
THE
INTERNATIONAL
ARBITRATION
REVIEW

SIXTH EDITION

EDITOR
JAMES H CARTER

LAW BUSINESS RESEARCH

THE INTERNATIONAL ARBITRATION REVIEW

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Sixth Edition

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EDITOR'S PREFACE

International arbitration is a fast-moving express train, with new awards and court decisions of significance somewhere in the world rushing past every week. Legislatures, too, constantly tinker with or entirely revamp arbitration statutes in one jurisdiction or another. The international arbitration community has created a number of electronic and other publications that follow these developments regularly, requiring many more hours of reading from lawyers than was the case a few years ago.

Scholarly arbitration literature follows behind, at a more leisurely pace. However, there is a niche to be filled for analytical review of what has occurred in each of the important arbitration jurisdictions during the past year, capturing recent developments but putting them in the context of the jurisdiction's legal arbitration structure and selecting the most important matters for comment. This volume, to which leading arbitration practitioners around the world have made valuable contributions, seeks to fill that space.

The arbitration world is consumed with debate over whether relevant distinctions should be drawn between general international commercial arbitration and international investment arbitration, the procedures and subjects of which are similar but not identical. This volume seeks to provide current information on both of these precincts of international arbitration, treating important investor–state dispute developments in each jurisdiction as a separate but closely related topic.

I thank all of the contributors for their fine work in compiling this volume.

James H Carter
Wilmer Cutler Pickering Hale and Dorr LLP
New York
June 2015

Chapter 24

IRELAND

*Dermot McEvoy*¹

I INTRODUCTION

This chapter affords a contextual overview of arbitration in Ireland and evaluates some recent Irish case law in light of the legislative landscape following the introduction of the Arbitration Act 2010 (the 2010 Act). Although the 2010 Act successfully consolidated and clarified the law for arbitration it has perhaps not yet achieved the ancillary goal of promoting Ireland as a prime venue for international arbitration.

There remain opportunities for the Irish arbitral process to be further enhanced to better meet commercial considerations. Given that Irish law is now in line with international best practice, the practicalities associated with conducting arbitration in Ireland should be addressed to efficiently utilise Ireland's potential to attract international arbitration. The substantive legislation is not at issue, but rather the procedural realities and consequential failures inherent in the Irish arbitral process.

Arbitration has a strong historic basis in Ireland and has long been of particular importance in the resolution of disputes. Ancient Brehon laws attributed great weight to arbitration and non-adversarial resolution of disputes that continued with the introduction of the common law to Ireland and the passing of the first arbitration statute in 1698.² Ireland has a clear preference for international arbitration written into our Constitution. Article 29.2 provides that 'Ireland affirms its adherence to the principle of the pacific settlement of international disputes by international arbitration or judicial determination.' Although supportive of arbitration, it is only relatively recently that Ireland reformed its legislation and modernised its approach to arbitration to bring it in line with the UNCITRAL Model Law on International Commercial Arbitration (the Model Law).

1 Dermot McEvoy is a partner at Eversheds.

2 Act for Determining Differences by Arbitration, 1698 10 Will. 3 c. 14 .

i Structure of the law

Previously, arbitration in Ireland was conducted on a relatively *ad hoc* basis utilising differing legislation for domestic and international arbitration. The Arbitration Act 1954 as amended by the Arbitration Act 1980 governed domestic arbitration and international arbitrations were dealt with under the Arbitration (International Commercial) Act 1998. The Arbitration (International Commercial) Act 1998 incorporated the Model Law into Irish law but it only applied to international arbitration. Domestic arbitrations, therefore, fell outside the domain of the Model Law. This fractured landscape led to uncertainty and a perceived complexity and expense associated with conducting arbitration in Ireland.

The 2010 Act came into force on the 8 June 2010 and repealed the Arbitration Acts 1954–1998. It is a consolidated piece of legislation and applies to all arbitrations in Ireland. It adopted the Model Law in its entirety into the laws of the state. Article 6 of the 2010 Act incorporates the Model Law and is included at the First Schedule.

The Preamble to the 2010 Act gives the force of law in Ireland to the Geneva Protocol on Arbitration Clauses,³ the Geneva Convention on the Execution of Foreign Arbitral Awards,⁴ the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards,⁵ and the Washington Convention on the settlement of investment disputes between states and nationals of other states.⁶

Incorporating the Model Law and the above Conventions into domestic legislation brings the Irish arbitral procedure in line with international procedure and practice. The 2010 Act applies to international commercial arbitrations and non-international commercial arbitrations (or domestic arbitration) alike. This is an essential requirement to promote Ireland as an international arbitration venue. O'Donnell J in *Galway City Council v. Samuel Kingston Construction Ltd*, stated that arbitration in Ireland is now governed by 'well-understood rules governing both domestic and international arbitrations, and a well-established regime that regulates the system of arbitration and its interaction with the courts system'.⁷

The 2010 Act does not apply to employment disputes nor is it applicable to consumer disputes where the parties contract in standard terms and the contract is valued under €5,000.

ii Arbitration in Ireland

By definition arbitration is available when included in a contractually binding agreement, in which both parties agree to settle their dispute outside of the courtroom. *In re Via Networks (Ireland) Limited*⁸ the Court noted that when parties enter into an arbitration agreement, they are expressly waiving the right to have issues that arise resolved in any forum other than the arbitral tribunal. An arbitration clause exists to support an

3 4 September 1923.

4 26 September 1927.

5 10 June 1958.

6 18 March 1965.

7 *Galway City Council v. Samuel Kingston Construction Ltd* [2010] IESC 18.

8 *re Via Networks (Ireland) Limited* [2002] 2 IR 47.

underlying commercial contract and aims to resolve disputes without the cost and time associated with litigation. An arbitration clause enables parties to pre-agree the venue of arbitration, substantive law, the particular arbitrator and the payment of costs. The above considerations all play a pivotal role in the outcome of the dispute and it is in parties' interests to invest in prudent drafting of their arbitral agreements. The 2010 Act operates as a default legislative framework should the parties not have expressly agreed to the above criteria.

Arbitration aims to increase efficiency and reduce cost. It is private and most importantly conducive to international contracts as opposed to traditional litigation. Although transnational disputes by nature involve issues relating to the locus of where the contract was formed; an effective arbitration clause will increase certainty in every commercial contract.

Arbitration clauses in Ireland are extensively used in building and civil engineering contracts, shipping, imports, exports and international trade, foreign investment agreements, commodities trading, partnership disputes, insurance contracts, intellectual property agreements, rent review and determining disputes in commercial leases.

iii Alternative means of dispute resolution

A modern civil justice system should offer a variety of approaches and options to dispute resolution in an attempt to increase access to justice.⁹ The ability to defend and vindicate private rights is a cornerstone of a civilised society. It is central to the promotion of the welfare of citizens and the economic development of the state.¹⁰ Arbitration, mediation, conciliation and adjudication¹¹ are all viable means to settle commercial disputes without instigating litigation proceedings. On average in Ireland a commercial dispute in the High Court can take two years (or more) to get to trial. Delays in securing a hearing date are often not unexpected. The Irish government has recognised the inherent benefits of alternative dispute resolution (ADR) and introduced various sector-specific pieces of legislation promoting various ADR methods with the aim of achieving a more efficient and cost-effective process, these include:

- a* the Construction Contracts Act 2013: introduces statutory adjudication for all payment disputes;
- b* the European Communities (Mediation) Regulations 2011: transposes the EU Mediation Directive 2008/52/EC into Irish law. The Bill is intended to provide a clear framework for mediation in Ireland and to promote ADR in commercial and civil matters;¹² and

9 Law Reform Commission Report 'Alternative Dispute Resolution' 2008.

10 Report of the Legal Costs Working Group (Stationary Office, Government Publications, 2005) at 5.41.

11 Adjudication was given a statutory basis for payment disputes in the construction sector under the Construction Contracts Act 2013, albeit it remains to be enacted by Ministerial Order.

12 A Mediation Bill is expected to shortly come into force in Ireland. The Bill aims to promote mediation as a viable alternative to court proceedings.

- c the EU Directive on Consumer Alternative Dispute Resolution:¹³ has yet to be ratified by Ireland but will give consumers access to ADR mechanisms to deal with any contractual dispute arising from the sale of goods or the provision of services between a consumer and a business.

There are many other legislative interventions providing for ADR. The above are provided by way of example only.

iv Commercial interest

The government's obvious inclination to promote ADR in Ireland is not in isolation and there is a clear commercial trend in favour of utilising well-constructed and effective ADR clauses. A recent PWC report stated 'conventional wisdom, anecdotal evidence and prior research all suggest that arbitration is the business community's preferred mechanism for resolving international disputes.'¹⁴ This trend is notably visible in the Irish construction industry. Arbitration clauses are standard in Construction Industry Federation (CIF) contracts.

International companies are increasingly seeking to invoke the arbitral process as they fully understand the importance of investing in well-executed arbitration clauses to increase certainty and party autonomy in selecting the location, the institutional basis, allocating costs and the nomination of the arbitrator as the decision maker who could best deal with a potential technical dispute. Arbitration is favoured by commercial entities as it is flexible, confidential, final and binding and is enforceable domestically and internationally.

In the PWC 2013 Survey, 'Corporate choices in International Arbitration', 56 per cent of the energy sector, 68 per cent of the construction sector and 23 per cent of the financial services sector prefers arbitration as a means of resolving international disputes. Eighty-four per cent of the construction sector believes that arbitration is best suited to its needs.¹⁵ This reflects the often inherently technical and knowledge-specific sector that may be best served by arbitrators with the requisite skill and experience to adjudicate on the dispute at hand.

The Business Arbitration Scheme, a Law Society of Ireland initiative offers a timely, cost-effective and efficient medium to resolve commercial disputes (up to €100,000.00) irrespective of whether an arbitration clause has been expressly included in the commercial contract. Both parties must agree in writing to proceed with the dispute by means of arbitration. The Law Society then nominates an arbitrator (upon agreement by the parties). The hearing must take place within 60 days of the arbitrator's appointment and the arbitrator must make a binding reasoned award within 30 days of the hearing. The Business Arbitration Scheme is effectively addressing the cost and time issues generally associated with conducting arbitral proceedings in Ireland.

13 Directive 2013/11/EC.

14 PWC Report 2013 'Corporate choices in International Arbitration'.

15 PWC 2013 Survey. (Although this survey was conducted in the UK, one can assume Ireland would be of a similar disposition.)

v **Irish courts**

Although Irish courts have always been supportive of arbitration, in reality litigation has long since been the traditional form of dispute resolution favoured in Ireland. Ireland became the most litigious country during the Celtic Tiger (1995–2000), second only to the United States and retains its fondness for entering the courtroom.¹⁶

Article 34.1 of the Irish Constitution states ‘Justice shall be administered in courts established by law by judges appointed in the manner provided by this Constitution, and, save in such special and limited cases as may be prescribed by law, shall be administered in public.’ A limited number of cases may be held in camera (privately) due to the inherently sensitive nature of the hearings.

Although there is no express requirement in the 2010 Act or an implied consensus that arbitral awards remain private, in reality in Ireland the process is conducted in a confidential manner. Arbitration facilitates privacy and confidentiality and avoids the constitutional obligation for public justice.

The Irish court system is provided for in Article 34 of the Constitution of Ireland. There are five courts operating in Ireland:

- a* The Supreme Court: only hears appeals from the Court of Appeal if it considers the decision to involve a matter of general public importance or the interests of justice require such an appeal.
- b* The Court of Appeal: established on 28 October 2014 and occupies an appellate jurisdictional tier between the High Court and the Supreme Court. It hears all appeals from the High Court with exception of those that the Supreme Court considers have exceptional circumstances and warrant a direct appeal to it.
- c* The High Court: has unlimited jurisdiction to hear civil cases that exceed €75,000 (personal injury €60,000). The Circuit and High Court have concurrent jurisdiction in the area of family law. The Commercial Court a sub division of the High Court has jurisdiction to hear commercial disputes in excess of €1,000,000.
- d* The Circuit Court: the civil jurisdiction of the Circuit Court is limited unless all parties to an action consent, in which event the jurisdiction is unlimited. The limit of the court’s jurisdiction relates mainly to actions where the claim does not exceed €75,000.
- e* The District Court: deals only with minor matters (monetary jurisdiction is €15,000) that may be tried summarily and predominantly relate to criminal, civil, family law and licensing issues.

Section 9(1) of the 2010 Act nominates the High Court as the relevant court for applications under the 2010 Act. The Act nominates the President of the High Court to deal with all issues that can be referred to arbitration. President Mr Justice Nicholas Kearns has designated Mr Justice Brian McGovern as Ireland’s arbitration judge. Mr Justice McGovern will hear all arbitration-related applications that come before the High Court under the 2010 Act. The appointment of a single arbitration judge will ensure consistency in the arbitral process. The Construction Contracts Act 2013, which has

16 www.cpdseminars.ie/articles/mediation-ireland-lessons-from-other-jurisdictions.

brought adjudication into play for payment disputes, failed to follow the 2010 Act's lead and provide for the referral of all cases that arise to the President of the High Court.

vi Arbitral institutions

The prominence of various arbitral institutions in Ireland is indicative of its potential as a prime arbitration venue. The International Chamber of Commerce has an office in Dublin, Ireland. The International Centre for Dispute Resolution until recently had an office in Ireland. It is also worth noting that the American Arbitration Association, the world's largest provider of commercial conflict management and dispute resolution services, held its first annual meeting outside the United States in Ireland.

The Chartered Institute of Arbitrators has a long-established Irish branch with an office in Dublin. The Dublin Dispute Resolution Centre (DDRC) is a purpose-built centre for dispute resolution. The DDRC is a joint venture between the Bar Council of Ireland and the Irish Chartered Institute of Arbitrators. The Centre for Effective Dispute Resolution (CEDR) Ireland was established in 2011 and has given CEDR a formal presence in Ireland, having operated here for more than 20 years.

II THE YEAR IN REVIEW

i The role of the courts

Irish Courts have traditionally respected party autonomy and the independence of the arbitral process and have always been reluctant to interfere where a matter is subject to an arbitration clause. Article 8 of the Model Law states 'if an action is brought before the court in a matter which is the subject of an arbitration agreement, the court shall refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.' Ultimately, the Irish courts must refer a dispute to arbitration if governed by a valid arbitration agreement.

The Irish courts have adopted a narrow interpretation of Article 8 and MacEochaidh J has previously stated: 'Article 8 of the Model Law directs courts to respect the arbitral process and stay court proceedings not out of deference to arbitration *per se* but rather as an expression of the most basic concept in the law of contract i.e., that parties who have mutually exchanged promises for value may, at the suit of each other, be kept to their promises. Where parties promise to arbitrate their disputes, courts should stay their proceedings in favour of arbitration if that promise is proved.'¹⁷

In *Franmer Developments Ltd v. L&M Keating Ltd and others*¹⁸ the parties entered into a building contract for construction of an apartment block in the Royal Institute of the Architects of Ireland (RIAI) standard form that contained an arbitration clause. A dispute eventually ensued and the claimant sought to enforce the arbitration clause. Ryan J stated that: 'It is indeed very difficult to see in what circumstances an arbitration

17 *P. Elliot & Company Ltd (In receivership and In liquidation) v. FCC Elliot Construction Ltd* [2012] IEHC 361.

18 *In Franmer Developments Ltd v. L&M Keating Ltd and others* [2014] IEHC 295.

agreement that is otherwise legitimate could be null and void or inoperative or incapable of being performed merely because it will be complex or difficult or inconvenient’.

It is important to note there is no right of appeal from any decision of the High Court. Section 11 of the 2010 Act effectively removes any right of appeal of a decision of the High Court to the Supreme Court.

The 2010 Act further reduces the scope of the courts to interfere and clarifies its powers in support of arbitration. Order 56 Rule 3(1) of the Rules of the Superior Courts sets out the applications for orders that can be made to the court in aid of arbitration as follows:

- a* for interim measure of protection under Article 9 of the Model Law;
- b* to appoint an arbitrator pursuant to Article 11(3)(a) or 11(3)(b) of the Model Law;
- c* to take the necessary measure pursuant to Article 11(4) of the Model Law in the event of a failure to act, an inability to reach agreement or a failure to perform a function under an appointment procedure agreed upon by the parties;
- d* to decide on a challenge to an arbitrator pursuant to Article 13(3) of the Model Law;
- e* to decide on the termination of the mandate of an arbitrator pursuant to Article 14(1);
- f* to decide on a plea that the arbitral tribunal does not have jurisdiction pursuant to Article 16(3) of the Model Law;
- g* to recognise or to recognise and enforce an interim measure issued by an arbitral tribunal in accordance with Article 17H(1);
- h* to issue any interim measure in relation to arbitration proceedings in accordance with Article 17J of the Model Law;
- i* to make an order in accordance with Article 34 of the Model Law;
- j* for the leave of the Court to enforce or to enter judgment in respect of an award pursuant to Section 23(1) of the Act;
- k* to enforce an award in accordance with Article 35(1);
- l* to enforce the pecuniary obligations imposed by an award, within the meaning of Section 25 of the Act; and
- m* for any other relief under or in pursuance of the Act, for which provision is not otherwise made in this order.

Order 56 of the Rules of the Superior Courts sets out the summary procedure for making an application to the High Court. It provides that applications are to be made by way of notice of motion specifying the orders sought. *Ex parte* applications can be made in respect of (a) to (h). Order 56 applications are provided for by a fast-track summary procedure. This approach aims to reduce litigious delays and respects the institution of arbitration as a valid and independent means of dispute resolution. This will also encourage parties who have the benefit of an international arbitration award that is enforceable against assets in Ireland to seek relief from the Irish courts, who have shown an inherent willingness to support and uphold arbitral awards.

ii Valid arbitration agreement

Section 2(1) of the 2010 Act provides that an arbitration agreement is to be construed in accordance with Option 1 of Article 7 of the Model Law. Section 2(2) stipulates that an arbitration clause must be concluded in writing. Article 7.3 of Model Law stipulates an arbitration clause is valid ‘if its content is recorded in any form, irrespective of whether the arbitration agreement has been concluded orally, by conduct, or by other means’. Article 7(6) of the Model Law states an arbitration clause can be incorporated from another source providing it is in writing and reference is such as to make the clause part of the contract.

Although an arbitration clause must be in writing the Irish courts are adopting an increasingly liberal approach to this definition. The Irish courts accept that general words of incorporation will be effective to incorporate a term from another contract, following the approach of the *Travaux Préparatoires* of the UN Commission on International Trade Law, reference to a written contractual document containing an arbitration clause is sufficient to establish the validity of the arbitration agreement and specific mention of the arbitration clause is not necessary. Section 8 of the 2010 Act provides that judicial notice shall be taken of the *Travaux Préparatoires* and its working group relating to the preparation of the Model Law and that the *Travaux Préparatoires* may be considered when interpreting the meaning of any provision and shall be given such weight as is appropriate in the circumstances.

In *Mount Juliet Properties Ltd v. Melcarne Developments Ltd & Ors*¹⁹ Laffoy J found that the standard forms of appointment of the Institute of Engineers Ireland, including the standard form arbitration agreement, had been incorporated into the parties’ respective contracts by general words of reference in preceding correspondence between the parties. The court held that reference to the arbitration clause contained in letters sent between the parties sufficiently met the requisite standard of incorporation by reference.

The Irish courts consider an arbitration clause valid where the parties involved have been put on notice of a standard form contract containing an arbitration clause, irrespective of express knowledge of the arbitration clause.

The *Mount Juliet* case is a warning to businesses who contract on the basis of standard form industry contracts of the importance of being aware of the contents of such contracts and to the presence of alternative dispute resolution clauses. Irish courts will not accept ignorance as a defence.

iii Standard of review

In light of the fact that an arbitral tribunal and a court can both rule on the existence of an arbitration agreement, the High Court of Ireland has recently addressed the standard of review required by the court; full judicial consideration or a *prima facie* analysis of the

19 *Mount Juliet Properties Ltd v. Melcarne Developments Ltd & Ors* [2013] IEHC 286.

presence of an arbitration clause. In *Lisheen Mine*²⁰ Cregan J conclusively decided that the courts should adopt a full judicial consideration approach.

The case concerned a dispute relating to a purported contract for the carriage of goods by sea. The court refused the defendants' application to stay proceedings to proceed with arbitration as the charter party agreement containing the arbitration clause had not been concluded.

Cregan J preferred the full judicial approach and noted 'a finding that an arbitration agreement exists on a *prima facie* basis means that the issue may have to be re-argued before the arbitrator as to whether an arbitration clause exists on a conclusive basis.' He highlighted the cost element of a future appeal and ultimately decided the presence of an arbitration agreement is a question of law and in this instance is best answered by the courts.

Cregan J's judgment is a comprehensive statement of the law and a clear indication that the courts in Ireland will determine arbitration clauses on a full judicial basis. It follows *Barnmore Demolition and Civil Engineering Ltd v. Alandale Logistics Ltd & Ors*,²¹ where Feeney J stated there is 'a particularly strong case for the argument that any review as to the very existence of the arbitration agreement should be on the basis of full judicial consideration'. However, on the facts of that case, the court was not required to so decide.

iv Arbitrators

Arbitration developed from the need to appoint specialist arbitrators who could better comprehend complex technical issues involved in disputes and consequently reduce the time and cost wastage associated with litigation fees.

The Act does not stipulate that arbitrators must have specific qualifications, however, they are generally experts in their respected fields.

Section 13 of 2010 Act stipulates that one arbitrator shall be chosen (by the institutional body or failing their nomination by the High Court) based on their relative expertise, independence and impartiality. Parties can opt for more than one arbitrator once noted in the initial arbitration agreement. Section 13 deviates from the Model Law, which provides in Article 10(2) that an arbitral tribunal shall consist of three arbitrators unless otherwise agreed. This was intended by our legislators to reduce unnecessary costs associated with the process and to encourage parties to consider Ireland as their seat for a cost-effective and efficient arbitral process. Parties to the dispute can only challenge the nomination of the arbitrator in writing within 15 days of their appointment. The only grounds to challenge the appointment of an arbitrator are 'if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties'.

Article 16 of the Model Act stipulates an arbitrator in Ireland can now rule on their own jurisdiction. The well-established *Kompetenz-Kompetenz* rule empowers an

20 *Lisheen Mine v. Mullock and Sons (Shipbrokers) Limited and Vertom Shipping and Trading BV* [2015] IEHC 50.

21 *Barnmore Demolition and Civil Engineering Ltd v. Alandale Logistics Ltd & Ors* [2010] IEHC 544.

arbitrator to rule on their own jurisdiction including any objections in respect of the presence of a valid arbitration agreement. Previously, if questions of jurisdiction arose in domestic Irish arbitration, the matter would be referred to the courts to so decide. The 2010 Act therefore reinforces arbitration as a valid means of dispute resolution and not a mere stop gap to litigation. Article 16(3), however, provides a right of appeal to the High Court for parties who dispute the arbitrators determination of jurisdiction. This additional safeguard provides extra security to the parties involved.

v Judicial assistance

Despite the increased powers of arbitrators, the courts still retain power in respect of ancillary duties including issuing witness subpoenas, ordering third-party discovery, and recognising and enforcing arbitral awards. The High Court has the power to grant interim measures of protection and assistance in the taking of evidence.²² Although it is important to note that most of these interim measures may now also be granted by the arbitral tribunal under Article 17 of the Model Law. Interim measures awarded by the arbitrator will be recognised and enforced by the courts.

The Irish High Court's powers are further curtailed subject to Section 10(2) of the 2010 Act, which provides that the High Court is not at liberty to order security for costs or discovery of documents unless previously agreed by the parties.

vi Enforcement of the award

The 2010 Act enables Irish businesses to easily obtain an arbitration award against a company in another country providing the Model Law has been adopted in that jurisdiction or the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards has been ratified. Section 23 of the 2010 Act states that an arbitral award will be recognised as binding and enforceable upon a written application (notice of motion grounded upon an affidavit) to the High Court. Article 31 of Model Law stipulates the award must be in writing, signed, dated and the location of the award clearly noted. Reasons for the arbitral award must be listed unless otherwise specified by the parties involved.

vii Challenging an award

The 2010 Act made extensive changes to the procedure previously in place for challenging an award. Parties can only apply to the High Court in very limited circumstances to set aside awards. These are very specific grounds and include incapacity, invalidity of agreement, failure to give adequate notice for arbitration, inability to present the scope of arbitration, that the dispute is not within the scope of arbitration, and that the dispute is not capable of settlement by arbitration or is in conflict with public policy.

The High Court's subsequent determination is final and complete. Order 56, Rule 4 of the Rules of the Superior Courts provides that an application to remit or set aside an award under an arbitration agreement shall be made 'within six weeks after the

22 Articles 9, 17 J and 27 of the Model Law.

award has been made and published to the parties, or within such further time as the Court may allow’.

Section 12 amends the time limit specified in Article 34(3) of the Model Law by providing that the application to the High Court to set aside an award on the grounds of public policy may be made within 56 days from the date on which the circumstances giving rise to the application became known or ought to have become known to the party concerned rather than the three-month period from the date when the party concerned received the award as specified in Article 34(3).

Irish courts have narrowly interpreted the above grounds as illustrated in *McIntyre v. Allianz PLC*.²³ The High Court dismissed an application to remove the arbitrator involved and set aside the arbitral award, on the basis that the reasons given for the award were sufficient and that there was no real likelihood of bias. The claimant failed to sufficiently raise one of limited grounds contained in Article 13. In *Snoddy v. Mavroudis*²⁴ the High Court refused to set aside a finding by an arbitrator on grounds that the Court did not have jurisdiction to second-guess the construction of an agreement by an arbitrator. Laffoy J noted ‘If this Court were to set aside the part of the award dealing with the fees for additional services, the Court would be usurping the Arbitrator’s role.’

III OUTLOOK AND CONCLUSION

Although it was thought the 2010 Act would increase the prevalence of international arbitrations in Ireland, it is difficult to conclusively determine whether this in fact has occurred. On the ground experience would suggest otherwise to the author who notes domestic disputes are still on the whole brought before the courts unless there is a contractual obligation to arbitrate. Although there may not be a dramatic increase of arbitral tribunals within the state, there is a definite increase in alternative means of dispute resolution, most notably, mediation and conciliation. Indeed if the UK experience is followed, adjudication will also be well received in Ireland when the ministerial commencement order is passed.

The growth of other dispute resolution methods is illustrative of the procedural realities of conducting arbitration within the state. This is not due to the concept of arbitration in itself which is a flexible, binding and non-adversarial method to solve a dispute, but instead its associated process, namely the delayed time line involved in conducting arbitration in Ireland. The Preamble of the 2010 Act states it intends to ‘further and better facilitate resolution of disputes by arbitration.’

In reality, however, arbitration in Ireland, despite the efforts of the 2010 Act, is a lengthy and time-consuming process, taking 12–18 months to complete and often requiring more time, cost and effort than litigation.

23 *McIntyre v. Allianz PLC* [2012] IEHC 551.

24 *Snoddy v. Mavroudis* [2013] IEHC 285.

Appendix 1

ABOUT THE AUTHORS

DERMOT MCEVOY

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Dermot has 25 years' experience as a commercial dispute resolution lawyer, and has been active in promoting commercial mediation in the last 15 years; an area where he remains very active. Dermot is conscious of the need to hone his core professional skills as a litigator and marry them with the facilitative tools acquired as a mediator and finds this an effective recipe to finding a successful outcome to commercial disputes. Dermot specialises in advising corporate and institutional clients in the property and construction sectors and has also developed strong skills in helping to resolve financial services disputes.

Dermot is an accredited CEDR mediator since January 2003 and the Chairman of the Council for the Irish Commercial Mediation Association (ICMA). Dermot is a former member of the Law Society of Ireland's Arbitration and Mediation Committee, and of the Litigation Committee. Dermot is also an active speaker and regularly publishes articles on dispute resolution topics.

He is recognised in *Chambers Europe 2014* as being 'quick, positive, approachable and contactable at any time', he 'really knows his stuff and is well respected' and is 'a great commercial litigator and a really honourable sort of guy.' *Chambers Global 2013* credits him as being 'efficient, on the ball and great to deal with,' while impressed peers say 'he is top of our referrals list.'

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