

CARIBBEAN LAW AND PRACTICE

Caribbean Construction Law

A Regional and Comparative Treatise

ROBERT D. FORRESTER

THE SOVEREIGN PRESS

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S U I I U R I S

Georgetown, Guyana

First published in Guyana in 2026 by
The Sovereign Press
Georgetown, Guyana
www.thesovereignpressgy.com
publisher@thesovereignpressgy.com

The Sovereign Press is an imprint of
The Forrester Group (Guyana), Inc.
Company Registration No. 14467

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ISBN 978-976-8369-68-0 (Hardback)
ISBN 978-976-8369-23-9 (Paperback)
ISBN 978-976-8369-24-6 (Digital edition)

Typeset in EB Garamond
First edition, 2026

10 9 8 7 6 5 4 3 2 1

THE SOVEREIGN PRESS
sui iuris

Edition 1, version 1.4.2. This version statement follows the MAJOR.MINOR.PATCH convention: a released version is never revised in place. Any correction or addition is issued as a new version, and the version and the date to which the law is stated together identify the text a reader holds. Corrections notified after publication are recorded at www.thesovereignpressgy.com/errata.

Corrected printing, 4 October 2026, version 1.4.2.

RECOMMENDED CITATION. R D Forrester, *Caribbean Construction Law: A Regional and Comparative Treatise* (1st edn, The Sovereign Press 2026) para 3-014, citing by chapter-paragraph number rather than page, since paragraph numbers are fixed to the edition and page numbers are not. Where the edition matters to the citation, give the version and the law-stated date: (1st edn, v1.4.2, law stated as at 24 April 2026).

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Scope of the First Edition

This treatise states the construction law of the Caribbean as a field. Its nine Parts run from the regional context and the sources of law, through the construction contract and the standard forms in Caribbean application, to procurement law, the integrity and local-content regimes, dispute resolution, and the security, insurance and finance architecture, closing with the forward agenda of climate, technology, capacity and reform. Fifty-eight chapters and their annexes carry that arrangement, and the law is stated as at the date given on the imprint page.

A first treatise in a field decides what it will treat and says so. The First Edition treats what is set out above. Subjects that the text names in passing — among them public-private partnership structures and PPP procurement, insolvency in the construction context, investment-treaty protection, and the sustainability and climate-finance instruments — are identified where they arise and are not given dedicated treatment here. The treatise is regional in method: it treats Caribbean construction law as a field, comparatively, and does not attempt the jurisdiction-by-jurisdiction depth a national practitioner's text would supply.

Versions of this edition follow the convention stated on the imprint page: a released version is never revised in place, and any correction or addition is issued as a new version, identified by its number and by the date to which the law is stated. Readers who hold a licence to the First Edition receive every version of it without further charge (Schedule, clause 8). When a new version issues, licensees are notified and the errata record is updated.

Preface

This treatise was written because the field it describes did not yet have a synthesis. The Commonwealth Caribbean enters its construction era — Guyana’s oil-funded build-out the sharpest instance, the wider region’s infrastructure and climate-adaptation imperatives the broader one — with a construction law scattered across the received common law, a patchwork of national statutes, voluntary technical standards, imported standard forms, and a thin domestic case law, and with no single work that gathers that law, states it whole, marks its gaps, and argues its reform. The treatise sets out to be that work: a doctrinal and comparative statement of Caribbean construction law as a field, written at the moment the field begins to matter, for the region’s construction lawyers, who will build the architecture the era requires.

The treatise’s method is doctrinal where the law is settled, comparative where the region’s own record is thin, and forward-looking where the construction era poses questions the present law cannot yet answer — with the established and the projected distinguished at every turn, the treatise’s reasoned recommendations marked as recommendations rather than stated as the region’s settled position. Guyana leads throughout, as the jurisdiction whose construction era is most advanced and whose legal gaps are most consequential; the wider Commonwealth Caribbean frames the regional argument; and the comparative jurisdictions — England, Singapore, Malaysia, Australia, Hong Kong, and the international standard-form and arbitral practice — supply the doctrine the region inherits and adapts. The treatise reasons, throughout, from the premise that getting the construction-law architecture right is a development imperative and not a technicality: the quality of the codes, the contracts, the payment regimes, the dispute systems, the security and insurance, and the professional regulation determines whether the region’s once-in-a-generation construction spend becomes durable, resilient, locally owned development or a boom built by others on imported terms.

This volume is organised in nine Parts across three movements. The first movement, Foundations, sets the regional context and the sources of law (Parts I–II). The second movement, the Project and Its Award, sets the contract architecture, the standard forms, the procurement law, and the integrity and local-content architecture through which the project is formed and awarded (Parts III–VI). The third movement, Disputes, Money, and the Future, sets the dispute-resolution architecture, the financial architecture of security, insurance, and finance, and the forward issues the construction era raises (Parts VII–IX). The treatise uses a confidence grammar, marking contested points as contested. A reader who finds an unmarked point contestable is asked to report it to the errata register. The whole is offered as a synthesis of the field and as a foundation for the architecture the construction era requires the region’s lawyers to build.

Editorial Note

A note on the treatise's production. This volume was produced through a sustained programme of research and drafting, and the author answers for every statement in it. The treatise distinguishes established fact, stated as fact, from reasoned projection, stated as the treatise's own analysis; the distinction is applied most actively in the forward-looking Part. Corrections identified after publication are recorded in the errata register named on the imprint page.

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The law is stated as at 24 April 2026. Where a development after that date is noted, it is identified as such in the text.

The Treatise in Brief — Table of Parts

The nine Parts and their scope, across the three movements:

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A Note on Using This Volume

This volume is navigated by Part and chapter: the fifty-eight chapters run continuously from Chapter 1 in Part I to Chapter 58 in Part IX, the numbering unbroken across the nine Parts, so that a chapter reference identifies its place in the whole without ambiguity. Each Part is built in three layers, all of them within this one volume. The structural chapters state the law. Folded under each chapter are the detailed sections that develop its subject; the text refers to these as the fuller treatment. Each Part then closes with a supplement, which carries the Part's treatment further; the text refers to it as this supplement, and it takes the form of lettered Annexes in some Parts and of sections numbered with the Part's prefix in others. Cross-references throughout are Part-qualified. Developments after the date to which the law is stated are noted at page xxv. Corrections identified after publication are recorded in the errata register named on the imprint page. This volume is complete in itself. The Sovereign Press may in future publish supplements or further titles in the field of Caribbean construction law; nothing in this volume depends on them.

A Note on Citation Practice

This treatise cites two kinds of material and treats them differently, because they do different work.

Legal authority — cases, legislation, treaties, and the standard-form contract conditions — is cited in footnotes in the form set out by the Oxford University Standard for Citation of Legal Authorities. A case is named in the text and its citation given in the note; on its first appearance in a chapter the citation is given in full, and afterwards in short form with a back-reference to the note carrying the full citation. Caribbean decisions are cited in the form used in their own jurisdiction: first-instance judgments without a neutral citation are given by claim or suit number, court, and date. Where a claim number or date has not been traced, the entry says so. The Table of Cases, the Table of Legislation and Instruments, and the Table of Standard Forms and Instruments collect this material and sit in the front matter.

Secondary material — the historical, economic, and institutional scholarship on which the treatise’s contextual chapters rest — is cited in the same footnote sequence but in a distinct form, and is collected in the Bibliography rather than in the tables. Where a note reads “see generally”, it points to where a subject is treated in the standing literature. It does not assert that a particular page of the cited work supports the particular sentence to which the note is attached. Readers who want the authority for a specific historical proposition should begin with the work named and follow its own apparatus.

That distinction is deliberate and is stated here rather than left to be inferred. The historical chapters of this treatise are synthetic: they draw a line through a literature in order to explain a legal formation, and the claims they make about that formation are the author’s own. The doctrinal chapters are not synthetic in the same way; there the authority is the law, and the notes carry it.

Citing this treatise. Each paragraph of the main text carries a bold chapter-paragraph number in the form 3-014, read as chapter 3, paragraph 14. These numbers are fixed to this edition and do not change between printings that correct typographical or citation errors; a pinpoint reference to this treatise should use them in preference to a page number, in the form “Forrester, *Caribbean Construction Law* (1st edn, The Sovereign Press 2026) para 3-014”. Page numbers remain useful for locating a passage while reading but are not stable enough for citation, since pagination can shift with typesetting changes that leave the paragraph numbering untouched.

Two absences are recorded rather than concealed. There is no prior treatise on Caribbean construction law against which this one could be positioned, and the colonial public-works and sea-defence engineering record is held in ordinances and departmental papers rather than in a scholarly literature. Where the treatise relies on that record it says so in the text.

Table of Abbreviations

AC	Law Reports, Appeal Cases
BLR	Building Law Reports
CCJ	Caribbean Court of Justice
(AJ)	Appellate Jurisdiction of the CCJ
(OJ)	Original Jurisdiction of the CCJ
CARICOM	Caribbean Community
CSME	CARICOM Single Market and Economy
Con LR	Construction Law Reports
ECSC	Eastern Caribbean Supreme Court
EWCA Civ	Court of Appeal of England and Wales, Civil Division
EWHC (TCC)	High Court of England and Wales, Technology and Construction Court
FIDIC	Fédération Internationale des Ingénieurs-Conseils
HCA	High Court of Australia
HCVAP	High Court Civil Appeal (ECSC)
ICSID	International Centre for Settlement of Investment Disputes
JCT	Joint Contracts Tribunal
JMCA	Court of Appeal of Jamaica
LCIA	London Court of International Arbitration
MLJ	Malayan Law Journal
NEC	New Engineering Contract
NPTAB	National Procurement and Tender Administration Board (Guyana)
SCC	Supreme Court of Canada
SGCA	Singapore Court of Appeal
SLR	Singapore Law Reports
UKPC	Judicial Committee of the Privy Council
UKSC	Supreme Court of the United Kingdom
UNCITRAL	United Nations Commission on International Trade Law
WIR	West Indian Reports
ZACC	Constitutional Court of South Africa

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References are to page numbers. Cases are grouped by the court or jurisdiction in which they were decided, Caribbean courts first. Caribbean decisions are given in the citation form used in their own jurisdiction; first-instance judgments without a neutral citation are given by claim or suit number, court, and date. Where a claim number or date has not been traced, the entry says so.

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This table lists the legislation and subsidiary instruments cited in this treatise, arranged by jurisdiction. Each entry gives the citation in the form the jurisdiction itself uses: the as-enacted number and year, and the revised-edition chapter where one exists. Commencement is stated where it has been verified against a primary source, and where an instrument's commencement depends on an order, proclamation or notice that has not been traced, the entry says so rather than implying the instrument is in force. This table does not carry page references.

Guyana

Arbitration Act (Act 17 of 1916), Cap 7:03, in force 2 September 1916, as amended by Act 4 of 1931. Repealed by the Arbitration Act 2024, s 74.

Arbitration Act 2024 (Act No 6 of 2024). Passed by the National Assembly 17 May 2024 as Bill No 18 of 2023; assented 24 May 2024; Official Gazette, Legal Supplement A, 24 May 2024, pp 89–173. Seventy-five sections in eleven Parts; Schedule, the UNCITRAL Arbitration Rules as the Act describes them — adopted 15 December 1976 and revised in 2010 and 2013 (s 2). In operation 5 July 2024: Arbitration Act 2024 (Commencement) Order 2024 (Order No 47 of 2024), Official Gazette, Legal Supplement B, 6 July 2024.

Bank of Guyana Act 1998 (Act No 19 of 1998), Cap 85:02, assented 31 December 1998. Repealed the Bank of Guyana Act, No 11 of 1995. Revised edition L.R.O. 1/2012, pages 1–39 authorised, carrying the Act as amended by Act No 21 of 2004 (which inserted ss 17A and 17B); Act No 14 of 2018 postdates the revision. No subsidiary legislation. The as-enacted s 1 provided for commencement on a date appointed by the Minister; the revised edition omits those words and prints no commencement date, so the date of the order is not recoverable from the L.R.O.

Civil Law of Guyana Act, Cap 6:01, Laws of Guyana (Revised Edition 2012), as amended by Act No 12 of 2021.

Civil Procedure Rules 2016 (Rules No 2 of 2016), as amended 2019.

Constitution of the Co-operative Republic of Guyana, arts 212W–212DD (Public Procurement Commission). No statute creates the Commission; it is established directly by the Constitution, not by an Act of Parliament.

Deeds Registry Act, Cap 5:01, Laws of Guyana (Revised Edition 2012).

Environmental Protection Act 1996 (Act No 11 of 1996), Cap 20:05, as amended by Act No 17 of 2005.

Guyana National Bureau of Standards Act 1984 (Act No 11 of 1984), Cap 90:16, in force 22 June 1984, as amended by Act No 2 of 1997.

Housing Act (Act No 24 of 1946), Cap 36:20, in force 1 April 1948.

Insurance Act 2016 (Act No 17 of 2016), Extraordinary Gazette, 18 July 2016; in force 16 April 2018 save for ss 59–62, 63(f)–(j) and 64, which commenced 16 April 2019. As amended by Act No 11 of 2018; Insurance Regulations No 1 of 2018 made under it. Repealed the Insurance Act 1998 (Act No 20 of 1998), Cap 91:02, and the Insurance (Supplementary Provisions) Act 2009. No revised-edition chapter: the last revision, L.R.O. 1/2012, predates it. Cap 91:02 belongs to the repealed 1998 Act and must not be carried over.

Interpretation and General Clauses Act (Act No 8 of 1970), Cap 2:01, commenced 23 February 1970.

Land Registry Act, Cap 5:02, Laws of Guyana (Revised Edition 2012).

Local Content Act 2021 (Act No 18 of 2021), Official Gazette, Legal Supplement A, 31 December 2021, pp 124 ff.

Natural Resource Fund Act 2021 (Act No 19 of 2021), brought into operation by Order No 34 of 2021, Extraordinary Gazette, 31 December 2021. Repealed the Natural Resource Fund Act 2019 (Act No 12 of 2019).

- Occupational Safety and Health Act 1997 (Act No 32 of 1997), Cap 99:06, as amended by Act No 22 of 2009.
- Procurement Act 2003 (Act No 8 of 2003), Cap 73:05, as amended by Act No 13 of 2010 and Act No 14 of 2019. Section 54(6) provides that Cabinet's involvement in procurement review "shall cease upon the constitution of the Public Procurement Commission except in relation to those matters referred to in subsection (1) which are pending".
- Procurement Regulations 2004 (No 9 of 2004), Official Gazette, Legal Supplement B, 26 November 2004, as amended by the Procurement (Amendment) Regulations 2016 (No 2 of 2016) and the Procurement (Amendment) Regulations 2019 (No 1 of 2019).
- Procurement (Amendment) Regulations 2004 (No 10 of 2004), Official Gazette, Legal Supplement B, 1 December 2004.
- Procurement (Suspension and Debarment) Regulations 2019 (No 5 of 2019), Official Gazette (Extraordinary) 98/2019, 21 June 2019, p 1309. Regulation 3(1) vests the power to suspend or debar in the Public Procurement Commission alone.
- Public Procurement Commission Tribunal Act 2004 (Act No 8 of 2004), Cap 73:06, in force 31 May 2007. No subsidiary legislation.
- State Assets Recovery Act (Act No 14 of 2017). Not repealed; the recovery agency was administratively disbanded in 2020 and the Act has been of no operational significance since. Asset recovery is pursued through the AML/CFT Act.
- Town and Country Planning Act (Act No 25 of 1946), Cap 20:01.
- The Engineers Bill 2024 is carried in the Table of Pending Legislation and does not appear here.*

Antigua and Barbuda

- Procurement Administration Act, 2011 (Act No 16 of 2011), assented 20 December 2011. Passed but never brought into force. Commencement under s 1 depends on a Notice published in the Gazette by the Minister; no Notice traced. The MAPS assessment of Antigua and Barbuda (March 2019, revised May 2022) states that the Act "has not been enacted nor implemented" and that procurement is conducted under the Tenders Board Act. The Act would repeal the Tenders Board Act, Cap 424A, on commencement (s 55); the Tenders Board Act accordingly remains the operative law. Review under the 2011 Act would lie to the Ombudsman (s 47).

Barbados

- International Commercial Arbitration Act, 2007-45, Supplement to Official Gazette No 105, 20 December 2007; revised edition Cap 110B. In force 19 January 2009 by Proclamation, S.I. 2009 No 2 (Proclamation of 17 January 2009, Supplement to Official Gazette No 7, 19 January 2009). Section 50 as enacted disapplies the Legal Profession Act, Cap 370A, for foreign counsel in international commercial arbitration. The revised edition is renumbered and ends at s 53; cite the proclamation for the in-force position, not the as-enacted s 54.
- Public Procurement Act, 2021 (Act 2021-30), assented 23 December 2021, gazetted 29 December 2021; in force 1 October 2023 by Proclamation, S.I. 2023 No 67. As amended by the Public Procurement (Amendment) Act, 2023 (Act 2023-11), commenced the same day.

British Virgin Islands

- Arbitration Act, No 13 of 2013, as amended by the Arbitration (Amendment) Act, No 6 of 2015 (assented 23 April 2015, gazetted 11 May 2015) and the Arbitration (Amendment) Act, No 16 of 2020 (assented 23 July 2020, gazetted 28 July 2020). The 2020 Act's long title mis-cites the principal Act as No 13 of 2014; 2013 is correct.

Dominica

- Public Procurement and Disposal of Public Property Act, 2021 (Act No 14 of 2021). Repealed the Public Procurement and Contract Administration Act 2012 (No 11 of 2012), Chap 63:06.

Grenada

Public Procurement and Disposal of Public Property Act (Act No 39 of 2014), as amended by Act No 1 of 2018 and by the Public Procurement and Disposal of Public Property (Amendment) Act, 2024.

Jamaica

Civil Procedure Rules 2002, made under s 4 of the Judicature (Rules of Court) Act; L.N. 2/2003; in force 1 January 2003, as amended.

Interpretation Act (Act 8 of 1968), in force 1 April 1968, as amended by Acts 3 of 1969, 29 of 1987 and 4 of 2016. Cited at ¶8-052.

Registration of Titles Act, Cap 340 (Law 60 of 1954), in force 1 October 1889, as amended by Acts 25 of 1967, 10 of 1974 and 25 of 2005. The consolidation on file, authorised by L.N. 480/1973, carries no later amendment; Act No 5 of 2020 is not on its face and is unconfirmed.

The Arbitration Act, 13 of 2017, in force 7 July 2017; text as authorised by L.N. 88/2022. Section 3 defines "commercial" to include construction of works, consulting and engineering.

Integrity Commission Act, 2017 (Act No 26 of 2017), assented 23 October 2017; in operation 22 February 2018.

The Natural Resources Conservation Authority Act (Act No 9 of 1991), in force 5 July 1991, as amended by Act 36 of 2017 (Schedule); reprinted as authorised by L.N. 90/1993.

Professional Engineers Registration Act 1987 (Act 11 of 1987), operational 2 November 1987, as amended by Acts 21 of 1996 and 3 of 2005.

Public Procurement Act 2015 (Act No 20 of 2015), in operation 1 April 2019.

Saint Christopher and Nevis

Procurement and Contract (Administration) Act (No 28 of 2012), in force 4 October 2012, as amended by Act No 14 of 2013; Revised Laws Cap 23:36.

Saint Lucia

Public Procurement Act, Cap 15:10, enacted as the Public Procurement and Asset Disposal Act (No 19 of 2015), as amended by Act No 13 of 2020 and by the Public Procurement (Amendment) Act 2026 (No 1 of 2026); in force 1 June 2021 by the Public Procurement Act (Commencement) Order 2020, S.I. 2020 No 202, made under s 1(2) on 3 December 2020 and gazetted 4 December 2020.

Saint Vincent and the Grenadines

Public Procurement Act (No 34 of 2018), effective 24 November 2020. Public Procurement Regulations 2019 (SRO No 23 of 2019) made under it.

Trinidad and Tobago

Arbitration Act 2023 (Act No 11 of 2023), assented 11 July 2023; in force 19 February 2024 by Legal Notice No 40 of 2024 (Proclamation No 1 of 2024), save ss 56(3) and (4).

Civil Proceedings Rules, 1998, made under s 78 of the Supreme Court of Judicature Act, Chap 4:01; in effect 16 September 2005 (r 2.1), as amended. The 1998 Legal Notice number has not been traced.

Engineering Profession Act (Act 34 of 1985), Chap 90:01, in force 12 December 1985.

Environmental Management Act (Act No 3 of 2000), Chap 35:05, in force 8 March 2000. Repealed and re-enacted the Environmental Management Act 1995 (Act No 3 of 1995).

Interpretation Act, Chap 3:01 (Act 2 of 1962), Laws of Trinidad and Tobago. Cited at ¶8-052.

Public Procurement and Disposal of Public Property Act 2015 (Act No 1 of 2015), assented 14 January 2015; in full operation 26 April 2023.

Regional instruments

- Caribbean Uniform Building Code (CUBiC) (Caribbean Community Secretariat, Georgetown, 1985; parts issued from 1983).
- 2018 CARICOM Regional Energy Efficiency Building Code (CREEBC) (adapting the International Code Council's International Energy Conservation Code 2018 and ANSI/ASHRAE/IES Standard 90.1-2016), developed by the CARICOM Regional Organisation for Standards and Quality under a directive of the 41st Special Meeting of COTED on Energy (April 2013) and first published in February 2019.
- Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023, applying across Anguilla, Antigua and Barbuda, the British Virgin Islands, Dominica, Grenada, Montserrat, Saint Kitts and Nevis, Saint Lucia, and Saint Vincent and the Grenadines.
- Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part (signed 15 October 2008) [2008] OJ L289/3; provisionally applied from 29 December 2008.
- OECS Building Code (OECS Secretariat, 1st edn June 1992; 7th edn September 2016).
- Revised Treaty of Basseterre Establishing the Organisation of Eastern Caribbean States Economic Union (Gros Islet, Saint Lucia, 18 June 2010, entered into force 20 January 2011) UNTS Reg No I-54948.
- Revised Treaty of Chaguaramas Establishing the Caribbean Community Including the CARICOM Single Market and Economy (Nassau, 5 July 2001).
- Treaty Establishing the Organisation of Eastern Caribbean States (Basseterre, 18 June 1981).
- Economic Partnership Agreement between the CARIFORUM States and the United Kingdom of Great Britain and Northern Ireland (signed 22 March 2019 and thereafter), applied provisionally by the United Kingdom from 22 December 2020 and by the CARIFORUM States from dates between November 2019 and April 2021, and not yet in force at the date to which the law is stated.
- The OECS Procurement Code is a harmonisation initiative rather than an enacted instrument and is described in the text rather than tabled.*

International instruments

- Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (adopted 21 November 1997, entered into force 15 February 1999).
- Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958).
- United Nations Convention against Corruption (adopted 31 October 2003, entered into force 14 December 2005) 2349 UNTS 41.
- United Nations Convention on Contracts for the International Sale of Goods (Vienna, 11 April 1980).
- UNCITRAL Model Law on International Commercial Arbitration (1985, with amendments as adopted in 2006).
- Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331.

Civil-law codes

- Netherlands. Burgerlijk Wetboek (BW), cited by book and article (Book 7, Title 12, aanneming van werk; Book 6, obligations and dissolution). Ongoing recodification; no single edition year.
- Suriname. Burgerlijk Wetboek — Wet van 5 december 2024, houdende vaststelling van een nieuw Burgerlijk Wetboek, S.B. 2024 no 164, in force 1 May 2025 by resolution S.B. 2025 no 14. Books 1–8. Replaces the Dutch-derived Code of 1869. The accompanying package, all commencing the same day, comprises S.B. 2024 nos 165–170, including the Overgangswet nieuw Burgerlijk Wetboek (no 166) and a new Wetboek van Burgerlijke Rechtsvordering (no 170).

The French Code civil, the Civil Code of Québec and the Civil Code of Saint Lucia are referred to comparatively in the text and are not tabled as instruments of a jurisdiction the treatise covers.

Table of Standard Forms and Instruments

Standard-form contracts are cited by publisher, title, edition and year. The FIDIC forms are the editions in use across the region; the 2017 editions as reprinted in 2022 carry consolidated amendments, and a contract referring to the 2017 conditions should be checked to see whether it incorporates them.

FIDIC — Fédération Internationale des Ingénieurs-Conseils, Geneva

Conditions of Contract for Construction for Building and Engineering Works Designed by the Employer (the Red Book) (1st edn, 1999)

Conditions of Contract for Construction (the Red Book) (2nd edn, 2017, reprinted 2022 with amendments)

Conditions of Contract for Plant and Design-Build (the Yellow Book) (1st edn, 1999; 2nd edn, 2017, reprinted 2022 with amendments)

Conditions of Contract for EPC/Turnkey Projects (the Silver Book) (1st edn, 1999; 2nd edn, 2017, reprinted 2022 with amendments)

Short Form of Contract (the Green Book) (2nd edn, 2021)

Conditions of Contract for Design, Build and Operate Projects (the Gold Book) (1st edn, 2008)

Conditions of Contract for Underground Works (the Emerald Book, with ITA-AITES) (1st edn, 2019)

The FIDIC Golden Principles (1st edn, 2019)

The FIDIC Contracts Guide (2nd edn, 2022)

Other Standard Forms

Joint Contracts Tribunal, the JCT 2024 Edition suite (The Joint Contracts Tribunal Ltd)

NEC4: Engineering and Construction Contract and associated suite (Thomas Telford 2017, amended January 2019 and October 2020)

International Instruments

Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958) (the New York Convention)

UNCITRAL Model Law on International Commercial Arbitration (1985, with amendments as adopted in 2006)

UNCITRAL Arbitration Rules (2021)

Revised Treaty of Chaguaramas Establishing the Caribbean Community Including the CARICOM Single Market and Economy (Nassau, 5 July 2001)

Multilateral Policy Frameworks

World Bank, Environmental and Social Framework (2016, effective 1 October 2018), comprising the Environmental and Social Policy and Standards ESS1–ESS10

Inter-American Development Bank, Environmental and Social Policy Framework (2020, in effect 31 October 2021), comprising Performance Standards ESPS1–ESPS10

Professional Guidance

Society of Construction Law, Delay and Disruption Protocol (2nd edn, February 2017)

Table of Pending Legislation

This table records legislation that had been proposed or introduced, but not enacted, by the date to which the law is stated, including Bills that lapsed, and which would materially alter the position described in the text if passed. A Bill is not law, and nothing in this treatise treats it as such; the table exists so that a reader who finds the position changed knows where to look.

Engineers Bill 2024 (Guyana)

Tabled in the National Assembly 18 December 2024 by the Minister of Public Works. Set down for second reading February 2025; debate shelved following objections, and the Bill was withdrawn later that month. It was never referred to a select committee, and it lapsed on the dissolution of Parliament on 3 July 2025. Not reintroduced in the Thirteenth Parliament, which first sat on 3 November 2025. Guyana has, as at the date of this note, no statutory registration regime for engineers.

Architects registration legislation (Guyana)

Long reported as pending; no Bill traced to the National Assembly as at the date to which the law is stated.

Developments since the Stated Date

The law is stated as at 24 April 2026. The developments below occurred after that date and are not treated in this edition. They are recorded so that a reader who finds the position changed knows where to look; each should be verified against the instrument itself before it is relied on.

- Belize — Occupational Safety and Health Act 2026, enacted and gazetted 9 September 2026, repealing the Factories Act, with construction sites expressly within scope and commencement phased by ministerial order.
- Jamaica — National Reconstruction and Resilience Authority Act 2026, passed by the Senate on 8 May 2026 and assented in May 2026. The authority's procurement is to be governed not by the Public Procurement Act 2015 but by an Order made under section 3(3) of that Act, producing a two-track regime for public works. The accompanying FAST Jamaica pathway lowers the expedited-investment threshold from US\$150 million to US\$15 million.
- Jamaica — a revised National Building Code was announced on 5 June 2026, requiring structures to withstand Category Five hurricanes and giving Municipal Corporations enhanced enforcement powers. Its legal form and commencement were not established at the date of this note.
- Guyana — Security Interests in Movable Property (Amendment and Validation) Act 2026, passed by the National Assembly 28 July 2026, permitting manual registration of security interests during registry outages and validating registrations effected during them. Presidential assent and the Act's number as assented had not been confirmed in the public record at the date of this note.
- Guyana — Guyana Development Bank Act 2026 (Act No 6 of 2026), assented and gazetted 30 July 2026, establishing the Guyana Development Bank with objects confined to small and medium-sized enterprises (s 4); brought into operation on 5 October 2026 by the Guyana Development Bank Act 2026 (Commencement) Order 2026 (Order No 179 of 2026), gazetted 16 September 2026.
- Barbados — Protection of Wages Act 2026-15 and Beneficial Ownership Transparency and Register Act 2026-16, both assented 7 August 2026.
- CARICOM — at the Fifty-First Regular Meeting of the Conference of Heads of Government, Gros Islet, 5–8 July 2026, Grenada and Saint Lucia were recorded as taking steps to join the full free movement regime that has been in force since 1 October 2025 for Barbados, Belize, Dominica and Saint Vincent and the Grenadines.
- Belize — the Prime Minister announced on 9 July 2026 that procurement reform would include a Central Procurement Unit, a public electronic procurement portal, and criminal penalties for deliberate circumvention. No Bill had been introduced at the date of this note.
- Procurement (Amendment) Regulations 2026 (Guyana). Gazetted 24 July 2026. Amends Schedule 2, paragraph 3 of the Procurement Regulations 2004 (Official Gazette No. 9 of 2004), raising the value ceiling for contracts reserved to community-based and small local contractors from GYD 5,000,000 to GYD 30,000,000. Made under sections 29 and 61 of the Procurement Act, Cap. 73:05. Source: Guyana Times, 29 July 2026. The instrument's own SRO or regulation number is not stated in that source, is not listed on the National Procurement and Tender Administration's regulations page, and no second source has been traced; it is therefore not given here.

Chronological Table of Statutes and Instruments

This table lists the legislation and international instruments cited in this treatise in the order of their signature, adoption, or enactment. It supplements the Table of Legislation and Instruments, which is arranged by jurisdiction; use that table for the citation form each jurisdiction itself uses and this one to trace the sequence of reform. Neither table carries page references. Model codes and instruments adopted individually by member states over time are listed at their point of origin, with that pattern of adoption noted.

1946

Housing Act (Act No 24 of 1946), Cap 36:20 (Guyana), in force 1 April 1948

Town and Country Planning Act (Act No 25 of 1946), Cap 20:01 (Guyana)

1958

Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958)

1969

Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331

1970

Interpretation and General Clauses Act (Act No 8 of 1970), Cap 2:01 (Guyana), commenced 23 February 1970

1985

Caribbean Uniform Building Code (CARICOM Secretariat 1985)

Engineering Profession Act (Act No 34 of 1985), Chap 90:01 (Trinidad and Tobago)

UNCITRAL Model Law on International Commercial Arbitration (adopted by UNCITRAL 21 June 1985; amended 7 July 2006)

1987

Professional Engineers Registration Act 1987 (Act No 19 of 1987) (Jamaica), operational 2 November 1987

1991

Natural Resources Conservation Authority Act 1991 (Act No 9 of 1991) (Jamaica)

1992

OECS Building Code (OECS Secretariat, 1st edn June 1992; 7th edn 2016), adopted individually and at different times by OECS member states

1996

Environmental Protection Act 1996 (Act No 11 of 1996), Cap 20:05 (Guyana), as amended by Act No 17 of 2005

1997

Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (adopted 21 November 1997, entered into force 15 February 1999)

Occupational Safety and Health Act 1997 (Act No 32 of 1997), Cap 99:06 (Guyana), as amended by Act No 22 of 2009

1998

Bank of Guyana Act 1998 (Act No 19 of 1998), Cap 85:02 (Guyana)

2000

Environmental Management Act (Act No 3 of 2000), Chap 35:05 (Trinidad and Tobago)

2001

Revised Treaty of Chaguaramas Establishing the Caribbean Community Including the CARICOM Single Market and Economy (Nassau, 5 July 2001)

2003

Procurement Act 2003 (Act No 8 of 2003) (Guyana), as amended by the Procurement (Amendment) Acts 2010 and 2019

United Nations Convention against Corruption (adopted 31 October 2003, entered into force 14 December 2005) 2349 UNTS 41 (Reg No I-42146)

2004

Public Procurement Commission Tribunal Act (Act No 8 of 2004), Cap 73:06 (Guyana), in force 31 May 2007

2012

International Finance Corporation, Performance Standards on Environmental and Social Sustainability (IFC 2012, effective 1 January 2012)

2015

Public Procurement Act 2015 (Jamaica)

Public Procurement and Disposal of Public Property Act 2015 (Trinidad and Tobago)

2016

World Bank, Environmental and Social Framework (2016, effective 1 October 2018), Environmental and Social Standards ESS1–ESS10

2019

Economic Partnership Agreement between the CARIFORUM States and the United Kingdom of Great Britain and Northern Ireland (signed 22 March 2019 by Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Saint Kitts and Nevis, Saint Lucia and Saint Vincent and the Grenadines; Trinidad and Tobago 1 April 2019; the Dominican Republic 4 April 2019; Antigua and Barbuda 6 June 2019; The Bahamas 27 November 2019), applied provisionally by the United Kingdom from 22 December 2020 and by the CARIFORUM States from dates between November 2019 and April 2021, and not yet in force at the date to which the law is stated

2020

Inter-American Development Bank, Environmental and Social Policy Framework (2020, in effect 31 October 2021), Performance Standards ESPS1–ESPS10

2021

Local Content Act 2021 (Act No 18 of 2021) (Guyana)

2024

Arbitration Act 2024 (Act No 6 of 2024) (Guyana), passed 17 May 2024, repealing the Arbitration Act, Cap 7:03

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SAMPLE CHAPTER

Chapter 43 — The Arbitration Law of the Caribbean: The Modernisation

¶43-001 to ¶43-018, pages 521–529 of the First Edition. Law
stated as at 24 April 2026.

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43 The Arbitration Law of the Caribbean: The Modernisation

43-001 The modernised chassis arrives with its leading authorities attached, and the treatise states the settled trio every regional practitioner now pleads. *Fiona Trust & Holding Corp v Privalov*¹ establishes the presumption that rational commercial parties intend all disputes from their relationship to go to one tribunal, and that the arbitration clause is separable, surviving attack on the matrix contract. *Lesotho Highlands Development Authority v Impregilo SpA*² disciplines the set-aside jurisdiction: an error of law is not an excess of power, and courts must not recharacterise merits disagreement as jurisdictional defect — the restraint the Model Law’s Article 34 equally commands. And *Dallah Real Estate v Ministry of Religious Affairs, Government of Pakistan*³ confirms that at enforcement the court reviews the tribunal’s jurisdiction de novo where the respondent never submitted. The Singapore Court of Appeal’s discipline cases — *AKN v ALC*⁴ on natural justice and *Tomolugen Holdings Ltd v Silica Investors Ltd*⁵ on the prima facie standard for a stay — supply the Model Law jurisprudence the regional statutes’ courts will most directly apply.

43.1 The generational shift and the Guyanese spine

43-002 The arbitration law of the Commonwealth Caribbean has been transformed within the present decade, and the transformation is the back end’s counterpart of the front end’s procurement and integrity reform: a generational modernisation, travelling through a regional model instrument, that has replaced colonial-era statutes with modern, Model-Law-based regimes across the region’s principal construction jurisdictions. The treatise’s account of this law was itself corrected mid-production — the errata instrument recording that Guyana, long described in the regional literature as a dated arbitration jurisdiction outside the New York Convention⁶, had in fact acceded to the Convention in September 2014, in force that December and without reservation, and had enacted a modern arbitration statute — and this chapter now builds on the corrected foundation. The chapter takes the Guyana Arbitration Act 2024⁷ as its spine, both because the treatise is Guyana-led and because the Act is the modernisation’s most recent and most complete regional expression, then sets the sister statutes around it.

¹ *Fiona Trust & Holding Corp v Privalov* [2007] UKHL 40, sub nom *Premium Nafta Products Ltd v Fili Shipping Co Ltd*.

² *Lesotho Highlands Development Authority v Impregilo SpA* [2005] UKHL 43.

³ *Dallah Real Estate v Ministry of Religious Affairs, Government of Pakistan* [2010] UKSC 46.

⁴ *AKN v ALC* [2015] SGCA 18.

⁵ *Tomolugen Holdings Ltd v Silica Investors Ltd* [2015] SGCA 57.

⁶ Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958).

⁷ Arbitration Act 2024 (Act No 6 of 2024) (Guyana), passed 17 May 2024, repealing the Arbitration Act, Cap 7:03.

43-003 The Guyana Arbitration Act 2024 — Act No. 6 of 2024, passed in May 2024, gazetted that month, and brought into force on 5 July 2024 by the Arbitration Act 2024 (Commencement) Order 2024 (Order No 47 of 2024) — repeals the colonial-era Arbitration Act of 1916 and replaces it with a regime built on the UNCITRAL Model Law as carried into the region by the model arbitration bill of the regional justice-reform project, a model endorsed by the community’s attorneys-general. The Act governs every arbitration commenced on or after 5 July 2024, including one under an arbitration agreement made before that day (s 73). An arbitration commenced under the former Act, Cap 7:03, and any court proceedings relating to it, are continued, completed and enforced as if the former Act were still in force (s 74(2)); and an award finalised before commencement is enforced under the former Act (s 74(3)). The first question on any Guyanese construction arbitration file is therefore a date: whether the arbitration was commenced before 5 July 2024 or on or after it. Under the 2024 Act arbitral proceedings commence, unless the parties agree otherwise, on the day the respondent receives the request that the dispute be referred to arbitration (s 34). The Act’s architecture carries the modern regime’s full apparatus, and the treatise states the key provisions with their section anchors, verified against the gazetted text. The court’s role is confined to the functions the Act provides — the non-intervention principle at section 6; the arbitration agreement is defined, with its writing requirement, at section 8; the court must refer parties to arbitration on request made before the first step on the substance of the dispute — the mandatory stay at section 9 — and arbitration may proceed notwithstanding pending court proceedings; the court may order interim measures in support at sections 10 and 30; the tribunal’s competence over its own jurisdiction, and the arbitration clause’s separability from its contract, are enacted at section 17; the tribunal may grant interim measures and preliminary orders, with court recognition and enforcement of tribunal-ordered measures — the apparatus, the treatise notes, that marks the Model Law’s revised rather than original lineage; setting aside is the exclusive recourse against the award, on the exhaustive grounds at section 56, with the public-policy ground elaborated — fraud, corruption, breach of natural justice — at section 59; awards are recognised and enforced irrespective of the country in which made, on the exhaustive refusal grounds the Convention prescribes, at sections 57 and 58; and the Act adds, beyond the bare Model Law, arbitrator immunity, confidentiality of proceedings, and provisions on consolidation and mediation that the regional model carried.

43-004 The Model Law chassis the modern statutes share deserves its construction-facing anatomy, because the generational shift is a shift in these specific machines. Separability insulates the arbitration agreement from the contract’s invalidity — the corruption and termination attacks of Parts III and VI no longer capsizing the forum with the contract. Competence-competence gives the tribunal first word on its own jurisdiction, the courts’ check deferred and defined. The stay provision converts the arbitration agreement into a defence the courts must honour — proceedings on a covered dispute halted on request, the old discretionary stays retired. The interim-measures architecture arms both tribunal and court: tribunal-

ordered measures enforceable, court support available without waiving the agreement — the bond-call injunctions and evidence-preservation orders of Chapter 19 now running through a defined dual channel. The set-aside code confines challenge to the enumerated grounds on strict timelines, retiring appeal-on-the-merits in its various disguises. And the enforcement code mirrors the Convention's, completing the lattice Chapter 11 mapped. The construction consequence is systemic: under the modern chassis, the contractual escalator of Chapter 41 discharges into a forum the courts protect rather than supervise — which is the entire commercial point of the modernisation, and the measure against which the older statutes' jurisdictions now visibly price.

43-005 The Guyana Act's working features deserve their practitioner's summary against this chassis: the Model Law architecture adopted with the Convention's enforcement regime given domestic effect — the accession-and-implementation pairing Chapter 11 fixed; the supervisory functions concentrated for coherence; and the transitional questions every modernisation generates — which agreements, references, and awards the new regime catches — answered by the Act's commencement and transitional provisions, verified per Chapter 8's discipline rather than assumed. The strategic repositioning is the chapter's headline: a jurisdiction generating the region's largest project pipeline now offers a modern *lex arbitri* and Convention enforcement, which converts the seat decision this chapter works from a reflexive offshore default into a genuine choice — and the treatise's seat analysis prices it as such, jurisdiction against jurisdiction, on the criteria the worked section applies.

43.2 The sister statutes and the regional map

43-006 Around the Guyanese spine the sister statutes complete the modernisation, and the construction lawyer practising regionally must know the map. Trinidad and Tobago's Arbitration Act 2023, enacted in mid-2023 and proclaimed in force in February 2024 save for a held-back tax provision, replaces the 1939 statute on the same model-bill foundation: court non-intervention, the mandatory stay unless the agreement is null and void, inoperative or incapable of performance, separability and competence-competence, the comprehensive setting-aside regime, recognition and enforcement of foreign awards, and an express confidentiality duty with public-interest exceptions — a regime the commentary places closer to the English statute than the bare Model Law in the measure of court involvement it permits. Jamaica's Arbitration Act 2017 was the modernisation's regional precursor — a substantially pure Model Law adoption replacing the 1900 statute, operating alongside the island's separate foreign-awards enforcement legislation. Barbados runs a dual regime: a 1958 statute for domestic matters and a 2007 international commercial arbitration act adopting the Model Law with the express statutory ambition of establishing the island as an arbitration centre. The British Virgin Islands' 2013 Act, in force from 2014 on the revised Model Law, anchored the region's first purpose-built international arbitration centre. The Eastern Caribbean

states largely retain older English-derived statutes — the modernisation’s remaining frontier — and the construction lawyer must check the seat-by-seat position, because the region now spans the full spectrum from the colonial statute to the revised Model Law.

43-007 The New York Convention⁸ map completes the regional picture, and the treatise states it with the corrected Guyanese position in its proper place. The Convention — the enforcement instrument on which international arbitration rests, now ratified by the overwhelming majority of states — counts among its Caribbean parties Trinidad and Tobago, an early accession in the 1960s; Jamaica; Barbados; the Bahamas; Dominica; Antigua and Barbuda, with the commercial and reciprocity reservations; Saint Vincent and the Grenadines; and Guyana, by the 2014 accession without reservation that the errata instrument fixed in the treatise’s record; with the British overseas territories — the Virgin Islands among them — covered by territorial extension. The practical meaning for the construction lawyer is the one the enforcement chapter will develop: an award made in a Convention state is enforceable in the region’s Convention states on the Convention’s narrow refusal grounds, and the Caribbean construction arbitration, wherever seated, ends in an instrument with treaty-backed regional and global currency. The map’s gaps — the states not yet party, the reservations where they apply — are the seat-selection and enforcement-planning detail the practitioner must work; the structural point is that the region’s enforcement fabric is Convention fabric, and the modernised statutes enact the Convention’s regime domestically.

43-008 The early regional record on arbitration remains, as at the date to which this treatise states the law, confined to the Caribbean Court of Justice’s three Belizean arbitration decisions: *British Caribbean Bank Ltd v Attorney General of Belize*⁹, on the anti-arbitration injunction; *BCB Holdings Ltd v Attorney General of Belize*¹⁰, refusing enforcement of an LCIA award on grounds of public policy; and *Belize Bank Ltd v Attorney General of Belize*¹¹, enforcing a later award. No decision of the Court in its Appellate Jurisdiction has yet addressed arbitrator-challenge or construction-arbitration enforcement specifically, and the region’s first statement on that question, when it comes, will be a significant development for the discipline this Part sets out. The treatise treats the three Belizean decisions as the established Caribbean arbitration canon for the present.

43.3 The statutes in operation: the early record

43-009 The modernised statutes are new, and the construction lawyer must understand the state of their operation, because a statute’s promise and its practice are different things and the regional record is at its very beginning. The treatise notes, as a genuine gap rather than a detail, that there is as yet no reported Guyanese de-

⁸ Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958).

⁹ *British Caribbean Bank Ltd v Attorney General of Belize* [2013] CCJ 4 (AJ).

¹⁰ *BCB Holdings Ltd v Attorney General of Belize* [2013] CCJ 5 (AJ).

¹¹ *Belize Bank Ltd v Attorney General of Belize* [2017] CCJ 18 (AJ).

cision applying the 2024 Act's stay or enforcement provisions: the Act is in force from 5 July 2024, but its judicial construction has not begun — the one Guyanese enforcement decision of the period, on the ICC award in *ConocoPhillips Gulf of Paria v PDVSA*, was given at first instance before the Act came into operation and proceeded under the Arbitration Act, Cap 7:03 — and the practitioner operates on the statute's text and the Model Law jurisprudence it imports rather than on domestic authority. The most prominent Guyanese enforcement decision of the period — the High Court's enforcement of a substantial international award against a foreign state-owned oil company, decided in mid-2024 — was decided under the prior law, the proceedings predating the new Act, and its significance is doubled by that fact: it shows the Guyanese court taking a pro-enforcement approach at common law, articulating the enforceability of a foreign award valid under its governing laws and rejecting a public-policy objection; and it shows the question of state-party enforcement, which the enforcement chapter develops, arriving in the regional courts — the decision under appeal at the research date, its appellate fate should be verified. The early record, in short, is promising and thin: a modern statutory text, a pro-enforcement judicial signal from the prior regime, and the first decisions under the new regime still to come — a state of affairs the treatise records as at the date to which the law is stated.¹²

43-010 The early-operation questions the modern statutes will answer in their first decade deserve naming, because counsel will argue them and the answers will build the regional *lex arbitri*. The arbitrability perimeter: which construction-adjacent disputes — procurement challenges, statutory adjudication once enacted, integrity sanctions — sit outside the arbitral forum on the mandatory-jurisdiction logic of Chapter 13. The public-policy ground's calibration: whether the regional courts hold the enforcement-stage ground to its narrow international meaning under the pressure of state-party cases — the discipline the Convention jurisprudence demands and small jurisdictions feel acutely. The interim-measures practice: how readily the courts grant support measures, and on what undertakings — the bond-call line of Part VIII supplying the early caseload. And the consumer and small-works boundary: how far arbitration clauses in domestic building contracts bind unsophisticated employers, the fairness question the modern statutes leave to general law. Each question is flagged at its substantive home in this treatise; the chapter assembles them as the modernisation's watching brief — and as the docket on which, per Chapter 9's economics, a handful of well-argued regional decisions will set the law for a generation.

43-011 The regional set-aside record now carries a decision of flagship weight. In *National Infrastructure Development Company Ltd v Construtora OAS SA* — Civil Appeal Po18 of 2023, judgment 24 April 2026, affirming Seepersad J in CV2022-01832 — the Trinidad and Tobago Court of Appeal upheld the setting aside of

¹² Cross-references: the Guyana Arbitration Act 2024 (Act No. 6 of 2024) section anchors (ss 6, 8, 9, 10, 17, 20–23, 28, 30, 34, 56–59, 63–65, 73–74); the T&T Arbitration Act 2023, Jamaica Arbitration Act 2017, Barbados ICA Act 2007, BVI Arbitration Act 2013; the New York Convention status table; the enforcement decision under the prior law (ch 46 below; appeal pending).

an LCIA tribunal's partial final award of US\$126.4 million under a FIDIC Yellow Book design-build contract for the Point Fortin highway extension. Two holdings carry region-wide: a contractual clause purporting to oust the court's set-aside jurisdiction is null and void as contrary to public policy — the *Czarnikow v Roth, Schmidt* principle received whole — and an award disclosing errors of law on its face, or findings no reasonable arbitrator could reach, remains vulnerable under the pre-Model-Law statute. The decision is the settled caution attached to this chapter's seat analysis: under the region's older arbitration statutes the merits door stands further open than the Model Law jurisdictions tolerate, and the seat decision prices that difference. The same project generated the securities litigation treated in *Part VIII: NIDCO v Banco Santander SA*¹³, upholding the employer's demands on the standby letters of credit that secured the contract.

43.4 The regional map in summary, and the stay worked

43-012 Table 43.1 states the regional arbitration map in summary, the statutes and the Convention positions together, as the practitioner's working reference; the seat-by-seat detail belongs to the expansion.

43-013 Table 43.1 — The regional arbitration map in summary. Statutes as at the research date; commencement details, section architecture, and Convention reservations should be confirmed against the primary instruments.

43-014 The stay of court proceedings is the modernised statutes' first practical instrument, and the foregoing treatment works it briefly because it is where the new law will most often first matter to a construction party. A party to a Guyanese construction contract containing an arbitration agreement is sued in the High Court on the contract; under the 2024 Act, on the party's request made before its first step on the substance of the dispute, the court must refer the parties to arbitration — the stay is mandatory, not discretionary, the colonial statute's discretion replaced by the Model Law's command — and the arbitration may be commenced and continued, and an award made, while any residual court proceeding is pending. The conditions are the practitioner's checklist: there must be an arbitration agreement within the Act's definition and writing requirement; the request must come before the first step on the substance — so the defendant must raise arbitration at the threshold, an appearance filed and a defence served being the classic forfeitures; and the agreement must not be null and void, inoperative, or incapable of being performed, the narrow exceptions the Model Law family carries. For the construction lawyer the stay converts the arbitration clause from a preference into a right: the counterparty that sues in breach of it can be held to its bargain as of course, and the tactical litigation that the discretionary regime invited — the suit filed to pressure, the arbitration clause argued around — loses its purchase. The structural point is the regime change: the stay is now mandatory across the modernised seats, and the arbitration agreement in a Caribbean construction contract is, at last, self-enforcing in the regional courts. Guyana adds

¹³ *Part VIII: NIDCO v Banco Santander SA* [2017] EWCA Civ 27.

a provision the Model Law does not contain. Under section 9(2) the court may, by order, refer to arbitration a matter arising in any proceedings before it, other than criminal proceedings, where it considers the circumstances appropriate, and whether or not the parties consent. Two consequences follow. The party that has lost its right to a mandatory reference under section 9(1), by engaging the merits first, has not necessarily lost arbitration: the discretionary route remains, though it is the court's to grant and not the party's to demand. And the subsection is not confined to matters that are the subject of an arbitration agreement, so that a construction dispute between parties who never agreed to arbitrate may nonetheless be referred. How the power will be exercised is undecided; so is the fate abroad of an award made on a compelled reference, where the Convention presupposes an agreement in writing.¹⁴

43-015 The seat decision's criteria deserve their checklist statement before the worked application: the *lex arbitri*'s modernity — Model Law chassis, confined intervention; the supervisory courts' record — speed, arbitration-literacy, enforcement temper; the Convention position and the award's portability from that seat; the practical infrastructure — arbitrators, counsel, hearing logistics, now partly virtualised; cost and neutrality optics between the parties; and the interim-relief reach of the seat's courts over the project's assets and site. The criteria's regional application is the modernisation's dividend: seats inside the region can now compete on the first three criteria where their statutes and courts have moved, and the reflexive offshore default — London, Miami, elsewhere — is a choice to be justified against the checklist rather than assumed, particularly where the project, the assets, and the evidence all sit in the jurisdiction whose courts the offshore seat then cannot conveniently reach.

43.5 The seat decision worked

43-016 The modernisation's practical payoff is the seat decision, and the foregoing treatment works it because it is the choice the new statutes were enacted to change and the one the construction lawyer now makes on altered ground. The seat is the arbitration's legal home: it determines the supervising court and the supervising statute — the stay, the interim measures, the challenge to the award — and it fixes the award's country of origin for Convention enforcement. Under the prior law the analysis was short: a colonial-statute seat exposed the arbitration to dated supervision and discretionary interference, and the prudent choice for a substantial Caribbean construction arbitration was an established foreign seat — London, New York, a neutral Model Law jurisdiction — with the region supplying the project and the foreign seat supplying the law. The modernised statutes change the weights. A Guyanese seat now carries a Model Law supervision — the

¹⁴ Cross-references: the mandatory stay (Guyana Act s 9; the T&T and Jamaican equivalents); the arbitration-agreement definition and writing requirement (s 8); the court-ordered interim measures in support (ss 10 and 30; ch 45 below); the seat-selection consequences (ch 44 above and ch 46 below). Section anchors verified against the gazetted text, Legal Supplement A, 24 May 2024, at 101.

mandatory stay, the confined intervention, the exhaustive setting-aside grounds, the Convention enforcement regime — and the localisation case acquires real content: the seat at the project, the regional bench and bar developed by the work, the costs and logistics of home-ground proceedings, and the policy momentum of statutes enacted precisely to make the region arbitrable at home. The counter-vailing considerations remain honest ones: the new statutes are judicially untested, the institutional infrastructure is developing, and the state-party dimension cuts both ways — a contractor against a state employer may prefer supervision outside the employer's home courts, however modern the statute, while the state may insist on the home seat as the price of the work. The structural counsel is therefore a weighing, not a rule: the regional seat is now defensible and will strengthen as the record accumulates; the foreign seat remains the conservative choice for the highest-stakes state-party engagements until the new regimes are tested; and the construction lawyer should make the choice deliberately, on the project's facts, rather than by the reflex — in either direction — that the prior law made habitual.¹⁵

43A Setting aside read closely: the exhaustive recourse

43-017 The foregoing treatment stated that setting aside is the exclusive recourse against the award; this section reads the regime closely, because it is the modernised statutes' centre of gravity and the construction lawyer must know precisely how narrow the door is. The grounds, in the Model Law family the regional statutes enact, are exhaustive and divide into two classes. The first class must be proved by the applicant: the incapacity of a party or the invalidity of the arbitration agreement under its governing law; the absence of proper notice or the inability to present one's case — the due-process ground, the family's workhorse; the award's dealing with matters beyond the submission's scope — the excess-of-mandate ground, severable where the excess can be separated; and the tribunal's composition or the procedure departing from the parties' agreement or, failing agreement, the statute. The second class the court may raise of its own motion: the dispute's non-arbitrability under the forum's law, and conflict with the forum's public policy — the ground the Guyanese statute, on the corroborated accounts, elaborates expressly in terms of fraud, corruption, and breach of natural justice. The application is time-barred — the Model Law family's three-month limit from receipt of the award — and the court's function is supervisory, not appellate: no ground reaches the merits, the tribunal's errors of fact and law are beyond recall, and the construction lawyer advising a disappointed party must say so plainly, because the setting-aside application brought as a disguised appeal fails as a class, and the costs of failing are the client's.

¹⁵ Cross-references: the supervising-statute functions (the stay, interim measures, setting aside — §§43.1, 43.4 above); the Convention origin and enforcement (ch 46 below); the institutional landscape and the untested-record caution (ch 44 above; §43.3 above); the state-party dimension (§46.2–46.3 below).

43-018 The grounds' construction-specific incidence deserves this supplement's statement, because the construction award attracts characteristic challenges and the practitioner should know where they actually run. The due-process ground runs where the tribunal decided on a basis the parties never addressed — the delay methodology the tribunal adopted unbidden, the quantum theory neither expert advanced — and the construction tribunal's protection is the practice the proof chapter counselled: put the provisional view, invite the submissions, decide on the case the parties met. The excess-of-mandate ground runs along the reference's edges — the claims crystallised before the board versus those first raised in the arbitration, the counterclaims' scope, the multi-contract project's boundary between the referred contract and its neighbours — and the construction lawyer polices it at the pleading stage, because the scope objection not taken promptly is waived in substance. The public-policy ground runs, in this region's coming jurisprudence, exactly where Part VI predicted: the corruption taint, raised against the award on the contract the integrity architecture condemns — and the foregoing treatment's marked tension, between the integrity demand and the no-retrial discipline, will be resolved ground by ground in the regional courts. This supplement's closing counsel is the regime's own logic: the award under the modernised statutes is nearly final by design; the recourse is procedural hygiene, not error correction; and the construction party's real protections are upstream — the tribunal well-appointed, the procedure well-agreed, the case fully put — because downstream the door is, by the parties' own modernised bargain, all but shut.¹⁶

The extract ends here. Chapter 43 continues in the full edition.

¹⁶ Cross-references: the setting-aside grounds (the Guyanese Act ss 56 and 59; the Model Law family); the three-month limit; the due-process and excess-of-mandate incidence in construction; the public-policy elaboration (fraud, corruption, natural justice) and the Part VI tension (§46.1; ch 46 below); the end of merits recourse (§45.4).

End of the Reader's Sample.

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