



## Arbitration in Ireland

### The Statutory Framework

November 2018

Arbitration has a long tradition in Ireland. Its current modern legislative framework is supported by the courts which will intervene only as required. When the courts do become involved, the process is streamlined with all arbitration matters being dealt with by the High Court from which there is no appeal. This article outlines the principal features of the Arbitration Act, 2010.

### Legislation: The Act and the Model Law

The legislation which governs all arbitrations in Ireland, both domestic and international, is the **Arbitration Act 2010** (“the Act”) ([link](#)). The Act incorporates the UNCITRAL Model Law on International Commercial Arbitration (“the Model Law”) into Irish law, subject to the specific provisions of the Act. In addition, Ireland is a signatory to the New York, Geneva and Washington Conventions.

The Act does not apply to an arbitration relating to terms and conditions of employment or remuneration of employees or to arbitrations under the Industrial Relations Act, 1964 or to arbitrations under the Property Values (Arbitration and Appeals) Act, 1960.

### The arbitration agreement

An arbitration agreement must be in writing, recorded in any form (including electronic communication). An arbitration agreement may be found in an arbitration clause in a contract or in a separate

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agreement. The applicable law is that decided by the parties and may be found in the choice of law provisions in the contract. In the absence of a choice of law by the parties, the arbitral tribunal must apply such conflicts of law rules as it considers applicable.

An arbitration agreement is not discharged by the death of any party, and it will be enforceable by or against the personal representatives of the deceased. The authority of an arbitral tribunal is not revoked by the death of any party by whom it was appointed.

In accordance with the Model Law, an arbitral tribunal may rule on its own jurisdiction and an arbitration clause is treated as an agreement, independent of the other terms of a contract.

Where, in legal proceedings relief by way of interpleader<sup>1</sup> is granted by a court, and it appears to the court that the issue between the claimants is one in respect of which there is an arbitration agreement, then the court must direct that the issue between the claimants be determined in accordance with the arbitration agreement unless the court finds that it is null and void, inoperative or incapable of being performed.

### Commencement of arbitration

Arbitral proceedings are deemed to commence on the date on which the parties provided in the arbitration agreement or where no provision has been made by the parties, the date on which a written communication containing a request for the dispute to be referred to arbitration is received by the respondent. Where parties agree that disputes under or arising out of a contract or agreement shall be submitted to arbitration, this includes disputes as to the existence or validity of the contract or agreement.

### Selection of the arbitral tribunal

Parties are free to provide how an arbitrator is to be selected. Typically, this would involve an attempt to agree upon an arbitrator. In default of agreement an office holder of a nominated body would be chosen to appoint the arbitrator. In the absence of a nomination process or the failure to have an arbitrator appointed, the High Court may nominate an arbitrator. The Model Law applies in relation to the appointment of an arbitrator, their failure to act, the impossibility for them to act and to appoint a substitute arbitrator.

The grounds and procedures in respect of challenges to the appointment of arbitrators are set out in the Model Law such as that the arbitrator may not be impartial or independent or if he does not possess qualifications agreed to by the parties. If the parties' own procedure cannot resolve the challenge there is an option of applying to the High Court. The arbitration may proceed during any challenge process.

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<sup>1</sup> A procedure whereby a person (who is sued, or expects to be sued, by rival claimants to property which is in his possession and in which he claims no interest and he knows not to whom he can safely give it up), can compel the claimants to interplead i.e. to take proceedings between themselves to determine who is entitled to it.

## The Arbitral Tribunal

### Competence

Unless agreed, the default number of arbitrators is one. The principle of competence-competence<sup>2</sup> is recognised in Ireland. The Model Law deals with the competence of an arbitral tribunal to rule on its own jurisdiction. In circumstances where the existence of an arbitration clause is not in dispute, the Irish courts will be very slow to interfere with the arbitrator's ruling on his own jurisdiction having regard to the competence-competence principle.

### Security for costs

Without prejudice to the Model Law, unless otherwise agreed by the parties, an arbitral tribunal may make an order relating to security for costs of the arbitration. Such an order may not be based solely on the ground that the party is an individual who is domiciled, habitually resident, or carrying on business outside the State, or is a body corporate established under a law of a place other than the State or whose central management and control is situated outside the State.

### Oral evidence

Unless otherwise agreed by the parties, an arbitral tribunal may direct that a party to an arbitration agreement or a witness who gives evidence in proceedings before the arbitral tribunal, be examined on oath or on affirmation, and may administer oaths or affirmations for the purposes of the examination.

### Immunity from Liability

The Act provides that arbitrators are not liable for anything done or omitted in the discharge or purported discharge of their functions. This immunity extends to any employee, agent or advisor of an arbitrator and to an expert appointed by an arbitrator under the Act and it also extends to cover arbitral or other institutions by whom an arbitrator is appointed and their employees and agents.

### Independence

The Model Law requires an arbitrator both at the outset of an arbitration and throughout its conduct, to disclose any circumstances likely to give rise to a justifiable doubt as to his impartiality or independence. The Model Law principles of '*ex aequo et bono*' and '*amiable compositeur*' apply to arbitrations in Ireland. There are no specific statutory ethical codes but the ethical rules of any relevant Institution agreed to by the parties would apply.

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<sup>2</sup> The power of an arbitral tribunal to determine its own jurisdiction.

### Fairness

Parties must be treated equally and must be given a full opportunity to present their respective cases. Where a party is in default and fails to show sufficient cause, or fails to appear at a hearing, an arbitral tribunal may continue the proceedings and determine the matter.

### Consolidated arbitrations

Under the Act, where the parties agree, arbitral proceedings must be consolidated with other arbitral proceedings, including arbitral proceedings involving a different party or parties with the agreement of that party or parties and concurrent hearings must be held on such terms as may be agreed between the parties.

### The courts and arbitration

The Irish courts take a very supportive approach to arbitration and will stay court proceedings in favour of arbitration unless they find that the arbitration agreement is null and void, inoperative or incapable of being performed. The Act permits a court to adjourn proceedings to enable the parties to consider whether any or all of the matters in dispute might be determined by arbitration. The High Court is the designated court for arbitration matters. There is a dedicated arbitration judge and this results in consistency of approach and outcomes. Significantly, there is no appeal from a decision of the High Court. These features serve to make Ireland a very attractive seat for international arbitration.

The High Court can grant interim measures, either before or during arbitral proceedings, if requested to by a party pursuant to the Model Law. Interim measures are available in accordance with and subject to the Model Law. Unless the parties have agreed otherwise, the Model Law grants power to an arbitrator to grant interim measures preserving the status quo, avoiding harm to the arbitral process itself, preservation of assets or evidence.

Unless otherwise agreed by the parties, the High Court cannot make an order relating to security for costs of the arbitration or for discovery of documents. A decision of the High Court in respect of an application to stay proceedings, to set aside an award or to recognise or enforce an award is final and there is no appeal to a higher court.

Under the Model Law an arbitral tribunal, including one conducting arbitral proceedings outside Ireland, may seek assistance from the courts in taking evidence. The courts do not have the power to compel parties to arbitrate, in the sense of having to actively engage in the arbitration.

Third parties cannot be forced to participate in arbitral proceedings in any circumstances.

In accordance with the Model Law, the Irish courts will assist an arbitral tribunal with regard to taking evidence. This includes arbitrations being held outside Ireland.

## Costs

The Act permits the parties to make such provision for the costs of the arbitration as they see fit. The nomination of an arbitral institution would be deemed to be an agreement to abide by whatever rules on costs may be contained in that institution's rules. In the absence of agreement on costs, then the arbitral tribunal must determine, by award, those costs as it sees fit. The tribunal must set out the grounds on which it makes any award of costs and must specify the items of recoverable costs, fees or expenses and the amount of each and by and to whom they must be paid. In this context 'costs' includes costs as between the parties and the fees and expenses of the arbitral tribunal.

## Interest

Under the Act, the parties may agree on the arbitral tribunal's powers regarding the award of interest and unless otherwise agreed, an arbitral tribunal may award simple or compound interest from the dates and at the rates and with rests that it considers fair and reasonable on any outstanding amount of any award including the award of interest and any award of costs.

## Recognition and enforcement of arbitral awards

An arbitral award must be recognised as binding in Ireland and must be enforced unless set aside on one of the limited grounds set out in the Model Law. Any application to set aside must be made within three months of the applicant receiving the award. The general rule is that an arbitral award, irrespective of the country in which it was made, must be recognised and enforced in Ireland unless one of the grounds set out in the Model Law exists. In the event of a claim that an award offends against Ireland's public policy, the application must be brought within 56 days of the applicant becoming aware of the circumstances giving rise to that claim. Any application to court to recognise or enforce an arbitral award is made to the High Court.

## Challenge to an award

Arbitral awards cannot be appealed, as such. The only recourse against an award is to apply to the High Court to have it set aside on one of the grounds set out in the Model Law. Any application must be made within three months of the applicant seeking to set aside, having received the award.

## Conclusion

Ireland is a jurisdiction where arbitration is regularly utilised to resolve disputes. As a member state of the European Union with a common law system which recognises international laws of arbitration and which has national implementing measures with a specified judge and a pro arbitration culture, Ireland is the ideal location for arbitration.

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