

INTERNATIONAL ARBITRATION



Our Dispute Resolution practice including our international arbitration specialists is one of the strongest in South Africa and Kenya, with over 50 lawyers across our offices in Johannesburg, Nairobi, Cape Town and Stellenbosch.

Doing business and navigating the complexities of international arbitration in Africa offers unique opportunities and challenges. It requires an understanding of the cultural, legal and commercial nuances that exist across the vast continent.

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.

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 upward trajectory in foreign direct investment (FDI) and investment returns that compete with the world's other emerging markets.

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 backgrounds) operating alongside customary law, together with diverse language and cultural influencers, the continent is fertile ground for international arbitrations.

Percentage of World' reserves in Africa

The economic advance of Africa and the unprecedented growth in cross-border and international trade is anticipated to continue.



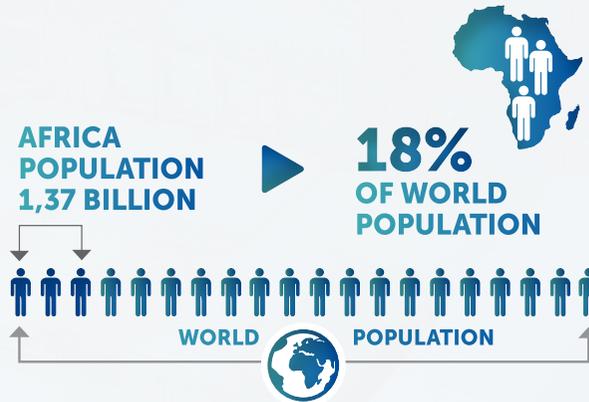
Cobalt
48.1%



Manganese
47.6%



Platinum
88%



In 2022 FDI into South Africa was USD 9bn, double the average of the preceding decade.



What is International Arbitration?

It is a truly independent, tailor-made, cross-border method of resolving commercial and investment 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 involves the submission of a dispute to a neutral and independent arbitral tribunal for determination. The process is an alternative to pursuit of litigation before the courts of a particular country, which may be subject to court delays, bias or influence.

The process and procedures are agreed by the parties through the application of a particular set of arbitral rules, or the creation of a bespoke process which incorporates relevant procedures from both civil and common law legal systems.

Arbitral awards are final and binding, and due to the existence of various international treaties and conventions, international arbitral awards are generally readily enforceable world-wide, providing significant enforcement advantages over court judgments.

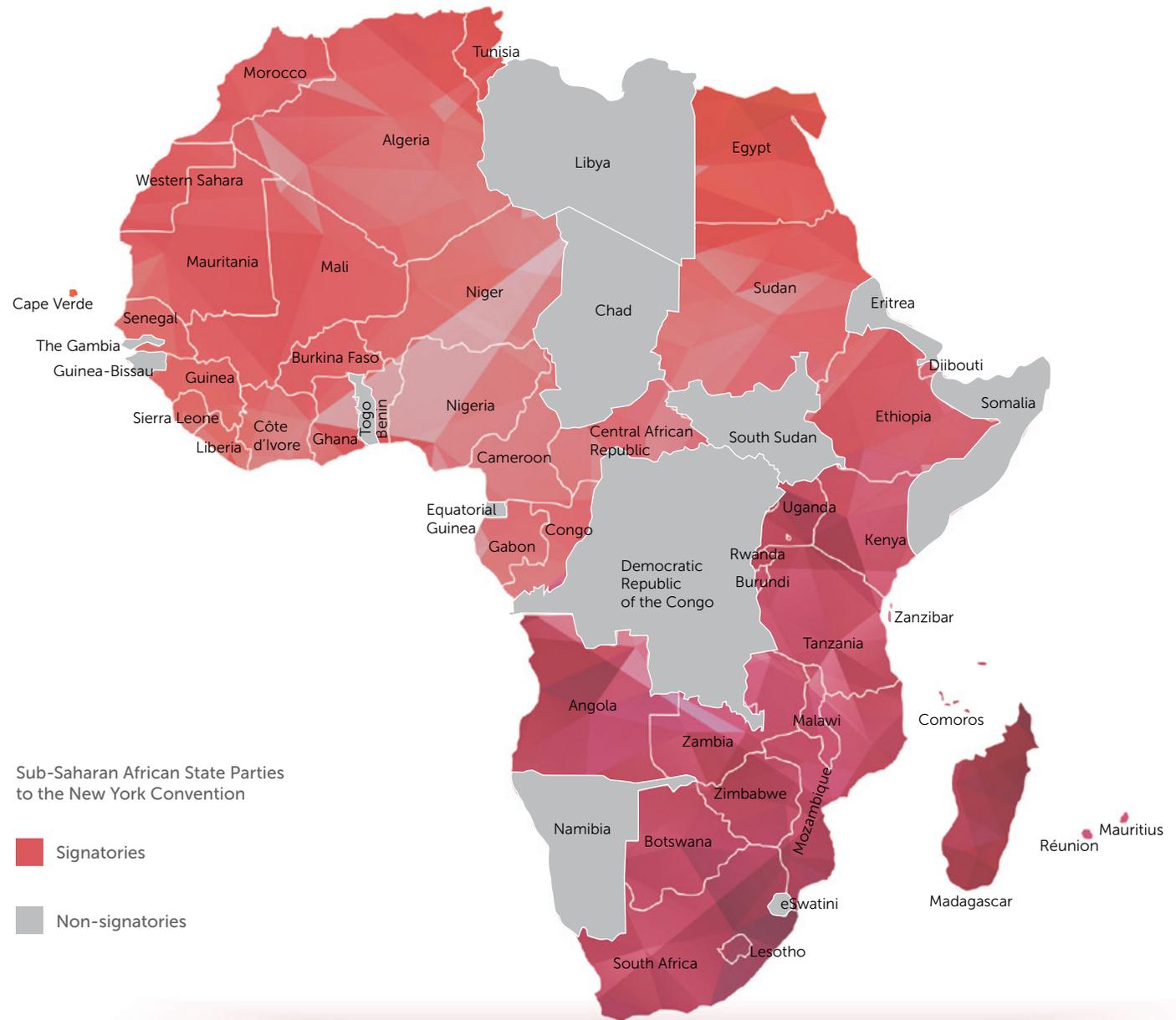
International arbitration is increasingly the preferred method of resolving international disputes arising out of both commercial and investment transactions. It is chosen in recognition of the particular benefits and advantages it can offer. This includes flexibility to agree a bespoke procedure, the ability to select independent and expert arbitrators who can consider issues impartially and independent from state influence, confidentiality of evidence and proceedings, and international enforcement advantages.

International arbitrations involving one or more African parties, or arising in relation to African contracts, are often resolved in established arbitral centres such as London or Paris. However in recent years there has been an exponential growth in the 'Africanisation' of arbitration, with disputes increasingly resolved by African arbitrators and/or in African arbitral centres. This is particularly apposite given the rapid and predicted growth in intra-Africa trade, with international arbitration increasingly the preferred mechanism for resolution of trade disputes.

Strong international arbitration centres are developing in South Africa, Kenya, Mauritius, Egypt and Rwanda, and African arbitral centres have revised and implemented rules in accordance with global industry standard.

Many jurisdictions have also taken steps to implement or revise international arbitration legislation in line with the United Nations Commission on International Trade Law's "Model Law" to allow for standardized and modernized procedures. Additionally the vast majority of African jurisdictions have acceded to the New York Convention on the recognition and enforcement of international arbitration awards, allowing for more efficient and predictable world-wide enforcement.

Arbitrating in Africa can offer many advantages to parties including cost savings and resolution of the dispute in the context of relevant African cultural, legal and social perspectives.



WHY CDH?

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

Our dedicated team of international arbitration practitioners is fully equipped to help you navigate the complexities of international arbitration and to guide you through the entire process in a pragmatic and commercially driven manner. We have specialist experience acting in international commercial arbitrations as well as treaty-based investment arbitrations and investor-state dispute settlements.

Our geographic reach

Doing business and navigating the complexities of international arbitration in Africa offers unique opportunities and challenges. It requires an understanding of the cultural, legal and commercial nuances that exist across the vast continent.

Our lawyers are admitted to practice in a number of jurisdictions including South Africa, Kenya, England & Wales, Namibia and Lesotho and we also have a unique network of relationship firms throughout Africa. This means that we are adept at identifying and advising on the different legal and commercial considerations particular to transacting and arbitrating across Africa.

We have extensive international cross-border experience and have advised clients in international arbitrations subject to a variety of laws including South Africa, England and Wales, Mauritius, Nigeria, Namibia, China, Ghana, Zambia, Dubai and Qatar.

We advise clients at all stages of commercial international arbitration proceedings, from drafting the arbitration agreement through to enforcing a final award. This includes advising on the circumstances in which arbitrating in Africa, rather than traditional arbitral centres in Europe or elsewhere, may be appropriate. We have represented clients in international arbitrations under the rules of the world's leading arbitral institutions, including the ICC, LCIA, AFSA, SCC and UNCITRAL.

We have expertise in a wide range of sectors.

We also advise both states and investors in investment treaty and investor-state matters, including the negotiation of investment commitments and potential infringements, and commercially focused risk advisory services to investors.

Recognising that disputes can be costly and divert valuable resources and time from your business, we are experienced in proactively managing and progressing arbitrations in a dynamic and cost-efficient way. This includes advising on expedited proceedings or applications for early dismissal and using technology efficiently for documentary review and disclosure.





**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:

- Drafting arbitration clauses and agreements**
- Choice of governing law**
- The selection of appropriate institutional arbitral rules**
- Appointments of and challenges to arbitrators**
- Jurisdictional challenges**
- Managing all procedural and evidential matters**
- Challenges or appeals to arbitral awards**
- Enforcement of arbitral awards in South Africa and internationally**
- Investor-state and investment arbitrations**
- Risk advisory services relating to bilateral and multilateral investment treaties**

EXPERIENCE HIGHLIGHTS

In advising clients we are able to draw on a wide variety of experience and expertise. Examples of our team's experience includes:

- Advising a South African company in an English law, London seated, LCIA arbitration valued in excess of USD 45 million against a corporate multi-national in relation to coal exports.
- Advising a South African claimant in the telecommunications sector in an UNCITRAL arbitration against an Indian party valued in excess of ZAR 450 million in relation to a breach of warranties claim.
- Representing Angolan and UK group companies in a South African law, Cape Town seated, arbitration arising from the cancellation of a shareholders' agreement between various international parties involving complex cross-border legal principles.
- Representing the respondent in an arbitration claiming commission on the sale of military equipment to a Middle Eastern government subject to the AFSA rules.
- Representing the claimant in an English law ICC arbitration seated in London between German and South African manufacturing entities in a multi-million euro contractual dispute.
- Representing a client in an LCIA-MIAC Mauritius seated arbitration between English, South African and Mauritian parties arising from a shareholder dispute in relation to the provision of educational services in Kenya.
- Representing a West African entity providing maritime support to the oil and gas industry in 32 associated LMAA and ad hoc arbitrations, followed by subsequent challenges and appeals before the English court under sections 67, 68 and 69 of the Arbitration Act.
- Representing a claimant investing in power projects in West Africa in LCIA proceedings worth more than USD 45 million brought against a local partner relating to the financing and operation of a power distribution company, and advising on international enforcement mechanisms.
- Advising an East African state in relation to risks and liabilities arising from its regulatory conduct in the mining and mineral sector in response to allegations that it had breached bilateral investment treaty commitments.
- Representing a South Asian state in English court proceedings relating to contested issues of bilateral investment treaty interpretation and the jurisdiction of the tribunal.



MARKET RECOGNITION

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

Chambers Global 2022–2024 ranked us in Band 2 for dispute resolution.

Chambers Global 2020–2024 ranked us in Band 3 for corporate investigations.

The Legal 500 EMEA 2017–2024 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 our Dispute Resolution team and Head of our Gambling & Regulatory Compliance sector.

The Legal 500 EMEA 2016–2024 recommended Rishaban for dispute resolution.

Tim Fletcher is the Chairperson and a director in our Dispute Resolution practice. *Chambers Global 2022–2024* ranked Tim in Band 2 for dispute resolution.

Chambers Global 2019–2021 ranked him in Band 3 for dispute resolution. *The Legal 500 EMEA 2024* recommended Tim in the 'Hall of Fame' for dispute resolution. *The Legal 500 EMEA 2016–2023* recommended him as a 'Leading Individual' for dispute resolution.

The Legal 500 EMEA 2018, 2020–2024 recommended **Timothy Baker** for construction.

Jackwell Feris is Head of our Industrials, Trade & Manufacturing sector, and a director in our Dispute Resolution practice. *Chambers Global*

2023–2024 ranked him as an 'Up & Coming' dispute resolution lawyer. *The Legal 500 EMEA 2022–2024* recommended him for dispute resolution.

The *Association of Young Arbitrators* recognised Jackwell as an expert arbitration practitioner.

The Legal 500 EMEA 2023–2024 recommended **Burton Meyer** for mining.

Chambers Global 2023–2024 ranked **Lucinde Rhoodie** in band 4 for dispute resolution. *The Legal 500 EMEA 2021–2024* recommended her for dispute resolution.

Clive Rumsey is the Head of our Construction & Engineering sector, and a director in our Dispute Resolution practice. *Chambers Global 2019–2024* ranked him in Band 1 for construction. *Chambers Global 2021–2024* ranked Clive in Band 4 for dispute resolution. *The Legal 500 EMEA 2020–2024* recognised Clive as a 'Leading Individual' for construction. *The Legal 500 EMEA 2022–2024* recommended Clive for dispute resolution.

Tim Smit is Head of our 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

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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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