

THE AFSA COURT

A NEW DIMENSION IN ARBITRATIONS ADMINISTERED BY AFSA

By Patrick Lane SC

The new International Rules came into force on 1 June 2021 and represent, together with the advent of the International Arbitration Act, the reaffirmation of South Africa as the leading administrative body for international arbitration in Southern Africa. The Rules align themselves with the best international standards for arbitration designed to ensure efficient, flexible, and impartial arbitrations.

For the first time in South Africa, although common internationally, the Rules introduce the AFSA Court. It is made up of twenty leading practitioners in commercial arbitration and is the final authority for the proper application of the Rules.

The Court is governed by its constitution and the Rules which provide, generally, for its composition, its powers, and its functions. The Constitution makes provision for the appointment of a Secretary General which performs the functions of the

For the first time in South Africa, although common internationally, the Rules introduce the AFSA Court.

The Court cannot consist of more than two-thirds of the same nationality. At present its members come from England, Australia, Hong Kong, France, Holland, Kenya, Botswana, and South Africa and will have a member from China and two members from the SADC. Retired Chief Justice Sandile Ngcobo is the president of the Court and Edwin Glasgow QC the vice-president. The other members of the Court are presently Adv Michael Kuper SC, Adv Patrick Lane SC, Professor David Butler, Jonathan Ripley-Evans, Des Williams, Harry Montovou QC, Neil Kaplan QC, Bruce Collins QC, John Bishop, Tengo Rubadiri, Remi Gerbay, Judge Edward Torgbor, Lise Bosman, Professor Maxi Sherer and Dr Fuyong Chen.

Patrick Lane SC
Chairman of AFSA International
and a member of the AFSA
International Court

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Edwin Glasgow QC
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Secretariat in terms of the Rules and who is responsible for the day-to-day administration of the referrals.

The Court does not in the conventional sense give judgements. It is the final

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authority for the proper application of the Rules as the appointing or confirming authority and for deciding any arbitral challenges. Article 2 of the Rules precludes the Court from itself deciding the merits of a dispute and, as distinct from the ICC Court, the Court does not vet the awards which are and remain the domain of the Tribunal. The function of the Court is to supervise the administration of the resolution of disputes assisted by the Secretariat to whom all communications to the Court must be addressed. The decisions of the Court are confidential.

An important provision is that the members of the Court, whilst not being eligible for appointment as

an arbitrator by the Court may take appointments as arbitrator from the parties to an arbitration or be appointed as the President of the Tribunal by the party appointed arbitrators in AFSA administered arbitrations.

The exercise of the Court's control over the appointment or confirmation of arbitrators permeates the Rules. Expedited and emergency arbitrations have been introduced in terms of Articles 11 and 12 in which the Court plays a key role in acceding to or refusing the requests and appointing the arbitrators. It controls the replacement of arbitrators in terms of Article 14 and may decide, in exceptional circumstances, when it considers it appropriate, that the remaining arbitrators, if any, may continue with the arbitration.

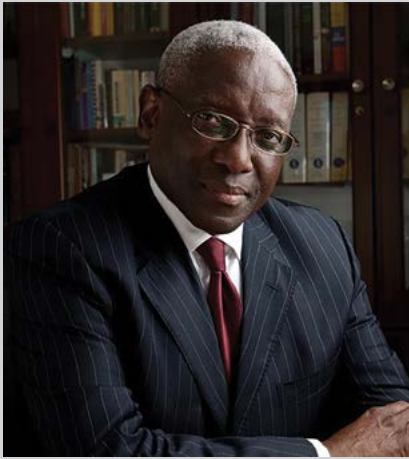
All challenges to the appointment of an arbitrator or for the removal of an arbitrator are decided by the Court in terms of Article 13. It also has the power of its own discretion to remove an arbitrator who refuses to act or to perform his or her functions in terms of

The function of the Court assures the parties referring their dispute to AFSA that there is absolute independence and neutrality in the process of establishing the Tribunal and dealing with challenges.

the Rules or if the arbitrator becomes *de jure* or *de facto* unable to perform his or her functions or for other reasons fails to act without undue delay.

Joinder and intervention of parties to an arbitration and consolidation of arbitrations are solely regulated by the Court before the appointment of the Tribunal.

The function of the Court assures the parties referring their dispute to AFSA that there is absolute independence and neutrality in the process of establishing the Tribunal and dealing with challenges. It introduces a new and necessary dimension to the administration of international arbitration in Southern Africa.



Retired Chief Justice Sandile Ngcobo
President

PRESIDENT OF THE AFSA INTERNATIONAL COURT

Retired Chief Justice Ngcobo received an LLM degree from Harvard Law School concentrating on constitutional law and international human rights. He was a recipient of a Fulbright Scholarship and a Harvard Law School Human Rights Fellowship. Retired Chief Justice Ngcobo gained extensive experience in the legal profession, both in South Africa and internationally, before being appointed to the Constitutional Court in 1999. In 2009 he was appointed as Chief Justice of the Republic of South Africa, a post he held until his retirement. Since his retirement he has chaired many Commissions and Panels and served as Acting Judge of the Supreme Court of Namibia at the request of the President of the Republic of Namibia. Chief Justice Ngcobo was recently appointed as Chairperson of the Covid Vaccines Adverse Effects Fund. He is also known as a campaigner of judicial reform and piloted many judicial reform projects.

INTERNATIONAL ARBITRATION ACT OPENS THE DOOR TO INTERNATIONAL ARBITRATION

South Africa's International Arbitration Act of December 2017 opened the door to international arbitration.

AFSA International has in a short space of time become a leader in the administration of international disputes and has taken active measures to create the legal infrastructure and platform for high quality service in administration of such disputes.

Some 92 international disputes have already been entrusted to AFSA for resolution, representing parties from across the globe including parties from...



Australia



British Virgin Islands



Gabon



Italy



Mozambique



Saudi



Tanzania



Bahamas



Cayman Islands



Germany



Kenya



Namibia



Singapore



Uganda



Belgium



China



Ghana



Lebanon



Netherlands



South Africa



United Kingdom



Bermuda



DRC



Gibraltar



Lesotho



Nigeria



Spain



United States



Botswana



Eswatini



India



Mauritius



Rwanda



Switzerland



Zambia



Brazil



France



Ireland



Malawi



Russia



Taiwan



Zimbabwe



By Edwin Glasgow QC
Vice President of the
AFSA International Court

INTERNATIONAL PERSPECTIVE

AFSA TAKES ITS RIGHTFUL PLACE IN THE INTERNATIONAL ARBITRATION ARENA



It seems only yesterday when we were all, perhaps too carelessly, hopping on and off planes, flying half way round the world to participate in half-day directions hearings, case management conferences, and mediations which necessity has now taught us, perhaps for good, can adequately and properly be dealt with “virtually” at a fraction of the cost. It was just as the first tsunami of the Covid pandemic hit us that I, together with lots of far more distinguished international arbitration practitioners, was greatly looking forward to gathering in Johannesburg to share a conference at which the new AFSA international Rules were to be launched and the AFSA Court was to have its first plenary session. Covid put paid to all that too.

However, the pandemic has yet again taught us that necessity is the mother of invention. Undaunted by it, the Rules have now been published and provide a welcome breath of life into

supporter of AFSA since the early days of its formation a quarter of a century ago. But it was not until the passing of the International Arbitration Act in 2019 that it really took its place on

new inclusive and truly international shape of AFSA but also by the draft Rules. No one is now surprised to witness the rapid steps which AFSA has already taken to occupy its rightful place in the international arbitration arena. It was by then already administering 62 international arbitrations. That has grown to nearly 100 today. The breadth of the referrals stretches across the globe, with cases from 41 different Countries, albeit in all of them to date at least one of the parties has been domiciled in South Africa. It is unsurprising to note that

The Rules have now been published and provide a welcome breath of life into the establishment of South Africa as a hub for international arbitration.

the establishment of South Africa as a hub for international arbitration. The drafting committee led by Professor Maxi Sherer has given impressively careful attention to the production of a set Rules which, though unfussy and straightforward are at the cutting edge of internationally accepted and functional procedure. They are a massively important part of the renaissance of AFSA which is now able, equipped and determined to provide a world class, inclusive and much needed dispute resolution service for Southern Africa – and beyond.

My own contribution to the launch of the proposed new Rules had been insignificant encouragement from the touch-line. I had been a too passive

the world stage and the launch of its new Rules became eagerly anticipated in Europe – which then still included the United Kingdom! For far too long, far too many African disputes had been resolved by foreign arbitrators and mediators, under the auspices of foreign institutions. Being acutely conscious of the enthusiasm with which this renaissance of AFSA and the launch of its draft new Rules were anticipated in London, I had been privileged to host a seminar at 39 Essex Chambers, which I share with Patrick Lane SC who, with Michael Kuper SC had done so much of the impressive work on this, to introduce both them and the Rules to a packed audience for which we ran out of seating! Not only were we all impressed to learn about the

Not only were we all impressed to learn about the new inclusive and truly international shape of AFSA but also by the draft Rules. No one is now surprised to witness the rapid steps which AFSA has already taken to occupy its rightful place in the international arbitration arena.

the internationally respected School of Oriental and African Studies in London has ranked AFSA as the leading arbitration centre in Africa.

The significance of the establishment of an arbitral administrative body in Southern Africa whose Rules are modern, clear, user friendly and easily recognizable by the international arbitration community cannot be over-stated. Its reach now extends to the SADC countries adopting the Rules which significantly broadens their acceptance in a world which is increasingly trading with Southern Africa. The character of the disputes that are being referred to AFSA ranges from general contractual issues and

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commercial disputes to engineering, construction and large infrastructure matters – with many billions of dollars, Euros, pounds and Rand being at stake.

South Africa enacted the International Act in December 2017 based principally and necessarily on the UNCITRAL Model Law. Its stated objectives were to: 7.1. Facilitate the use of arbitration as a method of resolving international disputes; 7.2. Adopt the Model Law for use in international commercial disputes; 7.3. Facilitate the recognition and enforcement of certain arbitration agreements and arbitral awards; 7.4. Give effect to the obligations of SA under the Convention. The Act thus rectified earlier legislation relating to the enforcement of foreign arbitration awards and properly and essentially aligned South Africa with the New York Convention. It provided the legal framework to host international arbitrations and AFSA has been able to provide the administrative platform which is now established and enhanced by the Rules.

A reading of the Rules, which were drafted with the new statutory provisions firmly in mind, provides a real sense of non-invasive, independent and efficient arbitral practice which both respects the agreements of the parties and provides for effective enforcement of them. A Court has been established like that of the LCIA and the ICC to

govern and control the appointment of arbitrators and rule on issues such as joinder, third party intervention and emergency arbitration. Under the Chairmanship of the widely respected retired Chief Justice Ngcobo, the court has twenty members who are drawn from among the leading international practitioners but with a limit on the number that can be appointed from any one jurisdiction so as to avoid any potential perception of national bias.

AFSA has scrupulously and deliberately avoided the pitfall of introducing invasive powers and practices to interfere with party autonomy or with the work done and awards made by arbitral Tribunal. It offers assistance, but not interference or intervention save where the Court is required to act in cases where any Tribunal encounters problems which it cannot effectively resolve or is failing properly to fulfill its function.

The passage of the new Act placed South Africa on the global arbitration map but, although being an essential prerequisite for the establishment of an effective arbitration hub, it left the real work to be done on the ground. And

For far too long these disputes were, more often than not, referred to arbitration administered by one of the European institutions and determined usually by European, and almost invariably non-African, arbitrators.

it has been! Equally, the publication of modern and effective rules, while being essential, can do not more than enable that hub to function. The success of the entire enterprise ultimately depends on the support of a the vibrant and growing Southern African business community with its increasing international reach. Confidence in AFSA as the go to institution depends, and will always rightly depend, on the efficiency with which it and the arbitrators whom it appoints conduct the arbitrations. The appointment of skilled neutral arbitrators, qualified and experienced in the practices of international arbitration has been and will be a core, indispensable requirement.

South Africa has a buoyant active business community operating internationally. Inevitably disputes arise. For far too long these disputes were, more often than

not, referred to arbitration administered by one of the European institutions and determined usually by European, and almost invariably non-African, arbitrators. The FIDIC rainbow suite of contracts are widely used by the construction industry and provided, understandably for historical reasons, for the disputes to be decided under the administration of the ICC. It is rewarding to see that the tide has changed and that there is an increasing number of international disputes now being referred to and administered by AFSA.

Another noticeable change to the South African legal landscape is the emergence of an increasing number of large international law firms setting up practices in South Africa where, unlike some other jurisdictions, they are welcomed on to a level playing field as a base for penetration into the whole of Southern Africa. There is strong and active support of AFSA by these firms, more than a dozen of which are active Members.

The number of referrals of international arbitrations to AFSA speak for themselves. The South African and international business communities have given

it a very real vote of confidence. This will be enhanced by the publication of the Rules which have been drafted with impressive care. Determined vigilance is going to be required to maintain the standards that have attracted these referrals and to embrace the dynamic practice of international arbitration.

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The integration of South Africa and its practitioners into the global arena, and the inclusive way in which AFSA has developed, was long overdue but is now universally welcomed and embraced with enthusiasm.



Edwin Glasgow QC
Vice President

Edwin Glasgow CBE QC is a member of the bar of England and Wales practising as an arbitrator and mediator in 39 Essex Chambers in London, Singapore and Malaysia and is a judge of the Qatar Financial Regulatory Tribunal. He was the founding chairman of the Singapore International Mediation Centre and has conducted many hundreds of international and domestic arbitrations for most of the international arbitration institutions.



Patrick Lane SC

Mr. Lane is a member of the bar both in South Africa and London, after formerly practising as an Attorney. He is a member of the Maisels Group and 39 Essex Street Chambers. Mr. Lane acts as counsel and arbitrator under EU, ICC, DIAC, LCIA and UNCITRAL rules in domestic and international matters and has chaired and been a member of a number of Dispute Adjudication Boards. He is a Vice-Chair of the AFSA Board of directors and is a member of the CAJAC International Guiding Committee. Mr. Lane is a Chartered Arbitrator (CI Arb) and an accredited arbitrator of HKIAC and SIAC, he has published and spoken regularly at both national and international conferences.



Adv Michael Kuper SC

Advocate Kuper SC was the convener of the joint venture between the legal and accounting professions and the Chamber of Business to establish AFSA for the purpose of providing administered arbitration and mediation in the Southern African region and the establishment of an arbitral regime consistent with the UNCITRAL Model Law. He has participated extensively as counsel and arbitrator in SADC countries, including Indian Ocean islands and has wide experience in international arbitrations in countries including the United Kingdom, France, Nigeria and the United States. He has been the Chairman of AFSA since 1996 and played a leading role in establishing the China- Africa Joint Arbitration Centre (CAJAC) He is also Chairman of CAJAC Johannesburg.



Mr Des Williams

Des Williams was the Chairman of Werksmans from 2005 to 2015 and is the head of the firm's arbitration group. He is experienced in all fields of commercial litigation and alternative dispute resolution, including international litigation, arbitration and mediation. He was the sole South African member of the Court of Arbitration of the International Chamber of Commerce (ICC) from 2011 to 2018 and is the former Co-Chair of the Litigation Committee of the International Bar Association. He is also a former member of the IBA's Legal Practice Division and is Chairman of AFSA's newly established SADC Division. He is ranked as one of the world's leading arbitration specialists in the International Who's Who of Arbitration.



Mr Tengo Rubadiri

Tengo Rubadiri is a Practising Attorney with over 30 years' experience in The Republic of Botswana. He is a former Judge of the Industrial Court in Botswana and is a member of the Chartered Institute of Arbitrators (CIARB). He is a former Chairman of the Botswana Institute of Arbitrators and current Vice Chairman thereof, a Member of the Association of Arbitrators South Africa (AOA), and one of the Botswana representatives to the AFSA SADC Panel of Arbitrators. Mr Rubadiri is a member of the Dispute Resolution Boards Foundation (DRBF) and has experience on many a Dispute Board in Construction work, particularly on FIDIC Contracts. He has extensive training in International Commercial dispute resolution and in particular arbitrations He has a wealth of training on matters involving the UNCITRAL Arbitration Rules, International Chamber of Commerce (ICC Rules) and London Chamber of Arbitration (LCIA) Rules, IBA Rules and AOA Rules.



Prof. David Butler

Prof. Butler is Chief Consultant to the South African Government on the International Arbitration Act and Professor Emeritus and Research Fellow at Stellenbosch University's Department of Mercantile Law. He is also a member of the South African Law Reform Commission Advisory Committee for Alternative Dispute Resolution. Prof. Butler is South Africa's leading academic on arbitration law. He regularly speaks and represents South Africa at various international conferences and has written widely on the field of international arbitration, including "Arbitration in South Africa Law and Practice" (ARIA Vol. 4 No. 4 1993).



Judge Edward Torgbor

Justice Edward Torgbor is currently a Specialist International and Chartered Arbitrator and Mediator based in Nairobi (Kenya). He is a Fellow of the Chartered Institute of Arbitrators (England) and former Vice President of the LCIA African Users Council. His international experience is underpinned by having completed law degrees at the Universities of Edinburgh (LLB), Cambridge (LLB/LLM), Stellenbosch (LLD) and as Academic Visitor at the University of Oxford, England. He has many years' experience in the legal, judicial and academic fields, and in dispute resolution. He was a barrister in England, Judge of the High Court of Kenya, Professor of Law (Stellenbosch University) and Court Member of the LCIA. His areas of specialisation include Domestic and International Arbitration, International Trade and Investment Law, Corporate and Commercial Law, Energy and Natural Resources and Banking.



Prof. Lise Bosman

Lise Bosman is based at the Peace Palace in The Hague, as Senior Legal Counsel at the Permanent Court of Arbitration (PCA) and Executive Director of the International Council for Commercial Arbitration (ICCA). She is also an Adjunct Professor at the University of Cape Town, South Africa, and has published and spoken widely in the field of international arbitration. Lise is the General Editor of the 'ICCA International Handbook on Commercial Arbitration' (a seven-volume loose-leaf collection of arbitration-related legislation and commentary on over 80 jurisdictions; Kluwer Law International, published since 1984) and the General Editor and contributing author of 'Arbitration in Africa: A Practitioner's Guide' (Second Edition, Kluwer Law International, 2021). Her areas of specialization are international commercial arbitration law and practice; the practice and development of international arbitration in Africa; international investment law; investor-State arbitration; and State-State arbitration.



Neil Kaplan QC

Neil Kaplan CBE QC SBS has been a full-time arbitrator since 1995. Called to the Bar of England and Wales in 1965, Mr Kaplan has practiced as a barrister, Principal Crown Counsel at the Hong Kong Attorney General's Chambers, and served as a Judge of the Supreme Court of Hong Kong in charge of the Construction and Arbitration List. He has been a Queen's Counsel since 1982 and was a founder and first head of Des Voeux Chambers in Hong Kong. From 1991 until 2004, he was Chairman of the Hong Kong International Arbitration Centre, and in 1999-2000 he was President of the Chartered Institute of Arbitrators. Since 1995, he has been a Council Member and now Governing Board Member of the International Council of Commercial Arbitration (ICCA) and in 2012-2016 he was a Member of the ICC International Court of Arbitration. He is a Chartered Arbitrator and a Fellow of the Chartered Institute of Arbitrators, the Hong Kong Institute of Arbitrators and the Singapore Institute of Arbitrators. Additionally, he is a panellist of several other arbitral institutions. Since 2017, Neil has been the President of the Court of the Mauritius Chamber of Commerce and Industry Arbitration and Mediation Centre. In 2020, he was appointed first President of Delos Dispute Resolution's board of advisers.



John Bishop

John qualified as a solicitor in England and Wales (1971) and Hong Kong (1983). From 1969 to 2016 he was a member of Masons (now Pinsent Masons LLP) and was Head of Construction and Engineering, Managing Partner, Senior Partner, Chairman of the Board, Senior Partner - Asia Pacific, Head of Hong Kong and Beijing offices. Based in London, China (Hong Kong and PRC) and Dubai, John specialised in construction and engineering (including mining, dredging, oil and gas and energy projects). His disputes experience included ADR, Court and Arbitration Proceedings in many jurisdictions. In 2016, John joined Arbitration Chambers, London, Hong Kong and New York and now practices as an Arbitrator, Mediator and Dispute Board Member. As Arbitrator he has been Chairman/President, Party Appointed Arbitrator, Sole Arbitrator and Appeal Arbitrator under many of the international rules of arbitration including ICC, LCIA, DIAC, LCIA-DIFC, CIETAC, SIAC, AFSA and UNCITRAL rules. John has been recognised by most of the leading directories for his expertise in Construction, Arbitration and Mediation and has held senior roles with a large number of specialist arbitration, mediation and construction institutions.



Prof. Dr. Maxi Scherer

Prof. Dr Scherer is a member of the Paris bar and a Solicitor of England and Wales. She is a Special Counsel at Wilmer Cutler Pickering Hale and Dorr LLP (London). Professor Maxi Scherer represents clients in numerous international arbitrations before most major arbitral institutions (including HKIAC, ICC, ICDR, ICSID, LCIA, SCC and SIAC) and at various seats, governed by a variety of substantive and procedural laws (including Algerian, Congolese, English, French, German, Hong Kong, Nigerian, and Swiss law), in different industry sectors, with a strong focus on energy disputes. She regularly serves as arbitrator in numerous ad hoc and institutional arbitrations, including with States and State-owned parties, with significant amounts in dispute and multiple parties, conducted in English, French and German. She has published numerous articles and treatises in the field of international arbitration and is the General Editor of Kluwer Journal of International Arbitration.



Harry Matovu QC

Harry Matovu QC is a Barrister and Queen's Counsel at Brick Court Chambers, London, and a Governing Bencher of the Inner Temple. He has a wide-ranging and high-profile commercial practice, both domestically and abroad, including energy and natural resources, public international law, private international law and cross-border disputes, civil fraud, finance, insurance/reinsurance and international arbitration. Harry is a member of the ICC and the LCIA, a member of the Court of the Lagos Chamber of Commerce International Arbitration Centre (LACIAC) and a member of the panel of arbitrators of the London Chamber of Arbitration and Mediation (LCAM). He was nominated as Silk (QC) of the Year for International Arbitration in the Legal 500 Awards 2020, and he is top-rated (Band 1) by Chambers & Partners as an international arbitrator. Harry is regularly instructed as counsel or appointed as presiding or party-nominated arbitrator in major ad hoc and institutional arbitrations (ICC, LCIA, UNCITRAL, ARIAS, ICSID) in multi-million-dollar disputes between commercial parties, and disputes involving States and state-owned enterprises.



Mr. Jonathan
Ripley-Evans

Mr. Ripley-Evans is a Director at Herbert Smith Freehills LLP based in Johannesburg. He has extensive experience in alternative dispute resolution, in particular arbitration and mediation, and general commercial litigation. He is an AFSA accredited mediator and arbitrator, a board member of the Chartered Institute of Arbitrators, SA Branch, and a committee member of both AFSA International and AFSA Construction.



Dr. Remy Gerbay
Bishop

Dr Gerbay is a partner in the arbitration group of Hughes Hubbard & Reed in Washington DC, and an academic based at Queen Mary University of London's School of International Arbitration. Remy was formerly Deputy Registrar of the LCIA and acting Registrar of DIFC-LCIA. He frequently sits as arbitrator in international disputes and serves on the Editorial Boards of the Journal of International Arbitration and the ICC Bulletin. He is Co-Chair of the American Society of International Law's dispute resolution group.



Bruce Collins QC

Bruce Collins is an international lawyer who has practised extensively in commercial law and commercial engineering and construction arbitration for more than 40 years, specialising in complex commercial, engineering, construction and infrastructure cases. His infrastructure and engineering experience also extends to hydro-electric power stations, port facilities and LPG facilities. He has taught arbitration in Moscow, Sydney, Bahrain, Sri Lanka, Hong Kong and elsewhere and has delivered papers and lectures in cities across the world. He is a member of numerous panels of arbitrators including CEITAC, Beijing, the Hong Kong International Arbitration Centre, the Singapore International Arbitration Centre and the Korean Commercial Arbitration Centre. He is a member of the specialist Spanish Court CIMA and has recently chaired an LCIA Arbitral panel hearing; an international oil sales dispute between English and African companies and sat on an ICC panel in Singapore. He now acts as an independent full-time international arbitrator in commercial cases which often involve conflicting expert evidence.



Dr. Fuyong Chen

Dr. Fuyong Chen is the Deputy Secretary-General of the Beijing Arbitration Commission/ Beijing International Arbitration Center (BAC/BIAC) and the Vice-President of Asia Pacific Regional Arbitration Group (APRAG). He is a qualified PRC lawyer with a LLB from China University of Political Science and Law, a LLM from Peking University and a PhD from Tsinghua University. Dr. Chen was a visiting researcher (2007-08) at the Law School of UC-Berkeley and is a Research Fellow of the Center for the Study of Dispute Resolution at Renmin University of China. He is the General Editor of Beijing Arbitration Quarterly and has published over ten journal articles on commercial dispute resolution, including "Striving for Independence, Competence and Fairness: A Case Study of Beijing Arbitration Commission", in The American Review of International Arbitration, v.18/no.3. Dr. Chen is the co-author of Chinese Arbitration Law (LexisNexis 2015) and China Arbitration Handbook (Sweet & Maxwell 2011). He is also the Chinese co-translator of Gary Born's International Arbitration: Law and Practice and Christopher R. Drahozal and Richard W. Naimark's Towards a Science of International Arbitration: Collected Empirical Research. Dr. Chen has extensive experience in handling various commercial disputes through arbitration and mediation and is a regular speaker at international conferences and seminars.



INTEGRATING AND HARMONISING THE PRACTICE OF COMMERCIAL ARBITRATION ACROSS THE SADC REGION



By Stanley Nyamanhindi, CEO SADC Division

Since inception, the AFSA SADC Division has generated quite a lot of interest amongst key players in arbitration in the SADC Region. The most significant step taken was the launch of the panel of arbitrators on the 11th of December 2020.

Eighty (80) qualified and well-practiced arbitrators have since been assessed and accepted to commence practical and curriculum-based training. Each of these was nominated for appointment by the respective Bar Association of each SADC Member State, based on a strict criterion. 14 Bar Associations out of the 16 SADC Countries have nominated experts to this panel, underscoring its depth and diversity.

of the panelists is in progress. The Division has commenced advanced deliberations with various state and non-state actors to advance consensus in the way of institutionalizing the practice of international commercial arbitration. We are pleased to announce that the AFSA international rules have been adopted as the standard to apply for regional arbitrations thus bringing certainty and uniformity.

ANGOLA | BOTSWANA | COMOROS | DRC | ESWATINI | LESOTHO
MADAGASCAR | MALAWI | MAURITIUS | MOZAMBIQUE | NAMIBIA
SEYCHELLES | SOUTH AFRICA | TANZANIA | ZAMBIA | ZIMBABWE

To complete the constitution of the panel, a regional President is to be selected who will be deputized by a unique tripartite panel of Vice Presidents to represent French, Portuguese and English as the official languages of SADC. Looking forward, an induction

AFSA SADC looks to work with various SADC Member states, public and private sector players to develop domestic arbitration based on the AFSA domestic rules and attendant standards of practice and procedure.

What role can you play or what can your organisation do to register interest in joining the network of SADC stakeholders in international Commercial Arbitration under AFSA SADC Division?

- Reach out to us for a unique presentation to your law firm/ network/ company or institution in order to receive a detailed breakdown of the AFSA SADC Division regional strategy and how this can positively impact or bolster your current interest in the field of arbitration.
- AFSA SADC Division is in the process of engaging various private sector and public sector stakeholders with a substantial interest in arbitration to create partnership around recognition of a regional seat for international commercial arbitration. Various MOUs and other agreements have been executed in order to advance this cause.
- Join our network of affiliates to make in into our directory of institutions that have adopted an internationally recognised standard of administration and regulation of the practice of arbitration.
- The AFSA SADC Division offers comprehensive training to give you the key to upgrade your skills in alternative dispute resolution and compete at a global level. This certification is also one of the pre-requisites for joining the AFSA SADC Panel of Arbitrators. We are pleased to announce that the qualification is accredited by the University of Pretoria's Faculty of Law.
- As a young lawyer, you are invited to join the Young AFSA initiative to start a career in arbitration guided by the right resources and expertise.

CONFERENCE IN SEYCHELLES ON THE CARDS

A conference to consider the potential of partnerships and synergies within the domestic, regional and international stakeholder spectrum for commercial arbitration in the SADC region is on the cards for 2022.

AFSA partners and all stakeholders in the administration of international commercial arbitration in SADC, on the African continent and internationally, will be invited to converge in the Seychelles, a SADC member, to consider the best practices for enhancing and maintaining the practice of arbitration and to assess strategies for survival beyond Covid 19.

The AFSA SADC Division has started planning for this conference and the date and further details will soon be announced.



AFSA ON THE EXECUTIVE COUNCIL OF THE INTERNATIONAL COMMERCIAL DISPUTE PREVENTION AND SETTLEMENT ORGANISATION (ICDPASO)

In September 2020 AFSA was invited to become one of some 150 members of the International Commercial Dispute Prevention and Settlement Organisation (ICDPASO) which has been established by the China Council for the Promotion of International Trade.

ICDPASO is intended to be involved in the design and implementation of dispute resolution mechanisms for the Belt and Road Initiative. AFSA is one of only two members of ICDPASO from Africa, the other being the African Union.

At the inaugural ceremony on 25 September 2020 AFSA was nominated and unanimously elected, as one of fourteen members of the Executive Council of ICDPASO.

The other Council Members being as follows:

- All China Lawyers Association (ACLA) - [China](#)
- Amfori - [Belgium](#)
- Arbitration Foundation of Southern Africa (AFSA) - [South Africa](#)
- Asian Financial Cooperation Association - [China](#)
- China Chamber of International Commerce (CCOIC) - [China](#)
- Chinese Society of International Law - [China](#)
- EU-China Friendship Association - [EU](#)
- Law Society of Singapore - [Singapore](#)
- Malaysia - China Business Council (MCBC) - [Malaysia](#)
- Mexican Business Council for Foreign Trade Investment and Technology (COMCE) - [Mexico](#)
- Russian Federal Chamber of Commerce and Industry - [South Asia](#)
- Secretary-General of ICDPASO - [China](#)
- The Bar Association of India - [India](#)
- The 48 Group Hub - [UK](#)

Michael Kuper, Chairman of AFSA, was appointed as a member of the Expert Advisory Committee of ICDPASO.

ESTABLISHMENT OF PANEL OF EXPERTS

AFSA has in recent years experienced significant growth in the need for experts and especially for experts with accounting and related expertise. This includes accounting auditors, forensic auditors and valuers, actuaries, economists, and experts in the field of financial instruments and services.

To meet this growing demand AFSA is in the process of establishing a panel of inter alia forensic accountants and accounting experts who would be available as expert witnesses in arbitrations and mediations. Experts with the necessary experience and expertise are invited to apply to serve on the AFSA Panel of Experts. The application form is available on the AFSA website www.arbitration.co.za and can be completed online or downloaded and completed manually.

Persons applying must be willing to attend AFSA specific training for witnesses. The Panel of Experts will be displayed on the AFSA website and provision will also be made for a "Generation Next" Panel for individuals who aspire to render expert services but may not have the required experience to be considered for the main Panel. The intention is to provide "shadow" opportunities for less experienced individuals with an interest in the field.

Experts with the necessary experience and expertise are invited to apply to serve on the AFSA Panel of Experts. The application form is available on the AFSA website www.arbitration.co.za and can be completed online or downloaded and completed manually.

The first panel will be constituted by December 2021 and thereafter the Appointment Committee will annually review and consider applications for admission to the Panel.



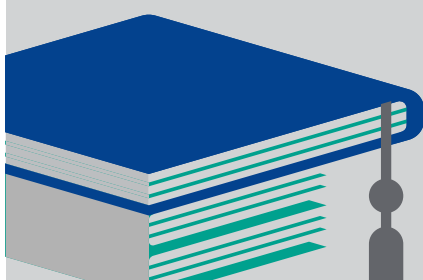
AFSA TRAINING

TO RESUME IN 2022

AFSA's training programme in Advanced Alternative Dispute Resolution, aimed at building a genuine body of expertise in ADR, will resume in May 2022.

This sought-after programme, accredited by and offered under the aegis of the University of Pretoria, will include modules such as an introduction to conflict management and dispute resolution, consensus building processes and skills, a module on arbitration and a choice of specialist elective modules such as arbitration in the construction industry, international commercial arbitration and divorce mediation. Some of the specialist modules will now also be offered as stand-alone courses.

Details of dates and costs for 2022 are being finalised and will be made available in due course. Interested parties may send their name and contact details to Selina Tshabalala selina@arbitration.co.za who will let them have further details when finalised.



SERIES OF WEBINARS THE FUTURE IN THE MAKING

WEBINAR

South Africa's International Arbitration Act has opened new dimensions in the practice of ADR.

In a series of webinars, The Future in the Making, AFSA International will be exploring aspects of the International Rules which have been crafted by an international committee of experts and which provides South Africa and SADC with a credible and attractive procedural regime for the determination of international cases.

The first webinar in this series took place on 22 July 2021. It was presented by AFSA and both the President of the AFSA International Court, Former Chief Justice Ngcobo as well as the Vice President of the International Court, Edwin Glasgow QC, spoke during the webinar.

In future webinars in the series AFSA, in association with its Founding Members with international ties, will explore aspects of the new International Rules including:

- Third party funding
- The role of good faith and perceived fairness in international arbitration
- Arbitration in the modern world - virtual hearings, evidence, e-disclosure, e-bundles and the reduction of the carbon footprint of arbitration. (Articles 15(d) and (e), Article 21 and Article 22 (5))
- Expedited procedure, emergency arbitrator and early dismissal. (Articles 10, 11 and 12)
- Multiple arbitration, joinder and consolidation (Articles 28-30); the differences between these processes and their respective application.
- Pleadings and the taking of evidence in international arbitration: in comparison with the usual approach in domestic arbitrations.


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Further topics will soon be announced.

If you would like to be part of the future in the making and would like to receive an invitation to attend these webinars, please send your name and e-mail address to info@arbitration.co.za. Ref: Webinar invitation.

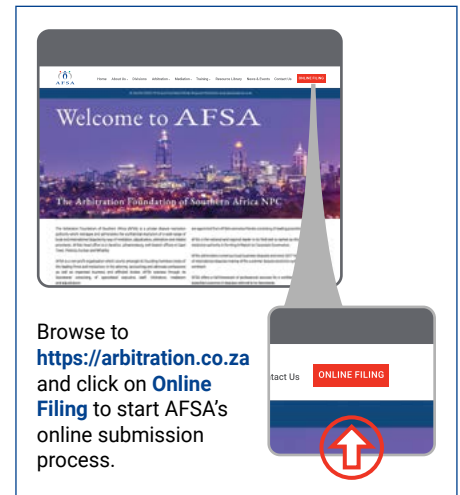
ONLINE FILING SYSTEM

The system makes it possible to file either domestic, international or mediation matters online. It is a secure, encrypted, cloud-based system hosted on the Microsoft Azur platform. Parties to a dispute receive a unique username and password that allows them to upload pleadings and submissions to an online folder which is accessible only to the parties involved in the matter

AFSA's online filing system, introduced in November 2020, is aimed at streamlining the submission and management of disputes referred to AFSA for resolution.

The parties can paginate and create hearing bundles in the folder and can access the bundle in a remote hearing.

This system makes it possible for the parties and the arbitrator/s to access information and to work from wherever they are. Parties to a dispute are invited to make use of the online filing system.



PERSPECTIVES 2

DESIGNING A DISPUTE RESOLUTION MECHANISM FOR BRICS

The second edition of the AFSA publication Perspectives was recently completed and, in this edition, various contributors examine the difficulties to be overcome in creating a shared Dispute Resolution System for the BRICS member states.

Inevitably as trade and investment continues to rise between BRICS member states, which includes Brazil, Russia, India, China and South Africa, so will commercial and investment disputes. It was in recognition of this reality that the BRICS Legal Forum issued the V Moscow Declaration in 2017 calling on the BRICS member states to establish BRICS Dispute Resolution Centres, within their respective jurisdictions,

to create a shared dispute resolution mechanism for the BRICS trading bloc.

In October 2019 the VI BRICS Legal Forum designated AFSA as the BRICS Dispute Resolution Centre for South Africa. In Perspectives 2 the challenges to be overcome in crafting such a system is highlighted and the progress which is being made in creating this shared system is tracked.

The Perspectives series and the topics covered serve as a research tool and an on-going record of the development of arbitration in Southern Africa and Africa. Perspectives 2 can be downloaded from the AFSA website www.arbitration.co.za.

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Contributors to Perspectives 2 include:



Lindi
Nkosi-Thomas SC



Alex
Kamath



Icho
Kealotswe-Matlou



Sarel
van Vuuren



Sybil
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Maseko Poisson

Perspectives can be downloaded from the AFSA website www.arbitration.co.za

The Arbitration Foundation of Southern Africa NPC

Board and National Management Committee

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