Ireland

by

Sarah Murphy, Orla Clayton & Colleen Barrett

A&L Goodbody LLP

This chapter has been reviewed by the Authors and
is up-to-date as of December 2023

2023

Encyclopedia of International
Commercial Litigation – December 2023

Ireland

Authors

Sarah Murphy is a partner in A&L Goodbody's Disputes & Investigations practice group. Sarah specializes in domestic and international commercial disputes with particular expertise in contentious mandates involving multiple claims and parties. Sarah has extensive experience handling complex and high-profile cases in the Commercial Court, Court of Appeal and the Supreme Court as well as regularly advising clients involved in arbitrations, mediations, and commercial negotiations. Sarah is a CEDR Accredited Mediator and a Council Member of the Irish Commercial Mediation Association. Sarah is also a member of the Dublin Solicitors Bar Association and is a qualified solicitor in England and Wales as well as Ireland.

Orla Clayton is a Knowledge Consultant in A&L Goodbody, supporting the Litigation & Dispute Resolution Department including specialist groups and is part of A&L Goodbody's Knowledge team. She is a commercial litigator with experience gained in top firms in London and Dublin. She has a particular background in product liability and product safety and in giving advice on both general and sector-specific EU and national requirements in relation to a wide range of products, with a focus on the life sciences, food and consumer goods markets, often involving large scale multiple plaintiff claims with a multi-jurisdictional dimension.

Colleen Barrett is a solicitor in A&L Goodbody's Disputes & Investigations practice group. She advises a variety of multinational and domestic clients on a wide range of contentious commercial matters. Colleen has experience advising clients on complex litigation relating to financial services, contractual breaches, and product liability, in particular involving multiple claims and parties.

With thanks to Sarah-Jane McCusker, trainee solicitor, for assisting with this chapter.

Ireland

PART A—GENERAL SECTION

(1) STRUCTURE OF THE COURTS

(a) The Court System

A1.1. The Irish Constitution outlines the structure of the Irish Court System. The courts include the Supreme Court (the Court of Final Appeal), the Court of Appeal, the High Court (with full jurisdiction in criminal and civil matters), the Circuit Court and the District Court (with limited jurisdiction). As the Irish Courts System is a 'common law' jurisdiction, the courts are bound by previous decisions of superior courts on the same legal issues. Courts will not be bound by previous decisions of other courts of equal or inferior jurisdiction but may regard them as persuasive. The Irish Courts will often be referred to decisions of the Courts of England & Wales or of common law jurisdictions such as New Zealand, Australia, Canada and (infrequently) the United States are also often cited in Irish Courts. They may regard such decisions as persuasive but not binding. Decisions of the European Court of Justice (ECJ) are also binding on the Irish Courts.

A1.2. The Irish legal system is divided into two branches: civil and criminal, each with its own specialized courts. In this chapter, we deal with civil and commercial cases only. Civil Courts hear cases involving disputes among individuals, private and public organizations or the state. These may be commercial or competition disputes, including personal injuries actions (which may be relevant for this chapter in the context of a product liability action).

A1.3. Flowing from the delivery to government of the comprehensive December 2020 report on the administration of civil justice of Mr Justice Peter Kelly, the Minister for Justice, Helen McEntee, published an implementation plan at the end of May 2022. The steps in that roadmap, once taken, may significantly reshape the civil justice and commercial litigation landscape generally, including a new regime for discovery.

A1.4. Commercial litigation is conducted before the High Court[1] in Dublin. The High Court has an unlimited monetary jurisdiction and is the principal Court of First Instance. It is the main focus of attention in this chapter. There is a right of appeal to the Court of Appeal from the High Court and, in certain circumstances, the Supreme Court.[2] Claims with a value of up to EUR 75,000 (EUR 60,000 for Personal Injury Claims) should be brought before the Circuit Court, which sits in most of the main towns in Ireland. Claims less than EUR 15,000 can be brought to the District Court, which sits in towns throughout the country.

A1.5. The High Court consists of the President of the High Court and fifty ordinary judges. The President of the Circuit Court and the Chief Justice are, by virtue of their

[1] The High Court is located at The Four Courts, Inns Quay, Dublin 7, to hear original actions. Personal and fatal injury claims are held in Dublin and in other provincial locations at specified times throughout the year.

[2] *See* s. A.12 re Appeals.

office, additional judges. High Court cases are normally heard and determined by one judge without a jury (with the exception of defamation and civil assault claims). However, the President of the High Court may decide that any cause or matter or any part thereof may be heard by three judges (a divisional court).

A1.6. A specific High Court Commercial division operates a case management regime to accommodate large-scale commercial litigation. Certain categories of litigation can be transferred to the Commercial List on the application of the parties and if the judge in charge of the commercial list approves the transfer. Commercial Court litigants need to be ready to meet more exacting timetables and pleading requirements, the reward being that the dispute should be resolved more quickly than elsewhere in the High Court.[3]

A1.7. In late 2021, an amendment of Order 63A of the Rules of the Superior Courts (RSC) created a new Intellectual Property and Technology List in the Commercial Court.

A1.8. Order 63A defines 'intellectual property proceedings' as any proceedings instituted, applications made or appeals lodged under certain legislation or instruments set out in the Order or relating to the licensing of rights protected under them. Examples of the relevant legislation include the Trade Marks Act 1996, the Copyright and Related Rights Act 2000 and the Industrial Designs Act 2001.

A1.9. The Commercial List Rules set out the categories of cases defined as 'Commercial Proceedings', eligible to be transferred to the Commercial List. These include any claim or counterclaim (other than personal injuries claims) arising from or relating to the following cases:

(1) a business document, business contract or business dispute;
(2) a claim or counterclaim involving any question of construction in respect of a business document or business contract;
(3) the purchase, sale, import or export of goods or the carriage of goods by land, sea, air or pipeline;
(4) the exploitation of oil or gas reserves or any other natural resource;
(5) insurance or reinsurance;
(6) the provision of services (excluding medical, *quasi*-medical or dental services or services under a contract of employment);
(7) the operation of markets or exchanges in stocks, shares or other financial or investment instruments, or in commodities;
(8) the construction of any vehicle, vessel or aircraft;
(9) business agency; and
(10) all intellectual property disputes.

A1.10. The value of the claim or counterclaim[4] should not be less than EUR 1,000,000.00.[5] There is no automatic right of entry to the Commercial List – it is at the court's discretion. The court also has discretion to admit cases which fall outside the above categories. Proceedings under the Arbitration Act (with limited exceptions) with a value in excess of EUR 1,000,000.00 and decisions amenable to judicial review may also be admitted to the Commercial List. Although certain classes of action are excluded from the

[3] While the Rules (R. 4 of Ord. 63A) say that any party to the proceedings may apply to the Commercial Court for entry at any time prior to the close of pleadings or completion of affidavits, the reality is that applicants are required to apply to transfer the proceedings into the Commercial List as soon as possible. Delay may be adversely regarded on an application for entry.

[4] With the exception of intellectual property claims or proceedings brought under the Cape Town Convention or the Aircraft Protocol or any regulations or procedures made thereunder.

[5] Although the court will permit consolidation of similar claims to meet the threshold.

Commercial List (including employment and personal injuries actions), high-value employment contract disputes and large-scale product liability actions can and have been admitted in the past at the court's discretion.

A1.11. Cases progress quickly in the Commercial Court and as part of an application for entry to the Commercial List, a '*Solicitor's Certificate*' is required. This must be signed by the individual solicitor responsible for the conduct of the case and include an undertaking that the solicitor will use their best endeavours to ensure the court's directions will be complied with in full. Judges are committed to progressing cases without delay and active case management facilitates quick resolutions of disputes. The average completion time currently stands at six months from the start to the finish of a case.[6]

A1.12. The range of cases in the Commercial Court reflects Ireland's growing economy as well as commercial activity and disputes globally. There has been an increase in the volume of commercial cases and subsequent appeals to the Court of Appeal and Supreme Court over the past number of years. Property disputes, insolvencies, judgments for loan defaults, investment disputes and disputes related to the COVID-19 pandemic have all featured heavily in the past number of years. There has also been a recent trend in disputes relating to aviation and aviation insurance cover being litigated in the Commercial list, as well as an increased focus on the need for practitioners to meet Court imposed deadlines by reference to the Solicitor's Certificate.

(b) The Competition List

A1.13. In competition law proceedings, a party can apply to transfer, or the judge can assign, the proceedings to the Competition List. Any motions or applications in competition proceedings are conducted in a swift manner.

A1.14. The Competition List judges direct parties to participate in active case management and to progress cases to trial expeditiously. This enables the parties to narrow the substantive legal issues in advance of trial which saves time and costs.

A1.15. Judges in the Competition List may, on the application of a party or of its own motion, appoint a skilled person to assist in understanding or clarifying a matter or evidence in order to expedite the trial. The judge may also direct the expert witnesses to consult with each other in order to identify the issues which they can agree with and the issues which are to be resolved before the judge.

A1.16. The State regulatory agency on competition, the Competition and Consumer Protection Commission,[7] may make written or oral observations to the court on competition law issues. This can be done on the commission's own application or at the request of the parties or the judge, if they are not party to the proceedings. The European Commission may make written observations to Courts of the Member States on its own initiative. It may also make oral observations with the permission of the court. Parties may file an *affidavit* to the court in reply to these observations.

A1.17. A specific division of the High Court also operates for planning and environmental proceedings. Formerly known as the Commercial Planning and Strategic Infrastructure Development ('SID') List, the list was renamed by a practice direction in April 2023 to the '*Commercial Planning and Environmental List*' and renamed again to the '*Planning and Environmental List*' by a further practice direction in December 2023. The list aims to increase efficiency in the

[6] Courts Service Report (2022).

[7] The Competition and Consumer Protection Commission was established on 31 Oct. 2014, an amalgamation of what was previously the Competition Authority and the National Consumer Agency.

management of planning and environmental proceedings. Certain proceedings, including those relating to acts or omissions involving domestic and EU legislation in the environmental and planning sphere, will be administratively entered in the list without the necessity of an application. The Planning & Environment List Practice Direction HC124 identifies relevant EU and domestic legislation for this purpose. Other planning cases, environmental cases or disputes relating to a project linked to proceedings in the list may be admitted by order of the court on application. 'Satellite litigation' to proceedings in the list will be automatically admitted to the list. It is envisaged that this list will eventually be renamed the '*Planning and Environmental Court*' and that the range of cases to be dealt with by that court further expanded, subject to the appointment of additional High Court judges.

A1.18. Other lists within the High Court include:

(1) The Non-Jury List which deals with contract claims, professional negligence and debt collection matters.
(2) The Chancery List which deals with company law matters, injunctions, specific performance and rescission.
(3) The Judicial Review List which deals with challenges to decisions of public bodies.
(4) The Admiralty List which deals with maritime and shipping matters.

A1.19. The Court of Appeal hears appeals from decisions of the High Court. The Court of Appeal's decision is final (save in limited circumstances). Normally, the waiting time for an appeal to the Court of Appeal is approximately twenty-five weeks.[8] These increased during COVID lockdowns, but most backlogs have been addressed by the use of 'virtual courts'. The Supreme Court, as a court of last resort, should only hear cases of general public importance or if it is in the interest of justice. As Ireland is a member of the European Union (EU), disputes involving European law raised in the Irish Courts may be referred to the European Court of First Instance and, or, the ECJ. The Supreme Court, the Court of Appeal and the High Court are referred to as 'The Superior Courts'. Separate rules apply to the Superior Courts, the Circuit Court and the District Court. This chapter focuses on the Superior Courts, where most commercial litigation takes place.

(c) Limits on the Courts' Jurisdiction

(i) Monetary Value of the Claim

A1.20. As noted earlier, the District Court has jurisdiction to deal with claims less than EUR 15,000, the Circuit Court has jurisdiction of claims up to EUR 75,000 (EUR 60,000 Personal Injury Claims) and the High Court has no limit on its monetary jurisdiction. The value of the claim or counterclaim should usually not be less than EUR 1,000,000.00 in 'Commercial Proceedings' in the Commercial List.

(ii) Issue-Related Limits

A1.21. No limits are placed on the High Court's jurisdiction. Under the Irish Constitution, it has full original jurisdiction over all claims. The Circuit Court and District Court are assigned, by statute, jurisdiction over a limited range of cases, which were traditionally small in value and importance. In the Circuit Court, six specialist insolvency judges deal with personal insolvency. Smaller companies can apply to the Circuit Court to have an examiner appointed to their company instead of the more expensive Commercial Court process. The Companies (Rescue

[8] Report of the Judicial Planning Working Group, Dec. 2022, available at https://www.gov.ie/pdf/?file=https://assets.gov.ie/248247/1894d424-7e23-4dc0-b6c6-3e40babe4016.pdf#page=null.

Process for Small and Micro Companies) Act 2021 came into effect on 7 December 2021 to provide for a dedicated rescue framework for small and micro companies subject to certain criteria. This fast-tracked legislation addresses the surge of insolvencies arising from the COVID-19 pandemic. It allows for a more cost-efficient process capable of conclusion within a shorter period of time than examinership.

A1.22. Major commercial litigation is generally confined to the Commercial List of the High Court. On appeal, it is assigned to the Court of Appeal and, in limited circumstances, the Supreme Court.

(2) JUDICIARY

(a) Training and Background

A2.1. Judges in Ireland are appointed by the government, with advice from the Judicial Appointments Board. Judges are generally either solicitors or barristers with extensive experience in practice. Although areas of expertise prior to an appointment would differ, many judges would have had extensive specialist commercial litigation experience prior to becoming a judge. The Judicial Appointments Commission Bill 2022 proposes to reform the arrangements for appointments to judicial office. The legislation proposes to establish the Judicial Appointments Committee (JAC) which will be in charge of selecting and recommending persons for appointment to judicial office. The recommendations will be based on merit, however, factors such as gender equality must be considered when making any decision. The Bill is currently going through the legislative process and has been passed by both houses of the Oireachtas. In October 2023, the President of Ireland opted not to sign the Bill into law, but referred the Bill to the Supreme Court to determine its constitutionality. A Supreme Court hearing on the constitutionality of the Bill took place in November 2023 and the constitutionality of the Bill has been upheld. The Bill is therefore now expected to be signed into law by the President.

(3) THE LEGAL PROFESSION

(a) Structure

A3.1. Ireland's legal profession comprises solicitors and barristers. Firms of solicitors vary considerably in size, from sole practitioners to a small number of large full-service commercial law firms offering a wide range of specialist expertise on a par with those in any major city. The professional body for solicitors in Ireland is the Law Society of Ireland[9] which exercises a supervisory, representative, regulatory, and educational role. It exercises statutory functions under the Solicitors' Acts 1954–2008 in relation to the education, admission, enrolment, and regulation of the solicitors' profession. It is governed by an elected council, and supported by a full-time executive led by the director general.

A3.2. Every solicitor must have a practising certificate which can be obtained once a solicitor provides evidence of professional indemnity insurance or exemption to the Law

[9] *See* www.lawsociety.ie, the official website of the Law Society of Ireland on which a directory of all solicitor firms in Ireland can be found. The Law Society is located at Blackhall Place, Dublin 7.

Society. In addition to the Solicitors' Acts 1954–2008 and the regulations made pursuant thereto, solicitors should also adhere to a code published by the Law Society which sets out the rules of practice, principles and procedures.[10] The recently established Legal Services Regulatory Authority (LSRA) (*see* below) has the power to issue codes of practice for legal professionals and/or to issue a notice directing a professional body to amend its code of conduct/ethics. Complaints made prior to 7 October 2019 are investigated by the Law Society. Complaints made after that date are investigated by the LSRA.

A3.3. The Legal Services Regulation Act 2015[11] (the 2015 Act) has changed the regulation of solicitors and barristers in Ireland. The 2015 Act established the LSRA, an independent body which now performs regulatory activities traditionally conducted by the Law Society and the Bar Council.

A3.4. Key elements of the 2015 Act, which were commenced in 2019, include:

(1) the establishment of a Complaints and Resolutions Unit;
(2) the establishment of a new Office of the Legal Costs Adjudicator; and
(3) the creation of new forms of legal partnerships, including limited liability partnerships, more direct professional access to barristers and Multidisciplinary Practices.

A3.5. Barristers are divided into Junior Counsel (BL) and Senior Counsel (SC, or Silks), and they are independent sole practitioners who have been called to the Irish Bar (the Bar). Most practising barristers are members of the Law Library[12] which is located in the main Four Courts building in Dublin. The Bar Council is the administrative body which regulates the Bar. Since the establishment of the Roll of Practising Barristers by the LSRA in June 2018, barristers must apply to the LSRA to have their name entered on the roll of Irish barristers. Barristers are also subject to the disciplinary function of the LSRA.

(b) Experience and Specialization

A3.6. Barristers only act upon the instructions of a solicitor, a foreign attorney (if providing advice) and a limited number of prescribed bodies (such as patent agents and insurance companies). They specialize in providing an advisory and/or advocacy service for which the barrister is briefed by a solicitor or other body. In most major commercial litigation in Ireland, barristers are retained for advice, preparation of pleadings and oral advocacy in court. Barristers do not handle clients' funds or provide the normal administrative services which a client would expect from a firm of solicitors.

(c) Experience in Dealing with Overseas Clients, Evidence and Witnesses

A3.7. All of the larger and some medium-sized Irish law firms have extensive ongoing contacts with foreign clients and law firms. In some cases, law firms take steps to obtain evidence overseas for use in litigation in Ireland or for assisting with regard to the Irish dimension of international litigation. There is no difficulty in involving foreign lawyers, clients, evidence and witnesses in Irish litigation.

[10] The Guide to Professional Conduct of Solicitors (4th edition 2022) .
[11] Legal Services Regulation Act 2015, Act No. 65/2015, available at http://www.irishstatutebook.ie/eli/2015/act/65/enacted/en/print.
[12] *See* www.lawlibrary.ie, the official Bar Council website on which can be found a directory of barristers.

(d) Legal Costs

A3.8. Under section 150 of the Legal Services Regulation Authority Act 2015[13] (the 2015 Act), once a solicitor has taken instructions to provide legal services, a legal practitioner must provide notice to the client, written in clear language, disclosing the legal costs that will be incurred or, if it is not reasonably practicable to do so at that time, set out the basis on which the legal costs will be calculated. A legal practitioner has an ongoing obligation to update the client if they become aware of any factor that would make legal costs significantly greater than previously indicated. In contentious business, the solicitor must advise the client if they may be liable to pay the costs of other parties and if the client's liability for costs may not be fully discharged by the amount of any of the costs recovered from the other parties. Unless otherwise agreed in writing, solicitors' fees are generally calculated using the criteria set out.

A3.9. A notice issued under section 150 of the 2015 Act should set out the costs that will be incurred or, where this is not practicable, the basis on which the costs are calculated having regard to:

(a) complexity;
(b) skill;
(c) time;
(d) urgency;
(e) place;
(f) documents;
(g) value;
(h) limited liability;
(i) research; and
(j) experts.

A3.10. In litigation, the notice should provide an outline of the work to be done and the likely costs or basis of costs involved at each stage of the litigation. A solicitor should provide information as to the likely legal and financial consequences of the client's withdrawal from the litigation, such as the likelihood of paying the costs of other parties and not fully recovering their own legal costs. Under the 2015 Act, a solicitor must ascertain the likely cost or basis of the cost of engaging a barrister, expert or other service provider and satisfy himself/herself as to the client's approval of that engagement before engaging such services.

A3.11. A fee structure which is based on a percentage of the damages award is unlawful. However, 'no win no fee' arrangements are common in personal injuries actions. Most solicitors' firms provide detailed itemized bills and fee notes on request. Barristers generally charge on the basis of brief fees for cases as a whole together with 'refreshers' for each additional day a case is at hearing. Fees are also charged for additional work such as attendance at consultations, settling pleadings, the provision of a written opinion and so on.

(e) Fee-Review Procedure

A3.12. Under section 153 of the 2015 Act, if a client disputes any aspect of a bill of costs issued by a solicitor, he or she must send a statement in writing setting out the nature of the dispute within twenty-one days of being provided with that bill of costs. The legal practitioner must then take all reasonable and appropriate steps to resolve the dispute by informal means (including,

[13] Statutes of the Irish Parliament (Oireachtas) can be viewed at www.irishstatutebook.ie.

where appropriate, mediation). If a party is of the opinion that reasonable attempts to resolve the dispute have failed, he or she must notify the other party of that opinion in writing.

A3.13. Following notification of a failure to informally resolve a dispute as to a bill of costs, a party can make an application for adjudication of legal costs in certain circumstances. A solicitor will be able to apply to the Office of the Legal Costs Adjudicators for a bill of costs to be adjudicated upon if the bill remains unpaid after thirty days of it being provided to the client (and within twelve months of that period). A client will have either three months (from the date of payment of a bill) or six months (from the date of provision of a bill) to make an application for adjudication.

(4) JURISDICTION OF THE COURTS GENERALLY

A4.1. If a foreign defendant is domiciled or registered in the EU, or in a Lugano Convention Contracting State, or in Denmark (pursuant to the Brussels Convention), then the Irish Courts will exercise jurisdiction pursuant to those conventions or pursuant to the rules of Council Regulation (EC) No. 1215/2012 (on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters) known as Brussels I (Recast) which applies from 10 January 2015.[14] No permission is required from the Irish Courts to issue proceedings against such parties. An endorsement on the writ setting out the articles relied upon is the only requirement.

A4.2. If the foreign defendant is not from the countries covered by Regulation No. 1215/2012 or the Lugano Convention, permission will have to be obtained from the court before the proceedings can be issued. In the High Court, this is governed by Order 11 of the Rules of the Superior Courts. The court will allow the proceedings to be issued if the claim falls into one of the following categories:

(a) the whole subject matter of the action is land situated within the jurisdiction (with or without rents or profits), or the perpetuation of testimony relating to land within the jurisdiction;
(b) any act, deed, will, contract, obligation or liability affecting land or hereditaments situated within the jurisdiction, is sought to be construed, rectified, set aside or enforced in the action;
(c) any relief is sought against any person domiciled or ordinarily resident within the jurisdiction;
(d) the action is for the administration of the personal estate of any deceased person, who, at the time of his or her death, was domiciled within the jurisdiction, or for the execution (as to property situated within the jurisdiction) of the trusts of any written instrument, of which the person to be served is a trustee, which ought to be executed according to the law of Ireland;
(e) the action is one brought to enforce, rescind, dissolve, annul, or otherwise affect a contract, or to recover damages or other relief for or in respect of the breach of a contract:
   – made within the jurisdiction; or
   – made by or through an agent trading or residing within the jurisdiction on behalf of a principal trading or residing out of the jurisdiction; or

[14] Prior to the coming into force of Regulation No. 1215/2012 Regulation No. 44/2001 on jurisdiction on the recognition and enforcement of judgments in civil and commercial matters applied.

– by its terms or by implication to be governed by Irish Law, or is one brought in respect of a breach committed within the jurisdiction of a contract wherever made, even though such breach was preceded or accompanied by a breach out of the jurisdiction which rendered impossible the performance of the part of the contract which ought to have been performed within the jurisdiction.

(f) the action is founded on a tort committed within the jurisdiction;
(g) any injunction is sought as to anything to be done within the jurisdiction, or any nuisance within the jurisdiction is sought to be prevented or removed, whether damages are or are not also sought in respect, thereof;
(h) any person out of the jurisdiction is a necessary or proper party to an action properly brought against some other person duly served within the jurisdiction;
(i) the proceeding relates to an infant or person of unsound mind domiciled in, or a citizen of Ireland;
(j) the proceeding is an interpleader proceeding relating to property within the jurisdiction;
(k) the proceeding relates to an arbitration held or to be held within the jurisdiction or to the enforcement of an award or an interim measure made by an arbitral tribunal in an arbitration so held;
(l) the proceeding relates to the enforcement of an award made by an arbitral tribunal, having its seat outside the jurisdiction or of the pecuniary obligations imposed by such an award;
(m) the proceeding is by a mortgagee or mortgagor in relation to a mortgage of personal property situated within the jurisdiction and seeks relief of the nature or kind following, that is to say, sale, delivery of possession by the mortgagor, redemption, reconveyance, delivery of possession by the mortgagee; but does not seek any personal judgment or order for payment of any moneys due under the mortgage;
(n) the proceeding is brought under the provisions relating to carriage by air of the Air Navigation and Transport Act, 1936;
(o) the proceeding relates to a ship registered or required to be registered under the Mercantile Marine Act, 1955, or any share or interest therein;
(p) the proceeding relates to the ownership of a trademark registered or sought to be registered in the Industrial and Commercial Property Registration Office;
(q) the proceeding is brought to enforce any foreign judgment or foreign arbitral award; or
(r) any relief is sought in proceedings commenced in accordance with Order 136 of these Rules;
(s) the proceeding is brought to enforce any interim measure issued by an arbitral tribunal, having its seat outside the jurisdiction or for other relief within the jurisdiction in connection with an arbitration held or to be held outside the jurisdiction.

A4.3. The procedures involved in making a personal injury claim in Ireland differ from other types of litigation. It is not possible to issue a personal injury claim until authorization from the Personal Injuries Assessment Board (the Injuries Board) is obtained.[15] The Injuries Board was established by the Personal Injury Assessment Board Act 2003 (the '2003 Act') and is an online statutory body which provides an independent assessment of personal injury compensation for victims of Workplace, Motor, Public Liability and other

[15] Section 12 of the Personal Injury Assessment Board Act 2003.

accidents.[16] The Personal Injuries Resolution Board Act 2022 was signed into law in December 2022 (the '2022 Act') and reforms the Injuries Board process. The 2022 Act is being commenced on an ongoing phased basis, meaning that it is at present partly commenced and has not yet been implemented in full.

A4.4. The requirement to obtain authorization from the Injuries Board before commencing court proceedings for personal injury applies to all civil personal injury cases with limited exceptions[17] including medical negligence actions and actions under the European Convention on Human Rights. A claimant must submit an application for assessment to the Injuries Board. The application form must be signed personally by the claimant and the following documentation must be submitted along with the application form:

(a) medical report of the injuries from a doctor who has treated the claimant, which the claimant must confirm describes the injuries sustained in the accident the subject of the application;
(b) all correspondence between the respondent and the claimant;
(c) supporting documentation for damages claimed such as receipts or vouchers;
(d) confirmation of the claimant's name, date of birth, phone number, address and personal public service number;
(e) confirmation of the name and address of each of the alleged respondents;
(f) confirmation of the date and time of the accident, a description of how and where the alleged accident occurred, and the personal injuries allegedly sustained; and
(g) any other documents the Injuries Board may consider relevant to the claim.[18]

A4.5. The claim is assigned to an Injuries Board assessor. The Injuries Board will send the respondent a letter and the respondent will have ninety days to decide to consent to an assessment of the claim by the Injuries Board.[19] The Injuries Board will assess damages on a 100% liability assumption without awarding legal costs. The assessment is intended to mirror that of the courts and lead to the early resolution of cases. Where a respondent accepts an Injuries Board assessment, which is not accepted by the claimant, the assessment will have the status of an offer of tender payment in any proceeding litigation. This may have cost implications for the claimant if they fail to recover a higher award of damages at trial.[20]

A4.6. Court proceedings in personal injury matters may arise in one of the following ways:

(a) where the Injuries Board notifies the parties that they are unable to deal with the case under section 17 of the 2003 Act.[21] Section 17 sets out numerous circumstances in which the Injuries Board has a discretion not to arrange for the making of an assessment, including cases involving multiple complex injuries, aggravated or exemplary damages are sought, the claim arises out of trespass to the person or there is insufficient case law in relation to the type of personal injury(ies); or
(b) where a respondent has refused to consent to the Injuries Board making an assessment; or

[16] Section 3 of the Personal Injury Assessment Board Act 2003.
[17] Section 3A of the Personal Injury Assessment Board Act 2003.
[18] Section 11 of the Personal Injury Assessment Board Act 2003 as amended by s. 3 of the Personal Injuries Resolution Board Act 2022.
[19] Section 13 of the Personal Injury Assessment Board Act 2003.
[20] Section 51A of the Personal Injury Assessment Board Act 2003 as amended by s. 16 of the Personal Injuries Resolution Board Act 2022.
[21] Section 17 of the Personal Injury Assessment Board Act 2003 as amended by s. 7 of the Personal Injuries Resolution Board Act 2022.

(c) either the claimant or the respondent has rejected the Injuries Board's assessment. In such situations, the Injuries Board will issue authorization to the claimant to institute proceedings in the courts. The claimant may now issue legal proceedings in the form of a Personal Injuries Summons in the High, Circuit or District Court.

A4.7. In respect of the assessment of damages by the Injuries Board, it will follow the Personal Injuries Guidelines (the '*Guidelines*') which were adopted by the Judicial Council under section 7 of the Judicial Council Act 2019 on 6 March 2021, replacing the Book of *Quantum*. The Guidelines set new guideline levels and outline various categories for personal injury compensation awards in Ireland. The purpose of the Guidelines is to achieve greater consistency in awards and to reduce the level of damages in personal injury cases. As both the Injuries Board and the Courts will have regard to the levels of damages under the Guidelines, it is hoped that such will entice parties to accept the Injuries Board assessment thereby reducing litigation costs and court waiting times.

A4.8. The 2022 Act has amended the 2003 Act to include some key reforms, including the processing of wholly psychological claims by the Injuries Board which it traditionally declined to assess. Once fully commenced, the 2022 Act will also introduce mediation on a consent basis which aims to further increase the number of personal injury claims which can be settled without recourse to litigation. The 2022 Act also contains several amendments to the 2003 Act to enhance the role of the Injuries Board regarding promotion of the work of the Board, data and reporting and measures to facilitate the prevention of fraud. Once fully commenced, the 2022 Act will also rename the Injuries Board as the Personal Injuries Resolution Board.

(5) GENERAL DESCRIPTION OF PROCEDURE OF A TYPICAL COMMERCIAL CLAIM

(a) Pre-trial Definition of Issues

A5.1. There is no pre-action protocol in Ireland (other than in personal injuries actions). However, a warning letter is generally sent prior to the issue of proceedings as a protective measure in relation to costs. The primary means of pre-trial definition of issues is by written pleadings. Proceedings are commenced in the High Court by issuing and serving a High Court Summons, most usually a plenary summons. Where an action is for the recovery of a liquidated sum, a summary summons is used. The principal pleadings in most High Court actions consist of the statement of claim and the defence and counterclaim. Other pleadings deal with contingencies such as third-party proceedings and claims between defendants. The pleadings set out the parties' respective cases, but they are not required to provide matters of evidence or law. Where a party has failed to give proper details of the nature of their claim or defence, the other party can serve a notice for particulars. If necessary, a party can apply to the court to compel the delivery of sufficient pleadings. There are other procedural devices available to ensure the pre-trial definition of issues, including the service of interrogatories requiring the other party to answer specified questions (in writing and on oath), and the service of a notice to admit facts. Parties can make an application to strike out the whole or part of the claim or for orders requiring the trial of a preliminary issue before the action as whole proceeds. Pleadings can be amended after they have been served by leave of the court.

A5.2. The Civil Liability and Courts Act 2004 (as amended) introduced procedural changes relating to the conduct of personal injuries litigation. A personal injuries plaintiff must serve a letter of claim, stating the nature of the alleged wrong on the alleged wrongdoer within one month of the cause of action, before any application is made to the Injuries Board.[22] The plaintiff must provide a copy of the letter to the Injuries Board when making an application for an assessment of the claim. If the matter proceeds to litigation, failure to send such a notice within the timeframe allows a court to draw such inferences as appear proper, and to penalize the plaintiff on costs. Further, the parties are required to provide affidavits verifying the truth of their pleadings or particulars. Where a party fails to lodge a verifying *affidavit* in court within twenty-one days of service of the pleading or such later agreed period, the court shall draw inferences as appear proper and may penalize the defaulting party on costs.[23] The court can dismiss actions where a plaintiff gives false or misleading information or swears an *affidavit* containing the same. A dishonest plaintiff will also run a greater risk of criminal prosecution and face a fine of up to EUR 100,000.00 and/or up to ten years' imprisonment on conviction.[24]

A5.3. An action is assigned to a judge for hearing when it is set down for trial. The party who sets the case down for trial is required to lodge a certified copy of the Book of Pleadings on the trial date with the judge's registrar.

A5.4. A party can apply to the Judge of the Commercial List for an order entering the proceedings in the Commercial List, at any time prior to the:

(a) close of pleadings, in the case of plenary proceedings; or
(b) completion of filing of affidavits, in the case of summary proceedings.[25]

Individual solicitors responsible for the conduct of a case are required to sign a solicitors' certificate grounding an application to enter a case in the Commercial List. The certificate should state the section(s) of the Rules of the Superior Court under which the application is being made. Following the introduction of a Commercial Practice Direction, which came into operation on 12 April 2019, the solicitor signing the certificate must make undertakings to use best endeavours:

(a) to comply with the court's directions in full; and
(b) to submit a case report electronically to the court within fourteen days of the conclusion of the matter (whether by agreement, discontinuance, strikeout, dismiss, or court order, and whether before or after entry to the Commercial List).

Where a solicitor's certificate was sworn prior to the coming into effect of the Practice Direction and did not include the new undertakings, it will be necessary for the solicitor running that case to swear an additional, truncated certificate making the new undertakings before admission to the list will be granted.

Entry of a case in the Commercial List is at the discretion of the judge in charge of the Commercial List. An application to enter a case in the Commercial List grounded on a certificate which does not include these undertakings will be refused by the court. If entered into the Commercial List, all further motions or applications for that case will take place in that list.

---

[22] Section 8 of the Civil Liability and Courts Act 2004.
[23] Section 14 of the Civil Liability and Courts Act 2004.
[24] Section 29 of the Civil Liability and Courts Act 2004.
[25] Rule 4(2) of Ord. 63A. Although the Court is likely to refuse entry to the Commercial List if there is an unreasonable delay in applying for entry.

(b) Pre-trial Hearings

A5.5. Pre-trial hearings of substantive issues are not normally part of the litigation procedure in Ireland, but they can be conducted before major trials if necessary. For example, either party can apply to the court for an order for trial of a preliminary issue or for directions. The court can also deal with any outstanding issues regarding pleadings, discovery or other matters which need to be disposed of prior to the trial of the action. Such matters will be dealt with by a judge or, in the case of certain applications, the Master of the High Court, both of whom will be concerned with making orders designed to advance the interests of justice or save costs while advancing the matter to trial. Except in the case of the trial of a preliminary issue, substantive factual issues will be resolved at trial. Procedural issues will be dealt with prior to trial on the basis of a written application (notice of motion), affidavits from each interested party and oral argument.

A5.6. Court rules, which have not yet been formally implemented, will introduce pre-trial case management procedures for cases in the Chancery and Non-Jury lists (but not personal injuries or jury cases).[26] It is envisaged that the procedures will be similar to the regimes that operate in the Commercial Court and Competition List. Such procedures will fall into three categories: pre-trial directions, case management orders and pre-trial conferences.

First, pre-trial directions will enable the judge to issue directions relating to pleadings, discovery and inspection, fixing issues, modular trials, preliminary issues, Alternative Dispute Resolution (ADR), timetables and other pre-trial steps. The judge may, at any time, give directions in relation to the conduct of the proceedings which he or she deems just, expeditious and likely to minimize costs. Such directions can include whether the proceedings should be heard with oral evidence or on *affidavit* alone. Directions can also be given in relation to modular trials and preliminary issues. The plaintiff will be required to prepare a case summary with an agreed outline of the case and chronology of events, a list of issues and an agreed statement of issues in dispute. The judge will choose to issue such directions or a party wishing to avail of pre-trial directions may bring a motion seeking directions. No time limit is expressed in the rules for an application for pre-trial directions.

Second, case management orders will apply where the judge is satisfied that the case is suitable for case management due to its complexity, the number of parties, the volume of evidence or other special reasons. The judge may direct case management, a motion, or a case management order if a party applies for such an order. Case management conferences are designed to ensure that issues are defined, pleadings are served, particulars and discovery are completed, and witness and expert statements are exchanged.

Finally, pre-trial conferences will apply to cases where no case management order has been made. The pre-trial conference aims to certify the case ready for trial and give directions in relation to expert evidence, time management at trial and modular hearings. In Commercial Court cases, each party must complete a pre-trial questionnaire at the Pre-trial Conference. The questionnaire contains a checklist of actions requiring completion at the pre-trial stage and arrangements for trial. The plaintiff must also prepare a case summary with a chronology of events, a list of principal parties involved in the dispute and a glossary of technical terms (if relevant). A trial booklet must be prepared not later than

[26] The Rules of the Superior Courts (Chancery and Non-Jury actions and Other Designated Proceedings: Pre-Trial Procedures) 2016. The implementation of these rules has been put on hold due to resourcing issues. The President of the High Court at that time indicated that two months advance notice would be given before these rules come into practical effect. However, technically, even in the absence of resourcing being in place, the provisions are in force and parties to litigation should be aware that the orders therein could be made in an appropriate case.

four clear days prior to the pre-trial conference, including joint and separate expert reports. The judge may require the parties to produce an agreed list of concise questions to be decided by the court to determine the proceedings. If not agreed, each party must produce such a list.

A5.7. New rules on the conduct of trials applicable to most High Court proceedings (but not personal injuries or jury cases) provide that a judge can direct that trials may be conducted in particular stages (or modules).[27] The court can make an order to direct that certain questions or issues of fact be tried before others. The court can also direct that a trial is conducted in modules with questions of fact, or fact and law, being the subject of a module. The sequence of the modules will be determined by the court.

A5.8. Special procedures designed to progress cases in a just and prompt manner and to reduce costs apply to cases in the Commercial List.[28] A case in the Commercial List is subject to a rigorous pre-trial procedure in order to narrow the issues and progress the case to trial expeditiously. The judge assigned to the case will hold an Initial Directions Hearing once it has been admitted to the Commercial List.[29] This enables the court to direct the mode of trial and to fix the issues of law and fact. Application can be made at the Initial Directions Hearing to suspend the proceedings for a period of not more than twenty-eight days to allow the parties to explore options to settle the proceedings, such as mediation, conciliation or arbitration.[30]

A5.9. In practice, it is not likely that such an Order would be made at this early stage, but it is still possible. It is more usual for the parties to be given a short time for the delivery of points of claim and defence and requests for discovery. If the claim is complex, then the more traditional Statement of Claim and Defence will be directed, but the parties must be careful only to plead matters they are in a position to substantiate. The parties will be asked to draw up a list of the facts and issues in the case. The court then focuses on this list throughout the pre-trial case management with a view to narrowing the issues which will be heard *orally* at trial.

A5.10. Every Friday during the court's term, there is a call-over of the cases listed for trial during the following week before the Commercial Court Judge. The call-over ensures that pre-trial directions have been complied with, and that cases are ready for trial. A date for the next directions hearing is always given, together with a list of matters the parties must address before the next date. A party could face criticism and possibly an adverse costs order if they fail to comply with a court direction.

A5.11. A Case Management Conference may be required due to the complexity of the case, number of issues, parties, volume of evidence in the case or for any other special reason.[31] The purpose of the conference is to ensure:

(a) the proceedings are prepared for trial in a just and expeditious manner;
(b) the factual and legal issues are clearly defined;
(c) all pleadings, affidavits and statement of issues and notices and replies are served or delivered;
(d) all interlocutory applications which the parties intend to make are served and delivered; and
(e) the judge's directions have been complied with.

[27] Rules of the Superior Courts (Conduct of Trials) 2016.
[28] Rules 5 and 14(7) of Ord. 63A.
[29] Rule 4(5) of Ord. 63A.
[30] Rule 6(1) (xiii) of Ord. 63A.
[31] *Ibid.*

If the court directs or the parties request case management, the plaintiff should lodge a case booklet with the registrar in advance of proceedings. Pleadings in the Commercial List are required to be more precise than those in the High Court. They need to clearly identify the case being made and the defence being relied on. Both parties will be required to identify, very early on, the agreed facts and the relevant matters which are not agreed.

A5.12. If a case management conference does not take place, each party can make an application for a pre-trial conference. A pre-trial questionnaire should be completed in advance of a pre-trial conference by the parties addressing various issues, for example, whether direct evidence will be given on sworn witness statements, whether video evidence is required and the number of witnesses which need to be cross-examined. Although the rules provide that a pre-trial conference is mandatory in all Commercial List cases, it does not tend to happen in practice.[32]

A5.13. The Commercial List Rules explicitly require solicitors who are attending Initial Directions Hearings, Case Management Conferences and Pre-trial Conferences to be sufficiently familiar with the case and have the authority to deal with any issues that arise.

(c) Mediation

A5.14. The Mediation Act 2017, which came into force on 1 January 2018, reinforces existing provisions regarding mediation in the Rules of the Superior Courts.[33] Prior to issuing proceedings, solicitors are required to:

(a) advise the client to consider mediation as a means of attempting to resolve the dispute (except judicial review, arbitration and certain disputes under tax and customs legislation);
(b) provide the client with information in respect of mediation services, including the names and addresses of persons who provide mediation services;
(c) advise the client of the benefits of mediation and resolving the dispute without issuing proceedings. However, the client must be advised that mediation is voluntary and may not be an appropriate means of resolving the dispute where the safety of the client and/or their children is at risk;
(d) inform the client of the matters concerning confidentiality and enforceability of mediation settlements; and
(e) inform the client of the obligation of the solicitor to provide a statutory declaration that the client has been advised of the above and the effect of the non-provision of such declaration.[34]

Under the act, there may be cost implications for a party if they refuse to consider using or attending mediation, having been invited to consider mediation by the court.[35]

A5.15. There may also be cost implications for parties if they do not explore ADR mechanisms. Even if the parties decide not to pursue ADR, the court may invite them to consider it. This is usually once the pleadings have been exchanged, although it can be done at any time. The parties can apply to suspend the proceedings to enable the parties to consider using ADR mechanisms.

[32] Rule 16 of Ord. 63A.
[33] Mediation Act 2017, available at: http://www.irishstatutebook.ie/eli/2017/act/27/enacted/en/print.
[34] Section 4 of the Mediation Act 2007.
[35] Sections 16 and 21 of the Mediation Act 2007.

(d) Pre-trial Discovery/Depositions

A5.16. Pre-trial discovery in Ireland is limited to documentary discovery. There is no procedure for oral discovery or depositions. In exceptional cases such depositions may be ordered (e.g., where the witness is overseas or is likely to die before the trial). Proceedings must be in being, and not just contemplated, for such a procedure to be available. Videotaping a witness in advance of proceedings being issued in the hope that such testimony will be admitted in evidence will not work.

A5.17. A party can furnish another party with a series of questions or '*interrogatories*'. Interrogatories are questions that may be raised either in lieu of the discovery procedure or after the inspection of documents. The aim is to seek out weaknesses in the opponent's case, reducing the length of trial and costs. Leave is required to issue interrogatories, save where fraud is alleged and where one set of interrogatories can be issued without leave in the Commercial Court. In practice, the court is likely to grant leave if interrogatories will narrow the issues.

A5.18. Pre-trial rules provide that a party can seek disclosure of information from a non-party where such information is not obtainable via discovery or interrogatories.[36] Although this rule is strictly construed in practice, it significantly extends the possibility of obtaining information, as distinct from documents, from a non-party to proceedings. The applicant for such information must indemnify the non-party for reasonably incurred costs.

A5.19. Documentary discovery in the High Court usually takes place after pleadings have closed. The parties request voluntary discovery of documents which are relevant and necessary for the proceedings or for saving costs. Discovery is limited to specified categories of relevant and necessary documents. Legally privileged documents are not disclosed to the other side, although they are listed in the *affidavit* of discovery. Discovery may be prepared using Technology Assisted Review where appropriate.[37]

A5.20. The discovered documents are then made available to the other party. Failure to make proper discovery can result in a claim being dismissed, a defence being struck out or adverse cost orders.

A5.21. Exchange of witness statements prior to trial arises in the High Court in personal injury actions where each party must exchange:

(a) a list of witnesses it intends to call; and
(b) the evidence of the experts on whom it intends to rely (*see* paragraph A5.36 below).

A5.22. In Commercial List cases, the rules provide that the parties exchange witness statements from witnesses as to both fact and expert witnesses prior to trial.[38] These statements should contain the essential elements of the evidence that will be given to the court and shall be signed and dated by the witness or expert as the case may be (*see* paragraph A5.36 below).

A5.23. The rules referred to at paragraph A5.6 above, which are not yet implemented, will provide for the exchange of witness statements from witnesses both as to fact and expert witnesses prior to trial in Chancery and Non-Jury list cases (*see* paragraph A5.37 below).

---

[36] Rule 30 of Ord. 31.

[37] *The High Court in IBRC v. Quinn & Ors* [2015] IEHC 175 held that technology assisted review complied with the Irish discovery rules and approved its use in a case involving a significant volume of documents.

[38] Rule 22 of Ord. 63A.

(e) Other Pre-trial Exchange of Evidence

A5.24. The exchange of expert evidence prior to trial is required in personal injury actions. Rules specify that certain documents must be available to the other side, including all reports or statements from the expert intended to be called to give evidence. The rules refer to any report or statement from accountants, actuaries, architects, dentists, doctors, engineers, occupational therapists, psychologists, psychiatrists, scientists or any other expert intended to be called to give evidence relating to any issue in an action and containing the substance of the evidence to be adduced. The report shall also include maps, drawings, photographs or any other matter referred to in the report. Within one month of the service of the notice of trial or within such time as may be agreed by the parties or permitted by the court, the plaintiff is required to provide to the other parties the expert reports. The other parties must then provide the plaintiff with their expert reports within seven days of receipt of the plaintiff's reports. The parties must also give the court a schedule listing all reports from witnesses intended to be called within one month of the service of the notice of trial. For proceedings in the Non-Jury and Chancery list, while rules in respect of expert evidence are in force, the obligation to exchange and file expert reports thirty days before the trial has not yet been implemented.

A5.25. Rules applicable to most plenary proceedings (with the exception of personal injuries cases) provide that expert evidence must be addressed in the statement of claim (by the plaintiff) or defence (by the defendant). Where a plaintiff or defendant intends to offer expert evidence, the statement of claim shall disclose that intention, state the field of expertise concerned and the matters of expert evidence. It is the duty of an expert to assist the court as to matters within their field of expertise. Such duty overrides any obligation to any party paying their fees.

A5.26. Under the rules, the court can direct that a single joint expert is appointed to give expert evidence on an issue, if two or more parties wish to offer evidence on the same issue. The parties are required to appoint the expert together. However, in default of agreement, the judge may select the expert from a list prepared by the parties or appoint an expert in such other manner as the court may direct. Written questions may be put to the expert in advance of trial.

A5.27. The courts have indicated that prior to issuing proceedings alleging professional negligence, it is appropriate to obtain an independent expert's report.[39] The rationale for this is that such proceedings can have a detrimental effect on the person's reputation and, therefore, an objective basis is needed before bringing such a claim. If the case goes to hearing or at the settlement stage, heavy reliance will be placed on an independent expert.

A5.28. When suing for fraud, the claim must be fully pleaded in writing. Oral submissions with precise details on the nature of the fraud and how it is alleged to have occurred must also be provided. If a party fails to plead fraud with sufficient detail, the court has an inherent jurisdiction to strike out the relevant part of the claim.[40] Further, the Bar Council's Code of Conduct prohibits a barrister from pleading fraud without express instructions.

[39] *Cook v. Cronin* (1999) IESC 54 and *Connolly v. Casey* [2000] 1 IR 345.
[40] *Keaney v. Sullivan & Ors* [2015] IESC 75.

(f) Pre-trial Investigatory Procedures

A5.29. The court has jurisdiction to order the detention, preservation or inspection of any property or thing. It may also authorize entry into land or buildings or the taking of samples or experiments to obtain full information or evidence.

(g) Fixing of Trial Dates

A5.30. Once the pre-trial steps have been completed, such as pleadings and discovery, it is usual that each side then sends a full brief to senior counsel so that they can advise on the proofs which will be required for the trial. This instructing solicitor will then assemble the evidence for the trial. Once the steps set out in the advice on proofs are completed, the senior counsel will issue a certificate of readiness. This certificate and a notice of trial are then lodged with the High Court Office and served on the other side. The Court Office will then place the case on the court list for hearing. Four times a year (at the end of each law term),[41] lists to fix dates are held by the High Court in which the parties can seek trial dates for the following law term.

A5.31. The number of cases coming before the High Court inevitably leads to situations where cases spill over from previous days, and judges are simply unavailable. If that happens, the case is adjourned to the next list to fix dates so that a new date can be assigned to it. Parties should be prepared for the case not being heard on the date assigned by the court and for significant delays. A Report of the Judicial Planning Working Group published in February 2023 acknowledged the need for more judges and increased judicial numbers over the coming years, via a phased approach.

(h) Trial Procedures

(i) Conduct of Trial

A5.32. Trials are usually conducted on the basis of oral testimony with witnesses being called to give evidence and then cross-examined by the other parties. Certain types of proceedings, such as judicial review proceedings, are generally dealt with on the basis of *affidavit* evidence without oral testimony.

(ii) Recording of Evidence

A5.33. Parties can obtain the transcripts of evidence of the proceedings. The costs of such transcripts are borne by the parties but may be recoverable as part of the costs of the proceedings. For most Commercial Court cases, a stenographer is needed. The parties generally agree to share the costs of the stenographer.

(iii) In What Form (Written or Oral) Does the Court Receives Evidence

A5.34. The primary form in which evidence is received at trial is through oral testimony. However, new case management rules provide that a judge can make certain directions in respect of expert witnesses (*see* paragraphs A5.42, A5.43 and A5.44 below relating to the form in which the court receives expert evidence).

[41] The legal calendar in Ireland follows a pattern of four terms, Michaelmas (the first Monday in Oct. to 21 Dec.), Hilary (early Jan. to the Friday before Palm Sunday), Easter (the second Monday after Easter Sunday to Whitsun) and Trinity (shortly after Whitsun to 31 Jul.).

A5.35. Pre-trial applications and other types of proceedings are generally dealt with on the basis of *affidavit* evidence.[42] Cross-examination of witnesses is permitted and facts may also be proved by way of other procedures, including delivery of a notice to admit facts and the service of interrogatories. However, statements of factual witnesses are not exchanged in advance.

A5.36. Witness statements are exchanged prior to trial in Commercial List cases. The rules provide that a plaintiff (not less than one month before the trial date) and the defendant (not later than seven days prior to the trial date) must serve on the parties to the proceedings written, signed and dated statements setting out the essential elements of their evidence. Both factual and expert witnesses are required to complete such statements. The court can direct that the statements are to be treated as the witness' evidence-in-chief on being verified on oath.

A5.37. In other High Court lists, witness statements are not exchanged prior to trial. As mentioned in paragraph A5.23 rules, which are not yet implemented, provide that where a party wishes to rely on the oral evidence of a factual or expert witness, the party must serve and file a written statement (factual witness) or a written report (expert) summarizing the essential elements of the evidence to be given. The factual witness and expert must sign the statements/reports and serve and file them thirty days prior to trial (unless directed otherwise). Similarly, in High Court, personal injury actions, copies of experts' reports and lists of factual witnesses are exchanged.

A5.38. Rules regarding the management of time at trial provide that the court can require the parties to provide a list of intended witnesses, a reasoned estimate of the length of the hearing and the estimated time for the examination and cross-examination of witnesses. The judge may make orders limiting time for opening, closing, examination/cross-examination of witnesses and other issues. The judge can also make a direction in respect of particulars, the nature of the evidence and the manner in which such evidence is to be put before the court. If written submissions have been filed, then the judge can direct whether oral submissions on those points are required. Costs sanctions may be made against a party if they unnecessarily prolong the trial.

A5.39. Regarding Commercial List proceedings referenced earlier, not every case which falls within the ambit of the definition of 'Commercial Proceedings' is suitable for trial in this manner. Significant costs are incurred quickly in Commercial List cases as short deadlines are set at the directions hearing. In the past, parties would have considered seeking interlocutory relief. However, it is now possible to avoid the costs of interlocutory proceedings as parties are able to move towards a full trial in a very short period. However, if a case requires detailed investigation and assimilation of documentation, it may not be in the best interest of the parties to follow this fast-track approach. Initially, the traditional High Court list would be more appropriate until the parties have prepared the case for transfer into the Commercial List.

A5.40. The Commercial List has facilities available for live evidence by video link. The court is also designed to be paper free, and facilities for pleadings and documents to be used in electronic format have also been installed. This has been extended to Chancery and Non-Jury list proceedings whereby the court may direct the giving of evidence (including expert evidence) by video link. As set under paragraph B1.20, a fully remote hearing of the trial is now possible due to the successful implementation of virtual court technology.

[42] As previously indicated, proceedings for the recovery of a liquidated sum and judicial review – proceedings are generally dealt with on affidavit evidence.

A5.41. Remote hearings can be facilitated and have grown in number. The ability to hold these in civil proceedings has been placed on a statutory footing (*see* B1.21 below).

(iv) In What Form Does the Court Receive Expert Evidence

A5.42. The court will usually receive expert evidence from expert witnesses in the form of written reports together with oral testimony. The experts will also be subject to cross-examination from the opposing party.

A5.43. In the Commercial List, the court may direct consultations between expert witnesses to:

(a) identify the issues in respect of which they intend to give evidence;
(b) where possible, reach an agreement on the evidence they intend to give in respect of those issues; and
(c) consider any matter which the judge may direct them to consider.

The court may require expert witnesses to record particulars of the outcome of their consultations in a memorandum. They must then submit this to the court and deliver it to the parties.[43]

A5.44. The court may appoint its own experts in personal injury cases. The court can appoint '*approved persons*' to perform the role of an expert witness. The court may direct that the expert investigates and gives evidence on a particular matter if appropriate. The parties to the action are required to cooperate with the expert.[44]

A5.45. In the Commercial, Chancery and Non-Jury list cases, where two or more parties wish to offer expert evidence on a particular issue, the court may direct that the evidence on that issue is to be given by a single joint expert. The parties are required to agree on the identity of a single joint expert, but in default of agreement, the judge may select the expert. The experts can meet privately and produce a joint report identifying matters agreed and matters not agreed. The joint report shall be lodged in court and a copy provided to each of the parties.

A5.46. Where a joint report has been prepared and filed with the court, the judge may direct a debate among experts known as 'hot-tubbing'. This is where the court facilitates a debate between the experts which is intended to focus on the areas of disagreement between the experts, as identified in the experts' joint statement. The judge may permit examination and cross-examination after the debate.

A5.47. An assessor can also be appointed on the application of a party or of the judge's own motion. An assessor is a person who, because of the experience he or she possesses, may assist a judge in understanding evidence in relation to a matter. The distinction between an expert witness and an assessor is that, unlike an expert witness, an assessor is not a witness and is not subject to cross-examination.

(v) How Legal Submissions Are Made at the Trial

A5.48. Oral and written legal submissions can be made at the trial. The courts require that, if complex legal issues are raised in the case, written arguments should be lodged by the parties in advance of the hearing. In the Commercial List, the Court of Appeal and the Supreme Court, written submissions are lodged as a matter of course.

---

[43] Rule 6(1) (ix) of Ord. 63A.
[44] Section 20, Civil Liability and Courts Act, 2004.

(vi) How Damages Are Assessed

A5.49. Damages are generally assessed by the judge at the trial. However, the courts will in appropriate cases separate the trial of liability and *quantum*. There is a rarely used provision under the Rules of the Court for the High Court Judge to refer a matter to the Master of the High Court to enable the master to assess the damages.

(vii) What Happens if the Case Lasts Longer than the Estimated Trial Time Reserved by the Court?

A5.50. If the case lasts longer than originally estimated it may be heard to completion or adjourned, depending upon the circumstances. The High Court (most particularly, in the context of the Commercial List) is becoming insistent on the estimated duration of cases being adhered to. Recent cases have demonstrated that if a case is assigned for a certain period and overruns, the court may decide to adjourn ('guillotine') the case to the next available date.[45]

(i) Availability of Judgments

A5.51. Judgments can be delivered orally following the conclusion of the case. However, in major or complex proceedings, judgments would generally be reserved and delivered in writing. Judgments would set out the findings of the facts on relevant issues and include full details of the legal reasoning. Since March 2020, judgments are now typically delivered electronically by email to the parties. Judgments in civil cases which are heard in the Superior Courts are also posted on the Courts Service website subject to any redactions.

(6) RECEPTION OF EVIDENCE AT THE TRIAL

(a) From Overseas Witnesses

A6.1. Witnesses generally attend a trial and give evidence in person in open court. In appropriate cases, the court can provide for alternative modes of testimony, including giving evidence on an *affidavit*, by way of response to interrogatories or by giving evidence to a commissioner or examiner. The testimony can also be obtained by means of evidence on commission. The court will not authorize a witness to give evidence by *affidavit* where the other party has a *bona fide* desire to cross-examine that witness or if either party would be significantly prejudiced by not having the opportunity to cross-examine a witness. If overseas witnesses were unwilling to cooperate, then it would not be possible to compel them to do so by way of *subpoena*. However, an application could be made for letters to be issued by the Irish Court to the foreign courts to seek their assistance in compelling the attendance of an individual to give testimony. Alternatively, if the witness is located in an EU State, the procedure under Council Regulation No. 1206/2001 is available. This regulation governs the cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters. The regulation allows the taking of evidence from one Member State to another without recourse to consular and diplomatic channels.

[45] *Aldi Stores (Ireland) Limited and Aldi GMBH & Co. KG v. Dunnes Stores* [2017] IECA 116.

(b) From Expert Witnesses

A6.2. Reports by expert witnesses must be exchanged prior to trial in High Court personal injury actions, and they can be exchanged between the parties in other litigation. Expert witnesses would normally furnish a formal report, give oral evidence and be subject to cross-examination. The Commercial List (*see* paragraphs A5.36, A5.39, A5.40 and A5.43) has developed specific procedures for the reception of evidence from experts. Similar rules applicable to Chancery and Non-Jury list cases, which are not yet implemented, provide for the exchange of expert evidence prior to trial (*see* paragraph A5.37).

(c) Evidence of Foreign Law

A6.3. A qualified lawyer in the jurisdiction concerned would provide a report on evidence of foreign law. The parties can agree that such evidence will be given in a written report or by *affidavit* avoiding the necessity for such foreign lawyers to travel to Ireland for the hearing. In default of such agreement, or alternative orders, the normal rules would apply and the foreign lawyers would be required to attend the trial in Ireland, giving evidence and being subjected to cross-examination. As with other common law jurisdictions, foreign law is considered to be an issue of fact, and it must therefore be proved in the same manner as other facts involved in the case. Usually, if foreign law is an issue in the case, the normal practice is that each side will include the issue in their pleadings.

(7) CONSERVATORY JURISDICTION GENERALLY

A7.1. A plaintiff can seek a preliminary order freezing the defendant's assets[46] pending completion of the trial. To obtain such an order, a plaintiff must meet various criteria, including submitting an undertaking as to damages (which applies if it subsequently transpires that the freezing order should not have been granted). There must also be an arguable case to be tried for the plaintiff, and the balance of convenience must favour the granting of such orders. The courts will generally make an order only where there is evidence of an intention on the part of a defendant to dissipate assets to defeat the plaintiff's claim pending trial. This has been described as a subjective test, and is in contrast to the objective test in England and Wales. Any order will be effective against the defendant personally (rather than against their assets) and a defendant does not pay any assets into court. If a party requires such an order, it must be in possession of credible, sustainable and detailed evidence of the defendant's 'nefarious' intention. This is a high burden for a plaintiff to meet.

A7.2. Such orders can require the defendant and third parties to preserve assets pending trial. The court has the discretion to grant other orders to preserve the *status quo* pending trial. The court will consider the balance of convenience, an undertaking as to costs from the plaintiff, and whether damages would be an adequate remedy at trial when granting such orders. A court will normally ensure that an order will neither restrict a company from trading nor prevent a defendant from accessing his or her everyday living expenses.

[46] Order 50 R. 6(1) of the Rules of the Superior Courts

(8) AVAILABILITY OF JUDGMENTS FOR INTEREST ON DEBTS OR DAMAGES

A8.1. The Irish Courts can award interest on debts or damages in accordance with the provisions of the contractual arrangements between the parties or pursuant to prescribed statutory rates which apply in default of any such contractual arrangements. The judge has discretion as to: (1) the point in the proceedings interest is to apply from; (2) if interest from the date of commencement of proceedings should be applied; or (3) if interest should be applied from a date after the commencement of proceedings. There is no discretion as to the amount of interest once it has been ordered. The fixed rate of interest applied is 2%.

(9) AVAILABILITY OF ORDERS FOR COSTS

A9.1. The court has discretion as to the award of costs. However, the unsuccessful party is generally ordered to meet the costs of the other parties. The amount of costs can be assessed by a court official in default of agreement between the parties. The amount recovered is usually about 65% of the actual costs incurred by the successful party. In certain circumstances, a plaintiff must give security on account of costs prior to commencement of proceedings. An application for security for costs is likely where the plaintiff is either an individual who is not an EU citizen or resident or a limited company and there is reason to believe it will be unable to pay the costs of the defendant if the defence is successful in the proceedings. Even in those circumstances, security for costs will not be awarded unless there is no arguable defence to the claim and there are no special circumstances why security should not be awarded. In view of long delays in the taxation of costs, it is possible to seek an order for an interim payment of a reasonable sum on account of costs, pending taxation. Where damages are awarded to a plaintiff in the High Court which are within the jurisdiction of a lower court, the plaintiff is normally entitled only to such costs as would have been incurred in the lower court.

A9.2. Costs sanctions may be made against a party who has unnecessarily prolonged the trial. Where the court is satisfied that the evidence of a witness was unnecessary or duplicated, the court may make an order disallowing recovery by a party of the witness' expenses. The court may also order the payment by that party of the costs occasioned to any other party by the calling of the witness concerned.

A9.3. In the Commercial List, the costs of the Initial Directions Hearing shall, unless the judge orders otherwise, be deemed to be costs in the cause. The judge of the Commercial List may prescribe requirements as to the form and content of bills of costs to be prepared. If the judge does not do this, bills of cost are to be prepared in the manner prescribed by Order 99 Rule 29. A judge shall make an award of costs for an interlocutory application unless it is not possible to adjudicate liability for costs. If, at the Case Management Conference, a judge believes that a pleading contains an unnecessary matter or is unnecessarily long, he or she can award costs incurred by one party in having to deal with the unnecessary matter against the offending party.

(10) ENFORCEMENT OF DOMESTIC JUDGMENTS AND ORDERS

A10.1. A variety of tools are available for the enforcement of domestic judgments and orders. Enforcement rarely poses a significant obstacle once the final judgment has been obtained, provided the defendant has sufficient assets against which to have recourse. A judgment for the recovery of any property other than land or money may be enforced by an order for the delivery or attachment of the property or for its sequestration. An order for the recovery or delivery of the possession of land may also be enforced. A judgment requiring any person to do any act other than the payment of money or to abstain from doing anything may be enforced by order of attachment or commitment. In respect of judgments for the payment of money, orders can be sought by the seizure or attachment of assets or, in very limited circumstances and where the debtor has the means to discharge any debt but refuses to do so, for his or her committal to prison. The rules also provide for the attachment of debts, the appointment of receiver or for charging orders in respect of stocks and shares.

(11) GERMANE JURISDICTIONS

A11.1. Ireland's procedures would traditionally have been similar to those of other common law jurisdictions such as England, New Zealand, Hong Kong, Singapore and Australia, but there has been a degree of divergence over recent years. While similarities remain in many areas, different jurisdictions have developed different procedural requirements relating to other matters, for example, case management, discovery, exchange of evidence and style of pleadings.

(12) APPEAL

A12.1. Appeals from the Circuit Court are heard in the High Court and proceed by way of a full rehearing.

A12.2. Appeals from the High Court are dealt with by the Court of Appeal or, in limited circumstances, the Supreme Court.

A12.3. The notice of appeal must be lodged within twenty-eight days from the date of perfection of the order being appealed. A respondent served with a notice of appeal has twenty-one days to file a Respondent's Notice in the Court of Appeal Office. Although the court has a jurisdiction to extend this period, this discretion is rarely exercised. If, on the hearing of an appeal, a party desires to submit fresh evidence it is required to lodge an *affidavit* setting out the nature of the evidence and the reason it was not submitted in the Circuit Court. In any event, the court has jurisdiction to admit fresh evidence.

A12.4. Leave must be obtained to appeal to the Supreme Court and an application for leave to appeal must be brought within twenty-eight days of perfection of the order being appealed.

A12.5. The Court of Appeal has jurisdiction to hear appeals in all civil proceedings from the High Court. Exceptions are those cases in which the Supreme Court has permitted an appeal directly to it (a 'Leap Frog' appeal). This is where the Supreme Court is satisfied

that there are exceptional circumstances warranting a direct appeal to it, and it involves a matter of general public interest and/or it is in the interests of justice.

A12.6. The decision of the Court of Appeal is final unless the Supreme Court permits an appeal as it is satisfied that the decision involves a matter of general public importance or it is in the interests of justice that there is an appeal to the Supreme Court.

A12.7. All appeals to the Court of Appeal and the Supreme Court are by way of rehearing, and the appellant may appeal from the whole or part of any judgment or order. The Court of Appeal and Supreme Court have discretionary power to receive further evidence on questions of fact by oral examination or by *affidavit* before an examiner or commissioner. Upon any appeal from a final judgment, such further evidence shall be admitted on special grounds only and requires leave of the Appeal Court. The Appeal Court has the power to make any such further order as the case may require. The Appeal Court can also order that a judgment or order is set aside and a new trial takes place.

A12.8. Findings of fact made by the trial judge in the High Court will, as a matter of Irish law, be almost impossible to overturn in the Court of Appeal or the Supreme Court.

(13) TIME LIMITATION

A13.1. The general limitation period in contract and tort is six years from the date upon which the cause of action arises. The statutory limitation period for all personal injury cases is two years[47] from the date: (a) on which the cause of action accrued; or (b) of knowledge of the injury, whichever is the lesser. The Civil Liability and Courts Act 2004 (as amended by section 13 of the Central Bank (National Claims Information Database) Act 2018) provides that a plaintiff in a personal injuries action must issue a notice providing details of the accident to the defendant within one month of the date of the cause of action or as soon as practicable thereafter.[48] Failure to do so entitles the courts to draw 'adverse inferences' and may affect decisions as to costs. This requirement is unrelated to the limitation period for the commencement of an action.

A13.2. Following the Defamation Act 2009, the limitation period for defamation claims is one year from the date of publication of the defamatory material.

A13.3. In land recovery claims, the limitation period is twelve years from the accrual of the right of action.

A13.4. In Maritime and Airline cases, the limitation period is two years from the date of accrual of the cause of action.

A13.5. In judicial review disputes, the claim must be brought promptly and in any event within three months of the date of the cause of action (the period can be extended by the court with good reason).

A13.6. The Law Reform Commission has recommended a uniform, basic, limitation period for 'common law actions' (contract, negligence, nuisance and breach of duty) of two

[47] Section 7 of the Civil Liability and Courts Act 2004. Section 50 of the Personal Injuries Assessment Board Act 2003 provides that the two year limitation period is suspended during the period from when a claim has been submitted to the Personal Injuries Assessment Board, and will not begin to run again for a period of six months after an authorization to commence legal proceedings has issued.

[48] Section 8 of the Civil Liability and Courts Act 2004.

years, to run from the date of knowledge of the plaintiff, that is, the date that the plaintiff knew or ought to have known of the cause of action. 'Knowledge' includes both actual and constructive knowledge. The commission has also recommended the introduction of a long-stop limitation period of fifteen years to run from the date of the act or omission giving rise to the cause of action. The proposed reforms have not been implemented to date, however 2023 did see the outline of possible new legislation on defamation, which is currently at the very early stages of the legislative process.

PART B—PARTICULAR CLAIMS

(1) CLAIMS FOR BREACH OF CONTRACT FOR SALE OF GOODS

(a) Appropriate Court for Claim and Method of Initiation of Claim

B1.1. There are no special provisions as to the choice of court for a sale of goods claim. The amounts outlined in section A1.4 would be applicable here. The sale of goods claim would be eligible to be transferred to the Commercial List if it is for more than EUR 1,000,000.00 in value. The normal mode of initiating proceedings in the High Court is by way of plenary summons, but alternative modes of commencement are available in certain circumstances. Proceedings may commence by summary summons where a plaintiff only seeks to recover a debt or liquidated demand, a landlord seeks to recover possession of land or a plaintiff initially seeks to have an account taken. A summary summons will proceed on *affidavit* evidence only and oral testimony will not be allowed. A defendant faced with such a summons will have to provide any defence it may have. If the defence is not sufficient, then summary judgment will be entered against it by the Deputy Master of the High Court. If a credible defence is set out on an *affidavit* by the defendant, the matter will then proceed by way of plenary proceedings with discovery and oral testimony.

(b) Claims by and Against More than One Party

B1.2. Until recently, there has been no class action procedure in Ireland.[49] Traditionally, where many plaintiffs have similar claims, the Irish Courts will allow a 'representative action' that is, where numerous persons have the same interest in a cause or matter, one or more persons may sue on behalf of all authorized persons. The proposed plaintiff must be authorized to sue on behalf of the other persons and the decision of the court will bind every interested party. However, in practice, each plaintiff tends to issue separate proceedings in class action type cases. Claims may be issued against more than one defendant, and the defendant can seek the leave of the court to allow them to issue third-party proceedings against a party not previously joined to the proceedings.

B1.3. In July 2023, the Representative Actions for the Protection of the Collective Interests of Consumers Act 2023 (the 'Representative Actions Act 2023') was signed into law by the President. The Representative Actions Act 2023 transposes the EU Collective Redress Directive (EU) 2020/1828 into Irish law, which required EU Member States to enact legislation facilitating collective actions by consumers who have suffered breaches of EU consumer protection law, via designated 'Qualified Entities' (QEs). The Representative Actions Act 2023 will allow groups of consumers who have suffered material loss or adverse consequence due to a breach of EU consumer protection laws to bring a collective 'representative action' for redress. While the Representative Actions Act 2023 represents the first of its kind in Ireland, it remains subject to commencement and will require secondary legislation to be operational. For example, while representative actions will be

[49] As outlined at B1.3, legislation was enacted in Jul. 2023 providing for a representative actions procedure. However, this requires further secondary legislation to be operational in practice.

brought by designated QEs, information on designation as a QE and which bodies may be, in time, QEs in Ireland is awaited. Secondary legislation will be required surrounding the role of the QE, including how a consumer wishing to be represented by a QE shall notify the QE and the form in which an application by an organization to be designated as a QE will be made. There is a further significant hurdle to be overcome before the Representative Actions Act 2023 will be operational, regarding access to funding by Irish designated QEs given that third-party litigation funding is currently prohibited by Irish law, save in very limited circumstances. The civil reform proposals mentioned at paragraph A1.3 above also include a proposal that general multi-party actions legislation is also introduced in Ireland, and this is awaited.

(c) Method of Pre-trial Definition of Issues

B1.4. In most cases a plenary hearing is required to dispose of cases as set out in section A5 (b) earlier in pre-trial hearings. The pre-trial definition of issues is on the basis of the exchange of pleadings as set out earlier in section A5 (a). If a defendant seeks to rely on a right of counterclaim, he or she is required to state the ground of counterclaim in his or her defence (subject to a right to subsequently amend the defence and counterclaim with leave of the court). If the court considers, on the application of any party, that the counterclaim should not be dealt with as a counterclaim but rather as an independent action, then it can order accordingly.

(d) Pre-trial Conservatory Remedies

B1.5. The court can make orders either for the examination of a party as to its assets or for the freezing of a defendant's assets. A freezing order will only be made if a number of conditions are satisfied, including evidence demonstrating an intention to dissipate its assets prior to trial in order to defeat the plaintiff's claim. Applications for such remedies are on the basis of notice of motion supported by affidavits. These applications are generally on notice to the other parties, but applications *ex parte* are permitted if the delay caused by proceeding by motion on notice might entail irreparable or serious mischief.

B1.6. The EU (European Account Preservation Order) Regulations 2016 provide a procedure to facilitate cross-border debt recovery in civil and commercial matters for a specific amount of money and enables a claimant to freeze funds in a defendant's bank account across twenty-six Member States by submitting a standard form paper application to a court in one of those participating Member States.

B1.7. The court can make other conservatory orders pending trial, such as 'an order' for the preservation of property.

(e) Pre-trial Hearings

B1.8. The plaintiff can apply for summary judgment if it can show that the defendant has no arguable defence to the proceedings. This procedure is available only in certain types of cases, and it is most often used in claims for liquidated debts or mortgage suits. Any such application will also be commenced by notice of motion and dealt with on *affidavit*. If there is a *bona fide* defence, the matter will proceed to trial in the normal way. Other pre-trial hearings include the trial of a preliminary issue (e.g., limitation questions, to compel a party to give better particulars of its claim or counterclaim or defence, to give further discovery of documents, to give security for costs or for various other reliefs provided for under the

rules). Once again, such hearings are dealt with on the basis of *affidavit* evidence and oral legal argument, and the court can make orders by either giving judgment for both parties or requiring either party to take particular steps in the proceedings. In the event of the breach of any such order, the other party can apply for the dismissal of that party's claim or defence, for an order for committal or sequestration of the defaulting party's assets.

B1.9. *See* section A5 (a–g) above in relation to Pre-trial Hearings, including pre-trial directions and modular hearings, case management orders and pre-trial conferences.

(f) Pre-trial Discovery/Depositions

B1.10. Pre-trial discovery is generally limited to the discovery of documents which are relevant and necessary for the proceedings (as outlined in paragraphs A5.16, 5.17 and 5.18). Oral discovery or depositions are unusual although they can be ordered if a witness is sick or likely to die before trial or is overseas. Rules applicable to Chancery and Non-Jury list cases, when implemented, will provide that witness statements and experts' reports are required to be exchanged prior to trial (as outlined in paragraph A5.37). In Commercial List cases, the rules provide that the parties exchange witness statements and experts' reports prior to trial (as outlined in paragraph A5.36). The court can, and frequently does, require the exchange of legal submissions in advance of the trial.

(g) Other Pre-trial Procedures

B1.11. The position as to exchange of experts' reports, witness statements and legal submissions is set out in section A5 (d) and (e), and paragraph A5.48.

(h) Pre-trial Investigatory Procedures

B1.12. It would be unusual for there to be pre-trial investigatory procedures by the court or court experts, but either party could seek an order for the examination or testing of goods.

(i) Trial Dates

B1.13. This has been covered in section A5 (g).

(j) Preparation of Evidence: Sworn, Oral and Expert Evidence, Evidence of Foreign Law, Proof of Documents and Assessment of Damage

B1.14. Where matters are dealt with on an application for summary judgment, they can be disposed on the basis of *affidavit* evidence. However, in most actions, they proceed to plenary hearing. The evidence of witnesses is given orally on oath and also to witnesses who are likely to be cross-examined by the other party. Experts' reports are not automatically exchanged prior to trial. Written reports from experts are usually furnished to the court in addition to oral testimony from the expert who is also likely to be cross-examined.

B1.15. By agreement between the parties, evidence of foreign law can be dealt with by the provision of a report or an *affidavit* from a suitably qualified foreign lawyer. In the absence of such agreement, the foreign lawyers will be required to attend and give evidence on oath as to the foreign law in question.

B1.16. Documents are often admitted by consent, but in the absence of such consent, they require formal proof before they can be admitted into evidence. A useful device is the notice to admit documents which require the other side to either admit a particular document or suffer the costs of the proof of such document.

B1.17. Damages are generally assessed by the High Court, but in rare cases, they are referred to the Master of the High Court.

(k) Conduct of Trial

B1.18. Counsel for the plaintiff opens the trial by summarizing the case, reading the pleadings, setting out the nature and extent of the evidence to be given, and noting any particular issues of law which will be raised. Once the opening has been completed, the witnesses for the plaintiff are called one by one to give their evidence on oath in open court. Each witness gives his or her evidence-in-chief upon questions from the plaintiff's counsel. After evidence-in-chief, counsel for the defendant has the opportunity of cross-examining the witness. Once the plaintiff has completed its evidence, the defendant will present its case in the same manner.

B1.19. On completion of the evidence, the legal issues raised by the case will be argued. In most cases, judgment will be reserved by the court to be delivered at a later date. There are no definite rules in relation to how long the court will take to deliver its judgment as it depends entirely on the timetable of the judge. The judgment will be reasoned, and interest will be awarded on the judgment amount if appropriate. As regards costs, this will be argued in open court after delivery of the judgment and it is usual that costs will follow the event. However, the court can take into account the entire conduct of the parties, and, as has happened in certain cases, will not award the entire costs to the winning party if the court is of the view that the case was unduly drawn out by that party or should have been issued in a lower court.

B1.20. The new rules on pre-trial proceedings (section A5, a–f) and the conduct of trials (*see* section A5, g–h) are dealt with above. These are designed to strengthen the control that a trial judge exercises over the process and to ensure that cases do not exist for extended periods of time without progress, mainly by '*front loading*' the issues associated with experts and experts' reports. The general spirit of the new rules is towards a more case management style where judges are actively involved in progressing the action to trial (as is already done in the Commercial and Competition Lists). Specifically, the new rules envisage the judge having some role in the expert evidence to be adduced at trial and pre-trial '*debate among experts*' (which marks a significant departure from the previous position).

B1.21. Recent case law has demonstrated that if a case is assigned for a certain period and overruns, the court may decide to adjourn ('guillotine') the case to the next available date.

In recent years, two commencement orders for the Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020 were signed. This gave the courts service the ability to administer proceedings remotely and therefore avoid larger delays than anticipated on account of COVID-19 lockdowns. Mr Justice Brian O'Moore directed in *IBRC v. Browne*[50] that a fully remote hearing of the trial should proceed and rejected concerns over the court's ability to assess the credibility of witness evidence. To address concerns over witness interference, he directed that witnesses give evidence from a venue to be approved by the court, in the presence of attendees who were either agreed by the parties or determined by the court. He also rejected arguments that non-urgent cases could be conducted remotely.

[50] [2021] IEHC 83.

While physical in-person attendance in court has returned as the default method of conducting hearings, certain proceedings or applications which do not require oral evidence may be listed for a fully remote or '*hybrid*' hearing.

(l) Appeals Procedure and Conduct of Appeals: Whether Fresh Evidence Is Admissible; Costs of Appeal

B1.22. The position in relation to appeals is dealt with in section A12. Again, costs are at the discretion of the court. In practice, the general rule is that costs follow the event.

(m) Enforcement of the Judgment Against Defendant Within the Jurisdiction

B1.23. This is dealt with in section B11.

(2) CLAIMS FOR RIGHTS IN MINERAL CONCESSION IN THE JURISDICTION

B2.1. There are no special rules of court for dealing with such claims. These would be addressed in the same manner as normal commercial litigation.

(3) CLAIMS FOR TITLE TO OR DAMAGE TO GOODS IN THE JURISDICTION IN QUESTION

B3.1. In most cases there are no special requirements in respect of claims for title or damage to goods in the jurisdiction. The requirements stipulated in sections A and B1 would also apply to such claims.

(4) CLAIMS FOR MONIES DUE UNDER INSURANCE/ REINSURANCE CONTRACTS

B4.1. In most cases there are no special requirements in respect of claims for monies due under insurance/reinsurance contracts in the jurisdiction. The requirements stipulated in sections A and B1 would also apply to such claims.

(5) CLAIMS TO ENFORCE CORPORATE SHARE-SALE TRANSACTIONS

B5.1. There is no special court for claims to enforce neither a share-sale transaction nor special procedures which apply to such claims. The appropriate court will depend on the value of the claim and may include an application to the court for an order for specific performance of the transaction. In other respects, the procedures do not differ from those set out in sections A and B1.

(6) CLAIMS TO ENFORCE COPYRIGHT/ TRADEMARK

B6.1. There is no special court for claims to enforce copyright/trademark. The appropriate court will depend on the value of the claim. However, certain applications can be made to specific courts. For example, the District Court can order the seizure by local police of goods, materials, articles or devices that infringe trademark/copyright. There is also a new Intellectual Property and Technology List in the Commercial Court which deals directly with the subject matter (*see* section A1.7). Other rights available to right holders include seeing an order for delivery of the infringing goods, articles or devices. In other respects, the principles set out in sections A and B1 applies.

(7) CLAIMS TO AN INTEREST IN A BANK DEPOSIT

B7.1. The same principles set out in sections A and B1 would apply to a claim to interest in a bank deposit. In such proceedings, it would be probable that the plaintiff would proceed by way of summary summons and make an application for summary judgment unless it was clear that the defendant would be in a position to show an arguable defence.

(8) CLAIMS FOR RECOVERY OF CHARTER HIRE/ DAMAGES UNDER A CHARTER PARTY

B8.1. Such claims fall within the Admiralty rules of the Rules of the Superior Courts.[51] However, the principles are virtually identical in dealing with such cases as would be the case in other commercial litigation. There are certain small differences in the types of court forms used, but a party to such litigation should expect to conduct the case in the usual manner.

(9) CLAIMS FOR AMOUNTS DUE UNDER A JOINT VENTURE TRADING AGREEMENT

B9.1. In most cases there are no special requirements in respect of claims for title or damage to goods in the jurisdiction. The requirements stipulated in sections A and B1 would also apply to such claims.

(10) ARREST OF SHIPS

B10.1. As with section B8.1, such claims fall within the ambit of Order 64 of the Rules of the Superior Courts, and they are heard by the judge assigned to Admiralty in the High Court. The principles for such litigation are virtually identical to other commercial litigation, with certain formal differences, though none that should trouble the practitioner.

[51] Order 64 of the Rules of the Superior Courts.

(11) ENFORCEMENT OF FOREIGN JUDGMENTS

B11.1. If a foreign judgment comes within Council Regulation No. 1215/2012 (Brussels 1 Recast), enforcement is obtained by serving the certificate of enforceability from the foreign court on the debtor. The judgment, certificate and *affidavit* of service are then provided to the competent enforcement authority (the sheriff or court as appropriate) who enforce the foreign judgment as they would an Irish judgment. If a foreign judgment comes within the Lugano Convention, then it will be enforced by means of an *ex parte* application to the Master of the High Court. The Irish Courts cannot and will not review the foreign judgment as to its substance. Once the Master of the High Court has issued the enforcement order, it is served on the defendant, who then has a short opportunity to apply to have recognition and enforcement refused. As with other jurisdictions, issues of service are the ones which usually occupy such cases. The Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (the 'Hague Judgments Convention') was given effect in Irish law on 1 September 2023.[52] The Hague Judgments Convention expands on the 2005 Hague Convention on Choice of Court Agreements, to provide a more predictable set of rules for the enforcement of foreign judgments in contracting states.[53] In Ireland, exclusive jurisdiction has been granted to the Master of the High Court to assess applications for the recognition or enforcement of foreign judgments under the Hague Judgments Convention. The Master may only refuse such an application on the limited grounds expressly set out in the Hague Judgments Convention, such as where the judgment was obtained by fraud or is contrary to public policy.

B11.2. If a foreign judgment comes from a non-EU, non-Brussels Convention, non-Lugano Convention or non-Hague Judgments Convention Contracting State, then it is enforced in Ireland by the commencement of simple debt proceedings. A summary summons would have to be issued and served on the judgment debtor. Thereafter, the plaintiff would issue an application for summary judgment based on *affidavit* evidence. The *affidavit* would have to show that the foreign court had jurisdiction over the dispute, the defendant was properly served who then had an opportunity to make its case, and also (very importantly) the foreign court's exercise of jurisdiction over the defendant was pursuant to rules also found in Irish conflicts of law rules. Unless the defendant can respond to the *affidavit* (by its own *affidavit*), summary judgment will be entered by the Deputy Master of the High Court.

B11.3. Foreign judgments which contain a punitive element, such as treble damages, will not, as a matter of public policy, be enforced. This is in line with long-standing common law principles.

B11.4. Practitioners should also carefully note that EC Directive 2010/24/EU provides for enforcement of revenue assessments and judgments throughout the EU and has been implemented into Irish law by S.I. No. 643/2011 – EU (Mutual Assistance for the Recovery of Claims Relating to Taxes, Duties and Other Measures) Regulations 2011.

(12) ENFORCEMENT OF FOREIGN/DOMESTIC ARBITRATION AWARDS

B12.1. The Arbitration Act 2010 makes the internationally recognized United Nations Convention on International Trade Law Model Law on International Commercial

[52] The European Union (Hague Judgments Convention) Regulations 2023 (S.I No. 434/2023).

[53] At present, the Hague Judgments Convention only applies between EU Member States and Ukraine. A number of other states have signed, but not yet ratified it.

Arbitration (the UNCITRAL Model Law), produced by the UN Convention on International Trade Law, part of Irish law for all arbitrations, domestic or foreign. Many Arbitration laws around the world are based on the Model Law including for example Singapore and New Zealand, which means that Ireland's Arbitration Act will be familiar to international arbitration practitioners. Ireland is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (NYC). This allows for easier enforcement of Irish arbitration awards, in any of the 172 signatories to the NYC, than the enforcement of an Irish Court judgment or indeed the judgment of any court where the courts will immediately move to recognize and enforce an arbitration award. It repeals and replaces earlier Irish legislation, sweeping away historic distinctions between domestic and international commercial arbitrations. The legislation applies the Model Law to all arbitrations in Ireland that commenced after 8 June 2010.

B12.2. The 'case stated' procedure has been abolished. Arbitrators cannot refer questions of law to the courts. It remains open under Article 26 to an arbitrator to seek independent advice or expert assistance if necessary in relation to a complex issue or a point of law arising in the arbitration, and it confers a right on the parties to require that the expert participates in a hearing whereby the parties have the opportunity to put questions and present their own experts on the points at issue.

B12.3. The removal of the case-stated procedure and significant reduction of the scope for judicial intervention is likely to lead to an increased focus on the choice of arbitrators and appointment mechanisms and requirements. The Model Law also confers increased procedural powers on arbitrators, including the power to terminate proceedings for want of prosecution, the power to review challenges to their appointment and to determine their own jurisdiction.

B12.4. The arbitrator will be required to give reasons for the award unless the parties have agreed otherwise (Article 31(2) of the Model Law). The requirement for a reasoned award imposes an additional rigour on the arbitrator. The only method of challenging an arbitral award will be under Article 34 of the Model Law. The grounds are extremely limited and the legislation will make it far more difficult to challenge an arbitral award. The Model Law grounds of challenge have been interpreted narrowly in other jurisdictions, and the Irish Courts are likely to adopt a similar approach, in keeping with their approach to arbitration generally.

B12.5. Section 21 of the Arbitration Act 2010 allows the parties to agree on the allocation of costs either before or after the dispute has arisen. The previous legislation provided that any such agreement on costs was only binding if it was reached after the dispute had arisen.

B12.6. Section 9 of the Arbitration Act 2010 introduces the concept of a single arbitration judge to deal with any applications. One judge develops expertise in arbitration issues. This should ensure a consistent judicial approach, and reduce the risk that parties might inappropriately seek judicial intervention. Furthermore, and exceptionally, there is no right of appeal from the High Court in respect of applications under the new legislation – the High Court is the court of final jurisdiction in that regard (as well as the Court of First Instance).

B12.7. On 5 July 2022, the President of Ireland, Michael D. Higgins, signed into law the Courts and Civil Law (Miscellaneous Provisions) Act 2023. This amends a variety of legislation, including the Arbitration Act 2010 by removing the current restriction on third

party funding of international commercial arbitration in Ireland. The amendments to the Arbitration Act 2010 have not come into force yet as they are subject to a commencement order. However, when they do come into force it will also mean that parties who are funded can now bring actions to enforce awards or seek interim relief in support of international commercial arbitration in the Irish Courts without falling foul of the torts of maintenance and champerty.