Irish Arbitration Act 2010: 
A New Act for a Centuries Old Tradition

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Over the centuries, Éire or Ireland has been described by historians in many different ways: ‘The Green Isle’, ‘The land of Saints and Scholars’, the ‘Land of a Thousand Welcomes’, to name but a few.

Before common law, legal practitioners were called Brehons. They were neither judges nor lawyers although many consider them so. In reality, they were arbitrators whose responsibility was to settle disagreements. The Brehons had to study the laws for years before they were allowed to practice their art due in part to the size or volume of the laws that were enforced. It was an oral code to the greatest extent, and was only first written down around the 3rd Century.

One example of such laws, which is quite apt considering our current economic climate:

"If a person who is of a higher rank than you refuses to pay his debt you may sit at his doorstep and fast until he submits to arbitration. If you die before he submits he shall be blamed for your death and shall suffer lifelong disgrace."

1. Irish Developments

Irish arbitration has been, for the most part, a domestic affair. The business of resolving arbitral disputes appeared to pass to London, Paris, New York, and Singapore. There are many reasons for this but there has been a sincere effort to erode this effect by, for example:

- the enactment of the Irish Arbitration Act 2010\(^1\)
- the Law Society of Ireland setting up the Business Arbitration Scheme
- new Irish Court rules promoting alternative forms of dispute resolution
- the establishment of the Dublin International Arbitration Centre
- the establishment of Arbitration Ireland (2010)\(^2\)

The Irish Government has continued to respect the growing need to promote arbitration on a domestic and global level.

The construction industry has a fondness for resolving their disputes through various alternative dispute resolution procedures, including conciliation and arbitration. The standard industry contracts used in Ireland are both the actual or tailored versions of our UK (ICE; JCT; NEC) and international counterparts (FIDIC). Like many jurisdictions, the Government had its own form of public works contracts and chose to amend its

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\(^2\) Arbitration Ireland webpage: [http://www.arbitrationireland.com](http://www.arbitrationireland.com)
standard contracts\textsuperscript{3}, which transferred a greater degree of risk to a building contractor (some would say it transferred all of the risk). It should be noted that these contracts, Government guidelines, and policies are strictly adhered to. The contracts may not be amended except in rare circumstances. The Government maintained its affection in these contracts for arbitration, which is commended considering the high value and complex contracts involved.

Over the last few years, the Irish Courts have seen a growing commercial case list. This coincided with unprecedented economic growth, which saw many new international companies, in sectors such as pharmaceutical, technological, manufacturing, establish European headquarters in Ireland.

With added pressures on the judiciary, there was an increase in costly delays, which is unacceptable to any company seeking to complete a project (construction related or otherwise). Recognising this failing, the Courts (under the guidance of High Court Judge, Mr. Justice Peter Kelly), amended the Irish Superior Court Rules to introduce the specialised ‘Commercial Court’. To secure a place on this list, you must satisfy a number of requirements, including the threshold of over €1 million dispute value. Cases heard by the Commercial Court are resolved within an average of 21 weeks, with 25\% of all cases being disposed of in less than 4 weeks, and 90\% of all cases being disposed of within 50 weeks\textsuperscript{4}.

As a consequence of this, Ireland is increasingly regarded as the forum of choice for international commercial disputes, and as an example is likely to be the first jurisdiction to reach judgment in the litigation against a fund custodian arising out of the alleged $65bn Bernard Madoff US fraud, among a number of other competing jurisdictions.

Against this backdrop, arbitration is still sold to clients as having the potential to be more cost effective and less time consuming. As all experienced practitioners may know, this is not always the case. Given that the Commercial Court is more likely to resolve the dispute in a timely manner, the hype was beginning to wear off.

It was with this (and many other factors) that the Arbitration Act 2010 was enacted, commencing on 8 June 2010.

2. Arbitration Act 2010: Background


The 2010 Act also incorporates the New York Convention, Washington Convention, 1927 Geneva Convention, and 1923 Geneva Protocol (Schedules 2 to 5 of the 2010 Act).


\textsuperscript{3} Capital Works Management Framework: \url{http://www.constructionprocurement.gov.ie/Home.aspx}

\textsuperscript{4} Please see Courts Service Annual Report 2009: \url{http://www.courts.ie} (2010 Report not publicly available at date of this article).
The impetus for the Act came from an analysis of existing legislation in Ireland in the lead up to the International Council for Commercial Arbitration Conference, which was held in Dublin in June 2008, to celebrate the 50th anniversary of the signing of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

The legislators had hoped to showcase Ireland as a leading place for dispute resolution. However, the strength and familiarity of many with existing centres like London, New York and Singapore meant that Ireland had a steep hill to climb.

That said, arbitration is the preferred method of resolving disputes in sectors including construction, insurance, maritime and travel. Added to the economic leaps made by Ireland over the past decade, arbitration has grown in appreciation in other sectors.

3. **Key Revisions to Irish Arbitration Law**

(a) **No distinction between domestic/international arbitrations**

There is no difference between domestic arbitrations and international arbitrations. This effect has not only made Ireland a more internationally friendly place for dispute resolution but it also encourages Irish practising lawyers to have greater familiarity with the Model Law and foreign case law interpreting the same.

(b) **Judicial Intervention virtually eliminated**

Previously, Irish law allowed for applications to the High Court by way of a case stated procedure, but these provisions have been repealed. The opportunities for parties to seek judicial intervention in arbitration proceedings have been severely curtailed in keeping with the Model Law.

Arbitrators may no longer refer to the Irish Courts a question of law arising in the course of the arbitration. This change reflects a perception that the case stated procedure might be used by parties to slow down the process. The change is intended to strengthen the integrity of the arbitration process. In appropriate circumstances, it remains open to an arbitrator to seek independent advice if necessary in relation to a point of law arising in the arbitration.

The effect of this change means that arbitrators will need greater proficiency in legal interpretation and international jurisprudence. It would not be appropriate to rely on legal experts all of the time.

Interpretation assistance is provided by the travaux préparatoires (Section 8 of the 2010 Act). Separately, arbitrators may refer to case law on UNCITRAL (CLOUT). CLOUT is a collection of court decisions and arbitral awards interpreting UNCITRAL texts. It includes abstracts (i.e. reports) in the six United Nations languages on the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) (CISG), the UNCITRAL Model Law on International Commercial Arbitration (1985, MAL), The Model Law on Electronic Commerce (1996, MLEC) and The Model Law on Cross-Border Insolvency (1997, MLCBI). Other texts are added as case law becomes available.

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5 Section 2 of the Act sets out the definition of “arbitration”.

6 The CLOUT database can be accessed at: [http://www.uncitral.org](http://www.uncitral.org)
As further example of reduced judicial intervention, the Circuit Court and High Court may adjourn a case for arbitration at any stage if it thinks it appropriate and the parties are in agreement (Section 32 of the 2010 Act).

Where an arbitration agreement exists the Courts are obliged to grant stays in respect of court proceedings so long as the application for a stay is brought sufficiently speedily and the written arbitration agreement is not null and void, inoperative or incapable of being performed.

Importantly, there is no appeal to the Supreme Court (final court of appeal) from any determination of the High Court in relation to:

- a stay application pursuant to Article 8(1) of the Model Law or Article II(3) of the New York Convention\(^7\); or

- an application for setting aside an award under Article 34 of the Model Law; or

- an application under Chapter VIII of the Model Law for the recognition and enforcement of an award made in an international commercial arbitration; or

- an application to recognise or enforce an arbitral award pursuant to the Geneva Convention, New York Convention or Washington Convention.

(c) **Single Arbitration Judge**

The concept of a single arbitration judge to deal with any applications is introduced. Section 9 of the 2010 Act confirms the President of the High Court (or a judge so nominated) has the authority to carry out the functions of arbitration assistance and supervision. Such assistance may arise, for example, in relation to arbitrator appointment, jurisdiction, and challenges to the same.

Therefore, one judge will develop a particular expertise in issues involving arbitration. This should ensure a consistent approach, and will also reduce the risk that parties might inappropriately seek judicial intervention in an attempt to delay or obstruct the arbitration process.

(d) **Limited Award Challenges**

The only provision for a method of challenging an arbitral award is under Article 34 of the Model Law. The grounds are extremely limited and the 2010 Act makes it more difficult to challenge an arbitral award than was the case under previous legislation. The Model Law grounds of challenge have been interpreted narrowly in other jurisdictions, and the High Court is likely to adopt a similar approach, in keeping with its approach to arbitration generally.

(e) **Cost Allocation**

The earlier legislation did not allow parties to make a prior arrangement that each party would bear its own costs in the arbitration. Any such agreement was only binding if it was reached after the dispute had arisen. Under the 2010 Act, parties to an arbitration agreement may make such a prior arrangement. Where the parties cannot agree or no provision for costs is made, the arbitrator can determine how the costs are to be apportioned. Furthermore, the parties may now agree the extent of the arbitrator’s power to award interest.

\(^7\) Osmond Ireland On Farm Business -v- Mc Farland [2010] IEHC 295 (High Court, June 2010)
(f) Reasons
Article 31(2) of the Model Law applies to awards. The default position is that the arbitrator will be required to give reasons for the award unless the parties have agreed otherwise.

4. General Points of Interest

(a) Appointment of Arbitrator

Unless otherwise agreed, one arbitrator will be appointed (Section 13 of the 2010 Act). This differs from Article 10 of the Model Law. It should be noted that the 2010 Act takes precedence over the Model Law. However, the differences between the 2010 Act and Model Law are easy to follow.

With regard to arbitrator selection, the arbitrator may be selected by the parties or by a third party institution nominated by the parties, failing which a party may request the High Court to nominate an arbitrator (Article 11 of the Model Law). As noted above, there is no appeal from a decision made. It is therefore imperative that the parties pay close attention to any qualifications and experience required of the arbitrator and any further considerations which will ensure that an independent and impartial arbitrator is appointed.

Arbitrators are obliged to disclose any conflict of interest. The parties may challenge the appointment of a particular individual if circumstances exist which give rise to concern as to his impartiality or if he does not possess the relevant qualifications. Article 12.1 of the Model Law is applicable which states that the arbitrator is required to “disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence”. The duty to make such disclosure continues throughout the arbitral proceedings.

Challenges must be made within 15 days of the appointment of the arbitrator or after becoming aware of such circumstances noted above. Unless the arbitrator withdraws or the other party agrees to the challenge, the arbitrator may make a decision on the merits of the challenge. If the challenge is not upheld, the party may appeal to the High Court within 30 days of the decision. While the appeal is pending, the arbitrator may continue with the arbitration proceedings and make an award.

(b) Jurisdiction

Article 16 of the Model Law governs the situation where an arbitrator rules on the question of his own jurisdiction, including any questions regarding the existence or validity of the arbitration agreement. Any plea that the arbitral tribunal lacks jurisdiction shall be raised not later than the submission of the statement of defence. Any pleas that the tribunal is exceeding the scope of its authority must be raised as soon as possible as the matter arises in the proceedings.

(c) Procedural Rules

The parties may set their own procedural rules (Article 19 of the Model Law). If none are chosen, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate. However, the parties are to be treated equally and each party is to

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be given a full opportunity to present their case (Article 18; Chapter V of the Model Law).

Specific institutional or trade association rules are commonly used in Ireland, for example Engineers Ireland; International Chamber of Commerce.

The parties are open to use the new UNICITRAL arbitration rules which were announced on 12 July 2010, replacing the 1976 version and came into full force and effect on 15 August 2010.

The UNCITRAL Model Law provides a pattern that law-makers in national governments can adopt as part of their domestic legislation on arbitration. The UNCITRAL Arbitration Rules, on the other hand, are selected by parties either as part of their contract, or after a dispute arises, to govern the conduct of an arbitration intended to resolve a dispute or disputes between themselves. Put simply, the Model Law is directed at States, while the Arbitration Rules are directed at potential (or actual) parties to a dispute.

(d) Consolidation of concurrent arbitrations

Section 16 of the 2010 Act provides that, where the parties agree, arbitral proceedings may be consolidated with other arbitral claims and be heard concurrently. This change mirrors the practice in Court proceedings, which save costs and promotes efficiency.

(e) Interim measures

Unless otherwise agreed by the parties, an arbitrator has the power to grant interim measures (Article 17 of the Model Law). An interim measure is any temporary measure directed to be taken before a final award is made by the arbitrator. They are usually granted to maintain the status quo of the parties prior to the final determination of the dispute or to prevent the dissipation of any assets likely to be used to satisfy a subsequent award or to preserve evidence relevant to the dispute.

The arbitrator must be satisfied before making an interim order that harm not adequately remedied by damages is likely to occur, that such harm outweighs the harm which might be done to the other party if the measure is granted and that there is a reasonable possibility that the requesting party will succeed with the claim.

By virtue of the 2010 Act, an arbitrator now has virtually the same powers as the Courts (Article 9) in granting interim relief which will undoubtedly aid the efficient conduct of arbitrations. Any interim measures ordered may be recognised and enforced by the High Court.

The 2010 Act, read with Article 9 of the Model Law, provides that, before or during arbitral proceedings, a party may itself also request from the High Court an interim measure of protection before or during the arbitral proceedings.

(f) Security for Costs

Under the 2010 Act an arbitrator has the power to order a party to provide security for the costs of arbitration unless agreed otherwise by the parties. Qualifications with regard to the bases upon which such security might be ordered are set out at Section 19(2) of the 2010 Act. This is a useful power, as previously parties to had to apply to Court.

(g) Conduct of Arbitration proceedings

Failing agreement by the parties, the arbitrator may determine various matters relating to the conduct of the arbitration proceedings including whether an oral hearing is required,
the location of the hearing, the appointment of an expert, the manner in which evidence will be given (either on oath or on affirmation) and the language to be used.

The parties are obliged to exchange a Statement of Claim and Defence within the timetable directed by the arbitrator. In the event that the claimant fails to deliver its Statement of Claim, the arbitrator may terminate the proceedings. If the respondent fails to deliver its Defence, the arbitrator will continue the proceedings without treating the failure as an admission of liability.

If the parties during the arbitral proceedings settle the dispute, the arbitrator will terminate the proceedings and may record the terms of the settlement in the form of an arbitral award.

The tribunal may request assistance from the Court in the taking of evidence (Article 27). However, it is worth noting that Section 10(2) of the 2010 Act states that the High Court is not empowered to make any order for discovery of documents unless otherwise agreed by the parties. The issue of privilege should also be noted, especially for in-house counsel and the recent decision of the European Court of Justice\(^9\).

\(\text{(h) Award}\)

As noted above, the arbitrator is now obliged to give a written reasoned award (Article 31 of the Model Law). A signed copy of the award is given to both parties. Within 30 days of receipt of the award, a party may on notice to the other side request the arbitrator to correct any clerical or computational errors in the award or request an interpretation of a specific point of the award. If the arbitrator considers the request justified, he is required to provide the required information within 30 days of receiving the request. The arbitrator may also correct any error on his own initiative within 30 days of the award.

\(\text{(i) Arbitrator Liability}\)

Section 22 of the 2010 Act provides that an arbitrator “shall not be liable in any proceedings for anything done or omitted in the discharge or purported discharge of his or her functions”. Such immunity also extends to any agent, employee, advisor or expert appointed by the arbitrator and appointing authorities are also immune. Although it is submitted that an arbitrator could be held liable for his own costs in the event of a successful challenge to his appointment or to his preliminary decision on jurisdiction.

\(\text{(j) Enforcement of an Award}\)

Ireland ratified the New York Convention in 1981 and no reservations have been entered. The Courts have shown support to the enforcement of arbitral awards. Section 23(1) of the 2010 Act provides that an arbitral award is enforceable in Ireland either by action or, by leave of the High Court, in the same manner as a judgment or order of that court with the same effect.

\(\text{(k) Remedies}\)

An arbitral tribunal may determine and award damages. Save for some exceptions, a tribunal has at its disposal the various common law and equitable remedies.

\(^9\) Akzo Nobel Chemicals Limited and Akros Chemicals Limited v European Commission (14 September 2010, C550-07 P): This case deals with the question whether, in the context of European Commission investigations and proceedings, communications with in-house lawyers are protected by the legal professional privilege. Following Case 155/79 AM&S Europe v Commission (1982), the European Court of Justice decided that such communications are not protected. This means that no communications between the management of a company and its in-house lawyers will be protected from search and disclosure in EU investigations and proceedings.
(l) Confidentiality

The 2010 Act does not specifically state that arbitrations are to be considered confidential and the parties thereto are subject to an implied duty of confidentiality. However, it is generally accepted that this is the actual position. It is still important to note that any matters heard in Court are heard in open court.

5. Construction Arbitration

In the construction industry, there have been many forms of contracts used for the various complex projects worldwide.

The following highlights some of these contracts and, in particular, the preferred method of dispute resolution:

Ireland: IEI Conditions of Contract

Before the Public Works Contracts, the industry commonly used the IEI Conditions of Contract for use in connection with Works of Civil Engineering Construction. These contracts refer to the Institution of Engineers of Ireland Arbitration Procedure, and were governed by the Irish Arbitration Acts (now repealed and replaced by the 2010 Act). The IEI contract was very similar to the ICE Conditions of Contract (used in the UK).

Ireland: Public Works Contracts

The Irish Government developed new contracts for public capital works projects. These contracts generally fall into two sectoral classifications:

- Civil Engineering Works; and
- Building Works.

This division reflects some fundamental differences between the civil engineering and building sectors. Civil engineering works such as roads, tunnels, bridges etc. are designed by civil engineers acting (for the most part) under the direction of the contracting authority and are carried out by civil engineering contractors.

Building works such as office buildings, schools and hospitals are designed by architects (with other consultants) again acting (for the most part) under the direction of the contracting authority and are constructed by building contractors.

In both sectors the standard forms of contract used in the past have been published by the lead professionals’ professional institutions. In the case of building works by the RIAI with the agreement of the Department of Finance, in the case of civil engineering works by the IEI (now known as Engineers Ireland).

A number of contracting authorities have also used the various FIDIC, JCT and MF/1 forms suitably amended for use in Ireland.

The old forms did not serve the public sector well in the past, hence the introduction of the new forms which:

- reflect the latest thinking in project and risk management;
- are clear in terms of wording and in the allocation of risk;

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10 The Public Works Contracts may be located at:
• recognise the development of new procurement methods such as design and build; and
• support the certainty of outcome in terms of cost, quality and programme that an effective capital asset delivery process demands.

In the private sector it is now common practice for the equivalent private sector forms, mainly the RIAI Form, to be appropriately amended by clients’ lawyers with the objective of maximising financial certainty by risk allocation. The RIAI Form uses arbitration as its dispute resolution mechanism.

The new Public Works Contracts are applied to traditional and design and build public works in Ireland that are procured directly by a government department, bodies under its aegis, including local authorities or other relevant bodies that provide public services (e.g. schools, voluntary hospitals, etc).

The final dispute resolution mechanism available to the parties is that of arbitration. The relevant arbitration rules are chosen by the parties. The appointing body in respect of the arbitrator’s appointment in default of agreement by the parties is that set out in a schedule thereto. Disputes under the contract are subject to the jurisdiction of the Irish Courts and, where relevant, to the Public Works and Services Arbitration Rules 2008.

**International: FIDIC**

Many readers will already be familiar with the FIDIC contracts, which also adhere to arbitration. Like many contracts, arbitration is preceded by a less costly mechanism. FIDIC requires adjudication and then arbitration using the ICC Rules. The advantage of the ICC Rules is that it is already familiar to the parties with the process.

6. **Comparisons with other jurisdictions**

On the international stage, there are differing views on how best to adopt the Model Law. While some jurisdictions refer to the Model Law, others adopt it directly into their legislation.

If by reference, i.e. “subject to this Act the Model … shall have the force of law in Singapore”\(^\text{11}\), the law is typically altered to suit the particular jurisdiction’s domestic laws and practices. It is understood that most include a provision permitting the travaux préparatoires to apply for interpretation purposes.

If by direct adoption, the jurisdiction enacts national law as an independent statute or as an amendment to existing civil procedures. Again, alterations are common.

Difficulties arise when attempting to compare jurisdictions. This is one of the reasons why lawyers are hesitant in agreeing to an unfamiliar governing law and arbitration rules.

As has already been shown above, Ireland enacted the 2010 Act and incorporated the Model Law as a schedule, with some alterations (for example, one arbitrator as the default position).

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\(^{11}\) Article 3(1) of the Singapore International Arbitration Act 1994, as amended.
Scotland
Scotland has recently enacted its own 2010 Act. The approach in the Act is broadly consistent with the Model Law and the regime for the rest of the UK in the Arbitration Act 1996 where appropriate. It establishes a statutory regime for arbitration in Scotland. Schedule 1 to the Act lays out a standard set or code of clauses (the Scottish Arbitration Rules) that form a regime for parties voluntarily agreeing to go to arbitration, where that arbitration is ultimately governed by the law of Scotland.

USA
It is understood that The Federal Arbitration Act, 9 U.S.C. § 1 et seq. (FAA) governs the arbitration of all transactions which could be regulated under the Commerce Clause of the U.S. Constitution. The FAA was adopted in 1925 and does not address various matters covered by the Model Law. A number of States, e.g., Illinois, have enacted international arbitration laws based on the Model Law.

There are differences between the FAA and Model Law. The differences include, among others: some of the specific grounds for challenging an award; the procedures for seeking to modify or correct an award; the authority of the arbitration tribunal to rule on its own jurisdiction; and the method of selecting arbitrators and number of arbitrators in the absence of agreement.

Singapore
Singapore has expressly adopted the Model Law as its own by scheduling it to its International Arbitration Act. Similar to Ireland it modifies the Model Law.

Canada
Canada has adopted the Model Law. The federal government and all Canadian provinces and territories, aside from Québec, have enacted legislation that incorporates the Model Law directly or by reference, in some cases with minor modifications.

Australia
Australia recently passed the International Arbitration Amendment Act 2010. The effect of the recent amendments to the International Arbitration Act 1974 is that the Model Law, as adopted by the Act, covers all Australian states and territories in relation to international arbitrations conducted in Australia. In particular, the operation of the various Australian State and Territory Commercial Arbitration Acts is expressly excluded. Accordingly, international arbitrations conducted in Australia must proceed within the framework of the Model Law as adopted by the Act.

Germany
The enforcement of arbitration proceedings is governed by Section 1032 ZPO when a party commences state court proceedings in breach of an arbitration agreement. Apart from this rule, the enforcement of arbitration agreement is not subject to express legislation. German arbitration law is based on the Model Law.

France
The relevant provisions relating to arbitration are found in Articles 1501 et seq. of the French Civil Procedure Code. The Model Law has not been adopted in France. It is understood that there are, however, no major differences between French international arbitration law and the Model Law.

Brazil
The Brazilian Arbitration Law (1996) is said to have been inspired by various statutes, such as the Spanish Arbitration Act and also the New York and Panama Conventions. The Model Law also had an influence but the law differs from the Model Law in several key aspects.
7. **RPS Group**

The 2010 Act helps in-house lawyers to argue that the balance between the Commercial Court and arbitration is now repaired. Certainly, as legal advisor to RPS, the ability to promote Irish arbitration to foreign counterparts has improved.

RPS employees have acted as arbitrators or experts. As a result, the role of the in-house legal advisor is to focus on terms of engagement and also on commercial contracts (bespoke or otherwise).

On a side note, RPS Group is an international consultancy providing advice upon the development of land, property and infrastructure; the exploration and production of energy and other natural resources; the management of the environment; and the health and safety of people.

The RPS Group trades in the UK, Ireland, the Netherlands, the United States, Canada, Australia and Asia undertakes projects in many other parts of the world.

In Ireland, RPS Group Limited and its Irish subsidiaries plan, design, develop and manage projects for clients in the public and private sector. Many of these projects are infrastructure and facilities essential for Ireland's continued growth and well being.

As is common for most in-house lawyers negotiating with foreign colleagues, the choice of law, rules and venue can cause some delays.

**Choice of law**

From experience, the choice of a law involves a review of such important factors as:

- geographical locality;
- level of expenses for maintenance of an arbitration proceeding;
- efficiency of an arbitration;
- language of the arbitration country;
- visa issues;
- local infrastructure;
- familiarity; and
- tax.

The law applicable to the substance of the dispute is determined by reference to the choice of law governing the agreement. It is open to negotiators to leave the contract silent on the governing law. If so, the arbitrator may determine the governing law by reference to applicable international standards\(^\text{12}\) for determining the same and to common law principles.

**Choice of rules**

It has already been discussed above that the arbitration rules should be considered and noted in the arbitration agreement. Whether they are an institutional or trade body (e.g. Engineers Ireland; ICC) or UNICTRAL Arbitration Rules, the necessity for the parties to agree appropriate and cost wise procedures in advance are key to a successful dispute resolution mechanism.

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\(^{12}\) Regulations 593/2008/EC on the Law Applicable to Contractual Obligations
Certainly, as in-house lawyer, the common choice is Engineers Ireland arbitration rules.

Choice of venue
The venue is sometimes omitted from the arbitration agreement. The factors considered from an RPS perspective would range from (i) legal considerations, (ii) convenience, (iii) proximity of evidence, witnesses, and exhibits.

2010 Act
As the 2010 Act is relatively new, the jury is out on its overall effectiveness in speeding up arbitrations and reducing costs. The fact that no appeal may be made to the Irish Supreme Court is to be commended. Many construction projects suffered due to a party seeking judicial intervention in an attempt to delay or obstruct the arbitration process. Fortunately, the avenues to do this have now been curtailed.

8. Future
The days of the Brehons are long gone, however arbitration has survived. It is anticipated and hoped that the international community will become more aware and familiar with Ireland as the first choice venue, with its fully modernised and streamlined arbitration legislation.

It is recognised that in complex arbitration, the costs can frequently approach those of litigation. With the Commercial Court, lawyers are now considering it as a more effective option. Should the courts begin hearing cases in camera, then perhaps arbitration will lose some favour.

In the field of engineering and construction, many variations of alternative dispute resolution mechanisms have been tried, some more successfully than others. Arbitration maintains its attraction due to lower cost, confidentiality, and being less time consuming (theoretically anyway!). The 2010 Act assists to maintain this. It also helps to maintain high professional standards; provide fair and equitable resolution; keep delays to a minimum; keep costs lower than litigation; encourage parties to resolve differences themselves; and provide satisfactory venues.

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RPS is Ireland’s leading multi-disciplinary, all island consultancy providing planning, engineering, environmental and communications services. RPS is also an international consultancy providing advice upon:

- the development of land, property and infrastructure
- the exploration and production of energy and other natural resources
- the management of the environment
- the health and safety of people.
We trade in the UK, Ireland, the Netherlands, the United States, Canada, Australia and Asia and undertake projects in many other parts of the world.

We employ enthusiastic, talented staff with a unique blend of skills and experience that enables them to provide reliable and practical advice.

Delivering results for our clients enables us to offer our people rewarding careers and create long-term value for shareholders.

We operate where concerns about energy supply and security overlap with climate change and sustainability.