

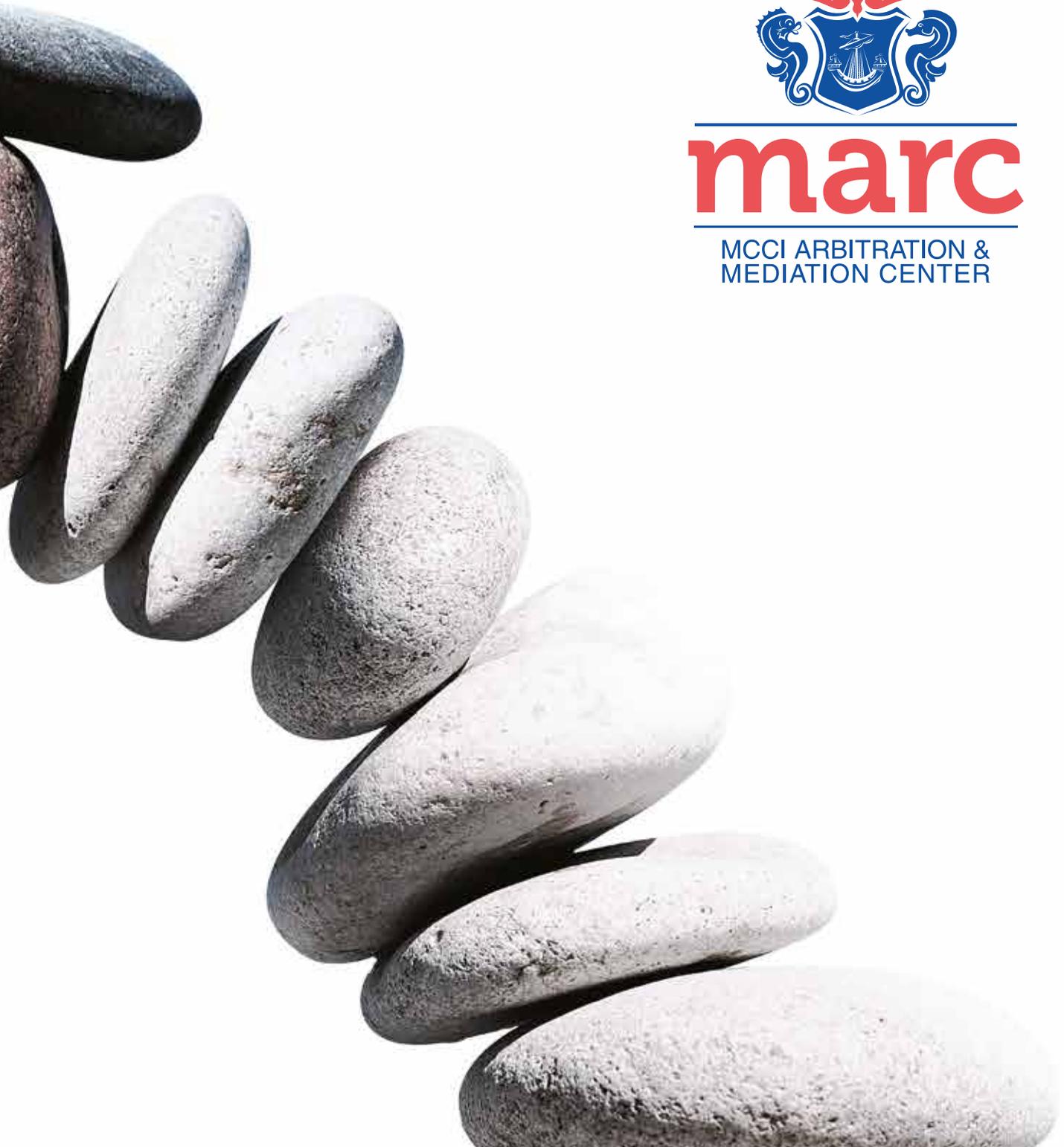
# NEWSLETTER

June 2015



**marc**

MCCI ARBITRATION &  
MEDIATION CENTER



# MAÎTRISEZ LES FONDAMENTAUX DE L'ARBITRAGE

Élargissez vos compétences et renforcez votre expertise contentieuse internationale :

Apprenez les principes et les techniques de l'arbitrage afin de pouvoir mieux maîtriser la procédure! Le **MCCI Arbitration and Mediation Center (MARC)** et le **Centre de Médiation et d'Arbitrage de Paris (CMAP)** ont le plaisir de vous proposer une formation sur l'arbitrage de 30 heures du 6 au 10 juillet 2015.

*MARC vous offre l'opportunité d'ajouter une nouvelle corde à votre arc, grâce à une formation intensive et de qualité, animée par un expert international en arbitrage. Grâce à une pédagogie alliant théorie et pratique, droit comparé (notamment mauricien et français) et droit international, cette formation a pour objectif de permettre aux participants de comprendre les spécificités d'une procédure d'arbitrage, de saisir les techniques et stratégies propres à cette procédure et de mieux appréhender la mission d'un arbitre.*

**Au programme :** Exposés, QCM, cas pratiques, mises en situation et interventions interactives avec les participants.

**À l'issue de cette formation, les participants seront évalués et recevront un certificat de formation du CMAP et de la MCCI.**

**Public concerné :** Avocats, experts-comptables, responsables juridiques, chefs d'entreprise, magistrats, juges et tout professionnel souhaitant agir comme conseil en arbitrage (et éventuellement devenir arbitre). Plus généralement, tous les professionnels qui désirent mieux comprendre la méthode et la pratique de l'arbitrage interne et international.

**Le lancement de la formation se fera au siège du Mauritius Bar Association.**

**Inscription :** Les inscriptions peuvent se faire en ligne sur le site de la MCCI: [www.mcci.org](http://www.mcci.org).

**Pour plus d'informations, veuillez contacter B.Pillay ou A.Chikhuri sur le 208 33 01 ou par mail: [akhemraz@mcci.org](mailto:akhemraz@mcci.org)**

Approbation par la MQA en cours

Prix de la formation : Rs 80,000



**WE WORK IT OUT**

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## Editorial

Discover the  
new edition  
of our  
**MARC Newsletter!**



Dear All,

I would like first of all to seize the opportunity of this MARC Newsletter to thank all of you for your support and active participation in our events and discussion forum for the development of Alternative Dispute Resolution (ADR) in Mauritius.

I can say that much has been achieved in a short period and much is still to be deployed in the coming months as presented in this new edition for your information and interaction.

We are aware that thanks to our reaching out program and presentations to operators and professionals, many contracts include a MARC Arbitration and/or Mediation clause for quick, confidential and cost effective dispute resolution. We are also confident that more and more operators will adopt our MARC standard clause.

ADR by definition, practice and objectives is quite different from traditional court and tribunal judiciary procedures; professionals interested in Arbitration and Mediation either as a counsel or as an Arbitrator or Mediator should undergo adequate training to be able to deliver the service to operators.

This year is a great year for you to get trained in Arbitration proceedings! We are indeed bringing a high level trainer, Dr Jalal Ahdab, from the Centre de Médiation et d'Arbitrage de Paris (CMAP) to deliver courses from 6 to 10 July 2015. We believe that this training session will be a great success not only because of the trainer's experience and qualification but also because we are working closely with the Mauritius Bar Association. We are also welcoming Dr. Craig Beles, for a whole month in August, from the US under the Fulbright program in close collaboration with the US Embassy.

MARC has been developing a dedicated policy for ADR training not only with the assistance of CMAP but also with other training institutions. We are convinced that the development of Arbitration and Mediation in Mauritius must be based on local professional involvement and skills.

We therefore invite you to be part of these opportune training sessions in July and August 2015.

Barlen PILLAY  
Permanent Secretariat

## Award ceremony and Networking Event for MARC-CMAP certified mediators



An award ceremony for MARC's first batch of Certified Mediators was held on 18 May 2015, at the MCCI, Port Louis. The certified mediators had successfully completed the 6 day intensive training and assessment on mediation which took place from 1 to 8 December 2014. The training was delivered by Melanie Germain and Patrick Van Leynseele, and had been organized by MARC and the Centre de Médiation et d'Arbitrage (CMAP) in collaboration with the Mauritius Bar Association.

Mrs Hélène Echevin, President of the MCCI, in her welcome address, talked about the importance of mediation as an important tool to facilitate dispute resolution management by business operators. Regardless of the sector of activity, a mediator, trained and supported by an institutional framework such as that of MARC, can assist in improving the quality of relationship between business partners in dispute, and thereby help to restore trust and dialogue, she said.

The Secretary of the Mauritius Bar Association, Mr Yahia Nazroo, who was the guest speaker on the occasion, mentioned the importance of education and training in this novel field which is slowly gaining ground in Mauritius, but which is already very well established in the developed world as an efficient and sophisticated tool for resolving business disputes. He also announced the forthcoming training in arbitration, scheduled for 6 to 10 July, which MARC is organizing in collaboration with the CMAP.

The event was followed by a networking cocktail attended by MCCI members, members of the Mauritius Bar Association, and members of the MARC Commission for Strategy and Development.



## Testimonials from some of the Certified Mediators:



**Catherine Nalletamby**, authorised to practice as Attorney as from the 3rd of March 1992, has her own practice since then. She has developed expertise in civil litigation namely in commercial, family law, debt recovery amongst others.

After 23 years of practice, she is "convinced that settlement through negotiation and particularly through efficient mediation process can help both parties in a commercial situation to have a quick and better outcome in a conflicting situation which will enable them to maintain their business relationship."



**Nilen Vencadasmy** is a qualified Barrister with 9 years standing at the Mauritian Bar and extensive experience in company law and contract drafting. He regularly advises foreign investors in setting up their businesses in Mauritius. He has a keen interest in Human Rights, Democracy and Governance and has acted as Counsel and legal advisor for local organisations and a number of leading NGOs in Mauritius.

Nilen Vencadasmy has always been interested in Alternative Dispute Resolution and believes that Mauritius, in its endeavour to establish itself as an international ADR centre of excellence, has a lot to gain in promoting Mediation as a speedy, confidential and cost effective dispute resolution technique. "A major advantage in commercial disputes is that parties who have resolved a dispute through mediation can maintain their commercial relationships which is not often the case after a lengthy and strenuous litigation process."



**Honita Prayag-Poonith** is a qualified barrister and currently Acting President of the Commission for Conciliation and Mediation (CCM). Since January 2013, she is also Chairperson of the Audit Committee of the Ministry of Labour, Industrial Relations, Employment & Training. She read law at Staffordshire University and was then called to the Bar of England & Wales in October 2006 and admitted to the Mauritian Bar in Jan 2008. She also holds an LLM in Advanced Legal Practice from Northumbria University.

She believes in mediation because 'mediation is generally less expensive and a more timely way of resolving disputes as compared to litigation. It also brings out solutions that have been mutually agreed upon rather than solutions imposed by a third party; as a result parties have more control over the outcome of their dispute and are thus more likely to comply with the terms of settlement. Gains and losses are more foreseeable in a mediated settlement than they would be if a case is arbitrated or adjudicated and more importantly the working relationship between parties to the dispute have better chances of being preserved.'

## Eligibility criteria for MARC Panel of Mediators

MARC's eligibility criteria for its Panel of Mediators, updated as at 20 May 2015 is available for consultation at the MARC Permanent Secretariat. The criteria includes requirement for training or experience in mediation, 15 years of professional experience, membership in a professional association, an undertaking to undergo continuous professional development and to abide by the MARC rules of ethics for mediators. For more information, please contact us on 208 33 01.

## Keeping Arbitration's Promise of Time and Cost Efficiency, by Dr Craig C. Beles

How many times have you heard it said that, "Arbitration is the best means of resolving private international commercial disputes because it is faster and less expensive than traditional litigation?" However, that promise of efficiency can be elusive when advocates treat arbitration as if it were "litigation-light," and untrained arbitrators permit proceedings to meander aimlessly for many months on end. Over-zealous counsel can clog the proceedings with questionable pre-hearing motions and oppressive document requests. Unsupportive national courts can unduly delay proceedings to decide matters best left to the arbitral tribunal. There is plenty of blame to be shared.

Even with those shortcomings, there are very good reasons why arbitration is the favored means of resolving international commercial disputes, e.g., parties have freedom to design much of their own dispute resolution process, choose independent arbitrators familiar with the subject matter, maintain confidentiality, select a neutral location, hasten finality, and ensure worldwide enforcement of an award, to name but a few.

More and more, courts look favorably on alternative forms of dispute resolution and attempt to foster rather than hinder arbitration. Similarly, ADR institutions like MARC have adopted modern and flexible rules for the administration of arbitrations. So when it comes to assigning fault, the finger pointing typically turns back to the arbitrators and the parties' counsel. Arbitrators blame counsel for insisting on court-like proceedings and counsel blame arbitrators for lax management of the process. Experience tells us that both accusations can be true. It is understandable that counsel is tempted to utilize all of the familiar tools of traditional litigation. And unfettered deference to "party autonomy" tempts some arbitrators to step back and leave it to counsel to run the process. Unfortunately, neither behavior fosters efficiency.

There are several pivotal points in the arbitral process that provide the opportunity

to achieve the efficiency objectives of the parties. More so than any others, attention to three critical stages can make a huge difference in the conduct of the proceeding. The first two opportunities belong solely to the parties and their counsel.

First is the drafting of the arbitration agreement. This opportunity to craft a comprehensive ADR procedure at the "honeymoon stage" of the parties' relationship is often neglected or completely ignored. Unfortunately, it becomes much more difficult to agree upon a process once a dispute has arisen, the parties are polarized and the attorneys have adopted a scorched-earth mentality. In addition to suggested standard language<sup>1</sup>, clear-sighted counsel can tailor the arbitration process by addressing such subjects as the scope of document exchange and electronic discovery, the number and length of depositions, firm deadlines and a precondition of mediation. The latter recognizes the ultimate efficiency in resolving a dispute by means of settlement through mediation before or during a pending arbitration. Mediation can be difficult to put in process in the charged atmosphere after a dispute arises because a suggestion of mediation can be viewed as a sign of weakness. This problem disappears, however, if the requirement of mediation prior to arbitration is contained in the arbitration clause of the underlying commercial contract.

The second major opportunity to affect the efficiency of the process is in the selection of the arbitral tribunal, particularly the chairperson. An arbitrator skilled in project management as well as the law is essential to guiding a complex and difficult dispute. Experienced and engaged arbitrators will work with counsel in process design and assume the primary responsibility for managing the chosen process. Therefore, careful selection of a skilled, collaborative and proactive arbitrator can save great expense and many months of time. MARC's new eligibility criteria help assure that its neutrals will be skilled and competent to guide complex commercial disputes.

The third significant opportunity to positively affect the efficiency of the arbitral process occurs at the prehearing conference. It is a big mistake to treat this first meeting as merely a "scheduling" conference. The prehearing conference is the critical step in structuring the arbitration process when procedural matters have gone unaddressed in the arbitration agreement. The arbitrator will use this conference to determine the parties' goals and to ascertain what process elements will help to achieve those goals. Experienced arbitrators will typically send the parties a letter and agenda beforehand alerting them to the numerous

subjects to be addressed at the prehearing conference with a request that they consult with each other in an attempt to resolve them. Thus, it is imperative that the tribunal and counsel are prepared and willing to cooperate to get the full potential benefit of this stage of the proceedings.

Careful planning during the drafting of arbitration clauses, attention to arbitrator selection, and recognition of the importance of the prehearing conference will permit arbitration to regain any luster it may have lost as an efficient and cost-effective means of conflict resolution.

Craig Beles has been an advocate, arbitrator, mediator, law professor and legal consultant for 40 years. He has arbitrated and mediated over 300 complex commercial disputes. Mr. Beles received a B.A. in Psychology from the University of California, Santa Cruz in 1971, a JD from Gonzaga School of Law, Magna Cum Laude in 1975, and an LLM in International Practice from the University of California, Berkeley, with High Honors in 1987.

Mr. Beles serves as an arbitrator on the rosters of the AAA, ICDR, CPR, WIPO, ICC, and FINRA. He is also a Washington State Bar Association disciplinary hearing officer and a United States Federal Court certified mediator & arbitrator. He is a Member of the National Academy of Distinguished Neutrals and the London Chartered Institute of Arbitrators.

In 2010, Mr. Beles was named a Fulbright Scholar and taught International Dispute Resolution and Comparative ADR in Prague and Brno, CZ. In 2013, the U.S. State Department again named him a Fulbright Specialist in Peace & Conflict Resolution. From 27 July until 21 August of 2015, he will be assisting the MCCI in fostering a culture of ADR in the Republic of Mauritius.



**Craig C. Beles,**  
JD, LLM, MCI Arb

*"Any dispute arising in connection with the present contract shall be finally settled under the Arbitration Rules of the Arbitration and Mediation Center of the Mauritius Chamber of Commerce and Industry (MARC) by [specify one or three] arbitrator(s) appointed in accordance with the said rules." If the contract is of an international nature, the parties should particularly foresee the applicable law, the venue and the language of the arbitration.*

## UPCOMING TRAINING AND WORKSHOPS

### 'Fostering an ADR Culture in Mauritius' with Dr Craig C. Beles (August 2015)

MARC in collaboration with the US Embassy is pleased to propose a series of workshops in August for the promotion of ADR in Mauritius, with the participation of Fullbright Specialist Dr Craig C. Beles.

Dr Beles will be in Mauritius from 26 July to 26 August, and will conduct a series of workshops and training programmes under the aegis of the MCCI and MARC. The calendar of events is provided as follows.

For more information, please contact us on 208 33 01.



### The Basics of Mediation, 30 - 31 July 2015

This workshop will cover the fundamentals of mediation and will involve participants in role plays so that they get a hands-on grasp of the different techniques of mediation for dispute resolution.

#### Topics will include\*:

- Mediation Process Overview - Essentials of Conflict-Resolution Theory
- The Role of the Mediator
- Setting the Stage for Effective Mediation - Premediation procedures
- Spectrum of Mediation Styles, e.g., Facilitative, Evaluative, Transformative
- Interest-based mediation: Interests vs. Positions
- Intercultural considerations in mediation and Co-mediation
- Settlement Building Techniques
- The Mediated Agreement Mediation
- Mediator Ethics

\*Contact the MARC Permanent Secretariat for the complete programme

#### Target audience:

Lawyers, members of the judiciary, professionals involved in Human Resource Management, Public Relations, Communication, Project Management, Accountancy. In general, all professionals seeking to learn more about mediation.

#### Cost:

Rs 8000 per participant\*

### Dispute resolution for SMEs, 4 August 2015

This one-day workshop will cover the various aspects of arbitration and mediation in the context of commercial dispute resolution. The aim is to help business operators, especially SMEs, improve their awareness and hence optimise the benefits to be gained from resolving their disputes through Alternative Dispute Resolution methods.

#### Topics will include\*:

- Advantages of Arbitration Over Court Litigation and Common Myths
- Advantages of Mediation Over Arbitration and Common Myths
- Selecting the Right Form of ADR for Your Business: Negotiation, Early Mediation, Arbitration, Courts, etc.
- How to Write a Bad Arbitration Clause - Incorporating ADR into Your Commercial Contracts
- What to Expect When You Choose Mediation and/or Arbitration
- How to Achieve Speed and Efficiency in Arbitration
- Do's and Don'ts for Corporate and Outside Counsel in Arbitration

\*Contact the MARC Permanent Secretariat for the complete programme

#### Target audience:

Business operators, entrepreneurs, middle and executive managers, in-house counsels, lawyers, members of the judiciary, professionals involved in Human Resource Management, Public Relations, Communication, Project Management, Accountancy.

#### Cost:

Rs 4000 per participant\*

### Fostering an ADR Culture in Mauritius - Panel Discussions and Networking cocktail, 4 August 2015

Dr Beles will interact with business operators and law professionals on the theme of 'Fostering an ADR Culture in Mauritius' during a one-hour interactive panel discussions. Participants and panelists will then join after the event for a networking cocktail.

#### Target audience:

Business operators, entrepreneurs, middle and executive managers, in-house counsels, lawyers, members of the judiciary, professionals involved in Human Resource Management, Public Relations, Communication, Project Management, Accountancy.

#### Cost:

Participation is free. As seats are limited, prior registration is necessary on a first come first served basis.\*

### Mediation and Arbitration of Financial Sector Disputes, 6 August 2015

This one-day workshop will cover the various aspects of ADR in the context of financial sector dispute resolution. The aim is to help operators in the financial services industry to improve their awareness of and hence optimise the benefits to be gained from resolving their disputes through Alternative Dispute Resolution methods.

#### Topics will include\*:

- Mediation & Arbitration of Financial Sector Disputes
- The Advantages of ADR Over the Litigation Default
- The U.S. Approach to Domestic Financial Disputes.
- Other Approaches, e.g., Singapore & Hague
- Financial Disputes Suited for ADR
- How to Save Money Resolving Financial Disputes

\*Contact the MARC Permanent Secretariat for the complete programme

#### Target audience:

Business operators operating in the financial services industry, middle and executive managers, in-house counsels, lawyers, members of the judiciary, professionals involved in Human Resource Management, Public Relations, Communication, Project Management, Accountancy.

#### Cost:

Rs 4000 per participant\*

### Mediation and Arbitration for the Construction Industry - The experience in America and perspectives for Mauritius; 11 August 2015

This one-day workshop will cover the various aspects of ADR in the context of construction sector dispute resolution. The aim is to help operators in the construction industry to improve their awareness of and hence optimise the benefits to be gained from resolving construction-related disputes through Alternative Dispute Resolution methods.

#### Topics will include\*:

- "Appropriate" Dispute Resolution
- Dispute Prevention - DRB Review Board, Partnering, Project Neutrals, etc.
- Arbitration - Drafting & Enforcing the Arbitration Agreement
- The Arbitration Award
- Arbitration Providers - Comparison of Rules & Fees From U.S. Arbitration Organizations
- How to Choose Your Arbitrators
- Choice of Law and Venue
- Document Exchange/"Discovery"
- Construction Mediation
- Alternative Dispute Resolution In Government Contracting

\*Contact the MARC Permanent Secretariat for the complete programme

#### Target audience:

Business operators operating in the construction and engineering services industry, middle and executive managers, engineers, in-house counsels, lawyers, members of the judiciary, professionals involved in Human Resource Management, Public Relations, Communication, Project Management, Accountancy.

#### Cost:

Rs 4000 per participant\*

\* Registration: Contact Mrs G.Bertrand on 208 33 01 or at [secretariat@mcci.org](mailto:secretariat@mcci.org)

**International trade contracts: why mediation and arbitration are the most efficient dispute resolution options?: 13 August 2015**

This one-day workshop will cover the various aspects of ADR in the context of international trade contracts dispute resolution.

**Topics will include\*:**

- Essential Features of International ADR
- Party Autonomy & Control/ Procedural Flexibility
- Enforceability of ADR Agreement & Awards
- Finality; speed & Cost ; Confidentiality
- Neutrality
- Maintenance of Business Relationships
- Minimization of Business Interruptions
- Hot Topics in International Commercial ADR

\*Contact the MARC Permanent Secretariat for the complete programme

**Target audience:**

Business operators, middle and executive managers, engineers, in-house counsels, lawyers, members of the judiciary, professionals involved in Human Resource Management, Public Relations, Communication, Project Management, Accountancy.

**Cost:**

Rs 4000 per participant\*

**Interim relief in International Arbitration: 14 August 2015**

This one-day workshop will cover the various aspects of interim relief in the context of international arbitration. The aim is to help professionals involved in arbitration practice to improve their knowledge of this important aspect of international arbitration.

**Topics will include\*:**

- Interim Relief - Effective Tool or Achilles Heel of Arbitration
- Forms of Interim Relief: Injunction, Attachment, Conservatory, Provisional.
- Timing Considerations: Pre- and Post-Tribunal Relief.
- Ex Parte Relief
- What Law, Principles and Standards Should Apply?
- Arbitral Tribunal vs National Court Ordered Interim Measures
- The Enforcement of Interim Relief and Judicial Support
- Expedited Procedures
- Differing Arbitral Tribunal Rules
- Recent Developments Around the World

\*Contact the MARC Permanent Secretariat for the complete programme

**Target audience:**

Arbitrators, barristers, attorneys, notaries, in-house counsels, members of the judiciary, professionals involved in arbitration practice, as well as any professional or business operator interested in learning more about this important aspect of arbitration practice.

**Cost:**

Rs 4000 per participant\*

**The Basics of Arbitration: 18,19 & 20 August 2015**

This workshop will cover the fundamentals of arbitration and will involve participants in role plays so that they get a hands-on grasp of the practice of arbitration for commercial dispute resolution.

**Topics will include\*:**

- Keeping Arbitration Efficient, Economical and Fair
- Drafting Issues & Enforcement of the Arbitration Agreement
- Selection, Disclosures, and Disqualification of Arbitrators
- Determining Jurisdiction and Arbitrability
- Prehearing Conferences and Prehearing Management in General
- Dealing with Dispositive and other Motions
- Discovery & eDiscovery
- The Hearing on the Merits – Video: Analysis & Discussion
- Awards and Interim Arbitral Decisions
- Post award Matters – Recognition and Enforcement

\*Contact the MARC Permanent Secretariat for the complete programme

**Target audience:**

Lawyers, members of the judiciary, accountants, engineers, professionals involved in management, and in general, all professionals seeking to learn more about arbitration.

**Cost:**

Rs 8000 per participant\*

**Formation à l'arbitrage avec le CMAP, du 6 au 10 Juillet 2015**



Résoudre autrement vos conflits avec le Centre de Médiation et d'Arbitrage de Paris

MARC s'associe de nouveau avec son partenaire stratégique, le Centre de Médiation et d'Arbitrage de Paris pour une formation à l'arbitrage du 6 au 10 Juillet 2015.

MARC et le CMAP propose à tous ceux que le sujet intéresse ou passionne d'élargir leurs compétences et de renforcer leur expertise en contentieux international, en participant du 6 au 10 juillet à une formation intensive destinée à l'apprentissage des principes et des techniques de l'arbitrage afin de pouvoir mieux maîtriser la procédure. La formation durera 30 heures et sera lancée au siège du Mauritius Bar Association.

MARC offre ainsi l'opportunité aux juristes, aux opérateurs et à tous professionnels intéressés d'ajouter une nouvelle corde à leur arc, grâce à une formation intensive et de qualité, animée par un expert international en arbitrage. A travers une pédagogie alliant théorie et pratique, droit comparé (notamment mauricien et français) et droit international, cette formation a pour objectif de permettre aux participants de comprendre les spécificités d'une procédure d'arbitrage, de saisir les techniques et stratégies propres à cette procédure et de mieux appréhender la mission d'un arbitre.

Le programme sera composé d'exposés, de QCM, de cas pratiques, de mises en situation et d'interventions interactives avec les participants.

À l'issue de cette formation, les participants seront évalués et recevront un certificat de formation du CMAP et de la MCCI.

Cette formation s'adresse aux avocats, experts-comptables, responsables juridiques, chefs d'entreprise, magistrats, juges et tout professionnel souhaitant agir comme conseil en arbitrage (et éventuellement devenir arbitre). Plus généralement, elle s'adresse à tous les professionnels qui désirent mieux comprendre la méthode et la pratique de l'arbitrage interne et international.

Cette formation sera aussi l'occasion pour MARC de retravailler en collaboration avec le Mauritius Bar Association, qui accueillera les participants à son siège à Port Louis pour la première journée. La formation se poursuivra par la suite dans un autre lieu.

Huit professionnels réunionnais, des juristes pour la plupart, font le déplacement de l'île Sœur pour bénéficier de cette formation intensive.

La formation sera animée par Dr Jalal El Ahdab. Le Dr Ahdab pratique le droit international des affaires, notamment avec le monde arabe et l'Europe, plus spécifiquement dans le domaine des contentieux transnationaux et investissements étrangers. Il a développé une forte expérience en matière de litiges internationaux et, tout particulièrement, dans le cadre d'arbitrages : litiges entre actionnaires, rupture abusive de négociations, garanties bancaires, franchises,



télécom, concessions portuaires, etc. Ces litiges l'ont conduit à pratiquer de nombreux règlements d'arbitrages (CCI, CNUDCI, CIRDI, LCIA, DIAC, TAS), en Europe, en Afrique, au Moyen-Orient et en Asie, à la fois comme conseil et comme arbitre (unique, président ou co-arbitre). Il intervient régulièrement dans de nombreux colloques et conférences sur l'arbitrage. Il a rédigé de très nombreux articles dans ce domaine. Il est le co-auteur du traité « Arbitration with the Arab Countries » (Kluwer 2011). Il est aussi rédacteur en chef de la revue International Journal of Arab Arbitration, consultable sur [www.kluwerarbitration.com](http://www.kluwerarbitration.com) et [www.intljjaa.com](http://www.intljjaa.com).

Enfin, il enseigne l'arbitrage à l'Université de Versailles.

Docteur en droit, est avocat aux barreaux de Paris, de New York et de Beyrouth, il est diplômé de Sciences Po Paris, de l'Institut Supérieur de Gestion et de Columbia Law School. Après avoir été Counsel dans un cabinet international, il a rejoint le cabinet Ginestier en 2012 en qualité d'associé. Il parle couramment le français, l'anglais et l'arabe.

Il est de plus un membre actif de la Chambre de Commerce Internationale (CCI/ICC) : il fait partie des Comités nationaux français et libanais (et de Hong Kong) et est membre de l'ICC Institute of World Business Law. Il a également été ou est membre des Groupes de travail suivants au sein de la CCI : "ICC Guide to National Procedures for Recognition and Enforcement of Awards under the New York Convention", ICC Task Force on "the Revision of the ICC Rules of Arbitration"; ICC Task Force on "Production of Electronic Documents in Arbitration"; ICC Task Force on "Arbitration Involving States or State Entities" et ICC Working Groups on « Decisions on Costs ». Il exerce également des responsabilités au sein de l'International Bar Association (IBA), et notamment au sein du Mediation Committee dont il est le Co-chair, mais également au sein de l'Arbitration Committee; (il est l'un des traducteurs officiels du Règlement de 2010, sur les modes de preuve, en arabe). Il fait enfin partie des organisations et institutions suivantes : AAA/ICDR, ABA, CEPANI, CI Arb, ASA, LCIA, SIAC et TAS (il est membre désigné par le Liban dans la liste des arbitres du Centre).

Il a remporté en 2005 le prix de la meilleure thèse (et du meilleur ouvrage) attribué par la Chambre de Commerce et d'Industrie de Paris (CMAP), intitulée « La clause compromissoire et les tiers ».

Il a été reconnu comme un "world leading arbitration expert" par l'International Who's Who of Commercial Arbitration 2012.

Les inscriptions à la formation peuvent se faire en ligne sur le site de la MCCI: [www.mcci.org](http://www.mcci.org)

Pour plus d'information, veuillez contacter B.Pillay ou A.Chikhuri sur le 208 33 01 ou par mail: [akhemraz@mcci.org](mailto:akhemraz@mcci.org).

\* Registration: Contact Mrs G.Bertrand on 208 33 01 or at [secretariat@mcci.org](mailto:secretariat@mcci.org)

## MARC Events

### Awareness Session: 'Securing your business by adopting the right tools for preventing or resolving business disputes'

MARC held an awareness session for MCCI members on 20 May 2015. The theme was "Securing your business by adopting the right tools for preventing or resolving business disputes".

### MCB Presentation

Barlen Pillay of the MARC Permanent Secretariat delivered a presentation on the theme of "Dispute Resolution in International Transactions" to an audience of some 200 operators during the third edition of the Mauritius Commercial Banks's 'Forward Thinking Event', on 23 April 2015.

### Mauritius Bankers Association - Interactive Information Session

Barlen Pillay and Anjana Chikhuri of the MARC Permanent Secretariat met council members of the Mauritius Bankers Association for an interactive information session on 6 May 2015.

### Collaboration MARC-Reunion for Mediation Training

MARC collaborated with the Centre de Médiation et d'Arbitrage de Paris for the assessment phase of a mediation training in which participated a group of 15 lawyers in Reunion Island. The training was held from 10 to 15 May, in St Denis.

### Meeting with the BACECA

MARC met council members of the BACECA (Building and Civil Engineering Contractors Association) for an interactive information session on 10 April 2015. Discussions were centered around the urgent need to improve dispute resolution practices in the construction sector. In this context, MARC is currently working with the BACECA for a common representation to public authorities.

### 2<sup>nd</sup> Meeting of the MARC Commission



The MARC Commission for Strategy and Development met for its second meeting of 2015 on May 18. Main topics discussed included ADR in the construction industry, legal framework for mediation and training. Since the last meeting, meetings were held with members of the sub-committee on construction and subsequently, with the council members

of BACECA. BACECA and MARC are currently collaborating to present a common position paper on improving ADR practices in the construction industry. The introduction of a legislative framework on mediation was also discussed ; such a framework would contribute towards reinforcement of a mediation culture in Mauritius, besides additional benefits such as enforcement mechanisms for mediation agreement, and protection of confidentiality.

### Mediation Mock case session



MARC organized a mock mediation case session on Thursday 30 April 2015. The case involved two operators locked in a dispute over a sales contract for which goods were delivered one week beyond schedule.

Moreover, part of the goods were considered by the buyer to contain defects. Issues at stake included an amount outstanding which the buyer refused to pay arguing that the seller did not respect an exclusivity usage that had been established between them. The mediator's challenge was to bridge the communication gap between the parties and bring them to a creative solution which went beyond the contractual obligations of both parties, towards a win-win solution which would help them continue their business relationships and secure future business transactions against similar situations.

Some of MARC's certified mediators participated in the session. Such sessions are meant to provide the opportunity to mediators to practice and refine their mediation skills. For information on future sessions, contact the MARC Permanent Secretariat on 208 33 01.

## Le développement de la médiation en France et au sein du Centre de Médiation et d'Arbitrage de Paris

La première loi sur la médiation date du 8 février 1995 et signe l'acte de naissance de la médiation en France. Cette loi, qui réglementait uniquement la médiation judiciaire, a conduit à l'insertion de nouveaux articles dans le code de procédure civile (article 131-1s.). La loi de 1995, qui coïncide avec la création du CMAP (Centre de Médiation et d'Arbitrage de Paris), a donc autorisé le juge à proposer aux parties de recourir à la médiation pour régler à l'amiable leur litige. Elle limite la durée de la médiation à 3 mois, renouvelable une fois, et garantit un certain encadrement du processus, notamment en ce qui concerne les délais.

La médiation judiciaire s'est rapidement développée dans les juridictions civiles et commerciales, même si aujourd'hui encore elle représente un faible pourcentage du traitement du contentieux. Ainsi, des actions de sensibilisation sont régulièrement organisées à destination des magistrats, afin de les inciter à renvoyer des affaires en médiation.

La Directive européenne du 21 mai 2008 a signé une avancée importante de la médiation en Europe, puisqu'elle a donné lieu à des lois de transposition sur la médiation dans chacun des 28 Etats-Membres de l'Union Européenne. Ainsi, par un décret du 20 janvier 2012, la France s'est dotée d'une nouvelle législation concernant la médiation, encadrant ainsi, non plus seulement la médiation judiciaire, mais également la médiation conventionnelle.

Plus récemment encore, un décret du 11 mars 2015 a imposé de préciser, dans l'acte introductif d'instance, les « diligences entreprises en vue de parvenir à une résolution amiable du litige ». Entré en vigueur le 1er avril dernier, ce décret est encore trop récent pour pouvoir dresser un premier bilan, mais gageons qu'il favorisera le recours à la médiation de façon plus automatique.

Depuis 1995, en créant le CMAP (Centre de Médiation et d'Arbitrage de Paris), la Chambre de commerce et d'industrie de Paris a mis à disposition des entreprises un service de médiation, d'arbitrage et d'autres modes alternatifs de règlement des conflits (expertise amiable par exemple).

Les missions du CMAP sont multiples. Tout d'abord l'institution est chargée d'organiser les procédures de médiation et d'arbitrage, de la saisine à la clôture : mise en place du processus, désignation du médiateur ou des arbitres, assistance lors d'incidents de procédure, encadrement de la procédure, notamment concernant le respect des délais et des règles d'éthique des tiers, recouvrement des frais et honoraires, etc.

Ensuite, le CMAP a une mission de sensibilisation des potentiels prescripteurs et utilisateurs de médiation et d'arbitrage. Cette mission est complétée par une activité importante de formation de médiateurs et d'arbitres. Le CMAP organise ainsi des sessions de formation de façon

régulière et participe activement dans toutes les actions de promotion et les colloques sur ces sujets.

Depuis près de 15 ans, le CMAP a également mis en place un système d'agrément de ses médiateurs, afin de garantir la qualité des médiateurs qu'il désigne. Depuis l'an dernier, cet agrément a été renforcé par une certification, en partenariat avec l'ESCP Europe, une des plus prestigieuses écoles de commerce européennes. Les personnes voulant intégrer les listes de médiateurs du CMAP doivent ainsi se soumettre à une évaluation écrite et à une mise en situation dans laquelle les parties sont jouées par des médiateurs expérimentés, qui testent les réactions du candidat. Le jury est présidé par un professeur de l'ESCP rompu aux techniques de négociation et de médiation.

Toutes ces actions de développement contribuent au quotidien au développement de la médiation en France et en Europe.

Concernant les activités internationales du CMAP, nous intervenons régulièrement, au niveau national et international, pour former des médiateurs et des arbitres, ainsi que pour assister des institutions dans la création de centres de médiation et d'arbitrage (en France et à l'étranger). C'est ainsi que nous avons eu le plaisir de collaborer avec la MCCI pour former leurs médiateurs et arbitres. Sur les 12 derniers mois, nous avons conduit des formations similaires dans d'autres pays tels que La Réunion, le Cameroun, le Liban, le Maroc, la Grèce, etc.

Nous sommes également régulièrement missionnés par la Commission Européenne sur des sujets liés à la médiation. Ainsi l'an dernier nous avons participé au programme « Go to mediation » et avons dans ce cadre rendu un rapport sur l'encadrement de la fonction de médiateur en Europe. Cette année, nous avons pour mission de contribuer au développement de la médiation judiciaire, dans le cadre du programme « Mediation meets Judges », et multiplions ainsi les actions auprès des tribunaux sur tout le territoire français.

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## Mediation in Mauritius

“Do you really want to end up in Court?” If you are about to get entangled in a tedious and costly lawsuit, you would probably want to think it over. Everybody knows it. Courtrooms are clogged and you are in for a protracted roller coaster ride which, depending on the nature of the dispute, could last years and cost you a fortune.

The problem is that most would be litigants are not aware that alternatives exist to courtroom action which could save them time and money and at the time contribute to alleviate the pressure on courts and considerably reduce the backlog of cases.

While people in Mauritius would generally know of the existence of arbitration as an alternative mode of dispute resolution, most are simply not aware of what mediation can offer.

To put it simply, mediation has in other jurisdictions drastically helped in keeping disputes out of the courts, saving parties to a dispute time, money and stress, as well as providing them with an array of flexible, creative solutions which neither a judgment of a Court of Law nor an arbitral award would have offered.

And the difference lies here: a neutral, independent third party challenging parties on their positions and helping parties compromise. Mediation is not about someone making a decision for you, but about someone helping you reach a decision.

And the advantages of mediation are numerous: the process is completely confidential and cost effective, parties are able to choose their mediator and are in full control of the process at all times, rules are relaxed allowing for customized solutions and parties normally end up the process shaking hands and getting on with their working relationships.

Although Mauritius has in the past few years demonstrated the ambition of propelling itself as an international dispute resolution centre of the likes of Singapore, Sydney or Hong Kong, efforts to promote mediation have been rather timid. The Employment Relations Act of 2008 provides for the conciliation or mediation of

labour disputes through a statutory Commission and in 2010 the Supreme Court established a Mediation Division under the Mediation Rules, with a view to referring “such civil suit, action, cause or matter which has been brought and is pending before the Supreme Court as the Chief Justice may deem appropriate...for mediation before a Judge of the Supreme Court.” While these attempts are indeed commendable, they both remain institutionally driven and lack the essential features which characterize mediation in its strict sense.

International ADR practitioners are almost unanimous in recognizing that Mauritius as an ADR Centre is highly appealing to them: a well balanced hybrid legal system, a genuine financial centre, a supportive government, a pool of competent legal professionals, an able judiciary.

So what else should we do? Insofar as mediation is concerned, the debate among professionals is whether a legal framework is required.

In order for alternative modes of dispute resolution to gain ground, we need a change of culture, so that instead of issuing proceedings, parties consider instructing a mediator to resolve their dispute. To most, mediation remains too vague a process and it is felt that in order to encourage parties to a dispute to embrace mediation, a number of questions need to be answered, the most recurrent ones being: Is there a privilege for mediators? Can a mediator be forced to disclose documents communicated in the course of mediation? How to enforce a mediation agreement in the event of default

Indeed for the process to be attractive, people need to be reassured that a qualified mediator is protected by a strict privilege; that a mediator cannot be called as witness in a subsequent legal proceedings; that a mediator cannot be forced to disclose documents communicated during the mediation process, that a mediation agreement can be rapidly enforced before a Court of law, in the event of default, by a special homologation procedure. Obviously all these

questions can only be catered for by putting appropriate legislation in place.

But legislating would not be sufficient. Innovation is the norm. Singapore has recently reinforced its position as the first specialist centre for the mediation of international commercial disputes. Of particular note is the establishment of a new ‘Arb-Med-Arb’ protocol, which allows a party who has commenced arbitration to stay arbitration proceedings to proceed to mediation. If the mediation is successful, parties can formalise the terms of any settlement in the form of a consent award, which is generally accepted as an arbitral award and, subject to any local legislation, is enforceable in the member states to the New York Convention.

Once again Mauritius seems to have to look up to its South East Asian counterpart and follow suit.

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