

MIAC 2014

THE THIRD BIENNIAL
MAURITIUS INTERNATIONAL CONFERENCE

**The Litmus Test: Challenges to Awards and
Enforcement of Awards in Africa**

Monday 15 December 2014

Hilton Hotel, Flic-en-Flac, Mauritius

Opening Address of the Solicitor General, Mr Dheerendra Dabee G.O.S.K., SC

MR DABEE: Honourable Chief Justice, Excellencies, honourable judges, distinguished delegates, ladies and gentlemen, good morning. You may have seen in your Conference brochure that the opening address was to be delivered by the Honourable Attorney General. I am just stepping in for him before the new Attorney General is sworn in in the days to come.

This being said, it falls to me to open this third Mauritius International Arbitration Conference. Let me begin by extending a very warm welcome to representatives of the co-hosts of this Conference, the United Nations Commission on International Trade Law (UNCITRAL), the Permanent Court of Arbitration (PCA), the International Centre for Settlement of Investment Disputes (ICSID), the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA) and the International Council for Commercial Arbitration (ICCA).

I am pleased that the heads of all these distinguished institutions are represented here today. The active support of the international arbitration community represented by your institutions has become a defining feature of this Conference. It contributes to the uniqueness of the Mauritius International Arbitration Conference not only in Africa but indeed in the world.

Such support is not only symbolic. Each session in the next two days will be chaired and moderated by one of the heads of our co-hosting institutions. My special thanks go to you Excellencies, ladies and gentlemen, for your enthusiastic commitment to this event.

There is another unique feature of our Conference of which we are particularly proud and that is the particular mix of speakers. Our distinguished panelists include academics, judges, and practising lawyers. They are representatives of civil law and common law traditions and speak at a minimum English and French. All of them are leading voices of the discipline in jurisdictions in Africa, Asia and Europe. I am deeply grateful to all of you for being with us.

The unique mix of speakers at this Conference in fact reflects something very Mauritian. As you may already know, Mauritius is a bilingual country whose legal system was shaped by the French Code Napoleon and the British common law. As you will discover in the course of your stay, Mauritius is also a country with a naturally international outlook. Our geography places us within Africa yet we are equally close to many countries in Asia. Our culture is a blend of European, African and Asian and our economy thrives on being Africa, Asia and Europe together through commerce, tourism, financial services and last, but not least, international arbitration.

Seen from this angle it is quite natural to develop international arbitration in Mauritius. Mauritius is already a preferred place to do international business; it is only logical to arbitrate here as well. But to develop into a hub for international arbitration certain conditions must be aligned. Arbitration requires, as it were, a particular ecosystem to thrive. In Mauritius the legal framework governing arbitration proceedings is as good as in any leading arbitral jurisdiction.

Our International Arbitration Act 2008 is based on the UNCITRAL Model Law with a number of significant improvements. International users can be assured that Mauritius is an efficient, neutral and predictable seat.

Any law is only as good as the courts that apply it. Mauritius prides itself on the quality of its judiciary. Oversight of arbitration proceeding in Mauritius is centralised with our Supreme Court which in turn has a panel of judges dedicated to arbitration-related matters. We welcome a number of judges of our Supreme Court, including the designated judges and magistrates of other courts of Mauritius, to this Conference.

You may have heard about a recent court judgment in the *Cruz City* case in which the Supreme Court expounded on the role of a reviewing court vis-a-vis the arbitral tribunal. If you have any doubts about the approach of our Supreme Court, I invite you to consult this ruling which can be accessed on the Supreme Court website.

Under the unique characteristics of the International Arbitration Act is that certain key functions under the Act have been entrusted to one of the world's oldest and most respected international arbitral institutions, the PCA at The Hague. For instance, under the Act, arbitrator appointments may be made and challenges to arbitrators resolved by the Secretary General of the PCA. Users may thus be assured that such decisions are taken in line with the highest international standards and drawing from the widest pool of arbitral talent.

At an institutional level the government of Mauritius has established formal partnerships with two leading players in international arbitration, the Permanent Court of Arbitration in The Hague, and the London Court of International Arbitration with the support of which we have created the LCIA-MIAC Arbitration Centre. LCIA-MIAC provides a state-of-the-art solution for those who seek an integrated Mauritian solution to their arbitration needs, a Mauritian institution for our Mauritian seat, but the seat has been created and exists for all forms of arbitration to thrive, be they under the ICC Rules, the SIAC rules or the SCC rules or, of course, Ad Hoc proceedings under the rules of UNCITRAL.

A major improvement of the arbitration infrastructure in Mauritius is planned for 2015, i.e. the opening of a brand new hearing centre designed and dedicated to dispute settlement proceedings. Here again the centre will be available for any type of arbitral proceedings regardless of institutional pedigree. I shall say no more at this stage but at the very least I can tell you confidently that the centre will be state-of-the-art.

The ecosystem for international arbitration in Mauritius is in place. I am glad to say that arbitral professionals worldwide are beginning to discover and, as it seems, to like what they find here in Mauritius. 2014 has been a highly successful year for arbitration in Mauritius. LCIA-MIAC has registered its first set of cases on the centre's own rules of procedure. Everything suggests that this is only the beginning of substantial growth of the centre.

LCIA-MIAC clauses are increasingly being used in Africa-related transactions.

The Permanent Court of Arbitration held a hearing this year in Mauritius in a significant dispute between an African private company and an African State. The PCA representative in Mauritius at the time acted as secretary to the Tribunal. We expect that this type of public private dispute involving an African State will become one of the pillars of PCA's activity in Mauritius.

The PCA Secretary General has also dealt with applications by parties under the International Arbitration Act including in respect of challenges to arbitrators. I expect that some of our Mauritian attorneys and barristers in this room have had direct involvement in these applications and have experienced first-hand the quality of the PCA's services.

I have it from good sources that a number of hearings and arbitrations organised ad hoc or under the rules of other arbitral institutions have indeed taken place in Mauritius. I stress this point because as much as we are happy to see the institution based in Mauritius thrive, all types of arbitration are welcome in Mauritius.

Finally, arbitration lawyers have embraced Mauritius as a platform for academic exchange at the highest level. The success of this Conference following that of MIAC 2010 and MIAC 2012 confirms that there is a genuine interest in and need for a centre of training of excellence in the African region. We are thrilled by the number of your registrations, which has exceeded our expectations. I suspect many of you will already have marked the dates 8 to 11 May 2016 in your diaries when we expect three times as many arbitration lawyers will flock to Mauritius to attend the world's largest summit of the profession, the bi-annual ICCA Congress. Mauritius is proud to be the first country ever in Africa to host this Congress.

Perhaps less significant in numbers but not in political significance is an event that will be held in March 2015 in Mauritius and that is the signing ceremony of UNCITRAL Convention on Transparency in Treaty-based Investor State Arbitration. The extent to which the general public has a right to be informed about the investment arbitration proceedings is

one of the truly controversial issues in international arbitration; after all, public accountability is at stake. Mauritius has chaired and led work on transparency in investor State arbitration of UNCITRAL both at the level of the working group and at the level of the Commission. The international treaty that resulted from this discussion was adopted by the UN General Assembly last Wednesday, 10 December and it will be known as the Mauritius Convention on Transparency.

It is fair to say today as we are about to open the third Mauritian International Conference that Mauritius has found its place on the world map of international arbitration. This is not to say that we are at the end of our journey, by no means, but we have come a long way since 2008 when the International Arbitration Act was adopted.

The beginning of a success story, but for whom? There is one obvious benefit and two more subtle ones. Obviously there are tangible collateral economic benefits for a country that hosts arbitration proceedings. The legal services industry, hotels and ancillary service providers tend to benefit. Moreover, to the extent that the legal seat of arbitration proceedings is in Mauritius, Mauritian lawyers may be engaged in proceedings before the national courts that relate to arbitration, although our international Arbitration Act is designed to ensure that these are kept to a minimum and that our courts will at all times support, rather than disrupt arbitral proceedings. There is a deeper reason why Mauritius is building up capacity in international dispute settlement. Promoting arbitration means promoting the rule of law. By establishing itself as a preferred arbitration venue Mauritius stands for legal certainty and good governance. Whilst Mauritius markets its beaches -- and we hope we will have the opportunity of enjoying them -- textiles, IT expertise, and financial services, we feel we have an even more precious asset to offer: a predictable legal framework and a stable political system. Suffice to note that Mauritius consistently ranks first in Africa in relevant indexes measuring good governance.

The third reason for promoting arbitration in Mauritius has something to do

with inclusiveness. As our distinguished key note speaker Neil Kaplan has just reminded you, arbitration has a long history, and a history not only European or Western yet it is hard to deny that contemporary arbitral practice is still largely defined in the developed world. Several institutions have identified that problem and I may point out that ICCA in particular is playing a constructive role in overcoming the perceived bias in the geography of international arbitration.

If one looks at the statistics that ICSID issues about its registered investment cases, it turns out that only 2% of the arbitrators are from the sub-Saharan Africa and 4% from North Africa and the Middle East, that despite 27% of all cases originating in Africa and the Middle East. To my knowledge no official figures exist that would demonstrate the frequency of investor State hearings held in Africa but I would venture to suggest that the figure is close to zero and this, to make the point again, despite more than a fourth of the respondent States being African or Middle Eastern.

I do not state those facts with a view to stoke controversy. The point is that Africa and other parts of the developing world are embracing arbitration today and rightly so. In doing so, however, we must become owners of the system not merely users. We must learn the professional codes of the discipline to appropriate it and shape it in our own ways. Mauritius is committed to making its contribution to capacity building so that international arbitration can progressively become part of the legal and cultural DNA in our region.

Ladies and gentlemen, the Mauritius International Arbitration Conference is a key element in Mauritius's plan to develop a hub for arbitration in Africa. The Conference is not only intended to be an intellectually stimulating encounter, which I am certain it will be judging from the most experienced speakers and delegates that we have gathered here. It is also intended as a vehicle to form the next generation of arbitration lawyers in our region.

With these preliminaries, and hopefully without having tried to fit too much in your head, it remains for me to wish you two constructive, engaging and perhaps inspiring

days. I have now the pleasure to declare the Mauritius International Arbitration Conference 2014 open. Thank you.