ICLG

The International Comparative Legal Guide to:

International Arbitration 2016

13th Edition

A practical cross-border insight into international arbitration work

Published by Global Legal Group, in association with CDR, with contributions from:

Advokatfirman Vinge
Ali Budiardjo, Nugroho, Reksodiputro
Anderson Mori & Tomotsune
Attorneys at law Ratiolex Ltd
Baker & McKenzie
BDO LLP
BMT LAW
Boss & Young, Attorneys-at-Law
Brödermann Jahn RA GmbH
Burnet, Duckworth & Palmer LLP
Cases & Lacambra
Chiomenti Studio Legale
CMS Cameron McKenna
Costa e Tavares Paes Advogados
Cuatrecasas, Gonçalves Pereira
D'Empaire Reyna Abogados
Divjak, Topić & Bahtijarević Law firm
DLA Piper UK LLP
Dr. Colin Ong Legal Services
Eric Silwamba, Jalasi and Linyama Legal Practitioners
Freshfields Bruckhaus Deringer LLP
Holland & Knight Colombia
Homburger
Hughes Hubbard & Reed LLP
Kachwaha and Partners
König Rebholz Zechberger
Lazareff Le Bars
Lendvai Partners
Linklaters LLP
Loyens & Loeff Luxembourg S.à.r.l.
Matheson
Medina Garrigó Abogados
Moroglu Arseven
Njeri Kariuki Advocate
Olleros Abogados, S.L.P.
Patrikios Pavlou & Associates LLC
Paul, Weiss, Rifkind, Wharton & Garrison LLP
Popovici Nițu Stoica & Asociații
PUNUKA Attorneys and Solicitors
Ronen Setty & Co. Law Firm
Salazar & Asociados
Sedgwick Chudleigh Ltd
Sefrioui Law Firm
Sysouev, Bondar, Khrapoutski Law Office
Travers Thorp Alberga
Von Wobeser y Sierra, S.C.
Weber & Co.
Wilmer Cutler Pickering Hale and Dorr LLP

CDR Commercial Dispute Resolution

glg global legal group

global legal group

Contributing Editors
Steven Finizio and Charlie Caher, Wilmer Cutler Pickering Hale and Dorr LLP

Sales Director
Florjan Osmani

Account Directors
Oliver Smith, Rory Smith

Sales Support Manager
Toni Hayward

Editor
Tom McDermott

Senior Editor
Rachel Williams

Chief Operating Officer
Dror Levy

Group Consulting Editor
Alan Falach

Group Publisher
Richard Firth

Published by
Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design
F&F Studio Design

GLG Cover Image Source
iStockphoto

Printed by
Ashford Colour Press Ltd
August 2016

Copyright © 2016
Global Legal Group Ltd.
All rights reserved
No photocopying

ISBN 978-1-911367-06-2
ISSN 1741-4970

Strategic Partners

MIX
Paper from responsible sources
FSC® C011748

Preface:

General Chapters:

Asia Pacific:

Central and Eastern Europe and CIS:

Western Europe:

Continued Overleaf →

Further copies of this book and others in the series can be ordered from the publisher. Please call +44 20 7367 0720

Disclaimer
This publication is for general information purposes only. It does not purport to provide comprehensive full legal or other advice.
Global Legal Group Ltd. and the contributors accept no responsibility for losses that may arise from reliance upon information contained in this publication.
This publication is intended to give an indication of legal issues upon which you may need advice. Full legal advice should be taken from a qualified professional when dealing with specific situations.

South Africa

Gerhard Rudolph

Darryl Bernstein

Baker & McKenzie

1 Arbitration Agreements

1.1 What, if any, are the legal requirements of an arbitration agreement under the laws of your jurisdiction?

Section 1 of the Arbitration Act 42 of 1965 ("Arbitration Act") defines an 'arbitration agreement' as "*a written agreement providing for the reference to arbitration of any existing or any future dispute relating to a matter specified in the agreement, whether an arbitrator is named or designated therein or not*".

As such, an arbitration agreement must be in writing to fall within the Arbitration Act. It should identify the existing or future dispute relating to a matter specified in the contract. An oral arbitration agreement is not invalid but is governed at common law only, presenting substantial difficulties in its enforcement.

Although under the Arbitration Act an arbitration agreement is required to be in writing, it need not be signed by the parties. A written arbitration agreement may be concluded by way of an exchange of correspondence, for example.

1.2 What other elements ought to be incorporated in an arbitration agreement?

The arbitrator is not required to be named or designated in the arbitration agreement, although often the parties provide for a means of appointment. The seat of the arbitration should also be included, as well as the parties' choice of law to be applied, both the governing law as well as the law of the arbitration agreement.

In practice, arbitration agreements will usually provide for the submission of the dispute to arbitration in accordance with the rules of a specified institution or administering body. These include, for example, the International Court of Arbitration of the International Chamber of Commerce ("ICC"), the London Court of International Arbitration ("LCIA"), or the Arbitration Foundation of Southern Africa ("AFSA").

1.3 What has been the approach of the national courts to the enforcement of arbitration agreements?

Following the principle of *pacta sunt servanda*, South African courts are generally loathe to set aside an arbitration agreement. The presumption is that such an agreement is binding, with the onus to prove otherwise on the party seeking to avoid arbitration. A court would only set aside an arbitration agreement on 'good cause shown' which has, in the past, been taken by South African courts to include allegations of fraud or misconduct on the part of the arbitrator. In practice, arbitration agreements are rarely set aside.

Importantly, South African law does not endorse the principle of separability, where the contract is invalid the arbitration clause will also be invalid. Notable exceptions are where the contract was terminated by repudiation or due to its voidability, in which cases the arbitration clause may be severed, surviving termination.

2 Governing Legislation

2.1 What legislation governs the enforcement of arbitration proceedings in your jurisdiction?

Arbitration proceedings are relatively flexible and a procedural framework is most often agreed between the parties. The Arbitration Act underpins and supports the arbitration process. In particular, section 21 sets out the general powers of the court in relation to a reference under an arbitration agreement and section 22 deals with offences for non-compliance with the procedures prescribed elsewhere in the Arbitration Act, generally at sections 14 to 22. Section 21 is dealt with in more detail below.

2.2 Does the same arbitration law govern both domestic and international arbitration proceedings? If not, how do they differ?

No distinction is drawn between domestic and international arbitration proceedings and they are currently both governed by the Arbitration Act.

In 1997, South Africa acceded to the 1970 Convention on the Taking of Evidence Abroad in Civil or Commercial Matters of the Hague Conference on Private Law, subject to certain reservations and declarations. South Africa's accession to this convention facilitates the obtaining of evidence abroad for use in litigation and arbitration.

South Africa has not ratified the 1965 Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States. However, ratification of this convention was recommended by the South African Law Reform Commission ("SALRC") in its 1998 report on International Commercial Arbitration. According to the SALRC, ratification will create the necessary legal framework to encourage foreign investment and further economic development in South Africa.

The Protection of Investment Act 22 of 2015 (the "Protection of Investment Act"), was passed in late 2015 with the principal aim of

© Published and reproduced with kind permission by Global Legal Group Ltd, London

strengthening South Africa's ability to attract foreign investment, increase exports and maintain a balance between the rights and obligations of all investors in South Africa. Though it has yet to come into force (at the time of writing), the Protection of Investment Act will, by and large, replace the Bilateral Investment Treaties ("BITs") between South Africa and other countries, which typically provide for arbitration as the preferred method of dispute resolution. The Protection of Investment Act provides for the settlement of investment disputes by arbitration, but only after all domestic remedies have been exhausted. This will certainly impact on the resolution of disputes.

2.3 Is the law governing international arbitration based on the UNCITRAL Model Law? Are there significant differences between the two?

The Arbitration Act predates and does not reflect the UNCITRAL Model Law. As above, no distinction is drawn between domestic and international arbitration proceedings in the Arbitration Act.

Following a review of South Africa's arbitration law, the SALRC has identified various shortcomings in respect of international arbitration. In particular, South African legislation does not contain provisions specifically dealing with international commercial arbitration. In order to create certainty, the SALRC recommended the adoption of a draft bill closely aligned with the UNCITRAL Model Law. It argued that this would improve South Africa's credibility in the field of international arbitration and ensure that South Africa becomes a sought after venue for international commercial arbitration.

Adopting the SALRC's recommendations would be of benefit to both domestic and international arbitration in South Africa. It would be particularly helpful in facilitating the effective enforcement in foreign jurisdictions of arbitration awards made in South Africa. However, the failure to do so does not render existing law ineffective. The current South African law can operate as the law of arbitration for international arbitration. Parties may elect to rely purely on South African arbitration law or to use this law as the background to their alternative choice of procedural rules.

2.4 To what extent are there mandatory rules governing international arbitration proceedings sited in your jurisdiction?

See above. The Arbitration Act governs arbitration proceedings and draws no distinction between domestic and international arbitration. Procedural rules may be agreed upon by the parties, which may include the rules of an agreed administering body.

3 Jurisdiction

3.1 Are there any subject matters that may not be referred to arbitration under the governing law of your jurisdiction? What is the general approach used in determining whether or not a dispute is "arbitrable"?

The Arbitration Act provides that the following disputes or causes of action cannot be resolved by way of arbitration:

- matrimonial causes or any matters incidental thereto; and
- matters relating to the status of a person.

At common law, arbitration may not be pursued in criminal matters.

Furthermore, disputes pertaining to a possible contravention of competition legislation may not be arbitrated.

In insurance-related claims, notwithstanding any contrary provision of a policy or agreement relating thereto, the owner of a domestic policy must enforce his or her rights against an insurer in a court of competent jurisdiction. However, this statutory restriction does not extend to disputes relating to the quantification of any such claims.

The Protection of Investment Act prescribes domestic mediation as a first step to an investment dispute, provided the investor and the government can agree on the appointment of the mediator. An alternative for investors is to approach the domestic courts. As mentioned above, exhaustion of local remedies is required before the government can be approached to consent to international investment arbitration.

The arbitrability of a dispute may be challenged under the Arbitration Act. If the allegation is that the particular dispute is not arbitrable, the party seeking to avoid arbitration may apply to the court for an order setting aside the arbitration agreement, declaring that the dispute shall not be referred to arbitration, or declaring that the arbitration agreement shall cease to have effect with reference to any dispute referred.

3.2 Is an arbitrator permitted to rule on the question of his or her own jurisdiction?

There is no legislated concept of 'competence-competence'. The parties may, on submission to arbitration, agree that the 'competence-competence' principle will apply. The rules of all three major administered arbitration institutions in South Africa do allow for such competence.

Absent any such provision in the adopted procedural rules, an arbitrator will ordinarily rule on the question of his or her jurisdiction as a matter of practicality. But, a party may apply to have any award set aside if, in so doing, the arbitrator exceeded his or her powers, which includes exceeding his or her jurisdiction.

3.3 What is the approach of the national courts in your jurisdiction towards a party who commences court proceedings in apparent breach of an arbitration agreement?

Generally, a party to court proceedings contending that the dispute is arbitrable will raise a special plea to stay court proceedings. The party seeking to avoid the arbitration agreement may, in terms of section 3(2) of the Arbitration Act, apply to court, on good cause shown for an order:

- setting aside the arbitration agreement;
- that the particular dispute referred to in the arbitration agreement shall not be referred to arbitration; or
- that the arbitration agreement shall cease to have effect with reference to any dispute referred.

An applicant who applies under section 3 for a matter not to be referred to arbitration bears an equally heavy onus to the party who resists a special plea that the proceedings should be stayed and the matter be referred to arbitration. Parties do not waive the right to arbitrate by participating in court proceedings.

3.4 Under what circumstances can a court address the issue of the jurisdiction and competence of the national arbitral tribunal? What is the standard of review in respect of a tribunal's decision as to its own jurisdiction?

Where one of the parties contests the validity of the agreement containing the arbitration agreement and alleges that the arbitrator

© Published and reproduced with kind permission by Global Legal Group Ltd, London

has no jurisdiction, and the arbitrator declines to proceed with the arbitration, one of the parties may apply to the court for a declaratory order.

Again, and in terms of section 33(1) of the Act, where an arbitration tribunal has exceeded its powers, the court may, on the application of either party, set the award aside.

3.5 Under what, if any, circumstances does the national law of your jurisdiction allow an arbitral tribunal to assume jurisdiction over individuals or entities which are not themselves party to an agreement to arbitrate?

There are no circumstances under which South African law allows an arbitral tribunal to assume jurisdiction over individuals or entities which are not themselves party to an arbitration agreement.

Neither a court nor an arbitral tribunal has the power to join a third party to arbitration proceedings without the parties' consent. In situations where there are a number of related parties and contracts, and arbitration is considered the best method of dispute resolution, the parties generally provide for multi-contract or multi-party dispute resolution procedures in their contracts.

3.6 What laws or rules prescribe limitation periods for the commencement of arbitrations in your jurisdiction and what is the typical length of such periods? Do the national courts of your jurisdiction consider such rules procedural or substantive, i.e., what choice of law rules govern the application of limitation periods?

Generally, there are no limitation periods for the commencement of arbitration, save as may be contractually stipulated.

The usual prescriptive periods for the prosecution of claims as provided for in the Prescription Act, 68 of 1969 ("Prescription Act") may still apply and are not excluded because the dispute is referred to arbitration. The Prescription Act provides that a contractual claim is extinguished by prescription if the creditor fails to enforce the claim within three years of the date on which the debt became due. The debt is not deemed to be due until the creditor has knowledge of the identity of the debtor or could have acquired such knowledge by the exercise of reasonable care. A referral to arbitration, where the creditor claims payment of a debt, interrupts the prescriptive period.

3.7 What is the effect in your jurisdiction of pending insolvency proceedings affecting one or more of the parties to ongoing arbitration proceedings?

For arbitrations constituted under the Arbitration Act, insolvency proceedings will not terminate the arbitration agreement unless the agreement provides otherwise. Under section 5 of the Arbitration Act, the referral to arbitration will be treated as any other court proceedings would by the liquidator.

4 Choice of Law Rules

4.1 How is the law applicable to the substance of a dispute determined?

Usually, the law applicable to the substance of the dispute is agreed by the parties in the arbitration agreement. In the absence of prior agreement, the tribunal will determine which substantive law applies in accordance with the applicable principles of private international law, as applied at the seat of arbitration in relation to contractual choice of law.

4.2 In what circumstances will mandatory laws (of the seat or of another jurisdiction) prevail over the law chosen by the parties?

The law chosen by the parties to govern the arbitration will supersede mandatory laws of the seat of the arbitration or of any other jurisdiction unless statutorily prohibited or contrary to public policy.

4.3 What choice of law rules govern the formation, validity, and legality of arbitration agreements?

In the absence of prior agreement, the tribunal will determine which substantive law applies in accordance with the applicable principles of private international law, as applied at the seat of arbitration in relation to contractual choice of law.

5 Selection of Arbitral Tribunal

5.1 Are there any limits to the parties' autonomy to select arbitrators?

No. There are no statutory requirements or restrictions in relation to an arbitrator's independence, neutrality, nationality, formal qualifications or expertise, and the parties are at liberty to agree an arbitrator as they see fit.

The parties are at liberty to stipulate any specific criteria or qualifications in appointment. In the absence of any such provision within the arbitration agreement, the office of an arbitrator is not capable of unilateral termination and an approach to court would, consequently, be required to secure his or her removal.

5.2 If the parties' chosen method for selecting arbitrators fails, is there a default procedure?

If a parties' chosen method for selection fails, section 12 of the Arbitration Act provides that the court has the power, in certain circumstances, to appoint an arbitrator/tribunal or to remove an arbitrator on good cause.

The rules of arbitration institutions, to the extent that they are applicable, will also usually provide for a default selection procedure.

5.3 Can a court intervene in the selection of arbitrators? If so, how?

As above, if the selection mechanism fails for any reason, the court may, upon application by a party to the arbitration agreement, appoint an arbitrator in the circumstances provided for in section 12 of the Arbitration Act.

In terms of section 13(2)(a) of the Arbitration Act, a court may at any time, on good cause shown and on the application of a party to the reference, set aside the appointment of an arbitrator or remove such person from office.

© Published and reproduced with kind permission by Global Legal Group Ltd, London

5.4 What are the requirements (if any) as to arbitrator independence, neutrality and/or impartiality and for disclosure of potential conflicts of interest for arbitrators imposed by law or issued by arbitration institutions within your jurisdiction?

No formal rules of evidence find application in arbitration proceedings and the arbitrator is bound simply to abide by the standards of natural justice, as are reflected in the Arbitration Act. The effect of section 33 is, *inter alia*, that an award made by an arbitrator who has committed any 'gross irregularity' may be set aside by a court in proceedings instituted by the aggrieved party. In addition, as set out in question 5.3 above, the court may set aside the appointment of an arbitrator 'on good cause shown'. Arbitrators generally deal with conflicts by way of full disclosure, in the ordinary course.

Where an arbitrator is nominated through a specific arbitration body, the procedure for disqualifying an arbitrator will be specified in that institution's rules.

6 Procedural Rules

6.1 Are there laws or rules governing the procedure of arbitration in your jurisdiction? If so, do those laws or rules apply to all arbitral proceedings sited in your jurisdiction?

Again, no formal rules of evidence find application in arbitration proceedings. The process is subject only to the rules of natural justice. There are no statutory rules (akin to the rules of the court) which govern the procedure of arbitrations in South Africa. The procedure will usually be determined by the rules of the arbitration institution administering the arbitration. In the absence of a set of rules, the parties are free to agree on any set of procedural rules, including the rules of court or other rules set out specifically for purposes of arbitration.

6.2 In arbitration proceedings conducted in your jurisdiction, are there any particular procedural steps that are required by law?

As above, and in the absence of agreed rules which determine the procedural steps in the arbitration, there are no particular procedural steps that are required by law, other than those set out in sections 14 to 22 of the Arbitration Act.

However, the Arbitration Act contains provisions regarding the need to give adequate notice of arbitration proceedings and how to proceed in the eventuality that a notified party fails to participate. It also deals with summoning witnesses to testify and to disclose documents.

6.3 Are there any particular rules that govern the conduct of counsel from your jurisdiction in arbitral proceedings sited in your jurisdiction? If so: (i) do those same rules also govern the conduct of counsel from your jurisdiction in arbitral proceedings sited elsewhere; and (ii) do those same rules also govern the conduct of counsel from countries other than your jurisdiction in arbitral proceedings sited in your jurisdiction?

There are no rules specifically governing the conduct of counsel in a domestic arbitration, albeit that both members of the Law Society of South Africa as well as the General Bar Council would remain accountable for their professional conduct to their respective professional bodies.

6.4 What powers and duties does the national law of your jurisdiction impose upon arbitrators?

An arbitrator's powers and obligations are determined by the Arbitration Act, the common law and the terms of reference to arbitration.

Among other things, a tribunal may, in the absence of contrary provisions in the arbitration agreement and on the application of any party to the reference:

- require any party to make discovery of documents by way of affidavit or by answering interrogatories on oath and to produce such documents for inspection;
- require any party to allow the inspection of any goods or property involved in the dispute;
- appoint a commissioner to take the evidence of any person in South Africa and forward such evidence to the tribunal;
- from time to time, determine where and when the arbitration proceedings shall be held;
- administer oaths to the parties/witnesses giving evidence;
- examine the parties/witnesses appearing/summoned to give evidence;
- inspect any goods or property; and
- make interim awards.

The obligations of the tribunal include the duty to:

- act fairly;
- make an award which is final, certain and legal;
- make an award in the presence of both parties, unless agreed otherwise;
- make an award at the proper place and within the timeframe specified in the arbitration agreement;
- attend all proceedings;
- dispose of every question/issue submitted;
- not exceed the submission;
- decide which party should bear the costs of the proceedings;
- execute the award together at the same time and place and in the presence of the parties (if the award is made by more than one arbitrator);
- not hear the evidence of a party/witness in the absence of the other party;
- give notice of proceedings;
- make an award in accordance with the ordinary law;
- not receive secret information from one of the parties;
- receive all evidence;
- keep a record of the proceedings; and
- not depart from a stated intention.

6.5 Are there rules restricting the appearance of lawyers from other jurisdictions in legal matters in your jurisdiction and, if so, is it clear that such restrictions do not apply to arbitration proceedings sited in your jurisdiction?

In South Africa, only admitted lawyers who have been admitted by the High Court of South Africa to practise law may appear in court. Such restrictions do not, however, apply to arbitration proceedings in South Africa and as such, foreign nationals can act as counsel or arbitrators in arbitrations.

© Published and reproduced with kind permission by Global Legal Group Ltd, London

6.6 To what extent are there laws or rules in your jurisdiction providing for arbitrator immunity?

There is no law in South Africa expressly providing for arbitrator immunity. While notionally a claim may lie against an arbitrator for breach of mandate, there is no case law precedent whereby a party to an arbitration agreement has brought a claim against an arbitrator or former arbitrator in South Africa. There is also no restriction on the arbitrator's entitlement to require the parties to arbitration to contractually indemnify him or her on acceptance of the mandate.

6.7 Do the national courts have jurisdiction to deal with procedural issues arising during an arbitration?

Where local courts intervene in the proceedings, section 21 of the Arbitration Act empowers the courts to make orders in respect of any matters specified in the section including:

- security for costs;
- discovery of documents and interrogatories;
- examination of witnesses;
- submission of evidence by affidavit;
- security for the amount in dispute;
- substituted service; and
- appointment of a receiver.

In addition, in terms of section 20, a tribunal may, on application by a party or of its own volition, refer any question of law arising in the course of the reference in the form of a special case for the opinion of a court or for the opinion of counsel. This must be before it makes a final award and on the application of any party to the reference or if the parties to the reference so agree. An opinion subsequently provided by the court/counsel is final and binding.

7 Preliminary Relief and Interim Measures

7.1 Is an arbitrator in your jurisdiction permitted to award preliminary or interim relief? If so, what types of relief? Must an arbitrator seek the assistance of a court to do so?

Section 26 of the Arbitration Act allows an arbitration tribunal to issue an interim award at any time within the period allowed for the making of an award. The nature of the interim relief that the arbitrator is capable of providing is not specified and may cause difficulties but is said to include: document discovery; furnishing of security for costs; inspection orders; interim custody orders or asset preservation orders; interim interdicts; and orders securing the amount claimed in the dispute.

7.2 Is a court entitled to grant preliminary or interim relief in proceedings subject to arbitration? In what circumstances? Can a party's request to a court for relief have any effect on the jurisdiction of the arbitration tribunal?

After the institution of arbitration proceedings, the court may, upon application:

- provide an opinion on any question of law arising during the course of the proceedings, which shall be binding and not subject to appeal;
- order the discovery of documents or interrogatories;
- order any party to furnish security for costs;
- order the inspection, interim custody, preservation or sale of goods or property;
- grant an interim interdict or similar relief; and
- make an order securing the amount in dispute in the reference.

The court's powers do not derogate from the tribunal's powers to make orders in respect of any such matters such as it may be authorised to decide upon. But section 6 of the Arbitration Act provides that, where any party to an arbitration agreement commences legal proceedings in any court against any other party to the agreement in respect of any matter agreed to be referred to arbitration, any party to such legal proceedings may apply to the court for a stay of such proceedings.

7.3 In practice, what is the approach of the national courts to requests for interim relief by parties to arbitration agreements?

In practice, the courts may make orders for interim relief in terms of section 21 of the Arbitration Act, provided that the order falls within the scope of the section.

7.4 Under what circumstances will a national court of your jurisdiction issue an anti-suit injunction in aid of an arbitration?

There are no reported cases in which a South African court has issued an "anti-suit injunction" in aid of arbitration in another jurisdiction. There are diverging opinions as to whether a South African court would have jurisdiction to grant an interdict prohibiting a party from instituting proceedings in a non-South African jurisdiction. Apart from the specific remedy contemplated in section 6 of the Arbitration Act, a party would also be entitled to raise a special defence of *lis pendens* if it is able to demonstrate that there are already pending proceedings between the same parties in another forum (including an arbitral forum) based on the same cause of action and subject matter, which may result in the dismissal or at least the suspension of the secondary proceedings pending the outcome of the prior proceedings.

7.5 Does the national law allow for the national court and/or arbitral tribunal to order security for costs?

The Arbitration Act does not specifically empower the tribunal to make an order for security for costs. As above, the scope for interim relief from the tribunal in section 26 is vaguely phrased. The rules of most administering bodies allow for this relief. In the absence of agreement, the parties would have to apply to court for such an order. In terms of section 21(1) of the Arbitration Act, a court has the power to make an order as to security for costs.

7.6 What is the approach of national courts to the enforcement of preliminary relief and interim measures ordered by arbitral tribunals in your jurisdiction and in other jurisdictions?

The Arbitration Act defines an award as including an interim award, so enforcement of interim relief is no problem in practice.

© Published and reproduced with kind permission by Global Legal Group Ltd, London

8 Evidentiary Matters

8.1 What rules of evidence (if any) apply to arbitral proceedings in your jurisdiction?

As above, the parties are not bound by formal rules of evidence in conducting arbitration proceedings. While sections 14 to 22 of the Arbitration Act govern the powers of the arbitral tribunal in relation to procedure and the procurement of evidence, the Arbitration Act does not specify any particular rules to which the arbitral tribunal is bound in establishing the facts of the case. In the absence of agreement to the contrary, an arbitrator will ordinarily apply South African law of evidence. It is up to the parties to determine what evidence should be led, whether expert evidence is necessary and, if so, the nature of the expert evidence required.

8.2 Are there limits on the scope of an arbitrator's authority to order the disclosure of documents and other disclosure (including third party disclosure)?

An arbitrator generally has the same authority to order the disclosure of documents as a court. If the arbitration agreement does not stipulate the rules for the conduct of the arbitration proceedings, then in terms of section 14 of the Arbitration Act, the arbitrator may require the parties to:

- make discovery of documents by way of affidavit or by answering interrogatories on oath and to produce such documents for inspection;
- deliver pleadings or statements of claim and defence, give particulars of their claim or counterclaim, and allow any party to amend its pleadings or statements of claim or defence;
- allow the inspection of any goods or property involved in the reference, which is in the possession or under the control of the parties;
- appoint a commissioner to take the evidence of any person in South Africa or abroad and to forward such evidence to the tribunal in the same way as if he or she were a commissioner appointed by the court;
- subject to any legal objection, examine the parties appearing to give evidence in relation to the matters in dispute and require them to produce books, documents or things that may be required and that could be compelled on the trial of an action;
- subject to any legal objection, examine any person who has been summoned to give evidence and require the production of any book, document or thing that such person has been summoned to produce; and
- with the consent of the parties or on an order of court, receive evidence given by affidavit; and inspect any goods or property involved in the reference.

8.3 Under what circumstances, if any, is a court able to intervene in matters of disclosure/discovery?

The right of a court to intervene in matters of disclosure and to compel disclosure is provided for in section 21 of the Arbitration Act.

8.4 What, if any, laws, regulations or professional rules apply to the production of written and/or oral witness testimony? For example, must witnesses be sworn in before the tribunal or is cross-examination allowed?

There are no laws, regulations or professional rules which apply to the production of written and/or oral witness testimony. There is no requirement that witnesses must be sworn in before the tribunal, although section 14 (b)(ii) of the Arbitration Act empowers the arbitrator to administer oaths/affirmations. The usual (but not invariable) practice is that witnesses are sworn in. Cross-examination is always allowed.

8.5 What is the scope of the privilege rules under the law of your jurisdiction? For example, do all communications with outside counsel and/or in-house counsel attract privilege? In what circumstances is privilege deemed to have been waived?

There are no rules of privilege specific to arbitration proceedings. The common law rules of privilege are those which are applicable in litigation.

In South Africa, legal professional privilege provides that all communications between a legal advisor and a client are privileged if the legal advisor, acting in a professional capacity at the time, provides the client with legal advice in confidence for purposes of pending or contemplated litigation, or for the purposes of obtaining legal advice. Privilege may be claimed by in-house counsel and foreign lawyers. Privilege may also be waived expressly or by implication. In making a decision regarding implied waiver, courts will have regard to the requirements of fairness and consistency. The Arbitration Act refers to privilege in section 22 as being applicable to a witness subpoenaed to give evidence or to produce physical evidence before a court of law.

9 Making an Award

9.1 What, if any, are the legal requirements of an arbitral award? For example, is there any requirement under the law of your jurisdiction that the Award contain reasons or that the arbitrators sign every page?

The formal requirements, in terms of sections 23 to 25 of the Arbitration Act, for an award are the following:

- the award must be in writing;
- the award must be made within the period prescribed by the Arbitration Act (four months) or by the arbitration agreement or within any extended period allowed by the parties to the court; and
- the award must be published by the tribunal or parties or their representatives being present of having been summoned to appear.

Reasons need not be given for the award and the award need not be reviewed by any other body.

9.2 What powers (if any) do arbitrators have to clarify, correct or amend an arbitral award?

Section 30 of the Arbitration Act empowers an arbitrator to correct clerical mistakes and patent errors arising from an accidental slip or omission in any award.

10 Challenge of an Award

10.1 On what bases, if any, are parties entitled to challenge an arbitral award made in your jurisdiction?

In terms of section 28 of the Arbitration Act, an award is final and not subject to appeal unless the arbitration agreement provides otherwise.

© Published and reproduced with kind permission by Global Legal Group Ltd, London

An award may be set aside in terms of section 33 of the Arbitration Act, upon application by either of the parties on notice, in instances where:

- any member of the arbitration tribunal has misconducted himself in relation to his or her duties as arbitrator or umpire;
- an arbitration tribunal has committed any gross irregularity in the conduct of the arbitration proceedings;
- an arbitration tribunal has exceeded its powers; and
- an award has been improperly obtained.

10.2 Can parties agree to exclude any basis of challenge against an arbitral award that would otherwise apply as a matter of law?

In terms of section 28 of the Arbitration Act, an award is final and not subject to appeal unless the arbitration agreement provides otherwise.

10.3 Can parties agree to expand the scope of appeal of an arbitral award beyond the grounds available in relevant national laws?

If the arbitration agreement provides for an appeal, the parties could, by agreement, expand the scope of the appeal. However, arbitration agreements that provide for an appeal generally do not expand the scope of appeal beyond the grounds applicable in appeals from the High Court to the Supreme Court of Appeal.

10.4 What is the procedure for appealing an arbitral award in your jurisdiction?

Where the arbitration agreement provides for an appeal, the procedure will be determined by the arbitration agreement of the parties or by the rules of the arbitration body administering the arbitration.

11 Enforcement of an Award

11.1 Has your jurisdiction signed and/or ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Has it entered any reservations? What is the relevant national legislation?

South Africa has ratified the New York Convention without reservation. The Recognition and Enforcement of Foreign Arbitral Awards Act 40 of 1977 gives effect to the New York Convention. It provides that any division of the High Court is competent to make a foreign arbitral award an order of court – a 'foreign arbitral award' being one:

- which is made outside South Africa; or
- whose enforcement is not permissible in terms of the Arbitration Act, but which is not in conflict with the Recognition and Enforcement of Foreign Arbitral Awards Act.

Any such foreign arbitral award which has been made an order of the court is enforceable in the same manner as a judgment of the court.

11.2 Has your jurisdiction signed and/or ratified any regional Conventions concerning the recognition and enforcement of arbitral awards?

Other than the New York Convention, South Africa has not signed any conventions concerning the recognition and enforcement of arbitral awards.

In 1997, South Africa acceded to the 1970 Convention on the Taking of Evidence Abroad in Civil or Commercial Matters of the Hague Conference on Private Law, subject to certain reservations and declarations. South Africa's accession to this convention facilitates the obtaining of evidence abroad for use in litigation and arbitration.

South Africa has not yet ratified the 1965 Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States. However, ratification of this convention was recommended by the SALRC in its 1998 report on International Commercial Arbitration. According to the SALRC, ratification will create the necessary legal framework to encourage foreign investment and further economic development in South Africa.

11.3 What is the approach of the national courts in your jurisdiction towards the recognition and enforcement of arbitration awards in practice? What steps are parties required to take?

It is important to consider whether it is preferable to enforce a domestic or a foreign arbitral award as the different applicable legislation stipulates different requirements for the validity and the enforcement of such awards.

Local arbitral awards made an order of court as provided for in terms of section 31(1) and 31 (3) of the Arbitration Act, as well as foreign arbitral awards made an order of court in terms of the requirements of the Recognition and Enforcement of Foreign Arbitral Awards Act, are capable of enforcement in practice. The latter Act was enacted to give effect to South Africa's obligations under the New York Convention.

For local awards, it must be proven that the dispute was submitted to arbitration in terms of an arbitration agreement, that the arbitrator was appointed and that there was a valid award in terms of the reference.

In addition to these requirements, the enforcement of foreign awards requires that the original foreign arbitral award and the original arbitration agreement in terms of which the award was made, duly authenticated, or certified copies of the award and agreement, must accompany the application to court. The Recognition and Enforcement of Foreign Arbitral Awards Act lists five categories of defences (corresponding to the defences identified in Article V.1 of the New York Convention) which would prevent the recognition and enforcement of a foreign arbitral award if successfully raised by the person against whom enforcement is sought.

In summary, a party seeking to enforce a foreign arbitral award potentially faces more defences to enforcement than a party seeking to enforce a domestic award. Further, there is uncertainty as some of the defences make reference to other legal systems with which the parties may not be familiar.

Importantly, when seeking to enforce a foreign award in South Africa, due consideration must be given to the Protection of Businesses Act 99 of 1978. This Act provides that no arbitral

© Published and reproduced with kind permission by Global Legal Group Ltd, London

awards made outside South Africa may be enforced inside South Africa without the consent of the Minister of Economic Affairs if the award arose from an act or transaction "*connected with the mining, production, importation, exportation, refinement, possession, use or sale of or ownership to any matter or material, of whatever nature whether within, outside, into or from [South Africa]*". The wording of this Act is wide and could potentially be used to frustrate enforcement of foreign arbitral awards beyond its intended ambit. As most awards touch on the ownership of "*matter or material*", the Minister's permission may well be needed in nearly every action for recognition and enforcement. This is a serious consideration for those trying to enforce.

11.4 What is the effect of an arbitration award in terms of *res judicata* in your jurisdiction? Does the fact that certain issues have been finally determined by an arbitral tribunal preclude those issues from being re-heard in a national court and, if so, in what circumstances?

When an award has been made, the matter becomes *res judicata* if there has been full and final adjudication precluding the subsequent ventilation of the same dispute in a court. However, under SA law, arbitration awards have no legal effect on third parties.

11.5 What is the standard for refusing enforcement of an arbitral award on the grounds of public policy?

The courts do not easily set aside awards on the basis that they offend public policy. The mere fact that foreign awards are made on a basis not recognised in South Africa does not necessarily mean that they are contrary to public policy. Whether an award is contrary to public policy will depend on the facts of each case.

12 Confidentiality

12.1 Are arbitral proceedings sited in your jurisdiction confidential? In what circumstances, if any, are proceedings not protected by confidentiality? What, if any, law governs confidentiality?

The Arbitration Act does not automatically render arbitration proceedings confidential, although the parties are free to import such a clause by way of agreement. Even if the clause is not expressly provided for, such a term is implied in South African law following English precedent. The AFSA and ASA procedural rules specifically ensure the confidentiality of the arbitration proceedings and the final award.

12.2 Can information disclosed in arbitral proceedings be referred to and/or relied on in subsequent proceedings?

A party who discloses confidential arbitration-related information is in breach of the confidentiality provisions such as may be express or implied, except where such disclosure is for the purposes of court proceedings as may arise from the arbitration.

Whether information disclosed in arbitral proceedings can be referred to and/or relied on in subsequent proceedings between the same parties will depend on whether the subsequent proceedings arise from or relate to the initial arbitration. In practice, a party might be able to compel disclosure of such documentation through the subsequent disclosure process.

13 Remedies / Interests / Costs

13.1 Are there limits on the types of remedies (including damages) that are available in arbitration (e.g., punitive damages)?

The Arbitration Act imposes no limits on the types of remedy (including damages) that are available, but damages under South African law are limited to the actual damages suffered. Punitive damages are not recognised by South African law. Whether an award arising from arbitration proceedings conducted in terms of the substantive law of another jurisdiction providing for punitive damages is to be construed as contrary to public policy will depend on the facts of each case. Specific performance may be awarded by a tribunal, providing that the tribunal is suitably mandated to make such an award under the terms of reference.

13.2 What, if any, interest is available, and how is the rate of interest determined?

On the question of interest, one needs to distinguish between foreign and domestic awards.

In relation to domestic awards, section 29 of the Arbitration Act provides that, where an award provides for the payment of a sum of money, such sum shall, unless the award provides otherwise, carry interest as from the date of the award and at the same rate as a judgment debt. The rate of interest on outstanding sums of money has not been agreed by the parties, the Prescribed Rate of Interest Act 55 of 1975 shall apply. Since 1 March 2016, the applicable rate of interest is 10.25 per cent *per annum*, calculated daily without compounding.

A foreign arbitral award that orders the payment of money, expressed in a foreign currency, must first be converted to Rand for it to be enforceable in South Africa. In terms of Section 2(2) of the Foreign Arbitral Awards Act, the award must be made an order of Court as if it were an award for payment of the equivalent amount in Rand on the basis of the exchange rate prevailing at the date of the award and not at the date of the order of enforcement. The Applicant therefore runs the risk of devaluation between the time of the award and the time of the order of enforcement.

13.3 Are parties entitled to recover fees and/or costs and, if so, on what basis? What is the general practice with regard to shifting fees and costs between the parties?

Generally, the party which is substantially successful is entitled to be awarded costs in the absence of special circumstances.

In terms of section 35(1) of the Arbitration Act, unless otherwise provided in the arbitration agreement, the award of costs in connection with the reference and award is at the discretion of the arbitrator/tribunal. If costs are awarded, directions must be given as to the scale on which they are to be taxed.

13.4 Is an award subject to tax? If so, in what circumstances and on what basis?

An award is generally not subject to tax but there is a great deal of complexity in relation to this issue and the treatment of income and expenditure in respect of certain awards. Awards in respect to payments due to employees, for example, constitute gross income for the purposes of calculating income tax.

© Published and reproduced with kind permission by Global Legal Group Ltd, London

13.5 Are there any restrictions on third parties, including lawyers, funding claims under the law of your jurisdiction? Are contingency fees legal under the law of your jurisdiction? Are there any "professional" funders active in the market, either for litigation or arbitration?

There are no restrictions on third party funding *per se*. In *PricewaterhouseCoopers Inc and others v National Potato Co-operative Limited*, the Supreme Court of Appeal held that an agreement to finance litigation in exchange for a part of the proceeds is in keeping with the right of access justice. It is not in itself champertous. A funding agreement will only be an abuse of process if it lacks good faith. There is generally no obligation on a party to disclose the existence of third-party funding in order to bring the case. The *PricewaterhouseCoopers* case has opened the way to more innovative funding of expensive litigation in South Africa, and this is an area that is gaining momentum.

The Contingency Fees Act, 66 of 1997 provides for two forms of contingency fee arrangements, namely a "no-win, no-fees" arrangement, allowing the attorney to claim fees as agreed with the client upon successful completion of the matter, and secondly, an arrangement in terms of which the attorney may claim fees not exceeding double the normal fee and further provided that for claims sounding in money, the fee may then also not exceed 25 per cent of the total amount awarded, which amount shall not, for purposes of calculating such excess, include any costs.

14 Investor State Arbitrations

14.1 Has your jurisdiction signed and ratified the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (1965) (otherwise known as "ICSID")?

No, South Africa has not signed this convention.

14.2 How many Bilateral Investment Treaties (BITs) or other multi-party investment treaties (such as the Energy Charter Treaty) is your jurisdiction party to?

South Africa is a party to the Multilateral Investment Guarantee Agency ("MIGA"), ratified on 2 March 1994. South Africa is also party to approximately 40 BITs that provide for arbitration pursuant to the rules of the additional facility of the International Centre for Settlement of Investment Disputes ("ICSID") of 1978. In addition, South Africa is a party to the Southern African Development Community ("SADC") Protocol on Finance and Investment, 2006.

As noted in question 2.2 above, the South African Government is in the process of terminating BITs in favour of a general framework for the settlement of investment disputes in the form of the new Protection of Investment (as at date of writing, yet to commence). When a date has been set for its commencement, the Protection of Investment Act will provide a legal framework for investments and addresses the legal protection of investors in line with the requirements of the South African Constitution. All investments will have to be made in compliance with South Africa's laws and the Act makes reference to the state's right to regulate in the public interest. This may include redressing socio-economic inequalities, upholding constitutional rights, promoting beneficiation and protecting the environment. The Protection of Investment Act will also regulate international arbitration. The South African state may consent to international arbitration brought by foreign investors after domestic remedies (mediation or court processes) have been exhausted. If the state consents to international arbitration in terms of the Protection of Investment Act, the Act requires the arbitration to be state-to-state arbitration (between South Africa and the home state of the applicable foreign investor) as opposed to investor-state arbitration (between the foreign investor and the host state, South Africa).

14.3 Does your jurisdiction have any noteworthy language that it uses in its investment treaties (for example in relation to "most favoured nation" or exhaustion of local remedies provisions)? If so, what is the intended significance of that language?

South Africa does have language which is common to some, but not all BITs. For example, reference is made in some of its BITs to "most favoured nation". As mentioned above, however, BITs are being terminated in favour of the Protection of Investment Act which will provide greater uniformity to state-to-state arbitrations, and in particular, will require an exhaustion of domestic remedies before a matter can be referred to arbitration.

14.4 What is the approach of the national courts in your jurisdiction towards the defence of state immunity regarding jurisdiction and execution?

Under the Foreign States Immunities Act 87 of 1981, a foreign state shall not be immune from the jurisdiction of the courts in South Africa in proceedings relating to, *inter alia*, a commercial transaction entered into by the foreign state, or an obligation of the foreign state which by virtue of a contract (whether a commercial transaction or not) falls to be performed wholly or partly in South Africa. In addition, if a foreign state has agreed in writing to arbitration, then that state will not be immune from the jurisdiction of the courts in relation to any proceedings that arise from the arbitration.

The government of South Africa is obliged to honour judgment debts as granted against it. The provisions of the State Liability Amendment Act 14 of 2011 regulate the enforcement and execution of judgments against the state. A state attorney is obliged to inform the relevant government department of the existence of a court order sounding in money against it. This must be done within seven days of the final court order having been granted. The department then has 30 days in which to settle the money owed. If payment is not effected within the stipulated time period, the creditor may then apply for a writ of execution against the moveable property of the state. The Sheriff of the court ought to attach moveable property that is not crucial for service delivery and does not threaten life if it is removed. The attached property may be sold by a Sheriff of the court within 30 days of the date of attachment.

15 General

15.1 Are there noteworthy trends in or current issues affecting the use of arbitration in your jurisdiction (such as pending or proposed legislation)? Are there any trends regarding the type of disputes commonly being referred to arbitration?

Commercial arbitration is a long-established mechanism for dispute resolution in South Africa. It has become increasingly popular in the last decade due to the relative speed and certainty with which resolution of disputes may be obtained, particularly in comparison

© Published and reproduced with kind permission by Global Legal Group Ltd, London

to the staffing and resource constraints in the court system, which has resulted in backlogged court trial rolls and increasingly unaffordable access to courts.

From an international perspective, South Africa has been slow in following the latest best practice in international arbitration and is not considered user-friendly. But, as African economies grow and more infrastructure development and economic activity occurs, South Africa is being seen as an emerging arbitration jurisdiction. South Africa has well developed arbitral institutions and many experienced arbitrators in various industries. The SALRC has, in July 1998, considered international commercial arbitration and recommended the application of the UNCITRAL Model Law to international commercial arbitration and the promulgation of a new international arbitration act in South Africa.

From a domestic perspective, during 2001 the SALRC submitted a comprehensive report on the status of South African domestic arbitration in which it was recommended, amongst other matters, that a new domestic arbitration statute be adopted, combining the best features of the UNCITRAL Model Law and the English Arbitration Act of 1996, while retaining otherwise effective provisions of the existing Arbitration Act. To date, however, the legislature has taken no steps to implement the SALRC's recommendations.

Recently, however, it appears that the government has developed a renewed appreciation of the broader commercial benefits of arbitration and the importance of international arbitration. As a result, there is renewed impetus to move forward with reform of both domestic and international arbitration legislation. The Justice Department has approved the International Arbitration Bill and it was introduced to parliament in April 2016. We remain hopeful that these steps will indeed take place in 2016.

Although slow, change is inevitable and there have been strong indications of support for arbitration by both the Supreme Court of Appeal and the Constitutional Court. For example, in the matter of *Lufuno Mphaphuli & Associates (Pty) LTD v Nigel Athol Andrews and Bopanang Construction CC*, the majority held that section 34 of the Constitution, which grants the right of access to court to all persons, did not apply directly to private arbitrations and that persons who choose to arbitrate do not waive their constitutional rights under section 34, but choose, instead, not to exercise such rights and to participate in a private process. The outcome, the arbitrator's award, will be respected by the courts and enforced by the courts. In sum, and despite South Africa's failure to adopt the UNCITRAL Model Law and the scepticism of some lawyers about the role of arbitration in South Africa, the country remains a relatively safe place to conduct arbitration hearings, seat arbitrations and enforce arbitration awards.

October 2009 saw the launch of Africa ADR, an initiative of SADC. Africa ADR is a regional dispute resolution forum for the determination of cross-border disputes within the SADC region, established in conformity with the resolutions of the General Assembly of the United Nations, which encourages the use of alternative and appropriate methods for the resolution of civil disputes. It was hoped that this forum would result in substantial change in the manner in which cross-border arbitration agreements were concluded between parties within South Africa but, some seven years down the line, there is uncertainty over Africa ADR's effectiveness.

Arguably the most important development in recent years is the creation during late 2015 of the China Africa Joint Arbitration Centre Johannesburg ("CAJAC") in co-operation with AFSA, Africa ADR (AFSA's external arm), the ASA and the Shanghai International Trade Arbitration Centre. It will serve as an international arbitration venue for disputes involving parties from China and Africa. It is envisaged that CAJAC will operate from both South Africa and China and will hear disputes relating to business in Africa in Johannesburg and disputes relating to business in China in Shanghai, respectively.

15.2 What, if any, recent steps have institutions in your jurisdiction taken to address current issues in arbitration (such as time and costs)?

No recent steps have been taken.

© Published and reproduced with kind permission by Global Legal Group Ltd, London

Gerhard Rudolph
Baker & McKenzie
1 Commerce Square
39 Rivonia Road
Sandton
South Africa

Tel: +27 11 911 4370
Fax: +27 11 784 2855
Email: gerhard.rudolph@bakermckenzie.com
URL: www.bakermckenzie.com

Gerhard Rudolph heads the Dispute Resolution team at Baker & McKenzie in Johannesburg and is listed internationally as one of South Africa's leading dispute resolution lawyers. Gerhard has over 20 years' experience in representing and advising both domestic and multinational corporate clients in a broad range of sectors. He routinely assists clients in matters involving post-transactional disputes, commercial advisory work (focusing particularly on banking and finance as well as construction, mining and infrastructure), mining and resources, construction and engineering, general corporate and shareholding issues, banking and finance. Gerhard's particular strength is advising on complex commercial disputes and he has extensive experience in commercially sensitive situations including business rescue and cross-border insolvency. Gerhard was previously employed as in-house counsel at one of the world's largest gold mining firms and has a strong understanding and appreciation of the operational and commercial imperatives of the South African mining industry.

Darryl Bernstein
Baker & McKenzie
1 Commerce Square
39 Rivonia Road
Sandton
South Africa

Tel: +27 11 911 4367
Fax: +27 11 784 2855
Email: darryl.bernstein@bakermckenzie.com
URL: www.bakermckenzie.com

Darryl Bernstein is a partner in the Dispute Resolution Department at Baker & McKenzie in Johannesburg. Darryl assists clients in matters involving international, domestic and multi-jurisdictional litigation and arbitration proceedings. He has acted for a wide range of clients listed both on the Johannesburg Stock Exchange and on various international exchanges in resolving commercial disputes. He has advised clients in the banking, construction, engineering and mining sectors in relation to a wide variety of general corporate disputes. He has also acted on behalf of various state organisations and commercial tenderers in the resolution of tender disputes and administrative reviews. He routinely advises his clients in relation to ancillary labour law enquiries, including disputes arising out of empowerment transactions. In addition, Darryl assists with commercial advisory work, focusing particularly on technology and telecommunications. His practice includes advising clients on data protection issues, internet and e-business services, and digital commercial and regulatory requirements.

Baker & McKenzie LLP is a limited liability partnership registered in England and Wales with registered number 0C311297. A list of members' names is open to inspection at its registered office and principal place of business, 100 New Bridge Street, London, EC4V 6JA. Baker & McKenzie LLP is a member of Baker & McKenzie International, a Swiss Verein.

Baker & McKenzie LLP is authorised and regulated by the Solicitors Regulation Authority of England & Wales. Further information regarding the regulatory position is available at www.bakermckenzie.com/london/regulatoryinformation.

© Published and reproduced with kind permission by Global Legal Group Ltd, London

Current titles in the ICLG series include:

- Alternative Investment Funds
- Aviation Law
- Business Crime
- Cartels & Leniency
- Class & Group Actions
- Competition Litigation
- Construction & Engineering Law
- Copyright
- Corporate Governance
- Corporate Immigration
- Corporate Investigations
- Corporate Tax
- Data Protection
- Employment & Labour Law
- Enforcement of Foreign Judgments
- Environment & Climate Change Law
- Family Law
- Franchise
- Gambling
- Insurance & Reinsurance
- International Arbitration
- Lending & Secured Finance
- Litigation & Dispute Resolution
- Merger Control
- Mergers & Acquisitions
- Mining Law
- Oil & Gas Regulation
- Outsourcing
- Patents
- Pharmaceutical Advertising
- Private Client
- Private Equity
- Product Liability
- Project Finance
- Public Procurement
- Real Estate
- Securitisation
- Shipping Law
- Telecoms, Media & Internet
- Trade Marks

glg global legal group

59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
Email: sales@glgroup.co.uk

www.iclg.co.uk