DÁIL ÉIREANN

AN BILLE EADRÁNA 2008
—ROGHCHOISTE

ARBITRATION BILL 2008
—SELECT COMMITTEE

Leasuithe
Amendments

SECTION 1
1. In page 5, lines 31 to 34, to delete subsection (2) and substitute the following:

“(2) This Act shall come into operation 3 months after its passing.”.
—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

SECTION 2
2. In page 6, subsection (1), between lines 7 and 8, to insert the following:

““consumer” means a natural person, whether in the State or not, who is acting for purposes outside the person’s trade, business or profession.”.
—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

SECTION 3
3. In page 7, before section 3, to insert the following new section:

“Application of Act. 3.—(1) This Act shall not apply to an arbitration under an arbitration agreement concerning an international commercial arbitration or a standard arbitration which has commenced before the operative date but shall apply to an arbitration commenced on or after the operative date.

(2) In this section, “operative date” means the date on which this Act comes into operation pursuant to section 1.”.
—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

[Acceptance of this amendment involves the deletion of section 3 of the Bill.]

SECTION 4
4. In page 7, subsection (2), line 17, to delete “The repeal of” and substitute “Subject to section 3, the repeal of”.
—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

SECTION 6
5. In page 7, line 32, after “to” to insert “arbitrations under”.
—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

SECTION 7
6. In page 7, before section 7, to insert the following new section:

[No. 33 of 2008] [22 April, 2009]
7.—(1) For the purposes of this Act and for the purposes of section 496 of the Merchant Shipping Act 1894 (as amended by section 28) arbitral proceedings shall be deemed to be commenced on—

(a) the date on which the parties to an arbitration agreement so provide as being the commencement date for the purposes of the commencement of arbitral proceedings under the agreement, or

(b) where no provision has been made by the parties as to commencement of proceedings as referred to in paragraph (a), the date on which a written communication containing a request for the dispute to be referred to arbitration is received by the respondent.

(2) The Statute of Limitations 1957 is amended by substituting the following section for section 74:

“74.—(1) For the purposes of this Act and for the purposes of any other limitation enactment, arbitral proceedings shall be deemed to be commenced on—

(a) the date on which the parties to an arbitration agreement so provide as being the commencement date for the purposes of the commencement of arbitral proceedings under the agreement, or

(b) where no provision has been made by the parties as to commencement as referred to in paragraph (a), the date on which a written communication containing a request for the dispute to be referred to arbitration is received by the respondent.

(2) For the purposes of subsection (1)(b), unless the parties otherwise agree, a written communication is deemed to have been received if it is served or given to the respondent in one or more of the following ways:

(a) by delivering it to the respondent personally;

(b) by delivering it to the respondent’s place of business, habitual residence or postal address;

(c) where none of the addresses referred to in paragraph (b) can be found after making reasonable inquiry, by sending it by pre-paid registered post or by any other form of recorded delivery service addressed to the respondent at his or her last known place of business, habitual residence or postal address.

(3) Unless the parties otherwise agree, where a written communication under this section has been delivered to a respondent in accordance with subsection (2), the communication is deemed to have been received on the day it was so delivered.

(4) For the purposes of subsection (2), a company registered under the Companies Acts shall be deemed to be habitually resident at its registered office in the State and every other body corporate (wherever it is incorporated) and every unincorporated body (wherever it carries out its activities) shall be deemed to be habitually resident at its principal office or place of business.”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

[Acceptance of this amendment involves the deletion of section 7 of the Bill.]
SECTION 8

7. In page 8, subsection (3), lines 10 and 11, to delete all words from and including “whether” in line 10 down to and including “otherwise” in line 11 and substitute the following:

“the existence or validity of the contract or agreement”.
—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

SECTION 10

8. In page 8, subsection (2), line 31, to delete “respect of” and substitute “relation to”.
—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

SECTION 11

9. In page 8, paragraph (b)(i), line 41, after “Law” to insert “or section 32”.
—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

SECTION 14

10. In page 9, paragraph (a), line 22, after “oath” to insert “or on affirmation”.
—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí, Pat Rabbitte.

11. In page 9, paragraph (b), line 23, after “oaths” to insert “or affirmations”.
—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí, Pat Rabbitte.

SECTION 17

12. In page 9, to delete line 37 and substitute the following:

“17.—(1) Subject to subsection (2)*, where in legal proceedings relief by way of interpleader is”.
—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

[*Note: This is the correct reference if amendment No. 13 is accepted.]

13. In page 9, after line 42, to insert the following subsections:

“(2) A court shall not direct that the issue between the claimants referred to in subsection (1)* be determined in accordance with the arbitration agreement concerned where the court finds that the arbitration agreement is null and void, inoperative or incapable of being performed.

(3) Where subsection (1)* applies but the court does not direct that the issue be determined in accordance with the arbitration agreement, any provision that an award is a condition precedent to the bringing of legal proceedings in respect of any matter shall not affect the determination of that issue by the court.”.
—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

[*Note: This is the correct reference if amendment No. 12 is accepted.]

SECTION 19

14. In page 10, subsection (2)(a), line 30, to delete “ordinarily” and substitute “habitually”.
—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.
SECTION 20

15. In page 10, before section 20, to insert the following new section:

20.—Without prejudice to the generality of the Model Law, an arbitral tribunal shall, unless otherwise agreed by the parties, have the power to make an award requiring specific performance of a contract (other than a contract for the sale of land).

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

16. In page 10, subsection (3), line 41, after “subsection (1)” to insert the following:

“or where a consumer is not bound by an agreement as to costs pursuant to subsection (6)”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

17. In page 10, subsection (3), line 41, to delete “may” and substitute “shall”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

18. In page 10, lines 43 to 46 and in page 11, lines 1 to 6, to delete subsection (4) and substitute the following:

“(4) In the case of an arbitration (other than an international commercial arbitration) the arbitral tribunal shall, on the request of any of the parties to the proceedings made not later than 21 working days after the determination by the tribunal in relation to costs, make an order for the taxation of costs of the arbitration by a Taxing Master of the High Court, or as the case may be, the County Registrar; and the Taxing Master, or as the case may be, the County Registrar, shall in relation to any such taxation, have (with any necessary modifications) all the functions for the time being conferred on him or her under any enactment or in any rules of court in relation to the taxation of costs to be paid by one party to another in proceedings before a court.”

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

19. In page 11, lines 13 and 14, to delete subsection (6) and substitute the following:

“(6) Without prejudice to the generality of the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 and 2000, an arbitration agreement—

(a) to which one of the parties to the agreement is a consumer, and

(b) a term of which provides that each party shall bear his or her own costs,

shall be deemed to be an unfair term for the purposes of those Regulations.

(7) Section 3 of the Legal Practitioners (Ireland) Act 1876 shall apply as if an arbitration were a proceeding in the High Court and the Court may make declarations and orders accordingly.

(8) In this section references to—

“costs” include costs as between the parties and the fees and expenses of the arbitral tribunal;
SECTION 20
“fees and expenses of the arbitral tribunal” include the fees and expenses of any expert appointed by the tribunal.”.
—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

SECTION 21
20. In page 11, lines 15 to 32, to delete subsections (1) to (5) and substitute the following:

“(1) An arbitral or other institution or person designated or requested by the parties to appoint or nominate an arbitrator is not liable for anything done or omitted in the discharge or purported discharge of that function unless the act or omission is shown to have been in bad faith.

(2) An arbitral or other institution or person by whom an arbitrator is appointed or nominated is not liable, by reason of having appointed or nominated him, for anything done or omitted by the arbitrator (or his employees or agents) in the discharge or purported discharge of his functions as arbitrator.

(3) The above provisions apply to an employee or agent of an arbitral or other institution or person as they apply to the institution or person himself.”.
—Pat Rabbitte.

SECTION 22
21. In page 11, subsection (2), line 42, to delete “enforceable under” and substitute “referred to in”.
—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

22. In page 12, between lines 3 and 4, to insert the following subsection:

“(4) Articles 35 and 36 shall not apply in respect of an award in arbitral proceedings which took place in the State.”.
—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

SECTION 24
23. In page 12, subsection (1)(a), line 21, to delete “15 and 16” and substitute “14 and 15”.
—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

SECTION 28
24. In page 14, before section 28, to insert the following new section:

28.—(1) This Act, other than the excluded provisions, shall apply to every arbitration under any other Act as if the arbitration were pursuant to an arbitration agreement and as if that other Act were an arbitration agreement, except in so far as this Act is inconsistent with that other Act or with any rules or procedure authorised or recognised under that other Act.

(2) The enactments specified in column (2) of Schedule 6 are amended to the extent specified in that Schedule.
(3) In subsection (3) of section 496 of the Merchant Shipping Act 1894, the reference to legal proceedings shall be construed as including a reference to arbitration.

(4) In this section, “excluded provisions” means subsections (2) and (3), subsection (3) of section 8, sections 17, 25, 26, 29 and 30 and Articles 12 and 13.”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

[Acceptance of this amendment involves the deletion of section 28 of the Bill.]

SECTION 29

25. In page 14, subsection (1)(a), lines 15 and 16, to delete “who are or were hired or engaged within the State”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

26. In page 14, lines 21 to 24, to delete subsection (2) and substitute the following:

“(2) Section 18 shall not apply to an arbitration conducted by a property arbitrator appointed under section 2 of the Property Values (Arbitration and Appeals) Act 1960.”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

SECTION 30

27. In page 14, before section 30, to insert the following new section:

30.—(1) A party to an arbitration agreement who is a consumer shall not be bound (unless he or she otherwise agrees at any time after the dispute has arisen) by an arbitration agreement where the agreement—

(a) contains a term concerning the requirement to submit to arbitration in the event of a dispute which has not been individually negotiated, and

(b) involves a claim for an amount that does not exceed the monetary limit for the time being specified under rules of court for commencing and dealing with a civil proceeding in respect of a small claim (within the meaning of Order 53A of the District Court Rules 1997 (S.I. No. 93 of 1997)).”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

[Acceptance of this amendment involves the deletion of section 30 of the Bill.]

28. In page 14, subsection (1), line 30, after “1997)” to insert the following:

“inserted by the District Court (Small Claims) Rules 2007 (S.I. No. 82 of 2007)”.

—Pat Rabbitte.

29. In page 14, subsection (2), line 33, after “No.” to insert “27 of 1995 and S.I. No.”.

—Pat Rabbitte.

SECTION 31

30. In page 14, subsection (1), line 41, after “any” where it firstly occurs to insert “civil”.

—Pat Rabbitte.
[SECTION 31]

31. In page 15, subsection (1), line 4, after “time” to insert “with the consent of
the parties”.

—Pat Rabbitte.

Section opposed.

—Pat Rabbitte.

SECTION 34

32. In page 16, before section 34, to insert the following new section:

“Exclusion of arbitration clauses in consumer arbitrations.

34.—A consumer arbitration agreement shall not exclude the right of the
consumer to have recourse to the District Court.”.

—Pat Rabbitte.

NEW SCHEDULE

33. In page 61, after line 16, to insert the following:

“SCHEDULE 6
ENACTMENTS AMENDED

Section 28*. 

<table>
<thead>
<tr>
<th>Number and Year</th>
<th>Short Title</th>
<th>Provision affected</th>
<th>Amendment</th>
</tr>
</thead>
</table>
| No. 3 of 1967   | Landlord and Tenant (Ground Rents) Act 1967               | Section 17         | In subsection (5) substitute “Sections 20, 22 and 36 of the Arbitration Act 2009 (and Articles 13 and 14 of the Model Law (within the meaning of the Arbitration Act 2009) as given the force of law in the State by that Act) for “Sections 29, 35, 36, 37 and 41 of the Arbitration Act, 1954”.

No. 1 of 1992    | Patents Act 1992                                         | Section 74         | In subsection (3) substitute “section 36 of the Arbitration Act 2009” for “section 35 of the Arbitration Act, 1954 (which relates to the statement of cases by arbitrators for the decision of the Court)”.

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| No. 28 of 2000 | Copyright and Related Rights Act 2000 | Section 367 | In subsection (8) substitute “request the court under section 9 of the Arbitration Act 2009 to decide on the termination of the mandate of that arbitrator” for “apply to the court for the removal of that arbitrator under section 24 of the Arbitration Act, 1954.” |

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.

[* Note: This is the correct reference if amendment No. 24 is accepted.]

**TITLE**

**34.** In page 5, line 13, to delete “IN PART”.

—An tAire Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí.