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International Comparative Legal Guides

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I. LITIGATION

1 Preliminaries

1.1 What type of legal system has your jurisdiction got? Are there any rules that govern civil procedure in your jurisdiction?

Ireland is a common law jurisdiction. The key sources of law are the Irish constitution, parliamentary legislation, European Union law, and the common law (previous decisions of the Irish superior courts). The civil Irish superior courts are the High Court, the Court of Appeal, and Supreme Court; these have strong judicial review powers, with the jurisdiction to invalidate parliamentary legislation on the basis that it is incompatible with the Irish constitution or EU law.

Irish civil procedure is governed by three sets of rules of court:

- the Rules of the Superior Courts (applicable to the Supreme Court, Court of Appeal and High Court);
- the Circuit Court Rules (applicable to the Circuit Court); and
- the District Court Rules (applicable to the District Court).

Where the Circuit or District Court Rules are silent as to applicable procedure, the Rules of the Superior Courts will generally apply.

Further, the Courts generally have broad case management powers. The Commercial Court, in particular, has strict case management procedures. Detailed case management rules for the normal High Court have also been enacted, but are not yet fully in force.

1.2 How is the civil court system in your jurisdiction structured? What are the various levels of appeal and are there any specialist courts?

There are five levels of civil courts in Ireland and one specialist court. There are a number of specialist tribunals established by statute for the determination of disputes in certain discrete areas of law, such as employment, and private residential leases.

The District Court

The District Court is the lowest Irish court. Ireland is divided into 23 District Court areas organised on a regional basis. Where a claim does not exceed €15,000, it should be brought in a District Court (unless the District Court is not entitled to hear that type of claim, e.g. it cannot hear defamation cases). Statute sets out the rules governing which District Court area is the proper jurisdiction for a matter – e.g. a District Court is entitled to exercise jurisdiction where the defendant is ordinarily resident within the relevant District Court area.

Civil decisions of the District Court can be appealed to the Circuit Court. Appeals proceed by way of a full rehearing and the decision of the Circuit Court is final. The District Court may also refer a question of law to the High Court by way of consultative case stated.

The Circuit Court

The Circuit Court is a level above the District Court. Ireland is divided into eight circuits organised on a regional basis. Where a claim does not exceed €75,000 (or €65,000 in a personal injuries claim), it should be brought in a Circuit Court. Again, the rules governing which Circuit Court has jurisdiction over a claim are set out in statute.

As set out above, the Circuit Court also acts as an appeal court for appeals from the District Court.

The High Court acts as an appeal court from the Circuit Court in civil matters. Appeals proceed by way of a full rehearing and the decision of the High Court is final. The Circuit Court may also refer a question of law to the Court of Appeal by way of consultative case stated.

The High Court

The High Court is established by the Irish Constitution. It is the highest court in which original civil proceedings can be initiated. It has unlimited monetary jurisdiction and hears civil cases exceeding €75,000 in value (or exceeding €60,000 in personal injury cases). Cases are usually heard by one judge, who determines both the factual and legal questions in dispute. Juries are only used in defamation and civil assault claims. There are specialist judges for competition, arbitration, and admiralty cases.

As set out above, the High Court also acts as an appeal court for appeals from the Circuit Court.

Normally, an appeal of a High Court decision will be to the Court of Appeal. It may also refer a question of law to the Court of Appeal by way of consultative case stated.

In exceptional circumstances, where a matter of general public importance is at issue or where the interests of justice require, a High Court decision can be appealed directly to the Supreme Court.

The Court of Appeal

The Court of Appeal has jurisdiction to hear appeals in civil proceedings from the High Court. Decisions of the Court of Appeal can be appealed to the Supreme Court if the Supreme Court accepts the appeal on the ground that it is satisfied that the case involves a matter of general public importance or if it is in the interests of justice to hear the appeal. Cases are heard by a panel of three judges.

The Supreme Court

The Supreme Court is the court of final appeal in Ireland. In most circumstances, the Supreme Court can determine whether it hears an appeal from the High Court or Court of Appeal based on the general public importance of the matters at hand, or on whether the interests of justice require the Court to hear the matter.

EU law supersedes Irish law in the sphere of Ireland's obligations as a Member State of the EU. As such, as there is no appeal from the Supreme Court, the Supreme Court has a duty to refer questions of unsettled interpretation of EU law to the Courts of Justice of the European Union before deciding such issues (unless EU law is clear on the issue).

Specialist court – the Commercial Court

The Commercial Court is a specialist division of the High Court, established to expeditiously and effectively resolve complex high-value commercial cases (generally with a value in excess of €1 million) and intellectual property disputes. Strict case management rules are applied to ensure cases progress expeditiously. Parties have to apply for entry to the Commercial Court and there is no automatic right of entry.

As the Commercial Court is a division of the High Court, appeals from the Commercial Court can similarly be made to the Court of Appeal or the Supreme Court, depending on the circumstances of the matter.

1.3 What are the main stages in civil proceedings in your jurisdiction? What is their underlying timeframe (please include a brief description of any expedited trial procedures)?

The main stages of Irish civil proceedings will depend on the type of proceedings being brought. That said, there are broadly four main stages for typical contract or tort claims, which are outlined below. The focus below is on High Court civil proceedings. While there are some differences between High Court procedure and Circuit and District Court procedure, generally these four stages apply.

1. Pleadings
   (a) Summons
   Most High Court proceedings are initiated by an originating summons. The summons alerts the defendants that an action is being taken against them and gives them an opportunity to enter an Appearance to defend the action.
   A summons may be served within 12 months from having been issued, after which it lapses. However, an application can be made to the Court to renew the summons for a further three months if there are special circumstances justifying such an extension.
   (b) Appearance
   A defendant is generally required to enter an Appearance within eight days of having being served with a summons. Consent should be sought from the plaintiff before entering the Appearance outside of the initial eight-day period. If the defendant fails to enter an Appearance, the plaintiff can proceed to seek judgment against the defendant.
   The entry of an unconditional appearance constitutes a defendant's acceptance of the jurisdiction of the court. If any question arises in respect of the Court's jurisdiction to hear the claim, the defendant should consider filing a conditional Appearance.
   (c) Statement of Claim
   The plaintiff's primary pleading is the Statement of Claim, which should set out the details of the claim being made against the defendant, so that the defendant knows the claim they have to meet at trial. As such, it should set out the relevant facts and the basis for the damages claim.
   The Statement of Claim should be delivered to the defendant within 21 days of the defendant's Appearance being filed. Outside of that time period, the plaintiff should seek the defendant's consent to the late delivery of the Statement of Claim, before delivering same. In theory, the defendant can apply to have the proceedings struck out if the Statement of Claim is not delivered within the 21-day period.
   (d) Defence
   The defendant is required to deliver a Defence within 28 days of delivery of the Statement of Claim. The Defence should set out what elements of the Statement of Claim are admitted or denied. If the defendant has a claim against the plaintiff, they can serve a Defence and Counterclaim within the same period.
   If the defendant fails to deliver a Defence, the plaintiff can apply to seek judgment. However, the Court will generally give the defendant every opportunity to deliver a Defence.
   Where a defendant is of the view that the Statement of Claim lacks sufficient detail for the defendant to understand the claim they have to meet, the defendant can raise a Notice for Particulars, identifying elements of the claim which require greater clarity.
   Depending on the circumstances, the above timings can be extended with the consent of the other party or with the permission of the Court. The Court will generally exercise its discretion to extend timelines if it is just to do so, but there could be accompanying costs consequences.
   In the Commercial Court, a full timetable for pleadings is usually agreed or directed at the first directions hearing. That timetable will be rigidly enforced.
2. Discovery
   Normally, the pleadings will be considered to be closed with the delivery of a Defence. At this point the issues in dispute between the parties should be clear. The next main stage of the proceedings will be the discovery process. This involves both parties seeking from each other information and documents which are relevant and necessary to resolving the issues in dispute and the saving of costs. This process is discussed in more detail in section 7 below. The timing of the discovery process varies widely depending on the complexity of the matters at hand and the volume of documents at issue. Again, stricter deadlines will be imposed in Commercial Court cases to ensure the case progresses effectively.
3. Witnesses and Legal Submissions
   After discovery, the parties will normally prepare factual and expert witness statements, as well as legal submissions, in preparation for the trial of the proceedings.
   In the Commercial Court, the parties will be directed to exchange factual and expert witness statements, as well as legal submissions. Again, this will be part of the proceedings timetable, and that timetable will be strictly enforced by the Court unless there are good reasons to depart from it.
   Similar directions can be made in non-Commercial Court High Court proceedings, but are not the default approach. The Court can also direct expert witnesses to meet to identify common ground in advance of the trial (see question 8.4).

4. Trial
The final main stage of the proceedings is the trial. The parties will present their evidence and make their legal arguments to the Court. The length of trials varies greatly and depends on the complexity of the issues and the volume of material to be put to the Court.

1.4 What is your jurisdiction's local judiciary's approach to exclusive jurisdiction clauses?

The Irish courts will enforce exclusive jurisdiction clauses, unless there is a good reason not to do so.

Further, EU law requires most Member States to enforce such clauses. Ireland has similar obligations pursuant to the Hague Choice of Court Convention in respect of contracting parties to that convention.

1.5 What are the costs of civil court proceedings in your jurisdiction? Who bears these costs? Are there any rules on costs budgeting?

The costs of civil proceedings vary widely depending on the complexity of the issues, the volume of the evidence, and the court in which the proceedings are being brought.

Both solicitor and barrister costs will be reflective of various factors including the complexity of the case and the amount of work undertaken on the matter. Practitioners are required to provide estimates.

The successful party is generally awarded their costs against the unsuccessful party in plenary proceedings, but the issue of costs is entirely within the Court's discretion. A successful party whose damages award does not reach the monetary jurisdiction of the court in which the proceedings were taken will usually be penalised on costs. For example, if the High Court awards a plaintiff €50,000, the plaintiff will usually have to pay a portion of the defendant's costs because that claim fell within the Circuit Court's monetary jurisdiction and therefore could have been brought in that court.

Unlike in other Irish courts, there is a specific scale of costs in the District Court, which attributes values which may be claimed in relation to elements of the conduct of District Court proceedings.

There are no formal rules on costs budgeting in Ireland. However, at the outset of an engagement, solicitors and barristers are required to issue a notice to clients disclosing the legal costs that will be incurred. If that is not possible, practitioners must set out the basis on which legal costs are to be calculated. By way of such notices, practitioners are required to give details of legal costs to date, along with fixed, certain and likely costs. There is an obligation to issue a new notice on fees if factors arise that are likely to lead to a significant increase in legal costs over those previously disclosed. They must also make clear to the client that they may be liable for the other party's costs if they are unsuccessful in the litigation.

1.6 Are there any particular rules about funding litigation in your jurisdiction? Are contingency fee/conditional fee arrangements permissible?

Ireland has traditionally had restrictive rules around litigation funding. It is not permissible for a third party to maintain proceedings where they have no legitimate interest in the outcome of the litigation. Similarly, a third party cannot fund litigation in return for a portion of the award if the litigation is successful. To do so would constitute champerty.

However, certain types of funding are permitted in limited circumstances. It is permissible for a third party to fund litigation in circumstances in which that party has a legitimate interest in the outcome of the proceedings. For example, the shareholder of a plaintiff company could be entitled to provide litigation funding on the basis that they have a legitimate interest in the plaintiff pursuing the litigation. If the plaintiff company is unsuccessful in the litigation, it is possible for the successful defendant to seek (a portion of) their costs against that legitimate litigation funder.

Contingency/conditional fee arrangements are not permissible in most cases and a solicitor may not charge their fee on the basis of a percentage of the award to their client.

After-The-Event insurance has been held by the Irish courts to be permissible if it meets certain requirements. Such insurance allows parties to buy insurance against the risk of being unsuccessful in the litigation.

1.7 Are there any constraints to assigning a claim or cause of action in your jurisdiction? Is it permissible for a non-party to litigation proceedings to finance those proceedings?

The Irish Supreme Court has confirmed that the assignment of a claim or a bare cause of action to someone who has no connection with the underlying claim is void as a matter of public policy. Such an assignment is considered to fall within the scope of champerty.

There is an unsettled exception to the above principle, which may arise when the assigned litigation rights are incidental to a *bona fide* transfer of other related rights (e.g. where an asset (e.g. a loan asset or property asset) is sold and litigation rights attaching to the asset are assigned as part of the sale).

Further, subrogation (e.g. where an insurance company takes over the defence of the insured's proceedings) is permitted in Ireland.

The rules in relation to non-party litigation funding are set out at question 1.6.

1.8 Can a party obtain security for/a guarantee over its legal costs?

Generally, a party can seek security for costs against a plaintiff company, regardless of where the company's registered office is. To succeed in such an application, the applicant must show that it (i) has a *prima facie* defence to the claim, and (ii) that there is reason to believe that the plaintiff will be unable to pay its costs if the plaintiff loses the case. If those two conditions are satisfied, the court will generally order security for costs unless there are special circumstances that persuade it not to do so.

However, it is much more difficult to get security against a personal plaintiff, particularly if they reside in Ireland or elsewhere in the EU.

However, security can be sought against any type of plaintiff in respect of the costs of discovery.

2 Before Commencing Proceedings

2.1 Is there any particular formality with which you must comply before you initiate proceedings?

A solicitor must advise their client of the option and advantages of mediation before proceedings are issued. Proceedings will not be permitted to go forward unless the solicitor files a

statutory declaration confirming they have complied with this requirement.

In personal injuries action, there can also be requirements to get authorisation from the State's claims assessment body (the Personal Injuries Board) before issuing proceedings.

Although there is no requirement to do so, a plaintiff's solicitor will usually send a warning letter to the defendant before initiating legal action, calling upon them to admit liability. Such a letter can be taken into account by the Court when considering costs awards.

If there is more than one potential defendant, the plaintiff's solicitor will usually write to all potential defendants calling upon the proper defendants to identify themselves. The letter will warn that, if necessary, all potential defendants will be sued and that the plaintiff will not be responsible for the costs of any party ultimately found not liable.

2.2 What limitation periods apply to different classes of claim for the bringing of proceedings before your civil courts? How are they calculated? Are time limits treated as a substantive or procedural law issue?

There are statutory time limits for commencing proceedings in Ireland. However, where the cause of action has been concealed by fraud, this will normally extend the relevant time period.

Most claims based on breach of contract or tort must be brought within six years of the action accruing.

A defamation claim should normally be brought within one year of the publication (but this can be extended to two years in certain limited circumstances).

Claims relating to land generally should be brought within 12 years.

A personal injuries claim must be commenced within two years from when the plaintiff knew or ought to have known they had a claim.

Arguments as to whether a claim is time-barred should be pleaded as part of the defendant's Defence.

3 Commencing Proceedings

3.1 How are civil proceedings commenced (issued and served) in your jurisdiction? What various means of service are there? What is the deemed date of service? How is service effected outside your jurisdiction? Is there a preferred method of service of foreign proceedings in your jurisdiction?

High Court proceedings are usually commenced by having a summons issued by the court office. Once issued, the summons must be served on the defendant. The procedure is broadly similar for commencing proceedings in the District and Circuit Courts.

Individuals can be served by handing them the document (i.e. personal service), or by sending the summons to them by registered post. Companies can be served by ordinary post or by leaving the documents at the company's registered address. Where postal services are used, the summons is deemed to be served on the date it would normally be expected to be delivered.

If proceedings are being served in another EU Member State, the summons should be appropriately endorsed with the basis for the Irish court's jurisdiction in the matter. The summons can then be lodged with the County Registrar who will transmit the documents for service by the relevant agency in the other Member State. Depending upon the circumstances, service through diplomatic or consular agents, service by registered post, or direct service may also be permitted. A somewhat similar process is required to serve documents in a contracting party to the Hague Service Convention. In those circumstances the summons must be lodged with the Master of the High Court. A plaintiff must apply to the Court for leave to serve documents outside of the jurisdiction if EU law or the Hague Service Convention do not apply.

The surest method of service of foreign proceedings in Ireland is through the Master of the High Court. Depending on whether EU law, the Hague Service Convention, or neither applies, and whether there is compliance with the relevant requirements, the Master of the High Court will direct for service to be effected.

3.2 Are any pre-action interim remedies available in your jurisdiction? How do you apply for them? What are the main criteria for obtaining these?

Interim and interlocutory injunctions are available as pre-action interim remedies in Ireland. The objective of these injunctions is to maintain the *status quo* between the parties until there has been a full hearing of the proceedings.

Interim injunctions are granted *ex parte* (i.e. without the opposing party present). Such applications are usually reserved for urgent or emergency cases. Interlocutory injunctions are granted after a hearing with all parties present. In granting such an injunction, the Court will consider whether there is a serious issue to be tried, whether damages are not an adequate remedy, and whether the balance of convenience lies in favour of granting an injunction. The applicant will be required to give an undertaking to pay any damages suffered by the other party as a result of the injunction if the applicant is ultimately unsuccessful in the substantive proceedings.

Quia timet injunctions, Mareva injunctions, Anton Piller Orders, and Norwich Pharmacal Orders are also available as pre-action reliefs in Ireland.

3.3 What are the main elements of the claimant's pleadings?

As set out at question 1.3 above, the claimant's main pleading will be the Statement of Claim. The main elements of that pleading will be the relevant facts of the claim and the basis for the relief sought. Where the claimant pleads fraud or fraudulent misrepresentation, there is an onus on the claimant to provide detailed particulars of the fraud. A High Court Statement of Claim must also disclose details around any intention to call expert evidence, if applicable. In personal injuries and defamation proceedings, the claimant must swear an affidavit verifying the alleged facts.

If the defendant is of the view that the Statement of Claim is not sufficiently clear as to enable them to know what case they have to meet, the defendant can raise a Notice for Particulars, seeking further details about the claim.

3.4 Can the pleadings be amended? If so, are there any restrictions?

Pleadings can be amended without leave of the Court within certain time limits. After that, the parties must apply for leave to amend. The Court will allow amendments where they are necessary to determine the issues in dispute between the parties. However, leave may not be granted where the amendment would prejudice the other party.

3.5 Can the pleadings be withdrawn? If so, at what stage and are there any consequences?

Pleadings can be withdrawn. At the early stages of proceedings, the plaintiff can withdraw their claim in whole or in part without leave of the Court, but will be liable for the defendant's costs incurred in dealing with the withdrawn elements.

Further, to encourage settlement, the plaintiff can withdraw their claim in whole (but not in part) at any time before the proceedings are set down for trial, with the consent of the defendant and without the leave of the Court. It is up to the parties to agree costs between them in these circumstances.

Otherwise, the plaintiff must apply for leave of the Court to withdraw their claim in whole or in part and the Court will exercise its usual discretion in relation to costs.

A defendant must seek leave from the Court to withdraw their Defence or counterclaim, in whole or in part. Again, the Court will exercise its usual discretion in respect of costs in such circumstances.

4 Defending a Claim

4.1 What are the main elements of a statement of defence? Can the defendant bring a counterclaim(s) or defence of set-off?

As set out in question 1.3, the main element of a Defence is the identification of what parts of the Statement of Claim are admitted or denied. Elements of the Statement of Claim which are not denied are deemed to be admitted, and denials should be substantive.

Specific defences, such as the claim being barred by contract or statute, or the applicability of contributory negligence, should be expressly pleaded in the Defence and pleaded separately to the admissions and denials.

A defendant can include a claim for set-off or counterclaim in their Defence. Again, this should be expressly and separately pleaded.

As with the plaintiff's Statement of Claim, a High Court Defence should also disclose details around any intention to call expert evidence in respect of any element of the defendant's Defence or counterclaim.

4.2 What is the time limit within which the statement of defence has to be served?

A Defence should be delivered within 28 days of delivery of a High Court Statement of Claim. The same period applies in the District Court, while a slightly shorter period (theoretically 10 days after the filing of an Appearance) applies in the Circuit Court. These time limits are commonly extended by agreement or court order.

4.3 Is there a mechanism in your civil justice system whereby a defendant can pass on or share liability by bringing an action against a third party?

A defendant can pass on or share liability by joining a third party to ongoing proceedings. This procedure is discussed in detail at question 5.1.

A defendant can also seek contribution against a co-defendant or third party where both are concurrent wrongdoers (i.e. they are both responsible for the same loss caused to the plaintiff). In certain circumstances, a defendant who has been found liable or who has settled with the plaintiff can initiate new proceedings seeking contribution from a concurrent wrongdoer who was not a party in the plaintiff's proceedings. However, unless the original proceedings were settled, there is a strong preference for such a concurrent wrongdoer to be joined as a third party to the original proceedings. The Court can refuse a contribution claim where the defendant seeking contribution failed to join the concurrent wrongdoer in the original proceedings without good reason.

4.4 What happens if the defendant does not defend the claim?

The consequences of not defending a claim depend upon the type of claim being made. If the claim is for liquidated damages, the recovery of land, or the delivery of goods, a plaintiff can get final judgment in the matter from the court office.

If the matter is for unliquidated damages, the plaintiff can issue a motion for judgment in default. The plaintiff can also make an application for a hearing to assess the damages claimed.

4.5 Can the defendant dispute the court's jurisdiction?

A defendant can dispute the Court's jurisdiction by filing a conditional Appearance and applying to the Court to set aside service on the basis that the Irish courts do not have jurisdiction to hear the matter.

If the defendant files an unqualified Appearance, they may be deemed to have accepted the Irish court's jurisdiction in the matter.

5 Joinder & Consolidation

5.1 Is there a mechanism in your civil justice system whereby a third party can be joined into ongoing proceedings in appropriate circumstances? If so, what are those circumstances?

A plaintiff can apply to the Court to join a third party as a co-defendant in ongoing proceedings where relief is sought against that third party which relates to the complaint being made in the ongoing proceedings. While such an order will normally be granted if the application is stateable, it may be refused where the joinder of the co-defendant would delay the trial of the proceedings.

A defendant can also apply to the Court to have a third party joined to the proceedings by way of a Third Party Notice. Such an application can be made where the existing defendant claims that:

a) it is entitled to contribution or an indemnity from the third party;
b) it is entitled to relief against the third party which is related to or connected with the plaintiff's proceedings, and the relief sought is substantially the same as some of the relief claimed by the plaintiff; or
c) the same or connected issues arise between the defendant and the third party as arise between the plaintiff and the defendant.

5.2 Does your civil justice system allow for the consolidation of two sets of proceedings in appropriate circumstances? If so, what are those circumstances?

Pending proceedings can be consolidated by order of the Court.

Any party can apply for such consolidation. In determining whether the order should be granted, the Court considers whether:

a) there are common questions of law or fact arising in the proceedings;
b) there is a substantial costs saving and convenience to the consolidation; and
c) the consolidation could lead to confusion or the risk of a miscarriage of justice.

5.3 Do you have split trials/bifurcation of proceedings?

Where several causes of action are being tried in the one set of proceedings, the Court can order separate trials if it is of the view that the issues cannot be conveniently tried together.

Issues of law can also be tried as preliminary issues at the outset of the trial on the application of either party, by the consent of the parties, or if the Court deems it convenient. The parties must agree the relevant facts before a preliminary issue will be heard.

Issues of law and fact can be tried on a modular basis, if so ordered by the Court. Such modular trials are sometimes invoked in complex proceedings, where it is convenient to hear certain disputes in advance of the main trial, on the basis that the resolution of those disputes could ultimately save time and costs.

6 Duties & Powers of the Courts

6.1 Is there any particular case allocation system before the civil courts in your jurisdiction? How are cases allocated?

Case allocation occurs in the High Court with the President of the High Court having overall responsibility for allocation. There are different court lists to deal with specialist matters (e.g. Commercial, Competition, Maritime, Judicial Review, etc.). Particular judges are responsible for those lists and specialist cases are assigned to the judge who deals with that list. Parties must apply for admission to the Commercial Court list (by way of motion on notice, and affidavit).

In the lower courts, the President of the respective court is responsible for managing the list, but there are no specialist lists at those levels.

6.2 Do the courts in your jurisdiction have any particular case management powers? What interim applications can the parties make? What are the cost consequences?

Courts have inherent case management powers and may issue directions or orders to assist with determining the proceedings in a just, expeditious and cost-effective manner (e.g. on format of proceedings, timetables and defining issues between parties).

A case management system has also been introduced to provide for greater case management and judicial control over litigation. These rules are intended to increase efficiency and reduce the duration of hearings in the High Court, making the process more organised and cost-efficient. The Commercial Court and Competition List have already been operating on a similar case-management basis for a number of years and the rules will extend this to cases in the Chancery and Non-Jury lists. The rules have not yet been brought fully into effect.

The case management system allows judges to make orders for pre-trial conferences, timetables and costs, etc., and provide for the sharing of expert reports and expert engagement. There is also scope for judges to appoint a court expert.

Failure to comply with a case management order can result in a party bearing the costs of an application to compel compliance.

6.3 What sanctions are the courts in your jurisdiction empowered to impose on a party that disobeys the court's orders or directions?

The Court can order a non-compliant party to bear the costs of any application or motion brought to compel the party to comply with a court order or direction.

In certain cases, a non-compliant party may have its case struck out.

The Court may also make a finding of civil contempt. The Court has a broad range of powers for civil contempt (up to unlimited powers of imprisonment, or sequestration of assets for a corporate entity).

6.4 Do the courts in your jurisdiction have the power to strike out part of a statement of case or dismiss a case entirely? If so, at what stage and in what circumstances?

Irish courts have the power to strike out all or part of a case if the pleading discloses no reasonable cause of action or answer, if the pleadings show the action or defence is frivolous or vexatious, if the party has failed to comply with court orders, if the case is an abuse of process or if the case is bound to fail.

The Court also has the power to strike out proceedings for want of prosecution or inordinate and inexcusable delay.

6.5 Can the civil courts in your jurisdiction enter summary judgment?

Summary judgment can be entered where the claimant can show that they are entitled to the relief sought and that there is no defence to the action. Summary judgment can also be entered if the defendant fails to serve its defence.

6.6 Do the courts in your jurisdiction have any powers to discontinue or stay the proceedings? If so, in what circumstances?

A claimant or defendant may apply at any stage for an action, or part of an action, to be discontinued, either indefinitely or for a defined period.

A claimant may discontinue or withdraw an action without the Court's leave either (i) before the defence is served or before taking any step in the proceedings (but he must pay the defendant's costs), or (ii) before the case is set down for trial if the defendant consents. A defendant must seek leave of the Court to withdraw a defence or counterclaim.

Common examples of circumstances where a court might stay proceedings would be to allow the parties to explore a settlement or alternative dispute resolution. If a party seeks judicial review of a decision or order, the High Court may stay the proceedings pending the outcome. In personal injuries cases, the proceedings may be stayed if the claimant has not complied with certain statutory requirements in respect of the summons.

7 Disclosure

7.1 What are the basic rules of disclosure in civil proceedings in your jurisdiction? Is it possible to obtain disclosure pre-action? Are there any classes of documents that do not require disclosure? Are there any special rules concerning the disclosure of electronic documents or acceptable practices for conducting e-disclosure, such as predictive coding?

Basic rules of disclosure

In Ireland, the most common disclosure process is known as discovery and is governed by the relevant Court rules.

It begins with a party issuing a request for voluntary discovery (usually after the pleadings have closed). An agreement between the parties for voluntary discovery has the effect of a court order. In High Court proceedings, the parties must stipulate the exact categories of documents which they require and provide reasons. The onus is on the party seeking the documents to show that they are relevant and necessary and that the request is proportionate.

The issues in the case need to be defined prior to discovery (as it is not a tool to identify causes of action). The documents must be (or have been) in the party's possession, power or procurement and must be relevant. The perceived sensitivity, confidentiality, significance or importance of a document does not affect the question of whether it is discoverable; once the document is within a category, it is considered responsive and must be discovered. However, privileged documents (see question 7.2) do not need to be provided for inspection.

Where the parties do not agree on voluntary discovery, an application for discovery may be made to the Court. The Court has a broad discretion and may order discovery in terms set out in the application or in amended terms. Objections to discovery on the grounds of proportionality (i.e. that making discovery will be particularly burdensome) and confidentiality may be considered by the Court, but will not be determinative.

The parties making discovery will each provide a sworn affidavit scheduling the relevant documents. The documents which are not privileged can then be inspected by the other party.

Pre-action disclosure

There is no provision for pre-action disclosure in the Irish Court rules. However, the Courts have previously recognised Norwich Pharmacal Orders which are sought to identify the defendant to an action, albeit that they are granted sparingly. For such an Order, the Court will look for proof of wrongdoing before granting the Order.

Classes of documents not requiring disclosure

See question 7.2 on privilege.

Disclosure of electronic documents

Electronic data is subject to the same rules as traditional discovery and must be disclosed as part of the discovery process. Parties must preserve evidence which may be relevant, and this obligation extends to evidence which is stored electronically. The Irish courts have approved the use of predictive coding and technology-assisted review in the discovery process as the volume and complexity of e-discovery has grown.

7.2 What are the rules on privilege in civil proceedings in your jurisdiction?

Privilege entitles a party to refuse to produce a document or to disclose its contents. Privilege can be relied on in a discovery process and at a trial.

There are a number of types of privilege recognised in Ireland:

- Legal advice privilege protects communications between lawyers and their clients where the communications are for the dominant purpose of seeking or providing legal advice.
- Litigation privilege protects confidential communications where the dominant purpose of generating the document was the preparation or furtherance of reasonably apprehended or ongoing litigation. The privilege generally only lasts for the duration of the proceedings.
- Common interest privilege arises when one party voluntarily discloses a privileged document to another party who has a common interest in the subject matter of the communication to which the document relates.
- Without prejudice privilege covers written or oral communications for the purpose of a genuine attempt to settle a dispute.

7.3 What are the rules in your jurisdiction with respect to disclosure by third parties?

It is possible to seek discovery against a non-party. However, a high standard of proof of relevance and necessity is required and any order will be at the Court's discretion. The document sought must not be reasonably available to the applicant by other means. Costs will be borne by the applicant.

7.4 What is the court's role in disclosure in civil proceedings in your jurisdiction?

The Courts can exercise discretion and must decide whether the requested documents or search parameters are relevant and necessary to dispose of the case properly. The Court makes the Discovery Orders (where the parties have not agreed).

7.5 Are there any restrictions on the use of documents obtained by disclosure in your jurisdiction?

Documents disclosed on foot of an Order for discovery are subject to an implied undertaking that they will only be used for the purposes of the action. To use the documents for any other purpose is considered contempt of court. An application can be made to the Court to vary or discharge this undertaking.

8 Evidence

8.1 What are the basic rules of evidence in your jurisdiction?

Although the primary form in which evidence is adduced at plenary trial in Ireland is through oral testimony, factual and expert witness statements are exchanged prior to trial in commercial court proceedings.

The general principle is that witnesses give evidence in person in open court. The Commercial Court can facilitate testimony by video link if necessary. In appropriate cases, the Court can also provide for alternative modes of testimony including evidence on affidavit, by response to interrogatories or by evidence before a commissioner or examiner. However, the Court will not authorise evidence on affidavit where there is a *bona fide* requirement for the particular witness to be cross-examined.

Ireland has not adopted the 1970 Hague Convention and, if overseas witnesses are unwilling to co-operate, it would not be possible to compel them by way of subpoena. However, an

application can be made for Letters Rogatory to be issued by the Irish court to the Courts of the appropriate jurisdiction to seek their assistance in compelling the individual to give testimony. In practice, the procedures are similar to those under the Hague Convention.

If the witness is located in an EU State, then the taking of evidence from one Member State to another without recourse to consular and diplomatic channels is allowed.

If evidence of foreign law is required, it is provided by a report from an appropriately qualified lawyer from the jurisdiction concerned. The parties generally agree for such evidence to be given in a written report or affidavit (avoiding the necessity for the foreign lawyer to travel). Absent such agreement, or alternative orders, the normal rules apply and the foreign lawyer could be required to testify in person.

There are a number of exclusionary rules governing the admissibility of evidence, including the rules against hearsay and the rule against opinion evidence (other than expert witnesses).

The standard of proof in civil proceedings is the balance of probabilities. The burden of proof rests with the party making the particular assertion.

The Courts permit evidence on affidavit in certain circumstances, e.g. pre-trial applications, cases suitable for summary disposal or cases unlikely to involve serious disputes of fact.

8.2 What types of evidence are admissible, and which ones are not? What about expert evidence in particular?

Oral evidence must usually be given; however, other types may also be admissible. These include:

- **Evidence on affidavit** – may be appropriate where the facts of the case are unlikely to be disputed.
- **Evidence on commission** – may be appropriate where a witness is situated abroad, unwilling to attend court or is unable to due to illness.
- **Documentary evidence** – admissible when the content of the document is proved. Sometimes proof of proper execution is also required.
- **Expert evidence** – admissible (including in the form of a written report) on issues considered to be within the witness' field of expertise. Such evidence is only permitted to the extent that it is required to enable the Court to properly deal with the matter.

8.3 Are there any particular rules regarding the calling of witnesses of fact, and the making of witness statements or depositions?

Parties are free to call any witnesses of fact whose evidence is relevant to the action. Other than in very limited circumstances, a judge cannot call a witness without the parties' consent. However, a judge may recall a witness.

Oral evidence must always be given on oath or affirmation, unless the witness is exempt (e.g. children under 14 or persons with a mental disability). Witnesses may, with the Court's permission, give evidence by video link.

A witness can be compelled to attend Court to give evidence (which requires an application for a subpoena). This is generally done when there is doubt as to whether a witness will give evidence voluntarily. Witnesses may also be compelled to bring certain documents with them when they give evidence.

Written witness statements are common in the Commercial Court and the new case management rules provide for their increased use in other cases (see question 6.2 above). The witness is then open to cross-examination on the contents of their statement. A witness statement should be in the witness's own words but, in civil cases, is usually prepared by a lawyer who has obtained all necessary information from the witness.

8.4 Are there any particular rules regarding instructing expert witnesses, preparing expert reports and giving expert evidence in court? Are there any particular rules regarding concurrent expert evidence? Does the expert owe his/her duties to the client or to the court?

Expert evidence must be independent and objective, and the expert has an overriding duty to the Court.

Expert witnesses should not give evidence on matters outside their area of expertise or on matters within the knowledge of the Court.

In the Commercial Court, a judge may direct the experts to consult with each other and may guide the process. The Court may also restrict or exclude expert evidence on case management grounds.

The new case management rules require parties to disclose their intention to offer expert evidence in their pleadings, and summarise the expert's field and the subjects to be addressed. A summary of the expert evidence must be served a month before trial.

The rules also provide for expert debate, cross-examination and questioning of experts by judges and scope for judges to appoint an expert to assist the Court. The Court may also order a joint report between multiple experts.

In the context of personal injury litigation, there are specific rules providing for pre-trial exchange of expert reports.

9 Judgments & Orders

9.1 What different types of judgments and orders are the civil courts in your jurisdiction empowered to issue and in what circumstances?

The High Court can award any common law or equitable remedy. Remedies include damages, declarations and other statutory remedies.

The lower courts are subject to jurisdictional limitations on the orders they can make.

The High Court can also make interim orders, e.g. an injunction to compel or prevent a party from doing something.

Steps must be taken by the relevant party to enforce a judgment.

9.2 What powers do your local courts have to make rulings on damages/interests/costs of the litigation?

The Court determines the appropriate level of damages in a case. The Court has discretion to award interest on a damages award at the statutory rate of 8%. Costs are awarded by the Court at its discretion (see question 1.5 above).

9.3 How can a domestic/foreign judgment be recognised and enforced?

A domestic judgment can be enforced in the District Court using one of the following methods:

- a judgment mortgage can be registered against a property;
- an execution order permits seizure of goods by a publicly-appointed sheriff;

- an instalment order requires the judgment debtor to make payments at regular intervals;
- if the judgment debtor fails to make payments under an instalment order a committal order may be sought, which results in arrest and imprisonment;
- an attachment order/garnishee order can made in respect of a debt owed to the judgment debtor by a third party;
- appointment of a receiver to sell a judgment debtor's property and discharge the debt;
- a petition for the liquidation of a debtor company or bankruptcy proceedings against an individual; or
- a charging order can be made in respect of Irish Government stock, funds, annuities, or shares or stock held in a private or public Irish company or English company carrying on business in Ireland.

Judgments obtained in another EU Member State are covered by the Brussel I Regulation (Recast). An *ex parte* application is made to the Master of the High Court on affidavit with the original judgment (or a certified copy) and a standard form certificate from the court officials in the relevant Member State containing details of the judgment.

Common law rules apply to the enforcement of foreign judgments outside the EU. The Irish Courts will not examine the merits, but the judgment must be a money judgment made by a court of competent jurisdiction.

9.4 What are the rules of appeal against a judgment of a civil court of your jurisdiction?

See question 1.2.

10 Settlement

10.1 Are there any formal mechanisms in your jurisdiction by which parties are encouraged to settle claims or which facilitate the settlement process?

Lodgment procedure – a defendant can pay a sum of money into Court, and if the claimant is successful but is awarded less than the lodgment amount then the claimant may only be entitled to their costs up to the date of the lodgment, with the defendant being entitled to costs from the date of the lodgment.

Without prejudice offer to settle – where a without prejudice offer to settle is made in writing, the Court may take this into account when exercising its discretion in relation to costs.

The Mediation Act 2017 – provides that there may be cost implications for a party to refuse to consider mediation or to refuse to attend mediation if they have been invited to do so by the Court.

II. ALTERNATIVE DISPUTE RESOLUTION

1 General

1.1 What methods of alternative dispute resolution are available and frequently used in your jurisdiction? Arbitration/Mediation/Expert Determination/Tribunals (or other specialist courts)/Ombudsman? (Please provide a brief overview of each available method.)

The most popular types of ADR in Ireland are:

- arbitration;
- expert determination;
- conciliation;
- mediation; and
- specialist tribunals.

Arbitration – is a popular means of alternative dispute resolution for commercial disputes. The parties submit the dispute to an independent third-party arbitrator for determination. It is a confidential process and the decision of the arbitrator (or arbitral tribunal) is final and binding. The format of arbitration broadly reflects Court proceedings. Parties may choose particular rules to apply to the arbitration. Those rules usually set out the mechanism by which the arbitrator is appointed.

Expert determination – is used for disputes requiring a specialist or niche area of expertise. The format is that of an evaluation by the expert who is an independent third party. This differs somewhat from arbitration where parties are more likely to adopt more adversarial positions. The process is confidential.

Conciliation – is broadly similar to mediation. However, a common form of conciliation in Ireland is construction conciliation, which differs significantly from mediation. If the parties do not reach a negotiated settlement, the conciliator issues a recommendation which is binding on the parties, unless it is rejected by either of them within a prescribed time period. The recommendation is largely at the discretion of the conciliator who can make a recommendation most conducive to a settlement or one which is based on their opinion of the merits of the case.

Mediation – is a confidential dispute resolution process with an independent mediator who accommodates the parties in reaching a negotiated settlement. It is a voluntary and non-binding process until a settlement is reached. Mediation can be agreed by the parties as a term of the contract or can be agreed after the dispute has arisen, or can be suggested by the Court of its own volition. Under the Mediation Act, a claimant's solicitor must advise their client about mediation and swear a statutory declaration that they have done so.

Specialist tribunals – there are a number of specialist tribunals to deal with specific types of dispute in Ireland (on the basis that they are faster and more economical than other methods). Examples include the Residential Tenancies Board, the Labour Court, the Workplace Relations Commission and ombudsman facilities such as the Financial Services and Pensions Ombudsman.

1.2 What are the laws or rules governing the different methods of alternative dispute resolution?

ADR mechanisms are generally governed by the contractual terms agreed between the parties (or the Court Rules where applicable).

In addition:

- **Arbitration** – is governed by the Arbitration Act 2010 which applies the UNCITRAL Model Law.
- **Mediation** – is governed by the Mediation Act 2017.

1.3 Are there any areas of law in your jurisdiction that cannot use Arbitration/Mediation/Expert Determination/Tribunals/Ombudsman as a means of alternative dispute resolution?

Generally, ADR can be used in relation to any dispute in Ireland except where public policy dictates that the matter must be dealt with by the Courts, or where the claimant is a child.

The Arbitration Act states that it does not apply to disputes which concern the terms and conditions of employment or the

remuneration of employees. A consumer dispute where the arbitration clause is not individually negotiated (and which is worth less than €5,000) can only be dealt with by arbitration at the election of the consumer.

1.4 Can local courts provide any assistance to parties that wish to invoke the available methods of alternative dispute resolution? For example, will a court – pre or post the constitution of an arbitral tribunal – issue interim or provisional measures of protection (i.e. holding orders pending the final outcome) in support of arbitration proceedings, force parties to arbitrate when they have so agreed, or order parties to mediate or seek expert determination? Is there anything that is particular to your jurisdiction in this context?

The Arbitration Act (implementing the Model Law) obliges a Court to stay proceedings if the parties have entered into a valid arbitration agreement in respect of the dispute.

The Courts may also adjourn proceedings to allow parties to engage in ADR (either on the application of the parties or of its own volition).

Under the Mediation Act 2017, if the Court invites the parties to consider mediation and a party refuses (without good reason), then the Court may have regard to this in awarding costs (if it considers it just).

1.5 How binding are the available methods of alternative dispute resolution in nature? For example, are there any rights of appeal from arbitration awards and expert determination decisions, are there any sanctions for refusing to mediate, and do settlement agreements reached at mediation need to be sanctioned by the court? Is there anything that is particular to your jurisdiction in this context?

Arbitration awards are final and binding. There are very limited grounds on which a party can seek to set aside an award (and the Irish Courts are generally reluctant to intervene in arbitrations).

A party may challenge the outcome of an expert determination.

Settlements agreed at mediation do not typically need to be sanctioned by the Court.

2 Alternative Dispute Resolution Institutions

2.1 What are the major alternative dispute resolution institutions in your jurisdiction?

There is no statutory ADR institution in Ireland, but there are government-nominated ADR bodies in Ireland relating to specific sectors, for example:

- The Chartered Institute of Arbitrators, Irish Branch (Arbitration Scheme for tour operators).
- The Advertising Standards Authority of Ireland.
- The Financial Services and Pensions Ombudsman.
- The Competition and Consumer Protection Commission (CCPC) (for consumer disputes under the Alternative Disputes Resolution Directive).
- A large number of lawyers, industry specialists and commercial bodies offer ADR services.

Lawyers (both barristers and solicitors) commonly act as mediators and arbitrators.

Members of specialist professional bodies also offer this service for relevant commercial disputes (e.g. engineers for construction disputes).

Acknowledgment

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