



THE CHARTERED INSTITUTE OF ARBITRATORS

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Irish Branch

Chairman's Address

The Royal Charter and Bye Laws of the Institute were amended by order of the Privy Council with effect from 1st July, 1999. The amendments include inter alia:

- new grade of membership – Member;
- new selection, education and training policy; and
- new entitlement for Fellows qualifying under the new syllabus to describe themselves as Chartered Arbitrators.

To ensure that existing members are not disadvantaged, there are transitional arrangements which will give Associate members the opportunity to exercise options affecting their membership status within the stipulated six months from 1st June to 31st December 1999. Associate members may during this period upgrade to Member. The Irish Branch will be running such a course on 27th November next.

After 31st December, 1999 any Associate wishing to upgrade to Member will have to:

- Take the Member Upgrade Examination prior to 30th June, 2000; or
- Sit and pass the new Part II Examination under the new syllabus.

Our Annual Dinner will take place on Friday 3rd December next in the Royal St. George Yacht Club, Dun Laoghaire, Co. Dublin. The President, Neil Kaplan, QC will be attending and our guest speaker will be the Attorney General, Michael McDowell, SC. Early booking is advised as there is limited seating in the yacht club. A booking form accompanies this Newsletter.

Finally, I would like to offer the congratulations of the Branch to David Byrne, newly appointed European Commissioner for Consumer Affairs, who is a Fellow of the Institute.

Michael M. Moran
Chairman

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HOLIDAY COLLOQUIUM - 21st September 1999



Feedback from the delegates who attended the recent holiday Colloquium at the Law Society, Blackhall Place, leads us to believe that the night was a resounding success.

Approximately seventy members attended on the evening, and after an enjoyable reception, heard, and hopefully digested, the information imparted during four very practical lectures followed by a lively debate.

Michael Moran chaired the Colloquium and a Panel of Speakers comprising John O'Reilly, Roy Sherlock and James McCourt, who very kindly deputised for Frank Murphy at short notice.

John O'Reilly outlined the workings of the Holiday Arbitration Scheme and advised the delegates how to run a successful hearing. Roy Sherlock offered advice on how to progress the Reference to Hearing and how to write the Award.

The 'open forum' that followed was of interest to the delegates and panel alike; topics debated included the desirability of making a separate Award on the issue of costs, the taxation of Costs, the proposed Branch holiday arbitration pupilage scheme and the possibility of introducing standardised procedures.

If we feel that there is sufficient demand, we shall run a further Colloquium in the new year to facilitate those members who for whatever reason could not attend this Colloquium, but who had expressed an interest in being nominated for holiday arbitrations and had promised to attend at least one such colloquium each year.

Given the interest shown in the Colloquium, the Committee is to give serious thought to holding similar evening seminars on other arbitration related topics on a more regular basis. Ideas please?

Roy Sherlock - Chairman, Schemes Subcommittee.

SCHEMES - LATEST NEWS

The number of requests for nomination under the various holiday arbitration schemes we administer continues to increase, up from 163 requests in 1997 to 194 requests during 1998; 1999 is likely to show a continuation of this upward trend despite the increased ceiling for claims made in the Small Claims Court.

The Committee has continued to 'chase' new schemes in an endeavour both to diversify and increase the overall number of nominations made by the Chairman.

At present we are actively discussing and promoting schemes in the areas of:

- 1 Directly marketed computers and computer equipment;
- 2 E-Commerce and Internet Providers;
- 3 Y2K areas;
- 4 Telecommunications regulation;
- 5 Miscellaneous Government bodies;
- 6 Motor industry.

Again however I make the plea; we have over 550

members, each specialising in their own niche areas. If you feel that as a Branch we could assist your clients or acquaintances by way of formulating a Dispute Resolution Scheme tailored to their particular business or professions would you please either suggest the idea to any such party or advise the Branch of your thoughts or proposals. In particular, I would ask our legally qualified members to promote the idea of including an Arbitration Clause in any Contracts they are drafting or offering advice upon, and wherever possible to make sure that the Chairman of the Chartered Institute of Arbitrators, Irish Branch is the nominating body.

Roy Sherlock
Chairman, Schemes Subcommittee



Arbitration and Settling Disputes in Credit Unions

by Anthony P Quinn

The comprehensive Credit Union Act 1997 reformed and consolidated the law on credit unions which are voluntary mutual co-operatives providing savings and loan facilities for their members. The 1997 Act includes at part V111, sections 125 to 127, relatively detailed provisions on settling disputes and also on arbitration and procedural matters. In the revised standard rules of the Irish League of Credit Unions (ILCU) for its affiliates, rule 158 reflects those statutory provisions but also includes detailed procedures for processing complaints arising in credit unions. Most but not all credit unions are affiliated to ILCU.

Settling Disputes

Section 125 (1) of the 1997 Act provides that save as otherwise provided by or under the Act, that section applies to any dispute between a credit union and persons listed : credit union members in that capacity; former members who ceased to be members not less than six months previously; any person claiming through members or former members or under the credit union's rules. References in section 125 (2) to (5) to disputes shall be construed accordingly.

ANTHONY P QUINN, FCI Arb., Barrister, is the author of Credit Unions in Ireland. The second edition, with a foreword by John Hume, MP, MEP, takes account of the comprehensive Credit Union Act 1997 and the consequential revised rules of the Irish League of Credit Unions for its affiliates. The book is available at £18.95 from booksellers and the publishers Oak Tree Press,

Subject to the overall statutory framework, 125 (2) gives general priority to the credit union's rules. If the rules give directions as to how disputes are to be decided, they shall be decided accordingly. The ILCU's standard rule 158 (3) includes procedures for processing complaints. In summary, credit unions should appoint complaints officers and sub-committees with a fall-back of reference to the ILCU. Those procedures are not final as there is recourse to further dispute resolution steps. If the dispute is not resolved to the complainant's satisfaction, it may be referred to an agreed arbitrator, or failing agreement on appointing an arbitrator, to the Registrar of Friendly Societies, the official regulator of credit unions,

The Act provided that the parties by consent may refer the dispute to the Registrar of Friendly Societies, who shall hear and decide the dispute. Under traditional procedures for mutual societies, disputes were referred to the Registrar for adjudication.

Under section 126 (3) of the 1997 Act, credit union rules may provide that the Registrar may hear and determine disputes. Such rules shall be deemed to be an arbitration agreement within the meaning of the Arbitration Acts 1954-1998. The Registrar shall be deemed to be a single arbitrator for the purposes of those Acts and provisions about appointing additional arbitrators or umpires shall not apply.

The District Court may hear and determine disputes under section 125 (5) on the application of relevant parties, where the rules provide no direction on disputes or where no decision has been made within 50 days of a dispute after application to a credit union for a reference under its rules.

Arbitral Authority and Finality

Decisions on disputes under section 125 (2) and (3) shall be binding and conclusive on all parties without appeal and not removable into any court of law or restrainable by injunction.

Decisions can be enforced through the District Court and not the Circuit Court as provided in earlier drafts of the legislation.

In contrast, the High Court has enforcement jurisdiction under the Arbitration Acts.

Arbitration and Settling Disputes in Credit Unions

A saver in section 125 (8) preserves ordinary legal remedies for credit union members, and members or persons claiming under them, in respect of contracts except those of Arbitration and Procedural Matters.

Under section 126 (2), where the rules (registered with the Registrar of Friendly Societies) provide that a dispute shall be determined by arbitration, the Arbitration Acts shall apply to that dispute (subject to any necessary modifications). The rules shall be deemed to be an arbitration agreement within the meaning of the Arbitration Acts. Arbitrators shall be named and selected in accordance with the credit union's rules.

If the rules do not make any provision, one arbitrator shall be named by the credit union's board of directors, and one by the member or other relevant person who is in dispute with the credit union. In accordance with general practice and principles of objectivity, section 126 (2)(c) provides that an arbitrator shall not be beneficially interested, whether directly or indirectly in the funds of a credit union. Other principles of fair procedure would also apply although not specified.

Under section 126 (4), the Minister for Enterprise, Trade and Employment, after consulting the Registrar, the Credit Union Advisory Committee (CUAC) and other expert bodies, may make regulations devolving the Registrar's arbitration functions to a non-statutory adjudicator or a statutory one.

Such an adjudicator shall be appointed in a scheme under section 127 or on a non-statutory basis for adjudicating complaints against credit unions. The Minister, following consultation, may under section 127 establish a scheme for investigating complaints - a type of ombudsman. Schemes in the banking and insurance sectors would not normally apply to disputes arising from mainstream credit union activities but could apply to related insurance services.

CONCLUSION

The general thrust of the relevant parts of the Credit Union Act 1997, outlined above, is to provide modern systems to solve credit union disputes and complaints in accordance with arbitration and ombudsman provisions in other spheres. After the legislation was enacted, the revised standard rules of the ILCU for affiliated credit unions provided procedures in rule 158 for dealing with

disputes, as outlined above. The combination of statutory provisions and procedures in standard rules seems to be unduly complex.

The ILCU, the umbrella and service organisation for over 500 credit unions throughout Ireland, has its own organisational rules as distinct from standard rules for its affiliates. The ILCU organisational rules provide for arbitration to settle disputes within the Irish credit union movement, for example between credit unions or with the ILCU. In a voluntary movement with over two million members and combined assets of around £3.4 billion (euro 4.3 billion), available information indicates that there are relatively few disputes.

Including modern dispute resolution procedures in the 1997 Act and in credit union standard rules is a positive development. The position is not yet clear about a statutory scheme to investigate complaints under Ministerial regulations further to section 127 of the Act. It remains to be seen whether the rules of a credit union (and specifically standard rule 158), deemed to be an arbitration agreement within the meaning of the Arbitration Acts, and also the statutory procedures will be effective in settling disputes.

This article is not intended as legal advice and views expressed are personal.

The Law Of Meetings

Michael Moloney and Jarleth Spellman
Round Hall Sweet and Maxwell
ISBN 1-899738-62-2
IR£39.00

Review by James Bridgeman

This is the first comprehensive text on the Law of Meetings in Ireland. The subject matter is wide ranging and addresses such diverse aspects as public meetings, private meetings, the Criminal Justice (Public Order) Act 1994, natural justice, meetings of local government bodies, meetings of the Houses of the Oireachtas, company meetings, committees, conferences and defamation. This is a work with an emphasis on practical issues. It addresses the rules and conventions in this area. In his forward to the work Mr Justice Kevin O'Higgins states:

"It is the first textbook of its type dealing specifically with Irish law. The position here differs considerably from neighbouring jurisdictions, not only because of the differences in legislation but because of the development of Irish constitutional law concerning natural and constitutional justice."

Seminal works such as Shackleton On the Law and Practice of Meetings, in our neighbouring jurisdiction will continue to be of great assistance in this jurisdiction. This work will be an invaluable asset to arbitrators, those with an interest in company law and local government law and others responsible for the procedure of meetings in this jurisdiction. There is a useful series of appendices which provide many practical precedents for notices and agendas.

Michael Moloney is a practising barrister and lecturer in Business law who formerly lectured in the Law of Meetings in the DIT. Jarleth Spellman MCI Arb, is a practising barrister and lecturer at the Division of Legal Medicine at University College Dublin.

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