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IBA ARBITRATION COMMITTEE

Arbitration Guide

NIGERIA

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I. Background

(i) How prevalent is the use of arbitration in your jurisdiction? What are seen as the principal advantages and disadvantages of arbitration?

Arbitration as a dispute resolution mechanism has gained tremendous grounds, especially in commercial arrangements. Beyond the oil and gas, telecommunication and finance industries, it has increasingly spread to the healthcare, construction, real estate and fast-moving consumer goods (FMCG) industries. The principal advantages of arbitration include the freedom and power that parties have to determine how they want a dispute to be resolved, the person or body that will resolve the dispute, the rules that will govern the resolution of the dispute, the confidentiality of the proceedings, the time within which a dispute must be concluded and how the award can be challenged.

On the other hand, one of the disadvantages of arbitration is that the cost of resolving disputes is relatively higher than the cost of resolving disputes through litigation. Also, it does not bar an unsuccessful party from challenging the arbitral award.

(ii) Is most arbitration institutional or ad hoc? Domestic or international? Which institutions and/or rules are most commonly used?

Most small claim arbitrations in Nigeria are ad hoc, while large claims are usually institutional. Furthermore, domestic arbitrations are gaining traction like international arbitration, although many domestic arbitrations usually have international involvement due to the legal requirement that all foreign entities doing business in the country must incorporate locally. For domestic institutional arbitrations, parties commonly use the Lagos Court of Arbitration or the Chartered Institute of Arbitrators (UK), Nigeria Chapter as the appointing authority.

For international arbitrations, it is common to see parties choose the London Court of International Arbitration (LCIA) or the International Court of Arbitration of the International Chamber of Commerce (ICC). Parties may also use the rules of these institutions or the rules of the governing law of the arbitration.

(iii) What types of disputes are typically arbitrated?

Non-tax related disputes arising out of basic commercial contracts are typically arbitrated.

(iv) How long do arbitral proceedings usually last in your country?

There is no stipulated time frame for the conclusion of arbitral proceedings. It depends primarily on the parties, the arbitrators and the complexity of the dispute; however, it is rare for domestic arbitration proceedings to last longer than nine months, while international arbitrations may last upwards of 18 months, especially if there is a hearing.

(v) Are there any restrictions on whether foreign nationals can act as counsel or arbitrators in arbitrations in your jurisdiction?

Section 7 of the Arbitration and Mediation Act 2023 (AMA) does not restrict the appointment of citizens of certain countries as arbitrators. It, however, gives the parties the freedom to determine the nationality of arbitrators.

On the other hand, the counsel in a domestic arbitration and/or in an international arbitration where the governing law of the arbitration is Nigerian Law, must be a legal practitioner called to the Nigerian bar. The law recognizes 'legal practitioners' as persons qualified to practice law in Nigeria by virtue of being Barristers and Solicitors of the Supreme Court of Nigeria. Please note that parties to an arbitration are permitted by Section 31 of the AMA to 'agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings…' The effect is that where parties to an arbitration do not rely on the Arbitration Rules in the First Schedule of the AMA (Arbitration Rules) or Nigerian Law as the law of the arbitration, the restriction on the appearance of foreign counsel will not apply.

II. Arbitration Laws

(i) What law governs arbitration proceedings with their seat in your jurisdiction? Is the law the same for domestic and international arbitrations? Is the national arbitration law based on the UNCITRAL Model Law?

The AMA applies to domestic and international arbitrations that designate a territory or state in Nigeria as the seat of arbitration. However, where the venue of the arbitration is in Lagos State in Nigeria, and the arbitration agreement does not expressly refer to any other law, the Lagos State Arbitration Law of 2009 (Lagos State Arbitration Law) will govern the proceedings. Furthermore, parties can designate Lagos State (a territory in Nigeria) as the seat of arbitration.

Both the Lagos State Arbitration Law and the AMA are relatively modelled after the UNCITRAL Model Law. Section 91(10) of the AMA expressly provides that the UNCITRAL Model Law must be factored in when the AMA is interpreted to foster uniformity of application and observance of good faith.

(ii) Is there a distinction in your arbitration law between domestic and international arbitration? If so, what are the main differences?

The AMA does not expressly define or distinguish between domestic and international arbitration. It however indicates that the AMA shall apply to the following types of arbitration where the seat of the arbitration is in Nigeria: international commercial arbitration, inter-state commercial arbitration and commercial arbitration within the Federal Republic of Nigeria.

(iii) What international treaties relating to arbitration have been adopted (eg New York Convention, Geneva Convention, Washington Convention, Panama Convention)?

Nigeria has adopted the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID).

(iv) Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?

Yes, Section 15(3) of the AMA provides that where the laws of the country to be applied is not determined by the parties, the arbitral tribunal shall apply the law determined by the conflict of law rules which it considers applicable.

III. Arbitration Agreements

(i) Are there any legal requirements relating to the form and content of an arbitration agreement? What provisions are required for an arbitration agreement to be binding and enforceable? Are there additional recommended provisions?

The only formal requirement is that the arbitration agreement should be in writing. This requirement is satisfied if the agreement is recorded in any form, and the information contained in it is accessible and can be used for subsequent reference.

(ii) What is the approach of courts towards the enforcement of agreements to arbitrate? Are there particular circumstances when an arbitration agreement will not be enforced?

Generally, Nigerian courts will enforce an agreement between parties to submit their dispute to arbitration (Part 1 Section 1 (3), AMA). However, the agreement must be in respect of an arbitrable dispute, must not be illegal, incapable of being performed or contrary to public policy.

(iii) Are multi-tier clauses (eg arbitration clauses that require negotiation, mediation and/or adjudication as steps before an arbitration can be commenced) common? Are they enforceable? If so, what are the consequences of commencing an arbitration in disregard of such a provision? Lack of jurisdiction? Non-arbitrability? Other?

Yes, multi-tier dispute resolution clauses are common and enforceable. The consequences of commencing an arbitration in disregard of such provision could lead to the tribunal declaring that the referral of the dispute to arbitration is premature as all the conditions precedent to arbitration have not been exhausted. Non-compliance is, however, treated as an irregularity, and as such, the arbitrator[s] would usually stay the proceedings until the condition precedent(s) is complied with.

(iv) What are the requirements for a valid multi-party arbitration agreement?

The AMA does not prohibit a multi-party arbitration agreement, and the requirement for its validity is the same, irrespective of the number of parties.

(v) Is an agreement conferring on one of the parties a unilateral right to arbitrate enforceable?

Yes, such an agreement would be enforceable.

(vi) May arbitration agreements bind non-signatories? If so, under what circumstances?

As a rule, arbitral agreements are not binding on non-signatories. Non-signatories can, however, be bound where a name-borrowing provision is included in the contract, or there are inter-connected agreements and if a party in any of the agreements expressly consents to be bound by the arbitration agreement in the other documents and the signatories to that agreement agree.

(vii) How do the courts in the jurisdiction determine the law governing the arbitration agreement?

The court makes recourse to the agreement between the parties to determine the law applicable to the arbitration agreement. Where the agreement is silent on the governing law, the law of the seat of the arbitration shall be the law governing the arbitration agreement (North Pole Navigation Co. Ltd. (2015) LPELR-25865(CA)).

(viii) Do courts in your jurisdiction distinguish between the seat (or legal place) of the arbitration and the venue of meetings/hearings?

Yes, they do. The Nigerian Supreme Court recognised the distinction in the case of NNPC v Luti Inv. Ltd. (2006) 2 NWLR (PT.965) 506 and emphasised that except the parties expressly agree in the arbitration agreement, the venue of arbitration may be different from the seat of arbitration.

Furthermore, Section 32 AMA distinguishes between the seat and venue of arbitration. It provides that the venue of arbitration is the place where the tribunal meets with the parties while the seat of the arbitration is the judicial seat for the purpose of determining the governing law of the arbitration.

(ix) Are blockchain- and NFT-related disputes arbitrable in your jurisdiction?

We are not aware of any law that prohibits or limits the arbitration of blockchain and NFT-related disputes. The Central Bank of Nigeria (CBN), however, prohibits Nigerian banks and financial institutions from participating in or facilitating transactions involving cryptocurrencies and other digital assets (Central Bank of Nigeria Response to Regulatory Directive on Cryptocurrencies, February 7, 2021), excluding the e-Naira which is recognised by CBN. Furthermore, the CBN released guidelines in 2021, which provides for the arbitration of e-Naira disputes (Central Bank of Nigeria Regulatory Guidelines on the e-Naira, October 25, 2021).

In the absence of a specific law or regulation for the arbitration of blockchain and NFT-related disputes, the arbitration will be governed by the law specified in the agreement.

(x) Are there circumstances in which courts find that a valid arbitration agreement has become inoperable?

There are no notable circumstances in which Nigeran courts have held that a valid arbitration agreement was inoperable. The courts are clear that a defect in a valid arbitration agreement cannot defeat or invalidate the arbitration clause (Mekwunye v Imoukhuede (2019) LPELR-48998 (SC); Sacoil 281 (NIG) LTD & Anor v. Transcorp (Nig) Plc & Ors. (2020) LPELR-49762(CA) at 106).

IV. Arbitrability and Jurisdiction

(i) Are there types of disputes that may not be arbitrated? Who decides – courts or arbitrators – whether a matter is capable of being submitted to arbitration? Is the lack of arbitrability a matter of jurisdiction or admissibility?

Generally, disputes that are not borne out of commercial transactions cannot be arbitrated. Furthermore, where a law expressly vests jurisdiction on a subject matter in the courts alone, such disputes are not arbitrable. The courts have held that tax disputes are statutory and not contractual and, as such, are not arbitrable (Esso Exploration & Production (Nig) Ltd. & Anor v. FIRS & Anor (2017) LPELR-51618(CA)).

The courts can be approached to determine the arbitrability of a dispute. The tribunal also has the power to determine its jurisdiction. Typically, the test of whether a dispute is arbitrable is whether the subject matter can be compromised by accord and satisfaction.

(ii) What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an arbitration agreement? Do local laws provide time limits for making jurisdictional objections? Do parties waive their right to arbitrate by participating in court proceedings?

By Section 5 of the AMA, an arbitral tribunal can continue arbitration proceedings and determine its jurisdiction even while court proceedings are pending. Upon the request of any of the parties, not later than when submitting their first statement on the substance of the dispute, the court shall stay its proceedings and refer the parties to arbitration unless the arbitration agreement is void, inoperative or incapable of being performed.

The AMA precludes parties from raising objections to the jurisdiction of an arbitral tribunal after the submission of the points of defence. In addition, an objection that the arbitral tribunal is exceeding the scope of its authority or the subject matter is beyond the scope of arbitration must be raised immediately during the proceedings.

A party waives its right to arbitration by participating in court proceedings to defend the suit. A party may be deemed to have participated in the proceedings if such party files processes in the suit other than the processes challenging the suit.

(iii) Can arbitrators decide on their own jurisdiction? Is the principle of competence-competence applicable in your jurisdiction? If yes, what is the nature and intrusiveness of the control (if any) exercised by courts on the tribunal's jurisdiction?

Arbitrators can decide their jurisdiction by virtue of Section 14(1) of the AMA. The principle of competence-competence applies in Nigeria, and the court has no control over the tribunal's jurisdiction during the arbitration proceedings.

V. Selection of Arbitrators

(i) How are arbitrators selected? Do courts play a role?

The mode of selection of the arbitrators is determined by the terms of the arbitration agreement. Parties can decide to appoint the arbitrators and can designate an arbitral institution or a court as the appointing authority.

Where no procedure is specified by the parties, then in the case of an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two thus appointed shall appoint the third arbitrator.

If a party or arbitrators fail to appoint the arbitrator (or third arbitrator) within 30 days of being required to do so, in a domestic arbitration, the appointment will be made by an arbitral institution in Nigeria or the court on the application of any party to the arbitration agreement.

For international arbitrations, if within 30 days after the appointment of the second arbitrator, the two arbitrators have not agreed on the choice of the presiding arbitrator, on the application of any of the parties, the presiding arbitrator shall be appointed by the appointing authority designated by the parties to make the appointment. Where the parties have not designated an appointing authority, the default appointing authority for international arbitrations under the AMA, which is the Director of the Regional Centre for International Commercial Arbitration, Lagos, will appoint the presiding arbitrator.

(ii) What are the requirements in your jurisdiction as to disclosure of conflicts? Do courts play a role in challenges and what is the procedure?

A person who knows of any circumstances likely to give justifiable doubts as to his/her impartiality or independence if appointed is obliged to disclose such circumstances when approached in connection with an appointment as arbitrator. This duty to disclose continues after the person has been appointed as an arbitrator and subsists throughout the proceedings unless the arbitrator had previously disclosed the circumstances to the parties.

The parties may determine the procedure to be followed in challenging an arbitrator's independence and impartiality, and the courts play a limited role in the challenge process. Where the agreement is silent on the procedure for a challenge, a party who intends to challenge an arbitrator must give notice of its challenge within 14 days of the appointment of the arbitrator it wishes to challenge, or within 14 days of becoming aware of the circumstances it complains of. The challenge must be in writing with the reasons for the challenge and must be served on the other party, the arbitrator being challenged and the other members of the tribunal.

Upon receipt of the challenge, the other party may agree, and the arbitrator may also agree and withdraw from his/her appointment. However, where the other party does not agree or the challenged arbitrator refuses to withdraw, the decision on the challenge will be made by the arbitral tribunal. Where the challenge is unsuccessful, the challenging party may within 30 days after the receipt of the notice of rejection request the court or other appointing authority (if the initial appointment was by the court or other appointing authority) to determine the challenge.

(iii) Are there limitations on who may serve as an arbitrator? Do arbitrators have ethical duties? If so, what is their source and generally what are they?

Except where the parties have agreed on the qualification of an arbitrator, there are no limitations as to who may serve as an arbitrator. The AMA, however, requires that the person appointed must be independent and impartial and this imposes ethical duties on the arbitrator.

Where an arbitrator is appointed by an arbitral institution, the arbitrator is expected to comply with the code of conduct and ethics of the appointing institution.

(iv) Are there specific rules or codes of conduct concerning conflicts of interest for arbitrators? Are the IBA Guidelines on Conflicts of Interest in International Arbitration followed?

There are no specific rules or codes of conduct concerning conflict of interest for arbitrators. Parties may agree on the rules or code of conduct that will govern conflict of interest obligations or rely on the code of conduct/guidelines of institutions, such as the IBA Guidelines on Conflicts of Interest in International Arbitration.

VI. Interim Measures and Emergency Arbitration

(i) Can arbitrators issue interim measures or other forms of preliminary relief? What types of interim measures can arbitrators issue? Is there a requirement as to the form of the tribunal's decision (order or award)? Are interim measures issued by arbitrators enforceable in courts?

Arbitrators can grant interim measures of relief or other forms of preliminary relief. These measures will be such as deemed necessary in respect of the subject matter of the dispute and can include orders for the conservation of the goods which are the subject matter in dispute, the deposit of the subject matter with a third person or the sale of perishable goods.

The orders are made by way of an interim award. The AMA and the Lagos State Arbitration Law specifically provide that interim measures awarded by an arbitral tribunal are enforceable upon application to the High Court.

(ii) Will courts grant provisional relief in support of arbitrations? If so, under what circumstances? May such measures be ordered after the constitution of the arbitral tribunal? Will any court ordered provisional relief remain in force following the constitution of the arbitral tribunal?

Courts can grant interim protection measures in support of arbitration. This is particularly so where the property sought to be protected is in the hand, custody or control of a third person against whom the arbitral tribunal has no powers. Interim measures may be ordered pending or after the constitution of the tribunal and remain binding even after the tribunal has been constituted.

(iii) To what extent may courts grant evidentiary assistance/provisional relief in support of the arbitration? Do such measures require the tribunal's consent if the latter is in place?

With respect to evidence, the court may order the attendance of witnesses by granting subpoenas on the application of any party to the arbitration. The tribunal's consent is not required.

(iv) Are decisions by emergency arbitrators enforceable in your country?

Yes. decisions by emergency arbitrators are recognised and enforceable in the same manner as arbitral awards.

(v) What is the approach in your country to anti-suit injunctions or injunctions by arbitrators preventing parties from initiating litigation proceedings?

We are not aware of any case law where a Nigerian court has granted an anti-suit injunction enjoining parallel court proceedings in violation of an arbitration agreement.

(vi) Do courts provide assistance in aid of foreign-seated arbitrations, including for disclosure of documents?

The AMA provides that the court shall not intervene in any matter governed by the AMA except where it grants the court the express power to so act. There is no case law available where the Nigerian courts have provided such assistance to foreign-seated arbitration.

VII. Disclosure/Discovery

(i) What is the general approach to disclosure or discovery in arbitration? What types of disclosure/discovery are typically permitted?

The AMA does not specifically provide for discovery in arbitration. However, the Arbitration Rules provide that the tribunal may require the parties to produce documents, exhibits or other evidence within such a period as the arbitral tribunal shall require. In considering a party's request for discovery, the arbitral tribunal must be mindful of the principles of equal treatment of the parties and of a fair hearing.

The arbitral tribunal will require some basis upon which discovery/disclosure is requested and will usually limit discovery to specific and identified documents or class of documents only.

(ii) What, if any, limits are there on the permissible scope of disclosure or discovery?

The tribunal may limit the form of discovery to documents which it considers relevant to issues in dispute and which are not covered by any privilege. Generally, the following documents are subject to privilege: documents or communications made between a legal practitioner and his/her client in the course of the legal practitioner's engagement; 'without prejudice' documents or agreements made between parties in the course of negotiations; and documents which by consent and agreement of the parties have been agreed not to be used in proceedings. Furthermore, no one can be compelled under any writ of subpoena to produce any document which he/she could not be compelled to produce during a trial of an action.

(iii) Are there special rules for handling electronically stored information?

There are no special rules under the AMA. For the purpose of admissibility, there are no restrictions because the Evidence Act, Cap. E14, Laws of the Federation of Nigeria (LFN), 2011 (as Amended) does not apply to proceedings before an arbitrator.

VIII. Confidentiality

(i) Are arbitrations confidential? What are the rules regarding confidentiality?

Arbitration hearings are private, and the award may be made public by the arbitrators only with the consent of both parties. There is an implied duty of confidentiality imposed on the parties although the arbitration rules refer only to privacy of the hearings, and not confidentiality of the whole proceedings.

(ii) Are there any provisions in your arbitration law as to the arbitral tribunal's power to protect trade secrets and confidential information?

No. However, since the Arbitration Rules provide that the arbitral award may be made public by the arbitrators only with the consent of both parties, any such information in the award is protected, although nothing stops a party from disclosing the information.

(iii) Are there any provisions in your arbitration law as to rules of privilege?

No provision relating to privilege exists.

IX. Evidence and Hearings

(i) Is it common that parties and arbitral tribunals adopt the IBA Rules on the Taking of Evidence in International Arbitration to govern arbitration proceedings? If so, are the Rules generally adopted as such or does the tribunal retain discretion to depart from them?

The IBA Rules are often adopted as a guide to assist the arbitral tribunal and will bind the tribunal if the parties so agree.

(ii) Are there any limits to arbitral tribunals' discretion to govern the hearings?

Yes. Any agreement by the parties as to the hearing procedure limits the arbitral tribunal's discretion. In addition, the arbitral tribunal must ensure that the parties are accorded equal treatment and that each party is given full opportunity of presenting its case.

(iii) How is witness testimony presented? Is the use of witness statements with cross examination common? Are oral direct examinations common? Do arbitrators question witnesses?

Testimonies of witnesses may be presented orally or by written witness statements on oath. The usual procedure is that unless attendance of a witness is dispensed with by the opposing party, witnesses who have given oral evidence or written depositions on oath must be presented for cross-examination.

Nigeria does not follow a civil law system where the arbitrators question the witnesses; however, the arbitrators may ask questions to clarify or understand evidence already given as long as the principles of fair hearing, impartiality and independence are maintained.

(iv) Are there any rules on who can or cannot appear as a witness? Are there any mandatory rules on oath or affirmation?

There are no rules on who can appear or cannot appear as witnesses.

The tribunal has the power to administer oaths to or take the affirmations of the parties and witnesses appearing, but it is not obligatory that witnesses be sworn or affirmed.

(v) Are there any differences between the testimony of a witness specially connected with one of the parties (eg legal representative, director or employee) and the testimony of unrelated witnesses?

No such differences exist; the arbitral tribunal will determine the weight to be attached to each witness's testimony.

(vi) How is expert testimony presented? Are there any formal requirements regarding independence and/or impartiality of expert witnesses?

Expert testimony could be presented orally or by way of a written report. Unless dispensed with, expert witnesses must be available for cross-examination. Parties or the tribunal can appoint an expert to testify in the arbitration and the expert must submit a statement of his/her impartiality or independence.

(vii) Is it common that arbitral tribunals appoint experts beside those that may have been appointed by the parties? How is the evidence provided by the expert appointed by the arbitral tribunal considered in comparison with the evidence provided by party-appointed experts? Are there any requirements in your jurisdiction that experts be selected from a particular list?

The tribunal can appoint an expert apart from the experts of the parties, especially where there is a conflict between the parties' experts' reports. Although the law does not regulate the weight of the evidence of party-appointed experts in comparison with the tribunal-appointed experts, the tribunal may attach more weight to the report of its own expert on the ground that he/she is not accountable to either of the parties.

No requirements exist that experts must be selected from a particular list or engaged in a particular manner.

(viii) Is witness conferencing ('hot-tubbing') used? If so, how is it typically handled?

'Hot-tubbing' is not a common practice in Nigeria. Experts tend to give their evidence sequentially, although they may have exchanged their expert reports before the hearing and submitted a joint list indicating areas of agreement and disagreement.

(ix) Are there any rules or requirements in your jurisdiction as to the use of arbitral secretaries? Is the use of arbitral secretaries common?

There are no rules regarding arbitral secretaries, but in practice, arbitrators use arbitral secretaries (commonly called registrars) for administrative purposes. The use of arbitral secretaries is common in complex and high-value claims. A tribunal secretary shall be bound by the rules of the appointing authority and the parties.

(x) Are there any ethical codes or other professional standards applicable to counsel and arbitrators conducting proceedings in your jurisdiction?

Legal practitioners practicing in Nigeria are obligated to adhere to the Legal Practitioners Act (LPA) and the Rules of Professional Conduct (RPC). The LPA requires Nigerian lawyers to maintain professional conduct, even when practicing outside Nigeria, to avoid the consequences of professional negligence or misconduct. However, it is doubtful that the provisions of the LPA and the RPC will bind foreign counsel.

Arbitrators are primarily guided by the ethical principles outlined in the arbitration laws and the terms of their appointment. The paramount requirement is that an arbitrator must disclose any potential conflicts of interest to the parties, and must maintain independence, neutrality and impartiality in their conduct.

(xi) Have arbitral institutions in your jurisdiction implemented rules empowering arbitral tribunals to exclude counsel based on conflicts of interest or other reasons?

No.

(xii) Has your jurisdiction adopted any rules with regard to remote hearings and have there been any court decisions on same?

In 2012, the Nigerian Judiciary Information Technology Policy was published to ensure the full integration of Nigerian courts for the use of video conferencing (VCF) in proceedings and courts have adapted video conferencing for remote hearing. Following the outbreak of the Covid-19 pandemic and its adverse impact on access to justice, various courts in Nigeria have further issued guidelines and practice directions on the adoption of remote hearings. We are not aware of any decided case prohibiting remote hearings in Nigeria.

X. Awards

(i) Are there formal requirements for an award to be valid? Are there any limitations on the types of permissible relief?

Section 47 of the AMA and Article 42 of the Arbitration Rules provide for the formal requirements of an award. These requirements include: the award must be in writing; it must be signed by all the arbitrators or a majority of them (the reason for the failure to sign by any of the arbitrators must be stated); it must detail the reasons for the decision, except where otherwise agreed by the parties, it must state the date it was made; and it must state the seat of the arbitration and place where the award was made.

The AMA does not specify the relief and remedies which an arbitrator can give in his/her award. However, in practice, an arbitrator can make awards for payment of money, of specific performance, of an injunction (where a third party will not be affected), or of a declaration of the rights of one or both of the parties.

(ii) Can arbitrators award punitive or exemplary damages? Can they award interest? Compound interest?

It is not clear whether arbitrators can award punitive or exemplary damages, but they can award interest on the sum of money awarded. With regard to the rate of interest, the arbitrators are guided by what is fair and just in the absence of any specific provision of the law or agreement of the parties. The arbitrators may award compound interest if it is fair or agreed to by the parties or provided by the law governing the issue or by the custom of the trade in dispute.

(iii) Are interim or partial awards enforceable?

Yes, interim or partial awards are enforceable like final awards.

(iv) Are arbitrators allowed to issue dissenting opinions to the award? What are the rules, if any, that apply to the form and content of dissenting opinions?

The AMA does not specifically refer to dissenting opinions to an award. The law only specifies that where the arbitral tribunal comprises more than one arbitrator, any decision must be made by a majority of the members unless otherwise agreed by the parties. This indicates that the AMA envisages that a dissenting opinion could arise, but the majority opinion shall be the decision of the tribunal.

(v) Are awards by consent permitted? If so, under what circumstances? By what means other than an award can proceedings be terminated?

Yes, consent awards are permitted where the parties have settled the dispute during the arbitral proceedings. The arbitration proceedings are terminated by the issuance of the consent award. The tribunal may also terminate the proceedings if the claimant withdraws his/her claim and the respondent does not object to the withdrawal, or there is no legitimate reason for the proceedings to continue until a final settlement of the dispute; if the parties agree on the termination of the proceedings; or if the tribunal finds that continuation of the proceedings has for any other reason become unnecessary and/or impossible.

(vi) What powers, if any, do arbitrators have to correct or interpret an award?

The arbitrators can, not more than 30 days from the date of the award, either on their own initiative or upon the application of a party, correct clerical, typographic or computation errors in the award.

The arbitrators can interpret specific points or part of an award and further make additions to an award only on the application of a party but such application must be made within 30 days of the award.

XI. Costs

(i) Who bears the costs of arbitration? Is it always the unsuccessful party who bears the costs?

The AMA does not direct which of the parties will bear the costs of arbitration and it is not always the case that the unsuccessful party bears the costs of the arbitration. The arbitral tribunal may apportion such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.

(ii) What are the elements of costs that are typically awarded?

In awarding costs, the arbitral tribunal takes into account the fees of the arbitral tribunal, its travel and other expenses; the cost of expert advice and of other assistance required by the arbitral tribunal; the travel and other expenses of witnesses to the extent that such expenses are approved by the arbitral tribunal; the cost for legal representation and assistance of the successful party if such costs were claimed during the arbitral proceedings, and only to the extent that the arbitral tribunal determines that the amount of such cost is reasonable; administrative costs such as cost of arbitral institution or the appointing authority, cost of venue, sitting and correspondence; the cost of obtaining third-party funding; and other costs as approved by the arbitral tribunal.

(iii) Does the arbitral tribunal have jurisdiction to decide on its own costs and expenses? If not, who does?

The arbitral tribunal has the power to decide on its costs by virtue of Section 50 of the AMA but it shall be reasonable in amount and take into consideration the value and complexity of the subject matter, the time spent and other relevant factors.

(iv) Does the arbitral tribunal have discretion to apportion the costs between the parties? If so, on what basis?

The tribunal has the power to apportion costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case. These circumstances may include where the successful party caused a delay in the proceedings or had earlier refused an offer for settlement in a sum equal to or more than the amount awarded in the final award.

(v) Do courts have the power to review the tribunal's decision on costs? If so, under what conditions?

The courts do not have the power to review the tribunal's decision on costs.

XII. Challenges to Awards

(i) How may awards be challenged and on what grounds? Are there time limitations for challenging awards? What is the average duration of challenge proceedings? Do challenge proceedings stay any enforcement proceedings? If yes, is it possible nevertheless to obtain leave to enforce? Under what conditions?

A party who is aggrieved by arbitral award may within three months from the date of the award apply to the court to set aside the award, where it is shown, that:

(1) a party to the arbitration agreement lacked legal capacity;

(2) the arbitration agreement is not valid under applicable law to which the parties have subjected it, or failing such indication, under the Nigerian law;

(3) the applicant was not properly notified of the arbitration proceedings or could not present its case;

(4) the award determines matters which are beyond the scope of the submission to arbitration;

(5) the composition of the arbitral tribunal, or the arbitral procedure deviated from the agreement of the parties;

(6) where there is no agreement between the parties, that the composition of the arbitral tribunal or the arbitral procedure did not align with the law;

(7) the subject matter of the dispute is not suitable for arbitration under Nigerian law; or

(8) the award is against public policy of Nigeria.

Due to the congested court dockets, challenge proceedings tend to be protracted and can last up to three years. While the award is being challenged, the applicant may apply to the court for a stay of proceedings on the enforcement. Where the order is granted, the party in favour of whom the award was entered cannot enforce it.

(ii) May the parties waive the right to challenge an arbitration award? If yes, what are the requirements for such an agreement to be valid?

A party may decide not to challenge an award. The award, in that case, will be valid under Section 55 of the AMA, which requires that an application to set aside an award to be made within three months. However, an agreement to waive the right to challenge an award may be unenforceable as it may be deemed a breach of the constitutionally guaranteed right of a party to access the court system (Section 36(1) of the Constitution of the Federal Republic of Nigeria (1999) as amended; L.S.W.C. v. Sakamori Const. Nig. Ltd. (2013) 12 NWLR (Pt. 1262) 569).

(iii) Can awards be appealed in your country? If so, what are the grounds for appeal? How many levels of appeal are there?

An award cannot be appealed in Nigeria. However, the parties may provide in the arbitration agreement agree that either party may apply to an Award Review Tribunal (ART) for a review of an award on limited grounds and the decision of the ART may be further reviewed by the High Court. However, the court's decision to enforce, set aside or refuse enforcement of an award can itself be appealed from the initial court to the Court of Appeal and finally to the Supreme Court on legal grounds arising out of the judgment.

(iv) May courts remand an award to the tribunal? Under what conditions? What powers does the tribunal have in relation to an award so remanded?

Rather than setting aside an award, the court may, where appropriate, suspend the proceedings for a period and remit the award to the arbitral tribunal for reconsideration, so it can take whatever action may be required to eliminate the grounds for setting aside of the award.

(v) Is there a specialist arbitration court in your jurisdiction?

No. There is no specialist arbitration court in Nigeria.

(vi) To what extent do courts in your jurisdiction allow arbitrators to amend and/or replace wrongly invoked law or the law not invoked by the parties (iura novit arbiter)? Could this be a basis to set aside the award?

Where any of the parties to an arbitration has cited a wrong law or the wrong provision of an applicable law, the arbitral tribunal has the power to apply the correct provisions of the applicable law. However, in circumstances where a law was wrongly invoked by the arbitral tribunal in reaching its decision, the attitude of the court is to set aside the award or refuse its enforcement.

XIII. Arbitrator Liability

(i) Does the arbitration law in your jurisdiction expressly provide for the immunity of arbitrators, experts, translators, interpreters and/or other participants in arbitration proceedings from civil liability in connection with their mandate? If so, are there exceptions to this immunity?

Yes. Section 13 of the AMA provides for the immunity of arbitrators, arbitral institutions and their employees against liability from anything done or omitted to be done in the discharge of their functions. However, the law makes no provision for the immunity of experts, translators or other participants.

(ii) Does this immunity, if any, extend to criminal liability?

No.

XIV. Recognition and Enforcement of Awards

(i) What is the process for the recognition and enforcement of awards? What are the grounds for opposing enforcement? Which is the competent court? Does such opposition stay the enforcement? If yes, is it possible nevertheless to obtain leave to enforce? Under what circumstances?

The party seeking to enforce the award will apply to the High Court within the jurisdiction where it wishes to have the award recognised or/and enforced. The application must exhibit the original or a certified true copy of the arbitration agreement and the award. The other party must be put on notice and may then request the court to refuse recognition or enforcement of the award.

Grounds for refusal include but are not limited to:

i. That there was incapacity of a party;
ii. That the arbitration agreement was invalid;
iii. That the party was not served with notice of the proceedings;
iv. That the arbitral tribunal lacked jurisdiction;
v. That a pre-condition precedent in the arbitration agreement, if any, was not met;
vi. That the arbitral tribunal was improperly constituted;
vii. The subject matter was not proper for arbitration;
viii. That the award is not binding, was set aside or was suspended at origin, or dictates of public policy.

Where there is an application urging the court to refuse to recognise an award, the court may upon application stay execution of the award pending the determination of the application.

(ii) If an exequatur is obtained, what is the procedure to be followed to enforce the award? Is the recourse to a court possible at that stage?

Once the local court grants recognition and enforcement of an award, the award is treated as a judgment of the registering court and enforced in a similar manner. A writ of execution or garnishee order can be issued to compel payment of a money award. The rules of civil procedure will apply, and a party can apply to the court in respect of the award, usually to seek payment on favourable terms.

(iii) Are conservatory measures available pending enforcement of the award?

Yes.

(iv) What is the attitude of courts towards the enforcement of awards? What is the attitude of courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

Courts, particularly the High Courts, recognise and enforce awards. Foreign awards, irrespective of the country in which they were made, are recognised as binding and enforceable in Nigeria. However, where the foreign award has been set aside or suspended or refused by a competent court at the place of arbitration and that information is disclosed to the Nigerian court in an affidavit in support of an application not to recognise the award, in accordance with the comity of nations principle, the Nigerian court may refuse to recognise the award.

(v) How long does enforcement typically take? Are there time limits for seeking the enforcement of an award?

The duration of enforcement proceedings depends on whether the other party contests the award or not. There is no expedited procedure for the enforcement of an award. Awards must be enforced within six years from the date the cause of action arose. In calculating the six-year time frame, the AMA and recent case law have stated that the period during which judicial, arbitral or other proceedings was commenced and pending will not be taken into account when calculating the six-year limitation period. In the context of arbitration proceedings, this means that the period during which arbitration proceedings were pending will not be taken into account when calculating the six-year limitation period for enforcement purposes. The Lagos State Arbitration Law has enacted this provision in its Section 35(5) which provides that, for the purposes of limitation, the time between the commencement of the arbitration and the date of the award is not to be reckoned, and thus, time freezes while the proceedings are pending.

XV. Sovereign Immunity

(i) Do state parties enjoy immunities in your jurisdiction? Under what conditions?

States enjoy immunity by virtue of Sections 1, 3 and 4 of the Diplomatic Immunity and Privileges Act, Cap D9, LFN, 2004.

(ii) Are there any special rules that apply to the enforcement of an award against a state or state entity?

There are no special rules that apply to the enforcement of an award against a state or state entity. However, it should be noted that awards may be enforced against a state or state entity where there is a waiver of diplomatic immunity under Section 2, 5(2), 7, 8, 10 and 16 of the Diplomatic Immunity and Privileges Act, Cap D9, LFN, 2004.

Awards may also be enforced where the state engages in commercial transactions which are subject to arbitration. In these situations, the State's entry into an arbitration agreement is treated as a waiver of immunity.

The Supreme Court of Nigeria has original jurisdiction to entertain enforcement proceedings for an ICSID award (ICSID (Enforcement of Awards) Act 1967, Section 1), and as such, applications for the enforcement of ICSID awards are to be made to the Supreme Court.

Where the award is in respect of money in the custody of a state or state entity, and garnishee proceedings have been brought to satisfy the award, the consent of the relevant Attorney-General must be obtained before the money can be released to satisfy the judgment except if the award debt had already been partially satisfied by the state. However, where the funds are held for the state or a state entity in a commercial bank, such funds will not be deemed to be in the custody of the state or state entity account holder and the consent of the Attorney General will not be required. But because the CBN is a state entity, the courts have held that consent of the Attorney-General must be obtained before funds in the custody of the Central Bank can be attached in garnishee proceedings. This is particularly significant in view of the Federal Government of Nigeria's Treasury Single Account policy which has directed that funds of state agencies are initially domiciled with the CBN.

(iii) Are there any requirements for arbitrations involving sovereign entities?

No. There are no special requirements for arbitrations involving sovereign entities under Nigerian law.

XVI. Investment Treaty Arbitration

(i) Is your country a party to the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States? Or other multilateral treaties on the protection of investments?

Nigeria is a signatory to the ICSID.

(ii) Has your country entered into bilateral investment treaties with other countries?

Nigeria is signatory to bilateral investment treaties (BITs) which are in force with the following countries namely; China, Finland, France, Germany, Italy, Republic of Korea, Netherlands, Romania, South Africa, Spain, Sweden, Switzerland, Taiwan (Province of China) and the United Kingdom. Nigeria has also signed BITs which are not in force, with the following countries namely; Algeria, Austria, Bulgaria, Canada, Egypt, Ethiopia, Jamaica, Morocco, Kuwait, Russia, Serbia, Singapore, Turkey, Uganda, and the United Arab Emirates.

Please note that apart from investment treaties with countries, Nigeria is also signatory to regional and institutional treaties with investment provisions, such as the AfCFTA Investment Protocol, the ECOWAS Common Investment Code (ECOWIC) (2019) and the ACP - EU Samoa Agreement (2023).

(iii) Have there been any recent court decisions in your country in relation to intra-European investor-state arbitration?

No.

XVII. Resources

(i) What are the main treatises or reference materials that practitioners should consult to learn more about arbitration in your jurisdiction?

The following may be useful:

- the AMA;
- the Lagos State Arbitration Law;
- Arbitration and Dispute Resolution in Nigeria: Practice and Procedure (Kraft Books Limited, 2022) by Colins Ebi Daniel;
- Foreign International Commercial Arbitration Awards- Recognition and Enforcement: The Nigerian Situation, Challenges and Proposed Solutions (Lambert Academic Publishing 2020); by Chinwe Odigboegwu FCIArb;
- Arbitration Law & Practice in Nigeria: The Practitioner's Perspective (2020) by Tolulope Aderemi;
- Commercial Arbitration In Nigeria: Law And Practice (Third Edition, 2019, Centre for Commercial Law Development); by Dr Fabian Ajogwu, SAN;
- The Nigerian Arbitration Law in Focus (2nd Edition, 2019 West African Book Publishers); by Obosa Akpata and Olusola Adegbonmire;
- Handbook of Arbitration and ADR Practice in Nigeria (2018 LexisNexis); by Tinuade Oyekunle & Bayo Ojo, SAN;
- Oil, gas, electricity and commercial arbitration in Nigeria; (2017 Dictus Publishing) by Tolulope Aderemi;
- Commercial Arbitration Law And Practice In Nigeria Through The Cases, (2016 LexisNexis);by Adedoyin Rhodes-Vivour, C.Arb;
- Commercial Law and Arbitration Practice in Nigeria; (2015 LawLords Publications) by Professor Paul Idornigie;
- Commercial Arbitration Law And International Practice In Nigeria (2012); by C. Adeyemi Candide-Johnson, SAN FCIArb & Olasupo Shasore, SAN FCIArb;
- Law and Practice of Arbitration and Conciliation in Nigeria (1999); by J.O. Orojo and M. A. Ajomo.

(ii) Are there major arbitration educational events or conferences held regularly in your jurisdiction? If so, what are they and when do they take place?

Training programmes and an annual conference are organised by the Chartered Institute of Arbitrators through its Nigerian Branch. The ICC also holds an annual 'Arbitration in Africa' conference in Nigeria.

XVIII. Trends and Developments

(i) Do you think that arbitration has become a real alternative to court proceedings in your country?

It has become a real alternative to court proceedings, particularly for disputes arising from commercial transactions.

(ii) What are the trends in relation to other ADR procedures, such as mediation?

ADR procedures are also gaining wide acceptance. Nigeria recently enacted the AMA in 2023, which establishes a legal framework that officially recognises mediation as a statutory ADR technique. Many courts have amended their civil procedure rules to encourage the use of ADR techniques such as mediation in the settlement of disputes by allowing judges to stay court proceedings and refer the suits to mediation, usually at mediation centres conjoined to the court premises. Some court rules now require the filing of a certificate confirming that counsel representing a litigant has discussed with and advised the client as to ADR resolution opportunities before a writ is filed.

(iii) Are there any noteworthy recent developments in arbitration or ADR?

The Nigerian National Assembly has enacted the AMA in 2023 which repealed the 35-year-old Arbitration and Conciliation Act. The new legislation includes the 2006 amendments to the UNCITRAL Model Law. It also provides clarification on the procedure for making applications to court among others.

(iv) Are there any official plans to reform the arbitration laws and practice in your jurisdiction?

There are currently no ongoing reform plans for the arbitration laws and practice in Nigeria. The AMA is still relatively new, and its provisions are yet to be comprehensively tested. As a result, the primary focus of stakeholders is on raising awareness and providing information about the provisions of the new act through sensitization efforts.

(v) Are there any rules governing third-party funding in your jurisdiction? Is there an obligation to disclose the identity of any non-party who has an economic interest in the outcome of the proceedings, including any third party funder? Have there been any recent court decisions in your jurisdiction in relation to third-party funding?

The AMA makes provision for third-party funding of arbitral proceedings. The AMA imposes a disclosure obligation on the party benefiting from a third-party funding agreement. Information about the funding agreement, such as the funder's name and address, must be shared with all relevant parties, the arbitral tribunal, and, if applicable, the arbitral institution. This disclosure must be made either at the outset of the arbitration, or where the funding agreement is executed after the arbitration has already started, promptly after its execution.

There is currently no decision available in relation to third-party funding.

(vi) Has your country implemented a sanctions regime? Do the courts in your jurisdiction consider international economic sanctions as part of their international public policy? Have there been any recent court decisions in your country in relation to the impact of sanctions on international arbitration proceedings?

Nigerian courts will apply the rules of international law that have been domesticated as local laws, provided they are found not to be over-ridden by clear constitutional rules. However, the practice of the courts on the application of international public policy is still in the process of being developed. Court decisions on the impact of sanctions on international arbitration proceedings are unavailable.