

Arbitration procedures and practice in Nigeria: overview

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USE OF ARBITRATION AND RECENT TRENDS

1. How is commercial arbitration used and what are the recent trends?

Use of commercial arbitration and recent trends

Due to the ever increasing court caseload, arbitration is gaining widespread acceptance in business circles. There are planned reforms to Nigeria's arbitration law and a focusing of policy towards promoting arbitration and making Nigerian courts more arbitration friendly.

Commercial arbitration is used increasingly in the oil and gas sectors, telecommunications and construction.

Advantages/disadvantages

Relative to litigation and other forms of dispute resolution, arbitration offers:

- Speed, as court lists in commercial centres are congested.
- The ability to select suitably qualified adjudicators in complex disputes.
- Confidentiality of the process.

The major disadvantage of arbitration over litigation and other forms of dispute resolution is the tendency for the losing party to resist enforcement of the award in high value disputes by instituting setting-aside applications (although these efforts are not usually successful).

LEGISLATIVE FRAMEWORK

Applicable legislation

2. What legislation applies to arbitration? To what extent has your jurisdiction adopted the UNCITRAL Model Law on International Commercial Arbitration 1985 (UNCITRAL Model Law)?

The principal legislation that governs arbitration is the Arbitration and Conciliation Act 1988 (Laws of the Federation of Nigeria 2004 Cap A18) (ACA), which is the federal statute. Some states in Nigeria also have their own arbitration laws.

The ACA was modelled on the UNCITRAL Model Law on International Commercial Arbitration 1985 (UNCITRAL Model Law) and came into force on 14 March 1988. Nigeria has not made any modifications to the ACA at the federal level, although a bill is currently before parliament to replace the 1988 legislation with the UNCITRAL Model Law incorporating the 2006 amendments.

The Lagos State Arbitration Law 2009 (LSAL) applies to all arbitrations that arise in Lagos State, except where parties have

stipulated another law. This law is an enactment of the UNCITRAL Model Law, and incorporates the 2006 amendments.

Mandatory legislative provisions

3. Are there any mandatory legislative provisions? What is their effect?

The Arbitration and Conciliation Act (ACA) contains some mandatory legislative provisions which if not complied with may result in the successful setting aside of a non-compliant arbitration award:

- The arbitrators must ensure equal treatment of the parties (*section 14*).
- The arbitration award must be in writing and signed by the arbitrators, with reasons stated for the absence of any signature by the non-signing arbitrator. It must also state the place and date of the award (*section 26*). The Lagos State Arbitration Law 2009 (LSAL) contains similar mandatory provisions, at sections 34 and 47 respectively.
- Domestic arbitrations must be conducted under the Arbitration Rules contained in the First Schedule to the ACA. The Arbitration Rules are a re-enactment of the UNCITRAL Model Arbitration Rules.
- The Arbitration Rules contained in the Arbitration and Conciliation Act (ACA) restrict party representation to legal practitioners who must be persons qualified to practise law in Nigeria. However, parties to an international commercial arbitration who elect to use rules other than the Arbitration Rules contained in the ACA, may be able to appoint legal practitioners who are not qualified to practise law in Nigeria.

4. Does the law prohibit any types of disputes from being resolved via arbitration?

The Arbitration and Conciliation Act (ACA) does not specifically list disputes that are not arbitrable. The test is whether the dispute can be settled lawfully by way of accord and satisfaction (*United World Ltd Inc v MTS (1998) 10 NWLR (Pt 568)106*). The consensus of legal opinion is that matters that impact on the legal status of an individual are not arbitrable. A recent court decision that is currently on appeal held that contractual disputes resulting from the fiscal provisions of contracts are not arbitrable, as the dispute impacts on the government's tax collection responsibilities.

Limitation

5. Does the law of limitation apply to arbitration proceedings?

Lagos State is the commercial centre of Nigeria. An application to enforce an arbitral award must be brought within six years from the date the cause of action accrued (*section 8(1)(d), Limitation Law of Lagos State*). There are similar provisions in the limitation laws of other states.

Generally, an arbitration must be concluded and the award enforced within six years of the cause of action arising.

ARBITRATION ORGANISATIONS

6. Which arbitration organisations are commonly used to resolve large commercial disputes?

The following arbitration organisations are commonly used to resolve large commercial disputes:

- International Court of Arbitration of the International Chamber of Commerce (ICC).
- London Court of International Arbitration.
- Lagos Court of Arbitration.
- Regional Centre for International Arbitration - Lagos.
- Chartered Institute of Arbitrators (Nigerian Branch).

The International Court of Arbitration of the ICC and the London Court of International Arbitration are the most commonly specified arbitral institutions. The Regional Centre for International Arbitration is also favoured by government entities.

The International Court of Arbitration of the ICC and the London Court of Arbitration most commonly administer international arbitrations seated in Nigeria.

See box, *Main arbitration organisations*.

JURISDICTIONAL ISSUES

7. What remedies are available where one party denies that the tribunal has jurisdiction to determine the dispute(s)? Does your jurisdiction recognise the concept of kompetenz-kompetenz? Does the tribunal or the local court determine issues of jurisdiction?

The party disputing the arbitral tribunal's jurisdiction must raise the issue before the tribunal. Section 12(1) of the Arbitration and Conciliation Act (ACA) incorporates the principle of kompetenz-kompetenz. That section states that arbitrators can decide on their own jurisdiction where one party denies that the tribunal has jurisdiction to determine the dispute. Any application to the local court to determine the arbitral tribunal's jurisdiction is likely to be unsuccessful due to this provision.

ARBITRATION AGREEMENTS

Validity requirements

8. What are the requirements for an arbitration agreement to be enforceable?

Substantive/formal requirements

To be enforceable, an arbitration agreement must be evidenced in writing, either in:

- A document signed by the parties.
- An exchange of letters, telex, telegrams or other means of communication which provide a record of the arbitration agreement.
- An exchange of points of claim and of defence in which the existence of an arbitration agreement is alleged by one party and not denied by another (*section 1, Arbitration and Conciliation Act (ACA)*).

Separate arbitration agreement

A separate arbitration agreement is not required. A clause in the main contract is sufficient.

Any reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that clause part of the contract (*section 1(2), Arbitration and Conciliation Act*). In such a case, the arbitration clause in a separate contract is enforceable to resolve disputes arising under the contract.

Unilateral or optional clauses

9. Are unilateral or optional clauses, where one party has the right to choose arbitration, enforceable?

Although there has been no case law on the point, it is likely that a unilateral clause would be enforceable once it is shown that the non-signatory has by its conduct consented to the terms of the contract that provides for arbitration.

10. In what circumstances can a party that is not a party to an arbitration agreement be joined to the arbitration proceedings?

The Arbitration and Conciliation Act (ACA) does not contain any provisions on the joining of a non-signatory party to the arbitration proceeding. However, with the consent of the existing parties to the arbitration, a non-signatory party can be joined to the arbitration (if they consent).

11. In what circumstances can a party that is not a party to an arbitration agreement compel a party to the arbitration agreement to arbitrate disputes under the arbitration agreement?

The privity of contract doctrine prevents a non-party to a contract from being able to enforce a contract between specific parties even where the non-party is a beneficiary of the contract terms. As such, a non-party is unable to enforce an arbitration clause in the contract, even for its own benefit, unless a name-borrowing provision is included in the contract. Name-borrowing provisions allow a party to pursue or defend a claim in the name of another person.

Separability

12. Does the applicable law recognise the separability of arbitration agreements?

The Arbitration and Conciliation Act (ACA) and the Lagos State Arbitration Law (LSAL) treat the arbitration agreement as an independent agreement (*section 12(2), ACA and section 19(2), LSAL*). Any alleged illegality or invalidity in respect of the dispute does not affect the validity of the arbitration clause.

Breach of an arbitration agreement

13. What remedies are available where a party starts court proceedings in breach of an arbitration agreement or initiates arbitration in breach of a valid jurisdiction clause?

Court proceedings in breach of an arbitration agreement

Where a party starts court proceedings in breach of an arbitration agreement or initiates arbitration in breach of a valid jurisdiction clause, the other party can apply to the courts to stay the court proceedings and refer the parties to arbitration, as long as it has not taken any steps to defend the suit in court. However, where that party takes steps to defend the suit in court, he or she will fail in an application to stay the court proceedings.

Arbitration in breach of a valid jurisdiction clause

The courts will assert their jurisdiction where any party to the contract makes an application contending that the arbitration proceedings are in breach of a valid jurisdiction clause.

14. Will the local courts grant an injunction to restrain proceedings started overseas in breach of an arbitration agreement?

Local courts will in appropriate circumstances issue restraining orders in respect of proceedings started overseas in breach of an arbitration agreement, subject to the presence within Nigeria of the parties who have commenced the offending proceedings.

ARBITRATORS

Number and qualifications/characteristics

15. Are there any legal requirements relating to the number, qualifications and characteristics of arbitrators? Must an arbitrator be a national of, or licensed to practice in your jurisdiction in order to serve as an arbitrator there?

The Arbitration and Conciliation Act (ACA) does not stipulate the number, qualifications and characteristics of arbitrators, and parties are free to choose arbitrators of their choice. In the absence of an agreement as to the number, the default number of arbitrators is:

- Three for arbitrations to which the ACA applies.
- One arbitrator for arbitrations conducted under the Lagos State Arbitration Law (LSAL).

The ACA does not stipulate that an arbitrator must be a national of Nigeria or be licensed to practise in Nigeria to serve as an arbitrator. No person can be disqualified from being appointed as arbitrator by reason of his or her nationality (*section 44(10), ACA*).

Independence/impartiality

16. Are there any requirements relating to arbitrators' independence and/or impartiality?

The Arbitration and Conciliation Act (ACA) requires that a person appointed as arbitrator must be independent and impartial. Such a person must disclose any circumstances that are likely to give rise to justifiable doubts about their independence or impartiality.

Appointment/removal

17. Does the law contain default provisions relating to the appointment and/or removal of arbitrators?

Appointment of arbitrators

The Arbitration and Conciliation Act (ACA) and the Lagos State Arbitration Law (LSAL) provide for the default appointment of arbitrators. The general position is that parties determine the procedure for appointment of their arbitrators (*section 7(1), ACA*). However, where parties fail to agree on a procedure for appointment, the ACA provides a default procedure under *section 7(2)*. Where the parties cannot agree on the appointment of a sole arbitrator or the third arbitrator in a three person panel, there is recourse to the courts. This applies to domestic arbitrations. *Section 44* applies to international arbitrations, and in these cases the appointing authority as defined in *section 57* is the Secretary-General of the Permanent Court of Arbitration at The Hague. *Section 8* of the Lagos State Arbitration Law (LSAL) makes the Lagos Court of Arbitration the appointing authority where the parties have not provided alternative default provisions.

Under both laws, the appointment is made according to the default provisions, on the application of any party to the arbitration agreement, if either:

- A party fails to appoint its arbitrator within 30 days of receipt of the request to do so by the other party.
- The two arbitrators fail to agree on the third arbitrator within 30 days of their appointments.

In addition, where any of the parties, the arbitrators, or the relevant institution fails to take any steps required of it, any party can apply to the court or the Lagos Court of Arbitration respectively to take the necessary actions, unless the parties' agreement provides for any other recourse (*section 7(3), ACA* and *section 8(4), LSAL*).

Removal of arbitrators

The ACA does not specifically provide for the removal of arbitrators. It provides that where the parties have not specified a procedure to challenge the appointment of an arbitrator, which if successful will result in his removal, a party who intends to challenge an arbitrator has 15 days to send to the arbitral tribunal a written statement of the reasons for the challenge. Unless the arbitrator who has been challenged withdraws from office or the other party agrees to the challenge, the arbitral tribunal decides on the challenge. A dissatisfied party can then approach the courts (*Article 12, Arbitration Rules*).

In contrast, however, *section 12* of the LSAL specifically provides that a party can apply to the court for the removal of an arbitrator if:

- Circumstances give rise to justifiable doubts as to the arbitrator's impartiality or independence.
- The arbitrator does not possess the qualifications required by the arbitration agreement.
- The arbitrator is physically or mentally incapable of conducting the proceedings or there are justifiable doubts about the arbitrator's capacity to do so.
- The arbitrator has refused or failed to use reasonable speed and efficiency in conducting the proceedings or making an award, and substantial injustice has been or will be caused to the applicant.

The ACA only refers to the existence of circumstances that give rise to justifiable doubts about the arbitrator's impartiality or independence or the arbitrator's failure to possess the qualifications agreed by the parties.

PROCEDURE

Commencement of arbitral proceedings

18. Does the law provide default rules governing the commencement of arbitral proceedings?

In default of an agreement by the parties, the arbitral proceedings in respect of a particular dispute commence on the date the request to refer the dispute to arbitration is received by the other party (section 17, *Arbitration and Conciliation Act (ACA)*).

In addition to deeming the commencement date as the date the respondent receives the notice of arbitration, the notice of arbitration should contain:

- A demand that the dispute be referred to arbitration.
- The names and addresses of the parties.
- A reference to the arbitration clause or the separate arbitration agreement that is invoked.
- A reference to the contract out of or in relation to which the dispute arises.
- The general nature of the claim and an indication of the amount involved, if any.
- The relief or remedy sought.
- A proposal as to the number of arbitrators (that is, one or three), if the parties have not previously agreed on that (*Article 3, Arbitration Rules, First Schedule, ACA*).

Applicable rules and powers

19. What procedural rules are arbitrators bound by? Can the parties determine the procedural rules that apply? Does the law provide any default rules governing procedure?

Applicable procedural rules

By default, domestic arbitrations are governed by the Arbitration Rules in the schedule to the Arbitration and Conciliation Act (ACA). Where the arbitration is deemed to be international arbitration, parties are free to determine the applicable procedural rules.

Default rules

For international arbitral proceedings, parties can choose any rules. However, for domestic arbitration, the Arbitration Rules in the schedule to the ACA are mandatory and include the following mandatory rules:

- The arbitral tribunal must give adequate advance notice of the date, time and place of the hearings (*Article 25*).
- The award or any decision made by a tribunal consisting of three members must be made by the majority (*Article 31*).
- The award must be made in writing and, unless otherwise agreed by the parties, state the factors on which the decision is based (*Article 32*).

Evidence and disclosure

20. If there is no express agreement, can the arbitrator order disclosure of documents and attendance of witnesses (factual or expert)?

At the request of a party, the arbitrator can invite a party to produce documents. However, where that party fails or refuses to produce the documents, the arbitrator cannot compel the party to do so, although the arbitrator can make adverse inferences

regarding the failure to comply, if appropriate. The arbitrator has no power to order the attendance of witnesses or compel a non-party to the arbitration to appear at the hearing to give testimony or produce evidence such as documents for the use in the arbitration. The parties to the arbitration must make an application to a court to order the production of any document or the attendance of any person.

EVIDENCE

21. What documents must the parties disclose to the other parties and/or the arbitrator? How, in practice, does the scope of disclosure in arbitrations compare with disclosure in domestic court litigation? Can the parties set the rules on disclosure by agreement?

Scope of disclosure

Generally, there are no documents that must be disclosed to the opposing side during the course of the arbitration proceedings, as each party has the obligation to prove its case. Each party usually discloses the documents they intend to rely on during the proceedings and the parties can set the rules on disclosure by agreement. This is without prejudice to the power of the arbitrator to decide questions of admissibility, relevance, materiality and weight of the evidence offered. Also, the scope of disclosure in litigation is broader than in arbitration because of the coercive powers of the court to compel the production of documents.

Validity of parties' agreement as to rules of disclosure

Parties can agree on the rules of disclosure as they see fit, subject to mandatory rules of taking evidence such as that there must be a fair hearing and each party must have an equal opportunity to present its case.

CONFIDENTIALITY

22. Is arbitration confidential? If so, what is the scope of that confidentiality and who is subject to the obligation (parties, arbitrators, institutions and so on)?

The Arbitration and Conciliation Act (ACA) makes no provision about the confidentiality of the arbitration proceedings and awards. However, as a matter of practice, arbitration proceedings are kept confidential. An award can be made public only with the consent of both parties (*Article 32, Arbitration Rules, ACA*). Clearly, the arbitrators, institutions and each party are subject to the implied duty of confidentiality under Article 32. However, once an application is made to the court to enforce or set aside an award, the records of the arbitration become part of the court's record and that arbitration loses its confidential status.

COURTS AND ARBITRATION

23. Will the local courts intervene to assist arbitration proceedings seated in its jurisdiction?

Local courts routinely intervene to assist arbitration, for example by:

- Granting injunctions staying proceedings pending arbitration.
- Appointing an arbitrator.
- Compelling a witness to attend the proceedings.

The Arbitration and Conciliation Act (ACA) defines courts to which applications can be brought as the High Courts of states or the Federal High Court. The specific court depends on the subject matter underlying the dispute.

24. What is the risk of a local court intervening to frustrate an arbitration seated in its jurisdiction? Can a party delay proceedings by frequent court applications?

Risk of court intervention

Section 34 of the Arbitration and Conciliation Act (ACA) severely limits the scope of court intervention in the arbitration process, so the ability to frustrate an arbitration from proceeding is limited.

Delaying proceedings

In the few cases where an action which would frustrate the arbitration proceedings is brought before a court, the arbitrators can continue with the proceedings and the arbitral tribunal can still make an award while the matter is pending in court (*section 4(2), ACA*). Therefore, as a matter of practice, it is extremely difficult for arbitral proceedings to be delayed by court applications unless parties agree to await the outcome of the court proceedings.

INSOLVENCY

25. What is the effect on the arbitration of pending insolvency of one of more of the parties to the arbitration?

There are two broad categories of insolvency proceedings and each one has a different implication for arbitration:

- Collective proceedings, such as winding-up proceedings. These operate as a stay of all other proceedings (*Companies and Allied Matters Act (CAMA)*). However, the Supreme Court has interpreted the provisions of CAMA to say that only proceedings before the Federal High Court are affected by a pending collective proceeding, therefore excluding State High Courts and arbitral tribunals.
- Non-collective proceedings, such as appointment of a receiver. These do not ordinarily operate to stay the arbitral proceedings. However, where a company is under receivership, the consent of the receiver or the Federal High Court is required to commence arbitral proceedings against the company.

REMEDIES

26. What interim remedies are available from the tribunal?

Interim remedies

The arbitral tribunal can grant any interim measures it deems necessary in respect of the subject matter of the dispute (*section 13 Arbitration and Conciliation Act (ACA); Article 26, Arbitration Rules, ACA*). This includes measures for the conservation of the goods forming the subject matter in dispute, such as ordering their deposit with a third person or the sale of perishable goods.

Ex parte

The ACA does not give a tribunal specific power to grant interim relief on an *ex parte* basis. It is unlikely that it can do so since the arbitral tribunal must ensure that the parties are accorded equal treatment and that each party is given full opportunity to present its case. However, the ACA permits parties to an international arbitration to adopt any rules of their choice. The effect of this is that where the applicable rules provide for *ex parte* interim reliefs, a tribunal is within its powers to grant them.

Security

The tribunal can order any party to provide appropriate security in connection with any measure taken (*section 13, Arbitration and Conciliation Act*).

27. What final remedies are available from the tribunal?

The Arbitration and Conciliation Act (ACA) does not state what types of remedies are available from the tribunal. Based on common law, the tribunal has implied powers to grant the reliefs sought by the successful party if they can be granted by a High Court. These include declaratory reliefs, monetary awards, specific performance and interest. The power to award costs is provided for in the ACA. By way of contrast, these powers are specifically granted to an arbitral tribunal under sections 38 and 46 of the Lagos State Arbitration Law 2009 (LSAL).

APPEALS

28. Can arbitration proceedings and awards be appealed or challenged in the local courts? What are the grounds and procedure? Can parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitral clause itself)?

Rights of appeal/challenge

Arbitral awards cannot be appealed against. However, an arbitral award can be challenged by an application to set it aside based on very limited grounds.

Grounds and procedure

Both the Arbitration and Conciliation Act (ACA) and the Lagos State Arbitration Law 2009 (LSAL) are based on the UNCITRAL Model Law on International Commercial Arbitration 1985 (UNCITRAL Model Law) and incorporate its provisions as to setting aside an award. A party seeking to challenge an award and have it set aside must show one of the following:

- That a party to the arbitration agreement was under some incapacity.
- That the arbitration agreement is not valid under the law which the parties have indicated should be applied, or that the arbitration agreement is not valid under Nigerian law.
- That proper notice of the appointment of an arbitrator or of the arbitral proceedings was not given to the applicant, in order for it to be able to present its case.
- That the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration.
- That the award contains decisions on matters that are beyond the scope of the submission to arbitration. However, if decisions on matters submitted to arbitration can be separated from those not submitted, only the part of the award containing the decision on matters not submitted to arbitration can be set aside.
- That the composition of the arbitral tribunal, or the arbitral procedure, was not in accordance with the agreement of the parties, unless the agreement was in conflict with an ACA provision.
- Where there was no agreement between the parties under the above point, that the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the ACA.
- That the subject matter of the dispute is not capable of settlement by arbitration under Nigerian law.
- That the award is contrary to Nigeria's public policy.

An award can be challenged by an application to any of the state High Courts or the Federal High Court within the applicant's jurisdiction to set it aside on any of the above grounds. The application to challenge the award must be brought within three

months of the award. The ACA does not stipulate the procedure for commencement, so recourse must be had to the rules of the court before which the application is brought. The Arbitration Applications Rules 2009 (Schedule, LSAL) provide that an application must be by way of an originating motion.

Waiving rights of appeal

Arbitral awards are not appealable. In addition, generally, if an agreement will have the effect of ousting the power of the courts' inquiry, that agreement is held contrary to Nigerian public policy and unenforceable. Therefore, agreements that the arbitral award is final and binding, or not subject to appeal, do not affect the disputing party's right to seek to set aside the award.

29. What is the limitation period applicable to actions to vacate or challenge an international arbitration award rendered?

Where the international arbitration proceedings are subject to the Arbitration and Conciliation Act (ACA), an action challenging the award must be commenced within three months of the date of the award.

30. What is the limitation period applicable to actions to enforce international arbitration awards rendered outside your jurisdiction?

The statutory regime for the enforcement of foreign judgments, which includes arbitral awards, is quite complex. Two statutes regulate the enforcement of foreign arbitral awards in Nigeria:

- Reciprocal Enforcement of Judgments Act of 1958 (1922 Ordinance). The time within which to register a judgment under the 1922 Ordinance is 12 months. The 1922 Ordinance only regulates judgments and awards of courts from the United Kingdom and other parts of Her Majesty's dominions and territories under Her Majesty's protection.
- Foreign Judgments (Reciprocal Enforcement) Act of 1960 (1960 Act). The time within which to register a judgment under the 1960 Act is six years. The 1960 Act regulates the enforcement of judgments from all other countries that extend reciprocity to judgments of Nigerian courts if so proclaimed by the Federal Minister of Justice (who is yet to make the proclamation required for its commencement). Until that proclamation, judgments and awards from other countries are only enforceable within 12 months of their delivery (or such a longer period as may be granted by the court) (*section 10(a), 1960 Act*). For such a foreign award to be enforceable in Nigeria, it must have been capable of enforcement in the country of its origin.

COSTS

31. What legal fee structures can be used? Are fees fixed by law?

There are no statutory legal fee structures for counsel or arbitrators in arbitration or dispute resolution generally. The Arbitration and Conciliation Act (ACA) empowers the arbitral tribunal to set its own fees. However, the tribunal's fees must be reasonable in amount, taking account of the amount in dispute, the complexity of the subject matter, the time spent by the arbitrators and any other relevant circumstances of the case (ACA). Generally, counsel and arbitrators use an hourly rate fee structure.

There are no known third party funders active in the market. Third party funding is unknown in the Nigerian legal system.

32. Does the unsuccessful party have to pay the successful party's costs? How does the tribunal usually calculate any costs award and what factors does it consider?

Cost allocation

There is no legal obligation on an unsuccessful party to bear the successful party's costs. Parties can agree that each party bears its own costs. However, in practice the unsuccessful party bears the cost of the successful party to the extent determined by the arbitral tribunal.

Cost calculation

The tribunal calculates costs depending on the circumstances of each case, and relies on the parties' costs claims and submissions. The tribunal takes into account the extent to which a party has prevailed in its position.

Factors considered

In calculating costs, the arbitral tribunal takes into account the:

- Fees incurred by the arbitrators (inclusive of travel and administrative expenses).
- Costs of attendance of witnesses, including expert witnesses.
- Reasonable costs of legal representation and assistance of the successful party, if the costs are claimed during the arbitral proceedings.

ENFORCEMENT OF AN AWARD

Domestic awards

33. To what extent is an arbitration award made in your jurisdiction enforceable in the local courts?

Arbitration awards made in Nigeria are enforceable at any of the High Courts as courts of first instance. The party seeking to enforce the award applies to the High Court within the jurisdiction where it wishes to enforce, for recognition and enforcement of the award. The application must exhibit the original or a certified true copy of the arbitration agreement and award. The other party must be put on notice and can request the court to refuse recognition or enforcement of the award.

Foreign awards

34. Is your jurisdiction party to international treaties relating to recognition and enforcement of foreign arbitration awards, such as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention)?

Nigeria is a party to the New York Convention. Nigeria's participation in the treaty is subject to reciprocal and commercial reservations, meaning that the award sought to be enforced must have arisen out of a commercial contractual dispute. Nigeria is also party to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States. A domestic enactment, the Foreign Judgments (Reciprocal Enforcement) Act, (Laws of the Federation of Nigeria 2004 Cap F35), recognises judgments (which by definition include arbitral awards) from countries with whom Nigeria has a reciprocal recognition and enforcement agreement.

35. To what extent is a foreign arbitration award enforceable?

The Arbitration and Conciliation Act (ACA) makes foreign arbitral awards enforceable in Nigeria irrespective of the country where the award was made (including awards made in the UK and the USA). In addition, foreign awards can be enforced under the reciprocal and commercial reservations in Nigeria's participation in the New York Convention and under the two statutes regulating the enforcement of foreign judgments (see *Question 30*). The party seeking to enforce the award applies to the High Court or Federal High Court within the jurisdiction where it wishes to enforce, for recognition and enforcement of the award. The party relying on an award or applying for its enforcement must supply all of the following:

- The duly authenticated original award or a duly certified copy of the award.
- The original arbitration agreement or a duly certified copy of the agreement.
- Where the award or arbitration agreement is not made in the English language, a duly certified translation of both.

Length of enforcement proceedings

36. How long do enforcement proceedings in the local court take, from the date of filing the application to the date when the first instance court makes its final order? Is there an expedited procedure?

There is no difference between the timeframe for enforcing domestic awards and enforcing international awards, as the process is the same. There is no expedited procedure for hearing applications for enforcement of awards. Due to congested court lists, the enforcement process can be protracted.

REFORM

37. Are any changes to the law currently under consideration or being proposed?

There is currently a draft bill to repeal the current Arbitration and Conciliation Act (ACA) and re-enact it based on the UNCITRAL Model Law as amended in 2006. It is likely that the new Act will be passed within the next 12 months. Similar proposals are pending for draft legislation based on the 2006 version of the UNCITRAL Model Law to be enacted as state legislation, to cover domestic disputes.

MAIN ARBITRATION ORGANISATIONS

International Chamber of Commerce - International Court of Arbitration

Main activities. Provides alternative dispute resolution services.

W <https://iccwbo.org/about-us/who-we-are/dispute-resolution/>

Lagos Court of Arbitration

Main activities. Provides arbitration and alternative dispute resolution services, trainings and facilities for hearings.

W <http://lca.org.ng/>

Regional Centre For International Commercial Arbitration

Main activities. Provides arbitration and alternative dispute resolution services.

W www.rcicalagos.org/

Chartered Institute Of Arbitrators (UK) Nigeria Branch

Main activities. Provides arbitration and ADR training.

W www.ciarnigeria.org/

ONLINE RESOURCES

Nigeria Law

W www.nigeria-law.org/ArbitrationAndConciliationAct.htm

Description. This website provides information on Nigerian laws and statutes.

Practical Law Contributor profiles



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Professional qualifications. Nigerian Bar, 1975; Solicitor, England and Wales, 2004.

Areas of practice. International arbitration; commercial litigation; corporate dispute resolution.

Non-professional qualifications. LLB Ife, 1974; LLM Harvard, 1977.

Recent transactions

- Counsel representing a multi-national oil exploration company in a US\$200 million arbitration with an offshore contractor.
- Party appointed arbitrator in a dispute between a state entity and a Bahamian transport management company.

Languages. English.

Professional associations/memberships. Vice-President of the International Council for Commercial Arbitration; Vice-President of the ICC Court of Arbitration; Council member of the LCIA African Users Council; Member of the arbitration appointments committee of the Scottish Arbitration Centre; Member of the Panel of Arbitrators of China International Economic and Trade Arbitration Commission (CIETAC); Board member of the Cairo Regional Centre for International Commercial Arbitration; Board member of the Lagos Court of Arbitration.

Publications. *The Public Policy Defence to Enforcement of Arbitral Awards: Rising Star or Setting Sun? – Published in Bahrain Chamber for Dispute Resolution International Arbitration Review, (2015) 2 BCDR Int. Arb. Rev. 2.*



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Professional qualifications. Nigerian Bar.

Areas of practice. International arbitration; telecommunications; anti-bribery; risk.

Recent transactions

- Acted for a multi-national in a multi-million dollar dispute with the Federal Government of Nigeria.
- Part of a team acting for a company in an arbitration arising from a contract for generator works and maintenance.

Languages. English.

Professional associations/memberships. Nigerian Bar Association; Global Association of Risk Professionals; Lagos Court of Arbitration; International Bar Association.

Publications

- *Fault Lines in International Arbitration and Thomas Schultz' Allegation of Dark Purposes!!! (March, 2017).*
- *EU ISDS Arbitration Reforms: The Balancing Game or The End Game – An Emerging Economy Perspective (August, 2016).*
- *Leveraging Nigeria's Emerging Economic Might to Drive Arbitration in Africa – (June, 2016).*
- *The Nigerian Risk – What We Learnt from MTN Nigeria's Risk Appetite (March, 2016).*