



STATUTORY INSTRUMENTS.

S.I. No. 539 of 2019



PERMANENT COURT OF ARBITRATION (PRIVILEGES AND
IMMUNITIES) ORDER 2019

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WHEREAS it is enacted by section 42A (amended by section 6 of the Diplomatic Relations (Miscellaneous Provisions) Act 2017 (No. 33 of 2017)) of the Diplomatic Relations and Immunities Act 1967 (No. 8 of 1967) that the Government may by order make provision to enable -

- (a) international organisations, communities or bodies, their institutions or organs and their property, and
- (b) persons,

to have and enjoy in the State any inviolability, exemptions, facilities, immunities, privileges or rights equivalent or having like effect to those conferred upon, or afforded in relation to, sending states, missions or international organisations under the Vienna Convention, the Convention on the Privileges and Immunities of the United Nations, or the Convention on the Privileges and Immunities of the Specialised Agencies or any other international agreement scheduled to the Diplomatic Relations and Immunities Act 1967 provided for in relation to them by an international agreement or arrangement to which the State or the Government is or intends to become a party;

AND WHEREAS the Permanent Court of Arbitration is such an international organisation, community or body and the Host Country Agreement between the Government of Ireland and the Permanent Court of Arbitration signed at Dublin on 5 March 2019 is such an agreement;

NOW, the Government, in exercise of the powers conferred on them by the said section 42A, hereby order as follows:

1. This Order may be cited as the Permanent Court of Arbitration (Privileges and Immunities) Order 2019.

2. The Host Country Agreement (the text of which is, for convenience of reference, set out in the Schedule) shall apply for the purposes of section 42A (amended by section 6 of the Diplomatic Relations (Miscellaneous Provisions) Act 2017 (No. 33 of 2017)) of the Diplomatic Relations and Immunities Act 1967 (No. 8 of 1967).

SCHEDULE

**Host Country Agreement between the Government of Ireland and the
Permanent Court of Arbitration**

**THE GOVERNMENT OF IRELAND AND THE PERMANENT COURT
OF ARBITRATION;**

CONSIDERING THAT:

International arbitration is a preferred means for the peaceful resolution of international disputes;

The Permanent Court of Arbitration was established by the 1899 Convention for the Pacific Settlement of International Disputes (the “1899 Convention”) at the first Hague Peace Conference, which was convened “with the object of seeking the most objective means of ensuring to all peoples the benefits of a real and lasting peace”;

The 1899 Convention was revised by the 1907 Convention for the Pacific Settlement of International Disputes (the “1907 Convention”), adopted at the second Hague Peace Conference;

In the 1899 and 1907 Conventions, the Contracting Parties undertook to maintain the Permanent Court of Arbitration accessible at all times, as a global institution for the settlement of international disputes through third-party intervention;

To further the objectives of the 1899 and 1907 Conventions, it is material that Member States in all regions of the world enjoy access to international dispute resolution services provided by the Permanent Court of Arbitration;

Ireland is a Contracting Party to the 1907 Convention, and the Secretary-General of the Permanent Court of Arbitration has invited Ireland to become a host country for arbitration, mediation, conciliation, and fact-finding commissions of inquiry administered by the Permanent Court of Arbitration; and

The Government of Ireland has accepted the invitation of the Secretary-General of the Permanent Court of Arbitration;

HAVE AGREED AS FOLLOWS:

Article 1 – Definitions

For the purposes of the present Agreement:

“Government” shall mean the Government of Ireland;

“Department of Foreign Affairs and Trade” shall mean the Department of Foreign Affairs and Trade of Ireland;

“Permanent Court of Arbitration” or “PCA” shall mean the Permanent Court of Arbitration, based in The Hague;

“International Bureau” shall mean the International Bureau of the Permanent Court of Arbitration;

“Secretary-General” shall mean the head of the International Bureau;

“Officials of the PCA” shall mean the Secretary-General and all members of the staff of the International Bureau;

“PCA Proceedings” shall mean any dispute resolution proceedings administered by or under the auspices of the PCA, whether or not pursuant to the 1899 or 1907 Convention or any of the PCA’s optional rules of procedure;

“PCA Adjudicator” shall mean any arbitrator, mediator, conciliator, or member of a commission of inquiry taking part in a hearing, meeting, or other activity in relation to PCA Proceedings;

“Participant in Proceedings” shall mean any counsel, party, agent, or other party representative, witness, expert, as well as any interpreters, translators, or court reporters taking part in a hearing, meeting, or other activity in relation to PCA Proceedings;

“PCA Meeting” shall mean any meeting, including hearings in the context of PCA Proceedings and conferences, convened by the PCA;

“Personnel of the Government” shall mean any person assigned by the Government to assist in the conduct of any PCA Proceedings or PCA Meeting in Ireland;

“Members of their Family” shall mean spouse or the person living together as spouse, and relatives dependent on them;

“1961 Vienna Convention” shall mean the Vienna Convention on Diplomatic Relations, adopted at Vienna on 18 April 1961;

“UN Convention” shall mean the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations on 13 February 1946; and

“Appropriate Authority”, within the meaning of Article 11 of this Agreement, shall mean such State, municipal, or other authorities of Ireland as may be appropriate in the context of the relevant provisions of this Agreement and in accordance with the laws and customs applicable in Ireland.

Article 2 – Legal Capacity

The Permanent Court of Arbitration shall have in Irish law the legal capacity of a body corporate.

Article 3 – Cooperation

- (1) Ireland shall be a host country for the PCA. As a host country, Ireland shall strive to facilitate the work of the PCA in the peaceful resolution of international disputes through arbitration, mediation, conciliation, and fact-finding commissions of inquiry and in providing other appropriate

assistance to governments, inter-governmental organizations, and other entities.

- (2) The Government shall make available, directly or through partner institutions, on an as-needed basis and at no cost to the PCA, such office and meeting space (including all public utilities therefor) and such secretarial services as may reasonably be deemed necessary by the Secretary-General or other Officials of the PCA for activities undertaken in connection with PCA Proceedings, as well as for PCA Meetings, in Ireland.
- (3) In making office or meeting space available to the PCA under the terms of this Agreement, Ireland shall make available, directly or through partner institutions, and at no cost to the PCA, the means for such telephonic, fax, internet, or other communications as may reasonably be deemed necessary by the Secretary-General or other Officials of the PCA.

Article 4 – Point of Contact

- (1) On the part of Ireland, the Department of Foreign Affairs and Trade shall coordinate on behalf of the Government all issues that may arise with respect to implementation of this Agreement.

- (2) On the part of the PCA, the Deputy Secretary-General shall serve as the principal point of contact for the Government.

Article 5 – Privileges and Immunities of the PCA

- (1) The PCA, its property and assets wherever located and by whomsoever held, shall enjoy immunity from every form of legal process except insofar as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall extend to any measure of execution, for which a separate express waiver shall be required.
- (2) The premises of the PCA shall be inviolable. The property and assets of the PCA, wherever located and by whomsoever held, shall be immune from search, requisition, confiscation expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.
- (3) The archives of the PCA, and in general all documents belonging to it or held by it, shall be inviolable wherever located.
- (4) Without being restricted by financial controls, regulations or moratoria of any kind,

- (a) the PCA may hold funds, currency of any kind, or other assets and operate accounts in any currency; and
 - (b) the PCA shall be free to transfer its funds, currency, and assets to, from, or within Ireland and to convert any currency held by it into any other currency.
- (5) The PCA, its assets, income and other property shall be :
- (a) exempt from all direct taxes; it is understood, however, that the PCA will not claim exemption from taxes which are, in fact, no more than charges for public utility services;
 - (b) exempt from customs duties and prohibitions and restrictions on imports and exports in respect of articles imported or exported by the PCA for its official use. It is understood, however, that articles imported under such exemption will not be sold in the country into which they were imported except under conditions agreed with the Government of that country; and
 - (c) exempt from customs duties and prohibitions and restrictions on imports and exports in respect of its publications.

- (6) While the PCA will not, as a general rule, claim exemption from excise duties and from taxes on the sale of movable and immovable property which form part of the price to be paid, nevertheless when the PCA is making important purchases for official use of property on which such duties and taxes have been charged or are chargeable, the Government will, whenever possible, make appropriate administrative arrangements for the remission or return of the amount of duty or tax.
- (7) The Government shall permit and protect free communication on the part of the PCA for all official purposes.
- (8) The PCA shall enjoy in the territory of Ireland for its official communications treatment not less favourable than that accorded by the Government to a diplomatic mission under the 1961 Vienna Convention in the matter of priorities, rates and taxes on mails, cables, telegrams, radiograms, telephotos, telephones and other communications; and press rates for information to the press and radio.
- (9) The official correspondence of the PCA shall be inviolable. The PCA shall have the right to use codes and to dispatch and receive its papers or correspondence by courier or in bags, which shall be subject to the same privileges and immunities as diplomatic couriers and bags.

Article 6 – Privileges and Immunities of Officials of the PCA and PCA

Adjudicators

- (1) Officials of the PCA and PCA Adjudicators shall enjoy, *mutatis mutandis*, the same immunities and privileges as the Government accords to officials of the United Nations pursuant to the UN Convention. In according privileges and immunities pursuant to this Article, Ireland shall not discriminate based on the nationality of Officials of the PCA or PCA Adjudicators.

- (2) Notwithstanding the preceding paragraph, the privileges and immunities accorded by Ireland to all Officials of the PCA and PCA Adjudicators, regardless of nationality, shall include, at a minimum:
 - (a) immunity from personal arrest or detention and from seizure of their personal baggage;

 - (b) in respect of words spoken or written and acts done by them in the course of the discharge of their duties, immunity from legal process of every kind. This immunity from legal process shall continue to be accorded, even after the person has ceased to exercise his or her functions in connection with the PCA;

- (c) inviolability for all papers and documents;
- (d) for the purpose of their communications with the PCA and in relation to PCA Proceedings, the right to use codes and to dispatch and receive papers or correspondence by courier or in sealed bags, which shall be subject to the same privileges and immunities as diplomatic couriers and bags;
- (e) the same facilities in respect of currency or exchange restrictions as are accorded to officials of comparable rank of diplomatic missions under the 1961 Vienna Convention;
- (f) exemption from taxation on any fees, salaries, and emoluments paid to them by the PCA;
- (g) immunity, together with the Members of their Families, from immigration restrictions and alien registration;
- (h) together with the Members of their Families, the same repatriation facilities in time of international crises as diplomatic envoys; and
- (i) the right to import free of duty their furniture and effects at the time of first taking up their post in Ireland.

- (3) In addition, the Secretary-General and the Deputy Secretary-General of the PCA shall be entitled to the same privileges and immunities as those accorded to the Secretary-General and Assistant Secretaries-General of the United Nations under section 19 of Article V of the UN Convention.

Article 7 – Immunity of Personnel of the Government

Personnel of the Government shall enjoy immunity from legal process in respect of words spoken or written and any act performed by them in their official capacity in connection with the work of the PCA, which immunity shall continue after the person has ceased to exercise his or her functions in connection with the PCA.

Article 8 – Privileges and Immunities of Participants in Proceedings

- (1) Participants in Proceedings shall be accorded the following privileges, immunities and facilities that are necessary for the independent exercise of their functions, subject to the production of the document referred to in paragraph 3 of this Article:

- (a) immunity from personal arrest or detention or any other restriction of their liberty;
- (b) immunity from seizure of their personal baggage;
- (c) immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in the course of their participation in PCA Proceedings, which immunity shall continue in perpetuity;
- (d) inviolability of all papers and documents in whatever form and materials relating to their participation in PCA Proceedings, which immunity shall continue in perpetuity;
- (e) for purposes of their communications in relation to PCA Proceedings, the right to receive and send papers and documents in whatever form by courier or in sealed bags;
- (f) exemption from immigration restrictions or alien registration when they travel for purposes of their participation in PCA Proceedings;
- (g) the same repatriation facilities in time of international crisis as are accorded to diplomatic agents under the 1961 Vienna Convention.

- (2) Participants in Proceedings who are nationals or permanent residents of Ireland shall enjoy the following privileges, immunities and facilities that are necessary for their participation in PCA Proceedings:
 - (a) immunity from personal arrest or detention or any other restriction of their liberty;
 - (b) immunity from legal process of every kind in respect of words spoken or written and all acts performed by them in the course of their participation in PCA Proceedings, which immunity shall continue in perpetuity;
 - (c) inviolability of all papers, documents in whatever form and materials relating to their participation in PCA Proceedings, which immunity shall continue in perpetuity;
 - (d) for purposes of their communications in relation to PCA Proceedings, the right to receive and send papers and documents in whatever form by courier or in sealed bags.
- (3) Participants in Proceedings shall be provided by the PCA with a document certifying that their participation is required by the PCA and specifying a

time period during which such participation is necessary. This document shall be withdrawn prior to its expiry if the Participant's appearance in PCA Proceedings or his or her presence within Ireland is no longer required.

- (4) Except where specified herein, the privileges, immunities and facilities referred to in paragraphs 1 and 2 of this Article shall cease to apply after fifteen consecutive days following the date on which the presence of the Participant in Proceedings concerned is no longer required by the PCA, provided such Participant had an opportunity to leave Ireland during that period.
- (5) Participants in Proceedings shall not be subjected by Ireland to any measure which may affect their participation in PCA Proceedings.

Article 9 – Acquisition and Waiver of Privileges and Immunities

- (1) Officials of the PCA shall be entitled to privileges and immunities from the moment of their employment with the PCA, whether or not they are present in Ireland. PCA Adjudicators shall be entitled to privileges and immunities from the moment of their appointment as such, whether or not they are present in Ireland.

- (2) When an Official of the PCA or PCA Adjudicator will be present in Ireland, or may have need to invoke privileges and immunities under this Agreement, a certification of the status of such person shall be provided to the Government under the signature of the Secretary-General.
- (3) When Personnel of the Government are assigned to assist in the conduct of PCA Proceedings in Ireland, they shall enjoy immunities under this Agreement from the moment of their assignment.
- (4) Upon receipt of notification from parties to PCA Proceedings as to the appointment of a Participant in Proceedings, a certification of the status of such person shall be provided to the Government under the signature of an Official of the PCA. The authorities of Ireland shall accord the privileges and immunities provided for in Article 8 upon production of this certification.
- (5) Whenever a determination is required as to whether a person enjoys status under this agreement such as would entitle him or her to privileges and immunities, or of whether words or acts are connected to the discharge of that person's official duties, such determination shall be made in the first instance by the competent authority, in consultation with the Government.
- (6) The privileges and immunities provided for in Articles 6 to 8 of this Agreement are granted in the interests of the good administration of justice

and not for the personal benefit of the individuals themselves. The competent authority has the right and the duty to waive the immunity in any case where, in the opinion of such authority, the immunity would impede the course of justice and can be waived without prejudice to the interests of the PCA or to any PCA Proceedings in connection with which those privileges and immunities are granted.

- (7) For the purposes of this Article, the competent authority shall be:
- (a) in the case of PCA Adjudicators and Officials of the PCA (other than the Secretary-General), the Secretary General;
 - (b) in the case of the Secretary-General, the Administrative Council of the PCA;
 - (c) in the case of Personnel of the Government, the Secretary-General;
 - (d) in the case of Participants in Proceedings representing or designated by a State which is a party to the relevant PCA Proceedings, that State;
 - (e) in the case of other individuals not falling within the terms of paragraphs (a) to (d), the Secretary-General.

Article 10 – Abuse of Privileges and Immunities

- (1) Without prejudice to the privileges and immunities provided for in Articles 6 to 8 of this Agreement, the individuals referred to in those Articles shall observe the laws and regulations of Ireland, and they shall not interfere in the internal affairs of Ireland.

- (2) The Secretary-General shall take every precaution to ensure that no abuse of the privileges and immunities provided for in Articles 6 to 8 of this Agreement shall occur. If the Government considers that there has been abuse of a privilege or immunity provided for in Articles 6 to 8 of this Agreement, the Secretary-General shall, when so requested, enter into consultations with the relevant authorities of Ireland to determine whether such abuse has occurred. If the consultations fail to achieve a result satisfactory to the Government and to the Secretary-General, the matter shall be resolved according to the procedures established in Article 15 of this Agreement.

- (3) In case of abuse of the privileges and immunities committed by the individuals referred to in Articles 6 to 8 in the course of activities carried out in Ireland outside of their official duties, the Government may require these individuals to leave Ireland, provided that:

- (a) in the case of persons entitled to privileges and immunities as well as exemptions and facilities under Article 6, they shall not be required to leave Ireland otherwise than according to the diplomatic procedure applicable to diplomatic envoys accredited to Ireland; and
- (b) in the case of all other individuals to whom Article 6 is not applicable, no order to leave Ireland shall be issued unless the Minister for Foreign Affairs and Trade of Ireland has approved it and the Secretary-General has been notified beforehand.

Article 11 – Security

- (1) The Government is under a special duty to take all appropriate steps to protect PCA Proceedings and Meetings conducted in Ireland. The Appropriate Authorities shall ensure the security and tranquillity of PCA Proceedings and Meetings and protect against any intrusion, disturbance of the peace, or impairment of the dignity of PCA Proceedings and Meetings. As may be required for the purpose, the Appropriate Authorities shall provide adequate physical protection on the boundaries and in the vicinity of any office or meeting space provided to the PCA. In all cases, security arrangements shall be made in consultation with the Secretary-General or an Official of the PCA designated as his or her representative.

- (2) The receiving State shall treat PCA Adjudicators and their partners, Officials of the PCA and their partners, Participants in Proceedings, and other persons attending PCA Meetings with due respect and shall take all appropriate steps to prevent any attack on their person, freedom, or dignity. As may be required for the purpose, to be determined in consultation with the Secretary-General or an Official of the PCA designated as his representative, the Appropriate Authorities shall provide adequate physical protection for such persons during their travel within and sojourn in the territory of Ireland.

Article 12 – Entry into Host Country and Facilitation of Travel

- (1) The Government shall take all reasonable measures to facilitate and allow the entry into and sojourn in the territory of Ireland of those non-residents and non-nationals of Ireland who enter as PCA Adjudicators or Members of their Families, Officials of the PCA or Members of their Families, Participants in Proceedings, and other persons attending PCA Meetings.
- (2) The Government shall take all reasonable measures to ensure that any visas which may be required for any of the persons referred to in paragraph 1 are issued as promptly as possible, and without charge, in order to allow the timely conduct of official business pertaining to the PCA.

- (3) No activity performed by any person referred to in paragraph 1 performed in his capacity with respect to the PCA shall constitute a reason for preventing his or her entry into or departure from the territory of Ireland or for requiring him or her to leave such territory.
- (4) Subject to its laws and regulations concerning zones into which entry is prohibited or regulated for reasons of national security, the receiving State shall ensure freedom of movement and travel in its territory to the persons referred to in paragraph 1.

Article 13 – Regional Cooperation

Ireland recognizes the importance of regional cooperation for the effective settlement of international and regional disputes. Ireland shall therefore, as appropriate, communicate the existence of the facilities designated pursuant to this Agreement to the competent officials in other countries of the same region and encourage their use for PCA Proceedings.

Article 14 – International Responsibility

Ireland shall not incur any international responsibility for acts or omissions of the PCA or of Officials of the PCA acting or abstaining from acting within the

scope of their functions, other than the international responsibility which Ireland would incur as a Contracting Party to the 1907 Convention.

Article 15 – Dispute Settlement

- (1) Any dispute among the Parties to the present Agreement that is not settled by negotiation shall be settled by final and binding arbitration in accordance with the Permanent Court of Arbitration Optional Rules for Arbitration Involving International Organizations and States (the “Rules”), as in force on the date of signature of this Agreement. The number of arbitrators shall be one. The appointing authority shall be the President of the International Court of Justice.

- (2) In any such arbitration proceedings, the registry, archive, and secretariat services of the PCA, referred to in Article 1, paragraph 3, and Article 25, paragraph 3, of the Rules, will not be available, and the PCA shall not be empowered to request, hold, or disburse deposits of costs as provided for in Article 41, paragraph 1, of the Rules.

Article 16 – Final Provisions

- (1) This Agreement shall enter into force on the date on which the Government notifies the Permanent Court of Arbitration that its internal

procedures giving effect to the Agreement have been completed, and it shall remain in force until it is terminated pursuant to paragraph 3 of this Article.

- (2) At the request of the Government or the Permanent Court of Arbitration, consultations shall be entered into with respect to the modification of the present Agreement. Any such modifications shall be made by consent of both Parties to the Agreement.

- (3) This Agreement may be terminated:
 - (a) by mutual consent of the Permanent Court of Arbitration and the Government; or

 - (b) by either Party by giving notice to the other Party at least one year in advance of the effective date of termination.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto,
have signed and sealed this Agreement in duplicate in the English language.

Done at Dublin, on this 5th day of March, 2019.

Seamus Woulfe A.G.

**FOR THE GOVERNMENT OF
IRELAND**

Hugo Siblesz

**FOR THE PERMANENT COURT
OF ARBITRATION**



GIVEN under the Official Seal of the Government,
30 October, 2019.

LEO VARADKAR,
Taoiseach.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

This order provides that privileges and immunities are afforded to the Permanent Court of Arbitration in accordance with the Host Country Agreement between the Government of Ireland and the Permanent Court of Arbitration, done at Dublin on 5 March 2019, pursuant to the Diplomatic Relations and Immunities Act 1967 (as amended).

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
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PUBLISHED BY THE STATIONERY OFFICE
To be purchased from
GOVERNMENT PUBLICATIONS,
52 ST. STEPHEN'S GREEN, DUBLIN 2.
(Tel: 01 - 6476834 or 1890 213434)

€ 6.50

