

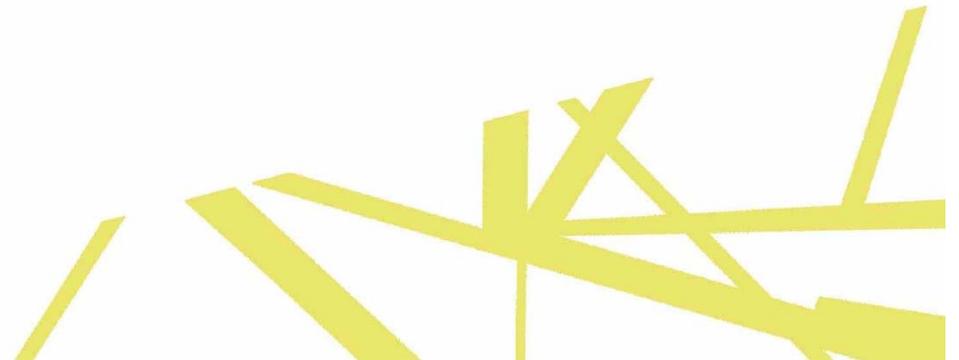
International Arbitration for  
African Lawyers

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AFRICA

# A South African Lawyer's experience

- The overwhelming majority of the average South African lawyer's practice is limited to domestic arbitration and domestic court proceedings.
- Only a handful of lawyers have experience in international arbitrations.
- Even those that do, only encounter international arbitrations rarely.



# Obstacles to International Arbitration

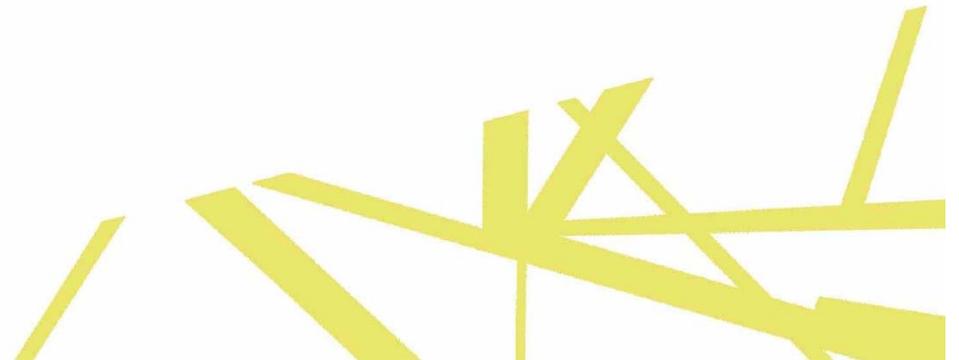
- Prior to 1990, the political climate in SA prevented many of its lawyers from getting exposure to international arbitrations. It takes some time to grow that exposure in an already developed international market.
- Arbitration in SA currently governed by outdated legislation from 1965. The International Arbitration Bill has only very recently been presented to Parliament. In the meantime, the other African jurisdictions have taken significant strides towards establishing a presence in international arbitration. However, these efforts are still far behind those of the established centers such as Paris, London, Singapore etc.
- SA has, until relatively recently, experienced a very buoyant domestic legal market. There has been little need to look beyond SA borders for work.

# Obstacles to International Arbitration...

- While the SA legal market has focused attention domestically, the major legal markets of the US, London and Paris have aggressively expanded their presence in international arbitrations in their jurisdictions and elsewhere. Drafted arbitration clauses that favour home turf.
- Between 2003 and 2014 the GNI per capita in Sub-Saharan Africa tripled, following the sharp rise of foreign investment into the region. This results in an increase in international arbitrations. Who got there first?
- Negative perception that African lawyers are not as capable as lawyers from the bigger legal jurisdictions. This is due to relative lack of experience, not ability.
- Doubt in one's own ability as an African lawyer. Improves with experience.

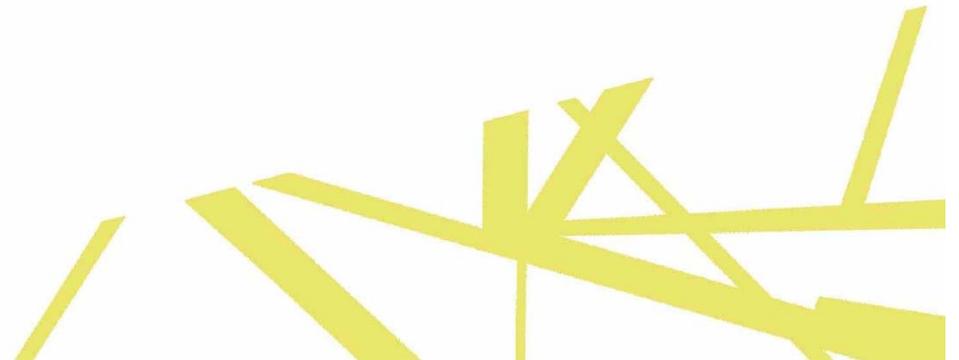
# Why it is changing

- Many African jurisdictions have realised that it is necessary to take advantage of the boom in investment into Africa to expand the legal market. Introducing arbitration centers.
- Africa is now part of a global legal village. Multinational law firms are expanding into Africa in various ways. This is slowly exposing African lawyers to international arbitration. The experience is coming.
- The quality of legal skills in Africa is improving with the exposure to the international market. Large corporates are becoming more comfortable with working directly with African lawyers.



# Two steps forward, one step back

- Resistance to change. To compete at international level, it is necessary to match or surpass the standard set by international competition. Turnaround time, quality of work, commitment, sacrifice.
- Matching international standards does not mean matching international charge out rates. Larger, more complicated matters may allow for a reasonable premium, but do not be greedy.



# The Holy Grail

- Largest matter (Yukos v Russian Federation) awarded legal costs of USD60 million for claimant (claimed USD80 million).
- Average costs for BIT claim are in the region of USD5 million per arbitration.
- Longest arbitration took just over 10 years.
- Average case takes 3.2 years.
- Acting for/against States, with big budgets. Exposure to best lawyers from around the world.
- Practice law beyond limitations of domestic courts.
- Opens doors to international opportunities.

# The path less travelled

- Start small and dream big.
  - Commercial arbitrations (ICC, UNCITRAL etc)
  - Recognition and enforcement proceedings
  - Acting for/against governments (BIT claims/WTO)
- Service is often just as important as results.
- Skill up – international arbitration workshops/seminars, tertiary qualifications.
- Knock on doors – magic circle firms. Take advantage of home visits.
- Inform clients of options as part of their investment strategy.
- Develop advocacy skills.

