ARBITRATION IN HONG KONG

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Hong Kong Arbitration Ordinance 2011 provides legislative support for arbitration in Hong Kong, based on the UNCITRAL Model Law. The law for domestic and international arbitration is now unified.

Administered arbitration may be conducted under the Rules of the Hong Kong International Arbitration Centre (HKIAC), ICC or the parties can agree ad hoc arbitration under UNCITRAL Rules of Arbitration or whatever rules they chose. Where the parties have agreed an ad hoc arbitration, the HKIAC may appoint arbitrators where the parties have failed to agree, have not designated an appointing authority or the designated authority has failed to appoint. As the statutory default appointing authority, the HKIAC may also be requested to decide on the number of arbitrators if the parties have not, or are unable to agree, on this.

If the HKIAC Administered Arbitration Rules apply, arbitration is commenced by notice to the HKIAC. A registration fee is payable. The parties may choose their arbitrator(s) and the HKIAC is required to confirm the appointment. The arbitrator does not have to be on the HKIAC panel. If the parties cannot agree, the HKIAC will appoint. A fee is payable to the HKIAC for administering the arbitration and this is a percentage of the sum in dispute. The parties can agree to apply a HKIAC scale to the fees of the arbitrators or each appointing party can agree with the arbitrator an appropriate fee. The parties can chose the law of the dispute and foreign lawyers or other persons can represent the parties.

The Tribunal may order interim measures. The award is final and not subject to review on the merits, except where the arbitration agreement between the parties expressly states that an appeal can be made on the grounds that an arbitrator has made an error of law or misconduct by the arbitrator. The New York Convention applies to Hong Kong.

The Hong Kong Maritime Group provides a list of arbitrators with experience of maritime disputes. Its members are happy to conduct HKIAC Administered Arbitration Rules arbitration, but also ad hoc arbitrations or rules based on LMAA.

ARBITRATION IN IRELAND

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INTRODUCTION

We review the development of arbitration in Ireland and focus on the arbitrators' powers in relation to the conduct of an arbitration before looking at hearings, awards, appeals, costs and enforcement.

STATUTORY DEVELOPMENT

Ireland has a long history and tradition of resolving disputes by arbitration and by its predecessor systems under its ancient laws. The Arbitration Act 1954, as amended by the Arbitration Act 1980, was very closely modelled upon the UK Arbitration Act 1950 (which has been replaced by the UK Arbitration Act 1996) and was the principal source of arbitration law in Ireland up to the passing of the Arbitration Act 2010 (the 2010 Act), which became operative on 8 June 2010 (www.irishstatutebook.ie).

The 2010 Act sets out a new regime for arbitrations in Ireland and repeals all prior legislation dealing with arbitration. Whilst Irish law operated a dual approach previously, with different regimes applying to domestic and international arbitrations, the new Act applies the UNCITRAL Model Law (Model Law) uniformly to all arbitrations. Indeed, the 2010 Act imposes a number of important changes to the way in which arbitrations, particularly domestic arbitrations, were previously conducted. A key objective of the new legislation was to standardise and modernise arbitration law in Ireland, as well as making Ireland a more attractive venue for international arbitrations.

The court's ability to intervene in the arbitral process has been dramatically restricted by the 2010 Act and time will tell what approach the courts will take in cases of apparent injustice where the 2010 Act provides that they shall not interfere.

A further departure contained in the 2010 Act relates to the number of provisions that apply unless otherwise agreed by the parties. It is essential therefore to be aware of the provisions where the parties can come to an agreement as well as the default position. Where there has been no agreement between the parties, default procedures will apply.

TRIBUNAL CONSTITUTION

An arbitration agreement must be in writing, which includes any electronic form, or through pleading in a statement of claim that is not denied by the respondent. An arbitration clause may be incorporated into a contract by reference. An arbitration commences either on the date the parties agree that it commences on or on the date when a written request to refer the matter to arbitration is received.

Unless the parties agree otherwise, the default position is for one arbitrator to hear the dispute. If there is no agreement on the choice of arbitrator, the court will appoint one, having regard to necessary qualifications and their independence and impartiality. A party may, in writing, challenge the appointment of an arbitrator within 15 days. The only basis for challenging an arbitrator is impartiality or lack of qualifications.

If an arbitrator cannot or will not perform their duties without undue delay, then their mandate will terminate if:

- the arbitrator withdraws, or
- the parties agree to terminate, or
- the court orders termination on an application by a party.

ARBITRATORS' POWERS

Unless the parties agree otherwise, an arbitrator can:

- require evidence to be given on oath and may administer that oath,
- award interest, either simple or compound,
- award security for costs, although costs will not be ordered against a party solely because they are outside the jurisdiction,
- order specific performance of a contract (other than for the sale of land), and
- order a losing party to pay the legal costs of the winner.

An application to court to stay proceedings must be granted if the application is brought before the party submits its first statement of the substance of the dispute, unless the court holds that the arbitration agreement is void or of no effect.

The arbitrator can conduct the proceedings as they see fit within the Model Law and they can determine the admissibility, relevance, materiality and weight of any evidence. However, the parties must be treated equally and given a full opportunity to present their cases. All statements, documents or other information supplied by one party to the arbitrator must be communicated to the other party.

Pleadings must be delivered within time limits set by the arbitrator. A party may amend its pleadings, unless the arbitrator considers that inappropriate on the grounds of delay. If without showing sufficient cause, a claimant fails to deliver their statement of claim on time, the arbitrator can terminate the proceedings. If the respondent fails to deliver a defence, the arbitrator can continue with the case without taking the failure to deliver a defence as an admission.

COSTS

The parties have the option of agreeing the costs arrangement. However, in the absence of agreement, the arbitrator is at liberty to decide the level of costs paid by each party.

HEARING AND AWARD

The arbitrator decides whether to hold an oral hearing or conduct the arbitration on documents only, but if a party requests an oral hearing, there must be one, unless there has been a prior agreement to the contrary. An arbitrator may appoint an expert and may require the parties to supply that expert with information or documents. The parties may examine the expert on their report.

If the dispute settles, the arbitrator will terminate the proceedings and may, if requested, record the terms as an agreed award, which has the same status as any other arbitral award. An arbitral award must be in writing and it must be signed, dated and state the place in which it is made. The award must set out reasons, unless the parties have agreed otherwise. The arbitrator will give a signed copy to each party.

APPEALS

A party has 30 days within which to ask the arbitrator to correct an error (computational, clerical or typographical) or to give an interpretation of a part of an award.

The only recourse against an award is an application to the High Court to set it aside on very specific grounds, including incapacity, invalidity of agreement, party not being given proper notice of the arbitration or their inability to present their case. An application to set aside must usually be brought within three months. There is no appeal from the High Court's decision on any matter.

ENFORCEMENT

An arbitral award is enforceable either by action or leave of the court in the same way as a judgment of the court. An arbitral award, irrespective of the country in which it was made, shall be recognised as binding and, upon application in writing to the competent court, shall be enforced, unless it can be brought within the terms of the grounds for refusing recognition or enforcement of an arbitral award.

COMMENTARY

Given that arbitration is a private forum, there is necessarily an absence of authoritative information on how many arbitrations happen in Ireland and how satisfactory a process it is for those involved in it. The expectation is that there will be an increase in arbitrations in the future now that the 2010 Act is in force. Ireland is well placed as a venue for international commercial arbitration due to its location, language, neutrality, legal framework, and the relevant skills and facilities it offers to parties to international disputes. The policy behind the 2010 Act is to severely restrict the grounds for court interference in the arbitral process in favour of party autonomy, and it is considered that this will make Ireland a significantly more attractive venue for international commercial arbitration.