Arbitration and Mauritius: An old and active tradition

This week is the international Arbitration Week held by MARC, the Mauritius Chamber of Commerce & Industry, Arbitration and Mediation Centre. It is a conference with international and local participants to discuss about international and local arbitration in the context of Mauritius. Our jurisdiction boasts to offer strong financial, corporate and administrative services and arbitration is an important partner to the services and products available.

Mauritius has a long tradition with arbitration. The first official Constitution of Mauritius dates from April 1791 when Mauritius was a French colony, therefore 2 years after the revolution of 1789. The Constitution is divided into 10 Titles *(Titres)* themselves divided into sections. Title IX deals with "Judicial Order" *(de l'ordre Judiciaire)* and section 1 deals with Arbitration *(des Arbitres)*. This section 1 is composed of six articles which promote arbitration to the highest level in the judicial order for dispute resolutions. Indeed Article 1 states that "arbitration, being the most reasonable means to terminate disputes between citizens, that the Colonial Assembly shall not be authorised to make any disposition which would tend to diminish either the favour or efficacy of any arbitration compromise".

Article 2 mentions that citizens may appoint arbitrators to pronounce themselves on private interests in all cases and on all matters without exception.

Article 4 even prescribes that no appeal shall be allowed against arbitral awards *(sentences arbitrales)* unless the parties had expressly stated in the arbitration clause or compromise the faculty to appeal against the arbitral award.

Article 6 deals with the execution of awards. It states that an award, against which there has been no appeal, shall become executory by a simple ordinance *(ordonnance)* of the

President of the Justice Tribunal. The latter shall be obliged to make it executory by simply signing the request *(expédition).*

Arbitration is tackled first in Section 1 and only in Section 2 does the Constitution tackle Judges, their appointments and powers. We therefore see that arbitration goes a long way back in the field of dispute resolution in Mauritius.

Ever since the Proclamation in 1808 of the Civil Procedure Code *(Code de Procédure Civile),* it addressed itself to arbitration at its Livre Troisième, starting from Article 1003 to Article 1028, thus dealing with most aspects of arbitration. Indeed the arbitration clause *(clause compromissoire),* the compromise *(compromis)* to start arbitration proceedings, the arbitration process and the arbitral award *(sentence arbitrale)* were covered. Appeals against arbitral awards, their consequences and the procedure to make awards executory were dealt with. The Code was later amended to govern aspects such as the procedure to make executory foreign awards.

In 1810, after the British conquest of the island, the Acte de Capitulation at Article 8 stated that "the inhabitants shall preserve their Religion, Laws and Customs." Consequently the 1791 Constitution and the Code de Procédure Civile of 1808 kept their legal tenure even when Mauritius became British.

More than two centuries later in 2001, Mauritius ratified the New York Convention for the Recognition and Enforcement of Foreign Arbitral Awards which is the multilateral instrument setting out the manner in which arbitral awards rendered abroad are to be enforced and recognised in the jurisdiction of signatory states indeed covering the BETAMAX case mentioned below.

Then in 2008 was enacted the International Arbitration Act which provides an adequate framework for international arbitration and more specifically for the intervention or non-intervention of the Supreme Court in matters of arbitration. It is interesting to note that should the Supreme Court get involved and have to deliver judgments in matters of

international arbitration, an appeal lies as of right to the Judicial Committee of the Privy Council against any judgment made under the International Arbitration Act 2008.

This intervention of our Supreme Court has recently been the subject of a national debate with the judgement of three judges of the Supreme Court on the 31st May 2019 in the matter of the State Trading Corporation v/s BETAMAX Ltd. (2019 SCJ 154). BETAMAX had a contract of Affreightment to supply Mauritius with its oil imports from India by the means of a tanker vessel named the Red Eagle. The contract was then terminated in January 2015 by the STC after a Cabinet decision by the newly elected Government. BETAMAX went to arbitration in Singapore against the STC and the matter was heard by a single arbitrator who delivered the award in September 2017. The award found that the STC was in breach of contract and had to pay 115 million dollars in damages to BETAMAX plus substantial costs and interests. BETAMAX tried to enforce and recognize the Singapore award before our Supreme Court and the STC moved the Court to set aside the Singapore arbitral award. The Supreme Court analysed all matters and concluded that the contract by itself was illegal and that the public policy of Mauritius prohibits the recognition and enforcement of such an award. The court found that such an illegal contract "unquestionably violates the fundamental legal order of Mauritius" and did set aside the Singapore Award under section 39(2) of the International Arbitration Act. BETAMAX will now appeal against the judgment of the Supreme Court to the Judicial Committee of the Privy Council sitting in London. It is safe to assume that the appeal would not be heard before 2020.

We may conclude that arbitration (together with mediation and conciliation) are strongly established in Mauritius. It should be encouraged to flourish so as to operate in synergy with other services offered within the Mauritius International Financial and Corporate Services Centre.

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