



The CI Arbbean News

QUARTERLY NEWSLETTER

of the Caribbean Branch of the Chartered Institute of Arbitrators

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NEW BRANCH CHAIR AND COMMITTEE ARE ELECTED

The Caribbean Branch of the Chartered Institute of Arbitrators held its Annual General Meeting on 26 April 2022 and the members present at the meeting approved the election and appointment of the members to serve on the Branch Committee for the ensuing year. The elected and appointed members met on 10 May 2022 and elected the officers of the Branch Committee, which is comprised of:

Chairman

Justice Dr. Anthony Gafoor, FCI Arb
(Trinidad and Tobago)

Vice Chairmen

Mr. Andrew Pullinger, MCI Arb
(Cayman Islands)

Hon. Barry Leon, FCI Arb
(British Virgin Islands)

Honorary Secretary

Mr. Ebrahim Lakhi, MCI Arb
(Barbados)

Honorary Treasurer

Mr. Mandish Singh, FCI Arb
(St. Lucia)

Elected Members

Ms. Jodi-Ann Stephenson, MCI Arb
(St. Lucia)

Mr. Jorge Molina Mendoza, MCI Arb
(Panama)

Ms. Shani Nembhard, MCI Arb
(Jamaica)

Mr. Joshua Hamlet, ACI Arb
(Trinidad and Tobago)

Elected Chapter Chairs

Mr. Calvin Hamilton, C. Arb
(Barbados)

Ms. Tameka Davis, MCI Arb
(British Virgin Islands)



The new Branch Chairman, Justice Dr. Anthony Gafoor, (pictured above) is an experienced judicial officer specialising in Commercial and Revenue law and is the Chair of the Tax Appeal Court of Trinidad and Tobago. He is a Fellow of the Chartered Institute of Arbitrators, a WIPO Neutral in mediation and arbitration, a certified and accredited mediator, and an attorney-at-law.

Holding numerous and varied post-graduate qualifications in different branches of law and in conflict and dispute resolution, Justice Gafoor is a panelist with many of the region’s arbitral institutions and is a Senior Lecturer with the University of the West Indies and a member of the faculty of CI Arb.

Justice Gafoor has a long association with the CI Arb Caribbean Branch, previously serving as Vice Chairman and Honorary Secretary and he is also the Chair of the Branch’s Trinidad and Tobago Chapter.

Justice Gafoor replaces Mr. Miles Weekes, FCI Arb (Barbados) as the Branch Chairman. Having served for three consecutive years as Branch Chairman, Mr. Weekes was ineligible for re-election, but he will continue to serve on the Branch Committee as the Immediate Past Chairman. The other Branch Committee member is Amb.(r.) David Huebner, C. Arb (USA), who is the current CI Arb Trustee for the Americas Region, and he serves as a non-voting ex-officio member.

The outgoing members of the Branch Committee are Ms. Shan Greer, FCI Arb (St. Lucia), Hon. Sir Patterson Cheltenham, FCI Arb (Barbados), Ms. Caroline Hay, FCI Arb (Jamaica) and Mr. Andrew Gibson, MCI Arb (Cayman Islands).

The CI Arbbean News in a recent interview with Justice Gafoor congratulated him on his election and asked him to share with readers what being elected as the Branch Chairman means to him.

Justice Gafoor: “I have always seen myself as a team player and so election to this esteemed office is an opportunity to continue to serve but also to lead the Branch by building on the work of my illustrious predecessors. It is also important to allow the Branch membership to tap into the new trends emerging in ADR in the post-pandemic phase of regional and global affairs.

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In particular, continuing to offer training both online and in-person but also to nurturing future leaders in the field of ADR who can speak to the particular needs of the region.

On a personal level, I feel deeply honoured to have been entrusted with managing the Branch's affairs together with an excellent team. I also see this opportunity as a means of giving back to a field to which I have been strongly committed for many years and which has enabled me to contribute ultimately towards building a more peaceful region.

The tasks and responsibilities engendered by this position will be tempered by the challenges which the region faces. These present important opportunities to manage the Branch's affairs at a time when we have to adapt to unexpected developments regionally and globally."

The CIArbbean News in noting the Chairman's long association with the Branch then asked him how he has seen the Branch grow and how does he see its future.

Justice Gafoor: "The Branch has emerged from its initial close links with the Jamaican Chapter and has continued to grow exponentially with the establishment of Chapters in several other Caribbean jurisdictions, as well as the hosting of triennial conferences which have attracted presenters and participants from across the globe.

The Caribbean region remains strategically located to build on its reputation as being relatively stable. The Branch is strongly committed to fostering peace and harmony notwithstanding the economic challenges posed in the post-pandemic era.

I remain optimistic that, through **CIArb** and the Branch's commitment to promoting training of the highest quality, it will continue to foster the growth of ADR which complements the judicial resolution of disputes.

I also believe that it is critical for the Branch to continue to play a vital role in fostering such in all of its manifestations, both nationally and internationally. To this end, some of the Chapters and Branch members have been hosting and participating in international conferences where we have an opportunity to sell the Caribbean brand of ADR which speaks strongly to the warmth of the region. In this regard, the Caribbean has also hosted various meetings geared towards attracting investment and facilitating the resolution of commercial disputes.

An important area for future growth will be to devote attention to building competency in the resolution of family and community disputes, many of which end up in protracted litigation. I hope that, during my tenure, these groups can be given priority since the peaceful resolution of disputes in these areas can contribute towards a more harmonious and peaceful region, in my respectful view."

The CIArbbean News finally asked the Chairman if there were any specific innovations in ADR which he would like to see implemented during his tenure.

Justice Gafoor: "The Covid-19 pandemic has underscored two main issues – that we can maintain contact within a disparate region delimited by natural boundaries and the significance of direct and in-person interactions to foster networking opportunities.

One of the key areas for the Branch will be to advance the greater use of technology to resolve disputes. Online dispute resolution can often save both time and costs and thus giving consideration to what the Branch can do to foster this is important, especially where face to face interactions are challenging and members may still be reluctant to travel. It is noteworthy that travel within the region can be expensive and thus facilitating online training even further is a key priority.

However, I also believe that the opportunities for networking and socializing provided by face-to-face meetings are invaluable and I hope, in consultation with the Branch Committee, to find ways in which we can encourage such opportunities in the context of the 'new normal'.

One of my priorities will also be to ensure that the Young Members Group is afforded an opportunity to contribute to Branch affairs and the excellent work the Branch has been doing throughout the region.

I also hope that, during my tenure, the Branch will continue to contribute towards global affairs and dialogue about the evolution and relevance of ADR and thus ultimately promote the Caribbean region as an attractive destination to facilitate the resolution of disputes. With the establishment of various international arbitration and mediation facilities regionally, I would like the Branch to continue to partner with such bodies in continuing to promote the region as a viable place to do business."

The CIArbbean News extends congratulations to all the members of the Branch Committee and offers thanks to the outgoing members for their years of service to the Branch.

NEWS UPDATE ON THE CHAPTERS

The **CIArb** Caribbean Branch has Chapters which were established in those countries of the region that have enough members to support Chapter formation and viability. The Chapters assist the Branch in furthering the objects of the Institute and focus on issues at a local level.

The **Trinidad and Tobago Chapter** is the largest and has 75 members. At its Annual General Meeting, held on 25 April 2022, the members present elected the Chapter Committee to serve for the 2022-23 term, comprised of:

Chapter Chair

Justice Dr. Anthony Gafoor, FCIArb

Vice Chair

Ms. Ria Mankee-Sookram, MCIArb

Secretary

Mr. Mark Hood, MCIArb

Treasurer

Mr. Edward Albada, MCIArb

Education & Training Officer

Ms. Natthoya Baptiste, ACIArb

The **Barbados Chapter** has 45 members and at its Annual General Meeting, held on 16 February 2022, the members present elected the Chapter Committee to serve for the 2022-2024 term. The Committee is comprised of:

Chapter Chair

Mr. Calvin Hamilton, C.Arb

Vice Chair

Ms. Tanya Goddard, FCIArb

Secretary

Ms. Giselle Layne, ACIArb

Committee Members

Mr. George Holder, MCIArb

Mr. Gregory Hinkson, MCIArb

Mr. Miles Weekes, FCIArb

The **Cayman Islands Chapter** has 22 members and at its Annual General Meeting, held on 12 April 2022, the members present approved a motion confirming that the Chapter Committee, elected in 2021, would

serve for a term of three years until 2024. The Committee is comprised of:

Chapter Chair

Mr. Andrew Pullinger, MCIArb

Vice Chair

Mr. Andrew Gibson, MCIArb

Secretary

Mr. Shaun Tracey, MCIArb

Committee Members

Mr. Quentin Cregan, FCIArb

Mr. Jalil Asif, MCIArb

The **British Virgin Islands Chapter** has 19 members. The Chapter Committee elected to serve for the 2019-22 term, is comprised of:

Chapter Chair

Ms. Tameka Davis, MCIArb

Vice Chair

Mr. Peter Ferrer, ACIArb

Secretary

Ms. Monique Peters, MCIArb

Treasurer

Ms. Rosalind Nicholson, MCIArb

One requirement for formation of a Chapter is that there is a minimum of 15 members in the geographical area proposed, although a lesser number may be acceptable where the viability of the Chapter can still be assured. Another requirement is that the majority of the members in the area proposed are willing to support the running of the Chapter.

Jamaica has 49 members and the Branch Committee will be seeking to establish an appointed **Jamaica Chapter** Committee which will oversee arrangements for the members in Jamaica to elect a Chapter Committee in due course.

Any member in Jamaica who is willing to support the running of the Jamaica Chapter and is interested in serving on the initial appointed Chapter Committee may contact the Branch Committee by email at info@ciarbcaribbean.org.

The Branch had previously formed a **St. Lucia Chapter** and a **St. Vincent and the Grenadines Chapter**. At the moment, neither Chapter has a functioning Chapter Committee and, based on some limited feed-back, it has been suggested that a more viable Chapter might be realised if all 34 members located in the OECS countries constituted a single Eastern Caribbean Chapter.

Members residing in Anguilla, Antigua and Barbuda, Grenada, St. Kitts and Nevis, St. Lucia and St. Vincent and the Grenadines are invited to share their views on this suggestion and to indicate their interest in supporting an Eastern Caribbean Chapter by contacting the Branch Committee by email at info@ciarbcaribbean.org.

TRAINING DIARY

The following training course is being offered by the Branch in 2022.

1 September – Virtual Module 1 – Law, Practice and Procedure of International Arbitration – US\$800

Candidates will receive reading materials on the start date and attend weekend half-day webinars starting 17 September before taking a written 48-hour assessment on 1 December. This course is intended for any person who is interested in a detailed knowledge of international arbitration and wishes to act as a party representative or counsel in arbitral proceedings or proceed to becoming qualified as an arbitrator or become a Member of **CIArb**.

HAVE YOUR SAY

Readers are encouraged to submit original papers, views, opinions and information on items of interest for future publication and to share their views and comments on this newsletter and its content.

ENFORCING FOREIGN AWARDS IN CAYMAN ISLANDS

The success and popularity of international arbitration, as a means by which to resolve cross-border disputes, is attributable in large part to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “**New York Convention**”), which underpins international arbitration by providing for the ready enforcement of foreign arbitral awards in contracting states.

In essence, the New York Convention requires contracting states to recognise arbitration agreements and to enforce arbitral awards made in other contracting states as though they are domestic court judgments of the contracting state. In practice, this means it is often considerably easier to enforce a foreign arbitral award than a foreign court judgment, the practical consequences of which may be significant.

The New York Convention was extended by the UK Government to the Cayman Islands in 1980, promoting the use of arbitration in the jurisdiction and facilitating the enforcement of foreign arbitral awards. The Cayman Islands have embraced international arbitration as a modern, efficient and cost-effective alternative to litigation and routinely enforce foreign arbitral awards.

This article provides a general overview of the procedure for the enforcement of foreign arbitral awards in the Cayman Islands, where the rules applicable to such enforcement are governed by the Arbitration Act (2012 Revision) (the “**Arbitration Act**”) and the Foreign Arbitral Awards Enforcement Act (1997 Revision) (the “**Enforcement Act**”). These statutes give domestic effect to the New York Convention.

The Arbitration Act is based on the widely adopted UNCITRAL Model Law on International Commercial Arbitration. Section 72 of the Arbitration Act provides that an arbitral award made pursuant to an arbitration agreement may, with the leave of the Cayman Court, be enforced in the same manner as a judgment or order of the Court to the same effect. Upon the grant of leave, judgment may be entered in terms of the award.

Section 72(5) provides that an arbitral award, irrespective of the country in which it was made, shall be recognised as binding and, upon application to the Court, shall be enforced subject to the provisions of sections 6 and 7 of the Enforcement Act. This is so whether or not the award is made in a New York Convention contracting state (a “**Convention award**”).

An application for leave to enforce an arbitral award is made by *ex parte* originating summons, supported by affidavit evidence. In practice, the supporting affidavit is typically brief. Section 6 of the Enforcement Act provides that a party seeking to enforce a Convention award shall produce (and exhibit to the affidavit in support) the duly authenticated original award or a duly certified copy; the original arbitration agreement or a duly certified copy; and where the award or agreement is in a foreign language, a translation certified by an official or sworn translator, or by a diplomatic or consular agent.

In addition, the supporting affidavit needs to state the name and usual last place of abode or business of the applicant and the person against whom it is sought to enforce the

award respectively and, as the case may require, either that the award has not been complied with, or the extent to which it has not been complied with, at the date of application.

Once leave is granted, the order must be served on the debtor, who then has 14 days from service of the order (or if the order is to be served out of the jurisdiction, within such period as the Court may think fit) within which to apply to set it aside. The award shall not be enforced until either that 14-day period has expired, or the Court has disposed of any application made within that period.

The grounds on which enforcement of a foreign arbitral award can be resisted are famously narrow and are set out in section 7 of the Enforcement Act. The grounds mirror those in Article 5 of the New York Convention and include legal incapacity of a party, invalidity of the arbitration agreement, lack of due process and notice, excess of the tribunal’s powers, non-conformity with party autonomy or the law, fraud, corruption or misconduct on the part of an arbitrator and prejudicial breaches of the rules of natural justice.

Enforcement may also be refused if the award is in respect of a matter which is not capable of settlement by arbitration, or if it would be contrary to public policy to enforce the award.

Enforcement of an award shall not be refused unless one of the grounds set out above is established. The Court is otherwise bound to enforce the award and does so as a matter of routine.

Submitted by Andrew Pullinger and Jane Hale of the Cayman Islands

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Submissions, views and comments should be sent by e-mail to info@ciarbcaribbean.org

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