

THE CHARTERED INSTITUTE OF ARBITRATORS

Irish Branch

NEWSLETTER

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EDITORIAL

THE ARBITRATION (INTERNATIONAL COMMERCIAL) BILL, 1997

The Arbitration (International Commercial) Bill, 1997 is progressing through the Oireachtas and it is expected that it will be enacted in the very near future. The Bill proposes the adoption of the UNCITRAL Model Law for international arbitrations.

The Bill further proposes that the documents of the United Nations Commission on International Trade Law and its working group relating to the preparation of the Model Law may be considered in ascertaining the meaning or effect of the Model Law.

The High Court is specified, for the purposes of Article 6 of the Model Law (interim measures) and as the court of competent jurisdiction for the purposes of Articles 27, 35 and 36 of the Model Law (court assistance in taking evidence, recognition and enforcement and grounds for refusing recognition and enforcement respectively).

Of particular interest to members of the Irish Branch will be the clarification that an arbitrator (his or her servants or agents including experts appointed under Article 26 of the Model Law) shall not be liable for anything done or omitted in the discharge or purported discharge of his or her functions as arbitrator unless the act or omission is shown to have been done in bad faith.

Similar provisions extend this immunity from suit to any arbitral or other institution or person designated or requested by the parties to appoint or nominate an arbitrator in the discharge of that function. In addition, it is proposed that, an arbitral or other institution or person by whom an arbitrator is appointed shall not be liable for anything done or omitted by the arbitrator (his or her servants or agents) in the discharge or purported discharge of the arbitrators functions as arbitrator.

There are further proposed provisions to expressly provide that witnesses giving evidence before an arbitral tribunal and barristers solicitors (or persons holding an equivalent qualification to barristers or solicitors) appearing in proceedings before an arbitral tribunal, shall have the same privileges and immunities as they would have in proceedings before the High Court.

The Bill further proposes that parties to an arbitral agreement may agree on the arbitral tribunal's powers regarding the award of interest. In the absence of

agreement, the Bill proposes that the arbitral tribunal may award simple or compound interest.

As regards the costs of the proceedings, the Bill proposes that the parties to an arbitration agreement should be free to agree on how the costs of the international commercial arbitration are to be allocated and on the costs that are recoverable. Where there is no agreement of the parties as to costs, the arbitral tribunal may determine by award the recoverable costs of the reference as the tribunal sees fit.

Although the Bill aims at the adoption of the UNCITRAL Model Law in its entirety and without modification, there is one proposed reservation, viz. that the time limit specified in Article 34 (3) or the Model Law shall not apply where an application is made to set aside the award on the grounds of public policy. (Article 34(3) of the Model Law provides for a three month time limit for an application to set aside an award.)

Further provisions will facilitate the consolidation of arbitral proceedings and allow for concurrent hearings if the power is granted under the arbitration agreement.

The Arbitration Acts 1954 - 1980, provide for court supervision of the arbitral process through inter alia the "case stated" procedure. Although a substantial number of arbitrations are held in the jurisdiction each year without any evidence of any abuse of this procedure, it has been felt that the international commercial community would be more comfortable with the UNCITRAL procedure.

When the Bill becomes law, there will be a two-tier legislative framework for arbitrations in Ireland. The UNCITRAL provisions will apply to references in international commercial arbitrations as defined in the Model Law, while domestic arbitrations will continue to be governed by the Arbitration Acts 1954-1980.

NEWS IN BRIEF

UCD ARBITRATION COURSES

Diploma in Arbitration Law

In the past year, the Law Faculty in UCD has launched two excellent courses of interest to members. Michael Moran is the chairman of the Branch Sub-Committee for these courses. The first course dealing primarily with domestic arbitration commenced in 1997 and has been successfully completed with an excellent pass rate. It is expected that another course will be run, commencing late September 1998, details of which will be announced later.

Diploma in International Arbitration Law

The second course which has a focus on International Arbitration commenced in January 1998 has also proved popular.

The course consists of lectures and seminars. Forthcoming seminars will address the following subjects and will be given by the following:

4th April, 1998

"International Arbitration Process" - Max Abrahamson, Consultant, McCann FitzGerald.

9th April, 1998

"A Practical Approach to Drafting Terms of Reference, Requests for Arbitration and Awards in International Arbitration" - Peter M. Wolrich, Senior Partner of Curtis, Mallet-Prevost, Colt & Mosie, Paris.

25th April, 1998

"ICC Arbitration in Practice: Pitfalls in International Arbitration" - Christopher Koch, Counsel, ICC Court of Arbitration.

28th March, 1998 or 2nd May, 1998

Possible additional speaker on a topic to be announced.

If members of the Irish Branch of the Chartered Institute of Arbitrators are interested in attending any of the above seminars, they should contact the Faculty of Law in UCD well in advance of the relevant dates to facilitate the college in making arrangements for a suitable lecture theatre and also to ascertain times of the seminars.

Further information can also be obtained from Geraldine Cosgrove in the Branch's office in Merrion Square, Tel: 01-6627867, Fax: 01-6627891, E.Mail: ciarb@iol.ie.

SCHEMES SUB-COMMITTEE

Committee members: John E. O'Reilly - Chairman, Ken McQuillan, Roy Sherlock and Vincent Martin.

The function of the schemes sub committee is twofold. In the first place, it designs, and monitors the operation of, arbitration schemes for commercial sectors and companies which are desirous that their commercial disputes be referred to the adjudication of professional arbitrators nominated by the Chairman of the Branch and that these references be conducted under the arbitration rules of the Branch.

The second function of the sub committee is to promote and encourage the creation of new schemes over as wide a range of industries as is possible and appropriate.

At present, there is one sectoral scheme and there are 14 company schemes. All of these are in the travel industry, but discussions are in progress with a number of interested parties in a diverse range of other commercial activities.

In addition to providing opportunities for the engagement of arbitrators, the administration and licence fees payable on foot of the operation of the schemes, constitute a substantial portion of the revenue of the Branch.

SEMINARS & FUNCTIONS SUB COMMITTEE

Committee members: Anne Bunni - Chairman, Bernard Gogarty, Michael O'Reilly and Roy Sherlock.

This sub-committee is presently arranging courses for 1998. The Entry Course will take place on 11th to 13th September, 1998 in the Grand Hotel, Malahide. The Supervised Training Weekend for those who have successfully completed the UCD Diploma Course will take place again in the Grand Hotel in October, followed in November by a Special Fellowship Course for lawyers and practising arbitrators. The sub-committee have been asked to give consideration to a suggestion that this year's Special Fellowship Course be held in Cork. Those members who are eligible and intend to take this course might like to comment on this suggestion, but it should be borne in mind that a venue outside Dublin usually means additional costs which will be reflected in the course fees.

PUBLIC RELATIONS SUB-COMMITTEE

The year 1997/98 has probably been the best year for public relations.

Dr. Murphy and Ken McQuillan met with Murrays, the P.R. Consultants on a number of occasions. The announcement of his appointment as Chairman on 5/9/1997, was widely published in the media. Dr Murphy was also instrumental in the publication of an article in the Irish Independent property extra for 12/11/1997 - "Arbitration too complex".

The Chairman assisted the Department of Justice, Equality and Law Reform on the new release for the new Arbitration (International Commercial) Bill, 1997. This sub-committee was also instrumental in the publication of the article by James Aughney in the Irish Independent on 27/11/1997 titled "Settling a dispute without legal agony" and the article on 11/12/1997 in Business and Finance titled "Arbitrators in Demand".

There was an article in the Sunday Business Post entitled "International Arbitration Centre Opens in Dublin" on 8/2/1998 which featured a photograph of the Chairman.

And of course the Chairman's recent appointment to the Murphy Tribunal by the Government, where it was constantly expressed in the reporting that Dr. Murphy was Chairman of the Chartered Institute.

And last, but not least, the management of the Institute's Home Page at <http://www.iol.ie/~ciarb>. All members who are on the Internet should access it to view for themselves.

DATES FOR YOUR DIARY

Last date for Nominations:	April 7, 1998
Annual General Meeting:	April 21, 1998
Colloquium:	May 13, 1998
Entry Course:	September 11/13, 1998
Supervised Training Weekend:	October, 1998
Special Fellowship Course:	November, 1998