



The CIArbbean News

QUARTERLY NEWSLETTER

of the Caribbean Branch of the Chartered Institute of Arbitrators

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BRANCH PATRON SUPPORTS THE LAUNCH OF AMCC

The Arbitration and Mediation Court of the Caribbean (AMCC) was launched on 12th October 2017 at an Introduction Ceremony held at the Walled Garden of the Barbados Museum and Historical Society. The keynote address presented by Patron of the CI Arb Caribbean Branch, the Rt. Hon. Sir Dennis Byron, President of the Caribbean Court of Justice, is reproduced in part below:



As Patron of the Caribbean Branch of the Chartered Institute of Arbitrators (CI Arb), I am very pleased to support the launch of this institution. It is an innovative approach to improve the quality of justice delivery in our region.

The successful realization of the objectives to provide modern and effective arbitration and mediation services for Barbados and the Eastern Caribbean will be a catalyst of investment growth in Barbados and the region; supplement the overburdened state judicial machinery, which has unacceptable delays in the adjudication of commercial claims; and augment efforts to enable the attraction and maintenance of investment with the region.

It will provide a direct stimulus to regional investment and regional economic development because its proper functioning requires the application and development of productive skills and investment in a range of adjunct and ancillary services - including specialised legal services, technological services, translation and transcription services, and other administrative and secretarial services.

The general idea of the AMCC began as an expression of interest among both public and private stakeholders in Barbados to institutionalise commercial alternative

dispute resolution (ADR) as a viable tool in the management of conflicts that arise in the course of business. Mobilization of the concept began as early as 2007.

Undaunted by the failure of early attempts to realise formal linkages with internationally recognised arbitration providers, the initial advisers and supporters of the concept of a Barbados-based ADR

centre, intent on guarding the wicket, embarked upon a path of innovation.

They decided that the Caribbean has sufficient expertise to make it unnecessary to chase the ball outside the off stump to try to reach international arbitration providers. They decided to play with a straight bat and use their own expertise to streamline, to revise, to fashion a solution customised to domestic and regional needs and capacity.

They eventually came up with a model for developing regional institutions that serve the public good without reliance on public funding. I think that in our economic situation as a small state, and our place in globalisation, this creativity and self-reliance must be commended and supported.

Thus the AMCC was incorporated in April of this year in Barbados as a private not-for-profit company constituted by members. It is now open for business and is ready to support its first clients. This dynamic journey demonstrates what can be achieved when stakeholders are determined to be part of the solution.

The establishment of the AMCC and the ADR services that it is intended to provide are a welcomed addition to the cadre of dispute resolution services currently available in Barbados and the Eastern Caribbean.

EVENTS DIARY

● 31 January 2018

CIArb Barbados Chapter Annual General Meeting – BARBADOS.

● 23 - 29 April 2018

CIArb International Arbitration Energy Conference including a two-day arbitration conference on managing disputes arising in bilateral investment treaties and investment contracts entered into between host governments and investors, a mock investor-state ICSID international arbitration, CIArb Arbitration and Mediation Training Courses and the CIArb Annual General Meeting – GUYANA.

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, views, opinions or information on related items of interest for publication in future editions.

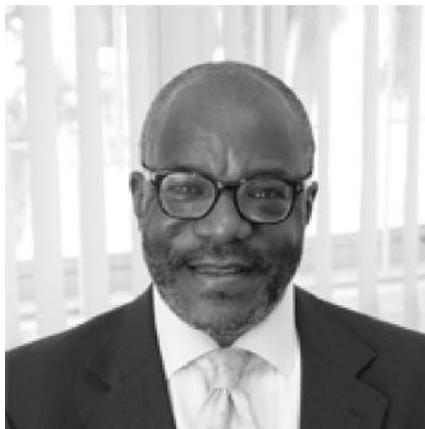
The newsletter is published on a quarterly basis on the first day of January, April, July and October and submissions, views and comments should be sent by e-mail to barbadoschapter@gmail.com

It may be necessary to edit lengthy submissions before publication in the newsletter and, in such cases, the full submission will be published on the Caribbean Branch's webpage or on its LinkedIn Group webpage.

KEEP IN TOUCH

The Caribbean Branch maintains a LinkedIn Group to promote interaction and dialogue between the members. Please keep in touch by joining LinkedIn and the Group at <http://www.linkedin.com/groups/8201202>

NEW APPOINTMENT TO ICC COURT



Mr. Calvin A. Hamilton FCIArb, a native of Guyana, has been appointed by the World Council of the International Chamber of Commerce to be a Member of the ICC International Court of Arbitration and becomes the first CARICOM national to be a Court Member. The appointment which took effect from 1st July 2017 is for a term of three years.

The ICC International Court of Arbitration is a global arbitral institution with offices located in Paris, New York, Sao Paulo and Hong Kong, managed by a multi-lingual Secretariat and with Court Members from over 100 countries.

The Court administers and supervises the arbitration process at all stages, including the scrutiny and approval of all awards to be issued by the arbitrators, who are either selected by the parties or directly appointed by the Court. It maintains policies and rules aimed at ensuring that all the participants in the arbitration process conduct themselves with honesty, integrity and professionalism.

Mr. Hamilton, who is a member of the CIArb Caribbean Branch and the Vice Chair of the Barbados Chapter, is considered one of the prominent arbitration practitioners in Europe and has more than thirty years of experience in the field.

For 16 years, he was a partner at two of Spain's leading international law firms until he founded his own Spanish boutique arbitration firm, *Hamilton Abogados*, in 2008, and which is listed among the Top 100 practices by Global Arbitration Review.

After practicing in Europe, Mr. Hamilton joined the Faculty of Law, University of the West Indies, Cave Hill Campus as a full time Senior Lecturer for 3 years, teaching courses including International Commercial Arbitration and Alternative Dispute Resolution, until he retired in July 2017.

He now sits as an independent international arbitrator, in addition to actively promoting arbitration law reform in the region through frequent conference addresses and presentations. Most recently, he was appointed to an Impact Justice Task Force, the primary objectives of which included: adoption of the UNCITRAL Model Law, introduction of effective caseload management by courts and the accreditation of mediators in the Caribbean.

Mr. Hamilton is included on the list of arbitrators of many of the major international and regional arbitral institutions and has been appointed in arbitrations seated in the Caribbean, Latin America, the US, Africa and Europe. In addition, he currently acts as a panellist in domain name disputes.

Fluent in English and Spanish and proficient in Portuguese and French, he has authored many articles which have appeared in publications such as *Mealey's International Arbitration Report*, *Spain Arbitration Review* and the *New York Law Journal*. One of his articles can be found on page 4 of this edition of [The CIArbbean News](#).

ARBITRATION AND MEDIATION COURT OF THE CARIBBEAN

Ms. Baria Ahmed, MCI Arb, the Director-General (Designate) of the Arbitration and Mediation Court of the Caribbean (AMCC) addressed the members of the CI Arb Barbados Chapter at the Faculty of Law, UWI Cave Hill Campus on 27 September 2017, prior to the launch of the Barbados based ADR Centre on 12th October 2017.

The Arbitration and Mediation Court of the Caribbean (AMCC) has been established to offer conflicting parties in commercial cases the opportunity to use Alternative Dispute Resolution (ADR) processes, such as arbitration and mediation, to resolve their differences.

Based in Barbados, the AMCC has been established as a free-standing, not-for-profit company, constituted by members, and as a regional institution with a focus not just on Barbados but also on the wider Organisation of Eastern Caribbean States (OECS).

The organisation's main objectives are to deliver ADR services for the benefit of both domestic and international parties, as well as development and capacity building throughout the region.

As a company constituted by members, the AMCC offers two categories of membership - contributory and non-contributory - for corporations and professionals in Barbados, the Caribbean and internationally.

Membership is open to any person or body of good standing with a bona fide interest in international commercial arbitration or ADR, including lawyers, arbitrators, mediators, experts, academics, business persons, law firms and commercial and trading organisations.

Whereas, the use and practice of ADR continue to grow regionally, albeit at a measured pace, the AMCC's vision is to enhance this developmental drive by way of awareness raising, capacity building through training and accreditation, and offering solutions to ensure conflict efficiency both within organisations and when disputes escalate towards litigation.

With a wide range of membership benefits, the AMCC will work closely with its partners in developing the emerging ADR market in the Caribbean and marketing regional expertise to clients worldwide. However, it is worth noting that the AMCC's dispute resolution services are to be made available to all contracting parties, without any membership requirements.

As with most ADR Centres, the AMCC will rely on the provision of its services via external experts in the form of arbitrators and mediators. Accordingly, appropriate and respectful fee share arrangements will need to be in place with all panel members, with the panel application process to be launched and details circulated shortly.

The AMCC will administer domestic and international arbitration and mediation, as well as other ADR methods. It will provide institutional arbitration and mediation services, principally in accordance with its own rules of arbitration and mediation, but also using UNCITRAL Rules, ICC Rules, or any other rules agreed upon by the parties.

The AMCC will also help to administer ad-hoc arbitration and mediation services providing the necessary technical and administrative assistance upon request from disputing parties.

The AMCC will also offer advice to parties to international commercial and investment contracts with regards to drafting of standard ADR clauses and agreements, and also in dispute prevention activities.

The AMCC will help develop the expertise and professional capacity of arbitrators, mediators and legal practitioners from Barbados and the OECS region through the provision of training programs and seminars.

In time, the AMCC will also seek to establish a system of continuing professional training, education, examination and recognition of arbitrators, mediators, conciliators and adjudicators, either independently or in partnership with other international and regional training and education bodies.

More widely, the AMCC will also seek to arrange events, seminars, workshops and other meetings and discussions of matters in connection with arbitration and mediation for primary and secondary stakeholders throughout the region.

In achieving all of these objectives, the importance of marketing in the development of AMCC cannot be under-estimated and with a focus on building a reputation for quality and excellence, the AMCC looks forward to promoting itself further in the coming months in Barbados and across the region.

Anyone interested in being included on the AMCC mailing list, or seeking further information regarding its services, training or panel application, please email the Director-General (Designate) at caribcourt@gmail.com.

*Submitted by Baria Ahmed
Barbados*

DISCOVERY AND CIVIL LAW SYSTEMS

A version of this article first appeared as a commentary on Discovery and Civil Law Systems, in the October 2006 issue of Mealey's International Arbitration Report. The subject matter is just as relevant today as it was in 2006. In Part 1 of the article, published in the last newsletter, the concept and forms of discovery were explored.

Section 3. Concept of E-Discovery

The scope of discovery is very wide and enables a broad spectrum of documents to be obtained, a spectrum not restricted to what may be used in the trial. The criterion is usually to allow the parties to ascertain any information which may reasonably lead to the unearthing of evidence that is both relevant and admissible. It is a considerably wide-ranging criterion, and parties normally disagree as to which information ought to be exchanged and which ought to be kept confidential. Disputes on these matters are normally settled by discovery motions and/or court rulings.

Legal acceptance of discovery in the English-speaking world has recently been extended to the possibility of requesting information stored in electronic files, which is known as "e-discovery".

Electronic discovery refers to 'any process in which electronic data is sought, located, secured, and searched with the intent of using it as evidence in a civil or criminal legal case'. E-discovery can be carried out offline on a particular computer or it can be done in a network.

In the United States, the Federal Rules of Civil Procedure, which already had specific rules addressing the possibility of discovery, have been amended to address discovery of electronically stored information so as to better accommodate discovery directed at information generated by computers.

Section 4. International Arbitration versus Litigation.

Discovery-related issues are resolved in different ways in arbitrations and in the ordinary courts of law. The approach to discovery constitutes one of the greatest differences between the arbitral and judicial systems and the availability of discovery procedures varies widely from one system to another.

Whether and to what extent discovery is available in an arbitration remains unsettled, particularly when discovery is sought from third parties. One must anticipate potential obstacles to discovery requests from the opposing party or parties in the arbitration, from the arbitrators, and from the party from whom discovery is sought (the third party).

In arbitration there are no specific rules as to discovery per se, and matters relating to discovery can usually be decided by agreement between the parties. In the event of disagreement, the arbitrator enjoys the necessary discretion to take a decision in this respect.

The extent to which a party can obtain discovery will depend on the arbitration agreement, applicable

arbitration rules, and disposition of the arbitrators. When seeking third-party discovery, a party's fortunes will also depend on the jurisdictions in which the arbitration is held and in which the third party is located.

In jurisdictions where there are legal provisions regulating discovery in the context of the courts, such rules are not automatically applicable to arbitration. Hence, one cannot formulate a request for discovery from the same point of view as a party may have under its own legislation. Instead, one would have to look at what the parties have specifically agreed in this respect. In the absence of any provision addressing the issue, many arbitrators tend to hold that, in deciding to submit to arbitration, the parties were precisely seeking to avoid the type of open-ended discovery permitted in the courts.

One frequent reason to choose arbitration over conventional litigation is to avoid the time and expense required for traditional litigation discovery. Accordingly, a party's right to discovery will depend in large part on the terms of the arbitration agreement itself.

The arbitrators will therefore approach discovery from the instance of the arbitration clause agreed by the parties, the rules of the arbitral institution, the law applicable to the arbitration, and any pertinent precedents relating thereto. Only after reviewing these tools, will they have regard to the relevant state legislation.

This article will be continued in the next edition of this newsletter.

*Submitted by Calvin Hamilton
Barbados*

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