

DISPUTE RESOLUTION ALERT

IN THIS ISSUE

A NEW DAWN OF INTERNATIONAL ARBITRATION LAW ON THE HORIZON

On 13 April 2016 cabinet approved the draft International Arbitration Bill for submission to Parliament for debate and approval. On 28 April 2016 the Bill, together with its explanatory memorandum was published in the Government Gazette. The Bill will shortly be introduced into Parliament and will become the highly anticipated International Arbitration Act.

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The Act will govern all international arbitrations (whether commercial or investment arbitrations) seated in South Africa currently regulated by the provisions of the 51 year old Arbitration Act, No 42 of 1965 (Arbitration Act), which regulates both domestic and international arbitrations. The most fundamental change to be brought about will be that the South African law will now distinguish between the law governing international arbitrations through the incorporation of the UNCITRAL Model Law on International Commercial Arbitration, as amended (the Model Law) as part of the Act and domestic arbitrations which will continue to be regulated by the Arbitration Act.

The International Arbitration Act will align the South African International Arbitration Law with international best practice and should go a long way to establish South Africa as a venue of choice for international arbitrations in Africa. The South African courts have for years played a critical role in promoting arbitrations in South Africa. The courts have not interfered with the sanctity of arbitration agreements and we believe will continue to refrain from doing so by providing the necessary platform and support to ensure international arbitrations are respected and thrive in South Africa.

Highlights of the new regime will, amongst others, include:

- the Act will be binding on all public bodies;
- the Model Law (subject to specific exclusions) will have the force of law in SA;
- international commercial arbitrations with public bodies to the extent not prohibited by the Protection of Investment Act will be possible and must be distinguished from investor-state arbitrations;
- immunity will be granted to arbitrators (as well as their institutions and representatives) acting in good faith;
- arbitrations involving any public body are to be held in public, unless the arbitrator based on compelling reasons directs otherwise. (There is no presumption as to confidentiality of other proceedings which will be determined by agreement between the parties);
- parties to an international arbitration agreement may refer their dispute to conciliation in accordance with the UNCITRAL Conciliation Rules;
- the Recognition and Enforcement of Foreign Arbitral Awards Act will be replaced by chapter 3 of the Act giving effect to the New York Convention;

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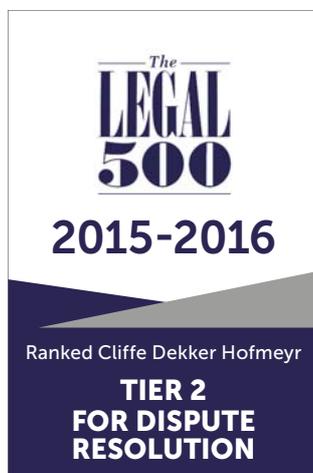
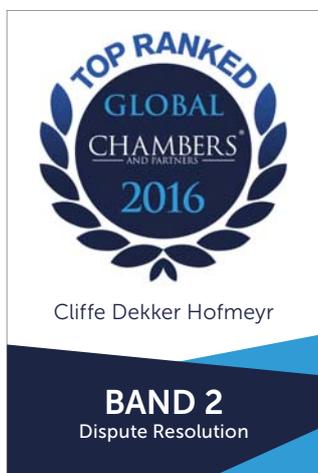
We believe that the Bill will go a long way towards promoting international arbitrations in South Africa.

- the permission of the Minister of Economic Affairs will not be required for the enforcement of certain foreign arbitral awards;
- a foreign arbitral award must be made an order of court upon application, save for certain exceptions (*inter alia* that the subject matter is not arbitrable in SA, the enforcement is against public policy or is in bad faith);
- security for costs may no longer be ordered against a foreign party at the commencement of the arbitration proceedings.

We believe that the Bill will go a long way towards promoting international arbitrations in South Africa.

For more information on our views please contact any of our practitioners listed below.

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