LEGAL COSTS REGIME -
ISSUES FOR BARRISTERS

Legal Costs Provisions of the Legal Services Regulation Bill, 2011

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AREAS TO BE COVERED

The areas covered will include:

1. Background to the provisions of Parts 10 and 11 of the Legal Services Regulation Bill, 2011.
2. Timeline for the enactment of the legislation.
3. (a) A detailed analysis of the important provisions of Parts 10 and 11 of the Bill.
   (b) The principal changes to be made by the legislation.
   (c) The role of the Legal Costs Adjudicators under the legislation.
   (d) The role of the Court.
   (e) Transitional provisions.
1. **INTRODUCTION: BACKGROUND TO THE PROVISIONS OF PARTS 10 AND 11 OF THE BILL**

**(A) PRINCIPAL FEATURES OF BILL**

- Legal Services Regulation Bill, 2011 – Published in October 2011.

Four Primary Areas:

1. Establishment of an Independent Legal Services Regulatory Authority to regulate the provision of Legal Services by Solicitors and Barristers (“Legal Practitioners”) (Part 2).

2. Establishment of an Independent Complaints and Disciplinary System including a Legal Practitioners Disciplinary Tribunal (Parts 5 and 6).

3. Establishment of the Office of Legal Costs Adjudicators headed by Chief Legal Costs Adjudicator to replace existing Office of Taxing Master with additional functions. Also the provision in Statute for legal costs principles (Parts 10 and 11).

4. Provisions for Legal Partnerships (LPs), Multi Disciplinary Partnerships (MDPs) and Direct Professional Access (DPA) (Part 8).
B. IMPETUS


EU / IMF / ECB (Troika) Programme of Financial Support for Ireland and Memorandum of Understanding (December 2010) required the Government to give effect to the outstanding recommendations of the Competition Authority to reduce costs and the report of the Legal Costs Working Group. Troika requirements expressly linked to recommendations of Competition Authority to reduce legal costs and the implementation of the recommendations of the Legal Costs Working Group.

The FG/Labour “Programme of the Government for National Recovery 2011 – 2016” (at page 51) undertook to:

“Establish independent regulation of the legal profession to improve access and competition, make legal costs more transparent and ensure adequate procedures for addressing consumer complaints.”

Compliance with Troika requirements kept under review during reviews and updates of the bailout conditions.
2. **TIMELINE**


- Submissions by interested parties / bodies including Bar Council and Law Society to the Minister.

- Second stage of Bill in Dail Eireann in December 2011 and January 2012.

- Joint Oireachtas Committee on Justice, Defence and Equality hearing on the Bill in March 2012.
Committee Stage of Bill in Dail Eireann: July 2013 – February 2014.

Committee Stage completed in Dail Eireann in late February 2014.

Some amendments to Bill as initiated. Primarily dealing with non-costs issues.

Report Stage commenced in Dail Eireann in July 2014.

Report Stage completed and Bill passed by Dail Eireann in April 2015.

Likely to be before the Seanad before end July 2015.
Further amendments very likely.
Enacted when?
3. **PART 10: LEGAL COSTS**

- Sections 111 – 140 of the Bill.

- Essential provisions: (1) Creation of Office of Legal Costs Adjudicators (2) Imposition of duties on legal practitioners in relation to legal costs and (3) specification of principles relating to legal costs which apply to the adjudication of bills of costs by a Legal Costs Adjudicator.

**Chapter 2: Office of the Legal Costs Adjudicators**

- Section 112: Establishes the Office of the Legal Costs Adjudicators (“LCA”). The Taxing Masters’ office will be known as the Office of the Legal Costs Adjudicators.
Section 112(2) provides for the appointment of the **Chief Legal Costs Adjudicator** (“CLCA”) by the Minister for Justice and Equality and such number of LCAs to be determined by the Minister with the consent of the Minister for Public Expenditure and Reform as being necessary to ensure that the work of the Office may be carried out “effectively and efficiently”.

The functions, powers and jurisdiction conferred or under any other enactment on a Taxing Master will be deemed to be conferred on the CLCA and every LCA (Section 112(3)).

The role and functions of the CLCA and every LCA appointed under the Act are limited to the jurisdiction previously exercised by the Taxing Master’s Office (i.e. High Court only). Does not extend to the lower courts or to the jurisdiction of County Registrars (Section 112(4)).

**County Registrars** retain jurisdiction to tax costs for the lower courts (Section 114(1)). They are required to have regard to the principles relating to legal costs specified in Schedule 1 and must also establish a register of taxation determinations (Section 114(2) and (3)).
• **The position of existing Taxing Masters**: Dealt with by way of the transitional provisions in Section 137. A person serving as a Taxing Master when that Section of the Act commences may be designated by the Minister to perform the functions of a LCA under Part 10 for the rest of the term the person would have served as Taxing Master. If so designated, that person shall be treated as if he / she were a LCA appointed under Part 10.

• **Criteria for (new) appointment as CLCA and LCA**: Section 121(1)(d).

  - This Section amends the Eighth Schedule to the Courts (Supplemental Provisions) Act, 1961.

  - To be eligible for appointment (apart from the transitional position) the person must:

    (a) Be selected by the PAS after a competition for that purpose (and be included in a group of not more than 5 persons);

    (b) Have practised as a solicitor or barrister for a period of not less than 10 years or have practised as a Legal Costs Accountant for a similar period.
- The **CLCA** and **LCA**s are appointed by the Government on the nomination of the Minister.

- The **CLCA**:
  - Will hold office for a period not exceeding 7 years,
  - Must retire at 70, and
  - May continue as a LCA thereafter.

- **LCA**:
  - Holds office for a period not exceeding 5 years.
  - Must retire at 70, and
  - Is not eligible for reappointment or an extension of the term of appointment.
- In the case of both the CLCA and LCAs – the period during which a solicitor or barrister is the CLCA or a LCA is reckonable as a period of professional practice for the purpose of an application for appointment as a judge (Section 121(10)).

**Removal:**

- A CLCA or a LCA may be removed from office by the Government on certain grounds including ill health, stated misbehaviour, failure without reasonable cause to perform the functions of the Office for a certain period, contravention of ethics legislation (Section 121(11)). Also will cease to hold office in certain circumstances including when convicted for certain offences.

- **Register of Determinations (Section 113).**

  - One of the most important provisions designed to address the issue of transparency to the new costs adjudication system is Section 113 which requires the CLCA to ensure that a register of determinations is established and maintained in relation to applications for adjudication of legal costs.
- Section 113(2) contains the requirements for such a Register. The register must contain (for example):

  - Date of receipt of application
  - Names of parties to adjudication
  - Date on which adjudication is assigned to LCA and the LCA to whom adjudication is assigned
  - The outcome of determination and the date or dates on which it was made
  - Whether an application for determination to be (re)considered under Section 133 has been made and outcome of that consideration.
  - Whether an application for review of determination by High Court under Section 134 has been made and, if so, the outcome of the review.
  - The reasons for the determination prepared by the CLCA

- Reasons:

  - CLCA must prepare and place on the register the reasons for a determination except in certain circumstances (Section 113(3)). Circumstances include:

    - If adjudication relates to costs between parties to proceedings which were not held in public or, if there had been a hearing, would not have been heard in public.
    - If adjudication relates to application for adjudication of legal costs between a legal practitioner and client,
    - If adjudication relates to application for adjudication of legal costs between parties to proceedings where proceedings settled, or
    - Or if CLCA considers, having obtained the views of the parties, that it would be contrary to public interest for the information to be published.
- CLCA not required to publish reasons for determination if of the opinion that the adjudication does not involve a matter of legal importance (Section 113(4)).

- In certain circumstances certain information may be required to be published by the CLCA in relation to the outcome of and reasons for the determination even in cases covered by Section 113(3).

- There is protection for commercially sensitive information in relation to the information published (Section 113(6)).

- The Register of Determinations must be available for inspection during office hours without payment by any person who applies to inspect it (Section 113(8)).
• Sections 115, 117, 118 and 119:

  – CLCA may from time to time prepare guidelines setting out the manner in which the functions of the CLCA and LCAs are to be performed (following consultation with various parties) (Section 115).

  – CLCA is required to prepare a strategic plan for the 3 years following the coming into operation of the Section and to submit the plan to the CEO of the Courts Service for approval. This must be done for subsequent 3 year periods also (Section 117).

  – The CLCA must also for each year prepare a business plan for submission for approval to the CEO of the Courts Service (Section 118).

  – The CLCA must also prepare and submit an annual report of the activities of the Office for the previous year for submission to the CEO of the Courts Service (Section 119).
Chapter 3: Legal Practitioners Duties in relation to Legal Costs

- Chapter 3 contains important provisions requiring the sending of notices and bills of costs and the consequences of not doing so. Will replace / supplement the existing requirements of Section 68 of the Solicitors (Amendment) Act, 1994 and the requirements of the Bar Council in relation to fee estimates.

- Section 122(1): A legal practitioner (defined in the Bill to include barristers and solicitors) is prohibited from charging any amount in respect of legal costs if:
  
  (a) They are legal costs in connection with “contentious business” (defined to include proceedings before a court or tribunal or arbitration – definition may change) and expressed as a percentage or proportion of damages or other monies that may be or become payable to the client (except in proceedings seeking to recover a debt or liquidated demand), or
  
  (b) They purport to set the legal costs to be charged by a Junior Counsel as a percentage of the legal costs paid to a Senior Counsel.

- Section 123 provides for the provision of notices by a legal practitioner to the client.

- On receiving instructions from a client, a legal practitioner must provide the client with a notice which must:

  (a) disclose the legal costs that will be incurred in relation to the matter or

  (b) that is if not reasonably practicable, set out the basis on which the legal costs are to be calculated.
- The **notice** must be written in clear language likely to be easily understood by the client.

- The **notice** must contain certain information set out in Section 123(4) including:
  
  - the **amount** of legal costs incurred or likely to be incurred or the basis on which they are to be charged.
  
  - the **basis** on which the amounts were or are to be calculated, by reference to paragraph 2 of Schedule 1 to the Bill.
  
  - a **statement** of certain obligations imposed on the legal practitioner.

- If the matter involves or is likely to involve litigation, provide certain other information including:
  
  - an outline of the work to be done at each stage of the litigation and the likely costs or basis of costs involved including the likelihood of engaging a barrister, expert witnesses or providers of other services,
  
  - information as to the likely legal and financial consequences of the client withdrawing from the litigation and its discontinuance, and
  
  - information as to the circumstances in which the client would be likely to be required to pay the costs of other parties and as to the circumstances in which it would be likely that the costs of the legal practitioner would not be fully recovered from the other parties.

  - Specify a cooling-off period (not longer than 10 working days).

- **Consequences** of not providing such a notice dealt with in Section 130(6): Fees not recoverable unless LSA of opinion that this would create an injustice.
- There is an obligation on the legal practitioner if he or she becomes aware of any factor likely to make the costs likely to be incurred significantly greater than those disclosed or indicated to provide the client with a new notice (Section 123(5)).

- If the matter the subject of the notice involves or is likely to involve litigation, the legal practitioner shall not engage a barrister, expert witness or provider of other service without first:
  - ascertaining the likely cost or basis of cost of engaging that person
  - providing the client with that information and
  - satisfying himself or herself of the client’s approval for the engagement of the person (can be express or implied approval) (Section 123(6)).

• The cooling-off period is provided for in Sections 123(7) and (8): Legal practitioner may not provide legal services unless the client confirms agreement to instruct the legal practitioner to continue to provide legal services in connection with the matter or the conditions of Section 123(8) are satisfied. They include:
  - Where it would be a contravention of a statutory requirement or rules of court or would prejudice the client in a manner which could not be later remedied not to provide the legal services;
  - Where the Court orders the legal practitioner to provide legal services to the client, or
  - Where the matter involves litigation and a notice of trial has been served or a date fixed for the hearing of the matter.
• Where the solicitor receives instructions from a client and proceeds to instruct a barrister, Section 123(10) applies.
  - The obligation on the barrister to provide a notice is fulfilled where the barrister provides the notice to the solicitor,
  - The duties owed by the barrister to the client are construed as a duty owed by the barrister to the solicitor.
  - The solicitor can seek clarification from the barrister in relation to any notice and, if so, must provide such clarification to the client.
  - Therefore, there will be quite onerous duties on barristers under the new regime.
• Section 124 provides for agreements regarding legal costs.
  – A legal practitioner and his/her client may agree in writing the amount and manner of payment of all or part of the costs payable for legal services.

  – If the agreement contains all of the particulars required in relation to a notice, the legal practitioner is not required to provide a notice in addition to the agreement.

  – An agreement under Section 124(1) is “amenable” to adjudication by the CLCA or a LCA (Section 124(4)). NB: under Section 128(6), the LCA is required to “have regard” to an agreement made under Section 124 in adjudicating on a bill of costs. To what extent may the LCA override the agreement?
• Section 125 deals with Bills of Costs.

- Section 125(1): A legal practitioner is required “as soon as is practicable after concluding the provision of legal services in relation to a legal matter for a client” prepare and sign a Bill of Costs containing the specified particulars.

What is the position in relation to payment upfront? Interim bills? Presumably, they can be subject of agreement: However, position not clear.

- Section 125(2) sets out what a Bill of Costs must contain, including:

  - A summary of the legal services,
  - An itemised statement of the amounts of costs in respect of the legal services,
  - Where time is a factor in the calculation of legal costs, the time spent in dealing with the matter (see also paragraph 2(d) of Schedule 1 where time is also a factor to be considered in the adjudication of legal costs).
  - The amount of any damages or other monies recovered or payable to the client.
  - The amount of any legal costs recovered from another party or an insurer on behalf of another party.

- The legal practitioner must also provide with the bill of costs an explanation of the procedure to be followed should the client wish to dispute any aspect of the bill of costs (Section 125(3)).

- Not all would seem to be appropriate to barristers. Amendments may be necessary.
• Section 125(8) deals with the position of barristers:
  - Where a solicitor instructs a barrister and the barrister “has concluded providing legal services in relation to that matter” an obligation on the barrister to provide a bill of costs is fulfilled where the barrister provides the bill of costs to the solicitor.

  - The solicitor must immediately on receipt of a bill of costs from the barrister provide that bill of costs to the client.

  - What about fees “up front” or interim fees? Presumably, can be subject of agreement. But not clear.
- **Section 126**: Obligation on legal practitioner to attempt to resolve any dispute in relation to bill of costs.
  - Client must within 14 days of provision of bill of costs send a statement in writing to the legal practitioner setting out the nature of the dispute.
  
  - The legal practitioner must take “all appropriate and reasonable steps to attempt to resolve the dispute by informal means” which may include (with the consent of the client) mediation.
  
  - Where attempt at informal resolution fails, the legal practitioner and/or the client must inform the other party in writing of that.
  
  - The mere failure by a client to pay a bill of costs within the 30 day period referred to in Section 127(5) is not to be construed as a form of communication of the existence of the dispute by the client to the legal practitioner (Section 126(5)). Onus put on client to dispute the bill. Otherwise time for legal practitioner to seek adjudication will start to run.
Chapter 4: Adjudication of Legal Costs

- The principles governing the Adjudication of legal costs are set out in Chapter 4 (Sections 127-134).

- Section 127(1) where order for costs made, bill of costs must be furnished to the paying party in a form and manner consistent with:
  - The terms of the order
  - The Act, and
  - Rules of Court
  - The paying party under an order for costs may apply to the CLCA for adjudication on any matter or item claimed in the bill of costs (Section 127(2))
  - The party in whose favour order for costs has been made may apply to CLCA for adjudication (Section 127(3)).
  - In each case, there has to be an attempt to agree the bill or resolve the dispute. However, there are no time limits for this.
  - Where bill of costs sent to client under Section 125, if client considers any matter or item in bill not properly chargeable “taking account of the provisions of this Act“ and any rules of court, client may apply to CLCA for adjudication (Section 127(4)).
  - Time limit for client to apply to CLCA for adjudication is 6 months after date of provision of bill of costs under Section 125 or 3 months from the date of payment of bill of costs (whichever first occurs) (Section 127(7)).
  - Possible lacuna in Act: no time limit for seeking adjudication where bill of costs sent on foot of order for costs under Section 127. No time limit expressly provided for.
- Section 127(5)(a) legal practitioner may apply to CLCA for adjudication where bill of costs unpaid by his/her client after 30 days from date of provision.

- Section 127(5)(b) deals with the position of a barrister who has provided a bill of costs to a solicitor. Where the bill or any part remains unpaid by the client after 30 days from provision of bill, the solicitor may with the consent of the barrister apply to the CLCA for adjudication.

- Section 127(5)(c) application by solicitor under Section 127(5) must be made within 12 months from the date on which bill provided to client under Section 125.
Principles to be followed in Adjudication of Costs

- Section 128 sets out the principles relating to legal costs which must be applied to the adjudication of a bill of costs by a legal costs adjudicator.

- It does so by reference to the principles set out in Schedule 1.

- The principles in Schedule 1 are an expansion of the test and principles currently set out in Section 27 of the Courts and Court Officers Act, 1995 and Order 99 Rule 37(22) of the Rules of the Superior Courts i.e. examine work done and determine if fee fair and reasonable.

- Paragraph 1 of Schedule 1: LCA must apply the following principles in adjudicating on a bill of costs, namely:
  (a) Costs must have been reasonably incurred and
  (b) Costs must be reasonable in amount.
Paragraph 2 of Schedule 1: in determining whether costs are reasonable in amount, LCA is obliged to consider each of the matters set out in that paragraph, including:

- the complexity of the legal work,
- the difficulty and novelty of the issues involved,
- the skill or specialised knowledge applied
- the time and labour reasonably expended
- the importance of the matter to the client
- the urgency of the matter and whether this required priority to be given over other matters
- the place and circumstances in which the matter was transacted
- the number, importance and complexity of the documents the legal practitioner was required to draft, prepare or examine
- where money, property or interest in property involved, the amount of the money or the value of the property or interest concerned
- whether there is any agreement to limit the liability of the legal practitioner pursuant to Section 38 of the legislation
- whether the legal practitioner necessarily undertook research or investigative work and the time scale within which the work was required to be completed
- the use and cost of expert witnesses and whether such costs were necessary and reasonable.
• In addition to the matters set out in Schedule 1, Section 128(4) also requires the LCA to:
  - verify that the work the subject of an item on the bill of costs was **actually done**
  - determine whether it was **appropriate** to charge for the work
  - determine what a **fair and reasonable charge** for the work or disbursement would be in the circumstances (Why it is phrased in this way?)
  - determine whether or not the costs relating to the matter or item were reasonably incurred. (overlap with paragraph 1 of Schedule 1).

- Under Section 128(5) – LCA required to ascertain:
  - the nature, extent and value of the work
  - who carried out the work
  - the time taken to carry out the work.

- Possible confusion between provisions of Section 128 and paragraphs 1 and 2 of Schedule 1. Not very clear.
• Section 128(6): LCA required to “have regard” to any agreement made between legal practitioner and client under Section 124 (i.e. written agreement concerning amount and manner of payment and costs).

• LCA may invite the parties to refer the dispute to mediation or other informal resolution process and may adjourn the determination of the application if the parties agree to such informal resolution process (Section 129(2) and (3)).

**Oral Hearings:** Section 129(4): An oral hearing must be held in public unless LCA of opinion that hearing or part thereof ought in the interests of justice not to be held in public.

• Section 129(5): where the parties consent, LCA may conduct an adjudication without an oral hearing if of the opinion that it is expedient and interests of justice to do so.

• Section 130 provides for the determination of applications for adjudication.
  
  – There is no time limit for the determination. However, Section 130(2) provides that the determination must be furnished to the parties “as soon as practicable after it is made”.

  – The options given to the LCA on an adjudication are set out in Section 130.
– LCA can confirm the charge in question provided that the charging in respect of the item is fair and reasonable in the circumstances and the amount charged is fair and reasonable (Section 130(3)).

– Section 130(6): LCA shall not confirm a charge in respect of a matter or item if not included in a notice under Section 123 or not the subject of an agreement under Section 124 unless LCA of opinion that to disallow would create an injustice between the parties.

– Where determination is made, LCA required to prepare a report where he/she considers it to be in the public interest or the parties request a report (within 14 days of the making of the determination) (Section 130(8)).

– The contents of the report are specified in Section 130(9).
• The effect of a determination of a LCA is set out in Section 131:
  
  - The determination is final and takes effect 20 days after it is furnished to the parties.
  
  - Where adjudication concerns legal costs as between a legal practitioner and client, where LCA determines the amounts to be paid are less than 15% lower than amounts in bill of costs, client is required to pay the costs of adjudication.
  
  - Where the amounts to be paid (in the case of a legal practitioner / client adjudication) are 15% or more than 15% lower than amounts in bill of costs, legal practitioner responsible for the costs of the adjudication.
  
  - These provisions seem to apply only to legal practitioner / client adjudications and not party and party adjudications.

• There is provision for the LCA referring a question of law to the High Court (Section 132).
There is provision for a party dissatisfied with a determination of a LCA under Section 130 to seek a (re)consideration by the LCA of the determination: Section 133.

– This must be done within **14 days** of the date on which the determination is furnished.

– The LCA may issue an interim determination pending consideration of an application under this Section.

– The LCA may decide not to vary the determination or to make a new determination.

– Insofar as practicable, the same LCA will deal with the consideration of a determination as made the determination in the first place (Section 133(6)).

- A party who is dissatisfied with the outcome of the consideration of a determination under Section 133 may apply to the High Court for a **review** of the determination: Section 134.

- Must be done no later than **21 days** after date of determination on foot of the consideration under Section 133

- Must be made by motion on notice to the parties to the adjudication and to the CLCA.

- The Court will hear and determine the review on the evidence before the LCA unless the Court orders that other evidence be submitted.

- The Court may either confirm the determination or allow the review and either remit the matter to the LCA or substitute its own determination.

- The High Court will allow a review only where satisfied that the LCA has "**erred as to the amount of the allowance or disallowance so that the determination is unjust**".

- Curious provision as to which court should deal with the review in the case of party and party costs — suggestion that it should be the court which heard the original proceedings in the case of party and party costs (Section 134(6)). Not clear how this would work.
Chapter 5: Miscellaneous:
Transitional Provisions – Section 138

• Where before the Section comes into operation matter has been referred for taxation and hearing taken place, then must be determined under old law.

• Where decision made on matter referred to taxation before Section comes into operation, any review must be determined under old law.

• Where matter referred for taxation but hearing not yet taken place, matter dealt with under the provisions of the new legislation.
CONCLUSIONS

- Not clear whether there will be any real substantive change in the adjudication of costs under the new system when compared with the system before the Taxing Master (Section 27 of 1995 Act and Order 99 of Rules of Superior Courts not repealed).
- Case law under those provisions will still be of relevance.
- May not be any dramatic change in principles to be applied.
- Will the new system lead to reduction in costs?
- Greater onus on solicitors and barristers re notices and bills of costs.
4. **PART 11: LEGAL COSTS IN CIVIL PROCEEDINGS**

- Part 11 (Sections 141 – 142) contains the provisions governing the awarding of costs in civil proceedings.
- There is nothing new in these provisions which essentially codify existing statutory provisions and case law in this area.

**Jurisdiction of Court**

- Section 141: Court may on application by a party to civil proceedings at any stage in and from time to time during the proceedings make an order for costs against one or more other parties or, where appropriate, order that costs be paid out of an estate or trust.
- Section 141(2): Sets out what the order for costs may involve.
- The order may direct the payment of:
  - a portion of another party’s costs
  - costs from or until a specified date
  - costs relating to one or more particular steps in the proceedings
  - costs relating to the successful element or elements of the proceedings (where a party is partially successful).
  - interest on costs from or until a specified date.

- These provisions merely give effect to existing statutory provisions and case law: Order 99 Rule 1 and cases such as *Veolia Water UK plc v Fingal County Council (No. 2)* [2007] 2 IR 81; *Usk and District Residents Association Limited v Environmental protection Agency* [2007] IEHC 30; *McAleenan v AIG (Europe) Limited* [2010] IEHC 279; *Kalix Fund Limited v HSBC Institutional Trusts Services (Ireland) Limited* [2010] 2 IR 581.
Costs Follow the Event:

- Section 142: Enshrines the principle that “costs follow the event”. In particular:
  - If entirely successful in proceedings party is entitled to award of costs against the other party.
  - Unless Court orders otherwise having regard to the particular nature and circumstances of case and conduct of the proceedings by the parties including:
    - Conduct before and during proceedings
    - Whether reasonable to raise issue or contest one or more issues in proceedings
    - Manner in which parties conducted all or part of their cases
    - Whether a successful party exaggerated his / her claim
    - Whether a party made a payment into court
    - Whether a party made an offer to settle the matter (Query whether without prejudice etc).
    - Whether parties invited by Court to settle claim by mediation or otherwise and Court considers one or more parties was / were unreasonable in refusing to engage in settlement discussions or mediation.

- Again, nothing new or dramatic in these provisions which would be regarded as in any event falling within the discretion of the Court in relation to Orders for costs.
• Where a Court orders that party who is entirely successful in civil proceedings is not entitled to costs then it must give reasons for that order (Section 142(2)). Again, nothing surprising here.

• Provision is made for a situation where a party succeeds against one other party but not against others. Ultimately the Court may order the unsuccessful party to pay the costs of all of the other parties (Section 142(3)).

• Section 142(4): Provides for what is to happen in the event of a discontinuance or abandonment of proceedings. Party discontinuing or abandoning proceedings will be liable to pay the reasonable costs of every other party up to the point of discontinuance or abandonment unless parties agree otherwise or Court orders otherwise (this probably reflects the existing position under Order 26 of the RSC: See Shell E&P Ireland Limited v McGrath (No. 3) [2007] 4 IR 277 (High Court, Laffoy J.)

• Not clear why Bill contains the provisions set out in Part 11.
ADVICE:

Wait and see final provisions of Bill as enacted as may be further amendments.