



October 2012

## The Commercial Court

The Commercial Court was established in 2004 and has proven an effective forum for commercial dispute resolution. It is effectively a fast track division of the High Court which was established to provide efficient dispute resolution in commercial cases. Eight years down the line, the Commercial Court has garnered a successful reputation for dealing with commercial litigation in a practical and cost-effective manner.

The Commercial Court has its own specific set of rules which dictates the manner in which the Court issues directions to the parties and the way it conducts proceedings once at trial. The Rules are designed to encourage litigating parties to agree as many issues as possible between them before the matter goes to trial so that the hearing can focus only on relevant issues that remain in dispute. Where suitable, the Court will seek to encourage the parties to resolve their differences through alternative dispute resolution.

### Entry into the Commercial Court List

Commercial court proceedings commence as normal High Court proceedings and an application to have a case admitted to the Commercial List can be made at any time prior to the close of pleadings. In practice however, unless a party seeks entry into the list at the outset, it is unlikely to be admitted due to the pressure and demands on the Court.

To be included in the Commercial List, the proceedings must fall within the definition of “*commercial proceedings*” as defined in the Rules. Generally, the claim disputed must be for a minimum of €1 million and relate to issues such as disputes over:

For further information on any of the issues discussed in this article please contact:



**Kieran Cowhey**  
DD: + 353 (0)1 673 1783  
[kieran.cowhey@dilloneustace.ie](mailto:kieran.cowhey@dilloneustace.ie)



**John O'Riordan**  
DD: + 353 (0)1 673 1792  
[john.oriordan@dilloneustace.ie](mailto:john.oriordan@dilloneustace.ie)

- a business document, business contract or business dispute;
- the purchase or sale of commodities;
- the export or import of goods;
- the carriage of goods by land, sea, air or pipeline;
- insurance or re-insurance;
- the provision of services (not including medical, quasi-medical or dental services or any service provided under a contract of employment);
- the operation of markets or exchanges in stocks, shares or other financial or investment instruments, or in commodities;
- business agency; or
- a dispute concerning intellectual property;

The Commercial Court judge hearing the application has an overall discretion to allow or refuse to enter a case onto the Commercial List. The value threshold is not a hard and fast rule for entry and a judge may decide to admit a case which does not meet that value threshold for various reasons including delay on the part of the moving party. Furthermore, some of the categories, including those relating to intellectual property, do not set a minimum value threshold.

### **Initial Directions Hearing**

When a case has been admitted to the Commercial Court the initial directions hearing directs the manner in which the trial will be run. The Judge will make a number of initial directions including timing for the exchange of pleadings, exchange of requests for particulars and discovery. These deadlines are typically very tight and failure to comply can result in a costs penalty against the offending party.

### **Case Management**

Cases admitted to the Commercial Court are also, in the majority of cases, subject to close case management. This is especially so where the complexity of the case, the number of issues or parties or the volume of evidence requires it. The purpose of the case management system is to streamline the preparation for trial, remove unnecessary costs and ensure full pre-trial disclosure. It is designed to ensure that the proceedings are progressed expeditiously and in a manner conducive to minimising costs.

Case management consists of a conference or series of conferences where the parties appear before a Commercial Court judge. Commercial Court judges have a wide discretion as to the directions that can be made and the sanctions that can be ordered for non-compliance. The overall aim of the case management conference is to ensure that the issues are defined as clearly, precisely and concisely as possible.

### **Pre-Trial Conference**

A pre-trial conference must be held before any commercial proceeding can be listed for hearing. This applies whether or not the case is case managed. At this conference, the judge establishes what steps remain to prepare the case for trial, if any special arrangements are required for the trial and the likely length of the hearing.

### **Alternative Dispute Resolution**

The Judge may, at any time, if he considers it advantageous, direct that the proceedings, or any particular issues within them, be sent for mediation, conciliation or arbitration. The judge can adjourn proceedings for up to 28 days to enable the parties to pursue one or more of these forms of alternative dispute resolution.

### **Success of the Commercial Court**

Commercial Court statistics from 2004 to 2011 highlight the success of the Court. There has been a huge increase in the volume cases progressing through the Court with the number of cases being entered annually growing from 43 in 2004 to 249 in 2011.

The overriding aim of the Commercial Court was to speed up commercial litigation and while the number of cases in the system has increased significantly the Court has maintained a swift turn around time. As per of the most recently available statistics, a quarter of the cases entered into the list conclude in less than 4 weeks and over 90% conclude within a year.

The statistics show the Commercial Court is well equipped to handle the escalation in commercial litigation which the recession has generated.

## Conclusion

The Commercial Court has provided a more satisfactory framework within which to conduct commercial related litigation. As a consequence, Ireland is now being increasingly regarded as a forum of choice for international commercial disputes.

Proceedings are overseen by Judges with established commercial backgrounds. The initial directions hearing and the case management and pre-trial conference procedures have required parties to cull the non-material issues at an early stage and to focus only on the material issues in dispute. This has resulted in shorter trials and is, unquestionably, a more precise and efficient means of disposing with commercial disputes.

## DILLON EUSTACE

### Dublin

33 Sir John Rogerson's Quay, Dublin 2, Ireland. Tel: +353 1 667 0022 Fax: +353 1 667 0042.

### Cayman Islands

Landmark Square, West Bay Road, PO Box 775, Grand Cayman KY1-9006, Cayman Islands. Tel: +1 345 949 0022 Fax: +1 345 945 0042.

### Hong Kong

604 6F Printing House, 6 Duddell Street, Central, Hong Kong. Tel: +852 352 10352.

### New York

245 Park Avenue, 39th Floor, New York, NY 10167, U.S.A. Tel: +1 212 792 4166 Fax: +1 212 792 4167.

### Tokyo

12th Floor, Yurakucho Itocia Building, 2-7-1 Yurakucho, Chiyoda-ku, Tokyo 100-0006, Japan. Tel: +813 6860 4885 Fax: +813 6860 4501.

### DISCLAIMER:

This document is for information purposes only and does not purport to represent legal advice. If you have any queries or would like further information relating to any of the above matters, please refer to the contacts above or your usual contact in Dillon Eustace.

### Copyright Notice:

© 2012 Dillon Eustace. All rights reserved.