Dispute Resolution

Contributing editor

Simon Bushell

2016

GETTING THE DEAL THROUGH

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Dispute Resolution 2016

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Law Business Research

THE QUEEN'S AWARDS FOR ENTERPRISE: 2012

Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 3708 4199
Fax: +44 20 7229 6910

First published 2003
Fourteenth edition
ISSN 1741-0630

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112

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Ireland

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Litigation

1 What is the structure of the civil court system?

Ireland's civil court system has five jurisdictional levels, generally regulated by the Courts (Supplemental Provisions) Act 1961.

The lower courts have limited and local jurisdiction. The District Court, comprising 63 full-time judges, sits permanently in cities and intermittently in over 200 towns. Its jurisdictional limit in contract and tort is €15,000. It sits as the Children Court for matters involving children. It oversees a small claims procedure for consumer and small business claims below €2,000. There is a full right of appeal (by rehearing) to the Circuit Court.

Thirty-eight full-time Circuit Court judges sit permanently in major cities and in circuits comprising one or more counties. The court's jurisdictional limit is €75,000 in contract and tort and €60,000 in personal injuries claims. The court has an important family law jurisdiction (when it sits as the Circuit Family Court) and substantial jurisdiction in property disputes and in personal insolvency arrangements outside bankruptcy (which are heard by specialist judges). It hears appeals from employment tribunals and from the District Court.

The High Court (comprising 38 full-time judges) is the Irish superior court of unlimited original jurisdiction. It can award unlimited damages and other statutory, common law and equitable remedies. Judicial review claims and actions contesting the constitutionality of legislation begin in the High Court. It sits generally as a single judge, though occasionally as a panel of three judges in significant cases. It hears appeals (on the record) from the Circuit Court and questions of law by case stated from the District Court. Cases of particular kinds are administratively assigned to specialist lists where there is a degree of judicial and practitioner specialisation.

The intermediate appellate court is the Court of Appeal, comprising 10 full-time judges, established by amendments in the Court of Appeal Act 2014. There is generally an unlimited right of appeal from the High Court (on the record) to the Court of Appeal, which also decides points of law by case stated from the Circuit Court. The court typically sits with three judges, but a single judge deals with interlocutory applications and case management.

The Supreme Court, comprising 10 full-time judges, is the Irish court of final appeal. There is no general right of appeal. Leave of the court is necessary to bring an appeal. A 'tertiary appeal' from the Court of Appeal is permitted where a decision involves a matter of general public importance or an appeal to the Supreme Court is necessary in the interests of justice. A 'leapfrog appeal' directly from the High Court is possible where the decision involves a matter of general public importance or it is in the interests of justice or both. In significant cases the court sits with five or seven judges, but it generally sits as a court of three, though a single judge deals with interlocutory applications and case management.

2 What is the role of the judge and the jury in civil proceedings?

In most civil actions a judge sits without a jury. The procedure is adversarial. The judge hears the parties' evidence and submissions, and decides the outcome depending on whether the burden of proof has been discharged on the balance of probabilities. The judge may, but is not obliged to, ask questions.

A jury is available only in High Court civil actions for defamation, false imprisonment and assault. A jury comprises 12 members of the public, one of whom is selected as foreman. In cases expected to last more than two months the jury may comprise 15 members. A jury decides questions of fact, following directions of the judge on matters of law.

3 What are the time limits for bringing civil claims?

The Statutes of Limitation 1957 and 1991, Civil Liability Act 1961 and Civil Liability and Courts Act 2004 set out the most generally applicable civil limitation periods. This legislation fixes limitation periods of six years for contract and tort generally; two years for personal injury claims and one year, or a longer period of up to two years allowed by the court, in defamation. In most cases, time runs from when the cause of action accrues, though time may not run against a person under a legal disability (eg, a child). In personal injuries cases, the period exceptionally commences when the claimant knew or ought to have known of the cause of action (section 3, Statute of Limitations (Amendment) Act 1991). The Liability for Defective Products Act 1991, similarly takes into consideration issues of discoverability in respect of certain property damage cases. Equitable claims may be defeated by equitable delay (laches).

In principle, because limitation operates as a defence and not a bar to action, a standstill agreement to suspend a time limit should be enforceable, though such an agreement can involve risk if the intent or effect of the agreement becomes disputed.

4 Are there any pre-action considerations the parties should take into account?

Irish rules of court do not regulate pre-action matters and generally no pre-action step is mandatory.

A letter of claim, describing the circumstances giving rise to the claim and calling on the intended defendant to make reparation, is conventionally sent before issuing proceedings. In personal injuries cases, such a letter must be sent within two months from the date of the cause of action, or as soon as practicable thereafter (section 8, Civil Liability and Courts Act 2004). Most personal injuries involve an application for assessment by the Injuries Board (a statutory claims assessment body) under the Personal Injuries Assessment Board Act 2003, which prohibits court proceedings in respect of a 'relevant claim' unless the Injuries Board grants an authorisation to issue proceedings.

An 'O'Byrne letter' is issued to each alleged wrongdoer where two or more parties may be responsible for loss suffered, calling on each to admit full responsibility, failing which the letter can be used to resist an application for costs by a successful defendant. Pre-action steps to identify or narrow issues may be taken by agreement in any case.

5 How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement?

Civil proceedings are begun by lodging the originating document in court to be issued for service on the defendant. High Court civil proceedings are generally commenced by a summons (plenary, summary, personal injuries or special), under Orders 1 to 3 of the Rules of the Superior Courts (RSC). A civil bill is the originating document in the Circuit Court (Order 5, rule 1, of the Circuit Court Rules (CCR)). In the District Court, proceedings are begun by claim notice (O. 40, r. 4(1), of the District Court Rules (DCR)).

The originating document need not be served immediately, though a summons requires renewal if not served within a year. The means of service depends on the court and the defendant. For High Court actions,

personal service is usually required on natural persons (O. 9, r. 2, RSC); the Court may authorise substituted service where personal service proves difficult. For actions in the lower courts service on natural persons by registered post suffices (O. 11, r.5, CCR; O. 41, r. 2(1), DCR). Service on a company is by post or delivery to the company's registered office (section 51(1)(a), Companies Act 2014).

Prior permission is not required for service in another EU member state of civil or commercial proceedings in which an Irish court has jurisdiction under EU Regulation 1215/2012 (Brussels I Recast). In such cases, under the EU Service Regulation (1393/2007), service can be effected through by a County Registrar as transmitting agency or as otherwise allowed by local rules in the place of service.

6 What is the typical procedure and timetable for a civil claim?

The main stages prior to a civil trial on oral evidence are exchange of written pleadings, discovery, trial preparation and in some cases exchange of evidence. Court rules fix time limits for pleadings, though the court may extend or abridge time.

The principal High Court pleadings are the plaintiff's statement of claim and the defendant's defence, though a reply and rejoinder may be delivered. A Circuit Court civil bill includes an indorsement of claim, and the defendant delivers a written defence. Since 2014, a written defence has been required in District Court claims. Further particulars may be sought and provided by agreement or by court order.

In High Court actions, each pretrial stage can be completed within two or three months, but the time varies depending on the case. These stages move more quickly in the lower courts where pleadings are generally less detailed and there may be no discovery.

7 Can the parties control the procedure and the timetable?

Traditionally, the pace of Irish litigation was left to the parties. However, the judiciary has become more interventionist, to ensure the right to a timely trial is satisfied. Ultimately, the timetable to trial is controlled by the judge, though it is often agreed by the parties in complex cases. Irish courts have express and inherent case management powers. Available case management orders include:

- orders setting time limits for pleadings, particulars, discovery and exchange of reports or statements of evidence;
- orders that statements of issues of law or fact or both be substituted for pleadings;
- orders fixing issues of fact or law or both to be determined;
- orders requiring the parties to exchange papers aimed at clarifying or defining the issues;
- orders requiring expert witnesses to consult to identify and, where possible, agree on issues and consider specific matters directed by the judge; and
- orders adjourning matters to allow for ADR.

Case management costs are usually awarded to the ultimately successful party as costs in the cause.

8 Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

Litigants must preserve relevant documents and evidence pending trial. The court can order the preservation, and detention if necessary, of any document, property or thing.

Parties to a civil action may seek discovery (disclosure) of documents within the 'power, possession or procurement' of the other party, or in some circumstances, a non-party. Discovery does not occur automatically but must be sought, initially voluntarily, and usually after exchange of pleadings. A party may apply to court to order discovery if it is not agreed. O. 31, r. 12, RSC requires a party seeking discovery to describe the categories of documents sought, and to provide reasons why those documents are both relevant and necessary. A discovery order may be restricted or modified by the court on grounds of proportionality. Relevance is determined according to P*eruvian Guano (Compagnie Financière et Commerciale du Pacifique v Peruvian Guano Co* (1882) 11 QBD 55) so a party is obliged to produce documents that may damage its own case.

Where electronically stored information (ESI) is sought, the requesting party must specify whether it seeks production of the ESI in searchable form, and if it is requesting search and inspection.

9 Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

The main categories of privilege recognised in Ireland are legal professional privilege (legal advice privilege and litigation privilege); 'without prejudice' privilege; public interest privilege, and privilege against self-incrimination.

Legal advice privilege applies to communications between a client and its lawyer, which the parties intended to be confidential, for the purpose of giving or receiving legal advice, regardless of whether or not proceedings are contemplated. Irish law treats in-house lawyers' advice similarly to external lawyers' advice, except in the context of EU competition law (where communications within a company with in-house lawyers are not privileged).

Litigation privilege attaches to documents created for the dominant purpose of actual or anticipated litigation. Litigation privilege attaches to the entire document, whereas legal advice privilege attaches only to content qualifying for protection.

10 Do parties exchange written evidence from witnesses and experts prior to trial?

Generally, statements that summarise the evidence of witnesses to be relied on at trial are directed to be exchanged before trial in the Commercial Court and in some other case-managed contexts, but this is uncommon outside the commercial sphere.

Under O. 39, r. 46, RSC, the parties to a personal injuries action must exchange schedules listing all expert witnesses' reports within one month of service of notice of trial, and thereafter exchange the reports listed. It is common in commercial cases for the court to direct exchange of expert reports and an expert meeting aimed at identifying matters on which the experts agree.

11 How is evidence presented at trial? Do witnesses and experts give oral evidence?

Most evidence at trial in Ireland is presented orally. Witnesses are examined orally on oath or affirmation in open court. However, the court may allow proof of facts by affidavit, and certain classes of cases (eg, judicial review) proceed on affidavit, with a right to cross-examine deponents on their affidavits.

There are three stages of witness examination: examination-in-chief, cross-examination and re-examination. Examination-in-chief and re-examination are by the party who called the witness and cross-examination by the opposing party.

12 What interim remedies are available?

Injunctions are available pretrial in the High Court and in some cases in the Circuit Court. An application for an injunction is supported by evidence on affidavit. In urgent cases, the application can be made ex parte, but the applicant must make full disclosure of all relevant facts to the court. Ex parte injunctions apply only for a short period, and are returned to an inter partes hearing. An inter partes injunction, where both parties are heard, can continue until trial, but can be varied or set aside.

The criteria for a pretrial injunction are that there is a serious issue to be tried; damages would not be an adequate remedy and the balance of convenience favours granting an injunction: *Campus Oil v Minister for Industry and Energy* (No. 2) [1983] IR 82. These criteria are not inflexible and the court may attach different weight to certain criteria depending on the case.

Irish courts may grant asset-freezing (*Mareva*) injunctions. Ancillary orders to police a *Mareva* may include disclosure orders and the appointment of receivers. The defendant may apply to the court to release frozen assets for legitimate purposes. The Irish courts may also grant *Anton Piller* orders, permitting an applicant to enter premises to look for evidence and to demand information.

Such remedies are available in Ireland as provisional or protective measures in aid of civil or commercial proceedings in other EU member states under article 35 of Brussels I Recast, but are not available in aid of proceedings in third states: *Caudron v Air Zaire* [1985] IR 716.

13 What substantive remedies are available?

The High Court and Circuit Court (within its jurisdictional limits) may award all common law and equitable remedies, including damages, various statutory remedies, declarations and permanent injunctions. In the

District Court, damages and various statutory remedies are primarily used. Irish courts may give summary and default judgments, and may give judgment by consent.

Punitive damages that are not compensatory and which are 'intended to mark the court's particular disapproval of the defendant's conduct ... and its decision that it should publicly be seen to have punished the defendant for such conduct' (*Conway v Irish National Teachers Organization* [1991] 2 IR 305) are rarely awarded in Ireland.

Money judgments bear 8 per cent interest.

14 What means of enforcement are available?

The following methods of enforcing a judgment are available:

- orders of fieri facias (a writ of execution levied on the defendant's goods) and orders to put the defendant in possession of goods (possession orders);
- appointment of receivers by way of equitable execution;
- charging orders over land (judgment mortgages) or over stocks and shares;
- instalment orders;
- examination of the defendant in court as to means;
- attachment of debts (garnishee); and
- attachment and committal for contempt for disobedience of an order of the court (an order of committal for civil contempt is intended to be coercive).

15 Are court hearings held in public? Are court documents available to the public?

Article 34.1 of the Irish Constitution requires that justice be administered in public save in special and limited circumstances prescribed by law. Generally, family and child law cases are heard in camera, and the judge may order that a trial or part thereof be in heard in camera where a public trial would involve disclosure of certain information unfairly detrimental to one of the parties.

Court documents such as pleadings are not accessible to the public before they have been opened in court.

16 Does the court have power to order costs?

Costs are in the court's discretion, but generally 'follow the event': the successful party is awarded costs against the unsuccessful party. Costs may be allocated on the basis of the parties' relative success on individual issues in complex cases: *Veolia Water UK plc v Fingal County Council* [2006] IEHC 137.

'Party and party' costs are most commonly awarded and do not provide a full indemnity. Rarely, the court awards 'solicitor and client costs', which are intended to indemnify the successful party against all costs except those that are unreasonably high or unreasonably incurred.

The amount of costs may be assessed by a specialist officer, a Taxing Master (in the superior courts) or County Registrar (in the Circuit Court). A fixed scale of recoverable costs applies in the District Court. The Legal Services Regulation Act 2015 contains proposals to overhaul costs assessment.

Security for costs is discretionary in Ireland. Where an application is made for security for costs, the court first examines whether the defendant has a prima facie defence. Thereafter, if the plaintiff is a company within the Companies Act 2014, and is unable to pay costs, security will usually be awarded absent special circumstances. If the plaintiff is a natural person or a corporation outside the 2014 Act, then the court will look at the plaintiff's residence which, if outside of the EU/Lugano Convention states, could impact enforceability of any costs order. Once the defendant has established a prima facie defence, he or she is entitled to security for costs absent special circumstances justifying a refusal, such as that the plaintiff's inability to pay costs was caused by the defendant's wrong or prejudicial delay by the defendant.

17 Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

Irish law does not explicitly regulate contingency fees, though Irish lawyers are expressly prohibited from charging fees as a percentage of damages awarded. 'No win, no fee' arrangements, where payment is contingent on a successful outcome, are long-established in Ireland.

Irish law on non-party litigation funding is highly restrictive. Maintenance (funding by a non-party who does not have a genuine interest in the outcome) and champerty (funding litigation for a share of the proceeds) remain prohibited in Ireland, as confirmed recently in *Persona Digital Telephony Ltd v Minister for Public Enterprise* [2016] IEHC 187, the first High Court decision to directly address third-party litigation funding, which is expected to be appealed.

After the event (ATE) insurance, covering a party's exposure to an opponent's legal costs, has been found permissible in Ireland, subject to certain limitations: *Greenclean Waste Management Ltd v Leahy* [2015] IECA 97.

18 Is insurance available to cover all or part of a party's legal costs?

Insurance to cover a party's legal costs or costs that may be awarded against him or her is available in Ireland or both.

19 May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

Irish law does not explicitly provide for class actions. While it is permissible for any number of plaintiffs to join in the same action, this is usually inappropriate except where each individual's loss does not require separate proof. The traditional vehicle for collective redress in Ireland is the test case, where an individual or group brings a case, the outcome of which establishes a key principle or precedent, after which individual 'follow-on' cases are brought, relying on the precedent of the test case.

20 On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

See question 1.

21 What procedures exist for recognition and enforcement of foreign judgments?

Irish courts may enforce judgments in civil and commercial matters given in other EU member states under article 39 of Brussels I Recast. Under the Choice of Court (Hague Convention) Act 2015, an Irish court may enforce a civil or commercial judgment by a court in a contracting state to the Hague Choice of Court Convention, which assumed jurisdiction under an enforceable choice of forum clause.

Ireland is not a party to any other convention or instrument for the recognition and enforcement of foreign judgments although Irish courts will, in certain circumstances, recognise and enforce foreign judgments without retrial where they accord with common law conflicts-of-laws principles.

Recognised foreign judgments may be enforced by the means outlined in question 14.

22 Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

Ireland has not implemented any convention for taking evidence abroad.

An Irish court will procure the evidence of an Irish domiciliary in aid of civil or commercial proceedings in another EU jurisdiction (except Denmark) under Council Regulation (EC) 1206/2001.

Where the proceedings are in a non-EU state, an Irish domiciliary may be directed by the High Court to give evidence by deposition or equivalent for a foreign court, as a matter of comity, under the Foreign Tribunals Evidence Act 1856 and O. 39, RSC. However, an Irish domiciliary will not be ordered to make discovery in aid of non-EU proceedings: *Sabretech Inc v Shannon Aerospace* [1999] 2 IR 468.

Arbitration

23 Is the arbitration law based on the UNCITRAL Model Law?

Yes. The substantive law of arbitration in Ireland is consolidated in the Arbitration Act 2010 (the 2010 Act), which incorporates the UNCITRAL Model Law on International Commercial Arbitration (the Model Law) as the basis for international and domestic arbitrations.

Update and trends

Recent reforms have been targeted at enhancing the efficiency of court processes.

The establishment of the Court of Appeal in 2014 was heralded by Chief Justice Susan Denham as the most important development in the Irish court structure since the foundation of the state. The statutory framework for the new court also empowered the making by a single judge in the Supreme Court or Court of Appeal of orders or the giving of directions relating to the conduct of proceedings before the court which are 'in the interests of the administration of justice and the determination of proceedings in a manner which is just, expeditious and likely to minimise the cost of the proceedings'. The Court of Appeal is alleviating pressure on the Supreme Court arising from a backlog of appeals, allowing the Supreme Court to focus on cases of general public or constitutional importance.

Since 2004, the Commercial Court has fundamentally altered commercial litigation in Ireland. The court has demonstrated a willingness to employ procedures designed to narrow the issues or to pre-empt the need for trial (eg, strike-out applications) and has supported use of modular trials. Through active case management and rigorous application of deadlines the court has operated with impressive efficiency. The Commercial Court has also catalysed the more nuanced approach to costs that is now standard in all complex litigation in Ireland. More general case management innovations in the High Court are expected later in 2016.

Another reform that will affect the courts is a radical revision of the Law on Personal Capacity in the Assisted Decision-Making (Capacity) Act 2015, expected to come into force later in 2016. This Act requires questions of personal capacity to be addressed functionally, assessing capacity on the basis of a person's ability to understand, when a decision is to be made, the nature and consequences of the decision to be made by him or her in the context of the available choices at that time. Responsibility for most decisions around personal capacity will be given to specialist judges in the Circuit Court.

24 What are the formal requirements for an enforceable arbitration agreement?

Under section 2(1) of the 2010 Act, Ireland applies Option 1 of article 7 of the Model Law. An arbitration agreement must be in writing and must indicate that the parties submit to arbitration all or certain disputes that have arisen or may arise in respect of a defined legal relationship.

25 If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

The 2010 Act provides that in default of agreement, the tribunal shall consist of one arbitrator (section 13), appointed by the High Court (under section 9, the High Court is specified for the purposes of article 6 of the Model Law and therefore makes default appointments under article 11).

Any prospective arbitrator must disclose circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. A party may challenge the appointment of an arbitrator only if such doubts arise or if the prospective arbitrator does not possess the qualifications agreed by the parties (article 12(2) of the Model Law).

26 Does the domestic law contain substantive requirements for the procedure to be followed?

The 2010 Act does not specify default procedural rules to apply in the absence of choice by the parties in accordance with article 19(1) of the Model Law. Accordingly, under article 19(2) of the Model Law, the tribunal may conduct the arbitration in such manner as it considers appropriate. In practice, the arbitrator frequently determines the procedural rules to apply (the UNCITRAL Arbitration Rules 2010 are frequently chosen) having heard the parties at the preliminary meeting.

27 On what grounds can the court intervene during an arbitration?

The court is not generally empowered to intervene, except to order interim relief under article 9 of the Model Law to assist the arbitration or to assist in obtaining evidence under article 27 of the Model Law. Section 10(2) of the 2010 Act provides that when exercising powers in relation to articles 9 or 27, the High Court shall not, unless otherwise agreed by the parties, make any order relating to security for costs of the arbitration or for discovery of documents.

28 Do arbitrators have powers to grant interim relief?

Article 17 of the Model Law permits arbitrators, unless otherwise agreed by the parties, to grant interim measures at any time prior to the issue of the final award. Interim orders may direct a party to:

- maintain or restore the status quo pending determination of the dispute;
- take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral process;
- provide a means of preserving assets out of which a subsequent award may be satisfied; or
- preserve evidence that may be relevant and material to the resolution of the dispute.

The requesting party must satisfy the tribunal that harm not adequately reparable by damages is likely to accrue to him or her if the measure is refused and such harm substantially outweighs any harm likely to result to the other party if the measure is granted, and that there is a reasonable possibility that he or she will succeed on the merits. Interim measures are binding and enforceable by the High Court.

29 When and in what form must the award be delivered?

Article 31 of the Model Law requires that an award be in writing, signed by the arbitrator (or by each or a majority of the arbitrators), and must include the date and the place of arbitration. Save where the parties have agreed otherwise, the award should contain reasons.

30 On what grounds can an award be appealed to the court?

There is no right of appeal as such. A party may apply to the High Court to set aside an award within three months of receipt of the award. The grounds are set out exhaustively in article 34(2) of the Model Law, that is, where:

- a party was under some incapacity or the agreement was not valid;
- the applicant was not given proper notice of the arbitrator's appointment or was otherwise unable to present his or her case;
- the award deals with a dispute not contemplated by the submission to arbitration, or contains decisions on matters beyond the scope of the arbitration;
- the composition of the tribunal or the arbitral procedure was not in accordance with the parties' agreement;
- the subject matter of the dispute is not capable of settlement by arbitration under Irish law; or
- the award conflicts with Irish public policy.

There is no further appeal from the High Court's determination under article 34.

31 What procedures exist for enforcement of foreign and domestic awards?

Section 23(1) of the 2010 Act provides that an award under an arbitration agreement is enforceable by action or, by leave of the High Court, in the same manner as a judgment or order of that court (summarily). Section 23(2) provides that, unless otherwise agreed by the parties, an award may be relied on by way of defence, set-off or otherwise in any legal proceedings in Ireland.

Section 24 of the 2010 Act gives the New York Convention force of law in Ireland. Articles 35 and 36 of the Model Law provide for recognition and enforcement of foreign arbitration awards. The limited grounds on which a court may refuse recognition are set out exhaustively in article 36(1). Accordingly, if declared enforceable under section 23, a foreign or domestic award may be executed or enforced as a judgment (see question 14).

32 Can a successful party recover its costs?

Section 21(1) of the 2010 Act provides that the parties may make such provision as to costs of the arbitration as they see fit. Where the parties agree to arbitrate under the rules of an arbitral institution, they are deemed to have agreed to operate that institution's rules as to costs. In the absence of agreement to the contrary, the arbitral tribunal may determine costs as it sees fit (section 21(3)) and may refer the measurement of costs to a Taxing Master or County Registrar.

Alternative dispute resolution

33 What types of ADR process are commonly used? Is a particular ADR process popular?

Expert determination and adjudication, each involving binding determination by an independent expert, are common. Expert determination is particularly common in share valuation and rent review disputes. Adjudication has statutory support in construction disputes under the Construction Contracts Act 2013. Conciliation, which can include recommendations that become binding if not rejected within a prescribed time, is often used in domestic construction disputes and is also prevalent in industrial relations disputes. Early neutral evaluation is uncommon in Ireland.

Mediation, using an independent third party to facilitate a negotiated resolution, has traditionally been common in family law, but its use has spread and it is now common in commercial disputes. The European Communities (Mediation) Regulations 2011 transpose Directive 2008/52/EC into Irish law and govern certain aspects of mediation in Ireland.

34 Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

Generally, there is no obligation for intending litigants to engage in ADR before instituting proceedings. Irish courts can encourage mediation by adjourning cases for a specified period to facilitate ADR, but a court cannot generally compel parties to engage in a consensual ADR process (and it is arguable that to do so would breach article 6, ECHR rights). The courts may take unreasonable refusal to undertake ADR into account when deciding costs. In principle, in personal injury cases, the court may direct a mediation conference (section 15, Civil Liability and Courts Act 2004) but in practice, the parties usually seek to negotiate a settlement before trial anyway.

Miscellaneous

35 Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

One feature that constrains the continuing increased efficiency in Irish litigation is the small number of judges. Ireland had the lowest relative number of judges of 47 countries examined by the European Commission in 2010, with just 3.2 judges per 100,000 inhabitants; Norway, with a similar population, has 11.2 judges per 100,000.

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