

Launch of the Kigali International Arbitration Centre:

Hogan Lovells assists with the establishment of a new centre to aid efficient dispute resolution in Rwanda and throughout East Africa

BACKGROUND TO THE KIGALI INTERNATIONAL ARBITRATION CENTRE (KIAC): A PROPOSED SOLUTION TO DISPUTE RESOLUTION IN EAST AFRICA

As mentioned in the previous issue of the Hogan Lovells Africa Newsletter, Rwanda has made considerable efforts to improve its business environment and attract new investment. On the legal side, Rwanda is in the process of reforming its legal system, gradually shifting its approach from a civil law to a common law system. It has also introduced commercial courts (in 2008), which has resulted in a reduction of the backlog of pending litigation and reduced the time taken for the resolution of commercial disputes.

As a result, Rwanda is now seen as one of the foremost countries in the region for reliable business procedures. In just four years, Rwanda's ranking in the Ease of Doing Business survey moved from 158th in 2008 to 45th in 2012. Rwanda is also ranked 3rd in the Sub-Saharan Africa survey behind only Mauritius and South Africa and is now ranked 39th in the Enforcing Contracts category worldwide.

Despite these improvements, the backlog in the commercial courts has remained high and court processes can still be long. As a result, with no alternative to the Rwandan court system available for resolving commercial disputes, developing appropriate ADR mechanisms was seen as the next logical step, by both the Government and private initiative, for Rwanda to continue to improve its reputation for and attract business and investment.

Rwanda had already achieved important results with respect to arbitration. It has been a party since 1979 to the Washington Convention on the Settlement of Investment Disputes, providing for protection for investors and direct arbitral recourse against the state. More recently, Rwanda provided for the efficient enforcement of arbitral awards by acceding to the New York convention on the Recognition and Enforcement of Foreign Arbitral Awards in 2006. Then, in 2008, Rwanda enacted a modern arbitration law, providing for appropriate conditions for arbitrations to be held in Rwanda.

In order to strengthen this movement, in 2008 the Private Sector Federation ("PSF") launched a consultation process on arbitration and other methods of ADR. They concluded that the best way forward was to create a local institution which could provide parties with the support, infrastructure and administration to carry through efficient alternative dispute resolution, as an alternative to court proceedings.

This process has now led to the creation of the Kigali International Arbitration Centre which was officially launched on 31 May 2012, in the attendance of the Rwandan Prime Minister and with international media attention.

The Centre aims to attract and create opportunities for arbitration, not solely in Rwanda but also with neighbouring countries in the East African Community (comprising Burundi, Kenya, Tanzania, Rwanda and Uganda) and from the Common Market of Eastern and Southern Africa (comprising twenty countries stretching from Libya to Zimbabwe). The KIAC's ambition is therefore to act as a regional arbitration centre by offering an arbitration forum to parties that might otherwise not have submitted their dispute to arbitration due to the comparatively high costs involved in Europe or Asia for example.

Particular features of the centre and the Arbitration Rules include an emphasis on low fees, with costs considerably lower than in traditional arbitration centres such as London, Paris or Singapore, with the aim that this will mean this is a viable choice for dispute resolution even where the amounts at stake are not necessarily significant. The resolution process can then be tailored to fit the dispute in hand. Another area of focus has been the possibility to gain quick relief, and the rules have included an emergency arbitrator option, similar to that contained in the recently amended rules of the International Court of Arbitration at the ICC, to allow for rapid interim relief where this might be appropriate.

HOGAN LOVELLS SUPPORT FOR THE CENTRE

Hogan Lovells has been involved in this project even before the launch of the KIAC. Thanks to previous contacts of Hogan Lovells in Rwanda, Thomas Kendra, senior associate in the arbitration practice in Paris, was asked to review and give advice regarding the



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establishment of the Centre, and in particular the draft Arbitration Rules which will govern the procedures to be followed by arbitrations at the centre. The Rules have now been finalised in three languages (English, French and Kinyarwanda) to encourage use of the centre in whichever language is best suited. Following this collaboration, Thomas has been appointed as one of the three overseas Board Members of the KIAC and as such was invited to its launch.

The media coverage of the launch event welcomed the institution:

- The Times reported on the event on 21 June 2012, Edward Fennell writing "In Rwanda, the first arbitration centre has been launched with the support of Hogan Lovells".
- Global Arbitration Review devoted an article to the launch of the Centre ("Rwanda gains place on arbitral map", 1 June 2012) on 1 June 2012 and emphasized the involvement of Hogan Lovells, quoting Thomas Kendra extensively:
 - "(KIAC) aims to promote the resolution of regional and domestic disputes by arbitration and ADR...

Kendra explains that his association with the centre stems from Hogan Lovells' history of acting for Rwanda, including in prosecutions in the wake of the 1994 genocide. More recently it has been involved in commercial law training initiatives. He says: "It's a privilege to be involved in this excellent project, which will offer a viable alternative for the resolution of disputes in the region. I know that much work is being done to ensure that the people working for the centre and local judges are given high quality training in arbitration issues. KIAC has also taken inspiration from other institutions to ensure that it will be based on solid and lasting foundations."

Kendra continues that there is "excellent potential" for East African parties to arbitrate disputes in Rwanda, avoiding the prohibitive cost and inconvenience of submitting them to arbitration centres abroad."

- Commercial Dispute Resolution also published an article on the KIAC launch ("Another notch for African ADR as Rwanda opens arbitration centre", 8 June 2012): "The possibility to have disputes resolved independently and locally can only be a positive development on offering parties choice and flexibility," says Thomas Kendra, a senior associate at Hogan Lovells and one the KIAC board members who helped to prepare and draft the KIAC's arbitration rules".

THE CHALLENGES AHEAD

The work of those at KIAC, and indeed the support of Hogan Lovells, has not ended with the launch of the Centre, far from it. The Centre now sets out to establish itself as a choice to be put forward by parties when coming to agreement, while ensuring that the Arbitration Rules that have been so carefully drafted are applied against a background of Rwandan law by arbitrators and judges in support of an efficient and independent arbitral process.

To this end, Bernadette Uwicyeza, Secretary General of the KIAC, has recently visited Paris in order to gather inspiration for the efficient running of cases and the overall strategy for the Centre. While there, she met with us at Hogans Lovells offices, and we organised various meetings with Paris arbitration institutions for her (including ICSID at the World Bank, the ICC and CMAP). At the same time, we have been in close discussions with Thierry Ngoga, the KIAC Registrar, in discussing the various projects of KIAC going forward. These may include:

- education programmes for local Judges, arbitrators, local lawyers and in-house counsel – including the potential short-term secondment of Rwandan lawyers to international firms - to raise awareness of the advantages of arbitration and of including arbitration clauses, to ensure that arbitration clauses will be well drafted and enforceable and to ensure the rules and laws are efficiently respected and applied
- organising and running comprehensive on-line resources to provide for the efficient circulation of information;
- publication of articles and studies and organisation of conferences through the use of the media and the industry press and journals to ensure a high profile is retained in the wake of the launch.

In particular, at the time of the next KIAC Board meeting Thomas Kendra will again be invited to Rwanda, and we propose to send a Hogan Lovells delegation to Kigali at that time which could undertake training and meet with local officials and business representatives in helping to expand KIAC's profile. All such initiatives will be gratefully received as KIAC aims to establish itself as a presence and a real commercial choice for dispute resolution in East Africa, so that, rather than relying on distant, expensive institutions which are not always appropriate, business in the region can use the capabilities it now has both locally and independently.

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