



INTERNATIONAL COMMERCIAL ARBITRATION: A FEW NOTES

Over recent years, Mozambique has been involved in international commercial arbitration cases and some of its institutions have administered these cases. Therefore, it is important to learn more about these institutions, their rules and the way which they work. Besides this, the growth in foreign investment in the country makes it important to revisit this topic, which is currently so important.

Arbitration is a dispute resolution mechanism in which one or more people (the arbitrators) decide on a dispute between two or more parties. It is an alternative to the state courts and, therefore, it is the responsibility of the parties to choose form of dispute resolution.

In international trade, arbitration the most appropriate form of dispute resolution, even between States. The arbitration is international when international trade interests are at stake, in other words, when it involves more than one legal system, because of the nationalities of the parties, the place of the arbitration the applicable law.

After being approved, foreign arbitral awards are recognised in other countries and they have the same value as decisions of the national courts. This system of recognising arbitral awards is, in most cases, administered under the New York Convention of 1958. This Convention currently has 157 signatory States, and Mozambique signed the treaty in 1998. The Convention allows for arbitral awards to be recognised in other countries, regardless of place where they were made. As there is no convention with the same breadth in relation to court decisions, arbitration provides a much better way of enforcing international trade decisions.

There are many institutions across the globe that administer arbitration, but the most important of these is the International Chamber of Commerce Court of Arbitration (www.iccwbo.org). Besides this Court, others relevant to Mozambique are the Permanent Court of Arbitration – which is located in The Hague, but has nothing to do with the International Criminal Court, the ICSID - International Centre for Settlement of Investments Disputes (of the World Bank, of which Mozambique is a member) or the LCIA - London Court of International Arbitration.

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There are many advantages to using international arbitration. Among others, it allows for neutral decisions, either because of the place of arbitration, because of the nationalities of the arbitrators. It also avoids the slowness of bringing proceedings in the national courts. Furthermore, it allows the parties to choose the specific rules they wish to apply in resolving their dispute, and the specific people who will make the decision and who are frequently specialists in the matters underlying the dispute.

In international trade, the resolution of disputes using arbitration is also founded on its greater confidentiality, because both the proceedings and the decisions are only published if the parties agree to this. This makes it possible to preserve the confidentiality of deals made between parties.

In the case of Mozambique, there are two institutions that administer arbitration. One of them is a state institution, COMAL – the Centre for Employment Mediation and Arbitration, which was created by the Government. The other is a private institution, CACM – the Centre for Arbitration, Conciliation and Mediation, created by the CTA – Confederation of Economic Associations Mozambique). CACM was inspired, to a great extent, by the ICC Court.

The International Chamber of Commerce (ICC) is the voice of the business world and it sees the global economy as a force for economic growth across the world. Nowadays, national economies are intimately interconnected and government decisions have much greater international repercussions than they did in the past. The ICC engages in three main activities to facilitate international trade operations: drafting rules for voluntary adoption, providing services to resolve disputes amicably, and defining strategic principles and guidelines.

At the heart of international trade are the standardised voluntary rules, which are essential tools to facilitate the daily flow of trade – they are the system at the base of all cross-border trade and investment. As part of its rule drafting work, the ICC has developed a large number of voluntary rules, directives and codes of conduct to facilitate trade and spread best practices. In doing so it boosts self-regulation in business and provides a crucial service to companies across the world.

For these reasons, the ICC possesses unique authority when it comes to drafting the rules that regulate cross-border transactions and, despite being voluntary, these rules are applied directly to thousands of transactions. They have already become a central part of international trade. The mission of the ICC is to facilitate global trade by eliminating barriers between countries, and promoting the global economy, and the creation of jobs and prosperity.

In pursuing its mission, the ICC deals with many matters, including arbitration through the ICC Court and the resolution of disputes by other means, the defence of free trade and the system of market economies, the self-regulation of businesses, and the fight against corruption and commercial crime. To deal with each of these areas, the ICC has set up special committees from all around the world, to develop rules, standards and strategic guidelines for their specific areas. The members of these committees analyse the topics relevant to area and prepare relevant opinions for guidelines for companies and governments.

The Court of Arbitration of the International Chamber of Commerce (ICC) is the world's leading arbitration situation. Since 1923, it has been helping to resolve difficulties in international trade and business disputes, in order to foster trade and investment.

It plays a crucial role, providing individuals, companies and governments with a variety of personalised services for each state of the dispute in which they are involved.

Although it has the word “court” in its formal name, the ICC Court does not hold trials in the formal of the term. On the contrary, it supervises the arbitration proceedings administered by the ICC. The responsibilities of the ICC Court include:

- confirmation, appointment and substitution of arbitrators, and deciding on any challenge made against them;
- monitoring the arbitration proceedings to ensure that they are carried out correctly, and with the necessary speed and efficiency;
- analysis and approval of all arbitral awards to improve their quality and applicability;
- defining, managing and – if necessary – ensuring that the costs and fees that the parties have to pay are appropriate;
- supervising urgent proceedings before the arbitration begins.

The Court is currently made up of 194 members representing 110 different countries. Mozambique now has a member – former Bar Association President Tomás Timbane – as from 1 June 2017, and his appointment translates into recognition of the growing involvement of the country in international arbitration.

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The main objective of the ICC Court is to ensure the correct application of the ICC rules, and to help the parties and the arbitrators overcome procedural difficulties. These efforts are supported by the Secretariat of the ICC Court, which is made up of more than 18 lawyers and support staff.

The official working languages of the ICC Court are English and French. However, it can administer arbitration cases in any language and communicate in all the main languages including Portuguese, Arabic, Chinese, German, Italian, Russian and Spanish. The Court Secretariat is divided into various teams and one of them is responsible for Portuguese and Spanish language proceedings.

The Court continually seeks to improve efficiency and to manage time and costs. It also makes continuous efforts to improve its operations and the level of confidentiality by introducing new and innovative arbitration tools. This constant focus means the Court keeps a close eye on the concerns and interests of its commercial partners around the world.



FRANCISCO PINHEIRO

A espera, 2006 (detail)

Acrílico s/ tela - 146 x 195 cm

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