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New *International Commercial Arbitration Act* in force in Ontario

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On March 22, 2017, Bill 27, *Burden Reduction Act, 20*17, an omnibus bill that includes a new *International Commercial Arbitration Act* ("**New ICAA**") received Royal Assent from the Ontario Legislature.

The New ICAA, with official title *International Commercial Arbitration Act, 2017*, SO 2017, c 2, Sch 5, repeals and replaces the *International Commercial Arbitration Act*, RSO 1990 c I.9 ("**1990 ICAA**"). The New ICAA is based on the Uniform International Commercial Arbitration Act as adopted by the Uniform Law Conference of Canada ("**ULCC**") at its 2014 annual meeting ("**Uniform Act**") and makes a number of significant changes to the previous Act.

The New ICAA brings Ontario in line with other Canadian jurisdictions by making explicit reference to the 1958 *Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, commonly known as the "*New York Convention*." The New ICAA also establishes a ten-year limitation period for the recognition and enforcement of foreign arbitral awards. Finally, it incorporates a number of amendments that were made to the United Nations Commission on International Trade Law ("**UNCITRAL**") Model Law on International Commercial Arbitration ("**Model Law**") in 2006.

The *New York Convention*

Canada acceded to the *New York Convention* in 1986. The Convention was then implemented in Ontario under the *Foreign Arbitral Awards Act* ("**FAAA**") that same year. However, when the FAAA was repealed and replaced with the 1990 ICAA, the 1990 ICAA omitted reference to the Convention. As such, Ontario is the only Canadian jurisdiction without express legislation incorporating the New York Convention.
The New ICAA now makes it clear that the Convention applies in Ontario. Section 2(1) of the New ICAA explicitly states that the *New York Convention* "has force of law in Ontario in relation to arbitral awards or arbitration agreements in respect of differences arising out of commercial legal relationships." What may seem like a small change is actually quite noteworthy as anything that makes international commercial arbitration in the province more standard and predictable for foreign practitioners will ultimately make Ontario a more popular locale for international arbitrations.

Limitation Period

Another important change in the New ICAA is the creation of a ten-year limitation period for the recognition and/or enforcement of international commercial arbitration awards. Ontario's adoption of the ten-year limitation period is consistent with the Uniform Act.

The ten-year period compares favourably with the respective limitation periods in Canada's major trading partners and recognizes that foreign awards are akin to foreign judgments, which are generally subject to a ten-year limitation period across Canada.

Amendments to the Model Law

In 2006, UNCITRAL adopted a number of amendments to the Model Law. These changes included: an express acknowledgement of the Model Law's international origin for the purposes of interpretation; a liberalisation of the formal requirements for arbitration agreements; and the inclusion of detailed provisions regarding interim measures and preliminary orders.

Article 2A deals with the interpretation of the Model Law and states that "regard is to be had to its international origin and the need to promote uniformity in its application and the observance of good faith". The Model Law has been adopted in 74 States in a total of 104 jurisdictions. As stated in the Explanatory Note, the revision "is designed to facilitate interpretation by reference to internationally accepted principles and it aimed at promoting a uniform understanding of the Model Law."

The 2006 amendments to the Model Law liberalised the definition and form of arbitration agreements in order to better conform to international contract practices. In doing so, UNCITRAL adopted two options under Article 7. The first option follows the structure under the original Model Law, though recognizes that a record of the "contents" of an agreement "in any form" as equivalent to traditional "writing." As such, an agreement to arbitrate can be entered into any form, including orally, as long as the content of the agreement is recorded. The second option does not have any form requirements whatsoever. The New ICAA has adopted the first option.

Article 17 of the 2006 Model Law provides detailed provisions regarding a tribunal's power to order interim measures and preliminary orders. Of particular importance is the inclusion of Article 17H(1), which means that interim measures will continue to be enforceable as final awards in Ontario.

Conclusion

The adoption of the New ICAA brings Ontario further into step with advancements in international arbitration globally. The legislative amendments are positive and should make Ontario an even more attractive location for international arbitrations in the future.

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