DELOS
dispute resolution

GUIDE TO ARBITRATION PLACES (GAP)

IRELAND

CHAPTER PREPARED BY

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JURISDICTION INDICATIVE TRAFFIC LIGHTS

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There have not been any material changes requiring an update to this chapter (including the traffic lights) since the date of the latest version. Nonetheless, please note that this chapter does not constitute legal advice and its authors, the contributing law firm and Delos Dispute Resolution decline any and all responsibility.

IN-HOUSE AND CORPORATE COUNSEL SUMMARY

Ireland is the only common law jurisdiction in the EU with English as one of its official languages. It has a modern arbitration act, the Arbitration Act 2010, based on the UNCITRAL Model Law, with very limited opportunities to appeal an arbitration award.

Arbitrations seated in Ireland are governed by the Arbitration Act 2010 (as amended) (the **Arbitration Act 2010**). Ireland is a pro-arbitration jurisdiction with a dedicated judge—currently Mr Justice Barniville, the President of the High Court—who deals with all arbitration-related court applications.

In broad terms, the Irish High Court uses a listing system to manage the work of the Court, which involves cases being organised into a number of lists depending on the nature of the case – e.g., the Commercial List, the Personal Injuries List, the Judicial Review List. The High Court has a dedicated "Arbitration List" which deals with all applications to and proceedings before the High Court concerning arbitrations under the Arbitration Act 2010.

There are many experienced Irish arbitrators who are highly regarded internationally and have been appointed to tribunals around the world.

Arbitration Ireland is an organisation responsible for the promotion of Ireland as a seat for international arbitration. Arbitration Ireland consists of a collaboration of law firms, members of the Bar Council, industry bodies and individuals actively involved in the practice of international arbitration in Ireland. The Dublin Dispute Resolution Centre houses modern hearing facilities in central Dublin with easy access to law firm offices and the Courts.

An amendment is due to be made to the Arbitration Act 2010 to permit third-party funding for international arbitration and related Court proceedings. The arbitration community in Ireland is eagerly awaiting the this amendment, which we anticipate may occur in 2024.

Key places of arbitration in the jurisdiction?	Dublin.
Civil law / Common law environment? (if mixed or other, specify)	Common law.
Confidentiality of arbitrations?	There is no express provision for confidentiality in the Arbitration Act 2010. However, in practice and in like manner to English jurisprudence, arbitration proceedings are confidential unless: (a) the parties agree otherwise; (b) disclosure is necessary to protect legitimate interests of a party; (c) a court orders disclosure; or (d) the interests of justice require disclosure.
Requirement to retain (local) counsel?	There is no requirement to retain local counsel for arbitral proceedings.
Ability to present party employee witness testimony?	There is no limitation on a party's ability to present the testimony of its employees. Tribunals have, subject to contrary agreement by the parties, wide powers to decide on matters relating to evidence,

	such as the exchange of evidence and conduct of hearings for oral evidence (Articles 19 & 24 of Schedule 1). The arbitral tribunal, or a party with the approval of the arbitral tribunal, may request assistance of the Court in taking evidence (Article 27 of Schedule 1).
Ability to hold meetings and/or hearings outside of the seat and/or remotely?	The parties are free to agree on the location for the hearing of the arbitration or any relevant meetings (Article 20 of Schedule 1) to include remote meetings and/or hearings. In the absence of agreement, the location of the arbitration will be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties. Notwithstanding the above, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts, or the parties, or for inspection of goods, other property, or documents.
Availability of interest as a remedy?	Yes. Section 18(1) of the Arbitration Act 2010 allows parties to an arbitration agreement to agree on the tribunal's powers regarding the award of interest. Unless otherwise agreed by the parties, the tribunal may award simple or compound interest, which is fair and reasonable, on any amount awarded by the arbitral tribunal in respect of any period up to the date of the award or on any amount outstanding at the commencement of the arbitration but paid before the award was made. The arbitral tribunal may also award simple or compound interest from the date of the award until the date of payment on the outstanding amount of any award including interest and costs (Section 18(3) of the Arbitration Act 2010).
Ability to claim for reasonable costs incurred for the arbitration?	Yes. Section 21(3) of the Arbitration Act 2010 states that arbitrators have discretion as to costs. However, arbitrators will usually follow the general rule that costs follow the event. Parties can also come to an agreement as to costs as they see fit. If the parties agree to arbitrate subject to the rules of an arbitral institution, they shall be deemed to have agreed to abide by the rules of that institution as to the costs of the arbitration.
Restrictions regarding contingency fee arrangements and/or third-party funding?	Yes. While contingency fee arrangements made on a traditional 'no win no fee' basis are legal, third-party funding of arbitration and litigation is prohibited in Ireland by the offences and torts of maintenance and champerty.[1] However, the Courts and Civil Law (Miscellaneous Provisions) Act 2023 is expected to amend the Arbitration Act 2010[2] to permit third-party funding for international commercial arbitration; court proceedings arising from international commercial arbitration, including appeals; and mediation or conciliation arising from international commercial arbitration or those court proceedings.[3]

1 A. Dowling-Hussey, D. Dunne, *Arbitration Law*, Round Hall, 2018, p. 302; see also *Persona Digital Telephony Ltd v Minister for Public Enterprise, Ireland* [2017] IESC 27

2 Available at: https://service.betterregulation.com/document/619815.

3 Available at: https://service.betterregulation.com/document/619096.

	The Courts and Civil Law (Miscellaneous Provisions) Act 2023 has been signed by the President and will come into force when the commencement order has been issued, which we anticipate may be in 2024.
Party to the New York Convention?	Yes, since 1981.
Party to the ICSID Convention?	Yes.
Compatibility with the Delos Rules?	Yes.
Default time-limitation period for civil actions (including contractual)?	Six years from the date on which the cause of action accrued (Section 11(1)(c) and Section 75 of the Statute of Limitations Act 1957). Section 11(5)(b) of the Statute of Limitations Act 1957 states that actions to enforce an award, where the arbitration agreement is under seal, will expire 12 years from the date on which the cause of action accrued.
Other key points to note?	ϕ
World Bank, Enforcing Contracts: *Doing Business* score for 2020, if available?	In 2020, Ireland ranked 91st out of 190 countries with a score of 57.9.[4]
World Justice Project, Rule of Law Index: *Civil Justice* score for 2023?	2023: Ireland ranks 17th out of 142 jurisdictions with a score of 0.73.[5]

4 Available at: https://www.worldbank.org/en/programs/business-enabling-environment/doing-business-legacy.
5 Available at: https://worldjusticeproject.org/rule-of-law-index/global/2023/Civil%20Justice/.

ARBITRATION PRACTITIONER SUMMARY

Arbitration is a widely used and well understood form of dispute resolution in Ireland.

The Arbitration Act 2010 governs arbitrations in Ireland, whether domestic or international, commercial or consumer. One of the central purposes of the Arbitration Act 2010 was to promote the use of arbitration as a method of resolving commercial and other disputes in Ireland. The Arbitration Act 2010 is closely based on the UNCITRAL Model Law, which is incorporated (including the 2006 amendments) into Schedule 1 with minor modifications.

Date of arbitration law?	The Arbitration Act 2010 came into force on 8 June 2010,[6] with latest amendment in 2022.[7] The Arbitration Act 2010 repealed the Arbitration Acts 1954 to 1998.
UNCITRAL Model Law? If so, any key changes thereto? 2006 version?	Yes. Section 6 of the Arbitration Act 2010 adopts the UNCITRAL Model Law, including its 2006 amendments for all arbitration proceedings seated in Ireland. Schedule 1 of the Arbitration Act 2010 contains the text of the UNCITRAL Model Law. The Arbitration Act 2010 adopted UNCITRAL Model law subject to minor amendments, e.g., under the Arbitration Act 2010, the default is the election of one arbitrator as opposed to three under UNCITRAL Model Law.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	Yes. The President of the High Court manages a designated Arbitration List in the High Court, which deals with all applications to and proceedings concerning arbitrations under the Arbitration Act 2010.
Availability of *ex parte* pre-arbitration interim measures?	Yes. Pre-arbitration interim measures are available from the Irish High Court (Article 9 of Schedule 1). Under Section 10 of the Arbitration Act 2010, the High Court has the same powers in relation to Articles 9 (interim measures) and 27 (assistance in taking evidence) of Schedule 1 as it has in any other action or matter before the Court. When exercising those powers, unless otherwise agreed by the parties, the High Court cannot make any order relating to security for costs or the discovery of documents. The High Courts may grant interim measures *ex parte* (without notice) in limited but appropriate cases. These are usually for urgent situations where a delay may prejudice the right of the party seeking the interim measure. i.e., to preserve evidence or assets. The application will be subject to an *inter partes* (on notice) hearing to determine whether the interim measures should remain in place.

6 Available at: https://www.irishstatutebook.ie/eli/isbc/2010_1.html.

7 Section 21(6) of the Arbitration Act 2010 on costs and unfair terms in consumer arbitration agreements was repealed by the Consumer Rights Act 2022 Available at: https://www.irishstatutebook.ie/eli/isbc/2010_1.html.

Courts' attitude towards the competence-competence principle?	Irish Courts respect the "competence-competence" principle and the tribunal's ability to rule on its own jurisdiction. The "competence-competence" principle is enshrined in Article 16(1) of Schedule 1 of the Arbitration Act 2010 which states that the arbitral tribunal may rule on its own jurisdiction. Under Article 16(2) of Schedule 1, if a party wishes to make a plea that the arbitral tribunal does not have jurisdiction, it must do so before the submission of the statement of defence. Under Article 16(3) of Schedule 1, an arbitral tribunal may rule on a jurisdiction plea either as a preliminary question or in an award on the merits. Where a ruling is made as a preliminary matter, an aggrieved party may request, within 30 days of having received notice of the ruling, that the Court decide the matter. Such decision of the Court is not subject to appeal. While such a request is pending before the Court, the arbitral tribunal may continue the arbitral proceedings and make an award.
May an arbitral tribunal render a ruling on jurisdiction (or other issues) with reasons to follow in a subsequent award?	Yes. "*Award*" is defined as including a partial award (Section 2(1) of the Arbitration Act 2010).
Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?	Articles 35 and 36 of Schedule 1 are closely modelled on the criteria for recognition and enforcement of awards under the New York Convention. Under Article 36 of Schedule 1, the recognition or enforcement of an arbitral award may only be refused at the request of an aggrieved party who can satisfy one of the following grounds: (a) a party to the arbitration agreement was under some incapacity; (b) the arbitration agreement is not valid under the governing law; (c) the aggrieved party was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present their case; (d) the award relates to a dispute which does not fall within or goes beyond the terms of the arbitration; (e) the composition of the arbitral tribunal or arbitral procedure was not in accordance with the arbitration agreement or governing law; or (f) the award has not yet become binding on the parties or has been set aside or suspended by a Court. Schedule 3 of the Arbitration Act 2010 contains the text of 1965 Convention on the Settlement of Investment Disputes Between States and Nationals of Other States Preamble (**ICSID Convention**). Article 52(1) of the ICSID Convention states that either party may request annulment of the award by an application in writing addressed to the Secretary-General on one or more of the following grounds: (a) that the tribunal was not properly constituted;

	(b) that the tribunal has manifestly exceeded its powers; (c) that there was corruption on the part of a member of the tribunal; (d) that there has been a serious departure from a fundamental rule of procedure; or (e) that the award has failed to state the reasons on which it is based.
Do annulment proceedings typically suspend enforcement proceedings?	If a party applies to set aside an award under Article 34 of Schedule 1, it is likely that enforcement proceedings will be stayed pending the outcome of the set aside application. Under Article 34(3) of Schedule 1, the application to set aside the award must be made within three months from the date on which the party received the award. Article 52(1) of the ICSID Convention, contained in Schedule 3 of the Arbitration Act 2010, states that a committee of three persons, appointed by the chairman of the administrative council of the ICSID, may, if it considers that the circumstances so require, stay enforcement of the award pending its decision. If the applicant requests a stay of enforcement of the award in their application, enforcement shall be stayed provisionally until the committee rules on such request.
Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?	Article 36 (1)(a)(v) of Schedule 1 provides grounds for a party to oppose the recognition or enforcement of an award on the basis it has not yet become binding or has been set aside or suspended by a court of the country in which it was made. As the wording is permissory rather than mandatory, courts retain a residual discretion under Article 36(1) of Schedule 1 to recognise and enforce a foreign award notwithstanding that it has been set aside or suspended by a court at the foreign seat. However, it is unlikely that the Irish Courts would do so in the absence of clear and substantial injustice at the seat.
If an arbitral tribunal were to order a hearing to be conducted remotely (in whole or in part) despite a party's objection, would such an order affect the recognition or enforceability of an ensuing award in the jurisdiction?	No. A tribunal has the power to decide all procedural and evidentiary matters, including a decision on when and where any part of the proceedings is to be held subject to any agreement by the parties under Article 19(2) of Schedule 1. Conducting hearings remotely is not a ground in and of itself for refusing recognition or enforcement of an award under Article 36 of Schedule 1 or for setting aside an award under Article 34 of Schedule 1. Any application seeking to set aside the award or challenging enforcement on the basis that the remote hearing had prejudiced one party would depend on whether the party was unable to present its case (Article 34(2)(a)(ii) and 36(1)(a)(ii) of Schedule 1) or the arbitral procedure was not in accordance with the arbitration agreement (Article 34(2)(a)(iv) and Article 36(1) (a)(iv) of Schedule 1).

Key points to note in relation to arbitration with and enforcement of awards against public bodies at the jurisdiction?	In the case of *Brostrom Tankers AB v Factorias Vulcano SA [2004] 2 IR 191* (followed in the 2011 High Court decision in *Danish Polish Telecoms v Telekomunikacja Polska S.A. [2011] IEHC 369*), Mr Justice Kelly in the High Court expressed the view that strong public policy considerations favoured the enforcement of arbitration awards. However, Justice Kelly stated that a refusal to enforce an award might still be necessary in certain circumstances as a matter of public policy. He 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."*
Is the validity of blockchain-based evidence recognised?	There is no Irish case law on this point, however we expect the Irish Courts may be influenced by other common law jurisdictions, e.g., England & Wales, New Zealand, and Canada. However, because the tribunal has the power to decide the manner and form in which evidence may be exchanged or presented under the Arbitration Act 2010 (Section 34(2)(f)), a tribunal may admit blockchain-based evidence at its discretion.
Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?	There is no Irish case law on this point, however we expect the Irish Courts may be influenced by other common law jurisdictions, e.g., England & Wales, New Zealand, and Canada. The Arbitration Act 2010 only requires an agreement and/or award to be in writing to benefit from the protections afforded under the Arbitration Act 2010. "In writing" is defined very broadly under Article 7(4) of Schedule 1 to include electronic communication if the information contained therein is accessible so as to be useable for subsequent reference. Article 7(4) of Schedule 1 defines electronic communication as "any communication that parties make by means of data messages; data message means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy."
Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?	This has not been tested in Ireland.
Other key points to note?	ϕ

JURISDICTION DETAILED ANALYSIS

1. The legal framework of the jurisdiction

The legal framework for arbitration in Ireland commenced with the Arbitration Act 1954, the Arbitration Act 1980, and the Arbitration (International Commercial) Act 1998. The Arbitration Act 2010 repealled those Acts and now governs domestic and international arbitration in Ireland. Before the passage of the Arbitration Act 2010, the UNCITRAL Model Law only applied to international commercial arbitrations as defined by the Arbitration (International Commercial) Act 1998.

1.1 Is the arbitration law based on the UNCITRAL Model law? 1985 or 2006 version?

Yes. Section 6 of the Arbitration Act 2010 adopts the UNCITRAL Model Law, including its 2006 amendments for all arbitral proceedings seated in Ireland. The UNCITRAL Model law is set out in full at Schedule 1 of the Arbitration Act 2010.

1.1.1 If yes, what key modifications if any have been made to it?

The Arbitration Act 2010 adopted the UNCITRAL Model Law subject to minor amendments e.g., under the Arbitration Act 2010, the default is the election of one arbitrator rather than three under UNCITRAL. In addition, under Section 10(2) of the Arbitration Act 2010, the High Court cannot order security for costs or disclosure of documents unless the parties agree.

1.2 When was the arbitration law last revised?

An eagerly awaited amendment to permit third-party funding is expected to become effective in 2024. The Arbitration Act 2010 was amended in 2023 by the Courts and Civil Law (Miscellaneous Provisions) Act 2023 to permit third-party funding for international commercial arbitration and related mediation or court proceedings. The amendment has been signed into law by the President but will not be effective until a commencement order is signed.

Prior to that, the Arbitration Act 2010 was last amended in 2022 by the Consumer Rights Act 2022.[8] Section 132(1) of the Consumer Rights Act 2022 states that a term of a consumer contract will be deemed unfair if it has the "object or effect" of:

(a) Excluding or hindering a consumer's right to take legal action, including by requiring the consumer to take a dispute to arbitration proceedings that is not governed by law; or
(b) Requiring a consumer to bear his or her own costs in respect of any arbitration.[9]

2. The arbitration agreement

2.1 How do the courts in the jurisdiction determine the law governing the arbitration agreement?

In the absence of a clear agreement to the contrary, there is a presumption that the law governing the arbitration agreement will be the law of the seat.

Article 28 of Schedule 1 of the Arbitration Act 2010 provides that a tribunal must decide a dispute in accordance with the substantive law chosen by the parties. The parties are free to choose the law or legal rules applicable to their relationship, provided it is not contrary to public policy.

If there is no agreement between the parties as to the governing law of the arbitration agreement, it will be determined by reference to the governing law provisions in the agreement or contract. This will generally be determined by the principles of private international law.

8 Available at: https://www.irishstatutebook.ie/eli/isbc/2010_1.html.
9 Available at: https://www.irishstatutebook.ie/eli/2022/act/37/section/132/enacted/en/html

2.2 In the absence of an express designation of a 'seat' in the arbitration agreement, how do the courts deal with references therein to a 'venue' or 'place' of arbitration?

Article 20 of Schedule 1 refers to the place of arbitration. Therefore, "place" is used rather than "seat." The express designation of place is often used to refer to the seat whereas venue is less clear and more often a reference to the practical location rather than the jurisdiction that govern the procedural law. If the parties have designated a place of arbitration, the Courts will treat this as the seat. If the parties have only designated a venue, the Courts will consider this along with the governing law of the contract to determine the appropriate procedural law.

Under Article 20(2) of Schedule 1, in the absence of agreement by the parties on the place of arbitration, the tribunal will determine the place having regard to the circumstances of the case including the convenience of the parties.

2.3 Is the arbitration agreement considered to be independent from the rest of the contract in which it is set forth?

Article 16(1) of Schedule 1 of the Arbitration Act 2010 provides for the separation of an arbitration agreement from the underlying contract. In line with the principle of separablity, a decision by a tribunal that the underlying contract is null and void will not invalidate the arbitration agreement.

2.4 What are the formal requirements (if any) for an enforceable arbitration agreement?

An arbitration agreement must be in writing in order to be enforceable (Section 2(1) of the Arbitration Act 2010 and Article 7(2) of Schedule 1 of the Arbitration Act 2010). An arbitration agreement will be deemed in writing where its contents are recorded in any form, including electronic communications.

Article 7(4) of Schedule 1 provides that an electronic arbitration agreement is in writing if the information contained therein is accessible so as to be useable for subsequent reference. Electronic communication means "any communication that parties make by means of data messages; data message means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy."

2.5 To what extent, if at all, can a third party to the contract containing the arbitration agreement be bound by said arbitration agreement?

While this is greatly dependent on the facts of a particular case, in general, tribunals have no jurisdiction to adjudicate disputes which are not expressly covered by an arbitration agreement. Therefore, non-signatory parties are not bound by arbitration agreements which they have not signed, unless some evidence of consent to be bound can be demonstrated.

The circumstances under which non-signatories may be deemed to be a party to an arbitration agreement are not covered by the Arbitration Act 2010. Therefore, the normal rules of Irish contract law would apply to determine this question.

In *Maguire v Motor Services Ltd* [2017] IEHC 532 following *P. Elliot & Co Ltd v FCC Elliot Construction Ltd* [2012] IEHC 361, Barrett J held that an arbitration agreement may apply to a non-party where a sufficient connection between a party to the arbitration agreement and the non-party exists.

2.6 Are there restrictions to arbitrability?

Yes, the Arbitration Act 2010 does not apply to certain employment disputes and labour arbitration.

In the context of international business and contracts concerning international trade and transactions, there are no limitations on the types of disputes that can be referred to arbitration provided the contracts are not illegal or contrary to public policy.

2.6.1 Do these restrictions relate to specific domains (such as anti-trust, employment law etc.)?

Yes, the Arbitration Act 2010 does not apply to the following types of cases: criminal liability, landlord and tenant disputes within the scope of the Residential Tenancies Act 2004, disputes concerning contracts whose objects are illegal or contrary to public policy, the validity of patents and trademarks, and disputes arising out of the operation of statutory insolvency proceedings.

Third-party funding of any kind is restricted in Ireland by old common law champerty and maintenance laws.[10] This will remain the case until the commencement of the amendment to the Arbitration Act 2010 which we anticipate may commence in 2024.

2.6.2 Do these restrictions relate to specific persons (i.e., State entities, consumers etc.)?

The Consumers Rights Act 2022 has introduced legislative protections for consumers in respect of mandatory arbitration clauses in consumer contracts, particular in respect of costs providing that an arbitration clause which provides that each party bears its own costs would be an unfair term and therefore unenforceable. This does not apply to insurance contracts or contracts that relate to creation or transfer of an interest in land.

Under Section 31(1) of the Arbitration Act 2010, a consumer is not bound by an arbitration agreement where the arbitration clause was not specifically negotiated, and the claim is less than €5,000.

3. Intervention of domestic courts

3.1 Will the courts stay litigation if there is a valid arbitration agreement covering the dispute?

3.1.1 If the place of the arbitration is inside of the jurisdiction?

Yes. Irish courts recognise the principle of *competence-competence* and in practice are considered pro-arbitration. Provided it is appropriate and in compliance with Article 8 of Schedule 1, the Irish Courts will stay proceedings in favour of arbitration if a valid arbitration agreement exists.

3.1.2 If the place of the arbitration is outside of the jurisdiction?

Yes.

3.2 How do courts treat injunctions by arbitrators enjoining parties to refrain from initiating, halt or withdraw litigation proceedings?

The Courts will respect the arbitrator's injunction as a partial award where there is a valid arbitration agreement. The party that has obtained the injunction from the tribunal may then need to apply to the Court to have the arbitrator's injunction converted to a court ordered injunction in order to assist with enforcement of the injunction.

The Arbitration Act 2010 permits a party to arbitration proceedings to seek interim protection measures directly from the High Court.

3.3 On what ground(s) can the courts intervene in arbitrations seated outside of the jurisdiction? (Relates to anti-suit injunctions/anti-arbitration injunctions or orders, but not only)

Under Article 17(J) of Schedule 1, the Courts have the same power to issue interim measures in relation to arbitration proceedings as in relation to Court proceedings , that is, irrespective of whether the place of the arbitration proceedings is in Ireland or not. The Courts must exercise this power in accordance with its own proceedings in consideration of the specific feature of international arbitration. Although the Irish Courts

10 A. Dowling-Hussey, D. Dunne, *Arbitration Law*, Round Hall, 2018, p. 302.

have not yet granted an anti-suit injunction under the Arbitration Act 2010, there is no reason that they could not do so.

4. The conduct of the proceedings

4.1 Can parties retain foreign counsel or be self-represented?

While there is no law preventing a party being self-represented or being represented by foreign counsel, it is conceivable that English barristers may be instructed in technical disputes. We are not aware that the use of foreign counsel in relation to arbitral proceedings has been challenged before the Irish Courts to date.

4.2 How strictly do courts control arbitrators' independence and impartiality? For example, does an arbitrator's failure to disclose suffice for the court to accept a challenge or do courts require that the undisclosed circumstances justify this outcome?

A party challenging an appointed arbitrator must demonstrate justifiable doubts as to the arbitrator's impartiality and/or independence. This is an objective standard and determined on a case by case basis. In the absence of an agreed procedure for challenging an arbitrator, Article 13 of Schedule 1 of the Arbitration Act 2010 provides that a party seeking to challenge an arbitrator must apply initially to a tribunal before seeking recourse to the High Court.

A party cannot invoke the jurisdiction of the High Court until it has exhausted all available remedies for challenge. However, if a challenge is rejected by a tribunal the aggrieved party may apply to the High Court for a final decision on the challenge. There is no appeal from the decision of the High Court and the High Court will decide the matter by way of summary proceedings (i.e., without an oral hearing).

4.3 On what grounds do courts intervene to assist in the constitution of the arbitral tribunal (in case of *ad hoc* arbitration)?

Under Article 11 of Schedule 1, the parties are free to agree on a procedure to appoint the arbitrator or arbitrators. If the parties fail to comply with the agreed procedure, any party may request the Court to take the necessary measure. There is no appeal from a Court decision on appointment of the arbitrator or tribunal. The Court in appointing an arbitrator will consider any qualifications required of the arbitrator by the parties and will aim to appoint an arbitrator of a nationality other than those of the parties.

Under Article11(3) of Schedule 1, if the parties fail to agree on the procedure for appointing an arbitrator in the case of a sole arbitrator, they will be appointed by the Court. In an arbitration with three arbitrators, each party shall appoint one arbitrator and those two arbitrators shall appoint the third arbitrator. If a party fails to appoint the arbitrator within thirty days of receipt of a request from the other party, or if the two arbitrators fail to appoint a third arbitrator within thirty days of their appointment, the appointment shall be made by the Court on the request of a party.

4.4 Do courts have the power to issue interim measures in connection with arbitrations? If so, are they willing to consider *ex parte* requests?

Section 10 and Article 17(J) of Schedule 1 of the Arbitration Act 2010 provides that the High Court has the same power to order interim measures in respect of arbitration as it does in civil litigation. This discretion applies irrespective of where the arbitration is taking place. A tribunal cannot alter an interim measure ordered by the High Court.

Article 9 of Schedule 1 of the Arbitration Act 2010 provides that tribunals and national courts have concurrent jurisdiction to provide interim measures. Therefore, a party is free to commence litigation with the sole aim of obtaining interim injunctive relief without jeopardising its right to have the balance of the dispute subsequently resolved by arbitration. This concurrent jurisdiction will operate, for example in circumstances where a party may be concerned about the possibility of dissipation of assets or the destruction of evidence.

In conclusion, yes, the Courts will consider ex parte requests in appropriate circumstances such as urgency where there is a risk of dissipation of assets or the destruction of evidence.

4.5 Other than arbitrators' duty to be independent and impartial, does the law regulate the conduct of the arbitration?

4.5.1 Does it provide for the confidentiality of arbitration proceedings?

There is no requirement under the Arbitration Act 2010 that arbitration proceedings be confidential. However, in practice and in line with the English jurisprudence, arbitration proceedings are conducted in private unless the parties agree otherwise.

4.5.2 Does it regulate the length of arbitration proceedings?

The Arbitration Act 2010 is silent on the length of arbitration proceedings. There is no requirement in the Arbitration Act 2010 that the award be rendered within a certain period of time.

4.5.3 Does it regulate the place where hearings and/or meetings may be held, and can hearings and/or meetings be held remotely, even if a party objects?

The parties enjoy a wide discretion on the procedural rules which apply to an arbitration, provided that due process is adhered to. However, a tribunal is not required to sacrifice efficiency in order to accommodate unreasonable procedural demands by one party.

Article 20 of Schedule 1 of the Arbitration Act 2010 provides that the parties' agreement in respect of an arbitral seat of choice must be followed. It further states that the tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation on a variety of matters including hearing witnesses or for the inspection of documents.

In the absence of an agreed seat, the tribunal must determine the seat having regard to the circumstances of the case, including the convenience of the parties.

There is no case law on whether an award would be set aside by the Irish Courts if a hearing was held remotely. However, any successful challenge would be likely to depend on whether each party had an opportunity to present its case, and this would be a high threshold to meet given the move to virtual hearings in the post pandemic world.

4.5.4 Does it allow for arbitrators to issue interim measures? In the affirmative, under what conditions?

Article 17 of Schedule 1 of the Arbitration Act 2010 confirms that arbitrators have the power to order interim relief, unless otherwise agreed by the parties. Article 17(A) of Schedule 1 states that the party requesting an interim measure must satisfy the tribunal that:

(a) damages are not an adequate remedy in respect of the harm that a party would suffer if the order is not made. In addition, such harm must be demonstrated to substantially outweigh any resulting harm against the counterparty as a result of the order sought; and

(b) There is a "reasonable possibility" that the applicant will succeed on the merits of the claim at the substantive hearing.

4.5.5 Does it regulate the arbitrators' right to admit/exclude evidence? For example, are there any restrictions to the presentation of testimony by a party employee?

Under Article 19 of Schedule 1, subject to any agreements by the parties on procedure, the tribunal has wide discretion to conduct the procedure in such manner as it considers appropriate subject to the Arbitration Act

2010, including on the admissibility of evidence. This is subject to the caveat that the parties must be treated equally, and each party being given a full opportunity to present his case.

Section 14 of the Arbitration Act 2010 states that a tribunal may direct that a party to an arbitration agreement or a witness who gives evidence in proceedings be examined on oath. or on affirmation.

4.5.6 Does it make it mandatory to hold a hearing?

Under the Arbitration Act 2010, parties are free to agree the procedure of an arbitration. Absent agreement, the tribunal is free to conduct the arbitration in a manner that it considers appropriate.

Absent express provisions to the contrary, the tribunal is permitted under Article 24 of Schedule 1 of the Arbitration Act 2010 to decide whether an oral hearing for the provision of evidence, or disclosure of documents should be held, or whether the proceedings shall be conducted on a summary basis (i.e., based on documents/other materials). However, save for circumstances where the parties have agreed that no hearings shall be held, the tribunal shall hold such hearings at an appropriate stage of the proceedings, if same is requested by a party.

4.5.7 Does it prescribe principles governing the awarding of interest?

Section 18 of the Arbitration Act 2010 states that the parties to an arbitration agreement may agree on the tribunal's powers regarding the award of interest. Unless otherwise agreed by the parties, the tribunal may award simple or compound interest from the date of the award (or any later date), provided rates are fair and reasonable.

4.5.8 Does it prescribe principles governing the allocation of arbitration costs?

Under Section 21(6) of the Arbitration Act 2010, the parties can agree to allocate the costs of the arbitration. However, there is an express exemption in respect of arbitrations involving consumers (under the Consumer Rights Act 2022, a term in an arbitration agreement which provides that each party bear their own costs is an unfair term and unenforceable).

Where a tribunal awards costs, it must outline the basis for such an award, the recoverable items, and the parties who will pay and receive the amount specified.

In line with Irish procedure (i.e., the Rules of the Superior Courts), costs will follow the event.

4.6 Liability

4.6.1 Do arbitrators benefit from immunity from civil liability?

Section 22 of the Arbitration Act 2010 provides a full indemnity for a tribunal from all civil liability. It provides that an arbitrator "shall not be liable in any proceedings for anything done or omitted in the discharge or purported discharge of his or her functions." This immunity extends to employees, agents, or advisors of an arbitrator, as well as to any expert appointed by the arbitrator pursuant to Article 26 of Schedule 1. Therefore, a tribunal should not be joined as a party to any subsequent application to the High Court (e.g., an application for any costs or damages caused by an arbitral order). This applies even where an arbitrator or other person has acted in bad faith.

4.6.2 Are there any concerns arising from potential criminal liability for any of the participants in an arbitration proceeding?

No.

5. The award

5.1 Can parties waive the requirement for an award to provide reasons?

Yes, under Article 31 of Schedule 1, the award shall state the reasons upon 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 under Article 30 of Schedule 1 (i.e., recording a settlement reached between the parties).

5.2 What atypical mandatory requirements apply to the rendering of a valid award rendered at a seat in the jurisdiction?

There are no atypical requirements for rendering an award in Ireland. It must be in writing, signed by the arbitrators, dated, and the place of the arbitration must be stated.

5.3 Is it possible to appeal an award (as opposed to seeking its annulment)? If yes, what are the grounds for appeal?

No. An award of a tribunal is final and conclusive.

5.4 What procedures exist for the recognition and enforcement of awards, what time-limits apply and is there a distinction to be made between local and foreign awards?

Under Irish law, an action to enforce an award must be taken within six years of the date upon which the cause of action accrued (i.e., the date a party failed to honour the arbitral award).[11] In practice, awards are more commonly enforced by way of the procedure set out in Order 56 of the Rules of the Superior Courts,[12] which seeks an order of the High Court giving leave to enforce the arbitral award pursuant to Section 23 of the Arbitration Act 2010.[13] While no time limits for making an application for an order are specified under Order 56, the six year limitation period would apply and any delay in bringing an application under Order 56 could prejudice a party's ability to recover interest on the award.[14]

A party must establish jurisdiction in Ireland in order for the Irish Courts to enforce a foreign arbitral award in Ireland. In practice, the Irish Courts have held that there must be a "*practical or material benefit*" to enforcing a foreign award in Ireland, e.g., some evidence of assets in the jurisdiction.

5.5 Does the introduction of annulment or appeal proceedings automatically suspend the exercise of the right to enforce an award?

In Ireland, any enforcement proceedings will be stayed pending the determination of an application to set aside an award.

5.6 When a foreign award has been annulled at its seat, does such annulment preclude the award from being enforced in the jurisdiction?

Article 36(1)(a)(v) of Schedule 1 of the Arbitration Act 2010 states that the enforcement of an Irish or foreign arbitral award may be refused if an aggrieved party can demonstrate that the award has been set aside or suspended by a national court of the country where the award was made.

5.7 Are foreign awards readily enforceable in practice?

Yes. Under Article 35 of Schedule 1.

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11 Section 11(1)(d) of the Statute of Limitations Act 1957.
12 Order 56 of the Rules of the Superior Courts.
13 A. Dowling-Hussey, D. Dunne, *Arbitration Law*, Round Hall, 2018, p. 501.
14 *Simon J Kelly & Partners v Dixon* [2012] IEHC 522 (unreported), A. Dowling-Hussey, D. Dunne, *Arbitration Law*, Round Hall, 2018, p. 502.

6. Funding arrangements

6.1 Are there laws or regulations relating to, or restrictions to the use of contingency or alternative fee arrangements or third-party funding at the jurisdiction? If so, what is the practical and/or legal impact of such laws, regulations or restrictions?

Yes. While contingency fee arrangements made on a traditional 'no foal no fee' basis are legal, third-party funding of arbitration and litigation is prohibited in Ireland by the offences and torts of maintenance and champerty.[15]

However, the Irish legislature has introduced legislation specifically to permit third-party funding of international commercial arbitration and related court proceedings. The Courts and Civil Law (Miscellaneous Provisions) Act 2023 will amend the Arbitration Act 2010 by inserting a provision (Section 5A) excluding the offences and torts of maintenance and champerty for an international commercial arbitration, court proceedings arising from international commercial arbitration, including appeals, and mediation or conciliation arising from international commercial arbitration or those court proceedings. The arbitration community in Ireland is eagerly awaiting the commencement of this amendment, which we hope will occur in 2024.

7. Arbitration and technology

7.1 Is the validity of blockchain-based evidence recognised?

There is no Irish case law on this point, however we expect Irish Courts may be influenced by the jurisprudence in other common law jurisdictions, e.g., England & Wales, New Zealand, and Canada.

7.2 Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?

See 7.1 above.

7.3 Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?

See 7.1 above.

7.4 Would a court consider an award that has been electronically signed (by inserting the image of a signature) or more securely digitally signed (by using encrypted electronic keys authenticated by a third-party certificate) as an original for the purposes of recognition and enforcement? (Please consider both hypotheses separately.)

Pursuant to Article 31(1) of Schedule 1, the award must be in writing and signed by the arbitrator(s). If there is more than one arbitrator, the signatures of the "majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated." Pursuant to Article 31(3) of Schedule 1, the award must also include the date and the place of arbitration, and the award is deemed to have been made at that place. Under Article 31(4) after the award is made, a copy must be delivered to each party to the arbitration.

While it is not specifically stated that an electronic copy of the award would be sufficient, given the definition of "in writing" for the purpose of a valid arbitration agreement (Article 7(4) of Schedule 1), which includes "electronic communication," it could be argued that this should also apply to awards if the parties agree. For context, "electronic communication" is defined as any communication that the parties make by means of data messages, information generated, sent, received or stored by electronic, magnetic, optical or similar

[15] A. Dowling-Hussey, D. Dunne, *Arbitration Law*, Round Hall, 2018, p. 302; see also *Persona Digital Telephony Ltd v Minister for Public Enterprise, Ireland* [2017] IESC 27.

means, including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex, or telecopy.

Therefore, while there is no Irish case law on this in respect of Irish arbitration proceedings, Irish law permits the execution of documents by way of e-signatures in commercial agreements (with the exception of those requiring a witness and those executed under the common seal), contracts, loan agreements, and company documents.

Overall, the party seeking to enforce the award would need to satisfy the requirements for recognition and enforcement by providing an original award or copy thereof and a translation if necessary.

8. Is there likely to be any significant reform of the arbitration law in the near future?

As mentioned at 6.1 above, the Irish legislature has introduced legislation specifically to permit third-party funding of international commercial arbitration and related court proceedings. The Courts and Civil Law (Miscellaneous Provisions) Act 2023 has been signed by the President and is awaiting a commencement order, which we anticipate may occur in 2024.

9. Compatibility of the Delos Rules with local arbitration law

Parties are free to choose the Delos Rules or any other arbitration rules to govern their arbitration as they will be compatible with the Arbitration Act 2010. In Ireland, ad hoc arbitration is quite common as well as arbitrations under the LCIA and ICC rules. As Ireland does not have an arbitral instiution, the lCIA and ICC instiutions are comonly used. The Chartered Institute of Arbitrators has recently launched All Ireland CiArb Rules to particularly address disputes between parties in Northern Ireland and the Republic of Ireland. Due to Brexit, it is currently much easier to enforce arbitration awards in the United Kingdom than Irish Judgments and vice versa.

10. Further Reading

A. Dowling-Hussey, D. Dunne, *Arbitration Law*, Round Hall, 2018.

ARBITRATION INFRASTRUCTURE AT THE JURISDICTION

Leading national, regional and international arbitral institutions based out of the jurisdiction, i.e., with offices and a case team?	Arbitration Ireland is the body which promotes Ireland as a seat and hosts Dublin International Arbitration Day in November every year.
Main arbitration hearing facilities for in-person hearings?	Dublin Dispute Resolution Centre.
Main reprographics facilities in reasonable proximity to the above main arbitration providers with offices in the jurisdiction?	Φ
Leading local providers of court reporting services, and regional or international providers with offices in the jurisdiction?	Gwen Malone, stenographer.
Leading local interpreters for simultaneous interpretation between English and the local language, if it is not English?	Translation.ie, 46 Mount Street Upper, Grand Canal Dock, D2 Irish Translators' and Interpreters' association, c/o Irish Writer's Centre, Parnell Square, D1
Other leading arbitral bodies with offices in the jurisdiction?	ϕ