

BRIEF REPORT- CPD Course titled "Arbitration in Mauritius - Current Scenario" - 14 March 2019

The Institute for Judicial and Legal Studies organised a CPD Lecture titled "Arbitration in Mauritius - Current Scenario" on the 14th of March 2019 and had the honour to welcome Me. Ravindra Chetty, Senior Counsel, to act as Resource Person. The lecture was attended by at least 100 law practitioners and was very successful inasmuch as the participants were able to be conversant with both the theoretical and practical aspects of Arbitration as being a form of private binding alternative dispute resolution in Mauritius.

The session began with Me. Chetty SC explaining the concept of arbitration as a concept of private justice. It's speedy, confidential and convenient. Me Chetty SC was very practical and pragmatic in his approach, for instance when he spoke about international arbitrators, he observed that they were quick in that they heard the arbitration rapidly and gave their orders within the shortest possible delay because that will ensure they would get their fees rapidly and they could move on to do other arbitrations. He also highlighted the time frame for domestic arbitration in Mauritius as being 6 months whereas for international arbitration there is no time limit but the arbitrators would still do it very quickly.

He mentioned the 3 different types of arbitration there are in Mauritius: Domestic, International and Investment arbitration. With regards to the setting up of the arbitral tribunal, Me. Chetty expounded on the fact that the International Arbitration Act (IAA) 2008 in its Section 11 provides that the number of arbitrators shall be three or such other number of arbitrators provided that it is an even number. Where the parties cannot agree on the appointment of the arbitrators, on request of one of the parties, the Permanent Court of Arbitration shall appoint the arbitrators.

Talking about competence and jurisdiction, Me. Chetty explained that the preliminary points regarding competence and jurisdiction in arbitration are now settled since it is the arbitrator HIMSELF who deals with the matter of competence. Therefore it is very difficult to antagonized the arbitrator in practice.

Concerning the subject matter of arbitration, every civil and commercial dispute is arbitrable and nowadays even matters of criminal law. In certain jurisdictions, sentencing has been decided through arbitration. Me Chetty believes that in the coming years more and more aspects of criminal law will become arbitrable.

Turning to appeal and review, the parties can agree in ADVANCE that there will be no right of appeal. However, despite this, section 1027-3 of the Code de procedure Civile, and section 39A of the IAA 2008 provides a review of the award under specific grounds, examples, question of appreciation of one set of facts or question of evidence.

However, the courts do not seem too keen to review the award. The grounds for recourse n annulation for an award are as follows:

1. Jurisdiction of arbitral committee
2. Defects in arbitral agreement
3. The arbitrator has acted ultra vires on certain specific points
4. The arbitrator was biased and did not disclose a conflict of interest or there was a breach of natural justice
5. Defect in formulation of the arbitral award and by the time the arbitrator gave the award, the mission has expired.

However, Dalloz propounds that a statement from the parties that the mission has been extended will be sufficient to cure this specific defect.

In the case where the losing party does not obey the award, then recognition and enforcement measures have to be lodged before the supreme court for domestic arbitration whereas the IAA 2008 specifies how to enforce international awards or stay execution of the award.

For domestic arbitration, time limit is 30 days and for international arbitration, the time period is 21 days for review.

The session was much appreciated and followed by questions and answers. For Arbitration, the parties need to go to the JIC for arbitration in the case the main case is the arbitration case. Interim measures are explained under section 21 and 23 of the IAA 2008. In UK, the arbitrator has the power to issue interim orders and the party can get the interim order validated by the Master and enforced through the system.

Me. Chetty SC also went on to highlight that interim relief, including injunctions and attachments, may be necessary to preserve the status quo pending arbitration or litigation. Consequently, in Mauritius, under Section 22 of the IAA 2008, local as well as foreign interim measures are recognized as binding and can be enforced on application to the Supreme Court.

He highlighted 5 characteristics of arbitration:

1. CONFIDENTIALITY – Where everything is kept secret in an arbitration. However, it is very important to note that if the arbitration provides for an appeal and you appeal to the supreme court, under domestic or international arbitration, then the whole file becomes PUBLIC.

But Counsel or Parties can make a motion that the appeal be held in camera and kept confidential.

2. Flexible and informal – Flexibility is in all terms, as far as choice of arbitrators, time period and procedures etc.
3. Swiftmess – Arbitration are known to be speedy justice. Some arbitrators tend to go very fast and intervene more and more in the case. It is possible even that the party can request the arbitrator to give an interim award on certain issues in the meantime and thereon he will take a stand on the other issues.
4. Economic – Arbitration, although they look expensive, the cost of an arbitration maybe less than a court.

It was also delineated that in respect of an arbitral award, the tribunal shall take into consideration such rules of law as are chosen by the parties and as are applicable to the substance of the dispute. The arbitral tribunal shall decide the dispute *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorised it to do so.

As far as the recourse against an arbitral award goes, Me. Chetty explained that under the IAA 2008, an application to the Supreme Court may be made for the setting aside of the award under Section 39. He also outlined that an appeal lies as of right to the Judicial Committee of the Privy Council against any final decision of the Supreme Court under the Act.

Gearing towards the end of the session, Me. Chetty explained that it is the Convention on the Recognition and Enforcement of Foreign Arbitral Awards Act 2001 which vests jurisdiction on the Supreme Court of Mauritius to hear an application for recognition and enforcement of a foreign arbitral award.