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Ontario Updates International Commercial Arbitration Act

Ontario's new legislation governing international commercial arbitration, the *International Commercial Arbitration Act, 2017*, came into force on March 22, 2017, replacing the *International Commercial Arbitration Act* previously in place.

The purpose of the legislation is to set basic norms for how international commercial arbitrations are conducted in Ontario as well as the treatment of international commercial arbitral awards by Ontario courts. In particular, the Act sets out the minimum standards to be met by international commercial arbitrations in order for the awards to be recognized and enforced by Ontario courts.

Like the former Act, the *ICCA, 2017* promotes the purposes underlying the *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, to which Canada is party. The hallmark of the New York Convention is the requirement that contracting states give effect to private agreements to arbitrate disputes and to recognize and enforce arbitral awards made in other contracting states.

The New York Convention is complemented by the UNCITRAL Model Law on International Commercial Arbitration, which sets out an archetype law for the conduct of international arbitrations that can be adopted domestically by states in order to harmonize legal regimes governing international commercial arbitration across jurisdictions.

Arbitration is now arguably the preferred method of dispute resolution for most large international businesses as a result of the certainty the New York Convention provides that agreements to arbitrate will be respected by domestic courts and that awards will be enforceable.

Rather than making fundamental changes,the *ICCA, 2017* clarifies some ambiguities in the old Act that had resulted in disputes and uncertainty. Some of the key changes that practitioners should be aware of are:

First, the *ICCA, 2017* expressly adopts the New York Convention into Ontario law. While the former Act was also based on the New York Convention and the Model Law, the new Act expressly states that the Convention and the Model Law have "force of law in Ontario". This removes the ambiguity that previously existed about whether the New York Convention

applied in Ontario. It also makes Ontario the first province in Canada to adopt the 2006 Model Law, which updated the original version created in 1985.

As a consequence, Ontario's Superior Court of Justice can apply the Convention directly as part of Ontario law when a party seeks to enforce or resist enforcement of an international arbitral award. This obviates the usual debate that Courts face over the force and effect of international law (here, the New York Convention).

Second, the definition of an "Arbitration Agreement" has been modernized. While an arbitration agreement must still be in writing to be enforceable, a written agreement is deemed to exist if the agreement is "recorded" in any form. This includes situations where the agreement was concluded orally, by conduct or by other means (for example, an exchange of written correspondence), provided that the agreement was "recorded" in some manner.

Third, the *ICCA, 2017* clarifies the scope and availability of interim relief from a tribunal. The old Act allowed tribunals to grant interim relief, but was not specific about the scope of the relief available, sending parties to Court before or during a proceeding because of the uncertainty regarding the tribunal's jurisdiction. The *ICCA, 2017* expressly recognizes a tribunal's power to grant interim measures, including injunctive relief and security for costs, and for those orders to be recognized and enforced as binding by the Superior Court of Justice.

Finally, *ICCA, 2017* imposes a limitation period for enforcing an arbitral award of ten years from the date the award is made or the date on which a proceeding to set aside the award concluded. This provides some much needed clarity following the Supreme Court of Canada's 2010 decision in *Yugraneft Corp v Rexx Management Corp*, in which the Court held that local limitations laws applied to the enforcement of an arbitral award, absent an express provision in the relevant legislation to the contrary.

These amendments are based on recommendations by the Uniform Law Conference of Canada. Ideally, similar amendments will be adopted by other Canadian provinces as well, harmonizing provincial approaches to international commercial arbitration and solidifying Canada's reputation as an arbitration-friendly state.

While the hope is that these amendments will promote Ontario as a forum for international arbitrations, at the very least they ensure that Ontario remains an arbitration-friendly jurisdiction that promotes harmonized legal standards for recognition and enforcement of international arbitral awards as intended by the

New York Convention.