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The Irish Arbitration Act 2010

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A Practice note providing an overview of the Irish Arbitration Act 2010 (AA 2010) and its key provisions. It examines how the AA 2010, which applies the UNCITRAL Model Law on International Commercial Arbitration to all arbitrations in Ireland, provides a strong legislative framework that enhances the country's status as an arbitral seat. It outlines how the legislation unifies and streamlines Irish arbitration law, permitting only limited court intervention consistent with the courts' pro-arbitration stance. The resource explores the powers of arbitrators, including the competence to rule on their own jurisdiction, and considers the role of the High Court, whose decisions on arbitral matters are final. It also addresses the narrow grounds for challenging an award, as interpreted by key case law. Furthermore, this note discusses Ireland as a venue for arbitration and significant recent developments, such as legislation on third-party funding and the forthcoming reform to the AA 2010 by the Arbitration (Amendment) Bill 2025.

Scope of this note

The Irish Arbitration Act 2010 (AA 2010) entered into force on 8 June 2010 and provides a strong legislative framework for arbitration in Ireland. This note provides an overview of the key provisions of the AA 2010 and how this legislation unifies and streamlines Irish arbitration law, permitting only a limited amount of court intervention consistent with the Irish courts' traditional position of supporting arbitration.

The note explores the powers of arbitrators, including the competence to rule on their own jurisdiction, and considers the role of the High Court, whose decisions on arbitral matters are final. It also addresses the narrow grounds for challenging an award, as interpreted by key case law.

It also discusses Ireland as a venue for international arbitration, which has a reputation as an established common-law jurisdiction with highly regarded English-speaking lawyers. This position was enhanced in January 2019, when the Irish Government announced the introduction of a legal services initiative aimed at promoting Ireland as a global hub for international arbitration and in March 2026 with the announcement that Ireland is to host a new international commercial arbitration hub for Europe, the Middle East and Africa (see Ireland as a venue for arbitration).

Furthermore, this note sets out significant reform developments, such as the 2023 legislation permitting third-party funding in the specific context of international commercial arbitration and related mediation and court proceedings, which has been enacted but not yet commenced (see Third party funding). It also refers to The Arbitration (Amendment) Bill 2025, which was published in December 2025 and proposes to create a procedure for enforcing awards made under certain international investment agreements (see Reform of AA 2010).

Background to the Irish Arbitration Act 2010

The purpose of the AA 2010 is:

- To apply the (UNCITRAL) Model Law on International Commercial Arbitration (Model Law) to all arbitrations which take place within Ireland.
- To consolidate Irish arbitration legislation into the one Act of Parliament.

The legislation unifies and streamlines arbitration law in Ireland and it incorporates what is arguably best practice from an international arbitration law perspective. The enactment of the AA 2010 reflects the Irish government's support for the arbitration process, support which has also been shown by the Irish judiciary and the court system.

Key provisions

Key provisions of the AA 2010 include:

- Removal of rights of appeal from arbitration decisions made by the Irish High Court (see Role of the High Court).
- Express recognition of the arbitrator's power to rule on their own jurisdiction (see Jurisdiction of the arbitrator or arbitral tribunal).
- Arbitrators' powers and setting the default number of arbitrators at one.

Previous law

The Arbitration Act 1954 (AA 1954), the Arbitration Act 1980 (AA 1980), and the Arbitration (International Commercial) Act 1998 (AA 1998) were the three core pieces of legislation which applied to arbitrations in Ireland before the enactment of the AA 2010. The AA 2010 repealed the previous three Acts in their entirety.

Model Law

The United Nations Commission on International Trade Law (UNCITRAL) adopted the Model Law in 1985 and subsequently amended it in 2006. The Model Law has been adopted by over 50 countries and establishes a sound basis for the harmonisation and advancement of national arbitration laws. The law was designed to deal with the shortcomings which exist in domestic law on arbitration, as it was considered that some national laws dealt with the issue of international arbitration inadequately and needed harmonisation.

The Model Law covers all stages of the arbitral process and, although initially designed with international commercial arbitration in mind, many countries have now extended its scope to cover domestic arbitrations.

The AA 2010 provides that it applies to all arbitrations, both domestic and international, which take place within Ireland except those commenced before 8 June 2010. At a seminar in January 2009 in relation to the then Arbitration Bill 2008, a High Court Judge, Mr Justice Frank Clarke (former Chief Justice, Mr Justice Frank Clarke), stated that it seems likely that, as the Model Law is adopted in more and more countries, a common approach to its interpretation will develop. He noted that although the Bill provided that judicial notice is taken of the *travaux préparatoires* (working papers), there is nothing in the Bill about the Irish courts having regard to the way in which other jurisdictions interpret the Model Law. Despite this, he said that there is likely to be a movement towards a common interpretation of the Model Law, and it is likely that the High Court would have strong regard to decisions in other jurisdictions.

In the time since the enactment of the AA 2010, case law indicates that the Irish Courts are not only continuing to support arbitration, but the inclusion of the UNCITRAL Model Law in the AA 2010 has assisted the development of arbitral principles in Ireland. As more cases come before the courts to be dealt with under the AA 2010, this will likely continue to develop.

Rules of the Superior Courts (Arbitration) 2010

The Rules of the Superior Courts (Arbitration) 2010 (SI No 361 of 2010) came into force on 17 August 2010. As noted in its accompanying memorandum, these rules facilitate the operation of the AA 2010 by (among other things):

- Amending Order 11 of the Rules of the Superior Courts.
- Substituting a new Order 56 for Orders 56 and 56A of the Rules of the Superior Courts.

The statutory instrument provides for a statutory framework in the area of arbitration and deals with among other things, applications to the court for orders, reliefs and time limits. Before entering into an arbitration agreement or making an application under the AA 2010, it is advisable for practitioners to consult this statutory instrument.

Ireland as a venue for arbitration

With its adoption of the Model Law, Ireland has established itself as a viable location for the conduct of international arbitration. As a neutral EU member country with a common law jurisdiction and an English-speaking population with good infrastructure, Ireland has unique and inherent advantages in terms of attracting international arbitration. Ireland's population is highly educated and it possesses a core of highly skilled legal

professionals including arbitrators, lawyers and judges, well versed and knowledgeable in advising and adjudicating on arbitration law issues.

The AA 2010 marked a leap forward for arbitration law in Ireland. The extremely limited powers of intervention given to the Irish courts, coupled with the fact that there is one arbitration judge appointed under the AA 2010 (although other judges also hear applications under the AA 2010) hearing any and all applications and that the decisions of those judges are not subject to appeal, provides concrete reassurance of very limited court intervention in the Irish arbitration process.

Having one regime for both domestic and international arbitrations has helped equip Irish legal practitioners and arbitrators with skills and knowledge that can be used both domestically and internationally. In modelling the AA 2010 on the best international arbitration legislation available, Ireland has set itself up as an attractive venue for hosting international arbitrations. The Irish arbitration community has established Arbitration Ireland, for the purpose of promoting arbitration as a method of dispute resolution at home and abroad and promoting Ireland as a seat for international arbitration. The organisation published an updated strategic plan in 2025 through to 2030, detailing plans to achieve this by hosting seminars and networking events. The organisation also includes in its ranks an advisory board of international arbitration luminaries, supportive of Ireland's ambition to cement its place in the world of international arbitration.

The Dublin International Arbitration Centre (DIAC) is a modern purpose-built centre in the heart of Dublin's legal district. It has acted as a venue for international arbitrations since the enactment of the AA 2010. On 21 December 2016, the International Centre for Settlement of Investment Disputes (ICSID) and the Dublin Dispute Resolution Centre (DDRC) entered into an Agreement on General Arrangements providing the framework for holding ICSID hearings at the DDRC and encouraging cooperation and knowledge sharing between ICSID and the DDRC. The DDRC is the venue for Dublin International Arbitration Day (Arbitration Ireland's annual conference) held in November each year.

In March 2026, the Irish Government announced that Ireland is to host a new international commercial arbitration hub for Europe, the Middle East and Africa (EMEA). The initiative will establish the International Centre for Dispute Resolution (ICDR) Ireland. ICDR is the largest international provider of dispute resolution services and the establishment of the ICDR in Dublin will serve as an international commercial arbitration hub for the EMEA region. This announcement is set to bolster Ireland's position as a global business hub, particularly for US multinationals (see Legal update, Establishment of ICDR Ireland: Dublin to host new international arbitration hub).

Structure of AA 2010

The AA 2010 adopts the Model Law in its entirety and then incorporates minimal amendments to the Model Law in the text of the AA 2010. This has the effect of making the amendments (such as they are) easy to identify.

The substantive provisions of the AA 2010 are contained in both "Articles" and "Sections".

The provisions of the Model Law are referred to as "Articles" and are contained in Schedule 1 of the AA 2010.

The amendments to the Model Law are set out in Parts 1, 2 and 3 of the AA 2010 and are referred to as "Sections".

The AA 2010 is structured as follows:

Part 1	Preliminary and General (*Sections 1 – 5*)
Part 2	Arbitration (*Sections 6 – 31*)
Part 3	Reference to arbitration where proceedings pending before the Court (*Section 32*)
Schedule 1	Text of the UNCITRAL Model Law (*Articles 1 – 36*)
Schedule 2	Text of the 1958 New York Convention
Schedule 3	Text of the 1965 Washington Convention
Schedule 4	Text of the 1927 Geneva Convention
Schedule 5	Text of the 1923 Geneva Protocol
Schedule 6	Consequential amendments to other Acts

Relevant provisions of AA 2010

This section considers those provisions of the AA 2010 which are most relevant to arbitration practitioners and arbitrators advising in relation to and taking part in arbitrations.

Interpretation

Section 2(2)(a) provides that a word or expression which is used in the sections of the AA 2010 shall have the same meaning as in the Model Law unless the context requires otherwise.

However, where there is a conflict between the sections of the AA 2010 and the Articles of the Model Law, the wording in the sections of the AA 2010 will prevail.

Application

Section 3 provides that the AA 2010 will apply to arbitrations which commence after the operative date, which is 8 June 2010. Arbitrations commenced before 8 June 2010 will continue to be run under the legislative provisions of the AA 1954, the AA 1980 and the AA 1998. The AA 2010 will apply to all arbitrations which take place in Ireland.

Adoption of Model Law

There is no distinction between international and domestic arbitrations under the AA 2010, eliminating a legislative distinction that had existed before the enactment of this legislation. Sections 2(1) and 6 provide that the AA 2010 applies to international commercial arbitrations and "arbitrations which are not international commercial arbitrations".

Definition of arbitration agreement

Section 2 provides that the definition of an "arbitration agreement", set out in Option 1 of Article 7 of the Model Law, governs what constitutes an arbitration agreement for the purposes of the AA 2010. Option 1 of Article 7 states that an "arbitration agreement" is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement can be in the form of an arbitration clause in a contract or in the form of a separate agreement (*section 2(1)*).

Section 2(2) requires that the arbitration agreement must be in writing. This requirement is construed broadly and includes an agreement concluded orally or by conduct so long as its content has been recorded in writing.

An arbitration agreement in electronic form will also suffice "if the information contained therein is accessible so as to be useable for subsequent reference". An agreement in writing may also exist if it is contained in an exchange of pleadings where it is not denied by the respondent. If a contract refers to an arbitration clause in another document, it will be sufficient "provided that the reference is such as to make that clause part of the contract".

Commencement of arbitral proceedings

Section 7(1) provides that arbitral proceedings are deemed to have commenced either:

- On the date that the parties to an arbitration agreement agree it commences; or
- On the date when a written request made by one party to refer the matter to arbitration, is received by the other party.

Interpretation of Model Law

Sections 8(1) and (2) provide that judicial notice shall be taken of the *travaux préparatoires* (working papers) of the UNCITRAL and its Working Group relating to the preparation of the Model Law. This will be of assistance to practitioners when interpreting the Model Law and, when advising clients on the AA 2010, reference to the *travaux préparatoires* (working papers) as an aid to construction of relevant parts of the AA 2010, is recommended.

Default number of arbitrators

Section 13 provides that the default number of arbitrators, in the absence of agreement between the parties, is one. This differs from Article 10 of the Model Law, which states that "the parties are free to determine the number of arbitrators" and failing this "the number of arbitrators shall be three". The primary reason for providing for a sole arbitrator as the default is to reduce costs attributable to the arbitral process. If the parties want to appoint more than one arbitrator, they can do this by inserting that requirement in the arbitration clause or by agreement when the dispute arises.

If the parties to an arbitration agreement are unable to agree on an arbitrator, and the arbitration clause in the agreement does not provide for an appointing body, then any party to the arbitration agreement may request the High Court to appoint an arbitrator. The High Court's decision in this regard is final.

Challenges to arbitrator appointments

Articles 12 and 13 set out the grounds of challenge and a procedure for challenging the appointment of an arbitrator.

Article 12(1) places a duty on the proposed appointee to disclose to the parties any circumstances which would raise doubts as to his or her impartiality or independence. This duty of disclosure remains with the arbitrator from the time of his or her appointment to the end of the arbitral proceedings.

The appointment of an arbitrator may only be challenged "if circumstances exist that give rise to justifiable doubts as to his or her impartiality or independence, or if he does not possess qualifications agreed to by the parties".

Article 13(1) provides that parties are free to agree on a procedure for challenging the appointment of an arbitrator. In the absence of an agreed procedure, the procedure set out in Article 13(2) will apply. This provides that the party bringing a challenge shall, within 15 days of becoming aware of the grounds for challenge, send a written statement containing the reasons for the challenge to the arbitral tribunal.

In the event of a party being dissatisfied with the decision of the arbitral tribunal, the party then has 30 days within which to make an application to the High Court to challenge that tribunal decision. The decision of the High Court will be final.

While the request is pending before the High Court, the arbitral tribunal may continue the arbitral proceedings and make an award. However, parties should be aware that if the High Court upholds the challenge to the appointment of the arbitrator, any award which is made will not be valid.

A party seeking to refer a matter to arbitration must ensure that any pre-conditions set out in the agreement between the parties, have been met, otherwise the appointment of the arbitrator may be vulnerable to a challenge. In the High Court decision of *Achill Sheltered Housing Association CLG v Dooniver Plant Hire Ltd [2018] IEHC 6*, Mr Justice McGovern held that an arbitrator had not been validly appointed as he had not complied with the contractual conditions underpinning his or her appointment (see Legal update, Arbitrator not validly appointed where pre-conditions in dispute resolution clause not met (Irish High Court)).

Arbitrators' powers

The High Court has very little power to intervene in arbitrations, and arbitrators have an increased range of powers under the AA 2010. Unless otherwise agreed by the parties, arbitrators have the power to:

- Review and decide on challenges to their appointment, although this can be appealed to a court or other body specified to decide on the challenge (*Articles 12 and 13*).
- Rule on their own jurisdiction (*Article 16*).
- Order interim relief (*Article 17*).
- Determine the procedural rules for the arbitration if the parties have not already done so (*Article 19*).
- Proceed *ex parte* to appoint experts to assist the arbitrator unless otherwise agreed to by the parties (*Article 26*).
- Terminate the proceedings (*Article 32*).
- Require evidence given by a party or a witness to the proceedings to be on oath and examined. The arbitrator or tribunal may also administer the oath (*section 14*).
- Make an award of simple or compound interest (*section 18*).
- Order a party to provide security for costs of an arbitration (*section 19*).
- Make an award requiring specific performance of a contract (other than a contract for the sale of land) (*section 20*).

Court ordered interim measures

Under Article 17J of the Model Law, a court has the same power to issue an interim measure in support of arbitration proceedings as it has in relation to proceedings in courts. It has this power whether or not the place or seat of arbitration is Ireland.

In *First Modular Gas Systems Limited v Citibank Europe PLC and others [2023] IEHC 514*, the court had to decide whether a request for an injunction to restrain payment under a letter of credit fell within the jurisdiction of the court under section 9 of the AA 2010 and article 17 of the Model Law. In particular, whether the requested relief was an injunction directed to a party to arbitration proceedings or intended arbitration proceedings under article 17. The court found that the claimant had not made out a prima facie or arguable case that the beneficiary to the letter of credit was bound by the arbitration agreement relied on by the applicant. In light of that finding, the court held that it had no jurisdiction to grant the relief sought.

Jurisdiction of arbitrators

Under the AA 2010 arbitrators have the power to review and decide on their own jurisdiction. Article 16 expressly recognises the competence of an arbitral tribunal to rule on its own jurisdiction, a principle also referred to as "kompetenz–kompetenz". This represents a positive step forward and will help to

reduce costs and improve business efficiency. The AA 1954 did not specifically address *kompetenz-kompetenz*, although the common law position was that an arbitrator did not have the power to deal with issues in respect of their own jurisdiction.

Under Article 16(1), an arbitrator may rule on the existence or validity of the arbitration agreement under which he was appointed. An arbitration clause will be treated as independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void "shall not entail *ipso jure* the invalidity of the arbitration clause".

In *K&J Townmore Construction Limited v Kildare and Wicklow Education and Training Board [2018] IEHC 770*, Mr Justice McGovern of the High Court (as he then was) held that an arbitration agreement referring to disputes "under" the contract should be interpreted as including all disputes arising in relation to that agreement unless specifically excluded by the terms of the contract (see Legal update, Dispute over payment covered by arbitration agreement (Irish High Court)).

Article 16(2) provides that where a party challenges the jurisdiction of the arbitrator, it must do so no later than the submission of the statement of defence. A party will not be precluded from making such a challenge even though it may have participated in the appointment of the arbitrator. If the parties are of the view that the arbitrator is acting outside the scope of his or her authority, then this should be raised as soon as the relevant act is alleged to have occurred. A delay in raising the challenge will only be countenanced if the arbitrator considers that the delay is justified.

The arbitrator can rule on any allegation or challenge raised. In the event that a ruling is made which either party finds unacceptable and believes is open to challenge, then that party has 30 days to apply to the High Court to determine the matter but in the meantime the arbitration may continue and an award may be granted (see Challenge to the appointment of an arbitrator). The court can only be asked to resolve an issue on jurisdiction where it has been dealt with as a preliminary question by the arbitral tribunal first. An application cannot be brought after the final award has been granted by the arbitral tribunal.

Section 8(3) overlaps with Article 16 as it also deals with the jurisdiction of the arbitrator. However, it is worth noting that section 8(3) does not make any changes to Article 16 and it is unclear why it was included in the AA 2010.

Exclusion of liability

Section 22 clarifies that an arbitrator will not be liable in any proceedings for anything done or omitted when performing their functions. The section goes on to exclude liability for any expert appointed under Article 26 and any employee, agent or adviser of an arbitrator. It also excludes liability for any bodies, institution or persons involved in the appointment of the arbitrator, and provides that these bodies or persons cannot be held responsible for the arbitrator's actions in the discharge of his or her functions (*section 22(3) and (4)*).

The AA 2010 contains an outright exclusion of liability and although bad faith or fraud is not mentioned, it is arguable that under common law, if the actions of the arbitrator are particularly outrageous, he or she could be found liable.

Consolidated arbitral proceedings

Section 16 provides that where parties to an arbitration agreement agree, different sets of arbitral proceedings shall be consolidated. This can be done even where those other proceedings involve a different party (so long as that party is also in agreement). The terms of the concurrent hearings may also be agreed between the parties.

Section 16(2) provides that the arbitral tribunal does not have the power to order consolidation of arbitral proceedings without the consent of the parties.

Awards

Article 31(1) provides that an award must:

- Be in writing.
- Be dated.
- State the place in which it is made.
- Be signed by the arbitrator. Where more than one arbitrator is involved in proceedings, the signatures of the majority will suffice, provided that the reason for any omitted signature is stated.

Article 31(2) provides that the award must state the reasons on which it is based, unless the parties have agreed that no reasons are to be given, or the award is an award on agreed terms. It is expected that the requirement to give reasons will add an additional rigour to arbitrators' analysis of the facts and the law which form the backdrop to the award. A signed copy of the award must be given to each party.

Effect of an award

Section 23 provides that an award made by an arbitrator or by an arbitral tribunal shall be enforceable, and where leave is given by the High Court, judgment may be entered in the terms of the award. An award made pursuant to the AA 2010 shall be binding on the parties between whom it is made.

It is clear that nothing in this section affects the recognition or enforcement of an award under the Geneva Convention, the New York Convention or the Washington Convention.

For discussion of recognition and enforcement of awards in Ireland, see Practice notes, Enforcing arbitration awards in Ireland and Enforcing ICSID Convention arbitration awards in Ireland: overview.

Challenging an award

Article 34 lists the only grounds available to challenge an arbitral award under the AA 2010, which are where:

- A party to the arbitration agreement was under some alleged incapacity or the arbitration agreement is not valid under the law to which the parties have subjected it or under the law of the state.
- The party making the application was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his or her case.
- The award contains decisions on matters beyond the scope of the submission to arbitration.
- The composition of the arbitral tribunal was not in accordance with the agreement of the parties.
- The arbitral procedure was not in accordance with the agreement of the parties.

(Article 34(a).)

The court finds that:

- The subject matter of the dispute is not capable of settlement by arbitration under the law of the state.
- The award is in conflict with the public policy of the state.

(Article 34(b).)

The Model Law grounds of challenge have been interpreted narrowly in other jurisdictions, and the Irish courts are adopting a similar approach.

A good example of Ireland's approach is the case of *Brostrom Tankers AB v Factorias Vulcano SA [2004] 2 IR 191*, which was heard in the High Court under the AA 1980 (now repealed). This case involved an application to enforce a foreign award in Ireland under section 7 of the AA 1980. The AA 1980 gave effect to the 1958 New York Convention, and section 7 dealt with the enforcement in Ireland of New York Convention awards and, in particular, section 41 of the Convention. In the High Court, Mr Justice Kelly expressed the view that strong public policy considerations favoured the enforcement of arbitration awards. However, Mr Justice Kelly stated that a refusal to enforce an award might still be necessary in certain circumstances as a matter of public policy. In this instance, Mr Justice Kelly held that a refusal to enforce an award on grounds of public policy was not justified, as to do so would greatly extend the notion of public policy. He held that case law and various textbooks make it clear that the public policy defence is of narrow scope. It extends only to a breach of the most basic notions of morality and justice. Mr Justice Kelly referred to Cheshire and North, *Private International Law* (Oxford University Press, 13th ed, 1999) and was of the opinion that a refusal to enforce would be justified only if there was:

> "Some element of illegality, or that the enforcement of the award would be clearly injurious to the public good, or possibly that enforcement would be wholly offensive to the ordinary, responsible and fully informed member of the public."

The decisions of Mr Justice *Hedigan in Ruairi O'Cathain v Diarmuid O'Cathain [2012] IEHC 223* and Mr Justice McGovern in *Patrick O'Leary Trading as O'Leary Lissarda v John Ryan [2015] IEHC 820* also show that the Irish Courts will construe the grounds for setting aside an arbitration award under Article 34 restrictively, in accordance with their preference for minimal interference with arbitral awards (see Legal update, Irish High Court refuses to set aside and remit arbitration award).

Other decisions to note include:

- *Delargy v Hickey and another [2015] IEHC 436*, in which Mr Justice Gilligan refused to set aside an award as he held that the respondents had lost the right to raise a challenge to the findings of the arbitrator by refusing to take part in the arbitral proceedings. The respondents' defence was struck out by the arbitrator due to their failure to comply with a
- discovery order or to have any further involvement in the arbitration. Mr Justice Gilligan went on to note that the grounds to set aside an award or to resist enforcement under Articles 34 and 38

are discretionary and while a court may annul an award if one or more of the grounds are satisfied, it is not mandatory to do so.

- *Hoban v Coughlan and another [2017] IEHC 301,* in which Mr Justice McGovern refused to set aside an award as he held that the power to set aside under Article 34 is very limited. On the facts before him, Mr Justice McGovern found that, there was a complete lack of meaningful engagement by the applicant from the very beginning of the arbitral process and so the arbitrator was entitled to proceed to an oral hearing, without the attendance of the applicant, as he had done.
- *Ryan & anor v Kevin O'Leary (Clonmel) Ltd. & anor [2018] IEHC 660,* where the High Court refused to set aside an arbitral award. It held that the jurisdiction to set aside an award under Article 34 is "very limited and it is a jurisdiction which the court should only exercise sparingly". Mr Justice Barniville noted that the case law stressed the importance of the finality of arbitration awards and made it clear that an application to set aside an award did not afford the court the opportunity of second-guessing the arbitrator's decision on the merits, whether on the facts or on the law (see Legal update, Court should exercise judgment to set aside an arbitral award "sparingly" (Irish High Court)).
- *Fayleigh Ltd v Plazaway Ltd t/a Hotel Partners and Francis Murphy [2015] IESC 92,* where the Irish Supreme Court considered whether the High Court was correct in finding that an arbitration had been misconducted. The Supreme Court further considered whether it was appropriate to remit the matter to the arbitrator or to set aside the award. The Supreme Court upheld both the High Court's finding of misconduct and its decision that the matter should be remitted to the arbitrator. While this case related to an arbitration that pre-dated the AA 2010, it is still relevant as Article 34(4) of the AA 2010 permits a court to suspend setting aside proceedings to give the arbitral tribunal an opportunity to resume the arbitration or take such other action as it considers will eliminate the grounds for setting aside.
- In *Site Facility APS v Randridge Holdings Limited [2025] IEHC 668*, the High Court recognised and enforced a Danish arbitral award under section 23 of the AA 2010 and Article 35 of the Model Law, notwithstanding notice of Danish proceedings said to contest the award. In reaching this conclusion, Mr Justice Barniville noted that the respondent had failed to participate in the application and had "not provided any material to the Court which would suggest that there is any basis for the Court to conclude that there is any form of a stateable case to set aside this award in the Danish courts."

Time limits for setting aside awards on grounds of public policy

Section 12 provides that an application to the High Court to set aside an award on public policy grounds shall be made within 56 days from "the date on which the circumstances giving rise to the application became known or ought reasonably to have become known to the party concerned".

This differs from Article 34(3) of the Model Law, which applies a three-month deadline to challenging an award on the grounds of public policy. Under Article 34(3), the three-month time limit runs from the date that the party making an application has received the award.

The time limit in section 12 runs from when the circumstances giving rise to the application became known or ought reasonably to have become known. Although there is potential for a challenging party to attempt to expand on the 56-day time limit, it is expected that the High Court will interpret this section narrowly, taking into account that the Model Law prescribes a three-month period from the date of receipt of the award.

Costs

Section 21 provides that the parties to an arbitration agreement can agree to make any provision in relation to costs. The parties can agree on the allocation of costs either before or after the dispute has arisen. For any corporate entity which decides to incorporate an arbitration clause into its commercial agreements, governed by Irish law, it will make sense to consider including in that arbitration clause, a provision on how costs will be dealt with, as part of any arbitration process which may be necessary.

If there is no agreement as to costs, the arbitral tribunal can determine costs as it sees fit by way of an award.

It is open to the parties to agree that each side will bear its own costs regardless of the outcome of the arbitration. However, if a consumer enters into such an agreement, section 21(6) provides that the provision as to costs will be deemed to be an unfair term for the purposes of the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 (*SI 27/1995*).

Any arbitrator, who makes a ruling on costs, will be required to state his or her reasons for the

costs order and set out in detail what items are recoverable and who must pay. Costs in this regard include inter partes (between the parties) costs, arbitrators' fees and expenses.

In a non-international commercial arbitration, an arbitrator can direct that the costs be taxed in the usual way by the bodies established by Irish law for regulating the amount of costs chargeable and recoverable (that is, the Taxing Master or County Registrar).

Interest

The parties can agree on the powers which an arbitral tribunal is given in relation to awarding interest. Failing this, section 18 provides that the arbitral tribunal may grant interest on any amount awarded by it in respect of any period up to the date of the award. The arbitral tribunal may also award interest from the date of the award until payment of any sum awarded.

Again, corporate entities which include an arbitration clause in their agreements, will consider including a provision which will specify how interest is to be dealt with as part of any arbitration.

Security for costs

Section 19 deals with the powers of the arbitral tribunal to make an order for security for costs. Arbitrators now have their own jurisdiction to order security for costs unless otherwise agreed by the parties. Section 19(2) provides that a party will not be ordered to provide security for costs solely on the ground that the party is from outside the state.

It is expected that an arbitral tribunal, which is required to apply Irish law, will decide a security for costs application on the same basis as would the Irish courts. In Irish law, the onus of proof is on the applicant to establish that there is a prima facie defence to the plaintiff's claim and that the plaintiff would not be able to pay the moving party's costs if the applicant is ultimately successful in fully defending the claim.

Third party funding

Third party funding in Ireland is currently subject to the rules of maintenance and champerty. The Supreme Court has previously confirmed that the torts of maintenance and champerty remain in place and that legislation will be required to remove them from the statute books (see *Persona Digital Telephony Ltd and another v Minister for Public Enterprise [2017] IESC 27*, discussed in Legal update, Irish Supreme Court considers third party funding a matter for legislature).

The current rules forbid third party or litigation funding save for certain exceptions such as funding by a third party with a legitimate interest in the proceedings (for example, a shareholder) or funding litigation on foot of an "after the event" insurance policy. These rules equally apply to arbitrations conducted under Irish law. However, the Irish Minister for Justice indicated in September 2022 that the restriction on third-party funding would be lifted in respect of international arbitration by way of a government amendment to what was the then Courts and Civil Law (Miscellaneous Provisions) Bill 2022 (see Legal update, Third party funding of international arbitration in Ireland: on the Horizon?). This legislation progressed through parliament and was signed into law by the President on 5 July 2023 (see Legal update, Third party funding of international commercial arbitration signed into law in Ireland). However, the specific provision allowing third-party funding has not yet come into force and remains subject to commencement, which may be awaiting the Irish Law Reform Commission's report on third-party funding, expected in 2026.

The amendment to the AA 2010, with the insertion of a new Section 5A legalises third party funding in the specific context of international commercial arbitration and for related mediation and court proceedings. Specifically, the legislation provides that the offences of maintenance and champerty do not apply to dispute resolution proceedings as defined in the AA 2010. The definition of "dispute resolution proceedings" is:

> "(a) an international commercial arbitration;
>
> (b) any proceedings arising out of an international commercial arbitration before a court of competent jurisdiction performing any of the functions provided for in the Model Law;
>
> (c) any appeal from a decision of a court referred to in paragraph (b);
>
> (d) any mediation or conciliation proceedings arising out of an international commercial arbitration, proceedings or an appeal referred to in paragraph (a), (b) or (c)".

A 'third-party funding contract' is defined as a contract or agreement between a party or potential party to dispute resolution proceedings and a third-party funder, for the funding of all or part of the costs of the proceedings in return for a share or other interest in the proceeds or potential proceeds of the dispute resolution proceedings to which the party or potential party may become entitled.

One important issue that remains to be addressed is the extent to which financed parties will be required to disclose information relating to third party funding. The new section 5A(4) of the AA 2010 will give the Minister for Justice the power to prescribe criteria for third-party funding contracts, including criteria relating to transparency in relation to funders and recipients.

Court intervention restrained

The enactment of the AA 2010 has greatly curtailed the opportunities for court intervention in arbitration proceedings. This is in keeping with the Model Law.

Role of the High Court

Section 9(1) provides that the High Court is the relevant court for applications under the AA 2010. Section 11 provides that there is no right of appeal from the High Court in respect of applications under the AA 2010, as the High Court is appointed as the Court of Final Jurisdiction as well as the Court of First Instance in relation to arbitration applications.

This means that the High Court's decision on any matter is final. Such matters include:

- A stay application under section 11(a).
- An application to set aside under section 11(b)(i).
- An application for recognition and enforcement of an arbitration award under section 11(b)(ii) and 11(c).

The High Court has its usual powers for granting interim measures of protection and assistance in the taking of evidence (*Articles 9 and 27, Model Law*). However, this is subject to section 10(2), where the High Court is not at liberty to order security for costs or discovery of documents unless otherwise agreed by the parties. The power to grant such orders is given to the arbitral tribunal. This further emphasises the autonomy of the arbitral tribunal.

Arbitration judge

The AA 2010 introduced the concept of a single arbitration judge to deal with any applications. Section 9 states that:

> "the functions of the High Court ... shall be performed by the President or by such other judge of the High Court as may be nominated by the President, subject to any rules of court made in that behalf."

Pursuant to section 9, Mr Justice David Barniville was appointed as the arbitration judge in June 2018, taking over from Mr Justice Brian McGovern who had been in place since the end of 2014.

While it was anticipated that the arbitration judge would hear most, if not all, of the applications under the AA 2010 in order to ensure a uniformity of decision making, in practice, a number of other judges have also dealt with such applications.

Taking evidence in aid of foreign arbitrations

Article 27 provides that the arbitral tribunal or a party with the approval of the arbitral tribunal may request the court's assistance in taking evidence. Section 15 provides that Article 27 includes an arbitration taking place outside the state. This section ensures that Irish courts have the capacity to assist with the taking of evidence in proceedings which are taking place outside of the state. However, Article 27 is subject to section 10(2), which provides that when exercising any powers in relation to Article 27, the High Court shall not, unless otherwise agreed by the parties, make any order relating to security for costs of the arbitration or make any order for discovery of documents.

The effect of these provisions is that the High Court will not make an order for discovery of documents under the AA 2010 in aid of a foreign arbitration, unless the parties have written into their arbitration agreement, their consent to give the court this power. Parties should consider this at the time of framing their arbitration agreement.

Power to stay court proceedings

Article 8 provides that if one of the parties makes an application to the court to stay proceedings, the court must grant the application if:

- **The party submits its application before submitting its first statement on the substance of the dispute:**
  - in *Go Code Limited v Capita Business Services Limited [2015] IEHC 673*, the court proceedings were stayed even though the defendant had called for a statement of claim and a statement of claim had been delivered before the motion to stay the proceedings was brought (see Legal update, Irish High Court grants stay of court proceedings pending arbitration);
  - in *XPL Engineering Ltd v K & J Townmore Construction Ltd [2019] IEHC 665*, the court considered the application of Article 8. Mr Justice Barniville determined that the defendant's replying affidavit in the summary proceedings did not refer to or engage with the "substance of the dispute between the parties" as it referred only in an indirect manner to the existence of a dispute.

- **The matter in dispute is subject to an arbitration agreement:**
  - according to Mr Justice Clarke in *Kelly v Lennon [2009] 3 I.R. 794*, where only some of the subject matter is subject to an arbitration agreement, the court has a discretion as to how the various elements of the case should be sequenced so as to maximise the likelihood of a speedy and just resolution;
  - in *Franmer Developments Ltd v L&M Keating Ltd and others [2014] IEHC 295*, the Irish High Court stayed court proceedings in favour of arbitration where an arbitration agreement existed between the plaintiff and the first defendant but not with the other four defendants. The multiplicity of actions did not make the agreement to arbitrate incapable of being performed (see Legal update, Irish High Court refers matter to arbitration despite multiplicity of actions);
  - similarly, in *Maguire and another v Motor Services Limited t/a MSL Park Motors and another [2017] IEHC 532*, the Irish High Court refused to stay proceedings between certain of the parties who had not entered into an arbitration agreement even though the proceedings were factually related to the arbitration proceedings (see Legal update, Irish High Court refuses to apply arbitration clause to a non-party);
  - however, in *Lisheen Mine v Mullock & Sons (Shipbrokers) Ltd [2015] IEHC 50*, Mr Justice Cregan refused an application to stay proceedings and to refer a dispute to arbitration. He held that it was appropriate for the court to decide whether an arbitration agreement existed and to give full judicial consideration to the issue rather than a prima facie consideration;
  - in *Kellys of Fantane Ltd v Bowen Construction Ltd and another [2017] IEHC 357*, Mr Justice McGovern refused to grant a stay of summary judgment proceedings brought to force compliance with a conciliator's recommendation. The judge held that the parties' dispute resolution clause provided for the court to have jurisdiction over the issue of compliance with the conciliator's recommendation. That did not interfere with the role of the arbitrator in ultimately determining the underlying dispute (see Legal update, Irish High Court refuses stay where contract allowed for determination by a court);
  - in *XPL Engineering Ltd v K & J Townmore Construction Ltd [2019] IEHC 665*, Mr Justice Barniville also considered the meaning of the term "dispute", as the plaintiff contended that there was no dispute in existence between the parties. Mr Justice Barniville considered that "a liberal or broad interpretation should be given to the term "dispute" in an arbitration agreement" and he set out a proposed approach for the court in interpreting that term;
  - in *San Leon Energy plc v Brightwaters Energy Ltd [2026] IEHC 1*, Mr Justice Kennedy considered whether an arbitration clause could be relied on to restrain the presentation of a winding-up petition for an undisputed debt. Endorsing the UK Privy Council's approach in *Sian Participation Corp (In Liquidation) v Halimeda International Ltd [2024] UKPC 16*, Mr Justice Kennedy held that a winding-up petition is a statutory right, not a claim to determine a debt, and therefore does not automatically fall within the scope of an arbitration clause. The decisive question is whether the debt was genuinely disputed on real and substantial grounds, which remained a matter for the Irish courts under Irish law rather than for an arbitral tribunal. On the facts, the court held that no bona fide and substantial dispute had been established and the arbitration clause was not triggered, therefore the requested injunction to restrain the winding-up petition was refused (see Legal update, Irish High Court clarifies interplay between arbitration clauses and winding-up petitions for undisputed debts).
- **The court does not find that the agreement is null, void, inoperative or incapable of being performed:**
  - while the court in *P. Elliot & Company Ltd (In receivership and In Liquidation) v FCC Elliot Construction Ltd [2012] IEHC 361* refused to stay proceedings pending arbitration on the grounds that the applicant could not establish that it was a party to the arbitration agreement, Mr Justice MacEochaidh accepted that there may be circumstances where an applicant has a "sufficient connection" with the party who agreed to the arbitration clause to invoke the clause and stay the proceedings (see Legal update, High Court in Dublin refuses third party's application to enforce an arbitration agreement);
  - in *Charwin Ltd t/a Charles Bar v Zavarovalnica Save Insurance Company D.D [2021] IEHC 489*, Mr Justice Barniville affirmed the principle that once the party seeking to refer the dispute to arbitration is able to establish that the words of the relevant arbitration clause are wide

enough to encompass the plaintiff's cause(s) of action, the burden then shifts to the other party to establish the existence of one or more of the 'disapplying factors' set out in article 8 of the Model Law. Those 'disapplying factors' are that the arbitration agreement or clause is null and void, inoperative or incapable of being performed. The judge found that no strong public policy considerations existed that should prevent a stay of proceedings to allow for referral of the dispute to arbitration. The factors cited by the plaintiff did not, in the judge's view, bring into play any public policy considerations which might render the dispute non-arbitrable or render the arbitration clause null and void, inoperative or incapable of being performed. This case also makes clear that (while undesirable) part of a dispute may be determined by arbitration, and part by the courts, if that is what is required to give effect to the words of the arbitration agreement (see Legal update, Irish Commercial Court dismisses claim that pandemic-related insurance claim is non-arbitrable);

- while the court is determining its position in relation to whether a stay should be granted, arbitration proceedings can still be commenced and an award made. There are risks in terms of the costs of proceeding with arbitration, before the court has made its determination in relation to the application to stay those proceedings;
- in *Creedon Construction Ltd v Kenny and another [2014] IEHC 188*, the judge allowed the dispute to go to litigation despite there being a valid arbitration clause. The court inferred that the parties had agreed subsequently, whether expressly or impliedly, that the matters raised should go to litigation, on the basis that no objection was raised by either side to the court's jurisdiction (see Legal update, Irish High Court allows litigation to proceed despite arbitration clause in contract);
- in *Ocean Point Development Company Ltd (in receivership) v Patterson Bannon Architects Ltd and others [2019] IEHC 311* and *Narooma Ltd v HSE [2020] IEHC 315*, it was confirmed that the court has no discretion in staying the litigation and referring the case to arbitration when court proceedings have been commenced in breach of a valid arbitration case. These cases also confirm that the grounds for refusing to stay the court proceedings are narrow insofar as the court must find that the arbitration clause is null, void, inoperable or incapable of being performed, before it can refuse to grant such a stay on the legislation;
- in *Sterimed technologies International and another v Schivo Precision Ltd and others [2017] IEHC 35*, the court considered the level of judicial scrutiny required to ascertain the existence of an arbitration agreement. Mr Justice McGovern opined that, in deciding whether a prima facie review or a full judicial consideration is appropriate to determine the existence of an arbitration agreement, a court will have to consider the specific issues arising in the case. In this case, the court considered that it had to apply more extensive scrutiny to the issue of whether or not there was a valid arbitration agreement (see Legal update Court proceedings stayed pending arbitration);
- in *Jephson and another v Aviva Insurance Ireland DAC [2024] IEHC 309*, the High Court lifted a stay on court proceedings granted under article 8 of the UNCITRAL Model Law by reason of the parties' agreement to refer their dispute to arbitration. The stay was lifted because the respondent failed to comply with an undertaking to progress the arbitration in a "timely and efficient" fashion (see Legal update, Irish court lifts stay on court proceedings for respondent's failure to progress arbitration).

Court powers to adjourn proceedings

According to section 32, the court may adjourn proceedings at any time with the consent of the parties to give the parties time to consider whether the dispute should be referred to arbitration.

Parties who consent to engaging in an arbitration process, will not have the opportunity of going back to court if they are dissatisfied with any decision of the arbitrator. Once an arbitrator is appointed and the parties agree to refer their dispute for the arbitrator's decision, then the jurisdiction for the dispute effectively passes from the court to the arbitrator.

Rule 8 of the Rules of the Superior Courts (Arbitration) 2010 (SI 361/2010), provides:

> "the Court, on the application of any of the parties or of its own motion, may at any time make an order under section 32 of the Act and where such an order is made, the Court may make such consequential, further or other orders or give such directions as the Court considers will facilitate the effective use of that process."

The application should be made by motion to the court on notice to the opposing party or parties,

and shall, unless the court otherwise orders, be supported by an affidavit sworn by or on behalf of the applicant. Parties must make an application for an order under rule 8 within 28 days of the date on which the proceedings are first listed for hearing (*Rule 10*).

Applicability to state parties

Section 28 provides that the AA 2010 is fully applicable to state parties.

Exclusion of certain arbitrations

Section 30 provides that the AA 2010 will not apply to employment or to industrial relations disputes.

Section 30(2) makes further exclusionary provisions with regard to arbitration agreements in relation to property valuations.

Consumer claims

Section 31 provides that arbitration agreements will not cover consumer claims under EUR5,000 unless the consumer agrees to go to arbitration after the dispute has arisen or the agreement has been individually negotiated. This section seeks to protect consumers who sign up to standard form contracts which include an arbitration clause about which they may have been unaware.

This section will not apply to amateur sports persons who agree to go to arbitration in relation to disputes involving their participation in a particular sport.

In *Flatley v Austin Newport Group Limited [2024] IEHC 359*, the High Court allowed an application by an insurer to have the court proceedings in relation to an insurance claim stayed and the dispute referred to arbitration in light of an arbitration clause in the insurance policy. In doing so, the court rejected an argument that the arbitration clause was an unfair term in a consumer contract (see Legal update, Irish court stays litigation in favour of arbitration dismissing argument that arbitration clause was an unfair term of consumer contract (High Court of Ireland).)

The New York Convention, Geneva Convention and Geneva Protocol

Section 24 contains the provisions which give effect to Ireland's international obligations in relation to the New York Convention, Geneva Convention and Geneva Protocol.

Case law interpreting AA 2010

An examination of relevant Irish case law under the AA 2010 demonstrates that the long-standing judicial support for arbitration in Ireland continues. The following cases, also referred to above in this article, confirm the Irish judiciary's continued commitment to arbitration:

- *K&J Townmore Construction Limited v Kildare and Wicklow Education and Training Board [2018] IEHC 770*, which involved a dispute over payment pursuant to a contract for construction works at a school. The Irish Courts interpreted the arbitration clause in the contract broadly to find that disputes "under" the contract included all disputes unless specifically excluded, and therefore the case was referred to arbitration where the arbitrator would have jurisdiction to determine all issues relating to the contract. This case demonstrates the broad interpretation of arbitration clauses and support for the arbitral process (see Legal update, Dispute over payment covered by arbitration agreement (Irish High Court).
- *Ruairi O'Cathain v Diarmuid O'Cathain [2012] IEHC 223*, which involved a dispute over a partnership agreement which was referred to arbitration. During the arbitration, one party left and an arbitral award was made in his absence. The Irish Courts refused an application to have the arbitral award set aside. This case demonstrates the Irish Court's preference for minimal interference with arbitral awards and reinforces its support for an arbitrator's decision-making powers (see Legal update, Irish High Court refuses to set aside and remit arbitration award).

Reform of AA 2010

The Arbitration (Amendment) Bill 2025 (Bill), which was published in December 2025, proposes to create a procedure for enforcing awards made under certain international investment agreements. In April 2026, the Bill was approved in its final form by the Dáil (lower house). In early May 2026, it passed through the Second Stage in the Seanad (upper house) and will be sent forward to the Committee Stage for further debate before being enacted into law in Ireland.

The Bill is intended to enable Ireland to ratify international agreements which incorporate the EU's new investment dispute resolution regime, following the Supreme Court's decision in Costello v Government of Ireland [2022] IESC 44 (Costello), which held that the proposed ratification of the

European Union-Canada Comprehensive Economic and Trade Agreement (CETA) was unconstitutional. However, in Costello, the Supreme Court also found that certain amendments to the Irish Arbitration Act 2010 could cure the unconstitutionality. The Bill seeks to give effect to that finding by inserting a new section 25A into the AA 2010. The passing of the Bill itself does not, however, ratify CETA (or any other international agreement) in Ireland. Separate Government decisions and Dáil motions will be required to do so.

International agreements to which section 25A would apply

The Bill inserts a new section 25A into the AA 2010 to give effect to certain international agreements. Section 25A(1) applies to:

- The CETA.
- The Advanced Framework Agreement between EU member states and the Republic of Chile.
- International agreements prescribed by order under subsection (5).

Enforcement of awards

Section 25A(2) provides that awards made under an applicable international agreement will be enforceable in Ireland by leave of the High Court, in the same manner as a judgment or order of the High Court. Such awards may only be enforced under section 25A and not under any other provision of the AA 2010.

Constitutional and EU law safeguards

Section 25A(3) addresses the constitutional concerns identified in Costello by declaring that an award is not, and never was, enforceable in Ireland if enforcing the award would compromise:

- The constitutional order of the state.
- The autonomy of the legal order of the EU.

During the Committee Stage debate, the Minister of State confirmed that the term "constitutional order" has been deliberately left undefined on the advice of the Attorney General, to give the courts broad discretion rather than constraining their powers with a prescriptive definition.

Appeals

Section 25A(4) provides that there is no appeal from the High Court to the Court of Appeal on an enforcement application, but that a "leapfrog" appeal may be made to the Supreme Court under article 34.5.4° of the Constitution (which requires exceptional circumstances for the Supreme Court to grant leave to appeal).

Power to prescribe additional international agreements

Section 25A(5) allows the Minister for Foreign Affairs and Trade, after consultation with the Minister for Justice, Home Affairs and Migration, to extend section 25A by ministerial order to additional international agreements to which Ireland is, or intends to become, a party.

During the Second Stage Dáil debate, the Minister for Foreign Affairs and Trade noted that this power would be used to prescribe other EU agreements with third countries containing similar investment dispute resolution provisions, such as those with Vietnam, Singapore and Mexico.

Any such order must be laid before both the Dáil and the Seanad as soon as possible after it is made and may be annulled within 21 sitting days.