

Irish Arbitration Act In Review: 15 years on

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Ireland has a large branch of the Chartered Institute of Arbitrators (CI Arb), with 650 members, and has been active for more than 40 years. For a country of its size on a per capita basis (adjusting for differences in population), the CI Arb's Irish branch is more active than those in some comparable countries where the Institute has a presence. Likewise, the *Bar of Ireland's* ADR Committee, the *Law Society of Ireland's* ADR Committee and the dispute resolution sections of other professional bodies (such as the *Royal Institute of Architects of Ireland* ('RIAI') and *Engineers Ireland*) are strong advocates for promoting alternative dispute resolution in this jurisdiction. Their interests are represented internationally by *Arbitration Ireland*, which for some years has successfully run events in cities such as Paris, London and New York. *Arbitration Ireland* also organises the well-established and popular Dublin International Arbitration Day, which is well attended by many members of the arbitration community from outside of Ireland. Individual Irish arbitrators are well known internationally. Notably, Irish arbitrators Joe Behan, James Bridgeman S.C., Dr. Nael Bunni, are well known internationally. Notably, Irish arbitrators Joe Behan, James Bridgeman S.C., Dr. Nael Bunni, Jeffrey Elkinson and John Tackaberry K.C. have served as International Presidents of CI Arb (although Elkinson and Tackaberry did so as members of CI Arb branches outside of Ireland.)

When surveying this arbitration landscape, it is natural to review and assess the effectiveness of Ireland's arbitral legislation. However, undertaking such a review can be difficult for reasons explored below. This challenge remains true when examining the Irish Arbitration Act 2010 (the 2010 Act), which is now 15 years old.

Nevertheless, we will offer some comments on the 2010 Act, including suggestions for changes that might be made. One measure of the success of arbitral legislation is whether it has led to an increase in the use of arbitration. There is little empirical evidence available to directly answer this question. We have – while conscious of the limitations of such gap by asking a number of arbitrators practising an exercise – attempted to bridge this statistical gap by asking a number of arbitrators practising in Ireland for their views on this point. (Each arbitrator's contribution is quoted directly below, limited to the remarks they provided.)

Arbitrators can be appointed on an ad hoc basis or by an institution. Whether an ad hoc arbitration occurs will, in the first instance, only be known by the parties. In some instances, there may be an application to the High Court in support of the arbitration and/or an application under Article 34 of Schedule 1 of the 2010 Act seeking to set aside of the

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award made. We suspect, however, (albeit without statistical proof), that most arbitrations – whether institutional or ad hoc – never involve any application to the High Court. As far as we know, there is no central record of the number of arbitrations where an institution/ default appointing body has appointed an arbitrator. We therefore rely on the views of those active in the field.

Eamonn Conlon S.C., speaking in June 2025 at an event run by the CI Arb, the Society of Construction Law and the Adjudication Society on the 15th anniversary of the legislation, commented on the 2010 Act's impact:

'The Act has not been successful in encouraging use of arbitration by Irish parties, or in encouraging the use of Ireland by non-Irish parties to arbitration agreements. Fundamentally, Ireland doesn't have a strong domestic arbitration culture. The 2010 Act, if anything, probably made domestic arbitration less popular, which deteriorated the arbitration culture.'

Conlon's perspective suggests that the 2010 Act has not achieved one of its implicit goals of boosting arbitration activity in Ireland.

Finality of Arbitral Awards and Challenge Rates

One area that stands out when reviewing the 2010 Act is the paucity of successful challenges to arbitral awards. While no one wants to undermine the process by allowing an unsuccessful party in an arbitral reference to routinely frustrate the winner by dragging them into court, it remains a fact that in other jurisdictions some awards are set aside. It seems that the degree to which Article 34 set-aside applications 'get over the line' in Ireland is very low indeed. Dowling-Hussey BL commented in 2023:

*'From 2010 to 2023 there have been around 45 applications to the High Court in Dublin under the 2010 Arbitration Act. No contested application to set aside an Award has, it seems yet been granted. Most recently in 2022 an Award was set aside before the then assigned arbitration judge Mr. Justice Sanfey, **New twist in rent dispute over fast food restaurant in Limerick – Limerick Live (limerickleader.ie)**, but one of the parties though served did not appear. As a result, there is no judgment in relation to this uncontested application which in the circumstances was understood to be relatively brief. Some years earlier an Award was set aside on consent before Mr. Justice McGovern. It may be that other Awards have been set aside on consent but anecdotally it would seem that we are in hen's teeth territory.'*³

Whilst there have been further applications since 2023 – including one or two further awards that have been set aside – it would seem that the percentage of awards set aside is no more than 2–3%. By comparison, to take one other European Union country, Poland's set-aside rate seems to be around 7.5%. In some other countries the figure is higher again. What effect, if any, does this have? Arbitration is usually a consensual process where the parties have chosen to arbitrate in hopes of obtaining well-established potential advantages, such as:

- Confidentiality
- Flexibility
- Cheaper
- Finality



However, we wonder whether some parties choose not to arbitrate in Ireland because the process is too final. Over the last fifteen years, as noted above, virtually no arbitral awards have been set aside by the courts. No process is fail-safe. Allowing a greater margin of judicial discretion to remedy those rare instances when an arbitral award does not meet best practice has a certain logic to it.

To address this concern, Dublin-based arbitrator Eamonn Conlon S.C. proposed an opt-in mechanism for limited court review in domestic arbitrations, inspired by the approach used in Hong Kong:

We have good courts, which locals and many foreigners are happy to use. Consideration should be given to an opt-in domestic regime, perhaps along the lines of the Hong Kong 2011 Arbitration Ordinance—prompted by the domestic shipping and construction sectors, I understand. Restoring a degree of court review, on a voluntary basis, could make parties more likely to be happy with sole

³ [Hen's Teeth ? Successful Article 34 Applications before Dublin High Court | LinkedIn](#) (accessed July 31, 2025)

⁴ [How often are arbitration awards set aside? Analysis of Polish case law shows that they rarely are - Linklaters](#) (accessed July 31, 2025)

arbitrators and 'technical' (non-lawyer) arbitrators. And it is (more) respectful of party autonomy.'

The 2010 Act has seen some updates in recent years. Notably, it was amended to allow for third party funding of arbitrations. In addition, and in response to a Supreme Court decision on the constitutionality of an E.U. trade deal with Canada, further amendments are expected when the Arbitration (Amendment) Bill 2025 becomes law. It is not clear that any further amendments to the 2010 Act are likely in the short term.

The Hong Kong 'opt in' approach, as suggested by Conlon, is one potential reform worth considering for, inter alia, the determination of preliminary questions of law by the court; to challenge arbitral awards on grounds of serious irregularity and to appeal against arbitral awards on questions of law. It does not follow that parties would automatically choose to avail themselves of all of these options. Nonetheless, specific sectors may find it more attractive to arbitrate if the perceived risks were mitigated by the availability of such review steps.

CI Arb Ireland would welcome members' thoughts on these issues. Readers are encouraged to share their views by contacting info@ciarb.ie.