

Much of this edition of AFSA@Work tracks AFSA's international activity and, by extension, the progress which South Africa is making in establishing itself as a regional arbitration hub.

In our June 2018 issue, we remarked upon the sudden and astonishing growth in the AFSA international caseload. We attributed this phenomenon to the passage of the International Arbitration Act which introduced the Model Law into the South African legislation, thereby providing an essential piece of the infrastructure needed to qualify South Africa as an acceptable international arbitration destination.

The International Arbitration Act became law in December 2017 and in the June 2018 edition, we were able to report that AFSA had by then established an international caseload of some 24 matters involving businesses out of the USA, Australia, Europe, Africa, the Middle East and Asia.

In the course of the last twelve months, the AFSA caseload has more than doubled and AFSA now administers 55 international matters in addition to its domestic caseload of some 500 matters.

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The accelerated growth of the international caseload is unusual by any standards. What is the reason?

Success is dependent on the support of a strong local business community with an international reach.

The passage of the new Act brings South Africa in line with the most progressive Model Law dispensations in Africa and elsewhere; but there are many examples of aspirant international arbitration centres which can boast an exemplary Model Law dispensation, but which have only a nominal caseload.

Appropriate legislation is a sine qua non of a viable arbitration hub, but it is no guarantee of one.

We also have a number of examples, elsewhere, of Governments throwing financial support behind the establishment of such institutions, yet without showing tangible results. The same is

Now that South Africa has the legislative infrastructure to host international arbitrations, AFSA has been able to provide the administrative platform by which such disputes can be resolved.

ESTABLISHING AN INTERNATIONAL ARBITRATION HUB



true notwithstanding the adoption of cutting-edge Rules, or glittering Panels of International Arbitrators. Yes, these are all necessary attributes, but none of them is enough to ensure success.

The truth of the matter is that everything depends not upon the support of Government, or upon the endorsement of leading arbitration institutions – success is dependent on the support of a strong local business community with an international reach.

South Africa, which vies with Nigeria as the leading African economy, has a vigorous, indeed rambunctious business community, backed by a sophisticated financial and banking system with immense resources in the agricultural, mining and manufacturing sectors. South African business operates internationally and,

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Editor: Deline Beukes

Contributors:

Adv. Michael Kuper SC
 Adv. Lindi Nkosi-Thomas SC
 Julia (Zhang) le Roux

hence, inevitably, becomes involved in all sorts of business and investment disputes, which are referred to arbitration. Until December 2017, South African business had to use dispute resolution services in Europe, but that is no longer the case.

Now that South Africa has the legislative infrastructure to host international arbitrations, AFSA has been able to provide the administrative platform by which such disputes can be resolved.

There are other features which play in AFSA's and South Africa's favour.

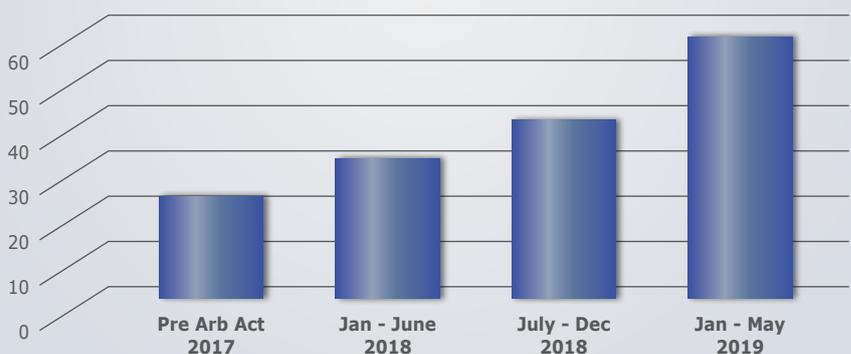
Given the down-trodden status of the rand, AFSA is able to offer competitive rates to foreign parties, but it can also attract to its Panels arbitrators of international status from around the world.

The South African legal system, which is a long matured amalgam of Roman-Dutch and English legal principles, is readily accessible and is easily understood. Its precepts are familiar to both Anglo-Saxon and continental practitioners. Of equal importance is the availability of highly qualified legal services. South Africa boasts a wide

AFSA's Johannesburg International Arbitration Centre provides a venue comparable in quality, and in its welcome, with the best available. It is one of a network of arbitration centres hosted by AFSA in all the main centres.



GROWTH IN AFSA'S INTERNATIONAL CASELOAD 2017 TO MAY 2019



array of attorney firms of international repute, as well as specialised litigators forming the advocates profession. The list of AFSA founding members gives a taste of the quality and depth of the leading legal and accounting services on offer.

AFSA's Johannesburg International Arbitration Centre provides a venue comparable in quality, and in its welcome, with the best available. It is one of a network of arbitration centres hosted by AFSA in all the main centres. South Africa is a well-served destination easily accessible and with top class accommodation.

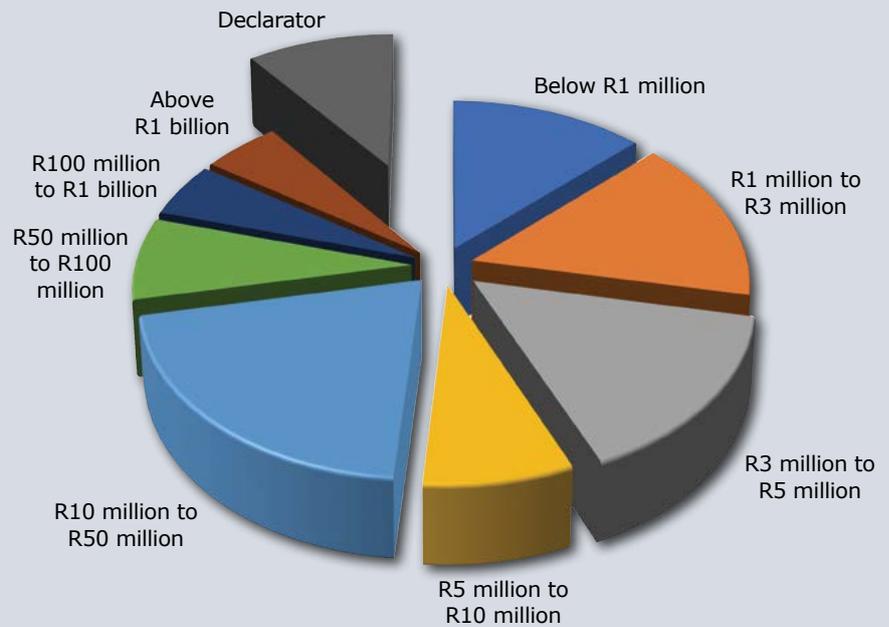
Reference to the statistical analysis of the AFSA international caseload which follows, shows that South Africa is also a popular destination for disputes between African parties across the continent. In that context it is becoming a pivotal arbitration destination for Africa.

South African business has benefited from close links with China - South Africa is the largest recipient of Chinese investment in Africa - and AFSA has been very active in the establishment of CAJAC; the China-Africa Joint Arbitration Centre. CAJAC links five Arbitration Centres in a common venture to provide comprehensive dispute resolution services between China and Africa. Its current members are AFSA, the Shanghai International Arbitration Centre, the Beijing International Arbitration Centre, the Shenzhen Court of International Arbitration and the Nairobi International Arbitration Centre. CAJAC is the arbitral bridge between China and Africa and as it expands into West and North Africa, it will provide a comprehensive and standardised dispute resolution platform of immense potential. CAJAC in many ways is the prototype for arbitral mechanisms which are needed to support the Belt and Road Initiative.

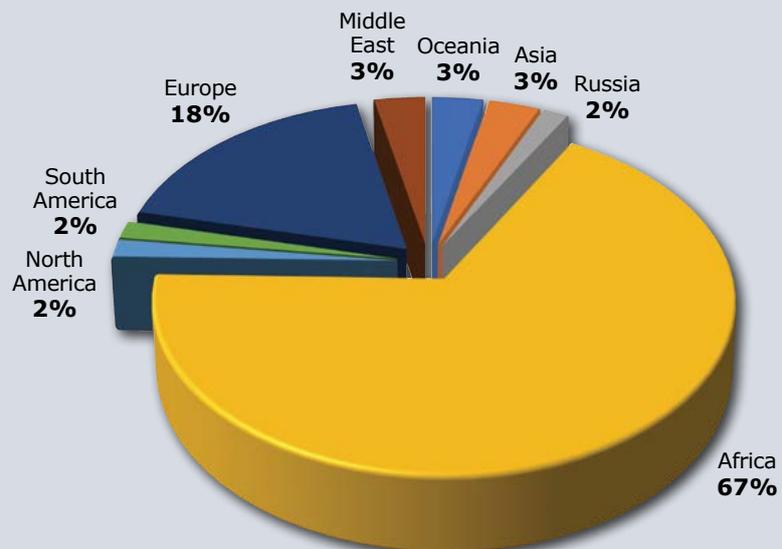
Establishing an international arbitration hub is never very easy and recent history is littered with examples of false starts. The South African trajectory has fortunately been different - it is a latecomer into the field, but at last it has come into its own.

Adv. M Kuper SC

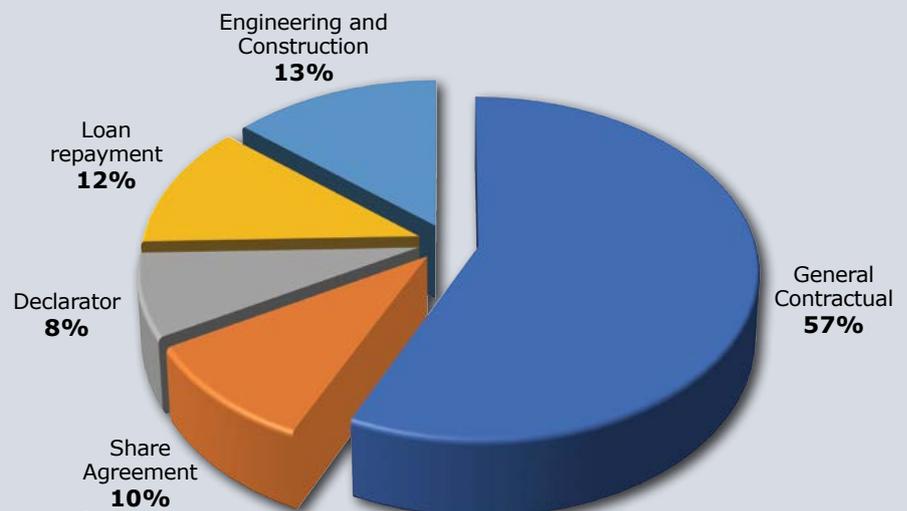
QUANTUM OF CLAIMS



PARTIES IN DISPUTE BY CONTINENT



NATURE OF THE DISPUTES



PARIS ARBITRATION WEEK

1 - 5 April 2019 *The highlights*



Adv. Lindi Nkosi-Thomas reporting from Paris.

In its 3rd edition in 2019, the Paris Arbitration Week (PAW) is a key industry event hosted in Paris, connecting a diverse and dynamic professional community. The annual event brings together the international arbitration community during a week of academic debates and professional exchange with over 35 official events, welcoming over 1000 participants from all over the world.

On Day 1 of PAW the 3rd ICC European Conference was held which offered delegates the opportunity to keep abreast with the institutional developments and the evolution of arbitration in Europe. The conference themed **"Public interest and the future of arbitration: lessons from Europe"**. The speeches were dominated by the judgment of the European Court of Justice (ECJ), dated 6 March 2018, in ***Slovak Republic v. Achmea EU:C:2018:158*** to ISDS (Investor State Dispute Settlement). There, the ECJ held that an arbitration clause in an international investment agreement (IIA) between two European Union (EU) Member States was incompatible with EU law because it side-lined domestic courts. This ECJ judgment sent a shockwave through the investment treaty arbitration community in the EU with some stating that it signals the beginning of an end to ISDS in Europe.

In his keynote address, **President Abdulqawi Ahmed Yusuf** of the International Court of Justice at The Hague suggested that the standardisation of ISDS might mitigate the "backlash". In this regard he proposed the following areas of reform:

- The establishment of appellate tribunals against ad hoc arbitral tribunals' awards;
- The establishment of a Multilateral Investment Court;
- Insistence upon the exhaustion of domestic remedies as a pre-condition to arbitrability;
- Institutionalisation of arbitral tribunals; and
- Ultimately, the proscription of ad hocism.

On Day 3 of the PAW the ICC Institute of World Business Law held a training session on **"The Conduct of the Proceedings and Case Management"**. This session was attended by 83 professionals from 36 countries and offered delegates actionable tips and techniques on how to effectively manage cases.

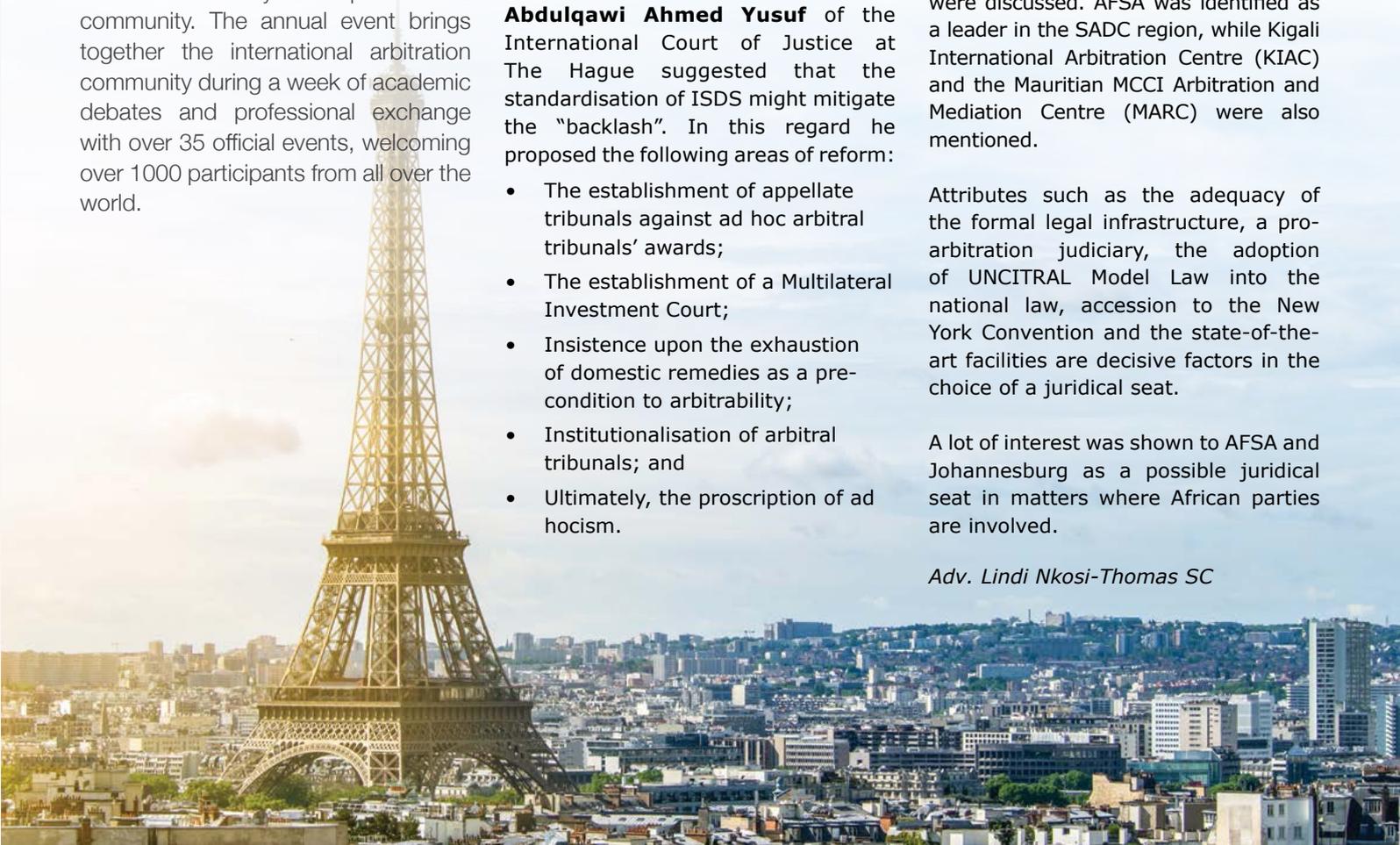
I found the possibility of a reduction of the arbitrator's fees for delayed submission of draft awards interesting. If the draft award is submitted for scrutiny beyond the six-month time frame provided for in terms of Article 31 of the ICC Rules, without satisfactory justification, the ICC Court may lower the arbitrator's fees proportionately to the delay.

On Day 4 of the Paris Arbitration Week, White & Case, Paris, hosted the **Game of Seats: Arbitral institutions in Africa and the quest for ascendancy.** During this session the leading arbitral institutions on the African continent were discussed. AFSA was identified as a leader in the SADC region, while Kigali International Arbitration Centre (KIAC) and the Mauritian MCCI Arbitration and Mediation Centre (MARC) were also mentioned.

Attributes such as the adequacy of the formal legal infrastructure, a pro-arbitration judiciary, the adoption of UNCITRAL Model Law into the national law, accession to the New York Convention and the state-of-the-art facilities are decisive factors in the choice of a juridical seat.

A lot of interest was shown to AFSA and Johannesburg as a possible juridical seat in matters where African parties are involved.

Adv. Lindi Nkosi-Thomas SC





BELT AND ROAD FORUM

BEIJING 2019



AFSA's broader involvement in the Belt and Road Initiative was recently reflected by the invitation from the Chinese Government to participate in the Second Belt and Road Forum, which was held in Beijing from April 25 -27.

AFSA's Chairman, Michael Kuper SC, was one of the speakers who addressed the Forum on the topic of ensuring business integrity and compliance in support of the theme of a "Clean Silk Road". Co-speakers included the Vice-Chairman of the World Bank Group; the President of

the Export and Import Bank of China; Bosch (China) Investment Ltd and the China Minmetals Corporation.

Michael Kuper took the opportunity to emphasise the need for a multi-national consensus on a moral code

in environmental, labour and social matters - in short a comprehensive moral code as to how business does business. He drew attention to the work of the King Commission on Corporate Governance in South Africa and suggested that it might serve

Michael Kuper took the opportunity to emphasise the need for a multi-national consensus on a moral code for business.

for business, which would extend beyond conscientious adherence to legal standards, and would include appropriate standards of conduct

as a model for the creation of an international institution on the same lines.

第二届“一带一路”国际合作高峰论坛

THEMATIC FORUMS OF THE SECOND BELT AND ROAD FORUM FOR INTERNATIONAL COOPERATION

2019年4月25日 中国·北京

25 APRIL 2019 BEIJING, CHINA



SUCCESS REQUIREMENTS FOR A BRICS ARBITRAL MECHANISM



Moscow 2019

From 6-8 April 2019, the Moscow Legal Forum, Russia's major legal annual event, was held by Kutafin Moscow State Law University (MSLU) in partnership with the Association of Lawyers of Russia and the Institute of Legislation and Comparative Law. International legal professionals from all fields were invited to attend and to participate in this event in Moscow.

In the session Arbitration in BRICS Countries and Emerging Economies, Deline Beukes CEO of CAJAC Johannesburg, shared with the audience the lessons learnt in designing and creating the cross-continental China-Africa Joint Arbitration Centre (CAJAC). She highlighted four important points:

- While it is essential for the legal communities in the BRICS countries to encourage and adopt an arbitral system, it is the leading arbitral institutions in the various BRICS countries with the knowledge, expertise and practical experience who will ensure the success of a cross-continental arbitral system such as BRICS.
- The model on which these institutions are to cooperate is of fundamental importance in that it must be agreed if the BRICS mechanism is to be a unitary body, a platform in which the respective arbitral institutions share a common set of rules and principles, but are otherwise independent, or simply a loose association of independent role players.
- Legal and cultural empathy played an important role and it was essential



to recognise the differences in the arbitral laws and procedures of the BRICS countries and to find a common approach to the technique of dispute resolution which is sensitive to differing legal systems and cultures.

- Agreeing on a common set of rules was essential and had successfully been achieved in the case of the China-Africa arbitral mechanism.

She pointed out that before BRICS countries could join together in an arbitral mechanism, some present problems first had to be addressed:

- The Indian Arbitration Act requires that for a foreign award in a foreign territory to be enforceable as a New York Convention award in India, the territory must be notified by the Central Government as a reciprocating territory through a notification in the Government Gazette. Two BRICS countries, namely South Africa and Brazil, have not been gazetted.

In the session Arbitration in BRICS Countries and Emerging Economies, Deline Beukes CEO of CAJAC Johannesburg, shared with the audience the lessons learnt in designing and creating the cross-continental China-Africa Joint Arbitration Centre (CAJAC).

- In the case of Russia, specific authorization by the Russian Federal Government had to be granted to foreign arbitral institutions who met the necessary criteria to administer disputes.

She concluded by saying that AFSA stands ready to offer its expertise and full support in the establishment of a BRICS Arbitration Centre in South Africa.





FIRST INTERNATIONAL ARBITRATION WEEK

TO BE HELD IN JOHANNESBURG, SOUTH AFRICA IN MARCH 2020



The Arbitration Foundation of Southern Africa is proud to announce that AFSA and its founding members will be hosting the first International Arbitration Week in Johannesburg, South Africa from 17 to 19 March 2020.

Since the promulgation of the International Arbitration Act, which incorporates the UNCITRAL Model Law, South Africa has become an active and respected player in international arbitration. AFSA founding members which include leading attorney firms, accounting firms, the Bars and related organisations believe that the time has arrived for South Africa to take its place in the international arbitration world. The International Arbitration Week offers South Africa the opportunity to showcase its advanced commercial arbitration standards and practice, its legal infra-structure and expertise, its arbitration facilities and a business

environment which makes South Africa a highly desirable venue for international arbitrations.

AFSA founding members which include leading attorney firms, accounting firms, the Bars and related organisations believe that the time has arrived for South Africa to take its place in the international arbitration world.

AFSA and its founding members are committed to providing a world-class dispute resolution hub in South Africa to meet the needs of international business.

If you would like to be kept informed about the Johannesburg International Arbitration Week, please send your name and contact details to: sandra@arbitration.co.za.



EGYPT

Sharm El Sheik

In December 2018 Deline Beukes attended a conference in Sharm El Sheik with the theme "The Role of Courts in International Arbitration", which was organised by the Cairo Regional Centre for International Commercial Arbitration (CRCICA).

Sharm El Sheik is a premier destination for business and corporate events and the CRCICA Board of Trustees met here during the conference. During her visit, Deline was invited to address the Board of Trustees about the CAJAC initiative, how it tied in with the Forum for China-Africa Cooperation (FOCAC) and the Johannesburg and Beijing Action Plans.

The Board of Trustees unfortunately failed to reach consensus about CRCICA's participation in CAJAC at this stage, but Dr Ismail Selim, the Director of CRCICA, expressed the desire to work in close cooperation with AFSA and the other CAJAC centres.



UNIFORM CAJAC RULES

SOON TO BE PUBLISHED



CAJAC partners shake on the appointment of Adv. Michael Kuper SC as the first Chairman of the extended CAJAC group.

In June 2019, when the Nairobi International Arbitration Centre launched CAJAC Nairobi, the five CAJAC partners met and reviewed how the extended CAJAC partnership would in future be managed.

In addition to CAJAC Johannesburg and CAJAC Shanghai, three further institutions had by then joined the CAJAC family, namely the Beijing International Arbitration Centre (CAJAC Beijing), the Shenzhen Court of International Arbitration (CAJAC Shenzhen) and the Nairobi Centre for International Arbitration (CAJAC Nairobi).

In Nairobi, representatives from the five CAJAC centres agreed to a rotating chairmanship for the China- Africa Joint Arbitration Centre and Michael Kuper,

In July 2019 the CAJAC chairmanship will revert to CAJAC Shanghai who will serve a term of one year. CAJAC Shanghai will assume responsibility for the next CAJAC meeting as well as a CAJAC conference in Shanghai later in the year.

chairman of CAJAC Johannesburg, was appointed as the first chair of the extended group.

CAJAC Johannesburg was tasked with the responsibility of preparing a draft Constitution and a uniform set of Rules for the CAJAC group. The drafting committee was led by Prof David Butler, assisted by Advocate Patrick Lane SC and Advocate Michael Kuper SC.

In November a first draft of the CAJAC Rules and Constitution were completed and circulated to all the CAJAC partners for comment. Four of the five partners met in Beijing in April 2019 to discuss the future role of the CAJAC Guiding Committee as well as proposed amendments to the CAJAC Rules and Constitution.

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OHADA JOINS CAJAC



OHADA, the French acronym for the Organisation for the Harmonisation of Business Law in Africa has formally accepted membership as a CAJAC partner. The OHADA Treaty represents seventeen African States in West and Central Africa and this supranational network will now become part of the CAJAC initiative.

At the most recent FOCAC Beijing Summit in China, the Beijing Action Plan encouraged "China and Africa to improve the China-Africa joint arbitration mechanism, the China-Africa Joint Arbitration Centre and its office network in Africa and raise its international standing". The Beijing Action plan is supported and was signed by China and 50 African States.

In view of the Beijing Action Plan CAJAC approached OHADA to become a member of the CAJAC group. Having reviewed the CAJAC Constitution and proposed uniform CAJAC Rules,

OHADA agreed to become a CAJAC member stating that OHADA's decision was motivated by the convergence of views and goals between OHADA and CAJAC, namely the setting up of an appropriate and efficient mechanism to resolve disputes between Chinese and African entities.

In accepting CAJAC membership, Prof Dorothé Cossi SOSSA said that the emergence and development of common arbitration case law, together with transcultural empathy for the benefit of and service to the legal community, companies and investors from China and Africa constitute a valuable asset.

On behalf of CAJAC Johannesburg, CAJAC Shanghai, CAJAC Beijing, CAJAC Shenzhen and CAJAC Nairobi, a very warm welcome to the Organisation pour l' Harmonisation en Afrique du Droit des Affaires!



SOAS CONFERENCE IN ARUSHA



The 5th African conference convened by Dr Emilia Onyema from the School of Oriental and African studies (SOAS), took place in Arusha, Tanzania in February 2019.

The conference focused on the development of arbitration practice in Africa and representatives from South Africa included Prof David Butler from the University of Stellenbosch, Deline Beukes, CEO of CAJAC Johannesburg, Julia (Zhang) le Roux, AFSA's International Registrar and Jonathan Ripley-Evans from Herbert Smith Freehills.

Topics included Africa's Experience in Adopting the UNCITAL Model Law and Arbitration Rules as well as The Enforcement of Arbitral Awards in Africa. One of the sessions also focused on an explanation of the African Continental Free Trade Area.

CHINA-AFRICA EXCHANGE PROGRAMME FOR YOUNG LEGAL PROFESSIONALS

Five candidates from South Africa have been accepted by the China Law Society to participate in the 6th Legal Professionals Exchange Programme in China which aims to encourage mutual understanding and practical cooperation between China and Africa.

Before departing for China, AFSA/CAJAC arranged a briefing session to prepare participants for their time in China and to discuss professional, practical and cultural issues.

Participants will be arriving in Guangzhou on 17 June and will be participating in the programme which ends on the 7th of July. The programme includes lectures as well as a conference on Legal Risks and Countermeasures of International Trade and Investment. Admitted participants are required to prepare a paper, chosen from a list of topics, and are invited to give a presentation during the conference.

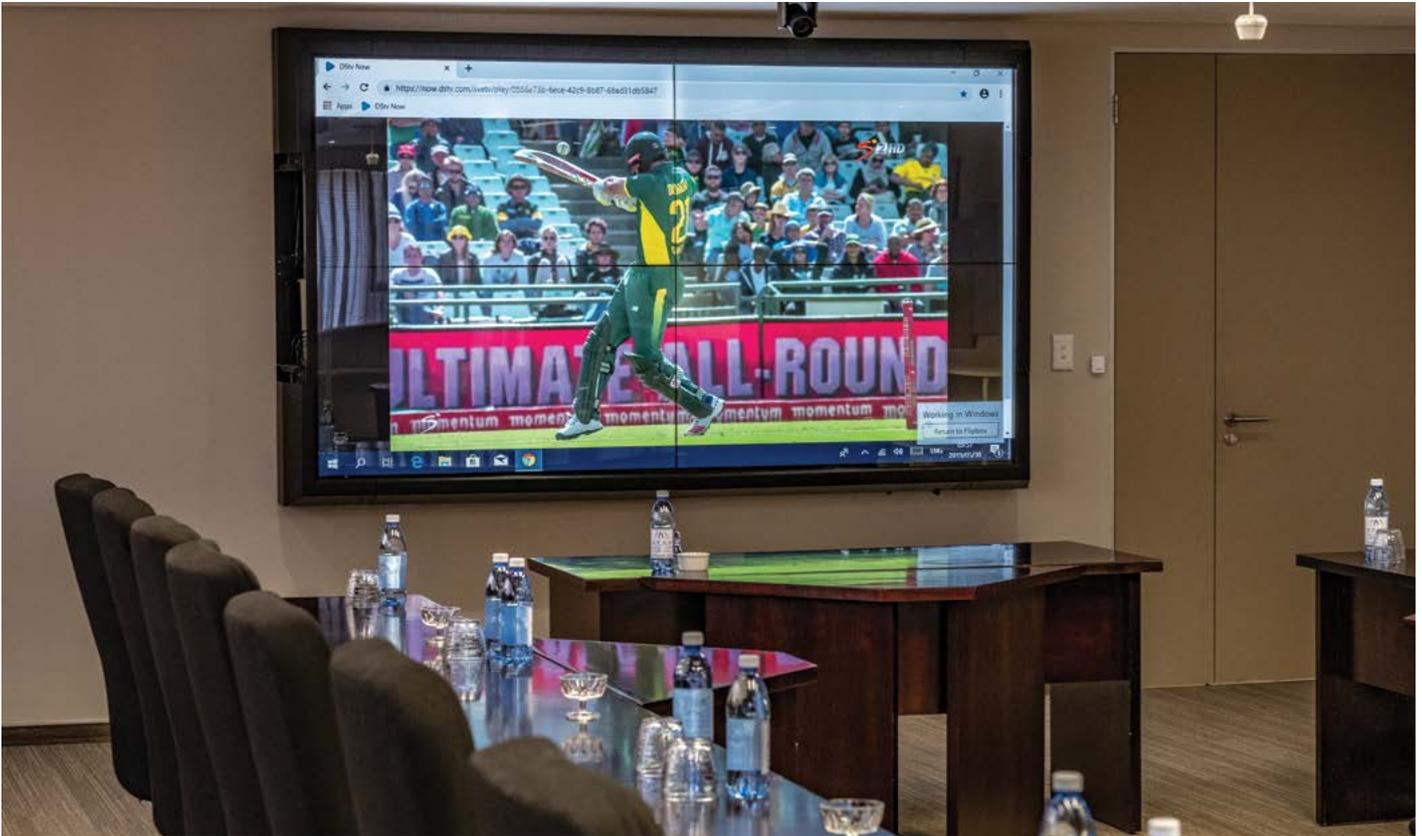
These young legal professionals will have the opportunity of visiting Guangzhou, Shenzhen, Jinhua and Beijing. In Shenzhen they will pay a visit to the Shenzhen Court of International Arbitration (SCIA), one of the five CAJAC partners. Other highlights include a visit to the Qianhai Cooperation Zone, the Ministry of Foreign Affairs of China as well as a visit to the Commercial Tribunal of the Supreme People's Court.



Four of the five participants are pictured here. From left to right Emanuel Masombuka, Nomfundo Jackson, Buhle Lekokotla, Ruthanya Naidoo (participant from a previous year) and Vincent Manko. Kerusha Pillay, not in the picture, is the fifth participant.

Apart from their international air fares, the China Law Society assumes responsibility for all travel and accommodation costs as well as meals while participants are in China. Best of luck to our South African ambassadors!

STATE-OF-THE-ART FACILITY FOR ALABAMA ROOM



AFSA is now one of the few organisations in South Africa able to offer the latest interactive video technology to its customer base worldwide. It is no longer necessary for participants in an arbitration to be in the same room or even on the same continent to conduct a successful arbitration or to be able to participate in meetings or lectures.

A state-of-the-art interactive video wall board in AFSA's Alabama Room in Sandton, allows parties to participate in an arbitration, regardless of geographic location, whether local or international. This advanced technology makes it possible for the parties to be captured simultaneously on screen, with a full room view and the ability to bring in external participants.

A 2x2 meter video wall with a custom made touch screen overlay, makes possible an all-in-one interactive collaborative experience.

A 2x2 meter video wall with a custom made touch screen overlay, makes possible an all-in-one interactive collaborative experience. The system offers all the functionality needed, including inter-active white-boarding to document sharing and access to web browsing, all from one easy to use intuitive interface. Additional high definition monitors on both sides of the room ensure unobstructed views from any vantage

point, while quality audio equipment produces crystal clear sound and an outstanding conferencing experience.

The system allows for up to 200 participants to take part, regardless of what device they are using.

Participants can make use of laptops, mobile phones or tablets to participate in discussions or hearings. The system allows for up to 200 participants to take part, regardless of what device they are using. Participants also have the ability to share presentations, media or their entire laptop or screen device.

The system offers a user-friendly interface, allowing users to switch the system on and off and easily, control the room dynamics from cameras pre-set to audio volume. This technologically advanced system, powered by Page Automation Telecoms, is the latest addition to AFSA Sandton's excellent arbitration facilities.

DIVISIONAL EXPERT COMMITTEES ESTABLISHED

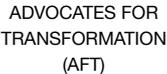
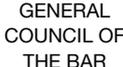
To keep pace with the fast-developing world of dispute resolution, AFSA has established various Divisions with expert committees, each led by a divisional chair.

AFSA Divisions include: -

  <p>AFSA Domestic Chaired by Advocate Michael Kuper SC</p>	  <p>AFSA International Chaired by Advocate Patrick Lane SC (Vice-chair of AFSA)</p>
  <p>AFSA Construction Chaired by Advocate Azhar Bham SC</p>	  <p>AFSA Municipal Chaired by Advocate Lindi Nkosi-Thomas SC (Vice-chair of AFSA)</p>
  <p>AFSA Training Chaired by Advocate Aslam Bava SC</p>	  <p>AFSA Mediation Chaired by Advocate Duncan Turner</p>

AFSA'S FOUNDING MEMBERS

AFSA's founding members constitute leading national firms and institutions in the attorney, accounting, and advocate professions as well as affiliated bodies.

GRADUATION CEREMONY

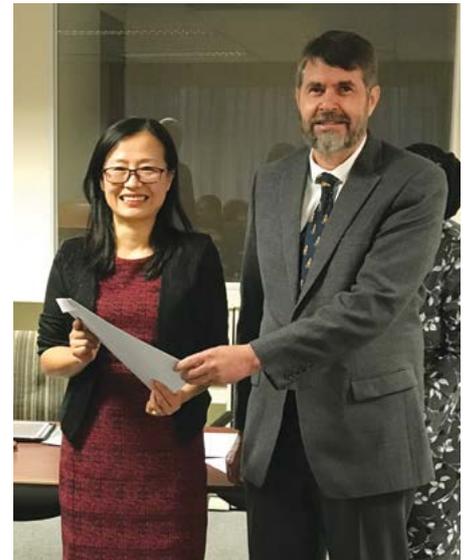
An evening to be proud of

The graduation ceremony for AFSA's Advanced Programme in Alternative Dispute Resolution 2018, held on the 29th of April 2019, marks 21 years of AFSA training in the field of dispute resolution.

The chairman of the AFSA Training Division, Advocate Aslam Bava SC, said that it was an evening to be proud of. He said that the interaction with the class of 2018 had been very rewarding and that five candidates had passed the

full course with distinction. They are Tebogo Mphela, Ory Ben Zeev, Kgomotso Mthetwa, Wendy Ntombela and Julia (Zhang) le Roux, the top achiever of the 2018 class!

Distinctions in stand-alone modules were achieved by Shane Voigt (International Arbitration), Graig Philander (International Arbitration), Prof Marlene Wethmar-Lemmer (International Arbitration) and Faheema Laher (Domestic Arbitration).



Top Achievers

Left to Right: Prof André Boraine, Advocate Michael Kuper SC, Tebogo Mphela, Ory Ben Zeev, Julia (Zhang) le Roux, Kgomotso Mthetwa and Advocate Aslam Bava SC, chairman of the AFSA Training Division.

Our warmest congratulations to Julia (Zhang) le Roux, AFSA's International Registrar, seen here receiving her certificate from Prof André Boraine, Dean of the Faculty of Law at the University of Pretoria.

The AFSA Advanced Course, aimed at building a genuine body of expertise in ADR, is accredited by and offered under the auspices of the University of Pretoria. Prof André Boraine, Dean of the Faculty of Law at the University of Pretoria, thanked Advocate Kuper for his unmatched passion for the development of AFSA and paid tribute to those who had

With the consent of the disputing parties, graduates who register as confidential clerks, are afforded the opportunity of sitting in on AFSA arbitrations, learning from experienced arbitrators how an arbitration is conducted and writing draft awards.

contributed to the training initiative in the past, including Prof Grovè and the late Frances Turton.

In his address, Adv Michael Kuper outlined the confidential clerk project which offers graduates of the AFSA course the

opportunity of gaining practical experience in arbitration. With the consent of the disputing parties, graduates who register as confidential clerks are afforded the opportunity of sitting in on AFSA arbitrations, learning from experienced arbitrators how an arbitration is conducted and writing draft awards. He said this project offered a rare opportunity to graduates to become future arbitrators.

As specialist areas grow and develop, certain modules acquire great importance for specialist users, e.g. international arbitration and construction. Selected modules are therefore offered as stand-alone courses.

The 2019 training course, with 36 attendees, started on the 14th of May 2019. AFSA Training wishes them the very best of luck!

For information about the course or AFSA's free-standing specialist modules, please consult AFSA's website or contact Selina Tshabalala selina@arbitration.co.za.

SACETA SIGNS COOPERATION AGREEMENT WITH AFSA AND CAJAC

In January 2019 AFSA and CAJAC entered into an agreement with the South Africa China Economy and Trade Association known as SACETA.

SACETA was formed in 2011 and this non-governmental organisation was set up by Chinese-funded enterprises and some Chinese-owned enterprises in South Africa. SACETA now has more than 130 members and the total investment of SACETA members in South Africa amounts to more than 13 billion US dollars

members, will assist SACETA members in better understanding the South African legal environment and assessing legal risk relating to business and investment in South Africa. SACETA members will also be encouraged to make use of dispute resolution mechanisms provided by CAJAC and AFSA. Information and guidance will

SACETA now has more than 130 members and the total investment of SACETA members in South Africa amounts to more than 13 billion US dollars and involves finance, mining, home appliances, communications, automobile, engineering, machinery, real estate, textile, clothing, logistics and other sectors which play an important role in the South African economy.

and involves finance, mining, home appliances, communications, automobile, engineering, machinery, real estate, textile, clothing, logistics and other sectors which play an important role in the South African economy.

It was agreed that AFSA and CAJAC, drawing on the expertise of its founding

be provided by way of lectures to SACETA members and the distribution of publications.

The parties will also work together in the furtherance of their common interests to promote sound corporate governance and affordable and efficient resolution of disputes.



Mr Wei, Secretary General of SACETA



The Arbitration Foundation of Southern Africa
NPC

BOARD OF DIRECTORS ENLARGED

AFSA has pleasure in announcing a significant enlargement of its Board of Directors following the extensive amendment of its Memorandum of Incorporation in order to reflect its national and international activities.

The Board consists of the following members:

- Advocate Michael Kuper SC (Chairman)
- Advocate Ghandi Badela
- Advocate Aslam Bava SC
- Advocate Azhar Bham SC
- Timothy Fletcher
- Advocate Patrick Lane SC (Vice-Chair)
- Stuart McCafferty
- Leslie Mkhabela
- Advocate Lindi Nkosi-Thomas SC (Vice-Chair)
- Advocate Anthea Platt SC
- Advocate Leon Sibeko SC
- Desmond Williams

20 REWARDING YEARS WITH AFSA

Selina Tshabalala was recently honoured by the AFSA Board and Management Committee when she celebrated twenty years of service with AFSA.



Selina Tshabalala

Selina was born and bred in Johannesburg but, after matriculating, decided to spread her wings and relocated to Durban to train at the Durban Technicon. After returning to Johannesburg she enrolled for a secretarial training course in Sandton. Her first job was in the canteen at Maisels Chambers but at times she helped out with administrative duties at AFSA. She soon developed an interest in training administration and was then offered a job at AFSA.

To brush up on her skills she enrolled for a Public Relations course at Damelin. When she discovered that her newly-acquired knowledge helped her in dealing with the AFSA training students she enrolled for a Certificate in Marketing Management at UNISA and later for an Advanced Certificate. Selina says "I loved it and I then registered with MANCOSA for a degree in Marketing Management, which I hope to successfully complete in two to three years."

Selina is well known to and appreciated by the students of AFSA's Advanced Course in Dispute Resolution.

Selina is well known to and appreciated by the students of AFSA's Advanced Course in Dispute Resolution. She enjoys welcoming them and liaising with them during the course of the year and hopes to continue doing so in future. She regards AFSA as a stable and very pleasant working environment with friendly people as colleagues.

Her only child is a twelve year old boy with a passion for soccer and a soft spot for his mum.

NEW PUBLICATION TO CONTAIN RESEARCH PAPERS EVALUATING THE NEW YORK CONVENTION

To celebrate the 60th Anniversary of the New York Convention and in the context of South Africa's International Arbitration Act, AFSA will soon be publishing five research papers, submitted by graduates of the AFSA course, in a new research publication that will be known as AFSA Perspectives.

Students were assigned the task of writing an evaluation of the New York Convention, as seen from an African perspective, after 60 years of the existence of this important Convention. AFSA Perspectives is to appear annually and is intended for local and international distribution.

Historical quirks

SOME INSIGHTS INTO SOUTH AFRICAN ARBITRATION

COULD WOMEN BE ARBITRATORS?

At about the time that Van Riebeeck (1652) sailed to the Cape, Johannes Voet was compiling his Commentary on the Pandects, a work rightly described by Sir John Wessels as a comprehensive legal encyclopedia, the standard and authoritative work on Roman and Roman-Dutch Law. Voet included an account of the law and practice of arbitration, and having dealt with what he called Cases of mad men, women and minors, he went on to pose the question whether women could be arbitrators. This is what he said (Book 4, title 8, section 6):

"Women may now be arbitrators. – But the Civil law did not allow women to undertake arbitrations on account of the modesty of the sex, but commanded that this office, however private, should be peculiar to men. Yet this is not now observed; since after deciding that women were even capable of the office of judge it would have been absurd that the power of taking up arbitrations should be denied them."

WHAT IS THE EARLIEST REFERENCE TO MEDIATION IN SOUTH AFRICA?

The Eastern Cape was for a long period the unsettled frontier of the Cape Colony and the Xhosa tribes did not suffer colonial intrusions in silence. Sir Harry Smith, then the Governor of the Cape Colony, saw some purpose in negotiating a deal with the Xhosa Chiefs and he turned to the Missionary, Rev. W.B. Shaw, to intercede in the capacity of Mediator. In his letter to Rev. Shaw dated 1 April 1837, he said:

"I hereby authorise and appoint Mr W. B. Shaw to act in my name as Mediator between all the Native Tribes to whom a British Resident is not nominated, that Peace may be preserved; and I approve of their good understanding already effected by Mr Shaw's judicious mediations with the great Tambookie Chief "Ioi" and the Fingoe Chief "Ludide", by which War was honourably and discreetly avoided – Mr Shaw will impress upon all the Chiefs that their mutual good understanding will enable me to call upon them to aid Her Majesty's Government in the suppression of the present wicked War, if called on by me through Mr Shaw, to whom I thus delegate in these points my authority if hereafter necessary; and all the Chiefs are to regard the Enemies of the Queen of England as their Enemies and to act accordingly when called on – H.S. Smith Governor."

We append a photograph of a miniature pennant gifted by Admiral Semmes, the Commander of the Confederate Raider the C.S.S. Alabama to his agents in Cape Town as a keepsake. Oddly, the miniature pennant is not the naval pennant of the Confederate Navy. It is an early rendition of what would become the United States Flag. Note how the States, each represented by a star, are subsumed into a larger star so that this early version of what would become the United States Flag represents a seemingly unique variant.

THE RIDDLE OF *the Alabama*



Rumour has it that this miniature pennant was part of the booty taken by the Alabama from a merchantman flying the Yankee Flag and about to enter Cape Town harbour when it was seized. This miniature pennant has miraculously survived and is exhibited in AFSA's Alabama Room at its Johannesburg Headquarters. Readers are cordially invited to view the pennant and the other artefacts on show and if anyone can give the editor any information regarding the possibility of other examples of this configuration, it will be much appreciated.