

GUIDE TO DEBT RECOVERY IN IRELAND

In this guide we detail legal procedures that are available to you, as a creditor to facilitate recovery of debt due to your company. We wish to emphasise that it is very important prior to beginning the legal process that the correct and most efficient procedures are employed that apply to the unique circumstances of your case as this will drastically impact upon the chances of collecting the outstanding debt due to your organisation. You should seek professional legal advice in this regard, as to do so will save you time, money and avoid frustration during the Legal collection process should an inappropriate option be chosen. This is particularly important in relation to large value debts where there are more legal options available to a creditor than would apply to low value debts.

STEP 1 - SEND A DEMAND LETTER

It is very important that your Solicitor sends a demand letter to the debtor on your behalf. If a demand letter is not sent this may have consequences in relation to recovery of the debt and the recovery of the costs of any future legal proceedings. Whilst you may have sent demand letters yourself as a creditor it is likely that they will have been ignored particularly if you are a creditor based abroad. If you are based abroad and your Solicitor has sent a demand letter you should still instruct your Solicitor in Ireland to send one as the response rate will be greater if the letter is sent from Ireland. The object of the demand letter is to obtain some form of response from the debtor whereby it may be possible either to be paid amicably or to enter into some form of payment plan and avoid legal proceedings.

STEP 2 - ISSUE LEGAL PROCEEDINGS

If step 1 does not result in payment being made or a payment plan being entered into then it is necessary to issue legal proceedings. As emphasised above it is very important that the most appropriate legal process is chosen. We set out below details of the legal process in Ireland

DISTRICT COURT PROCEDURES – Debts up to €15,000

Undefended Procedures	Defended Procedures
<p>1. Claim Notice issued and served on Debtor – This is official notice from the Creditor of the claim – to which the Debtor does not respond</p>	<p>1. Civil Summons sent to Debtor to which they respond</p>
<p>2. Affidavit of Debt sworn by Creditor and filed in Court Office together with judgment papers - no court hearing takes place, so Creditor swears an affidavit as to the amount of the debt now due.</p>	<p>2. Appearance and Defence Filed Submitted by Debtor and date of Court hearing fixed</p>
<p>3. Judgment issued - Should issue to Creditor within 20-60 days.</p>	<p>3. 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.</p>

CIRCUIT COURT PROCEDURES – Debts between €15,000 - €75,000

Undefended Procedures	Defended Procedures
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	1. Civil Bill issued to Debtor to which they respond
	2. Appearance submitted by Debtor which is their acknowledgment of intention to contest, and thereafter their written “Defence” should be registered in the Court office
	3. Notice of Trial 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.
	4. Court hearing with both Creditor and Debtor making their cases to the judge and Judgment will issue, if Creditor is successful.

HIGH COURT PROCEDURES – DEBTS GREATER THAN €75,000

Undefended Procedures	Defended Procedures
<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 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 for Judgment 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 Full 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.

After Judgment is awarded, interest is automatically applied to the Judgment debt at a statutory rate, currently 2%.

COSTS

Costs will be awarded to Creditors by the Court depending on the debt due.

STEP 3 ENFORCEMENT OF JUDGMENTS PROCEDURES

If the debtor fails to pay the creditor and Judgment is obtained it will be necessary to enforce that Judgment in order to be paid. Options in this regard are detailed below

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. Therefore the consequences for a debtor of publication is very serious.

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. This process is relatively inexpensive and depending on the circumstances of the particular case is normally the preferred method of enforcement. The Sheriff will not seize tools of trade, or essential household items.

GARNISHEE

This is an effective legal enforcement option whereby monies owed to the debtor by a third party may be protected and paid to the creditor instead. This enforcement method is dependent on the Creditor having good intelligence in relation to 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 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

This is a similar process to Garnishee except the ultimate objective is for the Creditor to receive the net sale proceeds of an asset, car, land, house or rent from a property or funds being paid regularly by a third party to the debtor.

JUDGMENT MORTGAGE

Once Judgment 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.

OTHER ENFORCEMENT OPTIONS

LIQUIDATION OF LIMITED COMPANIES

Applicable to debts over €10,000

To pursue repayment of debt from a limited company one of the most effective options open to a Creditor would be to liquidate the company. Such proceedings are quick and often will induce the company to repay the debt and so avoid this serious sanction against it. This process is particularly effective in relation to recovery of large debts but should only be used in relation to debts that are undisputed.

To commence the process a document known as a statutory demand is served on the debtor company personally at its registered office. The limited company has 21 days from the date of service in which to either pay the debt or dispute the debt. If the limited company takes neither option, a winding up petition can be issued and a liquidator is appointed to wind up the company. The purpose of this process is to put maximum pressure on the debtor company to pay its creditor and it is highly effective in this regard because the consequences of being liquidated are obviously very serious. Apart from the fact that the company will no longer technically exist and will have to cease to trade there are consequences for the Directors of the company who may be restricted from remaining or becoming directors of any other company and there are financial implications for them in this regard as well.

BANKRUPTCY – Individuals – applicable to debts over €20,000

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.

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 likelihood that the relevant Debtor may dissipate assets or act in such a way as to defeat any future Judgment. This is a procedure to seek to secure these assets.

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.

PLEASE CONTACT US

If you need assistance with debt collection in Ireland you are most welcome to contact Matthew Wales Solicitor by email **mwales@walesco.ie** or telephone **003531 2935110**. We would be pleased to discuss on an informal basis any cases that you may wish to action in Ireland with no obligation.