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Employment Arbitration in France, South Africa and Singapore

1. CNAT, France:

(We are indebted to ELA member Richard Ryde for his generous assistance in following up with CNAT and preparing this part of our note)

1.1. Rules: these are fairly standard arbitration rules giving great latitude to the parties and the tribunal to organise the procedure.

1.2. Awards: normally rendered within six months from the appointment of the tribunal, subject to extension by the CNAT. Provisions such as this are of course commonly seen in arbitration rules, and the actual turnaround time for arbitrations remains to be seen.

1.3. Costs: The costs of the centre and the fees of the arbitrators are calculated on the basis of the amount at stake. Given the amounts levied by tranche according to the costs annex, it can be said that arbitrations administered by the centre will be inexpensive.

1.4. An example is provided of a case where the amount at stake is €200 000:-

1.4.1. The administrative expenses would be €1900 and the fees of the tribunal either €3 000 for a sole arbitrator or €5 500 for a tribunal of three members.

1.4.2. The costs annex of the rules also provides for a splitting of the administrative costs and arbitrators fees in proportions which are intended to reflect, to some extent, the different tax and VAT statuses of the parties.

1.4.3. Thus, where the employer is a company registered for VAT, the employer pays three quarters and the employee quarter. Where the employer is a company not registered for VAT, the employer pays two thirds and the employee one third. Where both employer and employee are individuals, each pays half.

Article 23.5 of the Rules provides that the tribunal shall make the order for payment of administrative costs and arbitrator's fees in accordance with the costs annex.

Notwithstanding the absence of discretion of the tribunal in relation to the costs mentioned above, article 23.6 gives the tribunal power to make an order as between the parties for payment of other costs in the same way that an ordinary court would be able to (Specific reference is made to the powers of the courts under article 700 of the French code of civil procedure).

In practice, the losing party in French proceedings pays a contribution to lawyers' costs of the winning party. The above provisions do not represent any additional risk to a party to a CNAT arbitration compared with the position before the ordinary courts.

1.5. Scrutiny of draft award: the Rules provide for scrutiny of the draft award by the CNAT, which can make "suggestions for modifications" of both form and substance. Whilst the content of the award will always be a matter for the tribunal, the language of the provision is quite strong in this context.

1.6. The President of the CNAT, Maître Hubert Flichy, kindly provided the following information:-

1.6.1. The centre can be said to have been operational from September 2016.

1.6.2. To date, the CNAT has set in motion only one arbitration. The details of the case are confidential but the amounts involved are substantial and the three arbitrators are from leading business law firms in Paris.

1.6.3. The CNAT has already attracted a fair amount of interest from employment practitioners: there are around 70 members, the overwhelming majority of whom are lawyers.

1.7. The public perception of French employment tribunals are slanted towards employees, so it may be harder to persuade even sophisticated employees to opt for arbitration instead of the tribunals. The only genuine advantages are speed and confidentiality.

1.8. French lawyers are either Claimant or Respondent lawyers so it would be challenging to change that perception sufficiently for an arbitration practice to flourish, because either the Claimant or Respondent would object if someone was sitting who was from the "wrong camp".

2. South Africa:

2.1. Sector specific arbitration: The South African Society for Labour Law (SASLAW) is a similar organisation to ELA, based in Johannesburg. Advocate Gordon Edwards, SASLAW member and member of the Dispute Resolution Centre of the Motor Industry Bargaining Council kindly commented that arbitration in South African employment law is sector specific given the highly unionised workforce.

2.2. ADR – Conciliation and Con Arb standard: The Commission for Conciliation, Mediation and Arbitration (CCMA) established by statute is a hybrid between ACAS and the Employment Tribunals. The CCMA is actively engaged in ADR offering conciliation or con-arb depending on the circumstances.

2.3. CCMA rules: These are pretty similar to our employment tribunals apart from some stranger provisions such as the bar on legal representation unless the parties consent to it. The rules are available here: http://www.ccma.org.za/Advice/Knowledge-Hub/Downloads/Rules-Legislation.

3. Singapore:

3.1. Limited employment rights: employment rights are limited by nationality/residency and income. Accordingly, most if not all expats living there will not be subject to Singapore employment law themselves either because they are not permanent residents or Singaporean or because they earn too much.

3.2. Contractual rights: The parties in all but the meanest employment relationships rely on their contractual rights. It is perfectly feasible, especially in a vibrant arbitration friendly jurisdiction for employment contracts to include arbitration clauses. However, there is not an empirical evidence of the extent to which this is commonplace. Enquiries in that regard were inconclusive.