

# Kluwer Arbitration Blog

## Modernising Trinidad and Tobago's Arbitration Landscape: Key Features of the 2023 Arbitration Act

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On 11 July 2023, Trinidad and Tobago (“T&T”) enacted [the Arbitration Act 2023](#) (the “Act”) to significantly modernise the domestic and international arbitration legal framework of the country. The Act repeals the Arbitration Act, Chap. 5:01 (the “Former Arbitration Act”) dating back to 1939, that was based on the 1889 and 1934 British arbitration laws, reflecting the landscape existent at that time. The arbitration law in the country had not undergone many changes since its enactment although trade and business practices have evolved dramatically. The Act has been drafted in a bid to keep pace with international developments and its counterparts in the Caribbean namely, Bermuda, the British Virgin Islands (“BVI”), and Jamaica, that have each modernised their laws in 1993, 1996, and 2017 respectively.

The Act promises to incorporate several innovative provisions and align the country's arbitration laws with international best practices. The object of the Act is most notably to facilitate domestic and international trade, obtain fair and speedy resolution of disputes, and adopt the UNCITRAL Model Law (the “Model Law”) (*see* [Section 5 of the Act](#)).

In this post, we discuss some of the key aspects of the Act, highlighting how they will change the current regime and how they compare with the Model Law and, where applicable, the arbitration regimes in other notable jurisdictions, including the UK.

### Judicial Respect for Arbitration Agreements

The Act strengthens judicial respect for arbitration agreements by introducing provisions that allow a court to stay legal proceedings to uphold an arbitration agreement, recognising their formal validity unless the agreement is found to be null, void, or incapable of being performed (*see* [Section 11 of the Act](#)). The Act also introduces the doctrine of separability and the principle of competence-competence whereas the Former Arbitration Act did not include these important principles (*see* [Section 19 of the Act](#)).

Further, the Act allows for more court involvement in the arbitration process than the Model Law, being more in line with the approach taken by the [English Arbitration Act 1996](#). For example, the court can play a role in the appointment and removal of arbitrators, the determination of the arbitral tribunal's jurisdiction, the consolidation of arbitration proceedings, and the enforcement of interim

measures. While this may provide parties with additional safeguards and assistance, there is the risk that it could also lead to increased (undesired) judicial intervention, which may undermine the autonomy and efficiency of the arbitration process.

## Procedural Conduct of Arbitrations

Recognising the evolution of arbitral procedure globally, the Act has added new provisions to allow parties to conduct more efficient arbitrations and fill the gaps that existed in the Former Arbitration Act around various issues such as:

- due process (*see* [Section 31 of the Act](#)),
- evidentiary standards, wherein there are detailed guidelines on the rendering of evidence and the role of experts in arbitration proceedings. It emphasises that the arbitral tribunal should decide on the admissibility, relevance, materiality, and weight of the evidence presented by the parties. The tribunal also has the authority to determine the evidentiary rules applicable to the proceedings, which can include international or domestic legal principles, statutory rules, or any other rules the tribunal finds appropriate (*see* [Section 32 of the Act](#)),
- place of arbitration, which can also be virtual (*see* [Section 33 of the Act](#)), and
- consolidation of arbitrations under certain conditions (*see* [Section 36 of the Act](#)).

## Interim Relief Available to the Courts in Support of Arbitration

The Act enhances the role of courts in supporting arbitration by empowering them to grant interim relief in aid of arbitration proceedings. Arbitral tribunals themselves (after being constituted) also have the power to grant these reliefs without requiring recourse to the judiciary (*see* [Section 22 of the Act](#)). This includes measures relating to the preservation of assets, preservation of evidence and interim injunctions. This is a significant change from the current T&T regime, where courts have had relatively limited powers to grant interim relief in support of arbitration.

## Set Aside of Awards

The Act introduces a comprehensive regime for the setting aside of arbitral awards based on both procedural and substantive grounds (*see* [Section 55 of the Act](#)), in line with the Model Law, the English Arbitration Act 1996, and the [New York Convention 1958](#). Some of the grounds for setting aside an award include:

- the arbitration agreement is invalid,
- the composition of the arbitral tribunal or the arbitration procedure was not in accordance with the parties' agreement,
- the award deals with a dispute not contemplated by the arbitration agreement, and
- the award is in conflict with T&T public policy.

This new set-aside regime is a significant improvement over the Former Arbitration Act, which provided limited grounds for setting aside awards only extending to arbitrator or procedural

misconduct.

## Enforcement of Awards

The Act streamlines the enforcement of arbitral awards by providing a clear and efficient framework for the recognition and enforcement of both domestic and foreign awards (*see Section 28 of the Act*). The Act adopts the New York Convention's principles on the recognition and enforcement of foreign arbitral awards, which will facilitate the enforcement of T&T awards in other Convention states and vice versa. This is a major step forward for the T&T arbitration regime, which currently has a fragmented and less efficient enforcement framework.

## Deviations from the UNCITRAL Model Law

While the Act largely aligns with the Model Law, there are a few provisions that deviate from the Model Law and may be considered controversial or unique to the T&T arbitration regime. These include:

- **Confidentiality:** unlike the Model Law, the Act contains explicit provisions on confidentiality (*see Section 58 of the Act*). The Act imposes a general duty of confidentiality on the parties, the arbitral tribunal, and any experts or witnesses involved in the proceedings. However, there are exceptions to this duty, such as when disclosure is required by any enactment or rule of law necessary to protect a party's legal rights, or in the public interest. Parties can carve out this requirement and authorise the disclosure of confidential information. While the inclusion of confidentiality provisions can be seen as a positive development, the exceptions, and the lack of clarity on their application may lead to disputes and uncertainty.
- **Opt-in and Opt-out Provisions:** the 2023 Act distinguishes between domestic and international arbitration by providing different default rules for each. It further carves out certain provisions relating to ordering or refusing interim measures or recognition and enforcement of awards as only applicable to arbitrations with their place of arbitration outside of T&T (*see Section 4 of the Act*). This distinction could potentially lead to difficulties when determining the applicable rules in a specific arbitration.

## Conclusion

Overall, the Act largely adheres to the Model Law framework. It remains to be seen how these provisions will be received by practitioners and the arbitration community, and how they will be implemented and interpreted by the courts. While the Act is largely consistent with the arbitration laws of other notable jurisdictions, it is essential for practitioners to familiarise themselves with these differences when dealing with cross-border disputes involving these jurisdictions. The Act represents a significant milestone in modernising the arbitration landscape in this twin-island State. By introducing provisions that strengthen judicial respect for arbitration agreements, enhance the role of courts in supporting arbitration, provide a comprehensive regime for setting aside awards, and streamline the enforcement of awards, the Act brings T&T's arbitration regime in line with international best practices and the Model Law.

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