



MALAWI INTERNATIONAL ARBITRATION CENTRE:

Information Booklet and Joint Invitation to the Business Community

Brief Introduction

1. The Malawi International Arbitration Centre is a joint venture private company limited by guarantee incorporated by the Malawi Confederation of Chambers of Commerce and Industry (MCCCI) and the Malawi Law Society (MLS) on 7th September 2023. It establishes and seeks to maintain a private sector led neutral and independent facility for the resolution or settlement of commercial, investment and other disputes by way of arbitration, mediation and like processes as opposed to litigation in the Courts. This will improve the business environment in Malawi by institutionalising arbitration, mediation, conciliation and other alternative dispute resolution in Malawi and enhancing access to commercial justice through efficient non-adjudicatory measures in the service of the local and international business community. Its unique feature is that it is a legally sanctioned wholly private sector led initiative that actively promotes collaboration and recognition by state parties and multilateral institutions at national, regional and international levels. In furtherance of this main object, the company undertakes to manage and sustainably operationalize an arbitration centre in the Republic of Malawi to maintain and develop the business of alternative dispute resolution by providing services in Malawi and throughout Africa.

Background

2. The Malawi Government acceded the New York Convention effective 2nd June, 2021. Malawi is the 167th country in the world to accede to the Convention. By doing so, Malawi qualifies itself as a suitable jurisdiction in which international and local commercial disputes can be resolved through arbitration as an alternative dispute resolution to litigation. With these developments, there was and there is now special focus on Malawi as a seat for international commercial arbitration.
3. The Malawi Law Society (MLS) in collaboration with the SADC-Lawyers Association (SADC-LA) and the Arbitration Foundation of Southern Africa (AFSA) organized an inaugural International Commercial Arbitration Seminar as a first step towards establishment of an international commercial arbitration seat in Malawi. The seminar took place in Mangochi, Malawi from 26th to 28th January, 2022. It trained almost 200 lawyers from Malawi, Zambia, Zimbabwe, Namibia and South Africa in the theory and practice of international commercial arbitration. The seminar provided a comprehensive introduction to international commercial arbitration and a review of current developments in the SADC region.
4. Following the Mangochi seminar, at a joint review meeting held on 28th January, 2022, the SADC-LA, AFSA and MLS leadership and the Attorney General of the Republic of Malawi resolved to pursue the establishment of a seat for international commercial arbitration in Malawi.

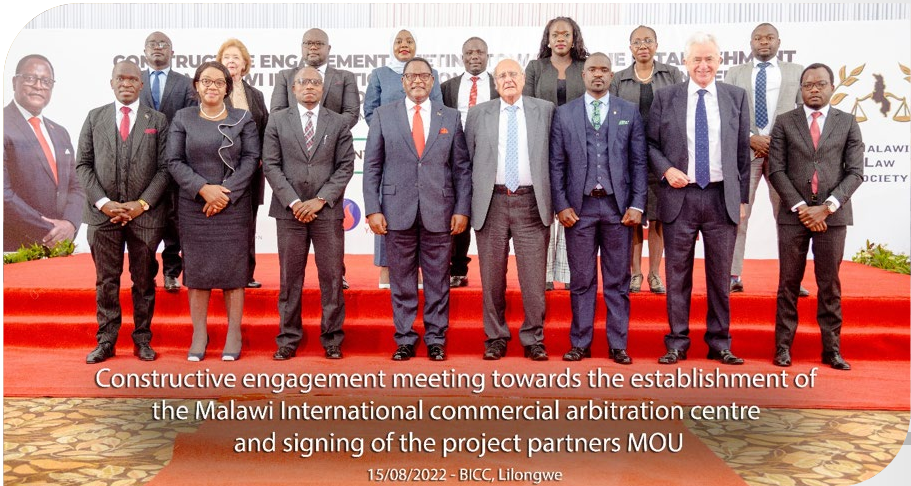


MLS officials, AFSA officials and presenters at the Inaugural Malawi International Commercial Arbitration Seminar

Signing of the Memorandum of Understanding between the Government of Malawi, the Malawi Law Society and the AFSA SADC Division.

5. Since the inaugural seminar, the MLS, the SADCLA and AFSA undertook respective consultations with key stakeholders as to the viability of the project. These key stakeholders included the Malawi Government, the Malawi Judiciary and key players in the public and private sector. The Government of Malawi endorsed the project from inception through the Attorney General at the seminar, and later through the Minister of Justice and publicly by the President of the Republic of Malawi, His Excellency Dr Lazarus McCarthy Chakwera. The public endorsement by the State President was made in his speech during the Constructive Engagement Meeting Towards the Establishment of the Malawi International Commercial Arbitration Centre and the Signing of the Project Partners Memorandum of Understanding at Bingu International Convention Centre, in Lilongwe, Malawi on 15th August, 2022. The President also directed the Attorney General to prioritise the processing of the Arbitration and Mediation Bill so that it is enacted into law as soon as possible. The significance of the President's remarks cannot be overemphasized as he made them whilst he was also doubling as the Chairman for SADC thereby, indirectly endorsing the project at the SADC Community level. The Malawi Judiciary, through the Chief Justice of the Republic of Malawi, Justice Rezine Mzikamanda, SC publicly supported the project. He emphasised the importance of the project to promote Malawi as a suitable destination for investment.





Constructive engagement meeting towards the establishment of the Malawi International commercial arbitration centre and signing of the project partners MOU

15/08/2022 - BICC, Lilongwe

MLS Executive Committee, AFSA officials pose for a picture with the State President of the Republic of Malawi, His Excellency Dr Lazarus McCarthy Chakwera and the Attorney General of the Republic of Malawi

Below

MLS President, Patrick Gray Mpaka (L), Minister of Justice Honourable Titus Songiso Mvalo (C) and AFSA SADC Division Chairperson, Des Williams (R) displaying the signed memorandum of understanding.



Further Commitment from the Government of Malawi and the Malawi Judiciary on the Arbitration Project

6. The Executive and Judicial Branches have continuously renewed their commitment to and showed support for the project. On 28th August, 2023 the MLS and the AFSA SADC Division met with the Minister of Justice and the Solicitor General of the Republic of Malawi, Honourable Titus Mvalo and Honourable Allison M'bang'ombe respectively at the Ministry of Justice Boardroom. The Minister assured the MLS and the AFSA SADC Division that Malawi is committed to support the Centre. To demonstrate government's commitment to the cause, the Minister of Justice and the Solicitor General positively acknowledged and agreed to the recommendation that the MLS and the AFSA SADC Division should develop an International Arbitration Bill modelled on the UNCITRAL model law.



MLS Executive Committee, AFSA SADC Division Officials, Minister of Justice (C) and the Solicitor General for the Republic of Malawi (L) after the meeting on 28th August, 2023

- 7. On 29th August, 2023,** the Chief Justice met with the MLS and the AFSA SADC Division Team. The Chief Justice indicated that the Judiciary understands the importance and benefits of arbitration and noted that it benefits the Judiciary as well. He pledged that the “Malawi Judiciary was committed to playing its rightful role to ensure that the cause of arbitration succeeds so that we all benefit”.



The Chief Justice of the Republic of Malawi Rezine Mzikamnda, SC (seated 2L), Judge Masauko Msungama of the High Court (Commercial Division) (seated right), Registrar of the High Court and Supreme Court of Malawi, MLS Executive Committee and AFSA SADC Division Team

Signing of Agreement between Malawi Law Society and AFSA SADC Division

8. To cement the relationship and foster collaboration between the MLS and AFSA SADC Division, the two parties signed an International Arbitration Facilitation Agreement. The agreement was signed on **29th August, 2023** at Sunbird Mount Soche Hotel in Blantyre, Malawi. Through this agreement, “the parties wish to collaborate in pursuit of the institutionalization of the practice of international commercial and investment arbitration based on a standardized set of rules and procedures for the administration of arbitration and mediation processes in Malawi and the SADC Region.” The parties also agreed and signed an Implementation Roll Out Plan. Under this Plan, the parties expect to start administering arbitrations by the end of 2023.



AFSA Chairman, Michael Kuper, SC and MLS President, Patrick Gray Mpaka exchanging the signed MAIC International Arbitration Facilitation Agreement.

9. Private Sector Led International Arbitration Centre in Malawi: Registration of the Malawi International Arbitration Centre:

On 7th September, 2023 the MLS jointly with the Malawi Confederation of Chambers of Commerce and Industry, a partnership of private enterprises and associations representing all sectors of the economy of Malawi, registered a company limited by guarantee, Commercial Arbitration Centre Limited. This company is the vehicle through which the Malawi International Arbitration Centre (MIAC) will be operated. Mr Patrick Gray Mpaka, the President of Malawi Law Society, Mr Lehani Katandula and now Dr Wisely Phiri, the President of Malawi Confederation of Chambers of Commerce and Ms Emily Makuta, a senior and experienced corporate executive from the corporate and business world are the first Directors of the company working with the MCCI and MLS Secretariats to transition the new company into full operations.



Director
Dr. Wisely Phiri



Director
Ms. Emily Makuta



Director
Mr. Patrick Gray Mpaka



10. The Company is currently working towards operationalising so that the Centre can open its doors and start administering commercial and investment arbitrations within the year 2024. It is a legal requirement in Malawi for a company to obtain permission of the Government in order to use the word Malawi in the name of a company. Following an application on **5th January 2024**, the Malawi Government through the Secretary to the President and Cabinet issued permission to use the protected and so “Malawi International Arbitration Centre” is fully authorized to operate as such.

Enactment of the International Arbitration Act, 2024

11. The MLS and AFSA SADC Division developed the draft International Arbitration Bill adopting the UNCITRAL model law. The MLS submitted the Bill to the Ministry of Justice on **19th September, 2023**. The Bill was introduced in Parliament in its November, 2023 sitting.
12. On **7th December, 2023**, the Malawi National Assembly passed the International Arbitration Bill. On **1st February, 2024**, the Malawi Government announced that the Bill was assented to by the President of the Republic of Malawi on **31st January, 2024**. The Act was published on **2nd February, 2024**. The International Arbitration Act has domesticated the Model Law on International Commercial Arbitration as adopted by the United Nations Commission on International Trade Law. This covers the space for international arbitration in Malawi.

Malawi Supreme Court of Appeal Pronounces Itself in Favour of International Arbitration in Malawi

13. On **14th March 2024** the Supreme Court of Malawi delivered a judgment in a matter in which one of the parties had referred to the International Chamber of Commerce in London a commercial dispute in respect of a contract which was being performed in Malawi. The other party sought an anti-arbitration injunction. Both the High Court and Supreme Court of Malawi refused to grant an injunction against the arbitration with the Supreme Court saying: *“In sum..this Court declines the Applicants request to intervene with an injunction against arbitration...This aligns with the principle of kompetenz-kompetenz in commercial arbitration, emphasizing that the arbitrator should decide issues related to the arbitration agreement. The competence-competence principle is a fundamental concept in international arbitration. It grants the arbitral tribunal the authority to rule on its own jurisdiction, including challenges to the existence, validity or scope of an arbitration agreement...It is our view that this Court lacks jurisdiction to adjudicate a plea that can be decided by an arbitral tribunal. The overarching idea is to provide a one-stop forum for the effective and efficient resolution of commercial disputes through arbitration and judicial intervention should not disrupt the process of arbitration”,* per Justice of Appeal Kapanda, **JA, SC in Projex Group Limited v. Central East African Railways Limited** on 14th March 2024.



Justice of Appeal Kapanda, JA, SC

Minister of Justice Re-iterates Government Commitment Deferring to the Private Sector to Lead and Manage the Malawi Arbitration Centre

14. In his address at the Johannesburg Arbitration Week on **9th April 2024** which remarks he recently repeated in the Nation Newspaper of **18th May 2024**, the Minister of Justice of the Republic of Malawi Hon. Titus Mvalo told the international and local business community that *“as Government we feel that we have fulfilled our core responsibility....We have left it to the Malawi Chamber of Commerce, the Malawi Law Society and the general business community to kick start the administration of the centre but we will remain supportive if the Centre needs any other Government support”*. The ball is therefore fully in the court of the Malawi Confederation of Chambers of Commerce and Industry, the Malawi Law Society, other professional bodies and the business community to fully operationalize the Malawi International Arbitration Centre hence the below proposal for a first ever symposium to be held jointly by MCCI and MLS on 5th and 6th September 2024 at the Bingu International Convention Centre primarily to introduce the Malawi International Arbitration Centre to the local business community and show case how it will facilitate effective business dispute resolution and what role the business community and professional bodies can play to make all this realistic.

THE NATION
SATURDAY, 18 MAY 2024

GUEST

OPINION & ANALYSIS

Govt seeks quick solutions to commercial disputes

THE NATION

Liked by many, detested by some, read by them all!

Whoever category you are, we thank you for making us a part of you

Last month, Minister of Justice TITUS MVALO led a delegation to the Johannesburg Arbitration Week (JAW) in South Africa which was hosted by the Arbitration Foundation of Southern Africa (Afsa). During the event 10 African countries signed and adopted the Afsa Alliance Charter which will facilitate the establishment of a regional seat of international arbitration centre and Mvalo believes Malawi is a credible and reliable venue for the centre. Our News Analyst LUCY MKANDAWIRE speaks to Mvalo to learn more about the charter and other issues. Excerpts:

Q. We heard about the Johannesburg Arbitration Week, take us through the Malawi story, where are we coming from?

A. Section 13(1) of the Constitution provides for peaceful settlement of disputes by adopting alternative dispute resolution mechanisms by which differences are settled through negotiation, good offices, mediation, conciliation and arbitration. In 2021 the Government of Malawi acceded to the New York Convention which binds every State that joins it to set internationally recognized and accepted standards of arbitration and mediation for settlement of commercial disputes which align with the Convention by adopting the United Nations Commission on International Trade Law Rules (Uncitral Rules) which are the model law. Malawi hosted a seminar on arbitration in January 2022 under the auspices of the Malawi Law Society (MLS) and Sada Lawyers Association (Sadda), which was attended by a cross section of lawyers from Malawi and beyond, including our Attorney General (AG) and judicial officers.

Q. What was the highest moment to get involved in



Mvalo: The benefits are plenty

Q. So, what are the benefits of arbitration?

A. The benefits are plenty. Arbitration resolves disputes quicker than litigation. It provides that confidentiality as disputes are resolved behind closed doors, and above everything, the conclusion usually does not make one party a winner. Through arbitration, you come up with a fair and balanced resolution. Even the loser walks away feeling it was a fair conclusion and can still live with it, and even continue doing business with the other party.

Q. What does arbitration offer at international level as far as business is concerned?

A. International investors and entrepreneurs have no time to wait for lengthy litigation processes in court, especially commercial disputes. We want to be looked up to as a potential seat. If we achieve this, Malawi will even expose herself to collateral benefits, and these include those coming for arbitration disinvesting Malawi as a country to invest in and in the process boosting the tourism sector too.

Q. In the same 2022, Malawi hosted an inaugural conference at Bingu International Convention Centre on 15th August which was organised by MLS in partnership with Sadda and Afsa. President Lazarus Chakwera opened the conference while Michael Kupper SC, chairman of Afsa and a renowned arbitration expert delivered the keynote address. At this conference, MLS signed a Memorandum of Understanding with Afsa. The Honourable Chief Justice Rihine Mzikamanda was there too, representing the Judiciary at the highest level. This was important to show that there was no conflict between the Judiciary and arbitration institutions. Government later drafted a Bill, International

Q. What was the Johannesburg Arbitration Week all about?

A. Well, this was an event organised by Afsa and co-

Q. What was the major highlight of the session

hosted by leading solicitor firms, Bars, among others. The meeting showcased arbitration in Africa and offered unique opportunity to MLS as a leading member of the Sada legal fraternity in advancing international commercial arbitration in Southern Africa. The Malawi delegation joined a high level panel of Bar Association presidents to present the Malawi perspective, relate their journey and announce to the international arbitration community the birth of the Malawi International Arbitration Centre and Initiative.

Q. What was the major highlight of the session

Further Regional Commitment to the Arbitration Project in Malawi

15. With full endorsement of the Malawi Government through its accession to the New York Convention and its recent executive, legislative and judicial pronouncements as explained above, the initiative is part of the broader network of like-minded institutions committed to effective, efficient and business-like commercial and investment dispute resolution through the development of a shared arbitration framework and advancement of the practice of international arbitration in the SADC region.
16. As part of this regional integration initiative, on 9th April 2024 at the Johannesburg Arbitration Week, the Malawi Law Society signed an Alliance Charter with the Arbitration Foundation of Southern Africa, the SADC Lawyers Association and 12 other Law Societies from within the SADC region thereby becoming a member of the family of internationally recognised Centres emerging within the SADC region.



Patrick Gray Mpaka, signing the AFSA-SADC Alliance Charter on behalf of Malawi Law Society on 9th April 2024

17. As a duly incorporated entity, the Malawi International Arbitration Centre is at stage where it now needs and seeks to be as participatory and inclusive of the national business community and professional bodies or their members as possible in the legally established operational structure of the Centre in order for the Centre to be fully owned and accepted by the business community which is its true ambassador and the ultimate beneficiary for its efficient operations. The Centre also needs to raise funds and generate resources for its setting up costs and expenses before it can begin to generate its own income to sustain its efficient operations in the administration and resolution or settlement of commercial, investment and other disputes by way of arbitration, mediation and similar non-adjudicatory processes.



18. The Centre's relevant mandate in this regard is in Article 2 of its Memorandum and Articles of Association. Articles 2.2.6, 2.2.9 and 2.2.14 respectively enable the Centre to convene conferences and symposia designed to support and develop awareness of its activities, to issue and distribute marketing and informative publications and training materials where appropriate and to raise funds by way of such services and through subscriptions and other fundraising activities. Article 4.4 of the Articles of Association of the Centre provides that the membership of the Company shall be bodies corporate when it says that no natural person shall be permitted to be members of the Company. So far, only the Malawi Law Society and the Malawi Confederation of the Chambers of Commerce are its members being the founding members at incorporation.
19. The purpose of the symposium is therefore (i) to inform the national business community and professional bodies or their members or member firms on the state of development of the Centre and the direction the initiative is taking and (ii) to give room for formal ownership and participation by the local business community and professional bodies or their members or member firms through recruitment of members to be featured and involved within the organisational structure of the Centre as the institution develops before it progressively starts offering its services to the local and international business community and (iii) to raise money to fund the initial setting up costs and expenses for the Centre before the Centre is able to raise its own money to sustain its operations.

Invitation to Malawi Arbitration Centre Symposium: 5th and 6th September 2024

20. The Malawi Confederation of Chambers of Commerce and Industry and the Malawi Law Society have therefore organised a one and half day symposium and now invites and encourages you and your institution to attend and participate in the Awareness and Membership Recruitment Symposium for the Malawi International Arbitration Centre to be held on 5th and 6th September 2024 at Bingu International Convention Centre from 9:00am to 4:30pm. You may contact Daisy Kambalame on 0888830330 or Chrispin Ngunde on 0999629322 for registration or for any further details on the symposium.

Dated this **25th** day of **July** 2024

Wisely Phiri, PhD
PRESIDENT, MCCI

Patrick Gray Mpaka
PRESIDENT, MLS





FOR MORE INFORMATION, CONTACT:

**Malawi Confederation of Chambers of Commerce and Industry,
Chamber House, Trade Fair Grounds, P. O. Box 258 Blantyre, MALAWI
Tel +265(0) 871 988/813**

**Attention: The Chief Executive Officer,
Ms. Daisy Kambalame
Cell: +265991830330
or email dkambalame@mccci.org**

**Malawi Law Society, Right Wing, 2nd Floor, Delamere House,
P.O. Box 1712, Blantyre, MALAWI,
Tel: 265 (0) 1 821 043/ +265 (0) 211 821 043**

**Attention: The Chief Executive Officer,
Chrispin Chimwemwe Ngunde
Cell: +265 (0) 999 629 322
Email: director@malawilawsociety.net/ngundeChrispin@gmail.com**