



The significance of the implementation of the UNCITRAL Model Law in the Commonwealth Caribbean: A step in the right direction?

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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 “its neutral geography at the crossroads of the Americas and the mixture of common and civil law regimes.”¹

One of the more recent jurisdictions which is now moving ahead with this is Trinidad and Tobago as the draft Bill was recently laid in Parliament on 23rd May 2023². 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

¹ Francois Lassalle and Hana Doumal. “International arbitration in the Caribbean.” British Virgin Islands International Arbitration Centre (BVIIAC). 29 July 2022. <https://globalarbitrationreview.com/review/the-arbitration-review-of-the-americas/2023/article/international-arbitration-in-the-caribbean>. Accessed 8th June 2023.

² Trinidad and Tobago Parliament website, Trinidad and Tobago. <https://www.ttparliament.org/publication/the-arbitration-bill-2023>. Accessed 5th June 2023.

(2013); 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.³

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.”⁴ 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.⁵ 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 2023.⁶

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

³ https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration/status. Accessed 8th June 2023. Bahamas itself has also been planning to adopt the Model Law through its International Commercial Arbitration Bill 2018 as amended in 2020. See <https://www.lexology.com/library/detail.aspx?g=fcad2bfe-520c-4fb0-91a4-5ae33b87dbe4>. Accessed 8th June 2023.

⁴ Lassalle and Doumal, note 1.

⁵ Such International Arbitration Centres have now been established in the British Virgin Islands in 2016; Barbados through the Arbitration and Mediation Court of the Caribbean in 2017; and Jamaica in 2017.

⁶ Jennifer Fox. “A Guide to Arbitration in the Cayman Islands.” *Insight*. 12th April 2022. <https://www.ogier.com/news-and-insights/insights/a-guide-to-arbitration-in-the-cayman-islands/>. Accessed 8th June 2023. The Cayman Islands Mediation and Arbitration Centre established its own Rules in 2023. https://www.caymanarbitration.com/_files/ugd/c37c5e_49eda398ab014af798c1870f88c9d109.pdf. Accessed 8th June 2023.

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, Bachand and Gelinas point out that there are at least two reasons why the implementation of the Model Law is important. The first is to promote the "harmonization and improvement of national laws...by arbitration, of disputes arising out of international 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."⁷ 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 both a desirable if not an essential objective of regional integration. However, the converse is that the lack of harmonization is also a major hindrance. Girvan has highlighted the slow pace of implementation as constituting a hindrance to the Caribbean Single Market and Economy (CSME).⁸ In this regard, this delay has been aided and abetted by the slow pace of harmonization of laws with the various jurisdictions. Henry 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.⁹

⁷ Frederic Bachand and Fabien Gelinas (eds). *The UNCITRAL Model Law After 25 Years: Global Perspectives on International Commercial Arbitration*. Juris. 2013, p.xvii.

⁸ Norman Girvan. "Towards A Single Development Vision And The Role Of The Single Economy." (2007). https://oldsite.caricom.org/documents/11332-single_economy_girvan.pdf Accessed 8th June 2023.

⁹ Lester Henry. "Towards a Borderless Region." *UWI Today*. May 2011. https://sta.uwi.edu/uwitoday/archive/may_2011/article6.asp. Accessed 8th June 2023.

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.

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