



BRICS LEGAL FORUM CONFERENCE

DES WILLIAMS

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INTRODUCTION

- > Long awaited changes to South African arbitration legislation have arrived.
- > New International Arbitration Act based on internationally accepted norms, standards, practice and procedure.
- > Relevant to broader world of international arbitration and within BRICS member states.

BACKGROUND

- > Reforms first recommended by South African Law Commission in 1998.
- > New International Arbitration Act became operative in December 2017.
- > South Africa the 11th African country to adopt UNCITRAL Model Law.
- > Foreign parties only comfortable if international arbitration law meets recognised international standards and benchmarks.

COURT SUPPORT

> **TELKOM/TELCORDIA**

Telcordia Technologies Inc v Telkom SA Limited [2007] 3 SA 266 SCA

Supreme Court of Appeal upheld principle of party autonomy in arbitration proceedings. South Africa to show a high degree of deference to arbitration awards.

> **LUFUNO MPHAPHULI & ASSOCIATES (PTY) LIMITED V ANDREWS**

Lufuno Mphaphuli & Associates (Pty) Limited v Andrews CCT97/07 [2009] ZACC 6

Constitutional right to a fair public hearing does not apply to private arbitrations.

Strong support for principle of party autonomy in arbitration proceedings

THE UNCITRAL MODEL LAW

- > Three important legal instruments –
 - > The New York Convention.
 - > UNICTRAL Arbitration Rules.
 - > UNCITRAL Model Law (1985, amended in 2006).
- > Designed to assist states in reforming and modernising laws on arbitral procedure.
- > Reflects worldwide consensus on key aspects of international arbitration practice.
- > Model Law leaves adopting states free to make alterations which they consider necessary so that Model Law can work effectively in their circumstances.
- > General principle focuses on need to promote uniformity.

CONCLUSION

- > Essential that members of BRICS should aim for harmonisation and modernisation.
- > Parties take comfort from knowing that the "rules of the game" are internationally accepted and meet international norms and standards.
- > Some flexibility always necessary.
- > BRICS member states will designate suitable arbitration organisations as managers of BRICS arbitration centres. These organisations should attempt to harmonise their rules and all aspects of arbitration law and practice, subject to need for flexibility.
- > This approach requires willingness to compromise in a genuine attempt to achieve a significant level of harmonisation.

THANK YOU

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