



The Legal 500 & The In-House Lawyer
Comparative Legal Guide
Ireland: Construction (2nd edition)

This country-specific Q&A provides an overview to construction laws and regulations that may occur in Ireland.

This Q&A is part of the global guide to Construction. For a full list of jurisdictional Q&As visit <http://www.inhouselawyer.co.uk/practice-areas/construction-2nd-edition/>

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1. Is your jurisdiction a common law or civil law jurisdiction?

Ireland is a common law jurisdiction.

2. What are the key statutory obligations relevant to construction and engineering projects?

The Construction Contracts Act, 2013 which applies to construction contracts (which in

turn covers not only construction contractors but also construction consultancy appointments such as architects and engineers, for example), is one of the key pieces of legislation relevant to construction and engineering projects. It sets out requirements in relation to payment arrangements, minimum periods for payments (with an emphasis on protecting sub-contractors), the ineffectiveness of “pay when paid” provisions in a construction contract, suspension for non-payment and, most significantly, a mandatory regime of adjudication in relation to payment disputes. The Building Control Acts 1990 -2014 and regulations made pursuant to those Acts deal with issues such as, for example, building standards, workmanship, conservation of fuel and energy and access for people with disabilities.

The Building Control (Amendment) Regulations 2014 (BCAR) is another key element of the statutory framework relevant to construction and engineering projects. This system is intended to provide a level of assurance that a building is built in accordance with the Building Regulations 1997-2017 (the Building Regulations). There are a number of certificates that may be required in relation to any part or installation in a building, including a Certificate of Compliance on Completion confirming the building works comply with the Building Regulations.

3. Are there any specific requirements that parties should be aware of in relation to: (a) health and safety; (b) environmental issues; (c) planning; (d) employment; and (e) anti-corruption and bribery.

(a) health and safety;

Regulation of health and safety is addressed mainly in a statutory framework, and failure to discharge the statutory duties can carry criminal sanction, including fines of up to €3 million and/or imprisonment for up to two years for convictions on indictment. The following contain the core health and safety legislation relevant to construction:

- Safety, Health and Welfare at Work Act 2005, which imposes core duties on all employers to ensure, so far as is reasonably practicable, the health and safety of their own employees and of third parties, including employees of others and members of the public.

- Safety, Health and Welfare at Work (Construction) Regulations 2013.
- Safety, Health and Welfare at Work (Asbestos) Regulations 2006 to 2010.
- Safety, Health and Welfare at Work (General Application) Regulations 2007 to 2016.

These regulations set out more detailed duties in respect of certain activities and in respect of the use of certain equipment, and provide for the management of specific risks.

The Safety, Health and Welfare at Work (Construction) Regulations 2013 require the appointment of duty holders responsible for specific functions to ensure that construction projects are planned, designed, and executed taking health and safety into account during the design and construction phases, and in subsequent use of the completed project.

Duties are also imposed on parties procuring construction works, and on both designers and contractors involved in construction work

(b) environmental issues;

Environmental policy in Ireland is largely driven by, and derived from EU policy on the environment. Environmental law in Ireland is administered, regulated and enforced mainly by local authorities, such as County Councils, and by the Environmental Protection Agency (“EPA”). Water services functions of local authorities (including prosecutorial powers in respect of certain water services matters) were transferred to Irish Water, a semi-state company established in 2013. The EPA licenses major industry (in addition to any other development consents required) purely with regard to environmental discharges, emissions and waste handling.

The consideration of environmental assessment to be carried out in respect of a project is generally the subject of consideration at an early stage of project development. Under Directive 2011/92/EU (as amended by Directive 2014/52/EU), and Ireland’s planning legislation generally, an environmental impact assessment (an “EIA”) is required at the development stage of all projects that are likely to have a significant

impact on the environment. In addition, an appropriate assessment pursuant to the Habitats Directive may be required where a project is likely to have a significant effect on a European Site (i.e. special protection area or special area of conservation).

(c) planning;

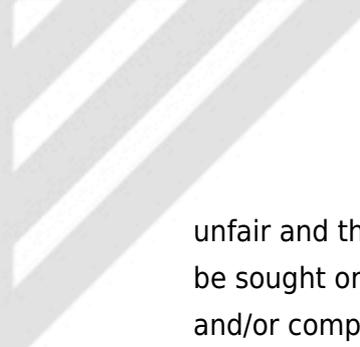
Planning and development of infrastructure projects are governed primarily by the Planning and Development Acts 2000–2018 (the “**Planning Acts**”) and the Planning and Development Regulations 2001 to 2018. The general rule in Irish planning law is that all development, not being exempted development, requires planning permission. “Development” is widely defined in the Planning Acts to include both works of development and material changes of use.

Local authorities deal with planning matters, including the grant of permission (also including conditions for minor environmental matters) for day-to-day development, subject to appeal to An Bord Pleanála (“**ABP**”). More significant development consent applications of a strategic nature are made directly to ABP. A grant of planning permission will contain conditions relating to both the construction of a development, as well as its continued operation or use. Enforcement proceedings may be taken by a local authority or any third party (including members of the public) in respect of a failure to comply with planning permission.

(d) employment; and

The Employment Equality Acts 1998 to 2015 prohibit discrimination on nine grounds, namely gender, civil status, family status, age, race, religion, disability, sexual orientation and membership of the Traveller community. Most employment equality issues are dealt with by the Employment Equality Acts, including: discriminatory dismissal, equal pay, harassment and sexual harassment, working conditions, promotion, access to employment, etc.

Under the Unfair Dismissals Acts 1977 to 2015, an employee who has worked for their employer for more than one year is entitled to rely on the legislation to challenge a dismissal as being unfair. Under the Unfair Dismissals Acts, a dismissal is deemed to be



unfair and the onus is on the employer to establish otherwise. The remedy which may be sought or awarded in the case of unfair dismissal is reinstatement, re-engagement and/or compensation of up to a maximum of two years' remuneration.

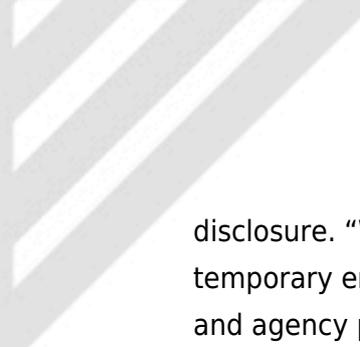
The current system for resolving workplace disputes has existed in Ireland since 2015. The Workplace Relations Act 2015 replaced the previous system of multiple employment tribunals with a two-tier structure for claims, namely: (i) the Workplace Relations Commission ("WRC"), which deals with complaints at first instance by means of a hearing before an Adjudication Officer, and (ii) the Labour Court, which deals with all cases on appeal. In addition, employees have access directly to the Courts in some circumstances.

The National Minimum Wage Act 2000 introduced a statutory minimum wage, which, as of 1 January 2019, is €9.80 per hour, and changes frequently. With effect from 19 October 2017, the Construction Sector is subject to a Sectoral Employment Order ("SEO"). The SEO applies to all Building Firms and Civil Engineering Firms as defined in the order. The SEO makes it compulsory for Building Firms and Civil Engineering Firms to (i) pay construction workers the rates of pay provided in the order and to (ii) provide a pension and sick pay scheme for the categories of workers as defined in the order. The SEO also contains a dispute resolution procedure to be utilised in the event of a dispute arising over a term in the order.

The Organisation of Working Time Act 1997 provides for minimum annual leave entitlements, work breaks, daily and weekly rest periods and a maximum working week of an average of 48 hours calculated over a reference period of, usually, four months.

Employers' data protection obligations are set out in the Data Protection Act 2018. This implements the General Data Protection Regulation which has been law in Ireland since 25 May 2018 and imposes onerous burdens on employers as data processors and controllers.

The Protected Disclosures Act 2014 provides a robust statutory framework within which workers in the public and private sector can disclose information regarding potential wrong-doing in their workplace, and significant employment and other protections to prevent such workers suffering penalisation or detriment following the making of a



disclosure. “Workers” is given a very wide definition and includes permanent and temporary employees, former employees, secondees, interns, consultants, contractors and agency personnel. The types of wrongdoing covered by the Protected Disclosures Act specifically includes things like the commission of offences, the failure to comply with legal obligations, health and safety issues and damage to the environment. An employee who is penalised by his or her employer for having made a protected disclosure, or an employee who is dismissed as a result of having made a protected disclosure, may claim up to five years’ remuneration from his or her employer.

The EU Posted Workers Directive (“PWD”) is applicable to circumstances where employers send workers who normally work in another EU Member State but, for a limited period, are sent by their employer to carry out their duties in another EU Member State (“posted workers”). The PWD guarantees posted workers an entitlement to minimum terms and conditions of employment and as such this individual would acquire Irish employment law rights. Furthermore, the PWD and the Irish transposing regulations provide that employers who post workers to Ireland are obliged to make a declaration to the WRC prior to the date the posted worker commences providing services in Ireland. The regulations provide that the declaration must be made in the prescribed form and contain the following information: identity of service provider; number of posted workers; duration of the posting; address of posted workplace; and the nature of services. Neither the regulations nor the PWD prescribe a minimum posting period which triggers this reporting obligation.

(d) anti-corruption and bribery.

Where a contract is obtained illegally in Ireland, a court can set aside the award of that contract. Irish law generally prohibits bribery not just by persons employed or acting for the state but also by private individuals. This is unusual in that other jurisdictions generally make a distinction between persons employed by or working for public bodies and those working for private companies. The exception to this is in relation to a presumption of corruption, which arises in certain circumstances under the Prevention of Corruption Acts 1889–2010 and the National Asset Management Agency Act 2009. The Ethics in Public Office Acts, 1995 and 2001, provide for members of the Irish public, office holders and senior members of the public service to report and surrender gifts or payments with a value over €650. Bribery is also an offence under Irish common law, although prosecutions in recent times are more usually brought for

statutory offences.

Under the Prevention of Corruption Acts 1889–2010, a person or agent for another person is guilty of an offence where they ‘corruptly’ (which is not defined) ‘accept or agree to accept, or agree to obtain a gift, for him or herself or another person as a inducement, reward or on account of the agent doing or making any act, or making any omission in relation to the agent’s position or his or her principal’s affairs or business’. In a similar vein, it is also an offence for a person to corruptly give such a gift. A person may also be guilty of committing either active or passive corruption under the Criminal Justice (Theft and Fraud Offences) Act 2001.

A person found guilty of corruption or the offence of corruption in office is liable on summary conviction to a fine of €4,000 or 12 months in prison, or both. A person convicted on indictment is liable for a potentially unlimited fine and 10 years in prison. A person convicted under the Criminal Justice (Theft and Fraud Offences) Act 2001, will be liable for a potentially unlimited fine and up to five years in prison.

4. What permits, licences and/or other documents do parties need before starting work, during work and after completion? Are there any penalties for non-compliance?

Depending on the specifics of a project, one or all of the following may be required:

- Planning Permission.
- If the Building Control (Amendment) Regulations 2014 apply, a Commencement Notice (and all prescribed accompanying documents), Fire Safety Certificate, Disability Access Certificate, Certificate of Compliance of Completion.
- Environmental licences, such as an Industrial Emissions licence or a waste licence, may be required before the project can become operational.
- Crane over sail licence.

5. **Is tort law or a law of extra-contractual obligations recognised in your jurisdiction?**

Yes, tort law is recognised in Ireland.

In certain circumstances the tort of negligence may create a legal route for a third party to bring a claim against a contractor or a consultant for defective work or design (as applicable). In order for a third party to be successful in bringing such a claim against a contractor or consultant in negligence, the third party will have to show that the contractor or consultant owed the third party a duty of care, that the acts or omissions of the contractor or consultant were in breach of that duty of care, that there was a causal link between the breach of duty and the loss suffered by the third party and that the loss suffered is not so remote that it cannot be recovered under negligence.

In addition to proving negligence against a contractor or a consultant, a third party must also be able to show that the type of damage suffered is a category of damage that is recoverable under Irish law. In Ireland, apart from certain circumstances, damages known as 'pure economic loss' are often not recoverable in tort. Pure economic loss would include damage to a thing itself. So, for example, if a purchaser of a home discovers latent defects in the building, the cost of repairing these latent defects or the diminution in value of the house as a result of the defects would be classified as pure economic loss.

Pure economic loss, however, is recoverable in certain circumstances. For example, where a contractor or a consultant voluntarily assumes responsibility to a third party through a statement of fact and the statement is negligently made, which results in loss to the third party, pure economic loss is recoverable in this instance. This is particularly relevant for consultants who sign certificates stating that buildings comply with certain standards.

6. **Who are the typical parties involved in a construction and**

engineering project?

The typical parties include the developer, building contractor, sub-contractors, design team, project managers, cost consultants, quantity surveyors, lenders, a lender's project monitor and insurance brokers/advisors.

7. What are the most popular methods of procurement?

There are a number of ways for major projects to be procured in Ireland, including the following:

- traditional form of contracting whereby the employer (which may be a private or state developer) appoints the contractor to carry out the construction work and separately appoints the design team to carry out design services;
- design and build contracts, where the employer appoints a contractor who takes on the responsibility and liability for both the design and construction (it is possible in Ireland for the employer to appoint a design team at the outset and then 'novate' the design team to the contractor, who then becomes responsible for the design and the design team);
- engineering, procurement and construction contracts are more typically used in power production projects and involve the contractor carrying out all of the engineering works and design, procuring all materials and plans and all construction works; and
- PPPs, where the state contracts with a private company for the private company to design, finance and build (and sometimes operate) large infrastructure assets (such as roads, water treatment plants and certain civic facilities such as court buildings).

There is no standard form for construction management or management contracting but projects can be let on these bases using amended standard forms of building agreements.

8. What are the most popular standard forms of contract? Do parties commonly amend these standard forms?

There are various Irish standard forms of contracts.



For building works in the private sector, the most common forms are the RIAI (the Royal Institute of the Architects of Ireland) forms of contract, with quantities (printed on a yellow form) or without quantities (printed on a blue form). Frequently, especially for larger projects, parties will also agree amendments and special conditions to those forms.

The Construction Industry Federation in conjunction with the RIAI, has prepared a form of subcontract for use with the RIAI form of main contract.

There is also the Engineers Ireland (formerly the Institution of Engineers of Ireland or "IEI") Third edition form of contract, which is generally used for civil engineering works. This had been the principal form used for most publicly-funded roads and water projects until the advent of the Public Works forms (see below). There is a standard form of subcontract for use with the IEI Third edition.

In 2007, the Government Construction Contracts Committee (GCCC) developed a number of contracts for use in public sector building and civil engineering works for contractors. These include traditional and design and build forms, as well as a minor works contract and a short form of contract for smaller projects, a contract for investigation works, a framework agreement, a contract for early collaboration with the Contractor on complex projects with a high value, and a term maintenance contract. These contracts replace the Government Departments and Local Authorities (GDLA) form of contract (similar to the RIAI form and prepared for use in the public sector) as well as the use of the IEI Third Edition for civil engineering works. The public works contracts are mandatory for all public works.

There are also standard forms for construction professionals developed by the representative bodies for construction consultants (the RIAI, IEI and the Society of Chartered Surveyors (SCS)). The GCCC has also developed standard conditions of engagement for construction professionals in public works.

UK and international forms are also used. The FIDIC (International Federation of Consulting Engineers (Fédération Internationale des Ingénieurs-Conseils)) suite is well known and frequently used, particularly in the energy sector. Other forms used include:

- Institution of Civil Engineers;
- Joint Contracts Tribunal;
- New Engineering Contract forms;
- Institution of Chemical Engineers (IChemE); and
- Institution of Engineering and Technology MF/1 (amended for the Irish market).

There is no standard form of Management Contract; however, a bespoke form is often produced based on one of the RIAI contracts referred to above.

9. Are there any restrictions or legislative regimes affecting procurement?

The restrictions and legislative regimes affecting procurement relate to public bodies, apart from this there are none in place.

10. Do parties typically engage consultants? What forms are used?

Yes, parties typically engage a range of consultants. There standard form appointments for construction professionals developed by the representative bodies for construction consultants (the RIAI, IEI and the Society of Chartered Surveyors (SCS)). The GCCC has also developed standard conditions of engagement for construction professionals in public works.

It is also very common for parties to appoint consultant on bespoke terms and conditions of appointment.

11. **Is subcontracting permitted?**

Yes. There are no statutory restrictions on subcontracting.

12. **How are projects typically financed?**

Projects are typically funded by one of more of the following sources:

- Bank funding, by way of traditional development finance (through pillar bank, non-pillar bank and non-bank lending) and by way of forward funded development finance.
- Private equity.
- Government funding.
- Public private partnerships.

13. **What kind of security is available for employers, e.g. performance bonds, advance payment bonds, parent company guarantees? How long are these typically held for?**

It is both permissible and common for there to be performance bonds (provided by banks and others) to guarantee performance, and/or company guarantees provided to guarantee the performance of subsidiary companies. The amount of the bond is typically between 10% to 12.5% of the contract sum. It can be difficult for contractors to procure a bond for a higher amount. The usual arrangement in a construction contract is for the performance bond to be a default bond, i.e. the beneficiary must show a default by the Contractor and loss arising before a payment is made. However, in some situations, an on-demand bond is provided (where payment is made on foot of a demand made to the bondsman in a specific format, notwithstanding that there may be a dispute between the Contractor and Employer as to the amount due). Such a bond is usually required, for example, in the case of an advance payment or early release of retention monies.

14. **Is there any specific legislation relating to payment in the industry?**

There is no specific requirement in Ireland as to how contractors should be paid. Typically, however, payments are made by electronic transfer. There is nothing in Irish law to prohibit payment by cash or cheque. How payments are to be made is usually stated in the governing agreement.

Subject to what is said below about the Construction Contracts Act 2013, parties are free to agree in their contracts the frequency of payments between them. Payment frequency is usually on an interim basis (e.g., monthly) or hinged off milestones (e.g., delivery of items to site).

Under the European Communities (Late Payment in Commercial Transactions) Regulations 2012, for business-to-business payments, the general deadline is 30 days unless otherwise stated in the contract. It is possible, if both parties agree, to extend payment terms to 60 days. The period may be extended beyond 60 days only if expressly agreed by the parties in the contract and provided that it is not grossly unfair to the supplier. The standard deadline for public authorities to process business payments is 30 days. Payment can be extended to 60 days only if it is expressly agreed and justified in light of the nature or feature of the contract.

Consultant appointments in Ireland typically provide for a lump sum, which is paid by instalments. This is not always the case and some appointments will provide for the consultant's remuneration to be measured by way of a percentage fee against the total construction contract cost.

On 25 July 2016 the Construction Contracts Act 2013 (the 2013 Act) commenced in Ireland. The 2013 Act, among other things, sets out the minimum provisions in relation to payments to be made under a construction contract (the definition of which would include the typical appointments of consultants). The 2013 Act provides that a construction contract shall provide for the following:

- the amount of each interim payment to be made under the construction contract;
- the amount of the final payment to be made under the construction contract;

- an adequate mechanism to determine such payment amounts;
- the payment claim date, or an adequate mechanism for determining the payment claim date, for each amount due under the construction contract; and
- the period between the payment claim date for each such amount and the date on which the amount is so due.

Where the construction contract does not comply with the above requirements, the schedule to the 2013 Act will apply to the extent the construction contract does not comply. For example, if the construction contract does not set out the payment claim date, the schedule will apply and would allow for a payment claim date every 30 days after the commencement of the construction contract up to substantial completion and 30 days following the date of final completion.

In relation to subcontracts (where the subcontractor is the party executing the works), it appears from the 2013 Act that regardless of what the subcontract payment dates are stated to be, the maximum period between payment claim dates is 30 days (as per the schedule) but the parties are free to agree a period that is more favourable to the executing parties.

15. Are pay-when-paid clauses (i.e clauses permitting payment to be made by a contractor only when it has been paid by the employer) permitted? Are they commonly used?

Under the Construction Contracts Act, 2013, such clauses are “ineffective” save in limited circumstances relating to insolvency, as set out in Section 3(5) of this Act.

16. Do your contracts contain retention provisions and, if so, how do they operate?

Standard form construction contracts typically provide for a retention amount, usually in the range of 3% to 5% of the contract sum, retained from each interim payment. Typically, half of the retained amount is released at practical completion and the

remainder at the expiry of the defects liability period, or issue of the final certificate under the contract. Retention provisions usually place a trust obligation (without obligation to invest) on the Employer for the retained amounts.

17. Do contracts commonly contain liquidated delay damages provisions and are these upheld by the courts?

Parties are permitted to agree in advance a fixed sum (liquidated damages), which will be paid by the Contractor to the Employer in the event of particular breaches, e.g. liquidated damages for late completion, usually expressed as a fixed amount for every day or week of delay beyond the date for Practical Completion. The sum to be paid must be a genuine pre-estimate of loss, but if it is not, the Contractor can seek to set it aside as a penalty. If the purpose is not intended to be compensatory but rather to force performance with the contract, that will be a factor pointing to it being a penalty.

18. Are the parties able to exclude or limit liability?

Yes, the parties are free to agree limits on their liability and exclude liability for certain heads of loss. While there is no general statutory prohibition on excluding liability for fraud, death and personal injury (in a non-consumer contract), it is market practice that these types of exclusions of liability are not permitted. There is also a general view that an Irish court would take a very strict approach to construing any such limitation or exclusion of liability in a general contract, and especially if it were to purport to exclude or restrict liability for death or personal injury arising from the counterparty's negligence (or breach of contract that is tantamount to negligence).

19. Are there any restrictions on termination? Can parties terminate for convenience? Force majeure?

A construction contract will rarely have a provision for automatic termination; one would need to be expressly agreed and it would likely be the subject of extensive

negotiation. The contract will usually set out clear grounds for termination. The contract typically provides for the Employer to be entitled to terminate for default or insolvency of the Contractor. In the case of the Contractor, it is typically for insolvency of the Employer or non-payment within a specified period.

If the contract does not have express contractual termination rights, or the express contractual termination rights do not apply, then a party may have grounds to terminate a contract at law. The principal reason for terminating at common law arises in the case of a repudiatory breach of contract (where one party refuses to perform all or substantially all of its obligations under a contract).

Parties are free to agree a right to terminate in the event of force majeure. There is no statutory definition of force majeure. Force majeure is an expression sometimes used in contracts to describe events that are beyond the control of either party and which have the effect of causing damage, delay, disruption, or financial detriment to one or more of the parties to the contract. Force majeure events are usually defined in the contract to include matters such as acts of God, fire, flood, explosion, riot, war, or rebellion beyond the control or influence of the parties which have a significant effect on the ability of the party to perform its obligations.

20. **What rights are commonly granted to third parties (e.g. funders, purchasers, renters) and, if so, how is this achieved?**

Funders, purchasers and tenants of commercial premises are typically granted contractual rights against the main contractor, key sub-contractors and design team members. This is achieved by way of a direct agreement between such parties, known as a '*collateral warranty*'. A funder, if providing development finance, will require rights allowing it to step in to the main contract, key sub-contracts and design team appointments in the event of borrower insolvency. Collateral warranties also allow the beneficiaries thereof to pursue a contracting party in the event of defects in the works where the beneficiary suffers a loss.

21. **Do contracts typically contain strict provisions governing notification of claims for additional time and money which act as conditions precedent to bringing claims? Does your jurisdiction recognise such notices as conditions precedent?**

Most of the standard form contracts contain time periods for the notification of claims for additional time and money, however not all contracts provide that compliance with such time periods will be a strict pre-condition to the Contractor's entitlement to bring such claims. There is no statutory footing for recognition of such notices as conditions precedent.

22. **What insurances are the parties required to hold? And how long for?**

There are no insurances related to a construction project required by statute other than motor vehicle insurance. However, a construction contract will typically require the following insurances:

- insurance of the works (usually referred to as 'all risks' insurance), taken out by either the employer or the contractor, covering loss or damage to the work executed and site materials up to practical completion in the joint names of both parties to the contract;
- public liability insurance, covering claims in relation to death or injury to third parties or damage to property other than the construction works;
- employer's liability insurance, to be taken out by the contractor to cover the injury or death of its employees; and
- professional indemnity insurance (PI), to cover design liability and to be taken out by any party carrying out design (including the contractor where it is doing some design under the contract). PI policies cover the insured against claims for professional negligence and are usually required to be in place from commencement of the work or services until six years (and sometimes 12 years) after practical completion.

The parties may agree that a project may also require specific insurance policies or overall project insurance. Although not universal, latent defects insurance products are available on the Irish market.



The parties may agree that a project may also require specific insurance policies or overall project insurance. Although not universal, latent defects insurance products are available on the Irish market.

23. How are construction and engineering disputes typically resolved in your jurisdiction (e.g. arbitration, litigation, adjudication)? What alternatives are available?

The most common methods of settling construction disputes are conciliation, mediation, arbitration, and litigation. Adjudication has been introduced by the Construction Contracts Act 2013.

24. How supportive are the local courts of arbitration (domestic and international)? How long does it typically take to enforce an award?

Arbitration in Ireland is governed by the Arbitration Act 2010. An arbitrator's award is binding on the parties and is enforceable in Court.

Ireland is a signatory to the New York Convention (the "Convention") and it is incorporated into its legislation in section 24 of the Arbitration Act 2010. Article 35(1) of the Model Law, incorporated in section 6 of the 2010 Act, provides that an arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced. International and domestic arbitral awards will be equally enforced by the Irish courts.

The courts will refuse to enforce an award in limited circumstances, such as those set out in Article V of the Convention. These include instances in which:

- (i) a party to the arbitration agreement was under some incapacity;
- (ii) the arbitration agreement was not valid under its substantive law;

- (iii) a party against whom it is to be enforced was not given proper notice or was unable to present its case;
- (iv) the tribunal lacked jurisdiction;
- (v) there was a procedural irregularity; and/or
- (vi) it would be contrary to public policy to recognise or enforce the award.

25. **Are there any limitation periods for commencing disputes in your jurisdiction?**

The parties are free to agree a limitation period, but in the absence of an express agreement, the limitation period as set by the Statute of Limitations, 1957, for a claim for a breach of contract is six years from accrual of the cause of action (which is the date of the breach of contract) if the contract is signed under hand, and twelve years from the date of the breach where the contract is executed as a deed. In tort, the Statute of Limitations, 1957, as amended, provides that an action founded on tort shall not be brought after the expiration of six years from the date on which the cause of action accrued. There has been considerable debate as to when the cause of action accrues. In the Supreme Court case of *Brandley and Deane [2017] IESC 23*, the Court looked at the question of when does time run for the purposes of the Statute of Limitations for property damage claims founded in the tort of negligence. In summary, the conclusions of the Court in that case are as follows:

- A cause of action in damages, for a non-personal-injury claim, accrues only at the time that “damage” becomes “manifest”.
- Damage is “manifest” when it is capable of being discovered (irrespective of whether it has or has not been discovered or ought to have been discovered).
- In a construction context, there may be a distinction between defective work, such as the installation of defective foundations, and actual damage occurring or becoming manifest.
- A “discoverability” test does not apply in respect of non-personal-injury claims in tort/negligence.
- Causes of action in contract and in tort/negligence may accrue at different points in time.

26. **How common are multi-party disputes? How is liability apportioned between multiple defendants? Does your jurisdiction recognise net contribution clauses (which limit the liability of a defaulting party to a “fair and reasonable” proportion of the innocent party’s losses), and are these commonly used?**

Multi-party disputes are common in the construction industry given the number of different parties engaged on a project. The Civil Liability Act 1961 provides that where two or more defendants are concurrent wrongdoers, they are fully liable for the damage suffered by the plaintiff. This means that in the event that one of the defendants is unable to meet the judgment against it for its portion of the damages caused, the other defendants, i.e. those that are marks for damages, will be liable for the full amount and not just their own respective portion.

Net contribution clauses are commonly requested by designers in their professional appointments and collateral warranties in order to overcome the provisions of the Civil Liability Act 1961, set out above. The effectiveness of net contribution clauses has not been specifically tested before the Irish courts.

27. **What are the biggest challenges and opportunities facing the construction sector in your jurisdiction?**

Skills and labour shortages are possibly the biggest challenges to the construction sector in Ireland currently, as we head towards near full employment.

In the current market, Brexit and the uncertainty as to what effect it will have on the supply chains, the labour market and the cost of materials is a challenge to the construction sector. Brexit on the other hand may also bring opportunities, as companies seek to relocate in Ireland.

Other challenges to the sector include inflation, as construction tender prices rose 7.7% for the full year of 2018 according to the latest Tender Price Index published by



the Society of Chartered Surveyors Ireland.

28. **What types of project are currently attracting the most investment in your jurisdiction (e.g. infrastructure, power, commercial property, offshore)?**

Commercial office space, residential projects, renewable energy projects and large infrastructure projects such as hospitals, schools and transport projects are currently attracting the most investment in Ireland.

29. **How do you envisage technology affecting the construction and engineering industry in your jurisdiction over the next five years?**

Technologies such as building information modelling, modular construction and robotics will have a significant impact on the construction and engineering industry in the next five years.

We would also see the use of machine assisted learning become more prevalent in the both the review of and the drafting of construction contracts.