



# Examining the benefits of commercial arbitration in Southern Africa

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# Outline

- ▶ Introduction
- ▶ Arbitral seat
- ▶ Benefits of arbitration
- ▶ Arbitration or litigation?
- ▶ Benefits of arbitration
- ▶ Cons
- ▶ Conclusion



# Introduction

- ▶ Commercial arbitration is a process for resolving business disputes between two parties outside the conventional court system.
- ▶ According to a PWC 2013 survey, the industries that prefer arbitration are the energy - power and construction industry; 73% Energy, Construction – 84% and 69% Financial Sector



# Seat of arbitration and how to choose an arbitral seat

- ▶ A seat of arbitration is the legal place where the arbitration will take place.
- ▶ Some arbitration centers in Africa include those in Mauritius, Egypt and Rwanda, South Africa ( Arbitrations Foundation of Southern Africa with branches in Sandton , Capetown, Durban and Pretoria)
- ▶ It is prudent to decide on the seat at the time of contract negotiation
- ▶ Several factors contribute in deciding the seat of arbitration and these are :
  - a. Procedural law applicable to the arbitration e.g is it modeled on the United Nations Commission on International Trade Law, (Model Law)
  - b. National courts responsible for applying the procedural law
  - c. Nationality of the award for the purpodrd of enforcement

# Continued

- ▶ Control over the process – parties are able to choose the applicable law and procedures e.g parties can choose a neutral or familiar law or set of rules to govern their arbitration, which may also take into consideration public international principles

# Arbitration or litigation?

- ▶ Most investors will opt for arbitration unlike litigation for the following reason:
  - a. local courts are considered to be impartial ,
  - b. corrupt
  - c. Political unrest and instability
  - d. Length of litigation ( most conventional courts have backlog of cases)
  - e. Diverse legal jurisdictions such as common and civil law, thus arbitration provides familiar legal jurisdiction

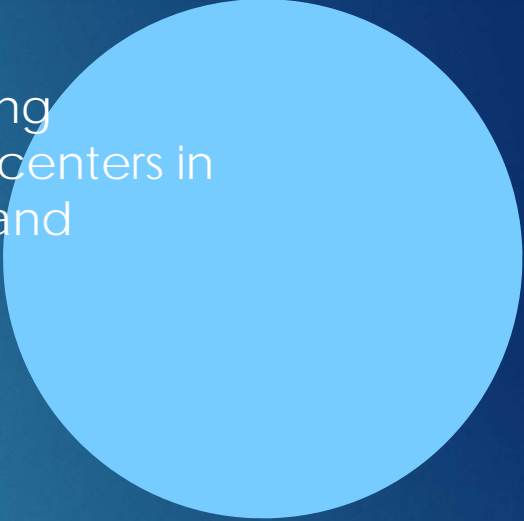


# Arbitration benefits to Southern Africa

- ▶ Attracts foreign direct investments; investors will have the confidence that complex commercial disputes will be effectively and efficiently dealt with
- ▶ Expeditious dispensation of justice
- ▶ Option to choose arbitrators with the requisite skills and knowledge
- ▶ Confidentiality of the proceedings and awards
- ▶ Less formal and rigid procedures
- ▶ Cost effective proceedings
- ▶ Relative ease of enforceability mostly under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards
- ▶ Neutrality of arbitrators and the arbitral process

# Cons



- ▶ There is now outcry that arbitration processes are increasing becoming expensive and lengthy, however most arbitral centers in Africa are providing for timely dealing of arbitral matters and providing for specific fee structure
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# How to increase arbitral references within Southern Africa

- ▶ Awareness
- ▶ Trainings
- ▶ Lobby for adoption of the model UNICITRAL law , as Zambia and Zimbabwe amongst others have done

# Conclusion



- ▶ Arbitration is vital to attract Foreign investment in southern Africa and the benefits in complex commercial arrangements such as being cost effective and neutrality outweigh the benefits of litigation
- ▶ We all have a role to promote the use and knowledge of commercial arbitration, mostly in centers within Africa and not far afield

THANK YOU - ZIKOMO

