

JURISDICTION: WHERE THE CLAIM SHOULD BE MADE

EU and EEA Rules

European Union law sets out common rules for the European Union and EEA in relation to where proceedings can or must be taken, where the dispute involves person, properties or transactions which have a connection with more than one EU member state. The European Union rules will nearly always apply in the case of a dispute with an English and Irish element or where one party resides in Ireland and the other in England or both reside in Ireland but there is some English element such as a property situated there.

There is a distinction between where Court proceedings may issue and where they have to issue. Frequently, where there is a connection with more than one country it may be possible to take legal proceedings in one or the other. In this case, it may depend on where the legal proceedings are started first. In other cases it is possible to take legal action in a single country only.

Where English Courts have jurisdiction under the European Union Rules, the claim can be served directly in Ireland. The time period for filing acknowledgements and defences are longer than in domestic England and Wales matters.

Place of Legal Proceedings

Generally the person against whom the claim is to be made, must be sued in the local Courts of where he permanently resides. Where a company is involved, it is where the company is managed and controlled. This is the general rule but in many cases there will be alternative possibilities.

Where the claim is based on some harm or wrong, the relevant courts are those of where the harmful event occurs. Where, for example, a manufacturer negligently makes a piece of machinery and sells it into another country, the customer can either sue where the negligence occurred or the damage occurred.

A consumer contract is one entered by a person outside his trade or profession with a person who pursues commercial or professional activities in his home country or of the or directs its activities to that state. Generally a consumer is entitled to sue and be sued in his own state and these rules cannot be altered by a prior agreement.

Exclusive Jurisdiction

There are some types of dispute where the Courts of a particular country have exclusive jurisdiction. Disputes in relation to land and matters arising out of land must be taken in the jurisdiction where the land is situate. This is the case even if a consumer is involved.

Proceedings linked to the validity of a company and its dissolution and winding up must be taken in the state where the company has its seat. Proceedings relating to patents, trade marks, designs must be taken where they are registered. This applies to disputes about the validity of registration and not those regarding infringement.

Prior Agreements on Jurisdiction

It is possible for non consumers to agree in a pre- dispute contract to confer jurisdiction on Courts other than those of his home country. This agreement should be in writing or proved in writing or arise from an established trade practice. In commercial cases, the contract between the parties will often state the law that is to apply and which Courts are to have power or jurisdiction over it. These agreements will generally be binding but there are exceptions and limitations.

If a person is sued in a foreign Court, the Court will generally be entitled to deal with the case unless objection is taken. If an individual objects to the jurisdiction (i.e. the courts authority to determine the dispute), he should acknowledge service and serve a notice of

his objection. If he does not do so he will be deemed to have accepted the jurisdiction of the Courts concerned.

In the case of contracts (legally binding agreements) it is usually possible to sue and the place where the agreement is to be performed. In the case of sale of goods this would be where the goods were delivered or were to be delivered. In the case of services, it will be the place where the services were provided or should have been provided.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.