
APPENDIX 1 DRAFT NEW UNIFORM INTERNATIONAL COMMERCIAL ARBITRATION ACT

PART I INTERPRETATION

Definitions

1. (1) In this Act,
- (a) "**Convention**" means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, adopted by the United Nations Conference on International Commercial Arbitration in New York on 10 June 1958 as set out in Schedule I; and
 - (b) "**Model Law**" means the Model Law on International Commercial Arbitration, adopted by the United Nations Commission on International Trade Law on 21 June 1985, as amended by the United Nations Commission on International Trade Law on 7 July 2006 as set out in Schedule II.

COMMENT: The definition of Model Law makes it clear that the 2006 amendments to the UNCITRAL Model Law are included.

- (2) Except as otherwise provided in this Act,
- (a) words and expressions used in Part II have the same meaning as the corresponding words and expressions in the Convention; and
 - (b) words and expressions used in Part III have the same meaning as the corresponding words and expressions used in the Model Law.

COMMENT: Some words are used in slightly different senses in the Convention and the Model Law. This section clarifies the meaning to be given to those words when used in the Act.

PART II THE CONVENTION

Application of Convention

2. (1) Subject to this Act, the Convention applies in [*enacting jurisdiction*] to arbitral awards or arbitration agreements, whether made before or after the coming into force of this Part, in respect of differences arising out of commercial legal relationships.
- (2) In determining whether the Convention applies to certain types of arbitral awards,
- (a) an arbitral award made in a jurisdiction within Canada that is considered to be international in that jurisdiction is not considered to be a domestic award for the purpose of article I(1) of the Convention; and

- (b) an arbitral award made in a jurisdiction within Canada that is not considered to be international in that jurisdiction is considered to be a domestic award for the purpose of article I(1) of the Convention.

COMMENT: Article I(3) of the Convention permits state parties to make both a “reciprocity reservation” and “commercial reservation.” This section makes the commercial reservation but does not make the reciprocity reservation. Enacting Jurisdictions that do not wish to make the commercial reservation should delete the phrase “in respect of differences arising out of commercial relationships.”

Designation of court

3. For the purpose of seeking recognition and enforcement of an arbitral award pursuant to the Convention, application shall be made to *[enacting jurisdiction to designate appropriate court]*.

PART III THE MODEL LAW

Application of Model Law

4. (1) Subject to this Act, the Model Law applies in *[enacting jurisdiction]*.
- (2) With respect to article 7 of the Model Law, option I applies in *[enacting jurisdiction]*; option II does not.
- (3) The Model Law applies to international commercial arbitration agreements and awards made in international commercial arbitrations, whether made before or after the coming into force of this Part.

COMMENT: Article 7 of the Model Law contains two options for the requirement that arbitration agreements be in writing. Subsection 4(2) makes it clear that option I applies but option II does not apply.

Meaning of certain terms used in Model Law

5. (1) In article 1(1) of the Model Law, an “agreement in force between this State and any other State or States” means an agreement that is in force in *[enacting jurisdiction]* between Canada and any other country or countries.
- (2) In articles 1(2), 17 J, 27, 34(2)(a)(i), 34(2)(b)(ii), and 36(1)(b)(ii) of the Model Law, “this State” means *[enacting jurisdiction]*.
- (3) In article 1(3) of the Model Law, “different States” means different countries, and “the State” means the country.
- (4) In articles 1(5), 34(2)(b)(i), and 36(1)(b)(i) of the Model Law, “law of this State” means the law of *[enacting jurisdiction]* and any laws of Canada that are in force in *[enacting jurisdiction]*.
- (5) In article 35(2) of the Model Law, “this State” means Canada.

COMMENT: *The language of the Model Law assumes that the enacting jurisdiction is a unitary state. In the Canadian context it is necessary to identify those instances in which phrases in the Model Law containing the word “state” should be interpreted as referring to Canada or to the enacting jurisdiction. This section achieves that objective.*

Use of extrinsic material in applying article 2 A(1) of Model Law

6. In applying article 2A(1) of the Model Law, recourse may be had to:
- (a) the Reports of the United Nations Commission on International Trade Law on the work of its 18th (3-21 June 1985) and 39th (19 June – 7 July 2006) sessions (U.N. Docs. A/40/17 and A/61/17);
 - (b) the International Commercial Arbitration Analytical Commentary on Draft Text of a Model Law on International Commercial Arbitration (U.N. Doc A/CN.9/264); and
 - (c) the Commentary of the United Nations Commission on International Trade Law concerning the UNCITRAL Model Law on International Commercial Arbitration 1985 with Amendments as Adopted in 2006 (U.N. Sales No. E.08.V.4).

COMMENT: *This section authorizes courts in the enacting jurisdiction to have regard to official UNCITRAL texts relating to both the original Model Law and the 2006 amendments to it.*

Designation of court

7. (1) The functions referred to in articles 11(3), 11(4), 13(3), 14, 16(3), 17 H, and 34(2) of the Model Law shall be performed by [*enacting jurisdiction to designate appropriate court*].
- (2) For the purposes of the Model Law, a reference to "court" or "competent court", where in the context it means a court of [*enacting jurisdiction*], means the [*enacting jurisdiction to designate appropriate court*] except where the context otherwise requires.

Rules applicable to substance of dispute

8. Notwithstanding article 28(2) of the Model Law, if the parties fail to make a designation pursuant to article 28(1) of the Model Law, the arbitral tribunal shall apply the rules of law it considers to be appropriate given all the circumstances respecting the dispute.

COMMENT: *Under article 28(1) of the Model Law parties may designate an applicable “law” or “rules of law”. The term “law” is sometimes considered to refer only to the laws, or only to the codified laws, of a state, while “rules of law” is considered to also include uncodified laws and other regimes that parties may agree should apply. Where the parties to an arbitration agreement have failed to designate either applicable laws or rules of law, article 28(2) of the Model Law requires the arbitral tribunal to apply the “law” determined by the conflicts of laws rule it considers applicable. This section requires the arbitral tribunal to identify “rules of law” it considers appropriate, and does not require it to apply conflicts of law rules when doing so.*

PART IV GENERAL

Enforcement of consolidation agreements

9. (1) If all parties to two or more arbitral proceedings have agreed to consolidate those proceedings, a party, with notice to the others, may apply to the [*enacting jurisdiction to designate appropriate court*] for an order that the proceedings be consolidated as agreed to by the parties.

(2) Subsection (1) does not prohibit parties from consolidating arbitral proceedings without a court order.

(3) On an application under subsection (1), if all parties to the arbitral proceedings have agreed to consolidate the proceedings but have not agreed, through the adopting of procedural rules or otherwise,

- (a) to the designation of parties as claimants or respondents or a method for making those designations; or
- (b) to the method for determining the composition of the arbitral tribunal

the court may, subject to subsection (4), make an order deciding either or both of those matters.

(4) If the arbitral proceedings are under different arbitration agreements, no order shall be made under subsection (1) unless, by their arbitration agreements or otherwise, the parties have agreed

- (a) to the same place of arbitration or a method for determining a single place of arbitration for the consolidated proceeding within [*enacting jurisdiction*];
- (b) to the same procedural rules or a method for determining a single set of procedural rules for the conduct of the consolidated proceedings; and
- (c) either to have the consolidated proceedings administered by the same arbitral institution or to have the consolidated proceedings not be administered by any arbitral institution.

(5) In making an order under this section, the [*enacting jurisdiction to designate appropriate court*] may have regard to any circumstances that it considers relevant, including

- (a) whether one or more arbitrators have been appointed in one or more of the arbitral proceedings;
- (b) whether the applicant delayed applying for the order; and
- (c) whether any material prejudice to any of the parties or any injustice may result from making an order.

COMMENT: *This section authorizes a court in the enacting jurisdiction to enforce unanimous agreements to consolidate multiple arbitrations and to assist the parties to such agreements in constituting an arbitral tribunal for the consolidated proceeding. The court is prohibited from ordering consolidation of arbitrations arising under incompatible arbitration agreements.*

Stay of proceedings

10. Where, pursuant to article II(3) of the Convention or article 8 of the Model Law, a court refers the parties to arbitration, the proceedings of the court are stayed with respect to the matters to which the arbitration relates.

COMMENT: *Under the Convention or the Model Law if court proceedings are commenced about a matter falling under an arbitration agreement, a court is required to “refer the parties to arbitration”. This section makes it clear that the relevant court proceedings are to be stayed.*

Limitation period for recognition or enforcement of arbitral awards

11. (1) No application under the Convention or the Model Law for recognition or enforcement, or both, of an arbitral award shall be made after the tenth anniversary of

- (a) the date on which the time limit expired for the commencement of proceedings at the place of arbitration to set aside the award, if no such proceedings were commenced; or
- (b) the date on which proceedings at the place of arbitration to set aside the award concluded, if such proceedings were commenced.

(2) Despite subsection (1), if an arbitral award was made before the coming into force of this Act but an application under the Convention or Model Law for the recognition or enforcement of that award was not made before that day, no application shall be made after the earlier of the following

- (a) the date determined under subsection (1); or
- (b) the date on which the limitation period that applied in respect of the recognition or enforcement of the arbitral award before the coming into force of this Act expired or would have expired.

(3) Where there is a conflict between this Act and any other Act on the limitation period for recognition or enforcement of arbitral awards, this Act prevails.

COMMENT: *This section creates a ten-year limitation period that applies to applications for recognition or enforcement of international commercial arbitration awards under either the Convention or the Model Law. Enacting jurisdictions should note that article III of the Convention prohibits an enacting jurisdiction from imposing “substantially more onerous conditions ... on the recognition or enforcement of” international commercial arbitration awards than are imposed for recognition or enforcement of domestic arbitral awards. Although there is room for debate as to whether this prohibition implicates limitation periods, enacting jurisdictions are advised to ensure that the limitation periods for recognition and enforcement of domestic awards are not more generous than those contemplated by this Act.*

Enforcement of Canadian court judgments recognizing or enforcing arbitral awards

12. (1) A judgment, order, or decree of a court of competent jurisdiction in Canada recognizing or enforcing an award under the Convention or the Model Law shall be enforced in [enacting jurisdiction] in the same manner and to the same extent as a judgment of that court granting the relief granted by the award.

(2) No procedure to have a judgment, order, or decree described in subsection 12(1) made outside of [enacting jurisdiction] become a judgment, order, or decree of [enacting jurisdiction to designate appropriate court] shall be commenced after the expiry of the period determined under subsection 11(1) or (2), as the case may be.

COMMENT: This section obviates the need for parties seeking to execute against assets in multiple Canadian jurisdictions to bring de novo proceedings for recognition and enforcement in each jurisdiction. Decisions of other Canadian provincial and territorial courts granting recognition and enforcement are to be treated in the same manner as judgments of those courts granting the relief set out in the award. Subsection 12(2) prevents use of the chain recognition option to circumvent the limitation period established by section 11.

Appeals from negative jurisdictional rulings

13. (1) If, pursuant to article 16(2) of the Model Law, an arbitral tribunal rules on a plea that it does not have jurisdiction, any party may apply to the [enacting jurisdiction to designate appropriate court] to decide the matter.

(2) The decision of the [enacting jurisdiction to designate appropriate court] shall not be subject to an appeal.

(3) If the arbitral tribunal rules on the plea as a preliminary question, the proceedings of the arbitral tribunal are not stayed with respect to any other matters to which the arbitration relates and are within its jurisdiction.

Crown bound

14. (1) This Act binds the Crown.

(2) An award recognized pursuant to this Act is enforceable against the Crown in the same manner and to the same extent as a judgment is enforceable against the Crown.

NOTE: Jurisdictions should consider whether subsections (1) and (2) are required in their jurisdiction.

Forms of proof

15. (1) In any proceeding, a certificate issued by or under the authority of the Minister of Foreign Affairs containing a statement that a foreign state is a Contracting State is, in the absence of evidence to the contrary, proof of the truth of the statement without proof of the signature or official character of the person who issued or certified it.

(2) Nothing in this section precludes the taking of judicial notice pursuant to the *Evidence Act* or any other enactment.

Coming into force

16. This Act comes into force on a day to be fixed by proclamation.