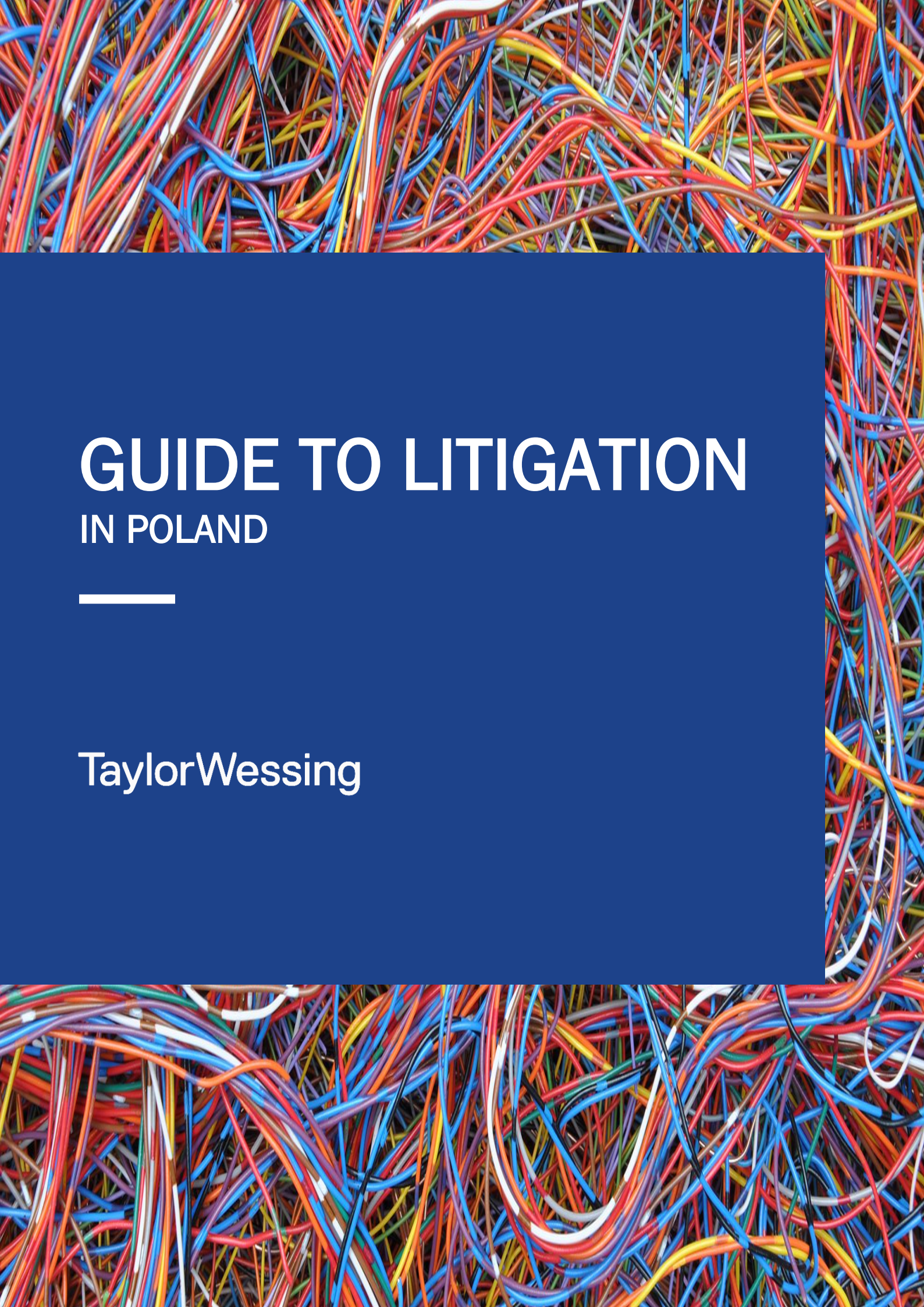




GUIDE TO LITIGATION IN POLAND

TaylorWessing

I. Introduction

In this briefing, we would like to provide you with the most important information to help you prepare for a dispute and argue your case before the Polish common courts.

II. How to prepare for a dispute?

Pre-litigation activities may play an important role for the outcome of your case. Adequate preparation for a possible dispute should include, in particular:

- **securing of potential evidence and proper documentation of the actions taken.** It is important to collect documentation relating to the contentious event/contract. Significant arrangements between the parties should be made by e-mail or in writing so that they can be effectively proven in case of a dispute.
- **exercising care in submitting statements and declarations** so that they are not used against you by the other party in the proceedings. In case of doubt, it is advisable to consult legal counsel about such communications.

Before the case goes to court, it is advisable to carry out a legal risk-reward analysis of the case. As part of the analysis:

- we will ask you, first of all, **to provide all information about the existing situation**, including a description of the undesirable event from your perspective and its impact on your business;
- based on the information provided, we may ask you **further questions, ask you to send us additional documents or help us find witnesses** who may have knowledge of the case;
- it may be necessary **to obtain additional documents or information from third parties** (e.g., authorities or courts);
- in cases involving, e.g., complex technical issues, a legal assessment may require **further clarification from an expert in the specific field** (e.g., a professional who will determine why the machine broke down, etc.);
- in order to gather information useful for legal proceedings it may also be advisable to make **use of business intelligence agencies** (we can of course guide you also in this respect).

Case analysis allows us to make recommendations and determine whether additional steps at the pre-trial stage should be taken, such as sending a final call for payment or making an additional, detailed calculation concerning the value of the damage suffered.

III. Is it possible to obtain an interim injunction to secure the claim before the case is settled in court?

Litigation in common courts tends to last a long time. However, if it appears that claim enforcement may be stymied by the passage of time, **the court has the power to protect the plaintiff's interests before or during the proceedings by granting an interim injunction securing the claim.**

When deciding on the interim injunction, the court makes a preliminary assessment of the evidence, considering whether it substantiates the statement of claim.

In the case of money claims:

- a) interim injunction involves seizures of the defendant's assets by the bailiff. The seized assets are not transferred to the plaintiff until the final (non-appealable) judgment in the case is handed down.

- b) interim injunction is granted only if it is justified by the defendant's precarious financial situation or the plaintiff proves that the defendant attempts to conceal his assets.

In other types of cases, the court grants the interim injunction issuing orders or prohibitions that the defendant must comply with for the duration of the proceedings. The plaintiff must prove that he or she will suffer damage without such temporary orders/prohibitions.

IV. Helpful to know if you are or may be involved in commercial proceedings

a) Types of claims

Polish courts generally examine three types of claims:

- for payment (the judgment awards the entitled participant the amounts due e.g., from invoices for services rendered);
- for determination (judgment confirms that a specific legal situation exists, e.g., that a contract has been validly terminated between the parties);
- for creation or change of the legal situation (e.g., creation of new contract conditions, price changes).

b) Court jurisdiction

The case is usually heard by the court with jurisdiction over the district in which the opponent is domiciled. However, there are a number of exceptions to this rule which may result from legal or contractual provisions.

c) Proceedings in commercial cases

Commercial cases generally involve disputes between businesses. The procedure is intended to be faster than in standard cases by having the parties to the proceedings comply with a number of restrictions. This is because businesses, in their professional capacity, are required to exercise much more diligence than individuals.

d) Proceedings step by step

i. Final request to the other party

Before a statement of claim is filed, a final call for specific performance or payment may be addressed to the other party. This is the stage at which out-of-court negotiations or mediation may also take place. Making this attempt is optional but may have an impact on the court's subsequent decision regarding court costs.

ii. The statement of claim

The plaintiff, when filing a statement of claim with the court, **sets out the particulars of the claim and presents his or her arguments and supporting evidence**. In commercial cases, the rule is that all arguments and evidence should be laid out by the party in its first pleading, and parties are not permitted to file new claims in place of or in addition to the original claims. A well-prepared statement of claim is therefore strategically important for the entire course of the proceedings in commercial case.

iii. Statement of defence

Once the statement of claim has been submitted, the court will serve a copy of the statement of claim on the defendant **and instruct the defendant to file a written statement of defence**. If the defendant fails to respond within the time limit set by the court, the court may issue a default judgment.

iv. *Pre-trial hearing*

Once the statement of defence has been filed, **the court may schedule a pre-trial hearing**. At this hearing, a schedule for the trial is prepared. The schedule for the trial determines the further course of the proceedings, in particular what evidence will be taken and when. The court may also summon the parties (their representatives) to attend the pre-trial hearing in person, although in practice the courts generally consider the presence of attorneys to be sufficient.

If, after the statement of defence has been filed, the court considers that a pre-trial hearing will not contribute to a more prompt determination of the case, the court may set a date for the first hearing (trial) or order a further exchange of pleadings.

v. *Main proceedings*

The next stage of the proceedings is usually the hearings themselves (trial).

Most often, evidence is taken during the hearings, including the examination of possible witnesses. In certain circumstances, the court may also admit evidence from the testimonies of the parties at the end of the proceedings.

- Evidence taking

In settling the dispute, the court relies on the evidence presented by the parties. Generally, evidence may be documents, witness statements, expert witness testimonies, inspection or hearing of the parties.

The general rule is that the party who wishes to achieve legal effects from a given fact must prove that fact. Any argument relevant to the case should therefore be supported by relevant evidence.

Documents are the most reliable source of evidence. **In commercial proceedings, the case is decided primarily on the basis of documentary evidence.** In these proceedings, witness evidence is, as a rule, admissible only if circumstances relevant to the case cannot be clarified by means of documents.

In order to use a document as evidence, it may sometimes be necessary to obtain a so-called *apostille* on a foreign public document or to have it translated into Polish by a sworn translator.

During the course of the proceedings, the court may require a party to submit additional documents.

- What does the witness testimony or hearing of the parties look like?

Depending on the court's decision, the hearing may take place either **in person, online or in writing**. If the hearing is in person or online, the summoned person has first, as a rule, the opportunity to speak freely about everything he or she knows about the case. After the witness has made a statement, the court and the parties may ask questions.

- What is an expert witness testimony?

In the event that some special information is required (e.g. about the breakdown of a machine), the court can summon an **expert witness to prepare a professional opinion**. The conclusions reached in such opinions play an important role in the case. The parties can file objections to the opinion prepared by the expert witness. The expert witness may then be called upon to provide a supplementary opinion or to give oral explanations.

vi. *Judgement*

After taking evidence and clarifying the facts of the case, the court closes the hearing stage and issues a judgment.

e) Is it possible to change the decisions issued by the court?

Proceedings before Polish civil courts may be carried out at two instances. This means that each party has the right to request that a ruling of the court of first instance be reviewed by the court of second instance.

This right can be exercised through:

- i. **a challenge** (an appeal against an order containing a substantive procedural decision of the court), which must be lodged within one week from the date of the service of the order; and
- ii. **an appeal** (against a judgement), which must, as a rule, be lodged within two weeks from the date of service of reasons for judgement.

After the case has been heard by two court instances, it is possible to file so-called extraordinary remedies, including a cassation appeal to the Supreme Court. However, this possibility is limited only to special situations.

f) Are there any costs other than the law firm's remuneration that need to be incurred?

If you file a statement of claim or an appeal (or a challenge), you will have to pay a court fee, payable into the court account. As a general rule, the court fee is 5% of the value of the matter at issue. However, in some cases there may be fixed fees regulated by the relevant provisions.

In the course of proceedings, the court may also order payment of additional fees related to the litigation such as the expert witness's fees, translator's fees, etc.

g) Can the cost of proceedings paid be recovered?

In settling the dispute, the court will also consider whether and to whom a party should reimburse the costs of the proceedings. The list of possible litigation costs to be awarded is open. It includes various costs of litigation incurred by the other party, such as e.g. the fee for the statement of claim, the appeal fee, the costs of an expert witness testimony, a translator, transportation to court, or the costs of proceedings for an interim injunction.

The reimbursement of the costs of proceedings also includes the reimbursement of the attorney's fees, but only at the flat-rate amounts specified in the provisions of the decree of the Minister of Justice on fees for attorney services.

To whom the court awards legal costs usually depends on the outcome of the case. An exception to this rule may be made, for example, when a party has obstructed the process.

V. Selected special types of proceedings

The Polish civil procedure also provides other specific rules in relation to some cases which may be relevant for businesses. These include:

(a) Fast-track procedure (obtaining an order for payment)

When the demand concerns money claims or fungible items and the facts are clear and sufficiently evidenced, it is possible to obtain from the court an order for payment. These proceedings make it possible to obtain a much faster settlement than in other proceedings. In order to determine whether a case can be fast-tracked, it is necessary to analyse the case documents.

There are different types of orders for payment. In this briefing we would like to draw your attention to two of them:

- a 'standard' order for payment – the defendant is obliged to pay the amount indicated in the court's order or lodge an objection. If the defendant lodges an objection to the order, the order is automatically revoked and the case continues to proceed according to the ordinary procedure. If an objection is not lodged, the order becomes final and the creditor may move to enforcement;
- a 'stronger' order for payment – this order additionally allows the plaintiff to request the bailiff to make immediate seizures of the defendant's assets (it may be used like an interim injunction). The defendant may also lodge an objection against the order, placing the case in the ordinary procedure, but this does not revoke the order and does not affect the bailiff's powers to make the seizures.

(b) Cases concerning competition and intellectual property laws

Cases of this type are regulated separately and follow a special evidentiary procedure. Usually, most of the evidence that is key for the outcome of the case is in the possession of the defendant, who does not want to voluntarily disclose material unfavourable to him or her. For this reason, there is a special procedure for securing evidence possessed by the opponent and for compelling the opponent to disclose or provide documents and information on the origin and distribution networks of the goods or services.

(c) Labour law disputes

From a business perspective, it is worth noting that employees bringing an action against their employer are subject to a much less rigorous procedure. If an employee chooses one claim in his or her statement of claim (e.g. reinstatement to work), but only the conditions of the other, alternative claim are met (e.g. compensation), the court may at its own discretion accept the alternative claim. In this type of cases witness evidence is particularly important. Moreover NGOs may bring an action on behalf of the employee, appeal against a judgement or join the employee in pending proceedings – a practice which is currently gaining popularity.

(d) Disputes between businesses and consumers

This is a new procedure, introduced into the Polish civil procedure rules as of 1 July 2023. The procedure is intended to deal with disputes involving businesses and consumers and places especially heavy obligations on the business involved. The rule is that the business party must produce all the evidence in the statement of claim if it acts as a claimant and all the evidence in the statement of defence if it acts as a defendant.

Furthermore, regardless of the outcome of the case, the court may order the business to pay all or part of the costs of the proceedings (and sometimes even double them). This may happen in particular if, prior to the consumer bringing a claim, the business failed to resolve the dispute amicably and thus caused the consumer action, which was in fact unnecessary.

VI. Litigation funding

There is a growing trend for third-party financing in Poland. Some entities specialise in investing in disputes by providing funds to the litigants. Litigation funding may be an interesting solution for a creditor who wants to pursue a claim but is concerned about the associated costs. If you are interested in financial support for fighting your case in court, we can of course, on your behalf, contact trusted providers.

VII. Is it worth choosing an alternative dispute resolution (ADR)?

In analysing your case, we look for the best solutions and tailor them to your needs. The alternative dispute resolution (ADR) can sometimes be one of them. Alternatives to fighting a case in court include negotiation, mediation and arbitration.

- (a) **Negotiation** – in the course of negotiations, the parties attempt to find a satisfactory solution to an existing dispute, often by making concessions to each other. The involvement of professional attorneys in negotiations not only provides support in drafting a precise agreement but also allows for the inclusion of appropriate safeguards in the agreement in order to facilitate the enforceability of the agreed settlement.
- (b) **Mediation** – during mediation, an impartial third party – the mediator – supports communication between the parties and facilitates their agreement on the terms of a possible compromise. There are many mediation centres in Poland. Our experienced team will be happy to assist not only at the stage of legal representation in mediation proceedings but also with selection of a suitable mediation centre. It is also possible for a common court to refer a case to mediation at any stage of the proceedings.
- (c) **Arbitration** – this method is similar to court proceedings before common courts. However, a dispute can be referred to arbitration only if there is an appropriate provision in the contract (arbitration clause) or a separate agreement is concluded after the dispute has arisen. By referring a dispute to the arbitration court, the parties agree to appoint one or more arbitrators who, after hearing the case, will issue an award in the case. The award of an arbitration court may be affirmed or set aside by a common court in a special procedure. There are many arbitration centres in Poland and around the world. You can find more information about arbitration, including permanent arbitration centres worldwide, at:

<https://www.taylorwessing.com/en/insights-and-events/insights/2022/05/arbitration-toolbox>

<https://www.taylorwessing.com/en/campaigns/local/the-arbitration-view>

Taylor Wessing will be happy to advise which method best suits your circumstances.

Taylor Wessing's dispute resolution team successfully handles highly complex litigation for its clients. We take a case-by-case approach to disputes proposing the most effective solutions to any business dispute.

If you would like to discuss your business dispute with us please feel free to contact us.

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