1. INTRODUCTION

South Africa’s Arbitration Act 42 of 1965 is fifty-two years old and is applicable to both domestic and international arbitration. The Act is outdated and in need of reform. However, the reform process, which was initiated in 1994, has been subject to extensive delays. Ultimately, government has taken the decision not to repeal the Arbitration Act but instead to retain it and limit its application to domestic arbitration. New legislation has been developed to meet the specific requirements of international arbitration and subsequently the International Arbitration Bill [B10-2017] was tabled on 21 April 2017.

According to the Deputy Minister of Justice and Constitutional Development, Mr J Jeffery the International Arbitration Bill, brings the dawn of a new era in international arbitration in South Africa.¹

¹The new Bill comes at an opportune time for our country to opt into the international standard for the resolution of commercial disputes. Not only does it have the potential
to attract foreign direct investment, but also to give greater legal protection to South African investments abroad.'

This paper will provide a brief background on the issues around international arbitration; the existing legislative framework; the South African Law Reform Commission investigations and reports as well an overview of the Bill.

2. THE GROWTH OF INTERNATIONAL ARBITRATION AS A MECHANISM TO RESOLVE DISPUTES

International arbitration can generally be classified into two groups.\(^2\)

- Commercial arbitration is the process of resolving business disputes between or among transnational parties through the use of one or more arbitrators rather than through the courts. It requires agreement of the parties, which is usually given via an arbitration clause that is inserted into the contract or business agreement.

- Investment arbitration is the process of resolving business dispute through the use of one or more arbitrators between foreign investors and states under bilateral investment treaties and multilateral agreements.\(^3\)

Where international investment goes, disputes invariably follow. As international trade has expanded in recent decades, so too has the use of international arbitration to resolve disputes arising in the course of that trade. In fact, growth in international arbitration, has over the last 12 years, taken off “explosively” across the world.\(^4\) Chinese commercial growth in particular is cited as one reason for arbitration’s rise, as this commercial growth has fuelled a dramatic rise in global trade, and consequently of trade disputes being resolved by arbitration.\(^5\)

Meanwhile in Africa foreign direct investment (FDI) rose by 853% from just over $6bn in 1994 to $57.2bn in 2013, compared to a global average of 466% growth. It is unsurprising then that the increase in African-related arbitration has also been robust. This can be seen in the rising number of referred cases to both the International Chamber of Commerce (ICC) based in Paris, which remains the most popular forum for major Africa-related international arbitrations, and the London Court of International Arbitration (LCIA).\(^6\)

The number of African parties involved in ICC arbitrations has more than doubled in the past ten years, from 68 in 2005 to 163 in 2014.\(^7\) Statistics published by major arbitral institutions show that there has been a constant annual increase in their caseload. Statistics also confirm

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\(^3\) Ibid


\(^5\) Ibid


\(^7\) Ibid
that arbitration is increasingly becoming the normal means of settlement of commercial and investment disputes from simple lease agreements to complex oil and gas concessions, construction contracts and transfer of technology.\(^8\)

Asian and African economies have embraced international arbitration as an accessible and often preferred means to resolve disputes. However, many African counterparties (typically state-owned entities) are increasingly attempting to avoid the traditional (European) arbitral institutions and opt for an ad hoc route, including domestic African arbitration centres, or regional options such as L’Organisation pour l’Harmonisation en Afrique du Droit des Affaires (OHADA) in West Africa\(^9\) and the Cairo Regional Centre for International Commercial Arbitration (CRCICA).\(^10\) Alternatively, they try to have the ICC and LCIA arbitrations seated in either their home jurisdiction, or a compromise venue, such as Mauritius, which is deemed more neutral than Paris or London.\(^11\)

Notably, however, the majority of arbitrations involving an African party still take place outside of the continent.\(^12\) The five most preferred and widely used seats are apparently London, Paris, Hong Kong, Singapore and Geneva. The primary factor driving the selection of a seat is its reputation and recognition. Respondent's preferences for certain seats are predominantly based on their appraisal of the seats established formal legal infrastructure, the neutrality and impartiality of the legal system, the national arbitration law and its track record for enforcing agreements to arbitrate on arbitral awards.\(^13\)

However, concerted efforts are being made to create the infrastructure necessary for international arbitration to take hold in Africa. From a structural standpoint, this includes not only establishing the necessary modern arbitration legislative framework but the emergence of new arbitration centres in different jurisdictions.\(^14\)


\(^9\) Founded in 1993 by 14 nations, OHADA has expanded to 17 Francophone states in the following years, and now consists of Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Comoros, Republic of the Congo, Equatorial Guinea, Gabon, Guinea, Guinea-Bissau, Ivory Coast, Mali, Niger, Senegal, Togo and Democratic Republic of Congo.


\(^14\) Ibid
3. WHAT IS INTERNATIONAL COMMERCIAL ARBITRATION?

International commercial arbitration is a means of resolving disputes arising under international commercial contracts. Arbitration is used as an alternative to litigation and is controlled primarily by terms agreed to by the parties. Contracts between the parties will contain a dispute resolution clauses specifying that any conflicts will be will be handled through arbitration rather than litigation. The parties can specify the forum, procedural rules, and governing law at the time of the contract.

Arbitration is consensual. It is a private procedure which leads to a final and binding determination of the rights and obligations of the parties and enables the parties to settle a dispute with limited interference from the courts (nationally or internationally). The dispute is referred to a third person, known as an arbitrator, who may be selected on the basis of his or her special knowledge and experience. The arbitrator must resolve the dispute after receiving submissions from the parties and after following a process, which is fair to all those parties. The arbiter’s decision is final and not subject to appeal.\(^\text{15}\)

### WHEN IS AN ARBITRATION INTERNATIONAL?

An arbitration is international if:\(^\text{16}\)

<table>
<thead>
<tr>
<th>Condition</th>
<th>Description</th>
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<tbody>
<tr>
<td>(a)</td>
<td>the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or</td>
</tr>
<tr>
<td>(b)</td>
<td>one of the following places is situated outside the State in which the parties have their places of business:</td>
</tr>
<tr>
<td>(i)</td>
<td>the place of arbitration if determined in, or pursuant to, the arbitration agreement;</td>
</tr>
<tr>
<td>(ii)</td>
<td>any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or</td>
</tr>
<tr>
<td>(c)</td>
<td>the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.</td>
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Arbitrations can be either “institutional” or “ad hoc.” The terms of the contract will dictate the type of arbitration. If the parties have agreed to have an arbitral institution administer the dispute, it is an institutional arbitration. If the parties have set up their own rules for arbitration, it is an ad hoc arbitration. Ad hoc arbitrations are conducted independently by the parties,

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\(^{16}\) This is according to the definition provided in the UNICTRAL Model Law
who are responsible for deciding on the forum, the number of arbitrators, the procedure that will be followed, and all other aspects of administering the arbitration.\textsuperscript{17}

4. CURRENT STATUTORY FRAMEWORK

South Africa’s existing legislative framework providing for arbitration can be set out as follows:

\textbf{1965}

Fifty-two years ago, the \textbf{Arbitration Act 42 of 1965} was enacted to \textbf{provide the statutory framework within which all arbitrations, both domestic and international,} would be conducted in South Africa. The Act provides for various matters including the settlement of disputes by arbitration tribunals; the binding effect of written arbitration agreements; the power of the courts in relation to such an agreement; powers in respect of the appointment of arbitrators and umpires; the powers and procedures of the arbitration tribunal; as well as provisions for rewards.

The \textbf{Arbitration Act 42 of 1965} was designed with domestic arbitration in mind and has no provisions dealing expressly with international arbitration. Consequently, there are a number of significant problems with the current Act:

- It was passed when international arbitration was in its infancy and as international arbitration has developed and evolved the provisions of the Arbitration Act 42 of 1965 have become inadequate and outdated.
- It makes no distinction between domestic and international arbitration. Therefore the Act is of limited assistance in the international commercial arbitration sphere.\textsuperscript{18}
- It provides excessive opportunities for parties to involve the court as a tactic for delaying the arbitration process. The Act gives South African courts a greater oversight role than is now regarded as acceptable (for example, the current Act refers to a local court on no fewer than 78 occasions).\textsuperscript{19} Moreover, the Act does not stipulate default rules regarding procedure and permits a recalcitrant party the opportunity to try and delay proceedings. These shortcomings may lead to costly and frustrating delays thereby undermining the arbitration process agreed between the parties.
- It gives a court the power to order a foreign claimant in an arbitration against a locally based defendant to pay an amount as security for the costs of an arbitration. While the intention behind this provision is to protect local citizens and companies from vexatious foreign litigants (over whom South African courts would not normally exercise


\textsuperscript{18}\text{Venter D, The UNCITRAL Model Law on International Commercial Arbitration as basis for International and Domestic Arbitration in South Africa (Accessed at http://dspace.nwu.ac.za/bitstream/handle/10394/4930/Venter_D.pdf;sequence=2)}

jurisdiction), the effect has been that foreign claimants were dissuaded from instituting arbitral proceedings in South Africa.20

- It provides inadequate powers for the arbitral tribunal to conduct the arbitration in a cost-effective and expeditious manner and insufficient respect for party autonomy (ie the principle that the arbitral tribunal's jurisdiction is derived from the parties' agreement to resolve their dispute outside the courts by arbitration).
- It was passed prior to the United Nations Commission on International Trade Law (UNCITRAL) Model Law.21

1976 and 1977

In 1976 South Africa signed the Convention on the Recognition and Enforcement of Foreign Arbitral Rewards (the New York Convention) (without reservation). When international commercial arbitration was first being established at the beginning of the twentieth century, it relied on domestic arbitration laws that differed considerably from each other, thus proving inadequate for the needs of international arbitration.22 One of the key problems at the time was the non-enforceability of arbitral clauses referring future disputes to arbitration. This led to the adoption of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958.

The New York Convention creates a uniform international framework, which enables parties to international commercial arbitration agreements to enforce foreign arbitral awards with relative ease. It seeks to achieve this by:23

- Requiring the courts of a signatory State (referred to as a “Contracting State”) to recognise and enforce an arbitration award rendered in another Contracting State.24
- Limiting the grounds upon which the courts in Contracting States may refuse recognition and enforcement of foreign arbitral awards.

One of the main reasons why arbitration is used for resolving international trade disputes in preference to litigation is the success achieved by the New York Convention of 1958. The Convention – has been ratified by 154 countries. This means that, in principle, an arbitration award can be enforced in any of those countries. A foreign arbitration award is usually easier to enforce in a jurisdiction, which is a party to the Convention than the judgment of a foreign court.25

20 Ibid
24 A contracting state also affirms that it will recognise arbitration awards as binding, and that it will enforce them in accordance with the procedural rules of the territory where the award is to be enforced. It also agrees that it will not impose substantially more onerous conditions or higher fees or charges on the recognition and enforcement of foreign awards than are imposed on the recognition or enforcement of domestic awards.
Widely considered the foundational instrument for international arbitration the Convention is described as currently the most successful multilateral convention in international commercial law.\(^{26}\) It provides the mechanism by which international arbitration awards are enforced around the world. (See Annexure A which reflects the African contracting parties to the New York Convention)

In 1977 South Africa promulgated domestic legislation the Recognition and Enforcement of Foreign Arbitral Awards Act (the Recognition Act) 40 of 1977 which gave effect to the New York Convention. The object of the Recognition Act was to make foreign arbitral awards (made outside of the Republic of South Africa and which cannot be enforced in terms of the Arbitration Act 42 of 1965) an order of court in South Africa and therefore to render the awards enforceable within the jurisdiction of South Africa's courts.\(^{27}\)

Following South Africa’s accession to the New York Convention and its subsequent promulgation of the Recognition Act, it appeared that South Africa intended taking the law of international arbitration seriously. However, the Recognition Act has been criticised as being inconsistent with South Africa’s obligations under the New York Convention by failing to give adequate effect to the New York Convention.\(^{28}\) The Recognition and Enforcement of Foreign Arbitral Awards Act 40 of 1977 contains certain defects. In addition, because of its limited scope, the 1977 Act does little to alleviate the shortcomings of the 1965 Act in relation to international arbitration.

**1978**

In 1978 during the time of international sanctions against the apartheid regime South Africa passed the Protection of Businesses Act 99 of 1978. The purpose of this Act was to restrict the enforcement of certain foreign judgments in South Africa. By enacting this piece of legislation the government backtracked from its commitment to the New York Convention.

The Protection of Businesses Act required the permission of the Minister of Trade and Industry before certain arbitral awards could be enforced in South Africa. Essentially this opened the door for executive interference in a situation where the New York Convention requires the matter to be left to the courts. This rendered the Recognition Act largely ineffective.\(^{29}\)

\(^{26}\) Ibid

\(^{27}\) For an arbitral award to be recognized it must not be in conflict with the Arbitration Act. The object of the Recognition Act is to make foreign arbitral awards an order of court in South Africa and to therefore render the awards enforceable within the jurisdiction of our courts.


\(^{29}\) Ibid
5. SOUTH AFRICAN LAW REFORM COMMISSION REPORTS

When South Africa emerged from the era of isolation following democratic elections in 1994, it was clear that many of its laws relevant to the field of international trade and investment were redundant and ineffective.

On 29 August 1994 the then Minister of Justice approved the inclusion of an investigation entitled "Arbitration" in the South African Law Reform Commission's (SALRC or Commission) programme of law reform. Subsequently the Commission released two separate reports (and accompanying draft legislation) on international arbitration and domestic arbitration respectively.³⁰


In July 1999, the SALRC published its Report on Project 94 Arbitration: An International Arbitration Act for South Africa. During its investigation, the Commission had considered whether it would be possible to improve the existing Arbitration Act 42 of 1965 while retaining its basic provisions. However, given the dramatic improvements to arbitration legislation in other jurisdictions the Commission was of the view that this option was not practical. The Commission then considered the approach adopted by several other countries concerning the adoption of the United Nations Commission on International Treaty Law (UNCITRAL) Model Law.

The SALRC Report highlighted the urgency of the need for reform given the various deficiencies with the existing Arbitration Act, which was seriously defective by international standards for use in international arbitration. Ultimately, the Commission recommended the following:³¹

- **The UNICTRAL Model Law should be adopted:** The compulsory application of the UNICTRAL Model Law to international commercial arbitration in South Africa. The Model law defines "international arbitration" and this definition should be used for determining which arbitrations qualify as international and are therefore subject to the Model Law.

- **The Recognition and Enforcement of Foreign Arbitral Awards Act 40 of 1977 should be repealed:** This Act should be repealed and replaced by legislation, which deals expressly with both the recognition and enforcement of foreign arbitral awards and rectifies certain other defects in the wording of the existing legislation.

³⁰ The investigation into arbitration was broadened on 8 July 1996 at the request of the Justice Minister to include an investigation into alternative dispute resolution (ADR).

³¹ Members should note that the third recommendation made by the Commission was that that South Africa should follow the example of most other African countries and ratify the Washington Convention, as this would create the necessary legal framework to encourage foreign investment and further economic development in the region. However, this was quite a controversial recommendation.
The Commission Report noted that:

- The UNCITRAL Model Law should be adopted for use in international commercial arbitration in South Africa. In this way, the country will align itself with international best practice.
- Separate legislation should deal with domestic commercial arbitration.
- The Model Law should be adopted with a minimum of alterations, for two main reasons:
  - First, the goal of the Model Law is to promote the harmonisation and thus the uniformity of national laws pertaining to international arbitration procedures.
  - Secondly, the absence of changes will make the South African version more user-friendly and attractive to foreign parties and their lawyers. The Model Law achieves the desired balance regarding the powers of the court, at least in the context of international commercial arbitration. Significant departures from the Model Law in this regard would adversely affect South Africa’s chances of developing into an important regional centre for international commercial arbitrations.

Comment

- Essentially the SALRC contended that:
  - South Africa should have two separate arbitration regimes: the International Arbitration Act (dealing only with international commercial arbitration); and the Arbitration Act (dealing only with domestic commercial arbitration). According to the Commission, this would provide greater certainty and efficiency for the parties and practitioners.
  - The Recognition and Enforcement of Foreign Arbitral Awards Act 40 of 1977 should be repealed and replaced by legislation forming a separate part of a single statute, which also enacts the UNCITRAL Model Law. All South African legislation on international arbitration would then be contained/consolidated in one statute, which would make it more readily accessible, particularly for foreign parties.

- The Commission also prepared a Draft International Arbitration Bill, which it reported in 2002 was on the legislative programme of Parliament. It is unclear what happened to this Bill despite it apparently being an “urgent bill of a high priority.” The Bill was never formally tabled.
The SALRC also conducted a thorough investigation into the matter of domestic arbitration. The Commission was of the view that the existing arbitration legislation was also inadequate for the needs of domestic arbitration, when compared to arbitration legislation recently enacted in other jurisdictions in Africa, Europe and elsewhere.36

Ultimately, the Commission recommended in its Report that:

- The UNCITRAL Model Law should not be adopted for domestic arbitrations in South Africa.
- The domestic arbitration regime should be reformed and modernised. The existing Arbitration Act 42 of 1965 should be repealed and replaced with a comprehensive new arbitration statute for domestic arbitration. Furthermore, it should contain certain specific provisions to reflect the objects of arbitration and the specific needs of the users in a South African context.

Comment
- This Report also included a draft bill, which was suggested as a replacement for the Arbitration Act 42 of 1965.37

6. WHY WAS ARBITRATION CONTENTIOUS?

In light of the global movement toward the modernisation of arbitration laws, there was increasing concern about the delays in reforming South Africa’s arbitration legislation. However, it was clear that arbitration was not without some political controversy.

Firstly, in 2005 it was reported that a Judge President (JP), in a report submitted to the Minister of Justice, had expressed some concern that arbitration was undermining the pace of judicial transformation in South Africa.38 The JP expressed the view that strengthening arbitration would weaken the courts. His concern was that arbitration was excessively secretive, to the detriment of the rule of law and that tribunals are not bound by legal precedent, a combination of factors that could operate to deprive the courts of South Africa with the opportunity to develop a national body of law with test cases and fact patterns.39 Moreover, the JP suggested that not only had a significant amount of civil work been diverted from the courts to arbitration,

36 Due to time constraints this paper focuses on international arbitration.
but that in certain instances this was for racist reasons.\textsuperscript{40} This was disputed by those in the arbitration sphere but these concerns had an impact.\textsuperscript{41}

Secondly, the South African Government was concerned about the potential threat of arbitral awards, to South Africa's constitutional imperatives as a developmental state, in the case of Investment Arbitrations. An Investment Arbitration is typically an arbitration between the host state and the foreign investor where the investor alleges that the host state has breached some or other obligation under international law, typically a bilateral treaty between the host state and the investors' home state.\textsuperscript{42} The government was concerned that certain South African governmental policies would not be protected through the international arbitration dispute resolution mechanisms.\textsuperscript{43}

6.1 CATALYST FOR CHANGE

6.1.1. The 2010 World Cup

The 2010 FIFA World Cup stirred renewed interest in South Africa as a potential international trade and investment partner and in the country's ability and readiness to host international arbitrations.\textsuperscript{44}

6.1.2 The case of Piero Foresti, Laura de Carli and others v. Republic of South Africa (ICSID Case No. ARB(AF)/07/1)

The Piero Foresti matter has been cited as the case that galvanised the government of South Africa to take steps to reform its approach to international arbitration.\textsuperscript{45} In the Piero Foresti case, foreign investors filed an expropriation claim for their mineral rights against the government of South Africa. The matter was settled on merit in 2010.

The case revealed how South Africa's domestic policies were vulnerable to challenges by an international tribunal. To curtail future challenges, a review process was initiated that resulted in the termination of the bulk of South Africa's Bilateral Investment Treaties (BITs).

The review process also recommended an overhaul of South Africa's legislative framework. It recommended new pieces of legislation should be developed specifically concerning -

\textsuperscript{41} Ibid
investment protection (Protection of Investment Act 22 of 2015), and international arbitration (International Arbitration Bill of 2015).  

6.1.3 Missed opportunities

For a number of commentators the delay in finalising international arbitration legislation has retarded South Africa’s ambitions of becoming a leading dispute resolution destination. International arbitration has gradually become a field of intense competition: competition between arbitral seats, between counsels; between arbitrators; between relevant events; and of course between arbitral institutions. The lack of a uniform and modernised approach to international arbitration meant that the government could not promote South Africa as a hub for regional arbitrations, with its attendant skills-development and revenue opportunities.

Other jurisdictions, have been gaining popularity as arbitration and investment destinations in Africa. Both Mauritius and Rwanda have overtaken South Africa in the World Bank’s Ease of Doing Business rankings, which consider the availability of arbitration as one of the factors that make it easier for investors to enforce contracts. (In 2016, Mauritius placed 32nd overall, Rwanda 62nd, and South Africa 73rd.)

6.2 THE SOUTH AFRICAN LAW REFORM COMMISSION UPDATES ITS REPORT ON INTERNATIONAL ARBITRATION

In 2012, the Justice Department asked the SALRC to update the Draft International Arbitration Bill contained in the 1998 Report. Since the publication of the SALRC’s 1998 and 2001 reports, there had been various developments, which had rendered the Commission’s Bills outdated in some respects.

The most important development was probably UNCITRAL’s amendments to the Model Law on International Commercial Arbitration, which were made in 2006.

In 2013, the SALRC noted that:

- The structure of having separate Bills for international arbitration and domestic arbitration has been retained.
- Following the approach of the legislatures in New Zealand, Australia, Ireland and Zimbabwe, the official English text of the UNCITRAL Model Law should be largely...
retained. This is considered preferable to the approach of jurisdictions like Mauritius, where the Model Law has been incorporated in the text of the Arbitration Act, but rewritten according to the relevant jurisdiction’s legislation drafting style. This approach can present the person applying the statute with the challenge as to whether some apparent changes in meaning, compared with UNCITRAL’s official text, were intended or not. Retaining the text in a schedule also facilitates consultation of the reports of the Commission and court decisions on the relevant provisions of the Model Law in other jurisdictions. This also supports the goal of the Model Law in promoting uniformity.

7. HOW DO SOUTH AFRICA’S COURTS VIEW ARBITRATION?

In various judgments the Supreme Court of Appeal and the Constitutional Court have shown support for the principle of party autonomy in arbitration and have acknowledged a need for judicial intervention in arbitration to be minimised. For instance:53

- **Telcordia Technologies Inc v Telkom SA Limited [2007] 3 SA 266 SCA**

  In 2006 the Supreme Court of Appeal upheld an appeal by Telcordia, a US corporation, against an order by the Pretoria High Court in favour of Telkom, setting aside an international arbitration award by a London arbitrator. The court held that it was not for the High Court to reinterpret the contract between the parties. In reaching this conclusion the Supreme Court of Appeal upheld the principle of autonomy in arbitration proceedings, and indicated that South Africa would continue to show a high degree of deference to arbitration awards and that there would be minimal judicial intervention when reviewing international commercial arbitration awards.

- **Lufuno Mphaphuli & Associates (Pty) Ltd v Andrews 2009 (4) SA 529 (CC)**

  The Constitutional Court affirmed that arbitration is rooted in freedom of contract. Private arbitration from a procedural perspective passes constitutional muster. The courts should be careful not to undermine the achievement of the goals of private arbitration by enlarging their powers of scrutiny imprudently. The one constraint on private arbitration in South Africa is that imposed on freedom of contract itself: it must not be “contrary to public policy in the light of the values of the Constitution.”

- **Bidoli v Bidoli & another (436/10) [2011] ZASCA 82**

  The Court noted that many developed and developing countries have adopted the UNCITRAL Model Law for domestic and international arbitrations.54 It is thus

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53 Due to time constraints, this paper does not provide a detailed analysis of these court judgements. However, such an analysis can be provided should it be requested.

lamentable that a decade later the Law Commission’s recommendations are yet to be acted upon.

- Zhongji Construction v Kamoto Copper Company (1) SA 345 (SCA) 2015

The Court expressed the view that South African courts not only have a legal but also a socioeconomic and political duty to encourage the selection of South Africa as a venue for international arbitrations. It is clear that if courts arrogate to themselves the right to decide matters which parties have agreed should be dealt with by arbitration, the likelihood of this country being chosen as an international arbitration venue in future is remote in the extreme.

8. UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW AND THE MODEL LAW

The United Nations Commission on International Treaty Law (UNCITRAL or the Commission) was established in 1966 by the General Assembly of the United Nations. The General Assembly recognised that there was a lack of similarity between the national laws of different countries governing international trade law and that these disparities created obstacles for international trade. UNCITRAL was established to resolve the existing disparities between various States regarding their international trade law. UNCITRAL's work seeks to formulate modern, fair, and harmonised rules on commercial transactions.  

The globalisation of international trade and increased cross-border commercial disputes and the preference to resolve such disputes by arbitration, led in 1985 to the recommendations of the United Nations Commission on International Trade Law being adopted by many countries (commonly known as the UNCITRAL Model Law). African countries that have ratified or acceded to the Model Law through domestic legislation include Egypt, Kenya, Madagascar, Mauritius, Nigeria, Tunisia, Zambia and Zimbabwe. Some countries, for example, Kenya, Zimbabwe, New Zealand and India, have even adopted the Model Law for use in domestic commercial arbitration disputes. (See Annexure B for states that have adopted the Model Law).

8.1 The Model law

The catalyst for the adoption of the UNCITRAL Model Law on International Commercial Arbitration by the General Assembly in December 1985 was a recommendation by the Asian-African Legal Consultative Committee for a review of the New York Convention. The

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57 Ibid
58 Ibid
Consultative Committee felt that the rules of existing arbitral institutions based in the West operated against the interests of developing countries. UNCITRAL decided not to revise the convention but to prepare a Model Law. Delegates from developing countries played a prominent role in the drafting process of the Model Law.

The various reasons for the establishment of the Model Law were:

- The various national laws of countries were drafted with domestic arbitration in mind and not international arbitration and were outdated.
- A model law can take into account the specific needs and features of international commercial arbitration.
- There is a "need for greater uniformity of national laws on arbitration".
- The establishment of a global “standard of fairness” and due process by establishing a core legal-framework containing mandatory provisions; to aid in the enforcement of foreign awards resulting from arbitration, and to limit the role of the courts and thereby placing an emphasis on party autonomy and the consensual basis of the arbitration agreement.

The UNCITRAL Model Law serves as a guidance tool for States reforming and modernising their arbitral laws. The Model Law forms an important part of UNCITRAL’s objective to harmonize international trade and can be seen as a crucial pillar in the world of international arbitration. It further provides the main features that should form part of the legislation such as procedures, composition, jurisdiction and enforcement of the arbitral awards.

The main strands in the Model Law are the liberalisation of international arbitration by limiting the role of national courts, and the emphasising of party autonomy by allowing parties the freedom to choose how their disputes should be determined. There is furthermore a defined core of mandatory provisions intended to ensure fairness and due process.

In addition, the Model Law contains a framework for conducting an international commercial arbitration so that in the event of the parties being unable to agree on procedure, the arbitration can still be completed. Finally, there is the incorporation of provisions to aid in the enforcement of awards and to clarify certain controversial practical issues.

9. OVERVIEW OF THE INTERNATIONAL ARBITRATION BILL

According to the Bills long title, it provides for the:

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59 Ibid
61 Ibid
62 Ibid
• Incorporation into South African law of the Model law on International Commercial Arbitration as adopted by the United Nations Commission on International Trade Law
• Recognition and enforcement of foreign arbitral awards (in line with the New York Convention)
• Repeal of the Recognition and Enforcement of Foreign Arbitral Awards Act 1977; and the
• Amendment of the Protection of Businesses Act 1978

Notably the Bill consists of four schedules:

• Schedule 1: the Model Law on International Commercial Arbitration (as developed by the United Nations Commission on International Trade Law which will be incorporated into the domestic law)
• Schedule 2: United Nations Commission on International Trade Law Conciliation Rules
• Schedule 3: Convention on the Recognition and Enforcement of Foreign Arbitral Awards
• Schedule 4: Laws to be repealed/amended

Key highlights of the Bill are as follows:63

• It emanates from a 1998 report of South African Law Reform Commission dealing with international arbitration.

• It seeks to modernise the law relating to international arbitrations.

• It incorporates, with amendments, the UNICTRAL 2006 version of the Model Law as the cornerstone of international arbitration. Notably, the decision was taken not to tinker extensively with the wording of the Model Law; on the basis that the ultimate goal is uniformity with other Model Law jurisdictions. In the case of a Model Law, a state is free to make such changes as it deems necessary when incorporating the Model Law into its domestic legislation.64 Effectively the Model Law (subject to specific alterations) will have the force of law in SA.

• Domestic arbitration will continue to be regulated by the Arbitration Act 42 of 1965.

• International commercial arbitrations with public bodies to the extent not prohibited by the Protection of Investment Act will be possible and must be distinguished from investor-state arbitrations, which will be governed by the Protection of Investment Act 22 of 2015 (which is not yet in force).

• It allows for contracting parties to settle their commercial disputes through conciliation proceedings in accordance with the UNCITRAL Conciliation Rules, affording flexibility and the possibility of avoiding the significant costs of international arbitration itself.

• It repeals the Recognition and Enforcement of Foreign Arbitral Awards Act 40 of 1977, and provides afresh for the recognition and enforcement of foreign awards as follows: a foreign arbitral award will be binding between the parties to that arbitration, and enforced in the same as any judgment or order of court. However, an award is not recognised and enforced if it is not permissible under South African law, contrary to public policy or was made in bad faith. The Recognition and Enforcement of Foreign Arbitral Awards Act will be replaced by chapter 3 of the Bill giving effect to the New York Convention.

• It amends the Protection of Businesses Act 99 of 1978 to remove any reference to arbitration awards from its ambit. The permission of the Minister of Economic Affairs will no longer be required for the enforcement of certain foreign arbitral awards.

• A security for costs may no longer be ordered against a foreign party at the commencement of the arbitration proceedings.

**Comment**

- **Socio-Economic Impact Assessment Report.** The Committee may consider requesting a copy of the SEIAS Report, which must accompany every piece of legislation. The Department of Planning, Monitoring and Evaluation provides an assessment of the socio-economic impact of legislation and its potential impact. This may provide useful background information for the Committee.

- **Changes to the Bill:** Is it correct that Cabinet did approve the Bill for introduction to Parliament in April 2016 but after the introduction of the Bill, the Justice department received advice that the UNCITRAL Model Law could be adapted in order to accommodate local circumstances? Consequently, the Justice department thought it expedient to adapt certain provisions of the Model Law in order to cater specifically for South African circumstances rather than to incorporate it as is. This meant going back to Cabinet with the suggested amendments for noting and endorsement before proceeding with the introduction of the Bill into Parliament. 65

### 9.1 Considering the Clauses of the Bill

Essentially, South Africa could go about adopting the UNICTRAL Model Law in two ways. The first is to include the Model Law as a schedule to the legislation (which is the proposed route).

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Alternatively, the text of the Model Law can be rewritten in the text of the legislation, having regard to the statutory drafting style of the adopting state. However, the SALRC recommended that the Model Law should rather be incorporated in a Schedule, which would make interpretation easier. This is the approach taken by the drafters of the Bill.

The Bill has been divided into four Chapters:

- Chapter 1 - contains general provisions
- Chapter 2 – contains key provisions guiding the application of the model law
- Chapter 3 – provides for the recognition and enforcement of arbitration agreements and foreign arbitral awards
- Chapter 4 – contains transitional provisions

**Chapter 1 – General Provisions**

- **Clause 1: Definitions**

The Bill refers to the definition of an arbitration agreement as set out in Article 7 of the Model Law, namely an:

“Arbitration agreement” is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

These agreements also apply (subject to section 13 of the Protection of Investment Act 22 of 2015) to public bodies, which are defined as including:

(a) Any department of State or administration in the national or provincial sphere of government or any municipality in the local sphere of government; or
(b) Any other functionary or institution when—
   (i) exercising a power or performing a duty in terms of the Constitution or a provincial constitution; or
   (ii) exercising a public power or performing a public function in terms of any legislation

- **Clause 3: Objects of the Bill**

The objects of the Act are, to:

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66 Ibid
(a) Facilitate the use of arbitration as a method of resolving international commercial disputes;
(b) Adopt the Model Law for use in international commercial disputes;
(c) Facilitate the recognition and enforcement of certain arbitration agreements and arbitral awards; and
(d) give effect to the obligations of the Republic under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958), the text of which is set out in Schedule 3 to this Act, subject to the provisions of the Constitution.

➢ **Clause 4: Exclusion of Arbitration Act 42 of 1965**

The applicability of the Arbitration Act 42 of 1965, which has been the governing statute in respect of arbitrations for 52 years, is excluded in this clause. This makes it clear that the 1965 Arbitration Act is not applicable to arbitration matters, which are subject to the Model Law.

In addition, the clause provides that section 2 of the Arbitration Act applies for purposes of Chapter 3 of the Bill. Chapter 3 of the Bill deals with the recognition and enforcement of foreign arbitral awards.⁶⁷

➢ **Clause 5: Binding on Public Bodies**

The Bill, subject to the provisions of section 13 of Protection of Investment Act 22 of 2015 (which has yet to come into operation), binds public bodies in respect of arbitrations agreements to which they are a party.

Section 13 of the Protection of Investment Act provides as follows:

Dispute resolution
13. (1) An investor that has a dispute in respect of action taken by the government, which action affected an investment of such foreign investor, may within six months of becoming aware of the dispute request the Department to facilitate the resolution of such dispute by appointing a mediator.

(2) (a) The Department must maintain a list of qualified mediators of high moral character and recognised competence in the fields of law, commerce, industry or finance, who may be relied upon to exercise independent judgment and who are willing and able to serve as mediators.

(b) The mediator must be appointed by agreement between the government and the foreign investor (hereinafter referred to as the parties) from the list contemplated in paragraph (a), or, in the absence of a list, from individuals proposed by either party.

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⁶⁷ Section 2 of the Arbitration Act refers to matters that are not subject to arbitration; namely any matrimonial cause or matters relating to status.
(c) In the event of the Department being party to the dispute, the parties may jointly request the Judge President of one of the divisions of the High Court to appoint a mediator.

(d) Recourse to mediation must be governed by the prescribed rules and any prescribed time limit may be adjusted by agreement between the disputing parties.

(3) In order to facilitate a resolution of a dispute contemplated in subsection (1), the following information and prescribed form must be submitted by the foreign investor:
   (a) Contact details of the foreign investor, including a physical address in the Republic or territory where the investor is predominantly resident, or where it is incorporated, its email address, facsimile number and telephone number;
   (b) a summary of the claim, including the measures giving rise to the investment dispute;
   (c) the specific organ, agency, province or other subdivision of the Republic allegedly responsible for the measures which the foreign investor alleges constitute a breach of any of the investment protection contained in this Act;
   (d) the provisions of this Act that the foreign investor alleges have been breached; and
   (e) the relief sought.

(4) Subject to applicable legislation, an investor, upon becoming aware of a dispute as referred to in subsection (1), is not precluded from approaching any competent court, independent tribunal or statutory body within the Republic for the resolution of a dispute relating to an investment.

(5) The government may consent to international arbitration in respect of investments covered by this Act, subject to the exhaustion of domestic remedies. The consideration of a request for international arbitration will be subject to the administrative processes set out in section 6. Such arbitration will be conducted between the Republic and the home state of the applicable investor.

Comment
- Although the model law provides that international commercial arbitrations with public bodies will be possible. Investor-state arbitrations will be regulated by a special regime under the Protection of Investment Act. The Protection of Investment Act was passed in 2015, reportedly to strengthen SA’s ability to attract foreign investment, increase

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68 Section 6 provides for Fair administrative treatment. (1) The government must ensure administrative, legislative and judicial processes do not operate in a manner that is arbitrary or that denies administrative and procedural justice to investors in respect of their investments as provided for in the Constitution and applicable legislation. (2) Administrative decision-making processes must include the right to be given written reasons and administrative review of the decision consistent with section 33 of the Constitution and applicable legislation. (3) Investors must, in respect of their investments, have access to government-held information in a timely fashion and consistent with section 32 of the Constitution and applicable legislation. (4) Subject to section 13(4), investors must, in respect of their investments, have the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum consistent with section 34 of the Constitution and applicable legislation.

exports and maintain a balance between the rights and obligations of all investors. Though it has yet to come into force, the Act will largely replace bilateral investment treaties between SA and other countries that typically provided for state-to-state mediation or arbitration as the preferred method of dispute resolution.\textsuperscript{70} The Protection of Investment Act provides for the settlement of investment disputes by arbitration, but only after all domestic remedies have been exhausted.\textsuperscript{71} According to the Department of Trade and Industry, this Act puts South Africa’s interests first. Furthermore, it is contended that the Act is in line with international practice where countries are terminating Bilateral Investment treaties (BITs) and introducing legislation to deal with investments domestically.

- The reluctance to permit investor-state investment arbitration may be understood in terms of the government’s stance on protecting its "policy space" regarding broad-based black economic empowerment (BBBEE) practices and concerns that international tribunals may not find BBBEE a compelling exception from the international standards of treatments for investors in SA.\textsuperscript{72}

### Chapter 2 - International Commercial Arbitration

- **Clause 6: Model Law has the force of law in South Africa.**

  This clause seeks to acknowledge that the Model law becomes law in the Republic.

- **Clause 7: Matters Subject to International Arbitration**

  This clause provides that any international commercial dispute, which the parties have agreed to submit to arbitration under an arbitration agreement, may be determined by arbitration, except where a:
  - Dispute is not capable of determination by arbitration under South Africa’s laws or the arbitration; or the
  - Arbitration agreement is contrary to public policy.

- **Clause 8: Interpretation of Model laws**

  This clause empowers an arbitral tribunal or a court to refer to relevant reports of UNCITRAL reports and its secretariat when interpreting Chapter 2 of the Bill as well as the Model Law.

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\textsuperscript{70} The Department of Trade and Industry has published draft rules for mediation in investor-state dispute resolution under the Protection of Investment Act.

\textsuperscript{71} Wright M and Browning R, Arbitration bill to regulate international proceedings Foreign businesses are also understandably cautious about litigating disputes in local courts 31 March 2017 (Accessed at https://www.businesslive.co.za/bd/opinion/2017-03-31-arbitration-bill-to-regulate-international-proceedings/)

\textsuperscript{72} Ibid
 Clause 9: Immunity provisions

The clause provides that immunity will be granted to arbitrators (as well as their institutions and representatives) acting in good faith.

 Clause 10: Consolidation of proceedings

The parties to an arbitration agreement may agree that arbitral proceedings be consolidated with other arbitral proceedings or that concurrent hearings be held. The arbitral tribunal may not, however, order the consolidation of hearings or concurrent hearings contrary to the consent of the parties.

 Clause 11: Confidentiality

This clause provides for the confidentiality of arbitral proceedings where such proceedings are held in private. However, arbitration proceedings to which a public body is a party, must be held in public unless the arbitral tribunal directs otherwise where compelling reasons so require.

 Clause 12 and 13: Conciliation

These two clauses allow the parties to an arbitration agreement the right to refer the matter to conciliation before or after the dispute is referred to arbitration. This will encourage the amicable settlement of disputes between parties. Parties who intend to settle their dispute by way of conciliation may agree to use the UNCITRAL Conciliation Rules, which are set out in Schedule 2 to the Bill.

Chapter 3 – Recognition and Enforcement of Arbitration Agreements and Foreign Arbitral Awards

As arbitration proceedings increase in popularity, both in South Africa and abroad, particularly because of the inclusion of arbitration clauses in commercial contracts and as international trade and enterprise becomes ever more globalised, the importance of having legislation which deals specifically with the endorsement and ultimate enforcement of foreign arbitral awards cannot be overstated.

 Clause 14: Definitions

This clause sets out the definitions, which are to apply for purposes of Chapter 3 of the Bill, dealing with the recognition and enforcement of foreign arbitral awards. Of particular note is the definition of “Convention” which means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the New York Convention), the text of which is set out in Schedule 3 to the Bill.
When South Africa acceded to the New York Convention, its text was published in the Government Gazette. However, some other countries adopting the Convention have included its English text in a schedule to the legislation. It is submitted that this should be done in a new South African statute on international arbitration, as a means of making the text of the Convention readily accessible to interested South African parties.

- **Clause 15: Determination of juridical seat**

In terms of this clause an arbitral award is deemed to be made at the judicial seat of arbitration determined in accordance with the provisions of Articles 20(1) and 31(3) of the Model Law.

- **Clauses 16, 17 and 18**

These clauses incorporate the wording of the Recognition and Enforcement of Foreign Arbitral Awards Act, 1977, which was a stand-alone piece of legislation, directly into the Bill. The applicability of the Recognition and Enforcement of Foreign Arbitral Awards Act will be repealed in its entirety once the Bill comes into effect as legislation.

In terms of clause 16 of the Bill, a foreign arbitral award must be recognized and enforced in the Republic as required by the New York Convention. Further, a foreign arbitral award must, on application, be made an order of court, and be enforced in the same manner as any judgment or order of court, provided it complies with the provisions of clauses 16, 17 and 18 of the Bill.

Clause 17 sets out the evidence, which is required by a party seeking the recognition or enforcement of an agreement. While the circumstances in which a court may refuse to recognise or enforce a foreign arbitral award are set out in clause 18 of the Bill. For example; the subject matter of the arbitration is not permissible under the law of the Republic; the recognition or enforcement of the award is against public policy; or the party against whom the award is being enforced lacked legal capacity to enter into a contract.

- **Clause 19: Savings**

This clause provides that the provisions of Chapter 3 of the Bill do not affect any other right to rely upon or to enforce a foreign arbitral award, including the right conferred by Article 35 of the Model Law.

- **Clause 20: Transitional Arrangements**

The transitional provisions provide that once it the Bill becomes an Act it will apply to an arbitration agreement even if the arbitration agreement was concluded before the Act commences. Where arbitration proceedings have already commenced under the old regime they will continue under the old regime. Where there are already pending applications for setting aside or enforcement they will still be dealt with under the old regime.
Clause 21: Repeal or amendment


9.2 Adapting the Model Law

A model law is created as a suggested pattern for states to consider adopting. However, states have the flexibility to consider departing from the text of the model law. Notwithstanding that flexibility, and in order to increase the likelihood of achieving a satisfactory degree of harmonization, States are encouraged to make as few changes as possible when incorporating the Model Law into their legal systems.73 Some adaptations, which have been, introduced to the Model law include the following:

Article 9 - Arbitration agreement and interim measures by court

Article 9 of the original 1985 Model law text merely stated that the granting of interim measures by a court was not inconsistent with the arbitration agreement. It was, however, silent on the scope of the court’s powers and did not give guidance on when a party should approach the arbitral tribunal for such measures, rather than the court. The SALRC Commission produced carefully worded provisions to fill these gaps, which were refined after public comment. These proposals have been retained by the drafters in preference to article 17J of UNCITRAL’s 2006 amendments.

Article 10: Number of arbitrators

Article 10(1) leaves the parties free to determine the number of arbitrators. Where the parties do not determine the number of arbitrators, article 10(2), in keeping with the tradition of international arbitrations, provides that the number shall be three.

Certain jurisdictions, eg Scotland, have modified article 10(2) to provide for a single arbitrator, unless the parties agree otherwise. This reduces expense and is in accordance with the usual South African practice. The SALRC was of the view that these are sufficient reasons for a departure from the Model Law, notwithstanding the desirability of conforming to the general practice when adopting the Model Law. The SALRC favoured a single arbitrator unless the parties agree otherwise. The proposal that the default position should be one arbitrator is in line with existing South African law and promotes a less expensive process. A modification has been made to the Model law.

Article 12 – Grounds for Challenge

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This article provides for an arbitrator to be challenged where there are justifiable doubts regarding his or her independence and impartiality. There has recently been an increase in the number of challenges being made in International Arbitration. A new paragraph is therefore proposed which sets out the current South African standard regarding removal of an arbitrator on the basis of bias. The other ground for removal, which is used in some of the other jurisdictions, is a real danger of bias as opposed to a reasonable apprehension of bias, the preferred ground in South Africa. It’s proposed that article 18 be amended to state that each party shall be given a reasonable opportunity instead of a full opportunity of presenting its case. Apparently, this is in line with the 2010 UNCITRAL conciliation rules and discourages court applications based on minor procedural irregularities.

**Exclusion of Articles 17B and 17C - Preliminary orders**

According to the SALRC the respected commentator Mr G Born was of the view that the provisions contained in the Model law on preliminary orders were ill-considered. The first objection was that the unilateral communications between the tribunal and one party only, which preliminary orders entail, undermine the equal treatment of the parties and due process entrenched in articles 18 and 24(2) and (3) of the Model Law. Secondly, ex parte relief is based on the applicant’s belief that the other party cannot be trusted to comply with its obligations and must be legally compelled to take certain actions immediately, without the opportunity to evade its obligations.

The preliminary orders provided by articles 17B and 17C have no direct coercive effect and therefore cannot accomplish the purpose of ex parte relief. A party requiring ex parte relief should therefore logically approach the court and not the arbitral tribunal. Born’s contention that articles 17B and 17C are ill-conceived is therefore clearly justified and the references to “preliminary orders” have been omitted from the version of Chapter IVA proposed in the updated Bill.

Amendments also appear to have been made to Articles 27-31, 34 and 36. Further information is needed from the Justice Department in this regard.

**Comment**

- The Committee should request that the Justice Department provide a detailed breakdown of any adaptations (as well as reasons for those adaptations) to the Model law.

**10. ISSUES FOR CONSIDERATION**

Certain issues that may be considered include:
Consultation

- The Department reports that during the SALRC investigation (which was in 1998, and therefore nineteen years ago) the SALRC consulted comprehensively on the proposed legislation and in August 2014 convened a meeting of experts for purposes of obtaining further input. Is this adequate consultation? Does a meeting of experts imply those who are already in the arbitration field and therefore those who will benefit most from the passing of this legislation? In the Doctors for Life decision the Court stated: “[Public participation] strengthens the legitimacy of legislation in the eyes of the people. Finally, because of its open and public character, it acts as a counterweight to secret lobbying and influence-peddling.” When determining whether consultation has been complied with, it is necessary to ascertain whether the consultation has been done in a manner that rationally connects the consultation with the constitutional purpose of accountability, responsiveness and openness.

Alignment

- Has the Justice Department engaged with the Department of Trade and Industry (DTI) in respect of the drafting of this Bill? Would the Committee benefit from an engagement with the DTI for a briefing on the connection between the international Arbitration Bill and the Protection of Investment Act. As Africa’s second largest economy by GDP with first rate domestic legal profession, South Africa could become a major competitor for the world’s established arbitration centres and establish itself as the first truly international arbitration centre on the Continent. However, some commentators have contended that unless both the Investment Act and the International Arbitration Act operate in concert, towards a common goal of facilitating the efficient resolution of business disputes, these best intentions may yet go unfulfilled.74

Unintended consequences

- The SALRC did warn that It must nevertheless be conceded that having two systems of arbitration law side by side (one for international and one for domestic arbitrations) will also cause certain practical difficulties, particularly until ambiguities in the UNCITRAL Model Law regarding the extent of its application and the extent of the courts’ powers have been clarified by the courts. Is the Justice Department concerned about this possibility and if so is there anything that can be done to ameliorate it?

Promoting transformation in the arbitration sphere

- By introducing this Bill, the government hopes to promote SA as a hub for regional arbitrations, with its attendant skills-development and revenue opportunities. The Deputy Minister of Justice has himself, however, expressed concern, about lack of transformation. “There are concerns about the type of people that are being selected as arbitrators, so for example if any judge wants to, gets asked to arbitrate or be an arbitrator in a matter they have to get permission from the Minister. So that will come through me ….I’m just speaking through memory but I’m not aware of any request for

a judge to act as an arbitrator where that judge wasn’t a white male…You can’t have arbitrators being effectively a group of white men and so that’s a general concern. To what extent have steps been taken in arbitration centres and the development of African arbiters or is it being left to the private sector?

China

- The enactment of the New Act should bring with it much-needed confidence in the legislative framework applicable to international commercial arbitration in South Africa. This development comes at an opportune time in light of recent developments on the African continent regarding international arbitration and South Africa’s involvement in establishing the China Africa Joint Arbitration Centre (CAJAC). CAJAC is briefed to function as the principal forum for commercial dispute resolution between Chinese and African parties. Its creation follows the Beijing Consensus that recognised the need to establish a China-Africa dispute resolution mechanism to support growing mutual trade and investment, and is bolstered by China’s relationship with the Arbitration Foundation of Southern Africa.

11. CONCLUSION

International commercial arbitration is a work in progress. In South Africa’s case, it has been a long and winding road to the development of an International Arbitration Bill.

12. SOURCES


76 Ibid


Wright M and Browning R, Arbitration bill to regulate international proceedings. Foreign businesses are also understandably cautious about litigating disputes in local courts. 31 March 2017 (Accessed at https://www.businesslive.co.za/bd/opinion/2017-03-31-arbitration-bill-to-regulate-international-proceedings/)
ANNEXURE A

Contracting Parties to the Convention on the Recognition and Enforcement of Foreign Arbitral Rewards (New York Convention) in Africa:

[Map showing countries in Africa with some marked as Contracting Parties and others as Non-Members.]

As of 1 February 2017
ANNEXURE B


According to UNCITRAL legislation based on the Model Law has been adopted in 74 States in a total of 105 jurisdictions: 79

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