

INTERNATIONAL ARBITRATION



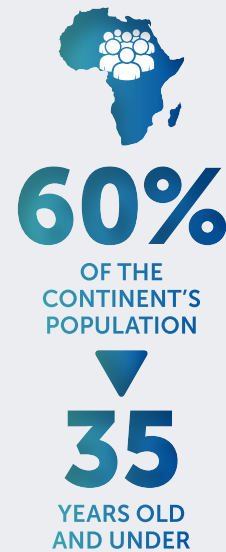
THE IMPORTANCE OF AFRICA

Doing business in Africa offers unique challenges and opportunities. With this comes a need to understand the cultural, economic and political nuances that exist across the vast continent, while appreciating that each region and country within Africa presents its own unique challenges and opportunities.

Cliffe Dekker Hofmeyr (CDH) believes that Africa has the potential to bring about a prosperous and sustainable future as deregulation sweeps across the continent. It is therefore critical that businesses are enabled to identify and capture these opportunities with the right legal partner.

Key trends defining Africa's future are its vibrant and youthful population, with almost 60% of the continent's population being 35 years old and under.

Its middle class is the fastest-growing in the world, comprising 300 million people of Africa's 1,11 billion population in 2015. Africa has the vast human and economic potential to become the world's most attractive investment destination and with an increased focus on the continent, businesses are looking to expand and capitalise on the growth surge in this nascent market.



Cliffe Dekker Hofmeyr believes that Africa has the potential to bring about a prosperous and sustainable future.

Africa's robust economic expansion over the past 10 years, given its abundance in natural resources and expanding consumer base, has resulted in a significant increase in foreign direct investment (FDI) and investment returns that compete with the world's other emerging markets.

FASTEST GROWING
MIDDLE CLASS
IN THE WORLD



300
MILLION



AFRICA POPULATION

1,11 BILLION



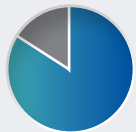
Oil

10%



Gold

40%



Chromium

84%



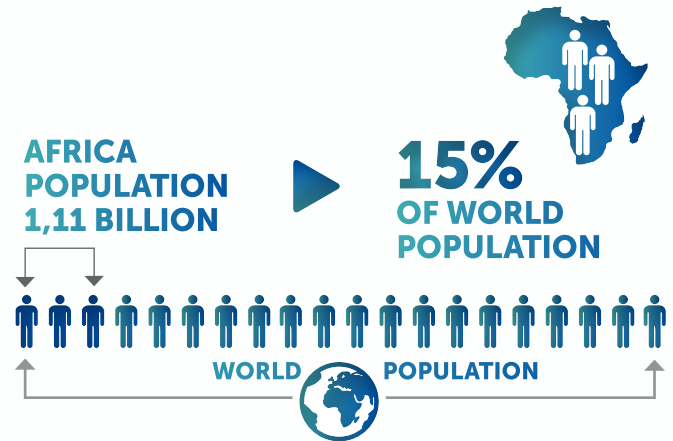
Platinum

88%

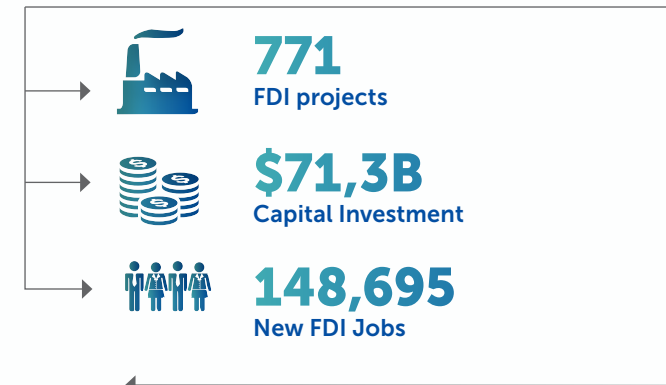
PERCENTAGE OF WORLD'S RESERVES IN AFRICA

This expansion will not abate – Africa is currently home to 15% of the world's total population, whom global investors have an active interest in, as the population continues to expand.

The economic advance of the continent, much of it credited to cross-border and international trade with African nations and increased interest from outside the continent, has seen unprecedented growth.



FDI DURING 2015



WHAT IS INTERNATIONAL ARBITRATION?

It is a truly independent, tailor-made, cross-border method of resolving commercial disputes. It is not subject to the authority of any particular state court and exists as an autonomous forum for the resolution of disputes.

International arbitration is a hybrid system, using select and relevant procedures from both civil and common law legal systems. International arbitration awards are also the most readily enforceable awards in the world (mainly due to the fact that the awards are truly transnational and not susceptible to difficult questions relating to sovereignty).

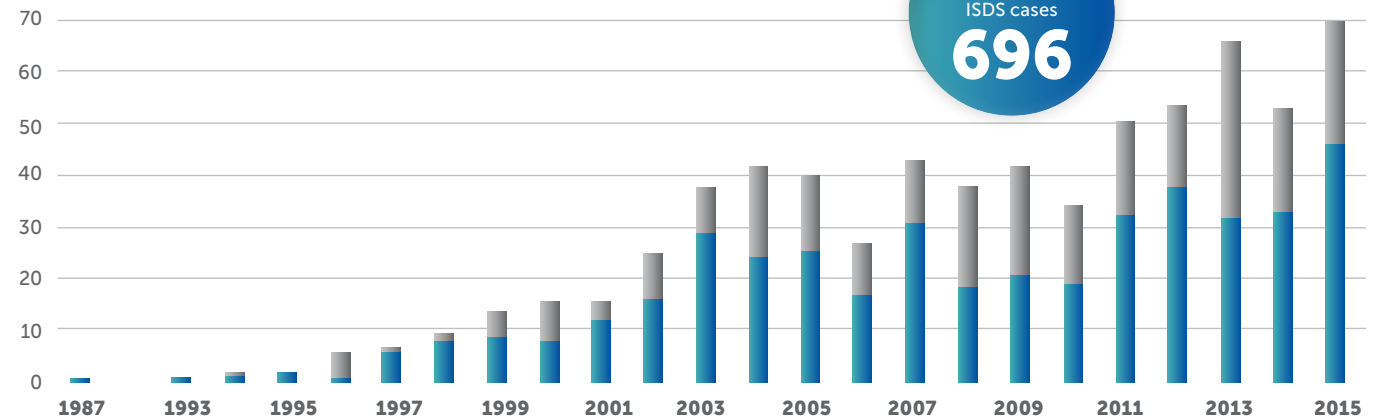
International arbitration is the most popular method of resolving international disputes arising out of both commercial and investment transactions. By way of example, recent years have seen a considerable growth in the number of investment disputes referred to the International Centre for the Settlement of Investment Disputes (ICSID) for determination by means of international arbitration.

The increase in trade and investment into Africa has increased the risk of commercial and investment disputes. With 54 independent countries with disparate civil or common law structures (given their Francophone, Lusophone and Anglophone background) operating alongside customary law, together with diverse language and cultural influencers, the continent is fertile ground for disputes.

International arbitration is a truly independent, tailor-made, cross-border method of resolving commercial disputes

ANNUAL NUMBER OF CASES

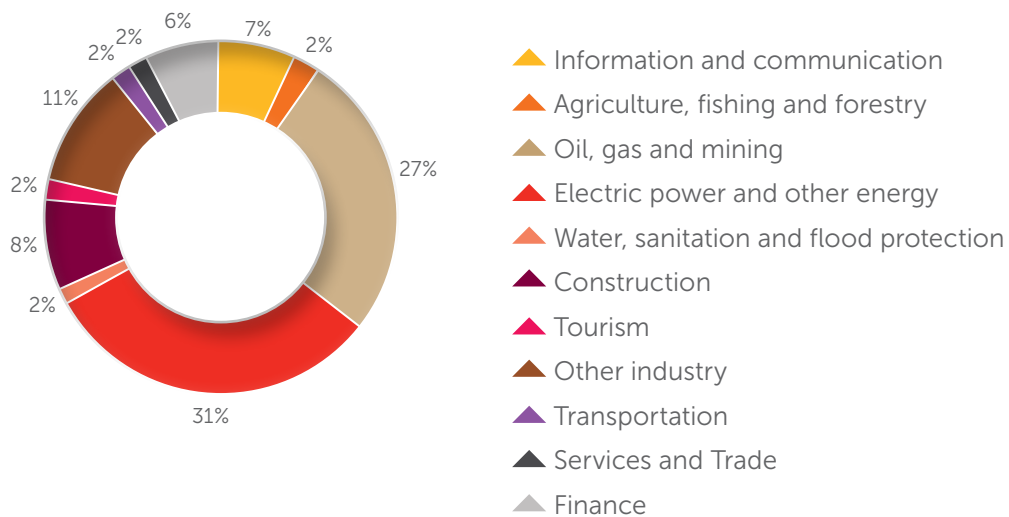
■ ICSID ■ NON-ICSID



Source: ©UNCTAD, Investor-state dispute settlement (ISDS) Navigator

The increase in trade and investment into africa has increased the risk of commercial and investment disputes.

Distribution of new cases registered in FY2015 under the ICSID Convention and additional facility rules, by economic sector



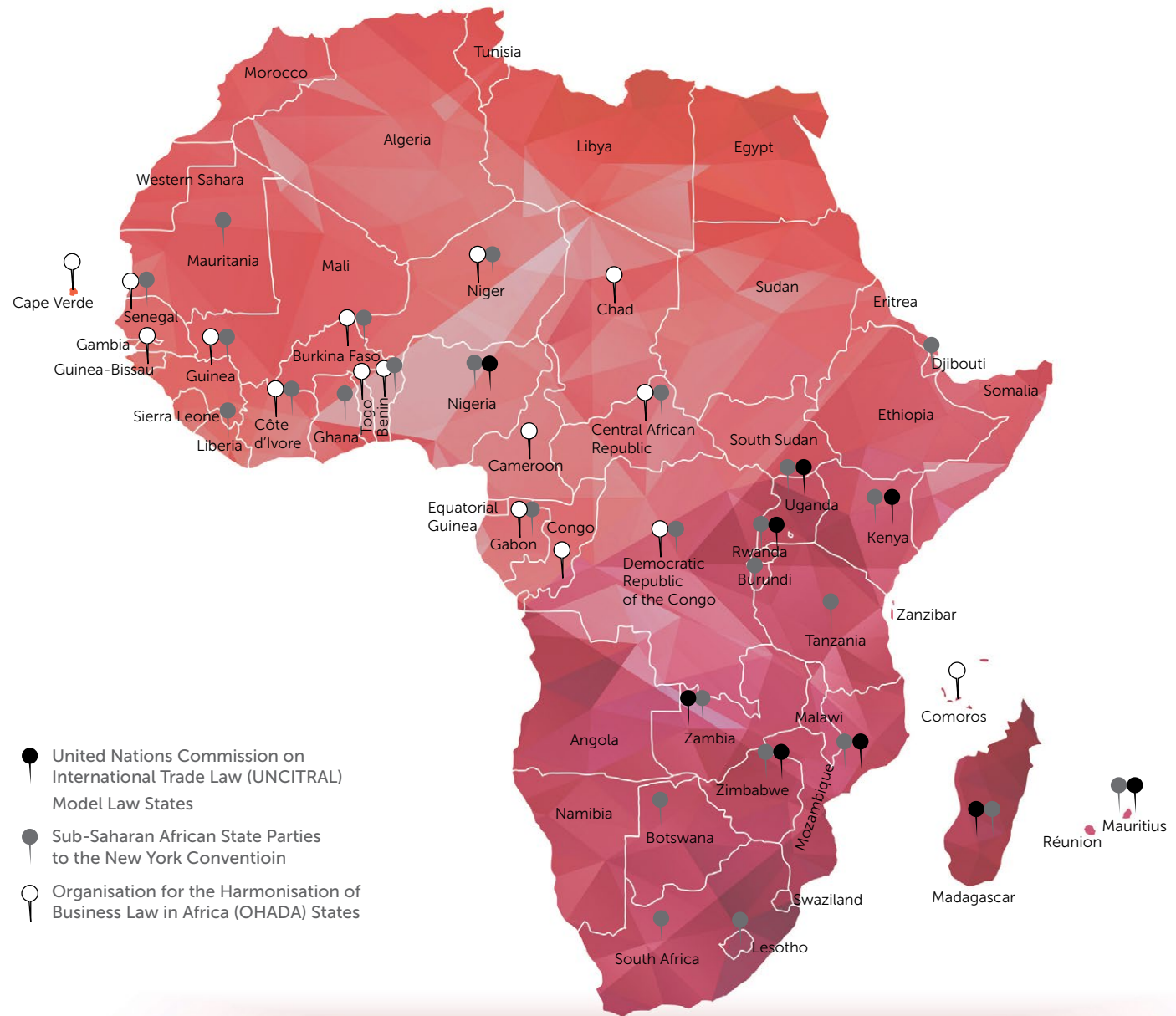
Source: ICSID ANNUAL REPORT

WHY INTERNATIONAL ARBITRATION IN AFRICA?

The impressive growth in the field of international arbitration on the African continent changes the question from “*should I use international arbitration in Africa?*” to “*can I afford to not use international arbitration in Africa?*”

The application of international arbitration to disputes in Africa is particularly apposite given the increased intra-Africa trade and foreign financing.

At the last count Africa had 33 independently registered organisations administering arbitrations (mostly domestic) on the continent, many of which have developed their own set of rules and procedures appropriate to the region in which they operate. Strong international arbitration centres are developing in Egypt, Kenya, Mauritius, Rwanda and South Africa to ensure that international commercial disputes affecting African parties are resolved in Africa.



WHY CDH?

Navigating the complexities of international arbitration in Africa requires expert guidance through the various factors specific to each jurisdiction on the continent.

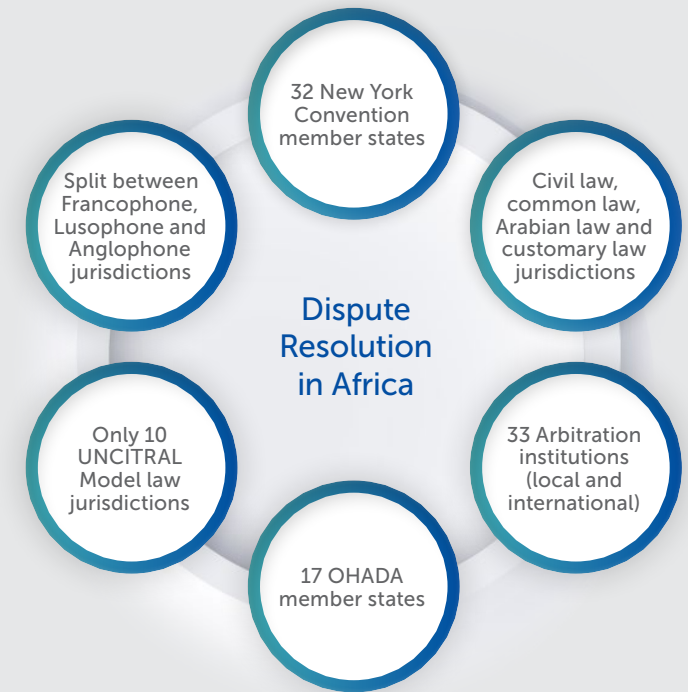
With the increased focus on the independent international arbitral institutions in Africa, the questions posed by African businesses are:

- Whether there is still a need to use the rules of the traditional administering bodies of international arbitrations based in Europe or elsewhere?
- Have the African organisations aligned their respective rules and procedures with international best practice?
- And most important, will an award issued under the auspices of a particular African administering body be enforceable worldwide?

Our dedicated team of international arbitration practitioners are fully equipped to help you answer those questions and to guide you through the entire process in a pragmatic and commercially driven manner – from negotiating the arbitration clause, the governing law for the agreement, choosing the appropriate seat and/or location for the arbitration hearing, electing the most appropriate procedural rules to govern the procedure, choosing the appropriate arbitrator right through to ultimate enforcement of the award, including risk advisory services relating to bilateral and multilateral investment treaties.

CDH has extensive experience in resolving cross-border disputes, particularly in the US, the UK, Europe and Africa and is skilled at providing arbitration services both domestically and internationally.

Coupled with our own expertise, we have a unique network of relationship firms throughout the African continent, each primed to advise on all aspects relevant to particularities of each country or region.



We have expertise in a wide range of sectors.



OUR SERVICES

We offer our clients the advantage of one law firm with the depth of resources, capabilities and experience to offer a full range of services which include:

- The drafting of arbitration clauses and agreements
- Choice of governing law
- Appropriateness of institutional or ad-hoc arbitration, particularly in Africa
- International investment arbitrations
- Investment law aspects of treaty-based arbitrations
- Risk advisory services relating to bilateral and multilateral investment treaties
- Aspects relating to the rules published by various arbitration institutions
- The choice of arbitrator
- Interim relief
- Procedural aspects of international arbitrations
- Challenges to the appointment of arbitrators
- Challenges to arbitral awards
- Enforcement of arbitral awards

Substantive experience

We have expertise in a wide range of sectors, which will be invaluable in any cross-border dispute. We act for clients in a broad range of industries, particularly in key commercial sectors such as aviation, banking, construction, energy, insurance and reinsurance, engineering, financial institutions, hotel and leisure, mining and minerals, oil and gas, private equity, real estate, tobacco and telecommunications.

Our clients range from blue chip national, international and multinational companies to state-owned enterprises. We have a large public sector base and have professional relationships with a number of government and regulatory bodies.

VALUE ADDED SERVICES

We offer

a partner-led approach, ensuring a high-level experience



Pragmatic and commercially-focused solutions for each matter



Efficient and quality delivery



Seminars, newsletters and regular email alerts

We emphasise

sharing, applying and managing knowledge assets



Empowering our clients through continuous skills training

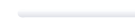


Keeping clients informed about proposed legislation and regulation developments

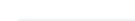
PRACTICE AREAS

As a full-service law firm, CDH offers services in the following practice areas:

Competition/Antitrust



Corporate & Commercial



Dispute Resolution



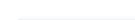
Employment



Environmental



Finance & Banking



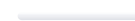
Pro Bono & Human Rights



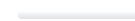
Real Estate



Tax & Exchange Control



Technology, Media & Telecommunications



Trusts & Estates

MARKET RECOGNITION

Our International Arbitration team is externally praised for its depth of resources, capabilities and experience.

Chambers Global 2022–2023 ranked us in Band 2 for dispute resolution.

Chambers Global 2018–2023 ranked us in Band 2 for restructuring/insolvency.

Chambers Global 2022–2023 ranked us in Band 3 for insurance.

Chambers Global 2020 ranked us in Band 2 for public procurement.

Chambers Global 2020–2022 ranked us in Band 3 for media & broadcasting.

Chambers Global 2020–2023 ranked us in Band 3 for corporate investigations.

The Legal 500 EMEA 2017–2023 recommended us in Tier 1 for dispute resolution.

The way we support and interact with our clients attracts significant external recognition.

Rishaban Moodley is the Practice Head of the Dispute Resolution team and Head of the Gambling & Regulatory Compliance sector. *The Legal 500 EMEA 2016–2023* recommended Rishaban for dispute resolution.

Tim Fletcher is the Chairperson and a Director in our Dispute Resolution team. *Chambers Global 2022–2023* ranked Tim in Band 2 for dispute resolution. *Chambers Global 2019–2021* ranked him in Band 3 for dispute resolution. *The Legal 500 EMEA 2016–2023* recommended him as a leading individual for dispute resolution.

The Legal 500 EMEA 2018, 2020–2023 recommended **Timothy Baker** for construction.

Jackwell Ferris is Head of the Industrials, Trade & Manufacturing sector, and a director in our Dispute Resolution practice. *Chambers Global 2023* ranked him as an up and coming dispute resolution lawyer. *The Legal 500 EMEA 2022–2023* recommended him for dispute resolution. The *Association of Young Arbitrators* recognised Jackwell as an expert arbitration practitioner.

Tim Smit is the Joint Head of the Consumer Goods, Services & Retail sector, and a director in our Dispute Resolution practice. *The Legal 500 EMEA 2020–2023* recommended him as a next generation lawyer for dispute resolution.



OUR TEAM

For more information about our International Arbitration sector and services in South Africa and Kenya, please contact:



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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

PLEASE NOTE

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

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