

## The benefits of the new Arbitration Bill in Jamaica

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**Arbitration analysis: M Georgia Gibson Henlin QC, attorney-at-law and arbitrator, partner at Henlin Gibson Henlin, examines the Arbitration Bill 2016 and assesses the practical implications of the proposed new legislation and how it might affect the development of international arbitration in Jamaica.**

### What is the background to the updated Jamaican legislation on arbitration?

There is recognition that the current arbitration law in Jamaica is limited to domestic arbitrations. In addition, it does not provide an effective alternative to the courts, although the courts give deference to arbitration agreements and awards. Its modernisation is long overdue. The current Arbitration Act was passed in 1900 and modelled on the English Arbitration Act 1889. The modernisation process is also in keeping with international trends towards enhanced and modern arbitration legislation. This trend includes the English [Arbitration Act 1996 \(AA 1996\)](#).

The need for modernisation was supported by organisations such as the Jamaica Chamber of Commerce and the Private Sector Organisation of Jamaica. These organisations partnered in 2007–08 to seek funding for a commercial alternate dispute resolution centre. The centre was set up but suffered a setback due to the lack of 'buy-in' by local commercial enterprises and possibly the legal community.

It was thought that a modern arbitration centre would provide a forum for the efficient and effective management and settlement of disputes. The purpose of this would assist in reducing the backlog in the courts by providing a viable and credible alternative to the courts. In addition, Jamaica is strategically situated close enough to international commercial centres such as London, New York and Toronto to function as an alternative seat.

Further, the legislation was not sufficiently robust to complement the continuing existence of the centre. It had therefore closed its doors by the end of 2009. However, the quest for the modernisation of the arbitration statute continued. The Caribbean Arbitration centre was set up and promoted training and capacity building so that there is a cadre of trained arbitrators waiting to take advantage of a modern arbitration statute. The ultimate aim was to improve the arbitration regime in Jamaica, align it with international standards and make Jamaica more attractive as a venue for international commercial arbitration.

### What are the key provisions of the Arbitration Bill?

The key provisions:

- o facilitate international commercial arbitration—cl 3 (defines commercial) and cls 38 and 39 (incorporate the provisions for the recognition and enforcement of awards irrespective of the country in which the award was made)
- o provide for the principle of kompetenz-kompetenz—cl 19
- o confer power on the arbitral tribunal to grant interim measures—cl 20
- o introduce electronic communications as a method of 'writing' in relation to 'arbitration agreements'—cl 10(4)
- o provide for the appointment of experts by the tribunal—cl 29, and
- o make provision for seeking the assistance of the court in taking evidence, if necessary—cl 30

### What are the practical implications of the new legislation?

The practical implications of the proposed legislation are that Jamaica will be set to manage and handle international and domestic commercial arbitrations. This includes the enforcement of foreign awards. It is also more likely that Jamaica will be selected as a seat of arbitration. It complements the capacity building exercise where a number of persons are now trained as arbitrators and members of the Chartered Institute of Arbitrators. Access to the more essential remedies and procedures are available in a single statute or piece of legislation.

## How might this legislation affect the development of international arbitration in Jamaica?

The Arbitration Bill, if passed, will introduce a modern arbitration statute and regime in Jamaica. This regime will be aligned to the United Nations Commission on International Trade Law (UNCITRAL) model law as well as modern arbitration legislation such as [AA 1996](#). This will make Jamaica more attractive as a centre for international commercial arbitration. This is because the proposed arbitration procedure under the new Act affirms the status of arbitration as a viable alternative to litigation. The inclusion of interim remedies is significant in this respect as it makes the tribunal more effective and efficient. This inclusion means that the parties do not have to resort to the court for the grant of interim measures but is able to request those awards from the tribunal.

*Interviewed by Susan Ghaiwal.*

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