

BRIEFING ON THE MAURITIAN INTERNATIONAL ARBITRATION ACT

8 December 2008

The Mauritian Parliament passed a new International Arbitration Act (“the Act”) last Tuesday, 25 November 2008.

The passing of this legislation represents the culmination of two and half of years of work undertaken by the Mauritian State Law Office, assisted by the Mauritian delegate at UNCITRAL (Mr Salim Moollan, of the Chambers of Sir Hamid Moollan QC, Mauritius, and Essex Court Chambers, London), the UK delegate at UNCITRAL (Mr Toby Landau QC of Essex Court Chambers), and Mr Ricky Diwan of Essex Court Chambers, and in close collaboration with the UNCITRAL Secretariat and the Permanent Court of Arbitration at The Hague (“the PCA”).

The Act is based on the UNCITRAL Model Law on International Commercial Arbitration, as amended by UNCITRAL in 2006 (“the Amended Model Law”). It will come into force on 1 January 2009. Pursuant to its Section 3, the Act will apply to all arbitrations commenced after that date (irrespective of the date when the relevant arbitration agreement was concluded) and not to arbitrations commenced before that date.

In addition to the Act itself, the drafters of the Act have – following a specific request by the Mauritian Prime Minister in Parliament – prepared Notes of the *travaux préparatoires* of the Act (“the Notes”), which are intended to be a companion to the Act, and to assist future users of the legislation. These were released for access to the general public on 8 December 2008. While the only official version of the Act is the English version, the Act and the Notes are being translated into French, and it is intended that they will be published in leading English and French arbitration journals over the coming months to facilitate general access thereto.

Mauritius’ strong commitment to developing international arbitration

The Act has received the direct personal backing of the Mauritian Prime Minister (Dr. the Honourable Navinchandra Ramgoolam), who has driven the project, and who – in introducing the Bill to Parliament – highlighted the following features which – it is hoped – will help Mauritius in its endeavours to become a state-of-the-art and attractive jurisdiction for international arbitrations:

- (1) Mauritius has a perfect geographical situation to become a centre of reference for disputes involving Africa, South East Asia, India, China and Europe.
- (2) Mauritius has the infrastructure to become such a centre, contrary to a great number of its neighbours.
- (3) The extensive network of Double Taxation Agreements which Mauritius has with a large number of Investor Countries as well as Developing Countries makes

- Mauritius a perfect conduit for international investments, and a place for the resolution of investment disputes.
- (4) The facility Mauritians have with languages, being naturally bilingual if not trilingual.
 - (5) The fact that Mauritius is, and is perceived, as a neutral country from both a developed world and a developing world perspective.

The Act received the support of all members of the Mauritian legislature, and was passed on an expedited basis.

The main features of the Act

The main features of the Act are as follows:

- (a) The Act establishes two distinct and entirely separate regimes for domestic arbitration and for international arbitration. It covers only the latter.
- (b) The provisions of the Amended Model Law have been incorporated within the Act itself (rather than in a separate schedule). In order to assist international users, a Schedule (The Third Schedule to the Act) has been prepared setting out where given Articles of the Model Law have been incorporated in the Act. The Amended Model Law has been modified by reference (in particular) to the current works of UNCITRAL on its arbitration Rules, and to the English, Singapore and New Zealand Arbitration Acts.
- (c) A number of specific features have been incorporated in the Act:
 - (i) The Act provides that all Court applications under the Act are to be made to a panel of three judges of the Supreme Court, with a direct and automatic right of appeal to the Privy Council. This should provide international users with the reassurance that Court applications relating to their arbitrations will be heard and disposed of swiftly, and by eminently qualified jurists.
 - (ii) The Act adopts a unique solution, in that all appointing functions (and a number of further administrative functions) under the Act are given to the PCA. In order to ensure that the PCA is able to react swiftly in all Mauritian arbitrations, the Mauritian Government has negotiated and will conclude a Host Country Agreement with the PCA pursuant to which the PCA will appoint a permanent representative to Mauritius, funded by Government, whose tasks will consist *inter alia* of assisting the Secretary-General of the PCA in the discharge of all his functions under the Act¹.
 - (iii) Specific provision has been made in the Act for the arbitration of disputes under the constitution of offshore companies incorporated in Mauritius in

¹ Signature of the Host Country Agreement should take place in February 2009.

order to provide a link between Mauritius' thriving offshore sector and the new intended international arbitration sector.

- (iv) The Act expressly clarifies that foreign lawyers are entitled to represent parties and to act as arbitrators in international commercial arbitrations in Mauritius.

A specific focus on investment arbitration

The Act has a specific focus on investment arbitration. First, the text of the Amended Model Law has been modified to ensure that the Act will apply to investment arbitrations conducted in Mauritius. This has been done by making the Act applicable to “international arbitration” generally rather than “international commercial arbitration” (compare Section 3 of the Act with Article 1(1) of the Amended Model Law), and the definition of “arbitration agreement” of Article 7 (Option 1) of the Amended Model has been extended to include arbitration clauses “in a contract *or other legal instrument*” for the specific purpose of covering investment treaty arbitrations arising under bilateral or multilateral investment treaties (see Section 4 of the Act, and para. 38 of the Notes).

In addition, a conscious decision has been taken not to include provisions as to confidentiality in the Act (contrary for instance to the detailed provisions included in the New Zealand International Arbitration Act in 2007), in order (in particular) not to hinder the application of such transparency rules as already exist or may be developed in the future in the field of investment treaty arbitration (see para. 104 of the Notes).

An invitation to all users

Despite the numerous failed attempts of one local institution (the Mauritian Chamber of Commerce and Industry) to develop a form of local institutionalised arbitration on the Island over the past twenty years, there are currently very few international arbitrations taking place in Mauritius.

As a result, the Mauritian Government has taken a policy decision not to create a Mauritian International Arbitration Centre (similar to SIAC, or to the new Dubai Centre) in the immediate future, but rather to engage with the leading arbitral institutions and to create the conditions for established form of institutional arbitrations (as well as ad hoc arbitration) to flourish in Mauritius. Contacts to that end have already been made with the leading institutions.

Feedback from interested parties

In the course of the Second Reading of the Bill, the Deputy Prime Minister and Minister of Finance and Economic Development (Hon. Rama Sithanen) stated that the International Arbitration Act would be monitored over the years, in order to detect any problems – or possibilities for improvement – in the legislation, with a view to corresponding amendments being implemented from time to time.

In order to facilitate this process, a specific e-mail address will be set up and publicised for users of the Act, academics, and other interested parties to provide comments and suggestions on the legislation to the Mauritius State Law Office.