



Debt Recovery Service

Business success depends on steady cash flow and over the past six months, as the economy has slowed many businesses have been adversely affected by their customers' failure to pay for goods and services provided in a timely fashion, or at all.

Our Debt Recovery Service is designed to assist clients with their own debt recovery efforts in a cost efficient fashion and with a view towards substantially increasing both the rate and speed of debt recovery.

The service includes all aspects of debt recovery, from pre-legal communications with the Debtor including sending the initial solicitor's letter and negotiation as appropriate, to the institution of proceedings against the Debtor in the appropriate Court if necessary.

While administered through our Litigation Department, our long experience of Commercial and Company law is also invaluable in this area.

Preliminary Procedures:

In the event that both the clients and our own preliminary recovery attempts have been unsuccessful, it will be necessary to pursue the Debtor further through the Courts.

Depending on the amount of the debt and/or the type of action being taken, proceedings will need to be initiated in the District Court, Circuit Court or High Court. The jurisdictional limits for each of these Courts and the procedures involved for each are as follow:-

The District Court:

The District Court deals with debts up to €6,348.69.

The Circuit Court:

The Circuit Court deals with debts of more than €6,348.69 but no more than €38,092.14.

The High Court:

The High Court deals with debts of more than €38,092.14 - If the amount owed by the Debtor is below this figure, then proceedings must be issued in the appropriate lower Court.

The Commercial Court:

The Commercial Court is a branch of the High Court which was established in 2004 to hear cases of a commercial nature involving disputes of more than €1,000,000 in value. The Court also has the discretion to admit cases below that figure in certain circumstances. Cases heard in the Commercial Court are dealt with more swiftly and efficiently than under the standard High Court procedure. Under the guidance of Judge Peter Kelly the Court has developed a reputation for a no-nonsense approach to commercial litigation.

The Commercial Court can hear a wide variety of commercial related cases, including debt recovery cases. The Judges in this Court have extensive experience of commercial litigation and use costs as a sanction to discourage delay or the adoption of an unreasonable stance by the parties coming before it.

Judgment

If a Creditor successfully obtains Judgment against the Debtor from the District Court, Circuit Court or High Court (whether in a defended or undefended case) statutory interest, currently set at the rate of 8% per annum, will be applied to the judgment amount. Costs can also be awarded but tend to be relatively minimal if the case is not defended.

Enforcement of Judgment

Once Judgment has been obtained, there are various options and enforcement methods which can be pursued to procure payment. There is no monetary jurisdictional limit on the District Court with regard to the enforcement of judgments and therefore any judgment, whether obtained in the High Court, Circuit Court or District Court, can be enforced using the enforcement procedures available in the District Court. While convenient, the threat of the District Court is rarely sufficient to procure meaningful payment and most debtors are compelled therefore to consider the other enforcement options available.

- Registration of Judgment;

One option open to a Creditor involves the registration of the Judgment. Various Trade Gazettes publish these judgments on a weekly basis and the threat of publicity is sometimes considerable encouragement for the Debtor to pay his debts, especially if the Debtor is actively trading.

However, it is important to be cautious when adopting this option as it may result in an outcome beyond that which was intended-Registering a Judgment may have serious consequences for the Debtor. It may even result in the Debtor becoming insolvent and going out of business. If this occurs, recovering the debt may become an expensive and time consuming process with no guarantee of a successful action.

It is also extremely important to note that if Judgment is registered mistakenly or after payment of the debt has been received, the Debtor is permitted to sue for defamation and may be entitled to claim damages. Furthermore, when judgment has been satisfied, it is important to remove it from the register

- The Sheriff;

The Sheriff is an officer of the Court who may seize goods from the Debtor in satisfaction of the debt owing. This is achieved by way of an Execution Order for Goods. These goods, once seized, will then be sold and the resulting funds will be used to discharge the debt. While fine in theory, successful enforcement through the Sheriff's office is increasingly unusual and most often the Sheriff will return the Order marked "Nulla Bona", which literally means "No Goods" but means in practical terms that the Sheriff could not find any suitable assets belonging to the Debtor to seize or could not gain entry to the premises.

- Examination;

This enforcement procedure allows a Creditor to issue a "Summons for Attendance of Debtor". Such a Summons orders a Debtor to attend before Court on a certain date to be examined as to their means. It is only appropriate for individual, rather than corporate, Debtors.

The summons, duly stamped, is brought to the Court office in duplicate, together with a statutory declaration that the debt is due under a Judgment, Decree or Order of the Court and the Debtor is ordinarily resident in that court area. A Court date is inserted on the Summons and is returned for service on the Debtor. The summons should include a statement of means to be completed by the Debtor.

- Instalment Order;

If the Debtor fails to attend for examination on the return date or fails to submit a statement of means or on examination fails to prove their inability to pay the Judge may make an Instalment Order. This might require the Debtor to pay the whole amount or a specified sum every week or month etc.

If the Judge considers that to impose such an Order would be futile, he may adjourn the application generally. The application can be re-entered at any time if the Creditor learns of a change of circumstances in the Debtor's financial situation.

A Creditor may wish to have an Instalment Order varied in circumstances where they have learned that the Debtors financial circumstances have improved. This is done by way of an Order for Variation of an Instalment Order.

- Committal Order;

If the Debtor fails to pay the sums in accordance with the terms of the Instalment Order, the Creditor can apply for a Committal Order.

This means that the Debtor can be arrested and sent to prison for a maximum period of 3 months.

The Committal Order when granted must be lodged together with a warrant to enforce the order for arrest and imprisonment in the relevant Court office.

- Garnishee Order and Receivership by way of Equitable Execution;

These types of enforcement may be effective where monies are owing to the Debtor by a third party or parties. These Orders would consist of the Court ordering that the monies owing by the third party or parties should be paid directly to the Creditor. Timing and a decent knowledge of the Debtors current financial affairs are essential for this type of enforcement and often it will not be a suitable type of enforcement.

These Orders are useful where the Creditor knows that the Debtor is disposing of an asset or where he is due to receive compensation or some sort of payment in the future. It is worth noting however that the Court will be very reluctant to attach such Orders to a Debtor's salary.

- Judgment Mortgages;

If a Debtor owns assets a Creditor can register Judgment as a Mortgage against such assets. This applies whether the asset is owned jointly with a spouse or otherwise and has the effect of prohibiting any dealings on that property until the relevant debt is discharged. The Creditor can also apply to have the property sold to obtain funds to

discharge the debt. This is done by way of an application for an Order for Sale. Statutory Interest of 8% per annum, continues to be incurred while the Judgment Mortgage remains in place.

- Bankruptcy;

If a Debtor fails to pay a debt, then a Creditor can apply to Court to have the Debtor declared bankrupt. For obvious reasons, this option, when threatened, is a serious incentive for a Debtor to pay a debt.

This option is relatively expensive however, and can take a considerable time to complete. Furthermore, it should be noted that though a Creditor may initiate bankruptcy proceedings, commencing the bankruptcy proceedings does not automatically entitle the creditor to actually recover the debt owed to them. There will nearly always be preferential creditors such as the Revenue Commissioners who will be entitled to receive their monies first.

- Winding Up by the Court;

The Court can order the winding up of a company on the petition of a person or body entitled to present such a petition. These petitions are usually made by or on behalf of the Creditors of the Company.

The threat of this action is also often a considerable inducement for the Debtor to pay the monies owed and can be very effective in many cases. Similar drawbacks to those outlined above in relation to Bankruptcy may apply however.

Our Fees:

Our fees and charges are agreed with the client in advance of any action.

Those fees and charges are tailored to suit our client's needs. Our charges can include a commission element or, if the client prefers, our fees can include more of a fixed fee element.

Where we charge a commission, we charge a fee of €50 for each letter before legal action. Often the receipt of a solicitor's letter by a debtor will sometimes be sufficient to bring matters to a satisfactory conclusion and Court action can be avoided. The letter often prompts full or partial payment or a negotiation process in which we are often active participants usually by way of negotiation over the telephone based on instructions from our client.

We usually charge a commission on monies recovered. Our commission rate is usually 6.5% on the first €1,200 recovered and 4% on the balance.

If the matter proceeds to the issue of proceedings, in addition to our commission charges on monies recovered, there are also scale fees and which we will need to be paid by you.

Scale fees are set by the Government and are calculated by reference to the amount of the debt. These are recoverable from the Debtor if the case is successful. As the scale fee and the commission are not an economic return for the work undertaken for issuing and serving court proceedings, we also charge you for certain costs of the firm which are not recoverable from the Debtor. Such costs reflect the time cost undertaken and outlays. The scale fee and costs charges are in addition to the commission on monies recovered.

We set out below the general summary framework of our typical scale fees and cost figures below for each type and value of a court action on behalf of a creditor:

District Court

Debt Due	Scale Fee	Costs
< €325.00	€52.00	€20.00
€325.00 - €600.00	€60.00	€60.00
€600.00 - €1900.00	€100.00	€120.00
€1900.00 - €3000.00	€140.00	€150.00
€3000.00 - €6348.00	€200.00	€260.00

Circuit Court

Debt Due	Scale Fee	Costs
€6348.00 - €12500.00	€300	€370.00
€12500.00 - €25000.00	€300.00	€600.00
€25000.00 - €38092.00	€300.00	€730.00

High Court

€38,092 + by negotiation

If we are obliged to attend in court or are required to proceed to a judgment in one of the above Courts, then there will be additional costs in connection with preparing for the Court hearing or the enforcement of the Judgment and any further action. There will also be additional charges incurred if it is necessary to engage a barrister in the Circuit Court or High Court proceedings.

It should also be noted that we are obliged to charge VAT at 21.5% on all our fees.

These figures are a basic guide to our estimated fees and should you wish to engage us in your debt recovery cases, we will provide you with a Section 68 letter which sets out our terms of engagement and provide you with a more precise and definitive guide to the fees and costs likely to be incurred.

Contact Us;

Seamas Turner sturner@mjoc.ie

Ann Marie O' Donnell amodonnell@mjoc.ie

Tom Kehoe tkehoe@mjoc.ie