



P.R.I.M.E. Finance
Panel of **Recognized International Market Experts in Finance**

Commodity exchanges in Africa : The role of dispute resolution



P.R.I.M.E. FINANCE
Panel of Recognised International Market Experts in Finance



Presentation by Hubert de Vauplane
2015 P.R.I.M.E. Finance Annual Conference
26 & 27 January, Peace Palace, The Hague

Map of Commodity Exchanges in Africa



Potential Disputes in a CE 1/2

- Disputes generated by the Physical Commodity Chain

Commodities exchanges \neq Stock Exchanges

Production \Rightarrow Transport \Rightarrow Warehousing \Rightarrow Delivery

\Rightarrow Technical Claims (late delivery, delivery of non conforming contractual goods, failure to give essential notices)

\Rightarrow Quality or quantity (inefficiency of warehousing)

\Rightarrow Payment delays



Potential Disputes in a CE 2/2

- Dispute generated by the Role of each participant
 - ⇒ **Buyers vs Sellers:** Buyer buys the commodity to the Seller. Need of quality and quantity
 - ⇒ **Exchange vs Traders:** Exchange is Counterparty to traders and guarantees performance
 - ⇒ **Brokers vs Clients:** Broker executes the trade and take the risk on behalf of a client
- Possibility of fraud

NSEL SCAM in India (2013)



Differents system of ADR

- **Mediation:** operates before any litigation
- **Arbitration:** panels of experts appointed to settle the dispute

Arbitration systems are notably used in the following African CEs:

- Nigeria/ASCE
- Malawi/ACE
- Rwanda
- South Africa/SAFEX
- Ethiopia
- Ghana (arbitration or mediation)



Arbitration and other systems of disputes resolution

- Arbitration \neq Exchange's disciplinary panels
 - Market abuse
 - Contraventions to the exchange rules
 - Rwanda: Exchange disciplinary commission expels and sanctions Member for offenses to the Exchange Rules

- Arbitration \neq sanctioning by public regulator

In GCX (Ghana), the Securities and Exchange Commission established under section 1 of the Securities Industry Regulations, 1993 PNDCL 333, specifies the codes of conduct, accredits and takes sanctions against the member of the Exchange

- Arbitration \neq industry self-regulator

Jurisdictions like United States



P.R.I.M.E. FINANCE
Panel of Recognised International Market Experts in Finance

Legislative and Jurisdictional framework for arbitrators

- What is the force of the arbitration award ?

Arbitration award may find their force in:

- ⇒ The law
- ⇒ The rules of the exchange (by contract)
- ⇒ The exchange's regulator

- Implications

- ⇒ Enforceability
 - *Award is final and binding
 - *Sanction mechanisms if the parties refuse to apply an award
- ⇒ Appeal
 - *The appeal must be coherent and must not contrast with the objectives of the ADR
 - *No right to appeal in most of the systems (Malawi, South Africa WRS)



What do Commodities Exchange need?

- Standardization —→ equally applied among Members
- Quickness of decision —→ capacity of arbitrators
- Effectiveness —→ must be binding/not subject to appeal
- Neutrality —→ not favor the Exchange/a Member against another

Typically, what can affect this neutrality is :

- ⇒ The fees that are payable by the party that refers to arbitrators
- ⇒ The dependence of the arbitrators toward the Exchange, when the dispute involves the Exchange



P.R.I.M.E. FINANCE
Panel of Recognised International Market Experts in Finance

What do Commodities Exchange have?

- Lack of Legal or Technical Capacities

⇒ Adaptation issues

Arbitrators may not be adapted (example of SAFEX in South Africa, where the arbitrators are the same for the Stock Exchange and for the CE)

⇒ Law capacities

Arbitrators are sometimes professionals and not properly lawyers or judges (example of ASCE in Nigeria)

- Conflict of Interests

⇒ Problem with the fee structure: example in Malawi

- Risk of Corruption

⇒ Ethiopian scandal of 2012



Our proposals

- Widening the scope of Experts in commodities among PRIME members
 - ⇒ Recruiting specialists of Commodities markets
 - ⇒ Training the existing arbitrators to the Commodities markets
- Set up a committee of international arbitrators from PRIME to deal with African CEs disputes
 - ⇒ Create panels from which arbitrators could be appointed to settle a dispute
 - ⇒ Defining precise eligibility criteria for arbitrators



P.R.I.M.E. Finance

Panel of Recognized International Market Experts in Finance



P.R.I.M.E. FINANCE
Panel of Recognised International Market Experts in Finance



2015 P.R.I.M.E. Finance Annual Conference
26 & 27 January, Peace Palace, The Hague