

SPEAKING NOTES- ARBITRATION BILL

The Honourable House is being asked to note that an Arbitration Bill will shortly be laid before Parliament. The Bill seeks to repeal and replace the Arbitration Act 1900 with more modern legislation that is intended to provide an effective non-judicial mechanism for settling disputes between contracting parties.

The Arbitration Bill is based on the provisions of the Model Law published by the United Nations Commission on International Trade Law (UNCITRAL) and will operate in conjunction with the provisions of the Arbitration (Recognition and Enforcement of Foreign Awards) Act as well as the Investment Disputes Awards (Enforcement) Act. With the passing of this Bill, Jamaica will join the large number of countries that have adopted the Model Law and as such, will benefit from the internationally agreed best

practices that are disseminated and promoted by UNCITRAL on an on-going basis.

Objects of the Bill

The legislation primarily seeks to:

- (a) provide a modern regulatory framework for the conduct of arbitration proceedings as a non-judicial mechanism for the settlement of commercial disputes;
- (b) facilitate domestic and international trade and commerce by encouraging the use of arbitration as a method of resolving disputes;
- (c) reduce the caseload in the commercial courts;
- (d) provide for the judicial recognition of arbitral awards; and
- (e) allow for the establishment of Jamaica as a seat of international commercial arbitration.

As the Honourable House is aware, the Government of Jamaica is committed to sustainable economic development for the country. Investors need to feel assured that they are conducting business in an economically stable environment. The legal risks inherent in transactional business ventures (particularly cross-border commercial arrangements) demand a settlement dispute mechanism that is expedient, cognizant of emerging trends and that operates at a highly modernized level.

Jamaica has been plodding along with an outdated arbitration regime, in which investors have found no confidence. We need to move towards the adoption of the UNCITRAL model law, which has been accepted in over 70 countries worldwide and over 100 jurisdictions. This model law is complemented by Jamaica's adoption of the Convention on the Recognition and Enforcement

of Foreign Arbitral Awards (also known as the **New York Convention**), which Jamaica ratified on the 10th of July, 2002.

International arbitration is chosen as the preferred dispute resolution process for cross border disputes because arbitration awards are enforceable under the New York Convention in more than 148 countries around the world. Judgments of local domestic courts are not as readily enforceable and in many jurisdictions, the judgment of a court from another jurisdiction cannot be enforced without a 're-run' of the trial.

There are several other benefits of arbitration. These are just a few:

(i) **The parties to the dispute usually agree on the arbitrator(s)**, so the arbitrator(s) will be persons who both sides have trust and confidence to be impartial and fair.

(ii) The dispute will normally be resolved much sooner, as a date for the arbitration can usually be obtained a lot faster than a court date. This would also contribute to a reduction of matters that go through the common court civil procedure process.

(iii) The arbitration process is flexible. Unlike trials, which must be worked into overcrowded court calendars, arbitration hearings can usually be scheduled around the needs and availabilities of those involved, including weekends and evenings.

(iii) Simplified rules of evidence and procedure. The often complex rules of evidence and procedure do not apply in arbitration proceedings, thereby making them less stilted and more easily adapted to the needs of those involved.

We are already prepared for the advent of the new arbitration law. The Mona International Centre for Arbitration and Mediation (MICAM) will be launching its operations on November 3, 2016. This will be followed by a conference on November 5, 2016 under the theme **“Capacity Building for Progress: Leveraging Arbitration for National and Regional Development”**. These efforts will ensure that once the Bill is passed, there will already be an established and modernized venue to host arbitration disputes. MICAM will also be thereafter conducting several training programmes geared towards ensuring that Jamaica has a credible and well-trained cadre of arbitrators who will join the illustrious panel of arbitrators that already exist worldwide.

Arbitration can be a game changer in the settlement of commercial domestic disputes and a major source of foreign

exchange earnings from the settlement of international trade disputes.

The Honourable House is now being asked to stay tuned for the tabling of the Arbitration Bill and endorsing the passing of another piece of legislation that will reinforce our path towards a more sustainable and developed business environment.

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Minister of Justice
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