

New international commercial arbitration regime takes effect in Ontario

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On March 22, 2017, a new international commercial arbitration act for Ontario came into force. The *International Commercial Arbitration Act, 2017*, [SO 2017, c 2](#) (the New Act) replaces the previous *International Commercial Arbitration Act*, RSO 1990, c I.9 (the Old Act) with immediate effect.

The New Act, among other things, includes provisions on interim measures and expressly adopts the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. It also changes certain limitation periods.

Practitioners should be aware of the new legislation when drafting agreements that provide for international arbitration and when acting as counsel in international arbitration proceedings.

What is different?

- The New Act expressly adopts the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which is appended as a schedule to the New Act. The New York Convention primarily governs the domestic recognition and enforcement of foreign arbitral awards, typically on the basis of reciprocity with the foreign jurisdiction. In other words, an Ontario court will generally recognize and enforce a foreign arbitral award if made in a jurisdiction that is a signatory to the New York Convention. The New Act thereby eliminates any doubt that Ontario is a New York Convention jurisdiction.
- The New Act includes provisions about interim measures and preliminary orders. This gives greater clarity to the parties about the jurisdiction of the arbitral tribunal.
- The New Act modernizes and liberalizes the form in which an arbitration agreement can be made. While the arbitration agreement must still be in writing in order for it to be enforceable, the New Act differs from the Old Act in providing that such requirement is met if the content is *recorded* in written form. However, the arbitration agreement can be *concluded* orally, by conduct, or by other means. The requirement that the agreement be in writing can be met through the use of electronic communications, including electronic mail.
- The New Act also makes consequential amendments to the *Limitations Act, 2002* to impose a limitation period on the enforcement of arbitral awards of generally 10 years from the

date the award was made. Equivalent amendments are also made in respect of domestic arbitration under the *Arbitration Act, 1991*.

What is the same?

- The New Act applies to all international commercial arbitration agreements and awards, whether made before or after the coming into force of the New Act.
- The New Act will continue to govern commercial arbitration agreements between private parties of different countries (but not different provinces). This is in contrast to the Ontario domestic arbitration regime found under the *Arbitration Act, 1991*, SO 1991, c 17, which governs all arbitrations conducted under an arbitration agreement in Ontario, unless its application is excluded by law or the international arbitration act applies.
- Most of the procedural aspects about arbitrations under the New Act remain the same as the Old Act, with both being based on the UN's Model Law.

Key takeaways

Practitioners should be aware of this important change in the legislation governing international commercial arbitrations seated in Ontario.

- Transactional and advisory lawyers drafting agreements should review the New Act and consider whether it could potentially apply to an arbitration agreement that is to be included in a particular contract, and refer to the New Act where appropriate.
- Dispute resolution lawyers should be aware of the New Act's provisions for any new or ongoing international arbitration proceedings.