

Kluwer Arbitration Blog

Interviews with Our Editors: Interview with Deline Beukes, CEO of the China Africa Joint Arbitration Centre Johannesburg

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With development in the African continent on the rise, the region is seeing the introduction and/ or revamping of its arbitration centres. One such development is the establishment of the [China Africa Joint Arbitration Centre \(CAJAC\)](#) to resolve commercial disputes between Chinese and African parties. Not an unsurprising development given China's commitment to invest \$60 billion in Africa.

Kluwer Arbitration Blog invited **Deline Beukes**, CEO of CAJAC Johannesburg to provide some insight into the development of CAJAC, its structure and challenges.

1. Can you give us a brief background on the inception of CAJAC and the reasons for its creation?

The rapid development of trade and investment between China and Africa necessitated the establishment of a China-Africa dispute resolution mechanism which would be supported and utilized by the business and legal communities of both China and Africa.

In June 2015, the Beijing Consensus, reflecting the views of Chinese and African stakeholders, was signed in Beijing and the decision was taken to establish, with immediate effect, a Sino-African arbitration mechanism to facilitate, safeguard and enhance Sino-African trade and investment.

In December 2015 the [Forum on China-Africa Cooperation \(FOCAC\)](#) representing 50 African States and China, agreed to a program of mutual cooperation and committed to the establishment of CAJAC.

CAJAC is therefore not an arbitration authority standing by itself, but an integral part of the support structure specially crafted to foster trade and investment between China and Africa.

2. How is CAJAC structured?

CAJAC was designed to make use of existing arbitral institutions. The Shanghai International Arbitration Centre (SHIAC) and the Arbitration Foundation of Southern Africa were the first two centres entrusted with the responsibility of establishing CAJAC in both Johannesburg and

Shanghai.

In March 2017, three more CAJAC centres were established in Beijing, Shenzhen and Nairobi. Every CAJAC centre is supported by an established and reputable arbitral authority with the knowledge, experience and resources to deal with international disputes and to develop such an ambitious project. The centres are, CAJAC Johannesburg under the auspices of [AFSA](#) ; CAJAC Shanghai under the auspices of the [Shanghai International Arbitration Centre \(SHIAC\)](#); CAJAC Beijing under the auspices of the [Beijing International Arbitration Centre \(BIAC\)](#); CAJAC Shenzhen under the auspices of the [Shenzhen International Court of Arbitration \(SCIA\)](#) and CAJAC Nairobi under the auspices of the [Nairobi Centre for International Arbitration \(NCIA\)](#).

This allows CAJAC to become operational almost immediately.

3. In addition to CAJAC Johannesburg, which countries in the African continent does CAJAC intend to set up a centre?

As CAJAC grows and develops, the idea is to also establish a CAJAC centre to serve the different regions in Africa: North Africa, West Africa and the OHADA states. CAJAC Johannesburg will primarily focus on Southern Africa while CAJAC Nairobi will focus on East Africa. The centre entrusted with the responsibility to resolve a dispute will, however, be the choice of the parties concerned.

4. Does CAJAC have its own arbitration rules as yet? If not, when if at all, will the CAJAC rules be issued?

Currently, each of the centres have their own international rules but at the 1st CAJAC International Conference held in Cape Town in November 2017, it was agreed that CAJAC should have the same rules and procedures to ensure conformity and the same high standard wherever a dispute may be heard. CAJAC centres will, therefore, adopt a uniform set of rules. CAJAC Johannesburg is tasked with the responsibility of producing the first draft which will be debated and finally agreed by all CAJAC Centres. It is intended that the rules will be far advanced by the middle of 2018.

5. Many of the African countries, such as South Africa and Kenya, have already established arbitration centres. If you have a CAJAC Centre and a local arbitration centre, why would investors opt for CAJAC? What would be the benefit?

CAJAC was officially called into existence by the decision of the 51 states which are signatories to the 2015 Johannesburg Action Plan as part of FOCAC. The purpose of the creation of CAJAC is to address China-Africa disputes as an integral part of the Belt and Road interaction. This implies the harmonization of China and Africa business practice, centralized norms and arbitral systems and requires a cadre of arbitrators familiar with the cultural norms and practices of China and Africa who will build together a shared jurisprudence. This is a unique purpose and it is anticipated that African and Chinese investors will benefit from the use of such an institution.

6. Since its inception in 2015, how many arbitrations have been referred to CAJAC Johannesburg?

It was never anticipated that there would be an immediate reference to CAJAC. The CAJAC framework had first to be finalized and a model clause widely published for incorporation in

commercial contracts.

The introductory phase is close to completion and we are aware that CAJAC clauses are being incorporated in commercial contracts by banks, financial institutions and in other commercial contracts. The passage of the International Arbitration Act in South Africa at the end of 2017, has given CAJAC further impetus as a recognized Model Law venue. CAJAC is open for business and it awaits referral of its first disputes.

7. It is understood that one of the aims of CAJAC is for matters to be disposed of quickly compared to national courts. How long have the arbitrations thus far initiated lasted?

CAJAC is administered by AFSA and the general experience in AFSA is that contested matters are finalized in about a year. The experience of our partner centres in China indicates that CAJAC disputes in China will be adjudicated at a faster pace, i.e. a matter of months.

8. Typically, what is the demographic of the arbitrators appointed? How are challenges to appointments dealt with? Does CAJAC have some sort of committee that deals with arbitrator appointments?

The concept of a shared panel for all CAJAC centres is fundamental. We want to ensure that disputants have an identical choice of arbitrator, or panels of arbitrators, irrespective of the centre in which their dispute is heard. We want to avoid any suggestion of “home-town” panels.

Each of the international institutions elect arbitrators to serve on the CAJAC panel. These arbitrators have expert experience in different fields and in particular in international arbitration.

9. What is the default seat for arbitrations under the future CAJAC rules (if any)? In the arbitration agreements thus far, what have you seen as the most common seat of arbitration? Do you think CAJAC increases the likelihood of the seat of arbitration being Africa and the arbitrators originating from Africa?

The uniform CAJAC rules, once finalized, will not have a default seat for arbitrations. Initially we would expect that a preponderance of matters will be handled by CAJAC China centres but, with the emergence of South Africa as a well-placed international venue, we think that there is a likelihood that matters referred to CAJAC Johannesburg will steadily increase. We also see strong potential for the use of CAJAC Nairobi.

10. Rule 8 of CAJAC Johannesburg states that it will accept matters referred to it by agreement of the parties, regardless of the seat of arbitration. What happens if the chosen seat is not a party to the New York Convention or does not incorporate the UNCITRAL Model Law?

Where CAJAC is mandated to administer a matter in a chosen seat which is not party to the New York Convention (e.g. Namibia), the party will routinely be advised of the limitations which may following regard to the recognition and enforcement of agreements and awards. Where the chosen seat is not a country which incorporates the Model Law, much will depend upon the adequacy of the particular arbitral system and may require the parties to consider a relocation of the chosen seat.

11. Does CAJAC have a system of reviewing the final award before it is rendered?

No such reviewing system is contemplated, but, no doubt, the matter will be considered at the final stage of the uniform rules.

12. What kind of challenges, if any, has CAJAC Johannesburg faced to date?

CAJAC Johannesburg has faced the usual challenges which confront any arbitral institution, but has been greatly assisted by the support of AFSA and the ability to draw on its resources, experience and skill.

The interaction between CAJAC partners has also facilitated the project as well as the support of 51 states to ensure its establishment.

13. What do you mean by usual challenges? How has CAJAC overcome any culture or social barriers, if any, to operating as a centre?

Usual challenges would include ensuring adequate funding for the period leading up to the administration of cases (AFSA is a wholly independent self-funding non-profit organization), creating awareness in the business and legal sectors of the availability of a tailor-made service and determining the specific needs of the target market.

In offering a China-Africa dispute resolution mechanism, CAJAC Johannesburg also had to ensure that the arbitrators nominated by CAJAC Johannesburg had a thorough understanding of the Chinese Arbitration Act, Chinese arbitration practice and procedure as well as an appreciation of Chinese culture. In addition to many exchange visits between China and South Africa, a delegation of CAJAC Johannesburg arbitrators also paid a visit to China to discuss various topics of common interest including arbitration principles relating to the exchange of pleadings; the production of documents; testimony of witnesses and the role of Counsel.

CAJAC Johannesburg further appointed a well-qualified lawyer and MBA graduate with wide experience and originally from mainland China, to facilitate communication and to ensure cultural understanding.

Finally, AFSA extended its Advanced Training Course, offered under the aegis of the University of Pretoria, to include a module on International Arbitration covering all the different aspects of international arbitration and in particular Chinese arbitration practice and procedure.

14. Given the make up of the continent and its general abundance of natural resources, do you see more energy and natural resource related disputes being referred to CAJAC or general commercial disputes?

We expect a variety of disputes to be referred to CAJAC Johannesburg covering all aspects of business conducted between China and Africa. This could include general commercial disputes, construction and infra-structure disputes, disputes arising in the telecommunications industry as well as in the financial and the energy sector. Only time will tell.


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