

INTERNATIONAL ARBITRATION WORKSHOP – PALAIS DE JUSTICE

SEYCHELLES – 10TH AUGUST 2013

Honourable Chief Justice Egonda-Ntende, Honourable President Court of Appeal, Honourable Justices and Judges, Honourable Judge Dominique Hascher, Counsellor Fedelma Smith, My Learned Colleagues, Ladies and Gentlemen, goodafternoon.

Seychelles has begun to move to an environment where there is an unparalleled support for arbitration. Already a commercial list court has been set up by the Judiciary. The Bar Association believes that on the legislative front there is a need for very significant legislature reform of our arbitration law and rules.

Our law on arbitration is provided in the Commercial Code Act of Seychelles and some sections of the Seychelles Code of Civil Procedure. This law introduced in 1977 as a Modern Law of Arbitration incorporated the text of the Uniform law on Arbitration proposed by the European Convention on Arbitration 1967.

The text with appropriate adaptations to the Law of Seychelles features in Articles 110-150 of the Commercial Code. Moreover, the New York Convention of 1968 was adopted as domestic law on the basis of reciprocity. Our law on arbitration seems to be outdated.

Arbitration in business disputes has expanded widely and most trading countries now subscribe to the International Trade Law (UNCITRAL) Model Commercial Arbitration Law.

As Seychelles is a trading nation, it is important that it should acquire a modern system of arbitration, a new Commercial Arbitration Act which should apply the provisions of the United Nations Commission on International Trade Law (UNCITRAL) Model for both domestic and international arbitration.

This model law is one that is known and established in the world. We are of the view that a new law on international arbitration should make some additional provisions too with regards to mediation and conciliation as an alternative dispute resolution avenue. This would be a significant step to introduce a uniform Commercial Act based on the model law and international best practice.

Nonetheless, the reinvigoration of arbitration in Seychelles will also require the cooperation of various stakeholders – commercial partners, lawyers (whether they be corporate, in-house lawyers, barristers and attorneys) arbitrators, arbitral institutions (particularly as educators and custodians of ethical standards), the government and the courts. It should be observed that the role or roles of each of these stakeholders are naturally interconnected; thus collective, coordinated action is essential if there is to be a successful future for Seychelles in International Arbitration.

The Bar Association note, that Seychelles has not developed a high volume of commercial arbitration business contrary to the experience in other countries for example our next door neighbour Mauritius. In the past the perception has sometimes been that courts were interventionist rather than supportive of arbitration in Seychelles. International experience indicates, however, that countries

which have been successful in establishing busy international arbitration centres and attracting significant international arbitration work are perceived as supportive of arbitration. Additionally these are countries which also have active and significant arbitration centres.

Despite the fact that this seminar focuses primarily on international arbitration in Seychelles, in my view domestic and international arbitration are inexorably linked, and feed off each other.

We believe that a vibrant domestic arbitration sector will provide significant experience for domestic arbitrators, we lawyers and particularly for present purposes also the courts. This is all the more so where the domestic and international arbitration law the Bar Association is proposing is based on an international regime such as the UNCITRAL Model Arbitration Law (the Model Law).

The perceived efficacy of Seychelles courts in arbitration

Seychelles courts are empowered to carry out certain functions with respect to international arbitration under the Commercial Code Act which adopts the New York Convention. This regime covers the judicial involvement and support in and the arbitral process and includes the appointment of arbitrators, removal of arbitrators and decisions on arbitral jurisdictions and the setting aside of arbitral awards. Also important is the ability of the courts to stay proceedings in favour of arbitration, whether permanently or otherwise, as well as the ability to grant interim measures (such as discovery and freezing orders etc) in support of arbitration. Pursuant to the New York convention, the function of the Seychelles courts in recognizing and enforcing awards is also critical.

At times, there has been a perception that Seychelles courts have hindered effective commercial arbitration (where there is an arbitration clause in a commercial agreement/contract) both by interpreting the arbitral law in an interventionist rather than in a supportive way. This perception as well as many other factors, is one of the reasons that our commercial arbitration requires attention. Our domestic law is outdated as a result of developments in legislation elsewhere particularly in next door Mauritius.

Nonetheless, it must be acknowledged that there were some problems with over-intervention in the arbitration process by way of appeals or judicial review of awards and as a result a tendency for parties to challenge awards on the basis of what is generally (but not strictly correct) described as “technical errors”.

The Bar Association is happy that the judiciary aim to achieve the efficient and just settlement of commercial disputes. One way, we believe, that the courts can do this is by supporting appropriate (also styled “alternative”) dispute resolution – ADR. Arbitration is an important aspect of ADR broadly defined.

The courts positive view of arbitration as a dispute resolution mechanism is also reflected in the special reference procedures available and applied by the Supreme Court which provide an effective and expedited, supervised, commercial court. Whenever, there is a reference to arbitration in a commercial contract, we are of the view that the matter should be referred to a commercial arbitration process with minimal appeal potential and no enforcement problems.

The future of arbitration in Seychelles

Attracting arbitral custom and generating and maintaining a successful and thriving arbitral sector and climate in Seychelles will depend largely on user perception. In a practical sense, we believe, the people who will benefit the most from increased use of arbitration are the parties to the disputes themselves. In the long run, offer of support for arbitration within the framework of a certain, consistent and enforceable environment will ensure that the rule of law prosper.

Consequently, we believe that the future of arbitration in Seychelles depend on a number of factors and stakeholders.

The Bar Association will fully support the Judiciary in facilitating the development of both international and domestic commercial arbitration in Seychelles. Nevertheless, Lawyers and the courts are only two pieces of the puzzle. Success in the arbitral world will depend on a complex interrelated support mechanism. This success can be achieved only by the combined effort of all stakeholders.

We also believe that if the stakeholders I mentioned earlier, do not take steps to encourage and promote arbitration, Seychelles will be marginalized in an international arbitral system. This will be particularly acute as arbitration in the offshore jurisdictions like Seychelles continues to grow exponentially. This will have significant adverse consequences in terms of the development of our international legal expertise and the involvement of Seychelles legal and other professionals in the international trade and commerce and in international financial services business.

CONCLUSIONS

Ladies and Gentlemen, for and on behalf of the Bar Association of Seychelles, we thank Counsellor Fedelma Smith for the proposal and the Honourable Chief Justice for taking the initiative of setting up this International Arbitration Workshop. The BAR is fully committed to working together with all stakeholders in creating the roadmap, the laws, and institutions necessary towards the aims and object of this workshop.

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