

Kluwer Arbitration Blog

The Choice of a Mauritian Arbitral Institution

Bilshan Nursimulu (5 Fifteen Barristers, Mauritius) and Ben Hornan (Hogan Lovells, London) · Monday, December 23rd, 2019

On 12 November 2019, the Mauritius International Arbitration Centre (“MIAC”) hosted an event to celebrate its relaunch following the termination of the institution’s joint venture with the London Court of International Arbitration (“LCIA”) in July 2018. Like many other arbitral centres that have emerged across Africa,¹⁾ the MIAC aspires to become the top dispute resolution centre for the region. Its Mauritian competitor is the dispute resolution arm of the Mauritius Chamber of Commerce and Industry (“MARC”).

From the perspective of commercial contract drafters who opt for arbitration in their dispute resolution clauses, the trend in the development of numerous regional arbitration centres makes the selection of the right institution and its procedural rules an increasingly sophisticated exercise. The governing structure, costs and arbitration rules of each institution are factors that affect its suitability to administrate a dispute. Perhaps more importantly for cross-border matters is the diversity of members of the decision-making body of the arbitral institution, and their ability to appoint arbitrators who have a practical familiarity with the jurisdictions and commercial cultures in which a particular dispute arises. In that respect, much has been said about the under-representation of African arbitrators in matters with an African interest. The commitment of regional institutions to address this concern makes them more “sellable” during the negotiation of an arbitration clause.

Despite the competition, the two Mauritian arbitral institutions have the potential to attract a great deal of interest in Africa and Asia on the back of the credibility of Mauritius as a well-developed arbitration jurisdiction²⁾ and the only “safe seat” of arbitration in Africa that is identified in Delos’s [Guide to Arbitration Places](#).

The LCIA-MIAC Arguably Put Mauritius on the Map

The development of arbitration in Mauritius for the resolution of cross-border disputes is closely related to the level of foreign investment which is channelled through Mauritius to finance operations in Africa and Asia across various sectors. These investments are made through special purpose vehicles (“SPVs”) incorporated in Mauritius. This cluster of the financial services industry of Mauritius started thriving about 10 to 15 years ago. The arbitration clauses that were drafted in the constitution of these SPVs or shareholders’ agreements at the time of raising the investments

refer mostly to LCIA, Singapore International Arbitration Centre (“SIAC”) and International Chamber of Commerce (“ICC”) for the administration of disputes arising from or in connection with those agreements. This explains why these institutions are most seen in practice as being the ones administering Mauritius-related disputes.

However, the establishment of the LCIA-MIAC Arbitration Centre in 2011 helped to “regionalise” arbitration. It was a welcomed effort by both local and international parties, and a strong contender for reference in arbitration clauses. The LCIA-MIAC organised regular conferences and seminars which were hugely successful, including the ICCA Congress in 2016. Although not many disputes are known to have been administered by the LCIA-MIAC during its 7-year existence, the reference to the institution and its rules in arbitration clauses received much traction. After the termination of the LCIA-MIAC joint venture in July 2018, the LCIA took over the administration of disputes arising out of agreements that referenced the institution.

The Rise of the MARC and the Coincidental Termination of the LCIA-MIAC Partnership

Although established in 1996, the MARC experienced a new level of success when it revamped its structure in 2017 and issued a sophisticated set of procedural rules in 2018, a few months before the termination of the LCIA-MIAC joint venture.

The institutional set up of MARC is on par with its international competitors: its permanent secretariat is headed by Dipna Gunnoo (previously Counsel at the defunct LCIA-MIAC Arbitration Centre), the MARC Court is headed by Neil Kaplan QC and composed of eminent practitioners from a diversity of jurisdictions in Africa, Asia and Europe, and its Advisory Board also consists of internationally renowned experts and is chaired by Sarah Grimmer, the Secretary-General of the Hong Kong International Arbitration Centre (“HKIAC”). Further, its administrative costs and arbitrator fees are relatively inexpensive as compared to its international competitors. A further potential attraction is its modern set of [arbitration rules](#), which provide an emergency arbitrator procedure, a small-claims expedited procedure, summary dismissal of claims or defences, disclosure of third party funding or insurance, and an optional appeal procedure.

While the familiarity with the MARC structure and rules has won over a fair portion of the local market, it is unlikely to have yet achieved the same level of traction as the defunct LCIA-MIAC Arbitration Centre with international practitioners. To some extent, the MARC is perceived as an acceptable choice for Chinese investors who are looking for a low-cost alternative to the established (but expensive) international institutions. The factors that contribute to that perception are the co-operation agreement entered into between the MARC and the Shenzhen Court of International Arbitration in 2017, the MARC’s participation in the Hong Kong Arbitration Week in the last two years, the fact that the Chinese market is generally less familiar with (and thus less impressed by) the big international arbitral institutions, and the appointments of Neil Kaplan QC (based in Hong Kong) as President of the MARC Court and Sarah Grimmer (the Secretary-General of the HKIAC) as first chair of the MARC Advisory Board.

While it is true that the MARC is a low-cost alternative to the international brands, the perception that it primarily appeals to the Chinese market is, in our experience, inaccurate. If anything, the appointments of Kaplan and Grimmer, who both played an important role in the establishment of the HKIAC, are viewed as an effort to replicate the Hong Kong success story in Africa. Further,

MARC clauses are commonly inserted in commercial agreements with an African, Asian or French interest across various sectors. The institution has also administered a fair number of disputes arising from those agreements in recent years, ranging from USD 2 to 20 million in size of claims.

The Promising Relaunch of the MIAC

MIAC's new offering is not vastly different from that of the MARC. It has an Advisory Board composed of eminent practitioners and headed by Emmanuel Gaillard (Sherman & Sterling). It is understood that the Advisory Board provides policy advice to the Secretariat, supporting the institution's adherence to international standards. The MIAC is also managed by a board of directors that is not involved in case management and is headed by Salim Moollan QC, a well-known arbitration practitioner and arbitrator of Mauritian extraction. Its [arbitration rules](#) are closely based on the UNCITRAL Arbitration Rules, which lack the innovative features of the MARC Rules – such as an emergency arbitrator procedure, a small-claims expedited procedure, and the disclosure of third party funding or insurance – but are nevertheless tried and tested internationally. What further differentiates MIAC is the financial support of the Mauritian government (with reportedly a guarantee of non-interference), as well as its continued strategy to leverage its relationship with an international arbitral institution, which is today the PCA. In that respect, the MIAC's secretariat is led by two co-registrars who are also Legal Counsel at the PCA, and the Secretary-General of the PCA serves as the appointing authority.

It is still very early to gauge the interest of the market to refer to the MIAC in arbitration agreements. With an offering which is on par with that of the MARC, the choice of MIAC as an alternative institution will most likely depend on the extent to which it promotes itself to the international investment community and arbitration practitioners. In the past, MIAC's marketing efforts did not go unnoticed. The recent establishment of a Practitioners' Group is also aimed at fostering the institution's relationship with the local and international arbitration community.

It is particularly interesting that while, on the one hand, the MIAC relies on its relationship with the Mauritian government and the PCA as evidence of its credibility and stability, on the other hand, the MARC puts forward its absolute political and institutional independence as a stronghold of its mission to represent and be used by the business community. Be that as it may, in our view, both Mauritian arbitration centres seem generally well equipped to administer international arbitration matters with the level of sophistication and experience as their international competitors. Whether one is better suited than the other for reference in a specific contract is a matter that needs to be considered on a case-by-case basis.

Will the MARC or the MIAC Deter Investors from the more Established International Institutions?

Admittedly, however, most American and European investors continue to feel more comfortable to refer their disputes to the more established international arbitral institutions. Although the administrative fees charged by those institutions are relatively high, they tend not to be prohibitive. Hence, it is the expected continued increase in investments from the African and Asian communities that is most likely to influence the reference of disputes to regional centres such as the MARC and the MIAC. In that respect, intra-African trade is expected to grow with the coming


into effect of the Agreement Establishing the African Continental Free Trade Area, while the China Belt and Road Initiative continues to generate significant infrastructure investments in Africa. Although the precise circumstances relating to these projects will be different, in general terms it may well be sensible for contracts relating to those investments to refer to a regional arbitral institution like the MARC or the MIAC for the resolution of disputes.

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