



The CI Arbbean News

QUARTERLY NEWSLETTER

of the Caribbean Branch of the Chartered Institute of Arbitrators

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NOTICE OF 2020 ANNUAL GENERAL MEETING ISSUED

The Honorary Secretary of the **CI Arb** Caribbean Branch has issued a Notice and an Agenda for the 2020 Annual General Meeting of the Branch. This AGM will take place online on Wednesday, 29th April 2020 at 5:00 pm (AST).

The Honorary Secretary has also issued Nomination Forms for the election of members to serve on the Branch Committee for a term of a maximum of three years. The Branch Committee, which shall consist of not more than fifteen elected members, currently has six elected members.

Any Associate, Member or Fellow, who has paid his or her 2020 dues, can be nominated by any two other members who have similarly paid their 2020 dues.

All Nomination Forms are to be returned to the Branch Secretary by 5:00 pm (AST) on 14th April 2020.

The Caribbean Branch has a total of 226 active members who reside in the following countries and in the numbers shown:

- Antigua and Barbuda – 4
- Barbados – 43
- Belize – 3
- British Virgin Islands – 20
- Cayman Islands – 17
- Dominica – 1
- Grenada – 5
- Guyana – 6
- Jamaica – 38
- St. Kitts and Nevis – 2
- St. Lucia – 13
- St. Vincent & the Grenadines – 5
- Trinidad and Tobago – 62
- Turks and Caicos Islands – 7

The Honorary Secretary has also issued Nomination Forms for the election of a member to go forward as the Branch's nominee to stand for election to the office of the President of the Institute.

The Presidential Election will take place in November 2020 and the winner will become the Deputy President in 2021 and the President in 2022. The runner-up will become the Vice President in 2021, the Deputy President in 2022 and the President in 2023.

Any Fellow, who has paid his or her 2020 dues, can be nominated by any five other members who have similarly paid their 2020 dues. These Nomination Forms are also to be returned to the Branch Secretary by 5:00 pm (AST) on 14th April 2020.

REGIONAL TRUSTEE FOR THE AMERICAS APPOINTED

Ambassador (r.) David Huebner (*pictured to the right*), the former Chairman of the North America Branch, has been appointed as the new Trustee for the Americas Region, replacing Ms. Ann Ryan Robertson, who resigned due to her elevation to the office of Deputy President of the Institute for 2020.

By his appointment, Amb. Huebner becomes an ex officio non-voting member of the Caribbean Branch Committee and he has accepted the congratulations sent by the Chairman of the Caribbean Branch.



In doing so, Amb. Huebner stated that he welcomed the opportunity to serve and expressed the hope that he will be able to use his new position as a platform for advocacy on behalf of all the members in the Western hemisphere.

He has already started the process by having a round of one-on-one conversations with each of the Regional Branch Chairs to identify the common problems and needs among the regional branches and he intends to have a follow-up group call to discuss overlapping interests.

TRAINING DIARY

Due to the many mandatory travel and assembly restrictions that have been implemented across the Caribbean region to mitigate the impact of the COVID-19 pandemic, the Caribbean Branch has suspended some of the training courses and assessments which were being planned by the Branch to take place in 2020.

This suspension affects the Module 2 International Arbitration course planned for March, the Introduction to International Arbitration courses planned for June and the Accelerated Route to Membership assessments in International Arbitration planned for July.

A decision on the remainder of the training courses and assessments for 2020 will be made at a later date. That decision will apply to the Modules 1 and 2 International Arbitration courses in September, the Introduction to Mediation and International Arbitration courses in September and October and the Accelerated Route to Membership assessments in International Arbitration in December.

In the coming months, the Regional Pathway Leader, the Education and Training Committee and the Faculty members will be working with **CIArb** to implement delivery of future training courses and assessments by the use of virtual classroom and video conferencing facilities, more than was the norm previously.

The **CIArb** Education Department is testing the integration of virtual classroom and video conferencing software to hold online training and preparing instruction manuals for the use of the software by the Branches. For the assessments of the candidates, the use of 'stay at home' assignments instead of examinations is being considered.

MEMBERS' NEWS

CIArb members residing in the Cayman Islands were previously members of the North America Branch. At their request, and with the agreement of the North America and Caribbean Branches, their transfer to the Caribbean Branch has been approved by the **CIArb** Board of Trustees.

There are currently 17 active **CIArb** members residing in the Cayman Islands and the Caribbean Branch Chairman and Past Chair have started discussion with some of them about the establishment of a Chapter and training opportunities.

The CIArb News welcomes the Cayman Islands' members to the Caribbean Branch and looks forward to their active participation in the Branch's activities.

POSTPONEMENT

Dr. Christopher Malcolm, the Secretary-General of the Jamaica International Arbitration Centre Ltd. (JAIAC) has advised **The CIArb News** that, due to the pandemic, the international conference and other activities which were to be convened by JAIAC in Kingston, Jamaica from 19 – 27 June as part of Arbitration Week 2020, will be postponed to a future date.

THE BRANCH CHAIRMAN'S MESSAGE

Dear Members,

I hope that as you read this message, each and every one of you and your loved ones are safe and healthy. As we navigate the passage of the COVID-19 pandemic, I would be surprised if you are not finding this uncertain time to be challenging. Here in our Caribbean region, where the pandemic is in its early stages, based on what has been observed elsewhere in the world, it would be prudent for us to be as prepared as we can be for the health environment to worsen before getting better and for the current isolation periods to be extended. I therefore urge you to follow carefully the guidelines which the health authorities in your particular country have issued and to practice the simple hand and respiratory hygiene techniques advocated; but most of all, reduce and avoid, wherever possible, close in person contact with others outside your households. Please be responsible, be safe and stay healthy.

Miles F. Weekes, Chairman

HAVE YOUR SAY

Readers are encouraged to share their views and comments on the newsletter and its content, and to promote and sustain its growth by submitting original papers, opinions and information on items of interest for future publication. Please send all submissions by e-mail to barbadoschapter@gmail.com.

In the event that it becomes necessary to abridge or serialise a lengthy submission for publication, the unabridged submission will be uploaded to the Caribbean Branch's webpage www.ciarbcaribbean.org

The CIArb News is published on a quarterly basis, on the first day of January, April, July and October. Past copies of the newsletter can be found on the Caribbean Branch's webpage www.ciarbcaribbean.org

YOUNG MEMBERS

The Caribbean Branch currently has 40 members who are 40 years old or younger. These young members are reminded that the Branch has established a Young Members Group (YMG) and would welcome their assistance in developing the Group and relevant programmes. Please contact the Group Chair, Ms. Jodi-Ann Stephenson via email at kajstephenson@gmail.com

CARIBBEAN CODE OF GOOD ARBITRATION PRACTICE

In the July 2019 edition of this newsletter, readers were introduced to the need for a set of guidelines and a code of good practice that could be adopted by the arbitration community and the arbitration institutions in the Caribbean. In the January 2020 edition, the writer set out the guidelines geared towards arbitral institutions, counsel and arbitrators. In this edition, the writer concludes the article by setting out the guidelines geared towards the code of good practice.

Section IV – Model Code

The section would cover ten broad areas of arbitration, namely: the arbitral agreement, appointment of arbitrators, procedure, abbreviated arbitral proceedings, emergency arbitrators, challenges of arbitrators, evidence, interim measures, the award and some comments on arbitration centres.

While the announcement of the Guidelines is vastly important, sections therein should introduce innovatory solutions so as to provide a comparative advantage in favour of the region as a principal location for international arbitrations, especially for those involving disputes governed by English law.

1. The Arbitral Agreement. The Guidelines could make some very specific recommendations concerning actual arbitration agreements.

The Guidelines should envisage situations where domestic law may have an effect on institutional rules and situations where current international practice causes arbitral institutions to modify their arbitration rules.

They should recommend, for example, that the model arbitration clauses of institutions indicate that the applicable arbitration rules be

those in force on the date of the commencement of the arbitration. This is of particular relevance in the region where arbitral institutions are now being created or updating and modernizing rules to adhere to international standards.

This is a definite method of eliminating ambiguity in situations where the applicable rules have been amended in the period between signature of the arbitration agreement and the commencement of the arbitration proceeding.

Also, of utmost importance in the Guidelines is a recommendation that the arbitration clause expressly specifies the scope of confidentiality concerning the arbitration, or that the parties agree on this point at the commencement of the arbitration. Arbitrations gloat of confidentiality, but there exists a great deal of ambiguity, which is often of concern.

2. Appointment of Arbitrators.

Common practice in the region often only permits the parties of arbitration proceedings to nominate arbitrators contained on the “closed list” of the arbitral institutions. This, especially on an international level, results in problems where the arbitration involves a very skilled or technical subject matter and the “closed list” of arbitrators does not contain sufficient experienced or well-qualified arbitrators.

Additionally, the Guidelines should recommend that where the parties are of differing nationalities, that the sole or presiding arbitrator not share nationality with either party. This is undeniably a marker to advance the practice and frequency of international arbitrations in the region, while also at the same time, increasing the perception of fairness.

Of special significance are rules concerning the appointment of arbitrators which provide that, as a condition precedent to appointment as arbitrator, an arbitrator signs a declaration of independence and impartiality which is provided to the parties for review. Though common in international practice, this has not been a habitual requirement by regional arbitral institutions, which often results in parties having to self-research the arbitrator and exploit available resources to ensure neutrality and fairness.

3. Procedure. As a way to encourage more international arbitrations in the region, the Guidelines should advocate that the parties be free to decide on the language of the arbitration proceedings, and that the language be neutral, taking into account the language of the arbitration agreement, the language of the documents and the witnesses and the ability of the arbitrators to speak a particular language.

Most of the prominent arbitration institutions in the region are either not equipped for non-English language proceedings or require that the language of the arbitration be English, which would be of concern for international practitioners.

4. Abbreviated Arbitration Proceedings. Under the Guidelines, abbreviated arbitration proceedings should be available if the amount in dispute, including answer and counterclaim, is US \$500,000 or less and the parties have not expressly opted out of the abbreviated provision; or if the parties agree the abbreviated proceedings regardless of the date of the agreement or the quantity in dispute.

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CARIBBEAN CODE OF GOOD ARBITRATION PRACTICE

5. Emergency Arbitrators. The Guidelines should recommend that unless otherwise agreed to, a party may, at any moment prior to the arbitrators being seized of the file, request the appointment of an emergency arbitrator who will be tasked with adopting interim measures that, because of facts and circumstances present at the time, cannot await the appointment of the arbitration panel.

6. Challenges of Arbitrators. The Guidelines should recommend that a challenge to an arbitrator based on impartiality, independence or any other motive, should be made in written form and should substantiate the allegations.

The Guidelines can stress the need for provisions for an appointing authority to be vested with jurisdiction to resolve the challenge. The decision should not be subject to appeal. However, for purposes of transparency, the decisions on challenges can be made public.

7. Evidence. Each party has a right to reasonably anticipate the evidence upon which the other party relies.

The Guidelines can recommend that evidence within the control of a party shall be subject to discovery, provided it can be shown that it is essential to the requesting party's case. The arbitrators may draw a negative reference with respect to evidence, where a party with control of the said evidence, unreasonably refuses to provide access to the same.

8. Interim Measures. The Guidelines should recommend that unless otherwise agreed, the tribunal shall, upon petition of one of the parties, agree interim measures, subject to deposit of costs if deemed appropriate. Parties, upon a request for interim measures, may also make an ex parte application for a preliminary order, in appropriate circumstances.

9. The Award. The Guidelines should recommend that unless agreed otherwise, the dispute shall be resolved in an award within two months following the conclusion of the proceedings, subject to a possible extension period of two months at the discretion of the arbitrators, the court of arbitration, or upon agreement of the parties.

It is to note that the tribunal does not become *functus officio* solely upon the expiration of the time for issuance of the award, rather, upon expiration of the term, one of the parties must provide notice to the tribunal of the said expiration. The tribunal will be granted a special grace period of 15 days after receipt of such notice to present the award.

The deliberations of the arbitrators are secret and the duty to maintain the secrecy of the deliberations continues after the termination of the proceedings.

In circumstances where a draft of the award has been prepared, either by majority vote or by decision of the president of the tribunal, each arbitrator may express his or her particular views in written form in a dissenting or other decision.

10. Centres for International Arbitration. As arbitration grows in popularity and as international arbitrations are increasingly attracted by the international openness of regional arbitral institutions, the Caribbean, with adequate preparedness, can promote itself as a location for international arbitrations.

The uniformity contained within a set of innovative Guidelines offers confidence in the Caribbean arbitration system to foreign and domestic parties searching for ideal arbitration forums.

Institutions adopting a set of Guidelines as described, are opening their doors for international arbitration practitioners and will likely see an increase in international arbitrations as a result of their determination to embrace international arbitration practices.

In conclusion, the Guidelines will only apply to the extent that, neither national codes of conduct, nor the arbitration agreement, nor the primary duty of loyalty to the party, nor the obligation to present the party's case, demand a different conduct and the parties have agreed on their application, or the tribunal decides to apply them unilaterally, if they consider themselves authorized to rule on matters of party representation to ensure the integrity and fairness of arbitration proceedings.

The above article was submitted by Mr. Calvin Hamilton, FCIArb., an independent international arbitrator based in Barbados and Madrid. He is a Member of the International Court of Arbitration of the ICC, the Chair of the Barbados Chapter of CIArb and admitted to practice law in New York and Madrid.

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Submissions, views and comments should be sent by e-mail to barbadoschapter@gmail.com

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