

THE ARBITRATION ACT

THE ARBITRATION (FOREIGN REPRESENTATIVE RIGHT OF AUDIENCE IN COURT PROCEEDINGS) REGULATIONS, 2020

ARRANGEMENT OF REGULATIONS

1. Citation.
2. Interpretation.
3. Foreign representation in international arbitrations.
4. Application for court order granting right of audience.
5. Granting of order for right of audience.
6. Refusal to grant an order.
7. Effect of order.
8. Duration of the order.
9. Extension of the duration of the order.
10. Revocation of order.
11. Right of appeal.
12. Decision of the court.
13. Code of conduct for foreign representatives.



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THE ARBITRATION ACT

THE ARBITRATION (FOREIGN REPRESENTATIVE RIGHT OF AUDIENCE IN
COURT PROCEEDINGS) REGULATIONS, 2020

In exercise of the power conferred upon the Minister by section 62 of the Arbitration Act, and every other power hereunto enabling, the following Regulations are hereby made:—

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| Citation. | 1. These Regulations may be cited as the Arbitration (Foreign Representative Right of Audience in Court Proceedings) Regulations, 2020. |
| Interpretation. | 2. In these Regulations—
“approved regulatory body” means a body authorised to regulate the admission to practise, licensing and conduct of attorneys in a particular jurisdiction; |

“attorney” has the meaning assigned to it under the Legal Profession Act;

“practise as a lawyer” has the meaning assigned to it under the Legal Profession Act;

“right of audience” means the right to appear before and address a court, including the right to call and examine witnesses in any court proceedings.

Foreign representation in international arbitrations.

3. A foreign representative desirous of appearing on behalf of any party before a court in any matter connected to an international arbitration shall be permitted, on application under regulation 4, to have a right of audience where—

- (a) the leave of the court has been granted; and
- (b) the foreign representative appears together with any person who is admitted to practise as a lawyer in Jamaica.

Application for court order granting right of audience.

4.—(1) Subject to paragraph (2), a foreign representative desirous of appearing before a court in any matter connected to an international arbitration shall make an application to the court seeking an order granting permission to exercise a right of audience before a court.

(2) A foreign representative who has been—

- (a) struck off the roll of attorneys or otherwise barred from practising as a lawyer, in the jurisdiction in which that foreign representative was admitted to practise by the approved regulatory body, as a result of—
 - (i) being convicted of an offence punishable by a term of imprisonment;
 - (ii) being found guilty of professional misconduct involving dishonesty, misrepresentation, deceit or fraud (as the case may be), in disciplinary proceedings conducted by the approved regulatory body; or
 - (iii) being found by the approved regulatory body to have obtained enrolment and admission to practice by fraud or misrepresentation; or
- (b) suspended by the approved regulatory body and—
 - (i) the approved regulatory body has not lifted the suspension; or
 - (ii) the period of the suspension has not expired,

shall not be eligible to make an application to the court under paragraph (1).

- (3) An application made under paragraph (1) shall—
 - (a) be in writing in the form prescribed by rule 11.8 (3) of the Civil Procedure Rules, 2002;
 - (b) state what order the applicant is seeking;
 - (c) outline clearly and concisely the grounds on which the applicant is seeking the order;
 - (d) include the applicant's estimate of the length of time required for the hearing of the application; and
 - (e) be supported by an affidavit sworn by the applicant.
- (4) The affidavit supporting the application made under paragraph (1) shall include—
 - (a) the name, address and nationality of the applicant;
 - (b) the jurisdiction in which the applicant is admitted to practise law;
 - (c) details of the applicant's qualifications and training;
 - (d) the reason for seeking the order;
 - (e) the name of the party to the international arbitration proceedings on behalf of whom the applicant intends to appear during the proceedings; and
 - (f) exhibits of—
 - (i) a certified copy of the applicant's current legal practising certificate; and
 - (ii) proof of the applicant's identification, which may include a passport, driver's license or permanent resident card.
- (5) The foreign representative shall give to the General Legal Council notice of the application in accordance with rule 11.11(1) of the Civil Procedure Rules, 2002.

Granting of
order for
right of
audience.

- 5.—(1) Subject to the provisions of this regulation and regulation 6, the court shall within three days after receipt of an application made under paragraph (1) either—
- (a) grant an order permitting the right of audience, unconditionally or subject to such restrictions and conditions as may be endorsed on the order;
 - (b) notify the foreign representative that additional information or documentation is required to be submitted to the court prior to the making of a determination of the application; or

- (c) refuse to grant an order permitting the exercise of the right of audience.

(2) The court may, upon receipt of an application from a foreign representative for an order granting permission to exercise a right of audience pursuant to regulation 4(1), grant the order sought by the foreign representative if satisfied with the merits of the application including the foreign representative's character, qualifications and training.

(3) In considering an application made under regulation 4(1), the court shall have regard to—

- (a) the foreign representative's training and qualifications;
- (b) the foreign representative's professional conduct and integrity; and
- (c) any other matter that the court considers relevant.

(4) Where the court considers necessary, the court may request that the foreign representative furnish additional information or documentation to substantiate the application.

(5) A request under paragraph (4) shall be—

- (a) notified in writing to the foreign representative; and
- (b) state that a response is required within ten working days, failing which the application shall be rejected.

(6) Where the court grants a foreign representative an order permitting the exercise of a right of audience before a court in any matter connected to an international arbitration, the foreign representative shall provide a copy of the order to the General Legal Council, each party to the international arbitration proceedings and the arbitral tribunal.

(7) A foreign representative shall not appear on behalf of any party before a court in any matter connected to an international arbitration without an order granting permission to exercise a right of audience together with any person who is admitted to practise as a lawyer in Jamaica.

Refusal to
grant an
order.

6.—(1) The court may refuse to grant an order under regulation 5 if—

- (a) the court is not satisfied in respect of the matters specified in regulation 5(2); or
- (b) the application contains, or is based on, a false or misleading representation.

(2) Where the court refuses to grant an order the court shall notify the applicant in writing of the decision, the reasons for the decision and the right of appeal conferred by regulation 11.

Effect of
order.

7. An Order granting a right of audience shall authorize a foreign representative to appear together with any person who is admitted to practise as a lawyer in Jamaica, before a court in any matter connected to an international arbitration on behalf of any party in accordance with any condition contained in the order.

Duration of
the order.

8. Any order granted pursuant to regulation 5 shall—

- (a) specify the period for which it shall continue in force; and
- (b) unless revoked in accordance with the provisions of these Regulations, continue in force for the period specified by the court in the order.

Extension of
the duration
of the order.

9. A foreign representative may, no later than two months preceding the date of expiry of the order, make an application to the court to vary the order so as to extend the duration of the order.

Revocation
of order.

10.—(1) The court may at any time after an order has been granted, revoke that order if the court is satisfied that—

- (a) during the duration of the order the foreign representative has been struck off the roll of attorneys in the jurisdiction in which the foreign representative is admitted to practise law by the approved regulatory body;
- (b) during the duration of the order the foreign representative has been convicted by a court of competent jurisdiction in Jamaica for an offence relating to dishonesty, fraud or corruption;
- (c) the foreign representative failed to comply with the conditions subject to which the order was granted;
- (d) the granting of the order was obtained by the foreign representative's submission of a false or misleading representation in the application made under regulation 4(1); or
- (e) the foreign representative used the order granted for or in relation to dishonest, fraudulent or corrupt purposes.

(2) The order shall be revoked once the court gives written notice to the foreign representative of the reasons for the revocation and outlines the foreign representative's right of appeal conferred under regulation 11.

(3) The foreign representative, upon receipt of the written notice from the court under paragraph (2), shall discontinue acting on the behalf of any party in connection with an international arbitration before a court.

(4) The rights and privileges enjoyed under any order that is revoked under this regulation shall cease to have effect upon such revocation but such revocation shall not, in any way affect the liability of any foreign

representative in respect of any contravention of this regulation or of the order that may have accrued prior to the revocation.

Right of
appeal.

11.—(1) Any foreign representative aggrieved by a court's decision to—

- (a) refuse to grant an order under regulation 5; or
- (b) revoke an order made under regulation 5, may appeal to the court against any decision by submitting a notice of appeal.

(2) Any appeal made under subsection (1) shall be made within five days of notification of the decision to the appellant except where the court may, for good cause extend the said period of five days.

(3) A notice of appeal shall—

- (a) be in writing;
- (b) include the name, address and nationality of the appellant; and
- (c) outline clearly and concisely the grounds of appeal.

(4) The court upon receipt of the notice of appeal may request that the appellant submit to it any document, information, or correspondence, relevant to the appeal, which in the opinion of the court is likely to assist in coming to a decision on the appeal.

(5) The court shall proceed to consider the appeal made by the appellant and make such decision as it may think fit, if the appellant fails to comply with the request under paragraph (4).

Decision of
the Court.

12.—(1) Upon consideration of the appellant's notice of appeal submitted under regulation 11, the court may—

- (a) affirm the initial decision;
- (b) vary the initial decision; or
- (c) set aside the initial decision and make a new decision in its place.

(2) After the appeal has been determined, the court shall inform the appellant of its decision in writing.

Code of
conduct for
foreign
representa-
tives.

13. A foreign representative who has been granted permission by an order under regulation 5 permitting a right of audience shall be subject to the rules of professional conduct and ethics stipulated in the Legal Profession (Canons of Professional Ethics) (Amendments) Rules that apply to, and regulate, attorneys admitted to practise law in Jamaica.

Dated this 3rd day of March, 2020.

DELROY CHUCK
Minister of Justice.