



Making a MARC on Mauritian arbitration

16 OCTOBER, 2018 ANDREW MIZNER The arbitration centre of the Mauritian chamber of commerce has made its pitch to be the country's top dispute resolution centre after the demise of LCIA-MIAC.

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The Mauritius Chamber of Commerce and Industry (MCCI) is promoting its arbitration centre as the future of international arbitration in the country, following the launch of a new set of rules designed to bring it up to speed with other international centres.

The **MCCI Arbitration and Mediation Centre** (MARC) is currently hosting a series of roadshow events to promote its new rules, and speaking at the London leg, the former president of the Supreme Court of the United Kingdom, **Lord Neuberger**, described the Mauritian courts as "well-reasoned and fair" institutions that offered clear and understandable judgments and he welcomed the new MARC rules.

Eminent arbitrator **Neil Kaplan QC**, president of the MARC court, said there was a need for an international arbitration centre in Africa, especially with Chinese money flowing into the continent through the One Belt, One Road programme.

Chinese President **Xi Jinping** recently unveiled **USD 60 billion in funding** for African development, while **Chinese investment** in the African energy sector nearly trebled in 2017. MARC itself has a co-operation agreement with the Shenzhen Court of International Arbitration, signed in 2017.

Kaplan cited **the success of the 2016** conference held in Mauritius by the International Council for Commercial Arbitration (ICCA) as proof of the country's suitability. "Mauritius is well placed, with its infrastructure, to be chosen," he said, citing its culture and legal tradition.

The centre is promoting itself at a timely moment. The previous front-runner in Mauritian arbitration, the LCIA-MIAC centre, was disbanded in July this year, following the withdrawal of the **London Court of International Arbitration** (LCIA). A newly relaunched and independent Mauritius International Arbitration Centre (MIAC) is up and running, with support from the Permanent Court of Arbitration, but it is clear that with heavyweight support from the likes of Kaplan and Neuberger, and former LCIA-MIAC counsel **Dipna Gunnoo** on board as head of MARC, the institution will be a strong competitor for the crown at the top of the Mauritian arbitration world.

The MCCI dates back to the mid-19th century, while MARC has been around since 1996 and holds partnerships with international arbitral institutions including the **American Arbitration Association**. The institution is purely private sector-run and the government has no role.

NEW RULES

The event heard from **Cheng-Yee Khong**, who as well as being a member of the MARC court, is an associate investment manager with third-party funder **IMF Bentham** in Hong Kong.

She explained that the new rules reflected best international practice, including greater transparency, and specific measures such as emergency arbitrators, joinder and consolidation, bespoke arbitrations, an appeal system and a range of other new measures. This echoes similar recent rule changes by many major international arbitral institutions seeking to improve the time and cost of arbitration, **including the Vienna International Arbitration Centre, the German International Arbitration Centre and the ICC International Court of Arbitration.**

Although the transparency drive does not yet extend to publishing anonymised awards, Kaplan said the institution would be considering it in the future.

Another specific measure taken by MARC is doing away with panels of arbitrators, with Kaplan explaining that the body was showing confidence in itself that when it is called upon to appoint an arbitrator, it will make the right choice, based on who is available in the market, and arguing that panels are problematic because they are restrictive. "The better way is to just ask people if they are prepared to sit," he said.

JUDICIAL QUALITY

Lord Neuberger, who **retired from the bench in September 2017 and joined One Essex Court** as an arbitrator three months later, said the judiciary should be supportive of arbitration and

arbitral decisions, as both parties have agreed to be bound by the process, describing the arbitrator's decision as being effectively a contract and party autonomy as being important.

"Arbitration, unlike litigation, is a private and consensual matter," he said, and the arbitrator is part of that. They should not "sit above proceedings like a judge", but be part of them.

Nonetheless, there are limits to this judicial hands-off approach, he said, noting that "if arbitrator has gone wrong somewhere, then it is the judge's duty to interfere".

He was also concerned that some arbitrators have become overly concerned about the possibility of judicial interference or criticism and have become protective in their awards. He also noted the tendency of some arbitrators to favour their own interest, noting that arbitrators "have become economically minded individuals and would like to be reappointed" which leads to them being over generous in their decision-making.

Duncan Bagshaw, counsel at **Stephenson Harwood** in London and a former registrar of the LCIA-MIAC centre, was effusive, describing the Mauritian judges as "one of its shining stars" and noted that within Africa they have "unique independence" and that they are unafraid of ruling against the government.

The country has a modified version of the UNCITRAL model law and Bagshaw also pointed to the *Cruz City 1 Mauritius Holdings v Unitech* case as an example of how well Mauritian courts work when it comes to enforcement of awards.

He added that Mauritius was a safe and welcoming country and praised the "superb facilities" on offer for arbitral hearings.

Jalal El Ahdab of **Bird & Bird** and a member of the MARC advisory board, expanded on the country's strategic appeal, saying "Mauritius is not completely in Asia, Mauritius is not completely in Africa".

"MARC is interface between Asia and Africa", he added, noting that by combining civil and common law, and the English and French languages, it had a wide international appeal.

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