



DEVELOPMENTS IN COMMERCIAL ARBITRATION IN THE REGION

SADCLA AGM, CAPE TOWN,
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SCOPE

- ❑ SADC region embracement of commercial arbitration as ADR mechanism
- ❑ operations, challenges and effectiveness of commercial arbitration centers SADC
- ❑ legal profession embracement of local vs international commercial arbitration in disputes resolution at SADC
- ❑ training in commercial arbitration (undergraduate, law school level and in CPD)

DEVELOPMENTS OF COMMERCIAL ARBITRATIONS IN SADC REGION

□ SADC region

- Members (nine Republics, Two Kingdoms, One United Republic and One Democratic Republic)

□ Embrace

- Member states setting Bedrock for Arbitration, Legislative Framework and Institutions

- Legal Profession- Roles

□ Operational Challenges, Effectiveness and Efficiency

- Factors that make Consumers opt Arbitration,

EMBRACEMENT OF COMMERCIAL ARBITRATION AS ADR AT SADC

SADC MEMBER COUNTRIES AND ARBITRATION(INSTITUTIONS)

- ❑ 50% + (SEYCHELES, ANGOLA, NAMIBIA MALAWI and BOTSWANA)
- ❑ **SA-** AFSA ,CAJAC and ADR AFRICA
- ❑ **DRC-**Congo Arbitration Centre
- ❑ The Directorate of Dispute Prevention & resolution **LESOTHO**
- ❑ **MADAGASCAR-**Arbitration Centre of Madagascar
- ❑ **MAURITIUS-**Permanent Court for Arbitration at the Mauritius Chamber of Commerce & Industry AND LCIA-MIAC Arbitration Centre
- ❑ **SWAZILAND-**Conciliation, Mediation and Arbitration Commission
- ❑ **ZIMBABWE-**Commercial Arbitration Centre
- ❑ **TANZANIA-** upcoming DIARC, TIA and NCC
- ❑ **ZAMBIA-**Zambia Centre for Dispute Resolution Limited (ZCDR)

EMBRACEMENT OF COMMERCIAL ARBITRATION AS ADR AT SADC

FEATURES AND ATTRIBUTES (COMMON) SOUTH AFRICA'S , TANZANIA'S AND ZAMBIA

❑ FORMATION

- Collaborative efforts, similar initiators (group of professionals)

❑ FUNCTIONS

- Mix of local and International Arbitration administration services
- Trainings

❑ ACCESIBILITY

- Online ?

❑ CONCLUSION

- More effort in marketing

EMBRACEMENT OF COMMERCIAL ARBITRATION AS ADR AT SADC

SADC MEMBER COUNTRIES AND ARBITRATION(LEGISLATIVE FRAMEWORK)

☐ THE NEW YORK CONVENTION SIGNATORY STATUS

- 80% signatories.
- Non signatories-Malawi, Namibia, Seychelles and Swaziland

☐ UNCITRAL MODEL LAW

- 33% Adoption
- Madagascar Mauritius, Mozambique, Zambia and Zimbabwe

☐ ICSID

- All?

☐ SADC PROTOCOL ON FINANCE AND INVESTMENT

- Entered into force 16 April 2010, foreign investors in SADC countries may bring arbitration claims under the ICSID Arbitration Rules or the UNCITRAL Arbitration Rules for breach of the Protocol's provisions related to expropriation and the guarantee of fair and equitable treatment .

OPERATIONS, CHALLENGES AND EFFECTIVENESS OF COMMERCIAL ARBITRATION CENTERS SADC

☐ **COMPETENCE (PROFILE AND EXPERTISE OF ADMINISTERING BODY)**

- Quality of Arbitrators, Expertise within its staff
- Modern arbitration rules and Arbitral trends
- Modern and efficient administrative and technological facilities-case load-dispute nature and amount Costs

☐ **FINALITY**

- Legal framework

☐ **CONFIDENTIALITY**

- Publication of award, Security and safety of documents

☐ **COSTS**

OPERATIONS, CHALLENGES AND EFFECTIVENESS OF COMMERCIAL ARBITRATION CENTERS SADC

□ **LORD HOFFMAN WEST TANKERS INC V RAS RIUNIONE ADRIATICA DISICURTI SPA AND OTHERS (THE 'FRONT COMOR'),**

▪ **“unobtrusive effectiveness of the supervisory jurisdiction along with neutrality and the availability of legal services as being the three criteria which determine the parties' choice of the situs...”**

□ **STEFAN KRÖLL , “INTERNATIONAL ARBITRATION AND INTERNATIONAL COMMERCIAL LAW”**

- Cost (42%),
- good transport connections (26%) and hearing facilities (including translators, interpreters and court reporters) (21%).
- Safety and the absence of bribery ,Efficiency and promptness of court proceedings (20%),
- language (16%), good contacts with specialized lawyers operating at the seat (15%) and the location of the parties (11%).

OPERATIONS, CHALLENGES AND EFFECTIVENESS OF COMMERCIAL ARBITRATION CENTERS SADC

□ CHALLENGES

- Institutions' Country Underlying Legal Framework
- Capacity/Quality of Arbitrators
- Consumers-Legal profession involvement
- Marketing(viz non SADC members)

LEGAL PROFESSION EMBRACEMENT OF LOCAL VS INTERNATIONAL COMMERCIAL ARBITRATION IN DISPUTES RESOLUTION AT SADC

□ LEGAL PROFESSION ROLES

- Advisers to primary users -the parties to contracts- Appointers
- Valid and effective arbitration agreement in their contracts
- Secretaries to arbitration tribunal(s)/Representatives of parties to Arbitration
- Arbitrators (2015 edition of Chambers and Partners “Most In Demand Arbitrators – Global Wide” doesn’t feature a single African arbitrator)
- Data?

□ REFERENCES (LOCAL viz INTERNATIONAL)

- LCIA from Africa 3.5%-2012, 4.8%- 2013,5.6%-2014 and 4.3%-2015

LEGAL PROFESSION EMBRACEMENT OF ARBITRATION

□ CHALLENGES AND OPPORTUNITIES

- Advocating for conducive legal framework in SADC
- Educating the Appointers
- Mentorship,
- Membership

TRAINING IN COMMERCIAL ARBITRATION SADC UNDERGRAD, LAWSCHOOL, CPD

AS A COURSE /SUBJECT

- Widely taught

AS A DEGREE PROGRAMME

- Nil

LAW SCHOOL

- Nil

CPDs SEMINARS AND CONFERENCES

- Considerable CPDs, Two conferences in SADC alone (MIAC 2016)
- CIArb activities in Chapters, SA, Mauritius, Seychelles

TRAINING IN COMMERCIAL ARBITRATION SADC

▣ PRACTICAL TRAINING

- Assistant to appointed Arbitrator
- Counsel of a party to Arbitration proceeding
- Secretary to Arbitration Tribunal
- Internships

TRAINING IN COMMERCIAL ARBITRATION SADC

□ GETTING THE DEAL

- Reputation
- Expertise(primary subject or substantive law of dispute)
- Knowledge of relevant language(s)- Chinese, English
- Knowledge of Applicable Law – qualification and practice
- Recommendation of external Counsel

WAY FORWARD

ADVOCATING FOR ARBITRATION AT GRASSROOTS

- Legal Profession role to the Appointers and Parties to agreement

MORE MARKETING

- online information ?

MORE PRACTICE TRAINING

- Collaborative programmes institutions and universities



THE END

 Thank you....