1. OVERVIEW

Ireland is increasingly an attractive destination for all forms of dispute resolution.

The formal litigation process through the Irish Courts remains the most commonly used form of dispute resolution for commercial disputes, although Ireland also offers alternative forms of dispute resolution including mediation and arbitration.

The Courts Service Annual Report 2015 shows that nearly 250,000 civil law cases were commenced in Ireland in 2015. Since the introduction of the Commercial Court in 2004, Ireland has been a forum of choice for judicially managed commercial disputes. The Commercial Court is recognised internationally as an efficient platform for the determination of substantial commercial disputes, according to Commercial Court statistics 90% of cases are decided within one year.

Like the United Kingdom, Ireland is a ‘common law’ jurisdiction. This means that the Irish Courts place greater reliance on previous case law than Courts in ‘civil law’ jurisdictions and are bound by the decisions of any Courts superior to them in the Court structure. The Courts structure in Ireland is made up of the lower Courts (the District and Circuit Courts) along with, in order of increasing supremacy, the High Court (which includes the Commercial Court), the Court of Appeal and the Supreme Court.

This guide primarily focuses on commercial litigation in the High Court.

2. LITIGATION

2.1 What is the structure of the Court(s) where large commercial disputes are usually brought?

Large commercial disputes are generally dealt with by the High Court, which has jurisdiction to hear claims valued in excess of €75,000 (or €60,000 in personal injuries cases). Matters coming before the High Court are normally heard and determined by a sole judge.

For claims below that value, the claim will be dealt with by either the District Court (which has jurisdiction to hear claims up to €15,000 in value) or the Circuit Court (which has jurisdiction to hear disputes up to €75,000 in value or €60,000 in personal injuries cases).

In circumstances where a claim is valued in excess of €1 million, or the Court considers that a claim is inherently commercial in nature, such a claim may be transferred to the Commercial Court.

The Commercial Court is designed to provide an expeditious, efficient and effective mechanism for dealing with commercial litigation cases. Cases are dealt with swiftly in the Commercial Court; as mentioned above according to Commercial Court statistics 90% of cases are decided within one year.

2.2 How is litigation usually funded? Can third parties fund it?

Litigation is usually funded by the parties to the dispute. The rules on maintenance and champerty in Ireland prohibit the funding of litigation by third parties who have no legitimate interest in the proceedings. The validity of these rules was recently tested in proceedings before the High Court in Ireland and the Court found that any change in the rules would require a change in legislation by the Irish Parliament. The High Court’s decision has been appealed directly to the Supreme Court (for more on appeals, see paragraph 2.7 below) and pending a differing judgment from the Supreme Court, or legislative intervention by the Irish Parliament, the rules prohibiting the funding of litigation by third parties who have no legitimate interest in the proceedings will continue to apply.
There are limited exceptions to the general rule prohibiting third party funding of litigation:

(1) third parties who have a legitimate interest in proceedings, such as shareholders or creditors of a company involved in proceedings, can lawfully fund litigation;

(2) A party can lawfully enter into an After the Event ("ATE") insurance policy. ATE policies come in varying forms but generally ATE is provided to cover a plaintiff’s exposure to pay the defendant’s legal costs if the plaintiff is unsuccessful in the litigation (see paragraph 2.8 below in relation to costs). ATE is a relatively new product on the Irish market and is not yet commonly used. However, due to a recent decision confirming its legitimacy, it may become more popular. ATE can, provided it is not conditional, be used as security for costs.

(3) Parties can also lawfully enter into conditional or contingency arrangements, where any payment made by the client to the solicitor they instruct in the litigation is contingent on the success of the case. These arrangements are referred to as ‘no foal, no fee’ or ‘no win, no fee’ arrangements and are more common in personal injuries claims involving an individual plaintiff and are less common in commercial cases. Whilst conditional or contingency arrangements are lawful, Irish lawyers are expressly prohibited from charging fees by reference to the damages awarded in the litigation.

On that basis, representative actions usually only arise where the class is relatively small or has a pre-existing relationship or bond with the main party.

In light of the above, the preferred option in Ireland for multi-party litigation is typically the test case. A test case can arise where numerous separate claims arise out of the same circumstances. One party pursues its case and then becomes the benchmark by which the remaining cases are resolved. For example, in 2008 the Commercial Court was faced with more than 65 separate claims related to the fraudulent investment operations run by Bernard Madoff.

The Commercial Court decided to take forward a small number of cases initially, as test cases. In this instance, it was decided that two cases by shareholders and two cases by funds would be heard sequentially as a first step and the Court stayed the other claims pending the resolution of the four test cases.

2.4 What is the life of a commercial dispute in the Irish Courts? Are proceedings case managed?

The Commercial Court has considerable flexibility in managing cases, with the relevant Rules of the Superior Courts providing for directions hearings, case management conferences and pre-trial conferences. The Commercial Court runs extremely stringent case management procedures and generally, although not always, delivers judgment promptly.

2.3 Do class actions exist in Ireland?

Whilst there is no framework in Ireland to formally facilitate class actions, the Irish Commercial Court has applied scheduling measures to ensure consistency and efficiency in its handling of multiple claims, in particular in financial services litigation. The closest procedures in Irish law to multi-party litigation are what are commonly known as “representative actions” and “test cases”.

A representative action arises where one claimant or defendant, with the same interest as a group of claimants or defendants in an action, institutes or defends proceedings on behalf of that group of claimants or defendants. Any judgment or Order in the action will usually then bind all claimants or defendants represented. There is a strict requirement that the parties must have the same interests in the same proceedings as opposed to merely similar or “common” interests. In addition, the Court must be satisfied that each individual member of a class has authorised the main party to act in a representative action.

Whilst there is no framework in Ireland to formally facilitate class actions, the Irish Commercial Court has applied scheduling measures to ensure consistency and efficiency in its handling of multiple claims, in particular in financial services litigation.
Proceedings that enter into the Commercial List will go through the following procedural steps:

- Issue and service of Plenary Summons
- Endorsement of Service of Summons
- Entry of Appearance – within eight days of Service of Summons
- Delivery of Statement of Claim
- Delivery of Notice for Particulars**
- Delivery of Reply to Notice for Particulars
- Delivery of Defence / Defence and Counterclaim
- Delivery of Reply to Defence

**An application to enter the Commercial List can be made at any stage but the later it is done, the more likely it is to be denied due to delay.

**A party can deliver a Notice for Particulars in relation to any formal pleading. Particulars can therefore also be sought on the Defendant’s Defence and Counterclaim or on the Plaintiff’s Reply.

***Directions Hearings and Case Management Conferences can take place throughout the proceedings as requested by the parties and as ordered by the Court.
As a result of the success of the Commercial Court, and in an attempt to increase the cost efficiency of other civil claims, similar statutory rules relating to case management have been introduced to the chancery and non-jury actions in the High Court (although at the time of publication they are not yet fully effective).

The length of time for a commercial claim to reach a decision in the High Court can vary considerably depending on the complexity and urgency of the case. However, recent data provides that the average length of High Court proceedings, from issue to disposal, is approximately two years. As discussed above, the Commercial Court is more expedient and, according to Commercial Court statistics, 90% of cases are decided within one year.

2.5 What are the document discovery or disclosure obligations on parties in Ireland? Can sensitive documents be withheld from discovery?

The discovery / disclosure process in Ireland involves the identification and exchange of relevant documents by the parties to the litigation. In some instances discovery may also be sought from parties not directly involved in the litigation. Discovery is made either as a result of an agreement to make voluntary discovery or, where no agreement is reached, pursuant to a Court order. The Commercial Litigation Association of Ireland has published a “Good Practice Discovery Guide” (the “CLAI Guide”) which is available [here](#).

The Court will only order discovery where the documents requested are relevant to matters in dispute and their disclosure is necessary to dispose fairly of the case or to save costs. In High Court actions, the parties seeking discovery must stipulate the exact categories of documents that they require and why they are requested with reference to the issues in dispute. The CLAI Guide recommends that the parties meet and confer at the earliest possible stage with a view to agreeing the scope and approach for the discovery exercise.

Once the relevant documents have been identified, only documents over which privilege can be claimed are exempt from discovery. A document cannot be withheld from discovery solely because it is particularly sensitive or damaging to the party’s case. That said, if a document contains irrelevant commercially sensitive information then it is possible for a party to redact that information before the document is discovered.

Failure to provide full and frank discovery could have a serious impact on the party’s prospects of success in the litigation and may also lead to cost consequences in the litigation. A party’s solicitor also owes a duty to the Court to ensure that their client makes full and frank discovery.

2.6 Are there any interim remedies available in Ireland? For example, freezing injunctions?

There are a number of interim remedies available in Ireland that allow a party to take more immediate action whilst the litigation proceedings take their course.

For example, a party can seek a freezing injunction to restrain the dissipation of assets by another party if they believe that the other party will do so before they are able to obtain and enforce a Court judgment against them. The standard of proof required to obtain such an injunction is high and, by way of summary, in addition to the risk of dissipation the applicant must prove that they have a prima facie cause of action and that the balance of convenience is in favour of granting the injunction. A freezing order is a type of interlocutory injunction and the object of such injunctions is to maintain the status quo between the parties until the final disposal of the action in Court (or such other period as ordered by the Court). Other examples of interlocutory injunction are injunctions to prevent the publication of potentially defamatory articles, or injunctions to prevent breaches of contract.

A party can also seek to obtain a search order where they believe that certain documents may be destroyed or withheld from the discovery process. The order may allow for inspection of the defendant’s premises for relevant documents although, as with freezing injunctions, a search order will only be granted in limited circumstances. The availability and execution of such interim remedies is strictly controlled by the Courts.

Another interim remedy available to parties is the ability to strike out part or all of the proceedings before a full Court hearing is required. A party may be able to strike out part of another party’s pleading where, amongst other things, the pleading does not disclose a cause of action or defence or is otherwise an abuse of the process of the Court. In practice, the standard of proof required before such an order is made is so high that obtaining a strike out order is rare.
The Court also has discretion to order that the plaintiff provide security for the costs to be incurred by the defendant in defending the litigation. The Courts are conscious to ensure that security for costs is only ordered in appropriate cases as such an order may limit a plaintiff's ability to advance its claim and restrict access to the Courts. As a result an order for security for costs can only be obtained in limited circumstances and the test for obtaining such an order against an individual plaintiff is more difficult to satisfy than it is as against a corporate plaintiff.

2.7 Can you appeal a Court Judgment?

It is possible to apply to appeal a decision of the High Court.

The appellate Courts in Ireland exercise jurisdiction on questions of both law and fact. However, this does not mean that an appeal will be a re-trial of the issues in the litigation. The appellate Courts generally do not hear oral evidence or interfere with findings of fact arrived at by the High Court.

The Court of Appeal (established in 2014) is the intermediate appellate court, sitting between the High Court and the Supreme Court and is now the default court for all appeals from the High Court. In the majority of cases the decision of the Court of Appeal will be final. However, permission to bring a further appeal may be sought from the Supreme Court. The Supreme Court will only grant such permission if satisfied that the decision involves a matter of general importance and / or in the interests of justice it is necessary that there be an appeal to the Supreme Court. Any finding by the Supreme Court is final and cannot be appealed, unless the case involves an issue of interpretation of EU law in which case it must be referred to the European Court of Justice.

A “leapfrog appeal” from the High Court to the Supreme Court, by-passing the Court of Appeal, is possible where the Supreme Court is satisfied that there are exceptional circumstances warranting a direct appeal to the Supreme Court. This will only apply where the decision of the High Court involves a matter of general importance and / or in the interests of justice it is necessary that there be an appeal to the Supreme Court.

2.8 Who is liable for the costs incurred in litigation?

Following the completion of the proceedings, or after any other hearing before the Court, the Court has discretion in relation to awarding legal costs between the parties. The general rule is that the losing party will pay the winning party’s costs incurred in relation to the litigation. However, there is a growing body of case law that suggests that if litigation is ‘complex’, the Court should engage in a more detailed analysis and should not just award full costs to the winning side if the plaintiff has not succeeded in all of its claims. The Court will also consider the behaviour of the parties in the litigation and any lodgements or tenders made when determining costs.

The costs awarded are usually restricted to those that are reasonable on a ‘party and party costs’ basis. ‘Party and party costs’ include those costs and expenses which are necessary or proper for the attainment of justice or for enforcing or defending the rights of the party.

In rare circumstances the Court may award the successful party ‘solicitor and client costs’, which are intended to indemnify the successful party on a more generous scale than the usual ‘party and party costs’. ‘Solicitor and client costs’ cover all costs except those that are unreasonably high or unreasonably incurred. Generally these costs are awarded in circumstances in which the Court considers that the behaviour of the losing party during the proceedings should be admonished by the making of such an order.

2.9 Can I enforce an Irish Court award in other jurisdictions?

Whether an Irish Court award can be enforced in another jurisdiction will generally depend on the laws of the state in which you wish to enforce the award. These rules can be restrictive in nature.

As Ireland is a member of the EU, the Brussels (Recast) Regulation and the Lugano Convention means that there is a legislative system in place for the mutual recognition and enforcement of Court awards between Ireland and other EU and EFTA states. Awards made by an Irish Court will be recognised in another EU / EFTA state without a declaration of enforceability being required so long as certain authenticity conditions are met. Enforcement of an Irish judgment can only be refused in an EU / EFTA state on a number of limited grounds, including where the Irish judgment is manifestly contrary to public policy in the member state where it is trying to be enforced.
In relation to jurisdictions where there is no convention in force to provide for a reciprocal recognition of judgments, it is for the recognising country to decide whether or not to enforce the Irish judgment and it is necessary to rely on the recognising country’s national laws regulating the rules of enforcement. As a general rule, the recognising Court will hold a hearing to determine if the requirements of local law are satisfied.

For further information on the enforceability of Irish Court awards in the UK post Brexit, please refer to our Brexit Commercial Litigation Q&A available here.

2.10 Can I enforce a judgment obtained in another jurisdiction in Ireland?

The ease with which a Court judgment from another jurisdiction can be enforced in Ireland will depend on whether Ireland has an agreement in place for the mutual recognition and enforcement of judgments with that jurisdiction.

As discussed above in relation to the enforcement of Irish court awards abroad, Ireland is subject to the Brussels (Recast) Regulation and the Lugano Convention meaning that the Irish Courts will recognise and enforce the judgments of Courts in other EU and EFTA states except where one of the limited exceptions discussed in paragraph 2.9 above applies.

Where such a reciprocal agreement is not in place, the Irish common law rules on the enforcement of foreign judgments will apply. To enforce a foreign judgment the applicant must issue Irish summary proceedings seeking an Irish judgment in the same terms as the foreign judgment. The Irish Court has a number of pre-requisites that must be met before it will enforce the foreign award, including that the foreign judgment must be final and conclusive and must have been awarded by a court of competent jurisdiction.

3. ALTERNATIVE DISPUTE RESOLUTION

3.1 Are there alternative dispute resolution mechanisms to formal litigation?

Alternative dispute resolution methods are available in Ireland and the two most commonly used forms are Mediation and Arbitration.

Mediation is a more flexible dispute resolution method whereby an independent, neutral party assists the parties in settling the dispute. It is commonly used in employment disputes. The mediation does not focus on finding in favour of either party, but on identifying a way to resolve issues to the satisfaction of both parties in a collaborative and consensual manner. The parties may prepare and exchange mediation position papers in advance of the mediation.

Mediation can be nominated by the parties by including a term in the contract in which they agree to refer any dispute in the first instance to mediation. Alternatively, when a dispute arises, the parties can agree to submit to mediation. The text of a new Mediation Bill is still in draft format, and this will provide a clearer framework for mediation in Ireland.

In Arbitration, an independent arbitrator hears the disagreement between the parties and makes a decision regarding the dispute. Arbitrations are normally conducted in like form to judicial proceedings with the exchange of pleadings and evidence in the traditional adversarial fashion. The mechanism for appointing an arbitrator is usually set out in the contract’s arbitration clause and an arbitrator’s award is final and binding.

The parties can agree to follow either the procedural rules of a particular arbitral institution (such as the London Court of International Arbitration or the International Chamber of Commerce) or their own bespoke procedure. The Arbitration Act 2010 standardised and modernised the law applicable to arbitration in Ireland by applying the UNCITRAL Model Law to both domestic and international arbitrations.

Arbitration is extensively used for commercial contract disputes, particularly construction, insurance and holiday contracts.
3.2 Are these alternative methods recognised in Irish law and can the awards be enforced?

In Ireland, in the absence of a clause in a contract between the parties, the Courts cannot compel the parties to use alternative forms of dispute resolution. However, in proceedings before the High Court, the Court may adjourn legal proceedings on application by either party or of its own initiative to allow the parties to engage in an ADR process. A party failing to engage in an alternative form of dispute resolution following a direction of the Court can be penalised in relation to costs.

Meditation is a voluntary non-binding process but the parties may decide to enter into a formal legal agreement to record and enforce any resolution reached between the parties.

In Arbitration, however, the decision of the arbitrator is legally binding on the parties and is enforceable through the Irish Courts. As Ireland is a signatory to the New York Convention, arbitral awards obtained in Ireland will also be recognised and enforceable in other states that are signatory to the convention, including the USA and the UK. For further information on the enforceability of arbitral awards in the UK post Brexit, please refer to our Brexit Commercial Litigation Q&A available [here](#).