

## THE 2023–2024 CARIBBEAN BRANCH COMMITTEE ELECTED

■ The **Ciarb** Caribbean Branch held its Annual General Meeting on 28 April 2023. In addition to receiving the Report of the Chairman and the Financial Statement of the Branch for 2022, the members approved the election of members and the appointment of ex-officio members to serve on the Branch Committee for the ensuing year.

The retiring members of the Branch Committee, Mr. Mandish Singh, Mr. Ebrahim Lakhi and Mr. Andrew Pullinger, were re-elected and Sir Marston Gibson was elected for his first term. Chapter Chairs, Mr. Calvin Hamilton and Ms. Tameka Davis were re-appointed as the ex-officio members.

On 1 June 2023, the members of the Branch Committee met to elect the officers and appoint subcommittees. The officers from the 2022–2023 year were all returned unopposed to their respective offices for another year.

The **Ciarb** Caribbean Branch Committee for 2023–2024 is therefore comprised of officers and members, as follows: →

● **Chairman**

Justice Dr. Anthony Gafoor, FCIArb (Trinidad and Tobago)

● **Vice Chairmen**

Mr. Andrew Pullinger, MCIArb (Cayman Islands)

Hon. Barry Leon, FCIArb (British Virgin Islands)

● **Honorary Secretary**

Mr. Ebrahim Lakhi, FCIArb (Barbados)

● **Honorary Treasurer**

Mr. Mandish Singh, FCIArb (St. Lucia)

● **Elected Members**

Mr. Miles Weekes, FCIArb (Barbados)

Ms. Jodi-Ann Stephenson, MCIArb (St. Lucia)

Mr. Jorge Molina, MCIArb (Panama)

Ms. Shani Nembhard, MCIArb (Jamaica)

Mr. Joshua Hamlet, ACIArb (Trinidad and Tobago)

Sir Marston Gibson, KA FCIArb (Barbados)

● **Ex-officio Members**

Mr. Calvin Hamilton, C.Arb (Chair of Barbados Chapter)

Ms. Tameka Davis, MCIArb (Chair of British Virgin Islands Chapter)

The Immediate Past Chairman, Mr. Miles Weekes was re-appointed as the Education and Training Officer and the Honorary Secretary, Mr. Ebrahim Lakhi was re-appointed as the Webmaster.

Mr. Joshua Hamlet was appointed as the Chair of the Newsletter Subcommittee and Justice Dr. Anthony Gafoor was appointed as the Chair of the Conference Subcommittee, tasked with planning the inaugural Caribbean ADR Week and the Fifth Triennial Conference during the coming year.

There is a desire for the creation of a Social Media Subcommittee with the mandate of managing the Branch's LinkedIn account as well as creating Facebook and Twitter accounts for the Branch. Any member interested in serving on this subcommittee should contact the Chairman.

**The Ciaribbean News** offers heartiest congratulations to all the officers and members who were elected and appointed to the Branch Committee and the Subcommittees and wishes them success during the year.▲

# THE SIGNIFICANCE OF IMPLEMENTING UNCITRAL MODEL LAW

**In May of this year, the Trinidad and Tobago Parliament began debate on the Arbitration Bill, 2023, an Act to repeal and replace the Arbitration Act, Chap. 5:01. In this article, Justice Dr. Anthony Gafoor looks at the significance of the implementation of the UNCITRAL Model Law in the Commonwealth Caribbean and asks whether it is a step in the right direction towards regional integration.**

■ As increasing numbers of Commonwealth Caribbean countries adopt the UNCITRAL Model Law (ML), it would be fair to say that this development also brings with it the attractiveness of such jurisdictions as arbitral seats. One specific reason for the region as a whole being an attractive seat for arbitration is what Francois Lassalle and Hana Doumal, in an article in *Global Arbitration Review* titled *International arbitration in the Caribbean*, called “its neutral geography at the crossroads of the Americas and the mixture of common and civil law regimes.”

One of the more recent jurisdictions which is now moving ahead with this ML adoption is Trinidad and Tobago and the draft Bill was laid in Parliament on 23 May 2023. This marks yet another significant addition to the family of countries which has embraced the ML within the Commonwealth Caribbean,

following in the wake of other significant capital importing countries such as Bermuda (1993); Barbados (2007); Cayman Islands (2012); British Virgin Islands (2013) and Jamaica (2017). Within the broader global context, laws based on, or influenced by, the ML have been adopted in 87 States in a total of 120 jurisdictions, according to UNCITRAL.

This may be seen as a recognition of assuring existing and potential investors of arbitral mechanisms of their choice to resolve disputes which obviate the need for litigation before state courts, which are often perceived as not necessarily having the expertise to deal with such commercial disputes as well as possibly being too closely allied with, and dependent on, the state for resources.

However, the enactment of the ML is really only half the story of what is required. As Lassalle and Doumal assert, “The Bahamas, Barbados, Bermuda, the BVI, the Dominican Republic, Jamaica and Trinidad and Tobago all seek to establish the infrastructure that would enable them to capitalise on the increasing demand for international arbitration in the Caribbean.”

This has taken the form of the establishment of international arbitration centres with the requisite technology and institutional structure to facilitate the

conduct of international commercial arbitration. To this may now be added the Cayman Islands, with its own procedural Grand Cayman Court Rules in 2013 and its International Mediation and Arbitration Centre Rules in 2023.

Having said that, legislation which implements the ML also creates expectations that, should the intervention of state courts become necessary, for example, in resolving challenges to the appointment of an arbitrator in the event of a conflict of interest, such state courts will be able to give the appropriate guidance to enable an international commercial arbitration to continue if the tribunal’s decision is challenged further. The intervention of state courts is also necessary for a variety of other reasons such as the enforcement of interim relief.

In reviewing the significance of the ML after some 25 years, Frederic Bachand and Fabien Gelinat, in the book titled *The UNCITRAL Model Law After 25 Years: Global Perspectives on International Commercial Arbitration*, point out that there are at least two reasons why implementation of the ML is important. The first is to promote the “harmonization and improvement of national laws ... by arbitration of disputes arising out of international

*(continued on the next page)*

# THE SIGNIFICANCE OF IMPLEMENTING UNCITRAL MODEL LAW

(continued from the previous page) commercial transactions.” The other is to “offer a legislative model that would prove acceptable to states located in different regions, belonging to different legal traditions, and pursuing different economic policies.” Such considerations are undoubtedly true of the Commonwealth Caribbean with its differing civil and common law traditions.

In the quest for promoting regional integration within the Caribbean Community, which forms the major part of the Commonwealth Caribbean, the harmonization of laws can be seen as a desirable, if not an essential objective of regional integration. However, the converse is that the lack of harmonization is also a major hindrance.

Norman Girvan in his CARICOM report titled *Towards a Single Development Vision and The Role of the Single Economy* has highlighted the slow pace of implementation as constituting a hindrance to the Caribbean Single Market and Economy (CSME). In this regard, this delay has been aided and abetted by the slow pace of harmonization of laws within the various jurisdictions.

Lester Henry in an article titled *Towards a Borderless Region* also points to the issue of the lack of harmonization of laws as

constituting an important factor in the slow pace of implementation of the CSME.

It may be postulated that, within the commercial and business world, the more rapid resolution of international commercial disputes through arbitration, as facilitated by the ML, is a step in the right direction towards achieving the broader objective of regional integration through the CSME. ▲

*Article submitted by Justice Anthony Gafoor, PhD FCI Arb Chair of Ciarb Caribbean Branch and Trinidad & Tobago Chapter*

**The original article submitted by Justice Gafoor can be found on the Caribbean Branch’s website at [www.ciarbcaribbean.org](http://www.ciarbcaribbean.org).**

**The Bahamas Parliament also began debating new arbitration legislation earlier this year and The Bahamas’ Ministry of Economic Affairs issued an explanatory note.**

■ The Explanatory Note was issued to assist the business and legal community as well as the general public with the amendments to the Arbitration Act, 2009 by virtue of the Arbitration (Amendment) Bill, 2023 and the introduction of new legislation, the International Commercial Arbitration Bill 2023.

The two Bills seek to improve the legislative framework to support international commercial arbitration, domestic arbitration and trust arbitration.

The Arbitration (Amendment) Bill, 2023 is applicable to any arbitration where the seat of arbitration is The Bahamas and where the International Commercial Arbitration Act, 2023 does not apply.

The Arbitration (Amendment) Bill, 2023 amends the Arbitration Act, 2009, not only to modernise it but also to improve the scope of its application, expand the interpretation section, define mandatory and non-mandatory provisions, provide penalties for the improper disclosure of confidential information and improve the provisions relating to challenge and appeal of the award.

The Bill also includes provisions related to the resolution of trust disputes through arbitration by expanding and replacing the existing provisions for arbitration of trusts disputes in the Trustee Act as effected by the Trustee (Amendment) Act, 2011.

The International Commercial Arbitration Bill 2023 is applicable to international commercial arbitration where the seat of arbitration is in the territory of The Bahamas. The Bill incorporates the UNCITRAL Model Law which is reflective of the global consensus on key aspects of international arbitration. ▲

*Reported by Tanya Goddard, FCI Arb Secretary General of the AMCC*

## THE QMUL 2022 ENERGY DISPUTES SURVEY

■ In January 2023, the School of International Arbitration at Queen Mary University of London (QMUL) published its thirteenth survey report – *The Future of International Energy Arbitration Survey Report 2022*. Generously supported by Pinsent Masons LLP, it was QMUL's first survey to focus on energy disputes and the future of energy arbitration.

The survey examined two main themes: the prevailing drivers of disputes in the short to medium term and how international arbitration adapts to best serve the needs of the energy sector.

Over 900 respondents took part in the survey from across a wide range of jurisdictions and included end users, leading practitioners, arbitrators, experts, intermediaries, arbitral institutions and academia. Follow-up interviews were done with over 50 respondents to add further context to the responses.

The survey found that issues arising from the construction of energy assets continue to be seen as the major source of disputes, with procurement and supply chain issues the most likely causes over the next five years.

Disputes related to the energy transition from fossil fuels to cleaner sources of energy are anticipated to arise significantly in the short to medium term, due to new players potentially entering the energy market and making it difficult for parties to properly allocate contractual risks, thus increasing the likelihood of disputes.

From the end user's perspective, arbitration was still considered as being very suitable for resolving energy disputes. Nearly three-quarters of all respondents gave arbitration a score of at least 4 out of 5 in terms of suitability. While 40% of respondents saw arbitration as being their preferred choice for resolving energy infrastructure disputes, arbitration was still seen as least suitable to climate change disputes.

Energy users saw arbitration as neutral, enforceable and benefitting from the technical expertise of arbitrators, but they wanted to see innovation driving more efficiency and early decision-making. The use of virtual meetings and hearings was seen as changing the nature of international arbitration for the foreseeable future.▲

## TRAINING COURSES

■ The **Ciarb** Caribbean Branch is offering the training courses listed below. Registration forms and course information sheets are available for download on the Caribbean Branch's website at [www.ciarbcaribbean.org](http://www.ciarbcaribbean.org)

● 2 September to 18 November 2023: Virtual **Module 3 – Award Writing in International Arbitration**. Cost US\$1,200. Register by 18 August 2023

● 21 to 29 November 2023: Virtual **Accelerated Route to Membership – International Arbitration**. Cost US\$1,000. Register by 6 November 2023

● 5 and 7 March 2024: Virtual **Introduction to International Arbitration** Cost US\$300. Register by 19 February 2024.

● 12 and 14 March 2024: Virtual **Introduction to Mediation**. Cost US\$300. Register by 26 February 2024.▲

## HAVE YOUR SAY

■ Readers are encouraged to share their views and comments on this newsletter and its content, and to promote and sustain its growth, by submitting original papers for publication in future editions to [info@ciarbcaribbean.org](mailto:info@ciarbcaribbean.org) ▲

**DISCLAIMER:** The articles published in this newsletter are for general information purposes only and do not reflect the views of The Chartered Institute of Arbitrators. Their inclusion in the newsletter does not imply any endorsement by the Institute of their content, accuracy or authenticity.

Submissions, views and comments should be sent by e-mail to [info@ciarbcaribbean.org](mailto:info@ciarbcaribbean.org)

Copyright © 2023 Caribbean Branch of the Chartered Institute of Arbitrators. All rights reserved.