

Ireland - Arbitration Act, 1980 (Number 7 of 1980)

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Contents

Ireland - Arbitration Act, 1980 (Number 7 of 1980)	1
<i>[Pre]</i>	1
Part I - Preliminary and General	1
1. Short Title and Collective Citation	1
2. Definitions	1
3. Commencement	1
4. Repeal	1
Part II - Effect of Arbitration Agreement on Court Proceedings	1
5. Staying Court Proceedings where Party Proves Arbitration Agreement . .	1
Part III - Enforcement of New York Convention Awards	2
6. Interpretation (Part III)	2
7. Effect of Awards	2
8. Evidence	3
9. Refusal of Enforcement	3
10. Non-Application of Part V of Principal Act	4
11. Saving for other Rights	4
Part IV - Enforcement of Washington Convention Awards	4
12. Interpretation (Part IV)	4
13. Approval of Acceptance	4
14. Government Contribution Under Washington Convention and Expenses .	4
15. Application of Principal Act and other Enactments	5
16. Enforcement of Pecuniary Obligations Imposed by Award	5
17. Power of High Court to Stay Enforcement	5
Metadata	7
SiSU Metadata, document information	7

Ireland - Arbitration Act, 1980 (Number 7 of 1980)

[Pre]

An Act to enable effect to be given to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards done at New York on the 10th day of June, 1958, and to certain provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States opened for signature in Washington on the 18th day of March, 1965, and otherwise to amend the Arbitration Act, 1954. [4th June, 1980]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Part I - Preliminary and General

1. Short Title and Collective Citation

(1) -This Act may be cited as the Arbitration Act, 1980.

(2) The Arbitration Act, 1954, and this Act may be cited together as the Arbitration Acts, 1954 and 1980.

2. Definitions

-In this Act-

“arbitration agreement” means an agreement in writing (including an agreement contained in an exchange of letters or telegrams) to submit to arbitration present or future differences capable of settlement by arbitration;

“the Principal Act” means the Arbitration Act, 1954.

3. Commencement

- Parts III and IV of this Act shall come into operation on such day or days as the Minister for Justice may by order appoint.

4. Repeal

-Section 12 of the Principal Act is hereby repealed.

Part II - Effect of Arbitration Agreement on Court Proceedings

5. Staying Court Proceedings where Party Proves Arbitration Agreement

(1) -If any party to an arbitration agreement, or any person claiming through or under

him, commences any proceedings in any court against any other party to such agreement, or any person claiming through or under him, in respect of any matter agreed to be referred to arbitration, any party to the proceedings may at any time after an appearance has been entered, and before delivery any pleadings or taking any other steps in the proceedings, apply to the court to stay the proceedings, and the court, unless it is satisfied that the arbitration agreement is null and void, inoperative or incapable of being performed or that there is not in fact any dispute between the parties with regard to the matter agreed to be referred, shall make an order staying the proceedings.

(2) Nothing in this Section shall be construed as limiting or otherwise affecting the power conferred on the High Court pursuant to section 39 (3) of the Principal Act to refuse to stay any action brought in breach of an arbitration agreement. 19

Part III - Enforcement of New York Convention Awards 20

6. Interpretation (Part III) 21

(1) -In this Part of this Act- 22

“award” means an award (other than an award within the meaning of Part IV of this Act) made in pursuance of an arbitration agreement in the territory of a state, other than the State, which is a party to the New York Convention 23

“the New York Convention” means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards done at New York on the 10th day of June, 1958, which Convention is set out in the First Schedule to this Act. 24

(2) The Minister for Foreign Affairs may by order declare that any state specified in the order is a party to the New York Convention and, while such order is in force, the order shall be evidence that such state is a party to that Convention. 25

(3) The Minister for Foreign Affairs may by order revoke or amend an order under this section, including an order under this subsection. 26

7. Effect of Awards 27

(1) -An award shall, subject to the subsequent provisions of this Part, be enforceable either by action or in the same manner as the award of an arbitrator is enforceable by virtue of section 41 of the Principal Act. 28

(2) An award that would be enforceable under this Part shall be treated as binding for all purposes on the persons between whom it was made, and may accordingly be relied on by any of those persons by way of defence, set off or otherwise in any legal proceedings in the State, and any reference in this Part to the enforcement of an award shall be construed as including a reference to the reliance on such an award. 29

8. Evidence

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-Any person who seeks to enforce an award shall produce-

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(a) the duly authenticated original award or a duly certified copy of that award, and

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(b) the original arbitration agreement or a duly certified copy of that agreement, and

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(c) in any case where the award or the arbitration agreement is in a language other than one of the official languages of the State, a translation of the award or the agreement, as the case may be, certified by an official or sworn translator or by a diplomatic or consular agent.

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9. Refusal of Enforcement

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(1) -Enforcement of an award shall not be refused otherwise than pursuant to the subsequent provisions of this section.

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(2) Enforcement of an award may be refused if the person against whom it is invoked proves that-

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(a) a party to the arbitration agreement was (under the law applicable to him) under some incapacity, or

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(b) the arbitration agreement was not valid under the law of the country to which the parties subjected it or, failing any indication thereon, under the law of the country where the award was made, or

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(c) he was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case, or

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(d) subject to subsection (4) of this section, the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration or contains decisions on matters beyond the scope of the submission to arbitration, or

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(e) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, with the law of the country where the arbitration took place, or

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(f) the award has not yet become binding on the parties or has been set aside or suspended by a competent authority of the country in which, or under the law of which, the award was made.

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(3) Enforcement of an award may also be refused if the award is in respect of a matter which is not capable of settlement by arbitration under the law of the State, or if it would be contrary to public policy to enforce the award.

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(4) An award which contains decisions on matters not submitted to arbitration may be enforced to the extent that it contains decisions on matters submitted to arbitration which can be separated from any decisions on matters not so submitted.

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(5) In any case where an application for the setting aside or suspension of an award

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has been made to such a competent authority as is mentioned in subsection (2) (f) of this section, a court before which enforcement of the award is sought may, if it thinks fit, adjourn the proceedings and may, on the application of the party seeking to enforce the award, order the other party to give such security as the court may think fit.

10. Non-Application of Part V of Principal Act

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-In any case where an award is also a foreign award within the meaning of Part V of the Principal Act, that Part shall not apply to such award.

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11. Saving for other Rights

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-Nothing in this Part shall prejudice the right of any person to enforce or to rely on an award otherwise than under this Part or under part V of the Principal Act.

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Part IV - Enforcement of Washington Convention Awards

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12. Interpretation (Part IV)

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-In this Part-

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“award” means an award rendered pursuant to the Washington Convention and includes any decision made-

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(a) pursuant to Article 49 (2) of that Convention in relation to any question which the Tribunal referred to in that Article had omitted to decide in the award, or in relation to the rectification of any clerical, arithmetical or similar error in the award,

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(b) pursuant to Articles 50, 51 and 52 of that Convention, interpreting, revising or annulling the award, and

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(c) pursuant to Article 61 (2) of that Convention in relation to costs;

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“the Washington Convention” means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States opened for signature in Washington on the 18th day of March, 1965, which Convention is set out in the Second Schedule to this Act.

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13. Approval of Acceptance

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-Acceptance by the State of the Washington Convention is hereby approved.

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14. Government Contribution Under Washington Convention and Expenses

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(1) The Minister for Finance may discharge any obligations of the Government arising under Article 17 of the Washington Convention (which obliges for Contracting States

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to meet any deficit of the International Centre for Settlement of Investment Disputes established under that Convention).

(2) Any sums required for the purposes of subsection (1) of this Section and any administrative expenses incurred by the Minister for Finance as a result of acceptance by the State of the Washington Convention shall be paid out of moneys provided by the Oireachtas. 63

15. Application of Principal Act and other Enactments 64

(1) -The Minister for Justice may by order direct that any of the provisions contained in- 65

(a) Sections 19, 20, 21 and 22 of the Principal Act (which relate to attendance of witnesses, security for costs, discovery of documents, etc.), and 66

(b) the Foreign Evidence Act, 1856 (which relates to taking of evidence for the purpose of proceedings before a foreign tribunal), shall apply to such proceedings pursuant to the Washington Convention as are specified in the order, and the order may contain such modifications or exceptions as may appear to the Minister for Justice to be expedient for the purposes of the order. 67

(2) Subject to subsection (1) of this section, the Principal Act shall not apply to proceedings pursuant to the Washington Convention. 68

(3) The Minister for Justice may by order revoke or amend an order under this section, including an order under this subsection. 69

16. Enforcement of Pecuniary Obligations Imposed by Award 70

(1) -The pecuniary obligations imposed by an award shall, by leave of the High Court, be enforceable in the same manner as a judgment or order of the High Court to the same effect and, where leave is so given, judgment may be entered for the amount due or, as the case may be, the balance outstanding under the award. 71

(2) Any person who applies to the High Court pursuant to subsection (1) of this Section for leave to enforce the pecuniary obligations imposed by an award shall lodge with his application a copy of the award certified in accordance with Article 54 (2) of the Washington Convention. 72

17. Power of High Court to Stay Enforcement 73

-Where an application is made to the High Court pursuant to section 16 of this Act, the High Court shall, in any case where enforcement of an award has been stayed, whether provisionally or otherwise, in accordance with Article 50, Article 51 or Article 52 of the Washington Convention, stay enforcement of the pecuniary obligations imposed by the award and may, in any case where an application has been made in accordance with 74

any of those Articles which, if granted, might result in a stay on the enforcement of the award, stay enforcement of the pecuniary obligations imposed by the award.

Code Of Civil Procedure Book Four, Title VIII Royal Decree N. 1443 Of 28 October 1940 * as amended by Law No. 25 of 5 January 1994 75

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