



STATUTORY INSTRUMENTS.

S.I. No. 361 of 2010



RULES OF THE SUPERIOR COURTS (ARBITRATION) 2010

(Prn. A10/1077)

RULES OF THE SUPERIOR COURTS (ARBITRATION) 2010

We, the Superior Courts Rules Committee, constituted pursuant to the provisions of the Courts of Justice Act 1936, section 67, by virtue of the powers conferred upon us by The Courts of Justice Act 1924, section 36, and the Courts of Justice Act 1936, section 68 (as applied by the Courts (Supplemental Provisions) Act 1961, section 48), and the Courts (Supplemental Provisions) Act 1961, section 14, and of all other powers enabling us in this behalf, do hereby make the following Rules of Court.

Dated this 17th day of June, 2010.

John L. Murray

Nicholas Kearns

Donal O'Donnell

Elizabeth Dunne

Paul McGarry

Mary Cummins

Patrick O'Connor

Geraldine Manners

Noel Rubotham

I concur in the making of the following Rules of Court.

Dated this 20th day of July, 2010.

DERMOT AHERN,
Minister for Justice and Law Reform.

*Notice of the making of this Statutory Instrument was published in
"Iris Oifigiúil" of 23rd July, 2010.*

S.I. No. 361 of 2010

RULES OF THE SUPERIOR COURTS (ARBITRATION) 2010

1. (1) These Rules, which may be cited as the Rules of the Superior Courts (Arbitration) 2010, shall come into operation on the 17th day of August 2010.

(2) These Rules shall be construed together with the Rules of the Superior Courts.

(3) The Rules of the Superior Courts as amended by these Rules may be cited as the Rules of the Superior Courts 1986 to 2010.

2. Nothing in these Rules shall:

(a) affect the validity of any step taken or any other thing done in any proceedings concerning any arbitration initiated before the repeal by section 4 of the Arbitration Act 2010 of the Arbitration Acts 1954 to 1998 (in this Article, the “repeal”), and any such proceedings shall, save where the court in those proceedings otherwise orders, be continued and completed as if these Rules had not been made;

(b) require that any proceedings, whether or not pending before a court or before an arbitral tribunal at the time of the repeal, in respect of any right, privilege, obligation or liability acquired, accrued or incurred under the Arbitration Acts 1954 to 1998 be taken in accordance with these Rules and any proceedings taken under those Acts in respect of any such right, privilege, obligation or liability may be instituted, continued or enforced as if these Rules had not been made.

3. The Rules of the Superior Courts are amended:

(i) by the substitution in rule 1 of Order 11, for paragraphs (k), (l), (q) and (s) respectively, of the following paragraphs respectively:

“(k) the proceeding relates to an arbitration held or to be held within the jurisdiction or to the enforcement of an award or an interim measure made by an arbitral tribunal in an arbitration so held;”;

“(l) the proceeding relates to the enforcement of an award made by an arbitral tribunal, having its seat outside the jurisdiction or of the pecuniary obligations imposed by such an award;”;

“(q) the proceeding is brought to enforce any foreign judgment;” and

“(s) the proceeding is brought to enforce any interim measure issued by an arbitral tribunal, having its seat outside the jurisdiction or for other relief within the

jurisdiction in connection with an arbitration held or to be held outside the jurisdiction.”;

- (ii) by the substitution for Orders 56 and Order 56A of the following Order:

“Order 56

Arbitration

I. Preliminary and General

1. In this Order:

“the Act” means the Arbitration Act 2010;

“arbitration” and “arbitration agreement” each has the same meaning as in the Act;

“Model Law” means the UNCITRAL Model Law on International Commercial Arbitration (as adopted by the United Nations Commission on International Trade Law on 21 June 1985, with amendments as adopted by that Commission at its thirty-ninth session on 20 July 2006), the text of which is set out in Schedule 1 to the Act;

“party” includes the personal representative of a deceased party;

unless the context otherwise admits or requires, words and phrases in Part II of this Order have the same meanings as in the Act.

II. Applications to the Court concerning arbitrations

2. (1) Where an arbitration has been commenced, any application pursuant to this Order by a party to such arbitration concerning or affecting such arbitration shall be entitled in the matter of the arbitration to which it relates and in the matter of the Act. Any originating notice of motion in respect of any such application shall name as respondent the other party or parties to the reference. In the case of any application described in paragraph (d), (e) or (i) of sub-rule (1) of rule 3, and in any other case where the Court so directs, notice of the application shall be given to the arbitral tribunal, which shall not be a party to the proceedings.

(2) Where no arbitration has been commenced, any application pursuant to this Order by a person concerning or affecting an intended arbitration shall be entitled in the matter of an

intended arbitration and in the matter of the Act. Any originating motion in respect of any such application shall name as respondent the intended other party or parties to the reference.

3. (1) Subject to sub-rules (2) and (3), any application or request to the Court for any of the following orders or reliefs by any party to a reference under an arbitration agreement in relation to an arbitration, or by any person in relation to an intended arbitration, may be made by originating notice of motion:

- (a) for any interim measure of protection in relation to an arbitration or an intended arbitration under Article 9 of the Model Law; or
- (b) to appoint an arbitrator pursuant to Article 11(3)(a) or 11(3)(b) of the Model Law; or
- (c) to take the necessary measure pursuant to Article 11(4) of the Model Law in the event of a failure to act, an inability to reach agreement or a failure to perform a function under an appointment procedure agreed upon by the parties; or
- (d) to decide on a challenge to an arbitrator pursuant to Article 13(3) of the Model Law (provided that the application is made within the period prescribed in that Article); or
- (e) to decide on the termination of the mandate of an arbitrator pursuant to Article 14(1) of the Model Law; or
- (f) to decide on a plea that the arbitral tribunal does not have jurisdiction pursuant to Article 16(3) of the Model Law (provided that the application is made within the period prescribed in that Article); or
- (g) to recognise or to recognise and enforce an interim measure issued by an arbitral tribunal in accordance with Article 17H(1), but subject to the provisions of Article 17I, of the Model Law; or
- (h) to issue any interim measure in relation to arbitration proceedings in accordance with Article 17J of the Model Law; or
- (i) to make an order in accordance with Article 34 of the Model Law (provided, in a case to which section 12 of the Act applies, the application is made within the period prescribed in that section); or

- (j) for the leave of the Court to enforce or to enter judgment in respect of an award pursuant to section 23(1) of the Act; or
- (k) to enforce an award in accordance with Article 35(1), but subject to the provisions of Articles 35 and 36, of the Model Law; or
- (l) to enforce the pecuniary obligations imposed by an award, within the meaning of section 25 of the Act, under that section; or
- (m) for any other relief under or in pursuance of the Act, for which provision is not otherwise made in this Order.

(2) Where an order has been made by the Court in proceedings begun by originating notice of motion in accordance with sub-rule (1), any application for any further order or relief mentioned in that sub-rule by any party to the same reference or arbitration may be made by notice of motion in the proceedings commenced by the originating motion referred to in sub-rule (1). In any such case, the provisions of rules 5 and 6 relating to an originating notice of motion shall apply to that notice of motion.

(3) Notwithstanding sub-rule (1), the Court may permit an application mentioned in paragraph (a) or (h) of sub-rule (1) to be made by originating motion *ex parte* and may hear any such application *ex parte*.

(4) An order on an application *ex parte* permitted to be made in a case referred to in sub-rule (3) may be made subject to such terms as to costs or otherwise, and subject to such undertaking, if any, as the Court may think just; and any party affected by such order may, within twenty eight days of receipt of notice of the making of such order, move by motion on notice to vary it or set it aside.

(5) An originating notice of motion or originating motion in any application requesting the Court to grant any interim measure of protection in accordance with Article 9 of the Model Law or to issue any interim measure in accordance with Article 17J of the Model Law shall specify the particular orders which the Court is requested to make.

4. (1) A request for an order under Article 8(1) of the Model Law or Article II.3 of the New York Convention shall be made by motion in the proceedings concerned and Order 52 shall apply to every such motion.

(2) Where relief by way of interpleader is granted, an application to direct the issue between the claimants to be determined by arbitration in pursuance of section 17 of the Act, may be made by any party at the hearing of the application or proceedings in which such relief is granted or at the conclusion of such hearing.

(3) An application under section 27(2) of the Act shall be by motion in the Bankruptcy proceedings brought in accordance with Part VIII of Order 76.

(4) A request to the Court under Article 27 of the Model Law for assistance in the taking of evidence may be made to the Court *ex parte* grounded on an affidavit and where the Court makes such an order, the provisions of Parts II and III of Order 39 shall apply *mutatis mutandis*.

5. Every originating notice of motion issued pursuant to this Order shall be returnable before, and shall be heard and determined by, the President of the High Court or a Judge of the High Court for the time being nominated by the President to perform the functions of the High Court referred to in section 9(2) of the Act.

6. (1) Subject, in the case of any proceedings which have been entered in the Commercial List, to the provisions of Order 63A and of any order made or direction given by the Court under that Order, the procedure specified in this rule shall apply to proceedings by originating notice of motion in accordance with this Order.

(2) Every originating notice of motion shall be grounded upon an affidavit sworn by or on behalf of the moving party. Each such grounding affidavit shall set out the basis upon which the moving party alleges that the Court has jurisdiction to grant the relief sought in the notice of motion.

(3) Copies of the originating notice of motion and of the grounding affidavit and of any exhibits thereto shall be served upon each respondent and, where required or directed under rule 2(1), shall be delivered to the arbitral tribunal, not later than fourteen days before the date fixed for the hearing of the said motion.

(4) Any respondent may deliver a replying affidavit. Any such replying affidavit shall be filed in the Central Office and a copy served upon the applicant and upon every other respondent within seven days of the service by the applicant of the originating notice of motion and the applicant's grounding affidavit upon the said respondent.

(5) Any replying affidavit shall set out concisely the grounds relied upon by the respondent to resist the applicant's claim for the reliefs set out in the originating notice of motion as against such respondent.

(6) The applicant shall be at liberty to file a further affidavit replying to any matter raised by a respondent in a replying affidavit, which further affidavit shall be filed in the Central Office and a copy delivered to each respondent within seven days after the service upon the applicant of the respondent's replying affidavit.

(7) An affidavit giving the names and addresses of, and the places and dates of service on, all persons who have been served with the originating notice of motion, grounding affidavit and exhibits (if any) shall be filed before the motion is heard. If any person who ought under this Order to have been served has not been so served, the affidavit shall state that fact and the reason for it.

7. Save where the Court otherwise directs, every application under this Part shall be heard and determined on affidavit.

8. The Court, on the application of any of the parties or of its own motion, may at any time make an order under section 32 of the Act and where such an order is made, the Court may make such consequential, further or other orders or give such directions as the Court considers will facilitate the effective use of that process.

9. An application by a party for an order under rule 8 shall be made by motion to the Court on notice to the opposing party or parties, and shall, unless the Court otherwise orders, be grounded upon an affidavit sworn by or on behalf of the moving party.

10. Save where the Court for special reason to be recited in the Court's order allows, an application for an order under rule 8 shall not be made later than 28 days before the date on which the proceedings are first listed for hearing.”;

(iii) by the deletion from Order 62 of rule 2;

(iv) by the substitution for paragraph (c) of the definition of “commercial proceedings” in rule 1 of Order 63A of the following paragraph:

“(c) any application or proceedings under the Arbitration Act 2010 (other than an application or request for an order under Article 8(1) of the Model Law or Article II.3 of the New York Convention (each within the

meaning of section 2(1) of that Act)) where the value of the claim or any counterclaim is not less than €1,000,000;”;

and

(v) by the substitution for paragraph (b) of rule 14 of Order 99 of the following:

“(b) any costs which are the subject of an order made by an arbitral tribunal in accordance with section 21(4) of the Arbitration Act 2010 for the taxation of the costs of the arbitration by a Taxing Master;”.

EXPLANATORY NOTE

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

These rules facilitate the operation of the Arbitration Act 2010, inter alia, by amending Order 11 and the substitution of a new Order 56 for Orders 56 and 56A of the Rules of the Superior Courts.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,
TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
nó tríd an bpost ó
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