

# Collection Profile Ireland

## Collecting in Ireland

- DSO in Ireland remains around 50 days. Small and medium businesses in Ireland have an increased DSO of 60 days, with 24% of them waiting a punishing 120 days before they see funds.
- Legal action can be expensive and time consuming, often with little reward. Amicable negotiations from debt collection agencies are a good way of identifying payers from non-payers.

## Collection complexity



## Complexity relating to

Notable Severe →

Payments	\$ \$ \$ \$
Court proceedings	⚖️ ⚖️ ⚖️ ⚖️
Insolvency proceedings	↘️ ↘️ ↘️ ↘️



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## General information

### Availability of financial information

There is little financial information on Irish businesses and even though incorporated companies must register with the Companies House, it may, in practice, be fairly difficult to trace debtors. Professional networks may help obtain reputational insights, however a specialized provider is strongly advisable. Euler Hermes allocates each company a grade reflecting its financial health and how it conducts business. The grades represent a core of our knowledge and analyses, and help clients identify and avoid risk. Data is continuously monitored to offer the most up-to-date information to support management decisions.

### Main corporate structures

Liability for business debts is determined by legal structures, which may be described as follows:

- Businesses which do not require a commercial organization may be operated by one private individual registered as a Sole Trader. Two or more individuals may also decide to share ownership and responsibilities through Partnerships (as regulated under the Partnership Act of 1890), in which case the partners may be jointly and individually liable for the actions of the other partners (while increasing fundraising capacity). Limited Partnerships (as regulated under the Partnership Act of 1907) may alternatively offer limited liability to the partners.
- Incorporated entities may also be relied upon. Private Limited Companies are popular because the shareholders (up to 99) are only liable for the company's debts in relation to their individual capital contribution, and there is no minimum capital requirement. Larger businesses would rather be set up through Public Limited Companies, for which a minimum capital of EUR 38,092 is required. In this type of company, the shares are tradable and the shareholders are only liable for the value of their share(s), while debts may only be recuperated from the company's assets.
- Often, foreign investors decide to settle in Ireland through a Branch entity independent from the parent company and capable of doing business in Ireland.

### Regulatory environment

Ireland has a Common Law system in which the courts' decisions have a law creating impact and bind the lower courts. The country divides into 23 District Courts (competent to deal with minor cases up to EUR 15,000), eight Circuit Courts (competent to hear disputes up to EUR 75,000 and to hear appeal claims brought against decisions rendered by District Courts), and a High Court (competent to hear cases over EUR 75,000 and to decide in second instance against decisions rendered in first instance by the Circuit Courts). The Commercial Court was created in 2004 as a division of the High Court dealing specifically with intellectual property and commercial disputes with a monetary value in excess of EUR 1 million. The Supreme Court is the court of final appeal.



**Days Sales Outstanding (DSO):** Payments in Ireland normally take place within 50 days and the payment behavior of domestic companies is poor.



## Getting Paid

### Days Sales Outstanding (DSO)

Payments in Ireland normally take place within 50 days on average (2016 figures) and the payment behavior of domestic companies is poor as debtors are not in a state of urgency when the time comes to settle monies owed. In addition, debtors are aware of how to play the system and the high cost of legal action can further provide an edge in regards to delaying payments.

### Late payment interest

The Recast EU Directive 2011/7/EU which stipulates that payments in the EU must be made within 60 days was transposed into Irish Law through the Statutory Instrument No. 580 of 2012, which took effect on 16 March 2013. The rules in Ireland are, however, stricter than the EU requirements: as a general rule, business-to-business transactions must be paid within 30 calendar days, but contractual agreements may extend this deadline up to 60 days provided that the arrangements are not grossly unfair. Late payment interest may be claimed past the due date. Rates may be agreed contractually but the law provides that, as a general rule, calculation must be based on the European Central Bank's refinancing rate, increased by at least 8 percentage points (10.25%).

Interest would normally be added to the debt and claimed during the collection proceedings.

### Debt collection costs

In addition, the law entitles the creditor to receive a flat collection fee (EUR 40 for debts below EUR 1000; EUR 70 for debts below EUR 10,000; EUR 100 for debts above this level) and may also be able to claim any reasonable recovery costs incurred as a result of the debtor's failure to pay on time.

### Ownership protection

Retention of Title (RoT) agreements aiming at preserving ownership over goods until the related invoice is paid in full are allowed in Ireland (under Section 91 of the Sale of Goods Act), but are mainly used in relation to insolvency. In addition to these 'simple' RoT provisions, 'all monies' RoT aiming at preserving ownership over goods until all payable invoices have been paid in full are also admissible. Strict requirements must be fulfilled for a RoT to become enforceable. In particular, it is essential that the goods can be traced, retrieved, and identified distinctly. This means that enlarged forms of RoT aiming at preserving ownership over goods despite a transformation process would not be admitted in court. Similarly, RoT clauses would most likely be inapplicable where the debtor has sold the goods to a buyer who concluded the transaction in good faith.

Having said this, RoT agreements can be used as a negotiation tool during the pre-legal stage as a means to obtain the return of goods which are still unpaid.

## Payments

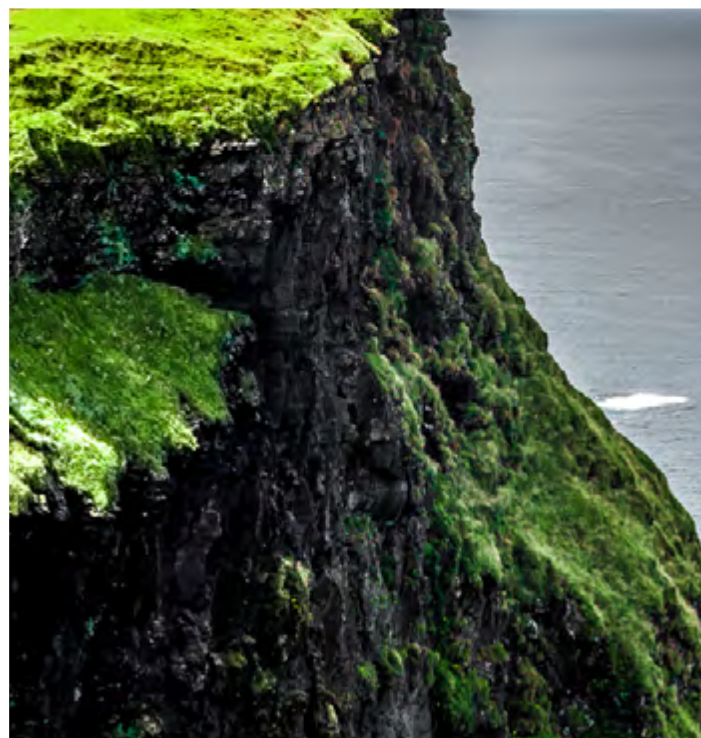
The most common payment methods are as follows:

- Swift bank transfers are most commonly used in Ireland as they are fast, secured, and supported by an increasingly developed banking network internationally and domestically. For export transactions, transfers should be guaranteed through an Export Credit Insurance policy, which helps minimize the risk of sudden or unexpected customer insolvency. Euler Hermes' worldwide network of risk offices monitors the financial well-being of customers and grants them a specific credit limit up to which clients may trade and claim should something go wrong. Alternatively, Standby Letters of Credit (a bank guarantees the debtor's credit quality and repayment abilities) constitute reliable guarantees.
- Irrevocable and confirmed Documentary Letters of Credit (a debtor guarantees that a certain amount of money is made available to a beneficiary through a bank once certain terms specifically agreed by the parties have been met) may also be considered.
- Checks tend to provide no guarantee as they entail no liability if they remain unpaid. Relying on bank guarantees and requesting down payments is therefore common.



### Late payment interest:

As a general rule, business-to-business transactions must be paid within 30 calendar days, although the terms may be extended to 60 days by contract





## Collecting overdues

### Amicable action

#### Negotiating

Although Irish courts are fairly efficient, amicable settlement opportunities should always be considered as a strong alternative to formal proceedings. Before starting legal proceedings against a debtor, assessment of assets is essential as it allows verification as to whether the debtor is still active and whether recovery chances are best. In addition, it is essential to be aware of the debtor's solvency status: if insolvency proceedings have been initiated, it often becomes impossible to enforce a debt.

### Legal action

#### Ordinary proceedings

Ordinary legal action generally commences when amicable collection efforts have failed. A claim is filed with the competent court (depending on the amount at stake) and the debtor must be served with a summons within 21 days. If the debt is above EUR 1,270, the debtor must be given 21 days to pay, propose an arrangement or bring a defence. Beyond this time limitation, the law would consider the debtor as being insolvent (Section 214 of the Companies Act 1963/2009 as amended), in which case the threat of commencing insolvency proceedings may prove efficient. Failure to do so would furthermore entitle the creditor to request a default judgment from the court.

If the claim is undisputed, it is alternatively possible to request a fast-track summary judgment (Summary Summons) from the competent court. When the debtor company has assets in other EU Member States, a European Payment Order procedure facilitating the recovery of undisputed debts (under Regulation EC No 1896/2006) may also be triggered. In this case, the demanding party may request a domestic court to issue an Order to Pay which will then be enforceable in all European Union countries (except Denmark) without exequatur proceedings.

If the claim is disputed, by contrast, a discovery phase takes place to allow the parties to explain and prove their respective arguments before the court renders a decision, but judges in the Commercial Courts may also suspend the proceedings for up to 28 days to allow resolution of the dispute through mediation or arbitration. The courts typically award remedies in the form of compensatory and punitive damages, specific performance, declarations, injunctions, etc.

#### Necessary documents

- Copies of invoices
- Up to date statement(s)
- Clients terms & conditions
- Original power of attorney

#### Time limitations

Business claims must normally be brought to court within six years following the date where the cause of action arose (i.e. when the invoice fell due or when the contract was breached). Beyond this time limit, legal action will be barred.

#### Precautionary measures

Precautionary measures may help to preserve the debtor's interests pending a final decision. Indeed, the courts may order interim measures aiming at protecting assets (attachment orders) or evidence (search orders, however, remain rare). The claimant must demonstrate that it has a strong case, that ordering such measures would prevent the occurrence of irreparable harm and that damages alone would not be sufficient to compensate for such harm. Same-day orders may be obtained in emergency situations if the courts agree to render ex parte decisions (without notice and in the debtor's absence), but the claimant would be asked to provide security on costs in order to protect the respondent from irresponsible action. Interlocutory injunctions would rather be granted once hearings have taken place.

#### Lodging an appeal

As previously mentioned, decisions rendered in the first instance may be brought to appeal, on points of law and fact. Decisions rendered in the second instance may also be appealed against before the Supreme Court within 21 days of delivery, but the latter would only focus on legal interpretation matters.

#### Enforcing court decisions

A judgment is enforceable as soon as it becomes final (i.e. when all appeal venues have been exhausted) but enforcement is very often the most critical part of the collection process. If the debtor fails to satisfy the judgment, it is possible to request the District Court to commend execution by way of attachment and sale of the debtor's assets by the sheriff. This may take quite some time and in many cases the judgement will be returned since the debtor has no goods to seize. The sheriff may however enter into an instalment arrangement with the debtor, which may be best over a reasonable period of time. Similarly, Garnishee Orders allowing the

#### Collection @ Euler Hermes

It is always advised to attempt collection prior to any legal action in order to maximize chances of successful recovery and avoid legal costs and delays. Our key principle is to collect in close proximity to the debtor, using a series of letters, emails and phone calls in the local debtor language. Our World Collection Network of Euler Hermes offices and external providers are experts in professional trade debt collection and negotiation, ensuring positive outcomes while retaining important client relationships. Euler Hermes can handle the complete collections process from amicable, pre-legal action through to judgment and enforcement.

payment of a debt through a third party owing money to the debtor is possible. If the creditor gives evidence that the debtor simply will not pay the debt due, the judge may also grant a Committal Order. Often, the threat of liquidation proceedings tends to increase execution ratios but registering the judgement for publication in the Trade Gazette is also an effective method of securing payment, especially if the debtor is trading. There is then widespread publicity of the judgement for little cost, but there is also a danger of putting the debtor out of business when alerting his other creditors, as well as a danger of being sued for damages for defamation if publication occurs after the debt has been paid.

#### How long could legal action take?

Obtaining a decision may take a year, but this timeframe may be doubled if compulsory enforcement is required. Appeal claims brought before the Supreme Court may take an additional three years. Apart for postage matters, disputes involving foreign parties would not be treated differently from disputes involving domestic parties only. No delays should therefore be expected from this point of view.

#### How much could this cost?

As a general rule, the successful party may obtain partial compensation for its costs against the defeated party (60 to 70% on average), but legal fees would usually not be recoverable. In addition, the courts would normally take the parties' behavior into account while awarding compensation, and actions brought before the wrong tribunal may lead to financial sanctions. Court fees could reach EUR 650 (claims up to EUR 15,000) to EUR 2,700 (claims in excess of EUR 75,000).

### Alternatives to legal action

#### Alternative Dispute Resolution methods (ADR)

Mediation and arbitration (as regulated under the Arbitration Act of 2010) is common in Ireland, and in fact the High Court and the Commercial Court increasingly tend to interrupt litigation proceedings in order to allow a faster settlement of the dispute through ADR methods.

Mediation involves nomination of a mediator who is given responsibility for helping the parties reach a compromise. In other words, the mediator has no authority to decide on the behalf of the parties and they cannot bind the parties with a decision. An agreement is only binding if a settlement agreement is entered into between the parties at the end of the mediation. The mediator acts as a facilitator to settlement and, in debt related disputes, the solicitors would tend to act as such.

Arbitration involves the parties agreeing to rely on an independent and impartial third-party arbitrator, who is given authority to settle their dispute on their behalf. The arbitrators' decision will be binding on the parties.

As an out-of-court settlement method, ADR can be cost-effective, generally reduces delays, allows preserving confidentiality and offers a binding decision which may then be enforced before the courts if necessary. When international transactions are involved, international arbitration may also be considered.

#### Foreign forums

Use of foreign forums in order to settle disputes is rather uncommon in Ireland as domestic courts are fairly efficient in rendering timely decisions. Nonetheless, the country is a signatory to the Rome I Regulation on the law applicable to contractual obligations, which stipulates that the parties to a contract may, by mutual agreement, choose the law applicable to the contract, and select the court that will have jurisdiction over disputes.



#### Litigation @ Euler Hermes

Should legal action be necessary, Euler Hermes can provide support throughout the legal process from judgment to enforcement via our World Collection Network of Euler Hermes offices and external providers. Legal action can often be complicated and expensive, so you will be informed of all costs prior to any action and advised on which route is best to take.

### Enforcing foreign awards

As previously mentioned, using foreign forums in order to obtain enforceable decisions against domestic debtors is rather unusual. Nonetheless, foreign decisions issued against foreign debtors may be enforced in Ireland, though various circumstances may apply. On one hand, decisions rendered in an EU country would benefit from particularly advantageous enforcement conditions. Apart from EU Payment Orders which are normally enforceable directly in domestic courts, the two main methods of enforcing a EU judgment in Ireland are by the use of a European Enforcement Order (EEO, as provided under Regulation EC No. 805/2004) when the claim is undisputed, or by registering the judgment under the provisions of the Brussels I Regulation (44/2001).

If the judgment qualifies as an uncontested claim, it can be enforced directly (i.e. without registration) by use of an EEO provided that the debtor has identified assets in the country. A European Small Claims Procedure (as provided by Regulation EC 861/2007) aiming at eliminating intermediate steps may similarly be relied upon while enforcing decisions up to EUR 2,000.

If the claim is disputed, the procedure for registering an EU judgment with domestic courts is relatively simple. The judgment holder must apply to the relevant court for the judgment to be registered and provide the court with, among other documents, an authenticated copy of the judgment, a certified translation and, if interest is claimed, a statement confirming the amount and rate of interest at the date of the application and going forward. Once the judgment has been registered, the judgment can be enforced as if it were issued by domestic courts (according to the Recast Regulation EC 1215/2012, such an exequatur procedure is no longer required from January 2015).

On the other hand, judgments rendered in foreign countries outside the EU would be recognized and enforced on a reciprocity basis provided that the issuing country is party to a bilateral or multilateral agreement with Ireland drafted for this purpose. In the absence of reciprocal arrangements, exequatur proceedings would take place before domestic courts. As a general rule, foreign judgments cannot be reviewed on the merits of the case, but the courts would deny admissibility where the foreign decision is neither final nor enforceable in the issuing country, deemed incompatible with Irish public policy or with decisions rendered by Irish courts, if the defendant has not benefited from a due process of law, etc.

Ireland is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, therefore its domestic courts ought to recognize and enforce awards rendered through international arbitration proceedings.





## Handling insolvent debtors

In Ireland, a debtor is deemed insolvent if they are unlikely to make their net worth exceed the accumulated losses (balance sheet test) while meeting their financial obligations within a reasonable period of time (cash flow test).

The primary legislation governing the law of corporate insolvency is contained in the Companies Acts, 1963 to 2006, and in the case of receivership, the Conveyancing and Law of Property Act 1881. Insolvency proceedings in Ireland take place before the High Court.

### Insolvency proceedings

#### Out-of-Court proceedings

Informal out-of-court negotiations may take place, but it is then necessary to obtain a unanimous agreement of all the creditors.

#### Restructuring the debt

Debt restructuring in Ireland is known as examination. Upon petition of the debtor or of the creditors, an examiner is given responsibility for supervising the company and formulating proposals for its survival while the company directors remain in control of the business. Meanwhile, ongoing enforcement proceedings against the company are stayed for up to 100 days. In order to bind the parties, the proposals must then be accepted by each class of creditor (by a majority in number and value) and must be confirmed by the court (which would verify that no creditor receives less from the arrangement than it would normally receive from liquidation proceedings). The law provides no write-off limitation, which means that there are no minimum guarantees as to how much of the debt could be recovered.

Schemes of Arrangement are also considered under the Companies Act (Section 201), however it is necessary to obtain approval from a majority representing 75% in value of each class of creditor. This threshold is therefore constraining and the schemes are rarely used.

#### Winding up proceedings

Liquidation is the terminal process which sees the selling of the assets of the debtor company upon request of the debtor, of the creditor, or by the court directly. Once the petition for liquidation has been admitted by the court, a liquidator communicates a winding up order to the Companies Registration Office and requests all creditors to file their claims with the court.

During the liquidation phase, the liquidator may submit schemes of Arrangement in order to avoid liquidating a viable business. The various classes of creditors and shareholders must approve the proposals which must be confirmed by the court in order to become effective. Receivership is a less constraining form of proceedings insofar as it only aims at realizing a specific part of the debt on the basis of a Deed of Debenture. A receiver is appointed to a company by either a debenture holder or the court to take control of the assets of a company with a view of ensuring the repayment of the debt owed to the debenture holder. Unlike a liquidator, a receiver would have no duty to realize



enough assets to pay other unsecured creditors. Often, once a receiver is appointed and they have realized assets to recover the debt due to their creditor, there is little left and the company usually goes into liquidation.

#### Priority rules

Priority rules normally apply while distributing the proceeds to the creditors. Secured debts (procedural fees and expenses, charge holders, mortgage and debenture holders) would normally be repaid to creditors prior to preferential creditors (social insurance debts, taxes, employees claims and floating charge holders) and unsecured creditors who may thus never recover their debt. Indeed, there is usually very little (if anything) left to be shared among the unsecured creditors in proportion to their debts.

Creditors protected under a receivable Retention of Title provision would normally be considered as owning a priority right over the other creditors, but it should otherwise be noted that a party going to the trouble and expense of winding up the company gains no priority for its debt.

#### How long could insolvency proceedings take?

Insolvency proceedings in Ireland could take up to five years.

#### Necessary documents

Assignment of rights to dividend, copies of invoices, copies of statements.

#### Insolvency @ Euler Hermes

Euler Hermes works closely with debtors, creditors and lawyers to provide support during insolvency and restructuring processes. With many options available when it comes to insolvency action, we can offer advice on which option is most suitable.



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