

GLOBAL ARBITRATION REVIEW

THE INTERNATIONAL JOURNAL OF PUBLIC AND PRIVATE ARBITRATION

NEWS

Cayman arbitration law under public review

29 May 2009

Cayman's Law Reform Commission has asked for public comment by 19 June on whether to adopt a version of the Model Law.

A draft discussion paper by the Commission suggests the islands' current arbitration law is past its sell-by date and driving arbitration business away. It advocates supplanting Cayman's existing law with a new framework based on the UNCITRAL Model, as well as removing administrative barriers on immigration that pose an obstacle to foreign arbitrators, parties and advocates.

The Cayman Islands want to borrow from the experience of other offshore jurisdictions that have adopted the Model Law, such as Bermuda, Singapore and Hong Kong.

Jeremy Walton, head of the commercial litigation and arbitration team at Appleby and chairman of the Cayman chapter of the Chartered Institute of Arbitrators, welcomes the review and says it is "very timely."

Walton says that the Cayman Islands' arbitration laws are still based on the English Arbitration Act of 1950, even though the act has been updated and replaced twice since then, most recently in 1996.

"The 1950 statute doesn't reflect modern thinking to minimise court intervention," he says. "It has outmoded approaches to challenging arbitral awards and doesn't reflect principles enshrined in the UNCITRAL model at all. So really it's a bit unwieldy for modern commercial arbitration."

According to the discussion paper, at present the Cayman Islands' financial services industry generates little international arbitration business that is conducted in the islands.

"More than half of the world's offshore funds are domiciled in the Cayman Islands," the report notes, but "local professionals have tended not to promote arbitration, no doubt partly because their clients are comfortable using the court system and partly because they are reluctant to promote an arbitration regime which is inconsistent with modern legislative trends."

A Cayman Islands Law Society committee has also recommended to the government that it pass legislation that largely mirrors the Model Law. It produced a draft Bill plus explanatory memorandum.

"No. The Law Society Committee was working on the project for almost two years" says Walton, who chaired the committee, when asked if the issue is a recent topic of debate. "I've certainly been making noises about it to anyone who'll listen for a while!"

A report in a Global Arbitration Review publication written by Walton and Chris Eason, an insurance specialist at Appleby, notes that domestic arbitrations in the Cayman Islands have increased in number in recent years as a result of insurance claims related to hurricanes, which have visited frequently in recent years. The economic impact of one storm in 2004 on the Cayman Islands was estimated at US\$3.43 billion by the World Bank.

The Commission's report says that any reform of the Cayman arbitration law should probably include special rules on multi-party arbitration to accommodate the needs of the hedge fund industry. The Law Society team says its proposal does that.

At present, arbitration matters are dealt with in the Cayman Islands under the Foreign Arbitral Enforcement Law (1997 revision), the Arbitration Law (2001 revision) and the Grand Court Rules (revised edition) orders 56 & 73.

- Contact the director of Cayman's Law Reform Commission on cheryl.neblett@gov.ky