



## A Guide to Legal Procedures in Ireland

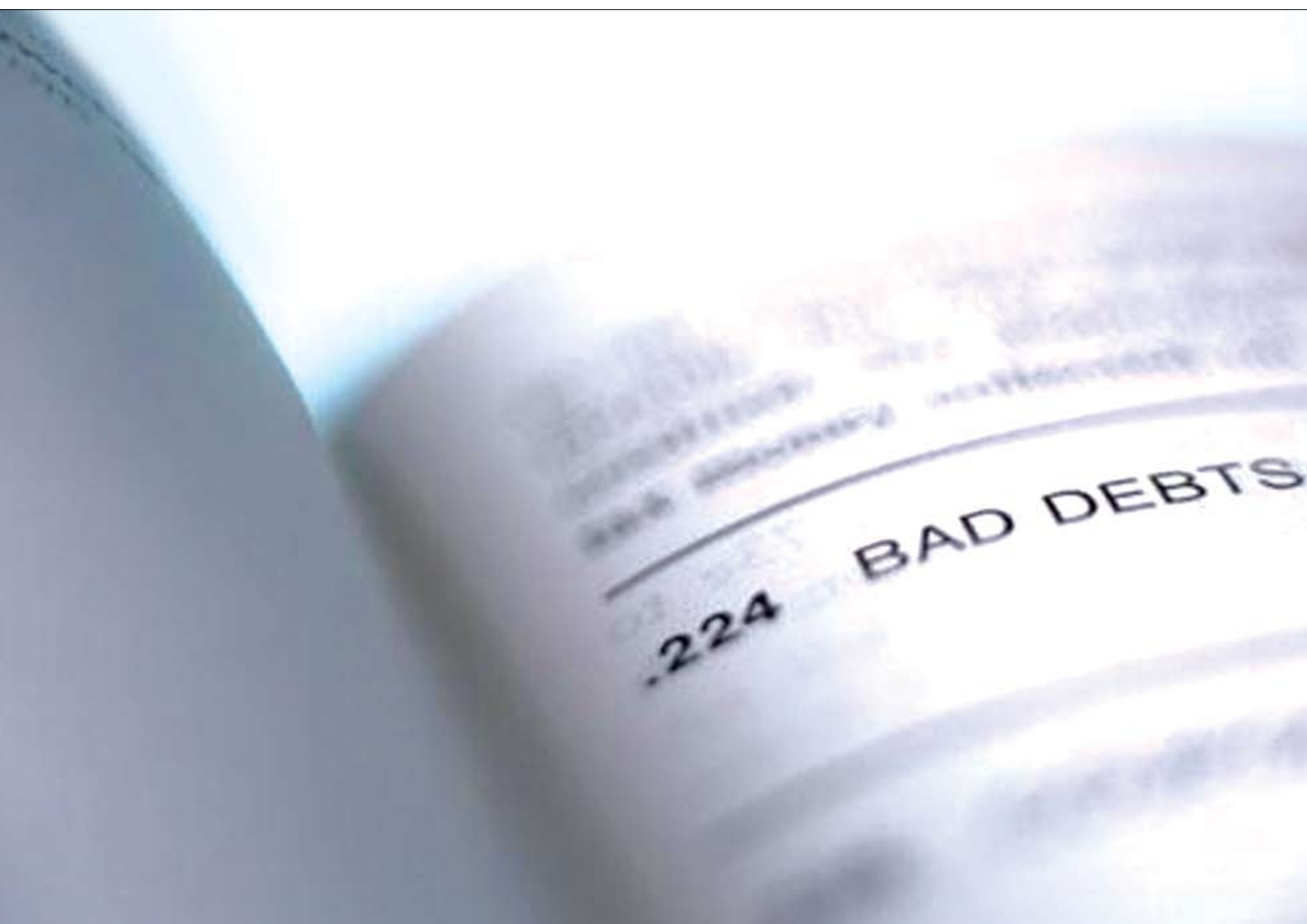
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For any business a key element in the profitability equation is the prompt collection of cash due. In many instances this can be achieved by a timely demand letter, or dialogue with the debtor by experienced personnel. If this fails, an agreed escalation process leading to legal proceedings if necessary, should be in place.

Legal proceedings should be the last course of action once sensible pre-legal avenues have been explored. Prior to embarking on the full legal process, certain crucial matters should be considered, such as the likelihood of success and whether, or not, the case will be contested. Each of these factors will have an impact on the length of time it takes to resolve the matter and the extent of the costs involved.

Ireland, like other jurisdictions, has its own legal procedures and enforcement options that allow creditors to pursue their outstanding debtors through the Courts. The Courts available are dependent on the nature of the case and, more importantly, its value.





## The Irish Courts

The Irish Courts are structured on a hierarchical basis and each has a process that must be adhered to throughout the course of the action. The processes involved for each of the main Irish courts are outlined below:

### 1. District Court

(debts up to €6,350)

There are District Courts in most Irish towns

Uncontested	Contested
1. Civil Summons served on debtor - official notice from the creditor of the nature of the claim - debtor does not respond	1. Civil Summons served on debtor - debtor does respond (see 2 below)
2. Affidavit of debt sworn by creditor - no Court hearing takes place so creditor swears the amount of the debt now due	2. Notice of Intention to Defend - submitted by debtor - date of court hearing fixed
3. Affidavit, Decree & Memorandum - filed in Court office	3. Creditor and debtor put their cases to the judge orally under oath
4. Judgment - should be issued to creditor within 20 - 60 days	4. If successful, the creditor will receive a judgment within 10 - 13 days after the hearing

### 2. Circuit Court

(debts between €6,350 and €38,092)

There is a Circuit Court in every Irish county

Uncontested	Contested
Similar to the District Court process. That is, 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	1. Civil Bill served on debtor - debtor does respond (see 2 below)
	2. Appearance submitted by debtor - debtor acknowledges intention to contest the claim and a written "Defence" should be registered in the Court office - Court often allows delay to allow time for the creditor or debtor to prepare their case
	3. Notice of Trial - served by creditor, after receipt of debtor's Defence, advising date of Court which can be 2 - 5 months away, depending on court scheduling
	4. Court hearing - creditor and debtor both make their case (orally under oath) to the judge and judgment will issue if successful

### 3. High Court

(debts greater than €38,092)

The High Court is based in Dublin

Uncontested	Contested
1. Summary Summons is served by personal service on a person(s) or by ordinary post to the registered office of a limited company  If uncontested, no Court hearing takes place and a judgment, or Fife, issues in the same way as from the lesser Courts	1. Summary Summons is served by personal service on a person(s), or by ordinary post to the registered office of a limited company - debtor does respond by entering an Appearance
	2. The creditor must apply for judgment to the Master of the High Court by way of a Motion. The creditor and the debtor make their cases by Affidavit and the Master may decide in favour of either. Alternatively, he may refer all or part of the claim to a High Court judge for hearing. This hearing may be on Affidavit again, or by way of a full trial with oral evidence

#### 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 business to business contracts entered into after the 8th 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 European Central Bank (ECB) base rate. After judgment is awarded, interest is automatically applied to the judgment debt at the statutory rate, which is currently 8%.

#### Costs

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



## Post Judgment Options

### Publication

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, Stubbs Gazette and various commercial databases.

These gazettes are widely read by bank managers, credit controllers, finance houses, etc.

### The Sheriff

Each county in Ireland has a Sheriff who is a civil servant and whose responsibility is to seize and sell goods belonging to debtors in the discharge of debt. There can be long delays in this process and often the Sheriff can decide that the debtor has no goods worth seizing and selling. The Sheriff will NOT seize the tools of trade, or essential household items.

### Instalment Order Process

(only applicable to individuals and 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 will decide the level of weekly/ monthly debt payments the debtor can make and will usually make an Instalment Order directing the debtor to make the repayments. The repayments will commence once the order is served on the debtor. It is unusual for a District Court judge to give an Instalment Order against an unemployed 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 (by Committal Order).

### Garnishee

A Garnishee Order is an effective legal enforcement option, although this is dependent on the creditor having good intelligence on any monies due, but not yet paid, to the debtor. In such circumstances, the creditor can apply to Court for a Garnishee Order, directing that such monies are paid by the third party directly to the creditor.

Timing is important so that the third parties are advised of the Garnishee Order before the monies are paid to the debtor.

### Receivership by way of Equitable Execution

This is a similar process to garnishee, except that the ultimate objective is for the creditor to receive the net sale proceeds of an asset belonging to the debtor. An example of this would be the sale of a car, land or house.

Under certain circumstances the Court may prefer to appoint a Receiver, such as Mason Hayes+Curran, where the creditor is unsure of how much money the debtor will receive.

### Judgment Mortgage

Once the judgment has been obtained, the creditor can apply in Court to have a Judgment Mortgage registered on the deeds of the debtor's property. This effectively prohibits 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 a Limited Company

To pursue the repayment of a debt from a limited company one of the options open to the creditor is to wind-up the company. Such proceedings can be quick and effective and are often an additional inducement to the company to repay the debt, so that this serious sanction is avoided.

To avoid spurious defences and the disapproval of the High Court, it is advisable to obtain a judgment beforehand, or at the very least, a written confirmation from the debtor company admitting the debt.

### Bankruptcy

When a creditor fails to have a debt repaid on foot of a judgment, one option open is to declare the debtor bankrupt. Again, this is a serious inducement for the debtor to repay, if they have the means to do so.

The creditor can seek to bankrupt an individual without a judgment from the Courts, though in practice many bankruptcy actions are taken where a judgment has been granted and returned 'nulla bona' (no goods) by the Sheriff.

Bankruptcy proceedings must be brought in the High Court and must involve debts over €1,905. Unlike similar procedures in England and Wales, bankruptcy proceedings in Ireland can be both costly and lengthy affairs.

### Mareva Injunction

With good intelligence a creditor may apply to the court, in anticipation of their application for judgment, for a Mareva Injunction. This demonstrates that there is a likelihood that the debtor may dissipate assets, or act in such a way 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 their assets below a certain level.



## Glossary of Irish Legal Terms

### Affidavit of Debt

A legal document confirming the debt due, that is sworn by the creditor to be true.

### Appearance

Response from debtor, who receives a summons, indicating that he intends to defend the case.

### Chattel Mortgage

Mortgage registered on property other than land/ house. For example, cattle, an item of machinery, or a ship.

### Civil Summons

District Court summons, to be served on debtor by the creditor, at the start of legal proceedings.

### Civil Bill

Circuit Court summons, to be served on 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 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.

### Defence

Circuit Court document, in which the debtor denies in writing that a debt is due and defending the claims made by the creditor.

### Discovery

Debtor's solicitor seeks copies of relevant documents in creditor's possession and vice versa.

### Ex Parte Application

The creditor applies to Court for an order, but notice does not have to be given to the debtor.

### Execution Order

Document to enforce a Circuit Court judgment.

### Experian Gazette

Weekly publication listing, amongst 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 following the granting of a judgment.

### Judgment

#### Certificate of Judgment

- document used to effect publication of a judgment.

#### Liberty to enter Judgment

- the order which the Master of the High Court makes when confirming that a particular debt is due.

#### Memorandum of Judgment

- the Court Officer's note confirming that a particular judgment has been granted.

#### Registration of Judgment

- publication of a judgment.

### Judgment Mortgage

A judgment that has been registered on deeds to immovable property. For example, deeds to a house, land, etc.

### Judgment Mortgage Affidavit

Affidavit sworn by creditor to effect a Judgment Mortgage.

### Judgment Interest

Statutory interest applied to all Irish judgment debts.

### 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 Circuit Court, the High Court, or the Master stating the creditor's desired objective.

### Notion of Intention to Defend

Official response from debtor on receipt of District Court Civil Summons indicating his/ her intention to defend the case.

### Notice for 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.

### Replying Affidavit

This is also a sworn legal document, in which the debtor will set out his side of the claim, denying that a debt is due and defending the claims made by the creditor.

### 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 cannot be served in the way stipulated by the Court, the creditor can apply to the Court, by Ex Parte Application, to be allowed to serve the particular summons by ordinary prepaid post, or by some other means. This is known as a 'sub-service'.

### Summary Summons

High Court summons to commence High Court action for debt recovery.