The Legal 500 & The In-House Lawyer
Comparative Legal Guide
Ireland: Litigation

This country-specific Q&A provides an overview of Litigation in Ireland.

It will cover methods of resolving disputes, details of the process and the proceedings, the court and their jurisdiction, costs and appeals and opinions on future developments.

This Q&A is part of the global guide to Litigation. For a full list of jurisdictional Q&As visit http://www.inhouselawyer.co.uk/practice-areas/litigation-dispute-resolution/

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1. **What are the main methods of resolving commercial disputes?**

Traditional litigation remains the most frequently used method of resolving commercial disputes. In 2004, a division of the High Court known as the Commercial Court (or Commercial List) was established to provide effective, efficient resolution of commercial disputes. Parties who wish to have their case admitted to the Commercial List must, when making an application to do so, demonstrate that it satisfies a number of criteria to include that the dispute is of a 'commercial nature', and that the value of the claim is at least €1 million (subject to certain exceptions).

Although traditional litigation is still most commonly used, parties are increasingly turning to alternative dispute resolution (ADR) methods of resolving disputes.

The most commonly engaged ADR mechanisms in Ireland are arbitration and mediation. Arbitration in particular is often chosen by parties to commercial agreements as an alternative to litigation, because of the binding nature of the award and the formalised process (which often mirrors court proceedings in terms of steps taken). In that regard, commercial agreements themselves very often include a clause that any disputes arising under the agreement must be referred to arbitration.

2. What are the main procedural rules governing commercial litigation?

Practice and procedure in the Irish Courts is determined by references to the rules of the relevant court (please see (3) below in relation to the jurisdiction of the various courts to hear a claim).

Most commercial disputes arise within the jurisdiction of the High Court and are governed by the Rules of the Superior Courts (RSC). The RSC are amended from time to time by way of Statutory Instrument, and are published on the Irish Courts Service website in their un-consolidated form.

Procedure before the courts is also governed by Practice Directions, which complement the rules of court, and inform parties what the court expects of them with regards to practice and procedure. These practice directions are also published on the Courts

Service website.

3. What is the structure and organisation of local courts dealing with commercial claims? What is the final court of appeal?

Claims (commercial or otherwise) with a value of up to €15,000 are dealt with by the District Court, while claims with a value of €15,000 - €75,000 are dealt with by the Circuit Court.

Claims with a value of over €75,000 fall to be dealt with by the High Court. Thereafter, if the proceedings satisfy the criteria for admission to the Commercial Court (as outlined at (1) above), they may be admitted to that List.

Decisions of the High Court / Commercial Court may be appealed, typically to the Court of Appeal. Decisions of the Court of Appeal are in many cases final however a further appeal to the Supreme Court is permitted in certain circumstances (see (17) below also).

4. How long does it typically take from commencing proceedings to get to trial?

The length of time from the date of issue of proceedings to trial varies depending on factors such as the urgency of the case and the extent of pre-trial steps required, for example, discovery. In a typical case, one might expect a trial date to be assigned within 12 - 18 months of admission to the Commercial List.

5. Are hearings held in public and are documents filed at court available to the public? Are there any exceptions?

All commercial proceedings in Ireland are held in public. Documents filed in court (such

as initiating documents, Notices of Motion and Affidavits) are not available to the public and are generally only available to parties to the proceedings themselves. However, certain information in relation to High Court proceedings and the filing of documents (such as the nature of the document, the party who filed it and the date it was filed) is available to the public via an online database maintained by the Courts Service.

6. What, if any, are the relevant limitation periods?

The time within which a party must issue proceedings is governed by the Statute of Limitations Act, 1957 (as amended). Where the claim is founded in tort, or is for breach of contract, a party has 6 years within which to bring their claim. The general rule is that time starts to run in contract claims when the breach of contract occurs, and in tort claims when the damage is suffered (subject to certain exceptions, for example, where the date of knowledge is later).

7. What, if any, are the pre-action conduct requirements in your jurisdiction and what, if any, are the consequences of non-compliance?

Although not a formal pre-action requirement, it is normal practice for a claimant to send a ‘letter before action’ to prospective defendant(s) before initiating proceedings offering them an opportunity to admit liability.

Separately, in line with the increased focus on ADR, the Mediation Act 2017 introduced a requirement that solicitors must advise all clients, prior to issuing proceedings, to consider mediation as a means of attempting to resolve the dispute, and provide them with details of the advantages / benefits of mediation and information on mediation services. Should proceedings subsequently issue, at the time of such issue, the solicitor must lodge with the relevant court office a statutory declaration evidencing that s/he has complied with his/her obligations under the Act.

8. **How are commercial proceedings commenced? Is service necessary and, if so, is this done by the court (or its agent) or by the parties?**

High Court proceedings are commenced by way of summons. Once the relevant summons is issued, it must be served within 12 months (which may be renewed for a further 6 month period by application to the court if good reason for the extension sought is demonstrated). The summons is generally served by the plaintiff's solicitor or by a summons server on the plaintiff's behalf.

9. **How does the court determine whether it has jurisdiction over a claim?**

This depends on a number of factors, including:

a. Value of the claim;

b. Nature of the claim;

c. Agreement between the parties, for example, the contract may contain a 'jurisdiction clause' which provides that the contract is to be governed by the laws of Ireland;

d. Other factors, e.g., where the damage occurred, where the contract was concluded etc.

10. **How does the court determine what law will apply to the claims?**

If the claim is, for example, a contractual claim, the court will look to the terms of the contract when determining the governing law to apply to the claim. Specifically, the court will consider whether or not the contract includes a choice of law clause. In the

absence of a choice of law clause, the governing law will depend on the nature of the claim. For example, a contract for the sale of goods shall be governed by the law of the seller's habitual residence. For a company, this would be its place of central administration.

If the dispute is not contractual in nature, for example tort claims, the general rule is that the applicable law will be that which applies where the relevant damage occurred. This general rule can be displaced by agreement of the parties.

11. In what circumstances, if any, can claims be disposed of without a full trial?

In many instances, commercial claims are compromised between the parties before a full trial. The rules of the Commercial Court encourage parties to engage with a view to reaching a resolution by providing that a judge of the Commercial Court may, of his own motion after hearing the parties or on the application of one of the parties, adjourn a case to allow the parties time to consider whether the proceedings ought to be referred to mediation, conciliation or arbitration.

Where a plaintiff delays considerably in progressing proceedings, a defendant may apply to have the claim struck out for want of prosecution and/or on the grounds of delay. The courts will consider the actions of the plaintiff(s) and defendant(s) in deciding whether to exercise its jurisdiction in this regard. Traditionally, the courts are slow to strike out unless a considerable period of time has passed and it can be demonstrated that some prejudice arises by reason of the delay. The courts also have jurisdiction to strike out a claim on the grounds that the claim is frivolous or vexatious, or that it does not disclose any reasonable cause of action. Whether or not such application is acceded to will very much depend on the particular facts of the case.

12. What, if any, are the main types of interim remedies available?

A number of interim remedies are available which relate, for the most part, to

preserving the status quo pending a full determination in the proceedings.

For example, a freezing order, known as a Mareva injunction, may be granted to restrain the dissipation of assets by a party if the Court believes that the party may remove, conceal or dissipate assets.

If a party believes that certain documents may be destroyed by their opponent or withheld from the discovery process, the court may grant an order allowing for the search and seizure of documents. This ‘Anton Pillar Order’ permits the plaintiff to enter the defendant’s premises with a view to inspecting and potentially removing items of evidence.

A party wishing to obtain such interim remedies will be required to meet a high standard of proof and must demonstrate inter alia that they have a prima facie case, that the balance of convenience favours the granting of the order, and that damages would not be an adequate remedy.

13. After a claim has been commenced, what written documents must (or can) the parties submit and what is the usual timetable?

The RSC provide the formal timelines to be applied in proceedings. In that regard, once a summons has been served, the defendant(s) must enter an appearance within eight days indicating their intention to appear to defend the claim or, alternatively, to contest the court's jurisdiction.

A statement of claim must be served on the Defendant within 21 days of the appearance being entered.

Thereafter, a defendant has 28 days from receipt of a statement of claim to deliver a defence and/or counterclaim. A reply to the defence and/or counterclaim may be delivered by the plaintiff within 14 days thereafter.

While the above timelines are laid down by the RSC, in practice, such timelines are often extended. Proceedings which are case managed by the Commercial Court are subject to directions timetables which set out the timelines for the delivery of all pleadings, discovery and outline written legal submissions. Such directions timetables are usually agreed between the parties and handed to the court. In the absence of agreement between the parties, the court will fix directions.

14. What, if any, are the rules for disclosure of documents? Are there any exceptions (e.g. on grounds of privilege, confidentiality or public interest)?

A party to a claim may request voluntary discovery (disclosure) from their opponent of documents which are relevant and necessary to the fair determination of the issues in dispute. If the categories of discovery cannot be agreed voluntarily between the parties, an application may be made to the court for an Order for Discovery. Any application for discovery must be brought by way of motion on notice and supported by a grounding affidavit setting out the categories of discovery sought and specific reasons why each category of discovery is deemed necessary.

Legal advice and litigation privilege may be claimed over documents in certain circumstances. The existence of any such privileged documents, if relevant to the categories of discovery, must be disclosed by way of listing when making discovery. However, where a claim of privilege is made (and maintained), it is not necessary to produce the said documents to the other side.

There is no exemption from disclosure on the grounds of commercial sensitivity, although commercially sensitive information which is not relevant to the matters in dispute may be redacted in certain circumstances.

15. How is witness evidence dealt with in commercial litigation

(and, in particular, do witnesses give oral and/or written evidence and what, if any, are the rules on cross-examination)? Are depositions permitted?

Witnesses usually give evidence by way of oral testimony on oath or affirmation, however in some instances facts may be proved on affidavit, or affidavits sworn by certain witnesses may be read into the court record.

In the Commercial Court, the parties to proceedings must exchange detailed witness statements in advance of trial outlining the core elements of the evidence that each particular witness proposes to give. At the trial itself, witnesses are subject to cross-examination following examination in chief. A witness may be cross-examined on their oral evidence and any affidavit evidence submitted by them. Depositions are not permitted.

16. **Is expert evidence permitted and how is it dealt with? Is the expert appointed by the court or the parties and what duties do they owe?**

Independent expert evidence is frequently availed of in commercial proceedings. Under the RSC, parties wishing to rely on independent expert evidence must provide disclose their respective expert reports to each other before trial. The Rules also provide for a procedure known as “hot-tubbing” whereby the court may direct that the respective parties’ experts meet in advance of trial to narrow the issues in dispute.

An expert’s duties are owed to the court and include:

> to provide truthful, independent and impartial expert evidence;
> to state the facts and assumptions upon which his/her evidence is based and to fully inform himself/herself of any fact that could detract from his/her evidence;
> to confine his/her evidence to matters within the scope of his/her expertise; and
> to act with due care, skill and diligence, including a duty to take reasonable care in drafting any written report.

There is no general provision for court-appointed experts in Ireland. However, the High

Court has an inherent jurisdiction to appoint such experts if it wishes to do so. This jurisdiction is rarely exercised.

17. Can final and interim decisions be appealed? If so, to which court(s) and within what timescale?

Final decisions of the Circuit Court may be appealed to the High Court. Decisions of the High Court (and Commercial Court) may be appealed, typically to the Court of Appeal. Decisions of the Court of Appeal may be appealed to the Supreme Court in certain circumstances only, for example where the decision involves a matter of general public importance and/or it is in the interests of justice that the decision be appealed to the Supreme Court. It is also possible in certain instances to appeal decisions of the High Court directly to the Supreme Court, effectively 'leapfrogging' the Court of Appeal. The Supreme Court will only hear such cases where it decides that the decision involves a matter of general public importance and/or it is in the interests of justice and where exceptional circumstances exist which warrant a direct appeal to the Supreme Court.

In order to appeal a High Court decision to the Court of Appeal, a notice of appeal must be lodged within 28 days of the date of perfection of the High Court Order. To appeal a decision of the High Court or the Court of Appeal to the Supreme Court, leave to appeal must be sought from the Supreme Court. Such application for leave to appeal must be filed and served no later than 28 days from the perfection of the Order of the lower court.

A Notice of Appeal in respect of an interim decision must issue not later than 10 days from the date of perfection of the interim Order being appealed.

18. What are the rules governing enforcement of foreign judgments?

The method of enforcing foreign judgements in Ireland depends on where the judgment has been obtained and whether there is an agreement of mutual recognition

in place.

Under the Brussels (Recast) Regulation and the Lugano Convention, if the judgement was made by a court of another EU or European Free Trade Association state, it may be recognised and enforced in Ireland without any further proceedings, subject to certain conditions being fulfilled. Recognition and enforcement may be refused inter alia if it is manifestly contrary to Irish public policy.

In respect of judgments obtained outside the EU/EFTA, conflict of law rules apply. In this instance, the party seeking to enforce the foreign judgment must issue summary proceedings in the Irish High Court seeking an Irish judgment in the terms of the foreign judgment. In order for an Irish court to recognise any such foreign judgment, it must be:

1. for a definite sum;
2. final and conclusive; and
3. have been awarded by a court of competent jurisdiction.

19. Can the costs of litigation (e.g. court costs, as well as the parties' costs of instructing lawyers, experts and other professionals) be recovered from the other side?

The general rule is that costs 'follow the event' meaning that the unsuccessful party will usually become liable for the costs of the successful party (and potentially co-defendant(s)). However, this general rule can be varied by the court in certain circumstances, for example, by reason of the conduct of the parties in the litigation.

As regards recoverability, costs reasonably incurred by the successful party in prosecuting or defending an action are recoverable. These are known as 'party and party' costs. Costs that a party may have incurred in connection with the proceedings over and above this, known as 'solicitor /own client' costs, are typically not recoverable.

20. What, if any, are the collective redress (e.g. class action) mechanisms?

There is no formal mechanism in Ireland to facilitate class action suits. “Representative actions” and “test cases” are the closest procedures to collective redress which exist.

A representative action arises where one claimant or defendant, with the same interest as a group of claimants or defendants, institutes or defends proceedings on behalf of that group. By agreement of the parties, a judgment in the action may bind all those represented.

Test cases may arise where a number of separate claims arise out of the same set of circumstances and one or more parties pursue their case(s), the outcome of which is then considered a non-binding precedent for the subsequent claims.

21. What, if any, are the mechanisms for joining third parties to ongoing proceedings and/or consolidating two sets of proceedings?

A defendant may join a third party to proceedings if they believe (and can demonstrate) that the third party may be in some way responsible for the wrongdoing alleged in the proceedings and the defendant’s claim against the proposed third-party involves the same subject matter and similar relief as that in the main action. An application to join a third party to proceedings must be brought as early as possible in the proceedings and usually no later than the delivery of the Defence.

Proceedings may be consolidated by consent of the parties and / or Order of the Court where the parties to the various sets of proceedings (or some of them) are common and where the subject matter or issues in dispute are in some way connected.

22. Are third parties allowed to fund litigation? If so, are there any restrictions on this and can third party funders be made liable for the costs incurred by the other side?

In general, a third party who has a legitimate interest in the litigation may provide funding for the proceedings. However, maintenance and champerty are prohibited in Ireland and therefore third parties with no interest in the litigation are prohibited from funding same (Personal Digital Telephony Ltd v the Minister for Public Enterprise [2017]). It is however open to parties to take out After the Event insurance which does not fall foul of the rules against maintenance and champerty.

Separately, the Irish Courts have held that in certain circumstances costs may be awarded against a non-party to proceedings (Moorview Developments Limited v First Active plc [2011]). The factors to be considered by the Court when making such an order include:

1. the extent to which the unsuccessful party could meet an Order for costs;
2. the degree of possible benefit to the non-party concerned; and
3. whether the proceedings were conducted in a reasonable manner.

23. What, in your opinion, is the main advantage and the main disadvantage of litigating international commercial disputes?

The main advantage of litigating international disputes in Ireland is the availability of swift, judicially managed disposal of disputes. Since its introduction in 2004, the Commercial Court transformed the landscape for commercial litigants, and it is now recognised internationally as an efficient platform for the determination of disputes. In addition, for commercial parties with no pre-existing links to the jurisdiction, with its streamlined system, Ireland appeals as a neutral venue, easily accessible from the EU and US.

An unavoidable corollary of any court proceedings, the principal disadvantage is the inevitable cost and business disruption which may occur. In recognition of this,

however, the Irish courts have, as outlined above, introduced a number of measures aimed at encouraging parties towards alternative and (it is hoped) more cost effective and efficient methods of dispute resolution.

24. What, in your opinion, is the most likely growth area for disputes for the next five years?

The focus on ADR, in particular mediation, is likely to continue as awareness of the potential time and cost benefits when contrasted with traditional litigation, if this collaborative alternative is successful, is amplified.

25. What, in your opinion, will be the impact of technology on commercial litigation in the next five years?

The increasing willingness of the legal system to explore and embrace electronic alternatives to traditional paper based practices continues apace, for example Ireland's first paperless statutory inquiry commenced in December 2017. Although the courts are still some way from transitioning to e-filing, it is hoped that the increased use of technology in the litigation process, e.g. predictive coding/technology assisted reviews, will have a number of positive effects in the short term.