



AFSA's SADC DIVISION

A NEW KID ON THE BLOCK



The enactment of the new International Arbitration Act in late 2017 provided a major boost for the development of South Africa, through AFSA, as the leading international arbitration centre in the Southern African region. This led to AFSA engaging with the SADC Lawyers Association ("SADC-LA") and the signature of a Memorandum of Association between AFSA and SADC-LA at a conference held at Victoria Falls in August last year, in terms of which the parties recorded their commitment to the development, strengthening and enhancement of commercial alternative dispute resolution practices modelled on AFSA's services in the SADC countries by way of a joint initiative between SADC-LA and AFSA.



DES WILLIAMS
Chairman SADC Division

The establishment of AFSA's SADC Division ("the SADC Division") is significant. In 2013 when the South African Law Reform Commission was requested to update its report and recommendations on international arbitration, the Commission emphasised the importance of the UNICTRAL Model Law and noted, from an African perspective, that of the 54 members of the African Union, at least 30 now have modern arbitration legislation for international arbitration, and 5 of these are in the SADC region.

South Africa is the 11th African country to have adopted the Model Law. Against this background, the establishment of the SADC Division will establish South Africa, as the leading regional

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STANLEY NYAMANHINDI
Vice-chairman SADC Division

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Contributors:

Adv. Michael Kuper SC
Adv. Lindi Nkosi-Thomas SC
Des Williams
Stanley Nyamanhindi

arbitration centre and, we believe, stimulate the growth and development of arbitration in the region.

The SADC Division has a board comprised of three AFSA representatives and three SADC-LA representatives, chaired by Des Williams with Stanley Nyamanhindi as vice-chair. Stanley Nyamanhindi is the CEO of SADC-LA and will provide the board with the executive secretarial services required to promote and develop the project throughout the SADC region. Other members of the SADC Division

and investment communities regarding the aims and purposes of the initiative as well as the dissemination of the standard rules and administrative processes.

- The provision of training facilities in arbitration and mediation and dispute prevention for those wishing to qualify themselves as arbitrators and mediators.
- Joint involvement in conferences, seminars and similar activities which are appropriate for promoting and marketing the SADC Division.

The parties recorded their commitment to the development, strengthening and enhancement of commercial alternative dispute resolution practices modelled on AFSA's services in the SADC countries by way of a joint initiative between SADC-LA and AFSA.

board are Michael Kuper SC, Lindi Nkosi-Thomas SC, Susan Mutangadura and Paulman Chungu. Julia (Zhang) le Roux is the Registrar of the SADC Division.

The SADC Division is implementing a plan to achieve a number of stated objectives, providing for –

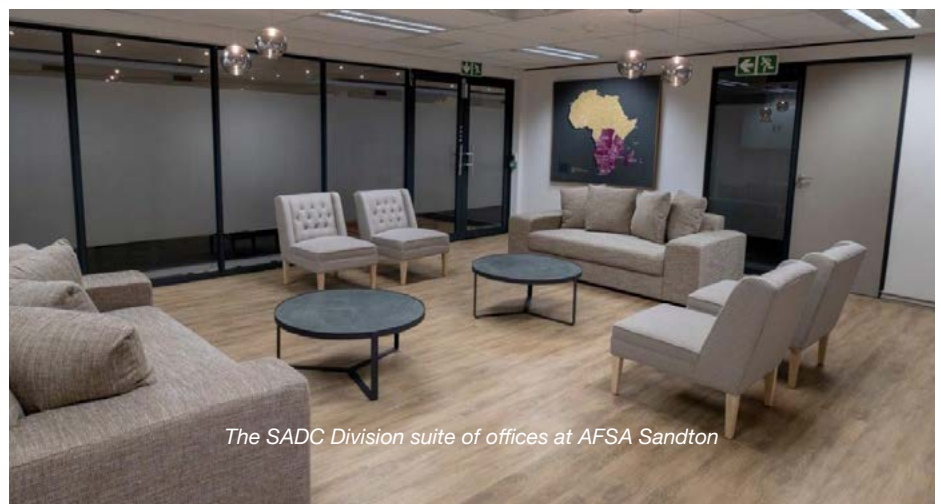
- The establishment of a SADC panel of arbitrators and mediators which will meet the criteria set by the SADC Division.
- The adoption of a standardised set of rules for the administration of arbitration and mediation processes throughout SADC.
- The provision of an administering Secretariat for case handling of arbitrations and mediations.
- The dissemination of information to SADC-LA members and businesses

In developing arbitration within the region, the SADC Division's focus will be –

- firstly, on training;
- introducing the SADC Division to the respective Governments of the members of SADC-LA and ensuring that we have the support of those Governments and Law Societies;
- promoting and developing the harmonisation of international arbitration practice and procedure in the region.

These are lofty ideals, but we are confident that international arbitration can now make headway in the SADC region through the partnership which has been established between AFSA and SADC-LA.

Des Williams and Stanley Nyamanhindi

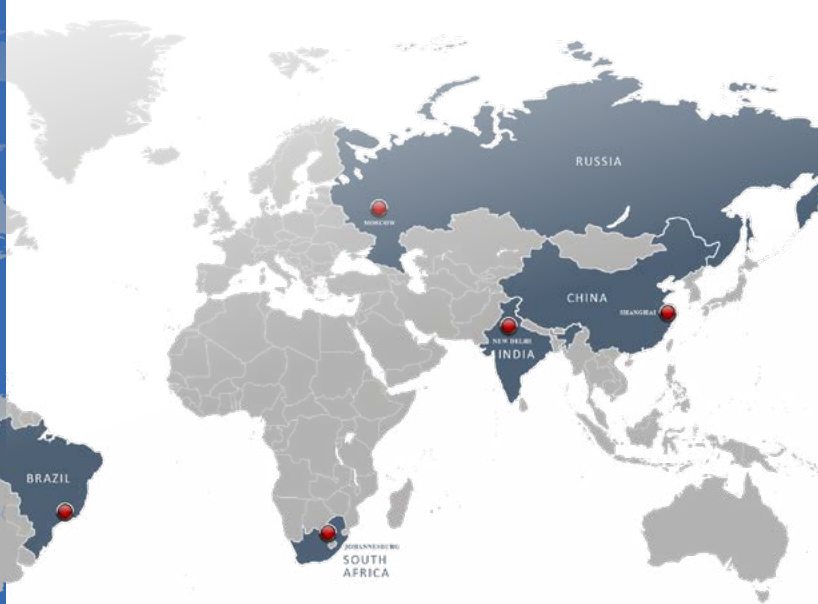


The SADC Division suite of offices at AFSA Sandton

BRICS ARBITRATION CENTRE FOR SOUTH AFRICA



Adv Lindi Nkosi-Thomas SC, Deline Beukes and Adv Anthea Platt SC, part of the South African delegation at the VI BRICS Legal Forum in Rio de Janeiro.



On the 16th of October 2019 AFSA received another accolade on the international arbitration stage. At the VI BRICS Legal Forum in Rio de Janeiro, AFSA was designated the BRICS Dispute Resolution Centre, South Africa in the following terms:

"We recognise the urgent need to complete the project for the establishment of BRICS Dispute Resolution Centres within BRICS member states and accept and endorse the establishment of the BRICS Dispute Resolution Centre for South Africa as proposed by the South African member institutions of this Forum under the auspices of the Arbitration Foundation of Southern Africa (AFSA) Johannesburg."

As intra-BRICS trade continues to grow, so would intra-BRICS trade and investment disputes. It was in recognition of this growing intra-BRICS trade (ZAR 1,84 trillion-Russian President, Vladimir Putin at the 10th BRICS Summit held in Johannesburg on 26 July 2018¹) that the Moscow Declaration, 2017 of the IV BRICS Legal Forum called upon member states to establish BRICS Dispute Resolution Centres within their respective jurisdictions in order to create a shared dispute resolution mechanism for the BRICS bloc and to standardise and harmonise dispute resolution within the BRICS bloc.

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The major challenges facing the BRICS countries include the fragmentation of jurisprudential heritage and the disparate legal systems, namely the civil law, common law, and the hybrid systems. The linguistic differences which include Portuguese, Russian, Hindi, Mandarin and English as well as the cultural diversity present further challenges but are no different from those facing the rest of the emerging world.

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The designation of AFSA as the BRICS Arbitration Centre in South Africa is based on AFSA being the leading arbitration institution in Southern Africa and its reputation internationally. AFSA played a pivotal role in the promulgation of the International Arbitration Act No 15 of 2017, which incorporated the Model Law on International Commercial Arbitration, as adopted by the United Nations Commission on International Trade Law, into South African Law.

AFSA also played a pivotal role in the design of the CAJAC arbitral mechanism and now the

The BRICS partners are currently in the process of drafting the rules for the BRICS arbitral mechanism and will be relying on the CAJAC principles and the CAJAC draft rules as the prototype for such a mechanism.

design of the dispute resolution mechanism for the Southern African Development Community (SADC). Both mechanisms entail the harmonisation and standardisation of disparate legal systems and cultures.

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AFSA's reputation and standing both locally and internationally is attributable to the hard work of the AFSA team under the able and indefatigable leadership of Michael Kuper SC.

Adv Lindi Nkosi-Thomas SC

1. <https://www.timeslive.co.za/politics/> 2018-07-26
brics-countries-vow-to-work-even-closer-together

AFSA OPENS NEW *Garden Route Branch*



Adv Jacques Malan (Branch Manager AFSA Garden Route),
Xhanti Zeka (Senior Magistrate-George) and Adv Michael Kuper SC
(AFSA Chairman)

On the 30th of October 2019 the new AFSA Garden Route branch in George was opened to provide arbitration and mediation services in the Southern Cape region.

The formal opening, held at the Protea Hotel King George, was attended by representatives of local municipalities, the local judiciary, law firms and the Southern Cape Society of Advocates. The AFSA Garden Route branch will be managed by Advocate Jacques Malan and a committee of stake holders consisting of representatives of local law firms, the Southern Cape Society of Advocates and local business.

Before the AFSA Board of Directors approved this initiative, discussions with a number of prominent attorneys in Plettenberg Bay, Knysna, George, Mossel Bay and Oudshoorn, as well as with members of the Southern Cape Society of Advocates and organised business, took place to establish the need for and support of arbitration and mediation services in the region. The

reaction was overwhelmingly positive.

AFSA's chairman, Advocate Michael Kuper SC, the guest speaker at the opening, also presented a well-attended introductory training session for prominent members of the legal fraternity, including retired judges, interested in serving on the local panel of arbitrators.

Advocate Jacques Malan is of the view that the establishment of the AFSA Garden Route branch, which is aimed at providing cost-effective dispute resolution services, professionally administered in accordance with AFSA Rules and procedures, is an important milestone in realising the constitutional right of access to justice for local disputants in matters suitable for arbitration and mediation.

For details about the services offered, interested parties may contact Jacques Malan - **Tel** +27 44 630 0800 | **Email** admin@afsagardenroute.co.za
Address Third Floor, Dynarc House, 31 Courtenay Street, George, 6529

CAJAC FEATURES PROMINENTLY AT SHANGHAI INTERNATIONAL ARBITRATION SUMMIT



In November 2019, the Shanghai International Arbitration Summit was held as a side event of the 2nd China International Import Expo. The theme of the Summit was Opening-up, Cooperation and Win-Win.

Prof David Butler as AFSA's Chief Legal Advisor and Deline Beukes, CEO CAJAC Johannesburg, represented CAJAC Johannesburg at this event. Deline was invited to speak about the China-Africa Route of International Arbitration Cooperation. She focused on developments in the Southern part of the African continent and highlighted the cooperation between the various CAJAC centres in China and Africa.

The Summit was followed by a CAJAC partner meeting, hosted by the Shanghai International Arbitration Centre (SHIAC).

The meeting offered the CAJAC partners the opportunity to finalise the revised CAJAC Constitution and Rules. It was agreed that the CAJAC Rules and Constitution would be made public and signed by the CAJAC partners at the Johannesburg International Arbitration Week in March 2020.

The CAJAC partners, including CAJAC Johannesburg (AFSA), CAJAC Shanghai (SHIAC), CAJAC Shenzhen (SCIA), CAJAC Nairobi (NCIA) and CAJAC OHADA will all in future, resolve China-Africa disputes in accordance with the agreed new Rules. In view of the COVID -19 Pandemic, the Johannesburg Arbitration Week unfortunately had to be postponed and a new date for the publication of the new CAJAC Rules and Constitution will be made public soon.



The Griqua Room

NEW STATE-OF-THE-ART FACILITY IN SANDTON

The fascinating history of possibly the first inter-state arbitration to take place in South Africa, inspired the naming of AFSA's new state-of-the-art facility in Sandton.

The discovery of diamonds in South Africa in the late eighteen sixties and the early eighteen seventies, inspired fortune-seekers from every corner of the globe to rush to the diamond fields at Kliprivier and Pniel in the neighbourhood of the Vaal River and soon after, to the dry diggings at Kimberley.

The discovery of diamonds also led to a triangular "battle of the boundaries" between rival claimants as to who owned the diamond rich territory between the Orange and Vaal Rivers. Ultimately the rival claimants, the Transvaal, Free State and the Griquas agreed to the appointment of an arbitration board. The review of the position resulted in what became known as "the Keate award" which set down that the territory in dispute belonged to the Griquas.

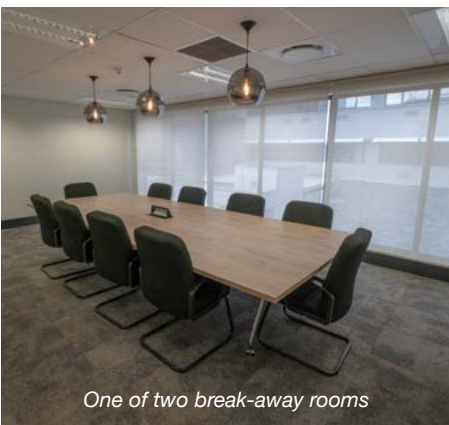


Griqua Room reception area

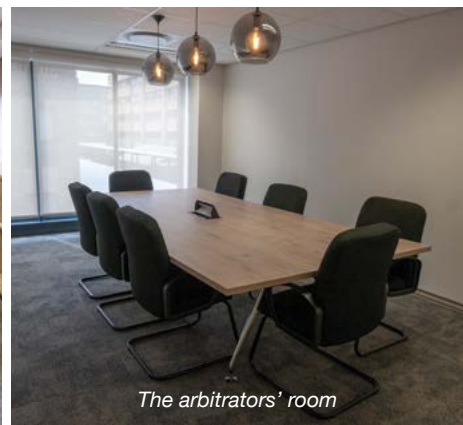


Pause area with tea and coffee making facilities

AFSA's Griqua Room meets international standards and is ideal for conducting international arbitrations. It offers a reception area, a spacious pause area with tea and coffee making facilities, a large hearing room equipped with a big screen TV for virtual hearings, state-of-the-art sound equipment, side screens for optimum viewing and a translation booth for multi-lingual international arbitrations. It also offers two spacious breakaway rooms and an arbitrators' room, all depicting various aspects of the fascinating history and people who played their part in the romantic and adventurous days on the Diamond Fields of South Africa.



One of two break-away rooms

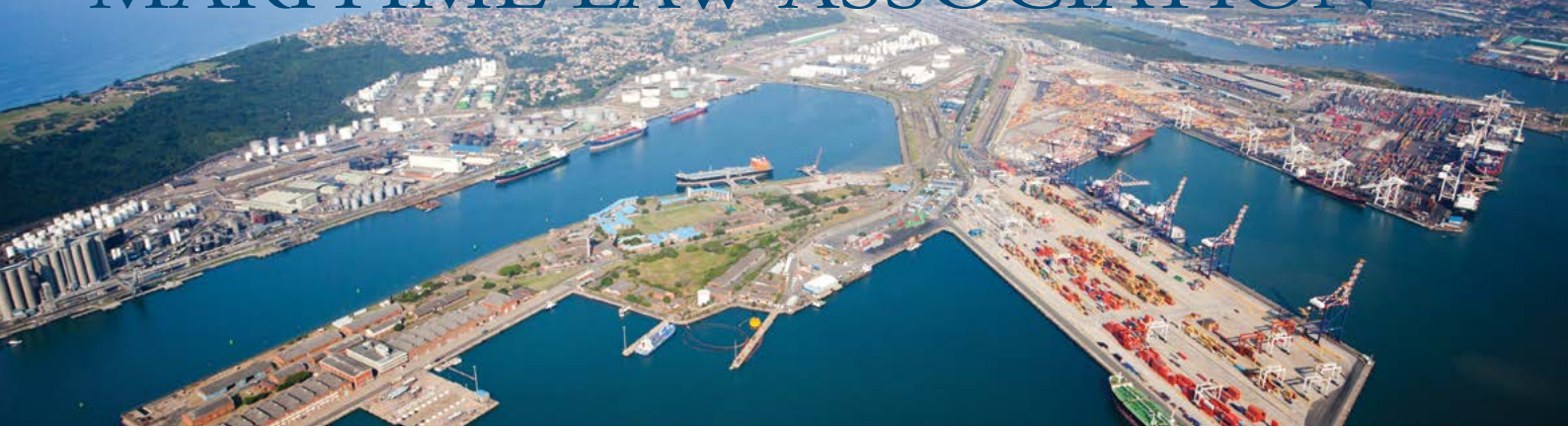


The arbitrators' room



Large hearing room equipped with big screen TV, state-of-the-art sound equipment, side screens and translation booth

AFSA CO-OPERATES WITH MARITIME LAW ASSOCIATION



The signing of a Memorandum of Understanding by AFSA and the Maritime Law Association (MLA) to establish a process for the administration of maritime arbitrations and mediations, promises to be the beginning of a mutually beneficial association between AFSA and the MLA. In August 2019, at the request of the MLA, Alex Jeffrey SC, chairman of AFSA Durban, addressed the annual conference of the MLA on the advantages of administered arbitrations and mediations in the resolution of maritime disputes.

His speech sparked the interest of the MLA and further discussions followed between AFSA and the MLA. Advocate Lisa Mills of the Durban Bar, an executive member of the MLA

and the chair of the MLA's maritime arbitration sub-committee, took part in the discussions.

committee, while Lisa Mills was elected as the vice-chair. Other members of the committee representing AFSA include

Michael Kuper, chairman of AFSA, welcomes this development and looks forward a mutually beneficial and successful association with the MLA.

In April 2020, these discussions resulted in the signing of a Memorandum of Understanding between AFSA and the MLA in which it was agreed by both parties to explore the establishment of a comprehensive process for administered arbitrations and mediations of maritime disputes.

At its first meeting a management committee to drive this exciting initiative was established. Alex Jeffrey SC was elected as the chair of the management

Sven Olivier SC, chairman of AFSA Cape Town, and Julia le Roux, AFSA's International Registrar. The MLA will be represented by Gavin Fitzmaurice, the current chair of the MLA and Trudie Nicols. This committee will oversee an operational plan which is currently being prepared.

Michael Kuper, chairman of AFSA, welcomes this development and looks forward to a mutually beneficial and successful association with the MLA.

JOHANNESBURG ARBITRATION WEEK

POSTPONED

At the end of February 2020 all was in place for the long-awaited Johannesburg Arbitration Week (JAW). An impressive list of speakers had been confirmed, side events arranged, menus selected and everyone looking forward to this four-day international conference.

On Monday morning 2 March the effect of Covid-19 hit home, and the first international speaker cancelled his participation, soon followed by an

avalanche of cancellations from very apologetic international speakers who could no longer fly to South Africa due to travel restrictions. By Wednesday 4 March the writing was on the wall and an emergency meeting of co-hosts, sponsors and organisers was called. The decision was unanimous. The Johannesburg Arbitration Week would have to be postponed, but not cancelled. All stakeholders agreed that the JAW would go ahead as soon as circumstances permit.

The Maslow Conference venue graciously accepted the postponement without imposing any penalties. Organisers were instructed to refund delegates and arrangements were called off.

AFSA would like to express its thanks and appreciation to the co-hosts and sponsors for their unfailing support and to all the speakers who pledged their participation when the Johannesburg Arbitration Week is rescheduled.

NEW AFSA INTERNATIONAL RULES TO REFLECT BEST INTERNATIONAL PRACTICE

To facilitate the exponential growth in AFSA's international caseload and to meet the needs of its increasing international users, AFSA embarked on a process of revising its International Arbitration Rules to reflect best international practice. To do so, AFSA assembled a Drafting Committee and an Advisory Board composed of leading academics, experts and practitioners from around the globe to revise and redraft its current International Rules.

While the Drafting Committee originally planned to launch the AFSA International Rules during the Johannesburg Arbitration Week (JAW) in March 2020, the postponement of the JAW due to Covid-19, provided the Drafting Committee with an opportunity to ensure that the rules were aligned with developments arising from the outbreak of the Covid-19 virus.

Prior to the official launch of the new AFSA International Arbitration Rules, AFSA wishes to encourage wider public consultation and would like to invite all interested parties to participate in interactive discussions about key innovations and provisions in the new AFSA International Arbitration Rules. The first of these discussions will take place on Wednesday 1 July 2020. For details refer to the AFSA website www.arbitration.co.za

Prof Dr Maxi Scherer, Chairperson of the Drafting Committee and Advisory Board, is confident that "the new arbitration rules will provide additional certainty and clarity to businesses trading across borders on the African continent and beyond and will continue to make AFSA a highly attractive choice for parties in international arbitration proceedings".

Patrick Lane SC, chairman of AFSA International and vice-chair of AFSA, says that "the new rules will be a product of a thorough review and will be an important

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step towards the implementation of new policies to foster the efficiency of AFSA international arbitrations".

Members of the Drafting Committee:



Chairperson: **Prof Dr Maxi Scherer** is a member of the Paris Bar and a solicitor of England and Wales. She is a Special Counsel at Wilmer Cutler Pickering Hale and Dorr LLP (London).



Ms Chiann Bao is a Mandarin speaking attorney from New York and is a member of the Arbitration Chambers in Hong Kong and London.



Prof Lise Bosman is based at the Peace Palace in the Hague. She is a Senior Legal Counsel at the Permanent Court of Arbitration (PCA) and Executive Director of the International Council for Commercial Arbitration (ICCA).



Dr Remy Gerbay is an attorney practising at US-based disputes firm MoloLamken LLP, and an academic based at Queen Mary University of London's School of International Arbitration.



Ms Ndanga Kamau is the Founder of Ndanga Kamau Law based in The Hague and Nairobi. Her practice focuses on Africa, and she specialises in international dispute settlement and public international law.



Ms Jennifer Kirby is a New York lawyer based in Paris. She acts as counsel and sits as arbitrator in a wide variety of international arbitration matters.



Mr Jonathan Ripley-Evans is a Director at Herbert Smith Freehills LLP based in Johannesburg, who has extensive experience in alternative dispute resolution.

Secretaries to the Drafting Committee:

- Mr Jonathan Lim
- Dr Gregory Travaini

Members of the Advisory Committee:

- | | | |
|------------------------|----------------------------|--------------------------|
| • Ms Funke Adekoya SA | • Ms Wairimu Karanja | • Dr Mohamed Abdel Raouf |
| • Mr Cavinder Bull SC | • Mr Tejas Karia | • Ms Ank Santens |
| • Prof David Butler | • Mr Patrick Lane SC | • Ms Leyou Tameru |
| • Dr Helena H C Chen | • Prof Dr Julian DM Lew QC | • Mr Craig Tevendale |
| • Ms Joanne Cross | • Mr Vlad Movshovich | • Mr Fui Tsikata |
| • Mr Ning Fei | • Ms Lindi Nkosi-Thomas SC | • Mr Baiju Vasani |
| • Mr Steven Finizio | • Dr Emilia Onyema | |
| • Rt Hon Lord Hoffmann | • Ms Alison Pearsall | |

YOUNG AFSA

VIBRANT NETWORK FOR YOUNG PRACTITIONERS

Early in 2020 AFSA announced the establishment of its Young AFSA Project. The inaugural meeting was planned to take place during the Johannesburg Arbitration Week and more than 100 young practitioners had indicated their wish to attend, while some of the outstanding international and local conference speakers had set aside time to participate and to get the project off the ground.

The AFSA Youth Project is intended to provide a vibrant network for young practitioners throughout the South African Development Community (SADC) who are interested in various forms of dispute resolution. It offers a unique opportunity to learn from and be inspired by experienced practitioners, to acquire a better understanding of arbitration procedure and best practice, and to discuss topical issues in a dynamic forum.

The launch of this exciting project has been delayed by Covid-19, but details of the launch and the programme will soon be published on the AFSA website.

The AFSA Youth Project is intended to provide a vibrant network for young practitioners throughout the South African Development Community (SADC) who are interested in various forms of dispute resolution.

The Young AFSA Project will:-

- host regular discussion groups and lectures on topics of practical importance to young practitioners
- host webinars and make podcasts available
- arrange group functions and initiatives
- bring young practitioners of SADC together and establish cross-border initiatives
- provide training in arbitration and mediation.

Membership of Young AFSA will be open to advocates, attorneys and legal academics, as well as to other professions with an interest in ADR. No financial commitment is involved and applications for membership may be sent to selina@arbitration.co.za, setting out the applicant's name, contact details and qualifications.

WHEN THE SHOW MUST GO ON

The decision to conduct either virtual or in person hearings must be decided on a case by case basis and it is for the tribunal and the parties involved, to consider if a virtual hearing is viable.

When the decision has been made that the show must go on and that a virtual hearing will be held, AFSA is in a position to offer the necessary equipment as well as high-quality internet connectivity that will minimize the risk of signal interruptions. Two of AFSA's hearing rooms are fully equipped with big screen and audio-visual systems which can facilitate the remote participation of one or both

parties. Standard technical support and assistance is also on hand.

The AFSA Secretariat will discuss with the tribunal how best to make use of electronic communication in submitting the necessary documentation. Parties are encouraged to agree, whenever possible, to the electronic notification of the award.

AFSA is currently looking into digital platforms for case management and the transmission and storage of documentation for remote proceedings. In the interim, parties are encouraged to file their requests for arbitration by e-mail.

Before the hearing the Secretariat will circulate, in advance, the full names and the role of each and every participant in a remote hearing to all the parties involved, including the tribunal, the legal representatives, counsel, witnesses and interpreters. The Secretariat will also ensure that the list is strictly adhered to. For further information about virtual hearings, please contact Julia Le Roux julia@arbitration.co.za

Lyzette Mc Master TAKES OVER IN CAPE TOWN



AFSA warmly welcomes Lyzette Mc Master who has taken over from Jacqui Naumann as Branch Manager in Cape Town.

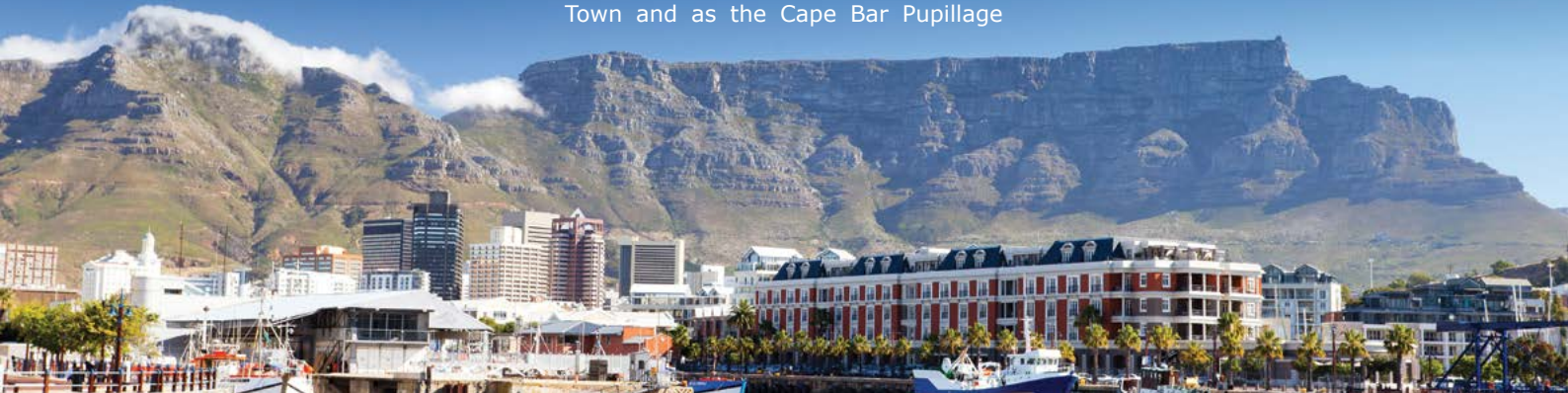
Lyzette, in cooperation with the Cape Town Management Committee, is inspired to further develop AFSA Cape. Her goals include the integration of online management of disputes, streamlining of AFSA Cape Town's database of arbitrators and mediators and arranging professional training courses for younger arbitrators.

Lyzette, who was born in Cape Town but grew up in Harrismith in the Free State, studied at the Orange Free State Technikon. She started her career as a legal secretary and worked in Johannesburg as a legal assistant in a law firm for several years before moving back to Cape Town. She gained valuable experience working for three prominent senior counsel in Cape Town and as the Cape Bar Pupillage

Coordinator, she was involved in the Pupillage Programme for 15 years.

When Jacqui moved to Germany and the position at AFSA became available, she saw it as an ideal opportunity for personal growth and development and felt she had the perfect background for taking charge of the Cape Town branch.

Lyzette and her husband, who owns his own art business and lectures at a college in Somerset West, have two daughters. The eldest is in her third year at the University of Stellenbosch while the youngest is in matric. Amongst family and friends Lyzette has earned a reputation as 'quite the foodie', with a lively interest in creative baking, catering, and culinary art.



PROJECTS IN THE PIPELINE

AFSA is finalising an online system which will meet the highest standards of international online processing and will allow for even speedier presentation of pleadings and documentation in all arbitrations.

An institutional protocol for virtual hearings is in the process of being drafted by AFSA to set standards and serve as a road map for parties who wish to make use of virtual hearings in resolving disputes.

In Memoriam



SHANE VOIGT

It is with profound sadness that AFSA learnt of the death of Shane Voigt, a member of the National Management Committee. Shane, who was a founder partner of Pinsent Masons in Johannesburg, was very active in AFSA's leadership and an influential speaker on its behalf.

He was a much respected practitioner who led the construction litigation and dispute resolution department at Pinsent Masons in Johannesburg and was a specialist in construction litigation and engineering law. We greatly valued his expertise and guidance in support of AFSA and CAJAC. He will be sorely missed.

AFSA's sympathies go to Shane's family, his colleagues in Pinsent Masons, and to his many friends.

AFSA INTRODUCES A NEW JOURNAL NAMED AFSA PERSPECTIVES

AFSA PERSPECTIVES will serve both as a research tool and as an on going record of the progress and development of arbitration in Southern Africa and Africa. The main theme of this edition is the New York Convention – 60 years later, an assessment by a panel of AFSA graduates speaking from their different vantage points.

In addition there are two recent speeches by AFSA spokesmen.



Adv Michael Kuper SC, analyses the recent history which has shaped South Africa's involvement in international arbitration and explains its burgeoning relationship through CAJAC and through BRICS, with the Belt and Road Initiative.



A speech by Prof David Butler, AFSA's Chief Legal Advisor, given to an audience in Beijing, which references the New York Convention in the particular context of a CAJAC initiative.

Assessments by AFSA graduates : The New York Convention - 60 years later



Adv Ori Ben-Zeev



Julia Le Roux



Adv. Kgomotso
Mthethwa



Shane Voigt



Marlene
Wethmar-Lemmer

Perspectives can be downloaded from the AFSA website www.arbitration.co.za

The Arbitration Foundation of Southern Africa NPC

Board and National Management Committee

Brian Abrahams, Nick Alp, Adam Anderson, Adv. Ghandi Badela*, Adv. Aslam Bava SC*, Adv. Azhar Bham SC*, Adv. Ig Bredenkamp SC, Pierre Burger, Tim Fletcher*, Adv. Alex Jeffrey SC, Adv. Michael Kuper SC* (Chair), Adv. Patrick Lane SC* (Vice-Chair), Leslie Mkhabela*, Stuart Mc Cafferty*, Adv. Lindi Nkosi-Thomas SC* (Vice-Chair), Adv. Sven Olivier SC, Adv. Anthea Platt SC*, Gerhard Rudolph, Adv. Mahlape Sello, Adv. Leon Sibeko SC*, Adv. Duncan Turner, Shane Voigt, Jonathan Witts-Hewinson, Peter Watt, Des Williams* (*Directors).