



The CI Arbbean News

QUARTERLY NEWSLETTER

of the Caribbean Branch of the Chartered Institute of Arbitrators

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SAVE DATES FOR AGM AND TRIENNIAL CONFERENCE

Notice has been given of the **ANNUAL GENERAL MEETING (AGM)** of the **CI Arb** Caribbean Branch, which takes place online via Zoom on **Friday, 30 April 2021** at 1530 hours Eastern Caribbean Time. Members are reminded to advise the Honorary Secretary, by 16 April 2021, of their intention to attend so that the necessary online arrangements can be made.

Nomination forms for the election of members in good standing to serve on the Branch Committee have also been circulated with a closing date of 16 April 2021.

The current Branch Committee, in which the management of the Branch is vested, comprises eight elected members and three elected Chapter Chairs. The Past Chair and the Regional Trustee also serve on the Committee as ex-officio members. The Branch Rules permit not more than fifteen elected members and not more than five duly elected Chapter Chairs to serve.

FOURTH TRIENNIAL CONFERENCE

The Caribbean Branch's Fourth Triennial Conference which will take place online via Zoom on **27 and 28 May 2021** starting each day at 0930 hours Eastern Caribbean Time.

The theme of the Conference is *'Improving the ADR Landscape'* and this will be explored through a number of keynote addresses and

panel discussions on the New York Convention, the Singapore Convention and the UNCITRAL legal framework of Model Laws, Rules and Notes for use in international commercial arbitration and mediation.

Panel discussions will expand into break-out rooms, where delegates can participate through follow-up questions and general discussion with the speakers, panellists and other delegates on the state of dispute resolution in the Caribbean, the growing use of mediation in commercial disputes, the adoption of the Model Laws as a legal framework for dispute resolution in the Caribbean and the challenges related to enforcement and recognition under the Conventions.

A special feature of the Conference will be a Young Members Group Session at the close of the first day, where the focus will be on *'Careers in ADR'*. The aim of this session is to assist young members and newly qualified ADR practitioners in carving out their niche in the Caribbean ADR landscape.

Registration will be free of cost and the Conference is being made possible through partnerships with the BVI International Arbitration Centre (BVI IAC), the Arbitration and Mediation Court of the Caribbean (AMCC) and other arbitral centres and institutions in the Caribbean.

More details about the Conference will be made available through a special supplement of **The CI Arbbean News** to be published later.

TRAINING DIARY

The **CI Arb** Caribbean Branch Online Training Courses and Assessments for the second half of 2021 are:

- 9, 10, 13 and 14 July 2021
ACCELERATED ROUTE TO MEMBERSHIP (ARM) in INTERNATIONAL ARBITRATION: Law, Practice and Procedure – Four half-day assessment workshops – FEE: US\$1,000
- 1 September to 9 December 2021
MODULE 3 in INTERNATIONAL ARBITRATION: Evidence and Award Writing – Weekly half-day lectures and training workshops – FEE: US\$1,350
- 29 and 30 September 2021
INTRODUCTION TO MEDIATION – Two half-day lectures – FEE: US\$300.00
- 27 and 28 October 2021
INTRODUCTION TO INTERNATIONAL ARBITRATION – Two half-day lectures – FEE: US\$300.00

Full details on the above courses including course content, entry requirements, registration forms, fee payment and course materials can be obtained from the Course Administrator, Ms. Theresa Williams at info@ciarbcaribbean.org

ONE YEAR IN: PANDEMIC'S IMPACT ON ARBITRATION

*This article was recently published in **INSOL World**, the quarterly journal of the global insolvency organization **INSOL International**. The authors have customized it for **The CIArb News**.*

As the Coronavirus pandemic wears on into its second year, albeit with some light down the tunnel, it seems appropriate – and important – to assess the impact it has been having, and will continue to have longer term, on arbitration in the Caribbean.

Commercial dispute resolution has been affected by the pandemic in ways that are obvious to most litigation and arbitration participants – disputing parties, parties' legal counsel, courts, arbitrators, mediators, arbitration institutions and organizations, suppliers to courts and to arbitrations and mediations, expert witnesses, governments, and others.

Most notable have been delays in much (but not all) commercial litigation and arbitration, particularly in the first six months of the pandemic. In some jurisdictions, commercial disputes in courts continue to be delayed beyond what often were unduly long delays already existing.

Also, there are ways in which commercial arbitration in the Caribbean is being affected that are not as evident, yet are likely to prove to be profoundly important longer term.

Arbitration in the Caribbean Leading into 2020

To understand and assess the impact of the pandemic on arbitration in the Caribbean, it is necessary to consider it in the context of the state of arbitration in the Caribbean leading into early 2020.

First, a common, albeit slow, trend in the region has been towards embracing arbitration.

Second, several Caribbean countries – but not all – have modernized, or are in the process of modernizing, their arbitration laws. Some Caribbean countries have also created, or are in the process of creating, arbitration hearing centres and/or arbitration institutions, organizing arbitration activities and events, and strengthening their institutional relationships.

Third, arbitration organizations, particularly **CIArb**, the Chartered Institute of Arbitrators, are growing in membership, activities, and prominence across the region.

Fourth, the courts in the Caribbean generally have been supportive of arbitration and several have judges with arbitration knowledge and experience.

Fifth, there is a growing cadre of arbitration practitioners. There are several practitioners who have studied and worked in the field of arbitration in the UK or elsewhere and have returned with a solid understanding of arbitration and a keen arbitration interest. In addition, there are a growing number of younger litigation lawyers who have an arbitration interest and would like to have an arbitration component to their disputes practices.

Sixth, there is a growing support and regard for arbitration, including by the business community in some (but not enough) jurisdictions. In a few countries the business communities have been actively engaged in promoting the use of arbitration and the legal and other infrastructures needed for it.

Seventh, several Caribbean jurisdictions have been competing to try to attract international arbitration, although increasingly there is a

trend to some cooperation as these jurisdictions are recognizing that “*a rising tide raises all boats*”.

However, there is no move yet towards all, or a small number of, countries coming together as a single Caribbean centre for international arbitration with a critical mass of cases and resources. Rather, for understandable reasons, each country aspires to attract international arbitration and the economic benefits that it has been hoped it will bring.

Four Significant Effects of the Pandemic on Arbitration in the Caribbean

There appear to be four ways in which the pandemic has affected arbitration in the Caribbean:

1. significantly delayed or lost arbitration-related opportunities in Caribbean jurisdictions because of the global move to virtual (remote/online), and hybrid, arbitration proceedings;
2. possibly new or expanded areas of dispute, resulting from the pandemic itself and its consequences for businesses, resulting in new opportunities for commercial arbitration in the Caribbean and for arbitration practitioners in the Caribbean;
3. the opportunity to utilize arbitration to resolve commercial disputes that have been, and continue to be, delayed in the court systems of the Caribbean; and
4. the impact of the revolutionary access, by everyone with internet access, to arbitration training, knowledge and networking via webinars and online written materials, most of which have been widely available throughout the pandemic, and importantly, without cost.

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1. Delayed or Lost Arbitration-Related Opportunities

There have been significant delayed or lost arbitration-related opportunities in Caribbean jurisdictions because of the pandemic.

Several Caribbean jurisdictions have been investing effort, and monetarily, to try to make themselves attractive places to 'seat' arbitrations (that is, to be the legal location of the arbitration), and attractive as venues for arbitration hearings, including by establishing arbitration institutions and centres. In most cases, their main object has been to attract 'arbitration business tourism' and other economic activity to Caribbean jurisdictions.

Those jurisdictions include BVI, Jamaica, Barbados, The Bahamas, and The Cayman Islands. In Guadeloupe, soon we will see the OHADAC Regional Centre for Arbitration, focused on the French Caribbean. Some jurisdictions, most notably BVI, have established and equipped 'bricks and mortar' arbitration hearing facilities.

The goal has been that the various participants in international arbitration hearings from around the world – or at least from leading centres of international arbitration, particularly in the United States, Western Europe, and Latin America – would come to the particular Caribbean jurisdiction, generating revenue not only for those directly involved in arbitration but for hotels, restaurants, transportation providers, local suppliers to the legal industry and tourism generally (that is, 'arbitration business tourism') and other economic activity.

With the cessation of travel and the closing of borders consequent on the pandemic, the desire of several Caribbean jurisdictions to be arbitration centres to attract 'arbitration business tourism' has been undermined, certainly in the shorter term, but it appears to some unknown degree permanently.

Those initiatives have been significantly impacted by the move to virtual, and hybrid, arbitrations. It is commonly accepted in the international arbitration world that things will never go back to what they were before early 2020, although there are differences of views on which parts of arbitration will return to hearings physically in-person when the pandemic is under control, or over.

Likely, many procedural hearings and mostly smaller arbitrations will be conducted virtually. Parts of some, perhaps many, larger arbitrations will be virtual, or hybrid. There will be many instances of hybrid hearings, with groups of participants together in several locations (at least for some time with distancing, masks, Plexiglas dividers, protocols, and other protective measures in place)

2. Potential New Opportunities

At the same time, the pandemic created potential new opportunities for commercial arbitration in the Caribbean and for arbitration practitioners in the Caribbean, both established arbitration practitioners and those who desire to do more arbitration work in their disputes practices.

First, there is the possibility of new or expanded areas of dispute resulting from the pandemic itself and its consequences for businesses. Everyone is aware of the consequences of the pandemic on major areas of the Caribbean's economy: tourism and hospitality, including the cruise, hotel and sailing industries, which have been strongly adversely impacted by COVID.

Arbitration should be valuable to resolve disputes in and relating to those industries in a timely and cost-effective manner.

Generally, there may be increasing numbers of disputes involving employment and involving non-performance of contracts of all types (including commercial leases); and of course, there will be insolvencies.

Internationally, arbitration practitioners are discussing the role for arbitration in Climate Change disputes. While at this stage arbitration is not being used for disputes arising out of climate related issues, in light of the geographic, physical, economic, and other realities of the Caribbean, these disputes will arise, and present yet further opportunities for arbitration.

Second, the global pandemic – and the move to virtual, and hybrid, proceedings that it has brought – created potential new opportunities for arbitration in the Caribbean.

Virtual proceedings can be a great leveller. The move to virtual enabled Caribbean arbitration hearing centres to compete globally (subject to the time zone issues, internet quality, and a limited number of other potential impediments). Suddenly we had a global market for arbitration venues – virtual arbitration venues – and hosting arbitration hearings.

The world has not only opened for hearing centres because of virtual. Caribbean arbitrators have the opportunity to do more work internationally, as being located in centres such as London, Paris, New York, Singapore and Hong Kong is much less relevant. And they have the opportunity to work in jurisdictions throughout the Caribbean without the complications and expense of travel. Of course, the opposite is true too. Arbitrators from outside the Caribbean now have easy access to doing cases in the Caribbean.

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"It is not the strongest that survives, nor the most intelligent but the one that best adapts to change."

- Charles Darwin

The extent to which Caribbean jurisdictions have been acting creatively, diligently, and aggressively to locate, assess and pursue new arbitration-related opportunities is open for discussion. Arguably they have not done enough.

3. Opportunity to Use Arbitration to Resolve Commercial Disputes Delayed in the Courts

Many of the Caribbean courts have long had a significant backlog of cases, including commercial disputes. They were overloaded even before the pandemic. In most instances, it appears that these backlogs have been exacerbated by the pandemic's effect on court operations and cases have been delayed even further. Also, there are new disputes that may be arising because of the pandemic, as discussed above.

The pandemic opened opportunities for arbitration to handle commercial disputes currently in courts and new disputes that otherwise would have been brought in court. It has created opportunities for those courts to reduce their backlogs.

If some of the disputes stalled in courts, and new disputes that otherwise would have been brought in courts, move into arbitration, this is opportunity for the Caribbean's arbitration practitioners, institutions and organizations, judges and courts, and business people to use arbitration to resolve disputes and reduce Caribbean court backlogs.

4. Revolutionary Global Access to Arbitration Training, Knowledge and Networking

The pandemic and virtual platforms have given rise to an explosion of webinars on international arbitration, presented by leading arbitration practitioners and academics from around the world on a wide range of arbitration topics. Almost all available without charge and all of them are available to anyone who has an internet connection. Some of those webinars have a networking component. International arbitration organizations have created a range of ways for arbitration practitioners to network online.

This has been an incredibly positive outcome of the pandemic. Happily, there has been a ready embrace of this development by some – perhaps many – Caribbean arbitration practitioners.

The longer-term impact of the availability of international arbitration training, knowledge and networking to anyone anywhere who is interested may prove to be as significant a consequence of the pandemic for arbitration as the move to virtual and hybrid hearings.

When the History of the Pandemic is Written

"When life gives you lemons, make lemonade."

Caribbean arbitration practitioners (counsel and arbitrators), arbitration institutions, and arbitration organizations should be talking up

the opportunities presented by the pandemic. In the case of counsel, they should be talking up the use of arbitration with clients and potential clients.

Arbitration institutions and organizations should be talking up arbitration generally (and not just with the converted) and engaging in public awareness initiatives. They should be reaching out to law firms, individual disputes lawyers, individual transactional lawyers, corporate counsel, business organizations, businesses, governments and others.

Arbitrators should be talking up arbitration generally and encouraging the arbitration organizations and institutions to take action.

Courts and judges should be proactively – and with judicial suasion – assisting litigants and their counsel to consider the advantages of arbitration and assisting them to make the move.

Business organizations, businesses and governments should be taking the initiative with their lawyers, and with their counterparties, to 'get on with it', pointing out that commercial disputes need to be resolved faster, less expensively and more efficiently – particularly in the pandemic era, and hopefully in a soon-to-be-seen post-pandemic era. They should be getting them to adopt arbitration for appropriate disputes, so that they can be resolved, and people can move on to deal with the challenges of today and tomorrow.

*Submitted by
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Submissions, views and comments should be sent by e-mail to barbadoschapter@gmail.com

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