

DEBT RECOVERY IN IRELAND

Legal Procedures and some Enforcement Options



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This publication is intended to provide a brief outline of some of the processes relating to Irish Judgment procedures and Enforcement options.

Please note, however, that it does not constitute legal or commercial advice, nor is it intended to provide a comprehensive or detailed statement of the law.

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Mason Hayes & Curran (MHC) is one of Ireland’s largest business law firms, in advising both national and overseas clients on Irish and International law.

DEBT RECOVERY

Our Debt Recovery Dept is one of the largest in Ireland and acts for a cross-section of Irish, and overseas, businesses from all sectors, i.e. corporate, government, institutional and personal sectors. Such is our reputation overseas that we find an increasing demand for our debt collecting services from all parts of the world, particularly from the US, the UK, and other EU countries.

Also, as leaders in debt recovery, MHC is abreast of the latest domestic and international legislation.

PERSONNEL

Many of the firm’s lawyers teach, and tutor, in the Law Society’s professional school and generate a volume of public legal material in the form of books and other articles. We regularly accept speaking engagements on legal topics and foster close relations with the main university law schools.

REPORTING TO CLIENTS

Part of our service involves dealing with volume work from banks, and other financial institutions and, in all cases, we provide regular Reports to clients, as often as they require, so that they’ll be appraised on the current status of a particular case, or book of cases.

We employ the latest technology to maximise our customer service.

FEES

Our Fees are structured to minimise the cost to our clients and still provide a pro-active, professional, comprehensive service. Should our “pre-legal” efforts, through written demands and phone follow-up be unsuccessful, we would then confer with, and offer advice to clients in agreeing a further course of legal action, if advisable.

CREDIT CONTROL ADVISORY SERVICE

Should clients require, we are happy to advise them on credit control and safety procedures, and best practices, which can be built into accounting processes (see our booklet “A Guide for Credit Managers”).

With the necessary focus on compliance with EU credit legislation we find there is an increasing demand for our consultancy services in that regard.

The staff of our Debt Recovery Department regularly give tailored training seminars, and lectures, on the debt recovery legal process in Ireland, and on the best, efficient and economic use of debt recovery lawyers.

COMPANY INSOLVENCY

We offer advice on matters of corporate insolvency and act for company receivers, and liquidators, regularly.

FOREIGN DEBTS

We are in a position to offer a service to enforce any Judgment handed down in an Irish court, against any overseas Debtor.

Needless to say, we would welcome any inquiry regarding any aspect of our debt collecting service and would be glad to meet clients at our offices to show them our services, and to meet with our staff.

Generally speaking, legal action for debt recovery would only be advisable if success was likely, in which case Judgment would be sought by the Creditor against the Debtor.

In deciding to take legal action to recover debt the fundamental question “is such legal action likely to be contested?” has to be addressed – hence the importance of having correctly worded contracts, terms and conditions, warranties etc in place at the outset of a business relationship.

Firstly, should the legal action not be contested, the process will be relatively simple, logical and inexpensive – and hopefully fruitful!

Secondly, there is a hierarchy of courts in which the legal action would be taken, depending on the level of debt, plus interest (see below).

DISTRICT COURT - Debts up to €6,348 (IR£5,000)	
Uncontested	Contested
<ol style="list-style-type: none"> Civil Summons sent to Debtor - official notice from the Creditor of the nature of the claim - to which the Debtor does not respond. Affidavit of Debt sworn by Creditor - no court hearing takes place so Creditor swears the amount of the debt now due. Affidavit, Decree & Memorandum are filed in Court office Judgment should issue to Creditor within 20-60 days. 	<ol style="list-style-type: none"> Civil Summons sent to Debtor - to which he/she does respond (see No.2 below) Notice of Intention to Defend submitted by Debtor and date of court hearing fixed Creditor and Debtor put their cases to the judge and, if successful, the Creditor will receive a Judgment within 10-30 days after the hearing.

CIRCUIT COURT - Debts between €6,348 — €38,092 (IR£5,000 - IR£30,000) <i>Remember, there’s a Circuit court in each of the 26 counties in Ireland.</i>	
Uncontested	Contested
<p>Similar to the District Court process i.e. if uncontested, no court hearing takes place and a Judgment issues on receipt of Affidavit of Debt in the Court office, sworn by the Creditor.</p>	<ol style="list-style-type: none"> Civil Bill issued to Debtor - to which he/she does respond (see No.2 below) Appearance submitted by Debtor - his/her acknowledgment of intention to contest, and his/her written “Defence” should be registered in the Court office Court often allows delay to allow either the Creditor, or Debtor, prepare their case. Notice of Trail is served by Creditor, after receipt of Debtor’s Defence, advising date of court which can be 2 - 5 months away, depending on court scheduling. Court hearing with both Creditor and Debtor making their cases to the judge and Judgment will issue, if Creditor is successful.

HIGH COURT - DEBTS GREATER THAN €38,092 (IR£30,000)

There's only one High court for debts in the Republic of Ireland - and it's in Dublin.

Uncontested	Contested
<p>1. Summary Summons is served - by personal service to a person (s) or by ordinary post to the registered office address of a limited company.</p> <p>While such cases are usually contested, if uncontested, no court hearing takes place and a Judgment, or Fifa, issues in the same way as from the lesser courts.</p>	<p>Such cases are heard by way of a Motion before the Master of the High Court in Dublin. Both Creditor, and Debtor would make their cases by Affidavit and the Master will rule in favour of either, or</p> <p>(i) can refer it onwards to be heard by a High court judge, or</p> <p>(ii) refer it for Plenary Hearing with oral evidence, or</p> <p>(iii) allow part of the claim and refer the remainder of the claim onwards.</p>

INTEREST

Interest can be claimed at the contract rate in any proceedings. However, where there is no contractual provision, the Court may award interest at its discretion.

Also, for contracts entered into after the 8th of August 2002, EU regulations now allow for interest to be charged on all late payments (after 30 days have lapsed) at a rate of interest linked to the ECB base rate, currently 10.25% p.a.

After Judgment is awarded, interest is automatically applied to the Judgment debt at a statutory rate, currently 8%.

COSTS

Costs awarded to Creditors vary depending on the amount due and the Court..They are generally low, unless the case is a defended.

PUBLICATION OF JUDGMENT

To bring a Judgment to the attention of the public at large it must be published. Judgments, once registered, are published in the Experian All Ireland Gazette, and Stubbs Gazette, both of which are weekly publications giving a list of all the Judgments registered that week.

Both gazettes are widely read e.g. by bank managers, credit controllers, finance houses etc and the information relating to Judgments published is also available to the public on-line.

THE SHERIFF

Each county in Ireland has a Sheriff who is a civil servant and part of whose responsibility it is to seize, and sell, goods belonging to Debtors in discharge of debt. There can be long delays in this process, depending on the Sheriff's work demands, and often the Sheriff decides that the Debtor has no goods worth seizing and selling. The Sheriff will not seize tools of trade, or essential household items.

RECOVERY OF DEBTS IN OTHER COUNTRIES

Mason Hayes & Curran provides a service for the recovery of debts from Debtors in other jurisdictions by virtue of its affiliations with, and memberships of, various legal and credit management associations and connections, especially in the US, the UK, and other EU countries - all with a view towards easing inter-jurisdictional legal work for their clients.

INSTALMENT ORDER PROCESS

(only applies to individuals - not companies)

After Judgment has been obtained in court the relevant Debtor can be called to attend at the District Court to be examined as to his/her means. The Judge then decides what level of weekly/monthly debt repayments the Debtor can make and then usually makes an Instalment Order directing the Debtor to make the repayments - to commence, once the Order is served on the Debtor.

If the Debtor does not make the repayments the Creditor can go back to the District Court and seek to have the Debtor committed to prison for non-payment of the repayments - by Committal Order.

District Court judges do not usually give Instalment Orders against unemployed Debtors.

GARNISHEE

This is an effective legal enforcement option but is dependent of the Creditor having good intelligence on any monies due, but not yet paid, to the Debtor from third parties. In such circumstances, the Creditor can apply to court for a Garnishee Order directing that such monies be paid by the third parties directly to the Creditor.

Timing would be important in that the third parties would want to be advised of the Garnishee Order before the monies were paid to the Debtor.

RECEIVERSHIP BY WAY OF EQUITABLE EXECUTION

Similar process, in intent, to Garnishee except the ultimate objective is for the Creditor to receive the net sale proceeds of something e.g. car, land, house etc.

In certain circumstances the court may prefer to appoint a Receiver, like Mason Hayes & Curran, where the Creditor is unsure as to what, or how much money, the Debtor will receive.

JUDGMENT MORTGAGE

Once Judgement has been obtained in court, the Creditor can then apply in court to have a judgment mortgage registered on deeds to the debtor's property, which would prohibit any dealings with that property unless the relevant debt is discharged.

The Creditor can take a further step and have the relevant property sold, so that the debt is discharged, by applying to the court for a Well Charging Order and Order for Sale of the property.

Winding up of limited companies by the Court

To pursue repayment of a debt from a limited company one of the options open to a Creditor would be to wind-up the company. Such proceedings can be speedy and effective and often are an additional inducement to the company to repay the debt and so avoid this serious sanction against it.

To commence this process the Creditor can simply demand repayment from the Debtor company, detailing the debt etc. However, it is advisable to obtain Judgment beforehand, or at least a written confirmation from the Debtor company confirming its intention to repay the debt, as the court would not entertain winding-up proceedings where there might be a dispute regarding the relevant debt – as there often is!

Bankruptcy

When a Creditor fails to have a debt repaid on foot of a Judgment one of the legal options open to him /her is to declare the relevant Debtor bankrupt – in itself, an additional inducement to the Debtor to repay the debt!

The Creditor can seek to bankrupt an individual without a Judgment but many bankruptcy actions are taken where Judgments have been granted but have been returned *nulla bona* (no goods) by the Sheriff.

Bankruptcy proceedings must be brought in the High Court and must involve debts over €1,905 but, in Ireland, they can be lengthy and costly procedures – unlike similar procedures in England and Wales.

The Mareva Injunction

With good intelligence a Creditor may apply to the court, in anticipation of his/her application for Judgment, for a Mareva Injunction where he/she can demonstrate there's a likelihood that the relevant Debtor may dissipate assets or act in such a way as to defeat any future Judgment.

If successful, the Order handed down can relate to specific assets or be of a more general nature in that it might prohibit the Debtor from reducing his/her assets below a certain level.

Appearance	Response from Debtor, who receives a Summons, that he intends to defend the case.
Chattel Mortgage	Mortgage registered on property other than land/house e.g. cattle, item of machinery
Civil Summons	District Court Summons, as would be sent to Debtor by the Creditor, at the start of legal proceedings
Civil Bill	Circuit Court Summons, as would be sent to Debtor by the Creditor, at the start of legal proceedings
Committal Order	Order of District Court committing the Debtor to prison for failure to make debt repayments, by instalments, under the terms of an Instalment Order
County Registrar	Circuit Court officer who issues default Judgments and also acts as County Sheriff.
Court costs	Costs fixed by Court to be paid by the Debtor to the Creditor by way of reimbursement for the legal expenses involved
Decree	District Court Judgment
Discovery	Debtor's solicitor seeks copies of relevant documents in Creditor's possession, and visa versa
Execution Order	Document to enforce a Circuit Court Judgment
Experian Gazette	Weekly publication listing, among other things, all Judgments registered that week in Ireland
Fifa	Document to enforce a High Court Judgment
Folio	An official Land Registry document which describes a piece of land, or property, and the ownership, burdens thereon etc
Instalment Order	Order handed down by the District Court requiring a Debtor to make debt repayments, by instalments, following the granting of a Judgment
Judgment	
Certificate of	Document used to effect publication of a Judgment
Liberty to enter	The Order which the Master of the High Court makes when confirming that a particular debt is due
Memorandum of	The Court Officer's note confirming that a particular Judgment has been granted
Registration of	Publication of a Judgment
Judgment Mortgage	A Judgment registered on deeds to immovable property e.g. deeds to house, land
Judgment Mortgage Affidavit	Affidavit sworn by Creditor to effect Judgment Mortgage

Judgment Interest	Statutory interest applied to all Irish Judgment debts. The current rate of interest is 8%
Land Registry	The government agency which records all deeds to property, with registered title, in Ireland
Master of the High Court	Quasi-judicial official who adjudges on debt recovery cases that come before the High Court
Master's Order	Order of the Master of the High Court normally giving liberty to enter Judgment
Motion	Document grounding application to the High Court, or the Master, stating the Creditor's desired objective
Notice of Intention to Defend	Official response from Debtor on receipt of District Court Civil Summons indicating his/her intention to defend the case
Notice of Particulars	Document frequently sent by Debtor, or his/her solicitor, to Creditor requesting details of the relevant debt, invoice date etc
Petition	Document grounding application to Court in insolvency, company, and related matters.
Plenary Hearing	Full trial of an action before a Judge and with witnesses attending, for both sides, to give evidence personally under oath
Praecipe	One of the documents in a High Court Judgment application by default
Registry of Deeds	The official government agency which records all deeds to property, with unregistered title, in Ireland
Replies to Notice For Particulars	Document served by the Creditor on the Debtor, or his/her solicitor, replying to a Notice for Particulars
Searches	Enquiries done in Land Registry, Registry of Deeds, Companies Office etc to see if a party owns property or is a director of a company etc
Stubbs Gazette	Weekly publication listing, among other things, all Judgments registered that week in Ireland
Substituted (sub) Service	When a Summons can't be served in the way stipulated by the Court, the Creditor can apply to the Court, in <i>Ex Parte</i> hearing, to be allowed to serve the particular Summons by ordinary prepaid post, or by some other means. This is known as "sub-service"
Summary Summons	High Court Summons to commence High Court action for debt recovery

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