

Kluwer Arbitration Blog

The Modernization of Guyana's Arbitration Regulatory Framework: A Bid to Become an Arbitration Hub

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On May 17, 2024, Guyana passed [the Arbitration Act 2024](#) (Act No. 6 of 2024) ("AA").

The AA repealed the outdated [Arbitration Act, Cap 7:03, Laws of Guyana \(Act No. 17 of 1916\)](#), passed more than a century ago, and makes Guyana the latest Commonwealth Caribbean country, after Trinidad and Tobago, [which passed new legislation in 2023](#), to modernize its arbitration laws.

This development is important on its own but has additional importance given that it was prompted, if not necessitated, by Guyana's unprecedented oil and gas-induced economic boom. The AA is now intended to, in part, shoulder Guyana's ambitions of becoming an international arbitration hub.

In this post, we examine some key features of the AA and additional factors that Guyana must consider as it aims to achieve its ambition of becoming an arbitration hub.

The Arbitration Act 2024 (Act No. 6 of 2024)

Guyana's AA is based on the Improved Access to Justice in the Caribbean ("IMPACT Justice") Project Model Arbitration Bill ("the IJMB"), which is itself based on the [UNCITRAL Model Law on International Commercial Arbitration](#). The IMPACT Justice Project is a Canadian Government funded project intended to effect justice sector reform in the Caribbean. As part of that process, the Project has completed several draft bills to modernize Caribbean legislation and achieve uniformity.

The IJMB was endorsed by regional attorneys-general and was approved by the Caribbean Community ("CARICOM") as a model bill. The IJMB was also approved by the United Nations Commission on International Trade Law ("UNCITRAL") as an UNCITRAL model, meaning that Guyana, having adopted this model, is considered UNCITRAL compliant.

The AA is geared largely toward commercial arbitration, including international commercial arbitration. Guyana's investor-state arbitration landscape is largely unchanged as the most recent Bilateral Investment Treaty ("BIT") was signed with [Brazil \(2018\)](#).

Guyana has **no BIT with the United States (U.S.)**, so any arbitration with companies like ExxonMobil would arise out of commercial contracts.

The Extent of Court Intervention

Courts are not permitted to intervene in matters governed by the AA except as provided for by Section 6 of the AA. A court hearing any action already referred to arbitration must refer the parties back to the arbitration proceedings if the arbitration is brought to the court's attention in the first pleadings addressing the substance of the proceedings (see section 9(1) of the AA).

The court may also refer the parties to arbitration in proceedings (except criminal proceedings) where it considers the circumstances appropriate, regardless of whether the parties consent (see section 9(2) of the AA). Importantly, the legislation dictates that arbitration proceedings can continue despite pending court proceedings on the same matter before arbitration (see section 9(3) of the AA). These provisions bode well for arbitration agreements.

Interim Relief and Preliminary Orders

The AA empowers the Court to grant parties to arbitration interim relief ahead of or during arbitration proceedings (see section 10 of the AA). Powers have also been expressly granted to the arbitral tribunal to grant preliminary orders without notice in appropriate cases (see section 21(1) and (2) of the AA). Guyana's Supreme Court has also been granted powers to recognize or enforce interim measures granted by an arbitral tribunal (see section 28(1) and (3) of the AA).

Competence-Competence and Separability

The doctrines of competence-competence and separability have also been codified in Guyana's AA (see section 17 (1), (2) and (3) of the AA), allowing an arbitral tribunal to determine these questions, and eliminating the need for court intervention.

Courts, guided by sections 17 and 6 of the AA, can therefore decline requests to determine questions of jurisdiction and separability.

Court Assistance in Taking Evidence and Summoning Witnesses

An arbitral tribunal can approach the court for assistance in summoning witnesses (see section 41(1) of the AA). The coercive intervention of the court on such issues is likely to enhance the arbitration process.

Setting Aside of Arbitral Awards

The legislation does allow parties to approach the courts for orders setting aside an arbitral award in limited circumstances (see section 56(1) of the AA).

An award may only be set aside where, for example: i) a party was under some incapacity; ii) the agreement is invalid under the applicable law, or where the law to be applied is not stipulated, under the laws of Guyana; iii) the party making the application to set aside the award was not given proper notice of the appointment of the arbitrator, or was unable to present his or her case; and iv) where the award deals or contains decisions on a dispute beyond the scope of the request for arbitration.

A court may also set aside an award if the subject matter of the dispute is not capable of settlement by arbitration under the laws of Guyana, or where the award conflicts with the public policy of Guyana (see section 56 (2)(b) of the AA).

An award conflicts with public policy if it was induced by fraud or corruption or was procured in breach of natural justice (see section 59 of the AA).

Recognition and Enforcement of Awards

Generally, local courts must recognize and enforce arbitral awards “irrespective of the country in which it was made [...]” once an application is made in writing (see section 57(1) of the AA). However, the AA also stipulates grounds on which a court may refuse to recognize and enforce an award.

These grounds are identical to those on which a court may set aside an award (see section 58(1) of the AA) and include the following: to do so would be contrary to Guyana’s public policy; the arbitration agreement was invalid; or the subject of the arbitration was not capable of resolution by arbitration under Guyana’s laws.

The words in which section 58(1) of the AA is articulated make it clear that the list is exhaustive. In the recognition and enforcement proceedings, the court can request an English translation of the award if the award was not made in English (see section 58(3) of the AA).

Confidentiality

Finally, arbitral proceedings must be kept confidential, and court proceedings related to arbitrations or awards must not be heard in open court unless the court is satisfied that it should (see sections 64 and 65 of the AA). These provisions preserve the preference of parties for privacy as they resolve their disputes, although the discretion to order open hearings is likely to cause discomfort to corporate parties.

Notable Differences Between the AA and the IJMB

Except for formatting differences, including placement of provisions, the provisions of the AA and the IJMB are largely identical. However, the AA does deviate from the IJMB on several matters.

1. Court-ordered Interim Measures

The AA follows the IJMB and modern developments by allowing court-ordered interim measures. The AA deviates from the IJMB, however, by expressly setting out conditions under which such measures “shall not” be issued. These include where the arbitral tribunal is not competent to issue measures, or where the arbitral tribunal has not yet been appointed and the matter is urgent.

2. Default Awards

Section 40(1) of the AA sets out circumstances under which a party to arbitration proceedings may obtain a default award. However, section 40(2) of the AA extends the circumstances under which a default award may be granted. For example, a claim may be dismissed for inordinate and inexcusable delay (see section 40(2)(a)).

3. General Duties of Parties

Section 43 of the AA sets out the general duties of parties to arbitral proceedings. These rules include complying with orders and directions regarding evidentiary and procedural matters and otherwise facilitating the proper and expeditious conduct of the arbitral proceedings. These provisions seem to be adopted from section 40 of the United Kingdom’s [Arbitration Act 1996](#).

4. UNCITRAL Rules

Both the IMJB and the AA state that parties to arbitral proceedings may agree to adopt the UNCITRAL Rules (see section 32 of the AA).

However, while the IJMB has created “Model Rules” to govern specific matters, Guyana’s AA has deviated from this suggestion, opting instead for the UNCITRAL Rules. For example, section 49 of the AA states that the fees and expenses of arbitrators are to be assessed according to Article 41 of the UNCITRAL Rules; section 50 of the AA states that the allocation of costs will be governed by Article 42 of the UNCITRAL Rules and section 51 of the AA states that the deposit of costs will be governed by Article 43 of the UNCITRAL Rules.

5. Tax Exemptions for Foreign Arbitrators and Attorneys

In keeping with the IJMB, the AA allows a foreign attorney involved in an international arbitration to make any international arbitration-related application in court as long as he or she appears with an attorney-at-law admitted to practice law in Guyana.

The AA does not, however, grant the tax exemption suggested by the IJMB to foreign attorneys and arbitrators on income and expenses related to arbitrations lasting for a continuous period of 30

days or less in a period of 365 days. The result is that the applicable taxes will be levied for any period of work in Guyana.

Conclusion: What More Is Needed?

The passage of the AA is a monumental step which modernizes Guyana's arbitration laws, but will it be enough to make Guyana a regional or international hub?

A [2021 Arbitration Survey Report](#) by the Queen Mary University of London found that Paris (64%), New York (54%), São Paulo (21%), Geneva and Singapore (19%), Miami (15%), Lima (6%), and Madrid (5%) are among the top ten preferred seats for Latin America and the Caribbean.

Respondents did say that greater court support for arbitration (56%), increased impartiality in the local legal system (54%), better judicial enforcement of arbitration agreements and awards (47%), the ability to enforce decisions of emergency arbitrators or interim orders (39%), the ability of courts to deal with arbitration-related matters remotely (28%), and political stability (25%) could make other seats, like Guyana, more attractive.

The AA can guide courts toward greater support for arbitration, and enforcing arbitration agreements, awards, and interim orders, but while it will take time before a track record develops, the work has already started. Guyana's High Court [recognized an arbitral](#) award granted to ConcoPhillips Gulf of Paria B.V., and Phillips Petroleum Company Venezuela Limited against Venezuela in international arbitration proceedings.

Judicial independence in Guyana is ensured by [Article 122A of the Constitution of Guyana](#), but perhaps a true picture requires an analysis of decisions.

On political stability, Sithe Global, [pulled out](#) of a GY\$858 million hydro-power deal in Guyana in 2013 due to "political wrangling". Finally, the current opposition has promised to seek the renegotiation of the [PSA](#) if it wins elections in 2025.

The AA has undeniably modernized Guyana arbitration legislative framework, but more is required of Guyana to become an arbitration hub. Ultimately, time and potential parties to arbitration will tell.

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