GETTING THE DEAL THROUGH

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George Etomi & Partners

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1 Multilateral conventions

Is your country a contracting state to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Since when has the Convention been in force? Were any declarations or notifications made under articles I, X and XI of the Convention? What other multilateral conventions relating to international commercial and investment arbitration is your country a party to?

Nigeria is a contracting state to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, having acceded to it on 17 March 1970. The Convention has now been made expressly applicable to Nigeria by section 54 of the Arbitration and Conciliation Act, LFN 2004, which factors in the provisions of article 1.X and XI of the convention.

Nigeria is also a party to the Vienna Convention on the Law Treaties and acceded to it on 23 May 1969 and ratified it on 31 July 1969.

2 Bilateral treaties

Do bilateral investment treaties exist with other countries?

Nigeria is party to bilateral investment treaties requiring arbitration and regulating the recognition and enforcement of arbitral awards. Nigeria has signed bilateral investment treaties with 22 countries, which include but is not limited to Spain, France (1990), the United Kingdom (1990), the Netherlands (1992) and Brazil (2005).

3 Domestic arbitration law

What are the primary domestic sources of law relating to domestic and foreign arbitral proceedings, and recognition and enforcement of awards?

The primary domestic source of law relating to domestic and foreign arbitral proceedings is the Arbitration and Conciliation Act, LFN 2004 (the ACA), which embodies the UNCITRAL Arbitration and Conciliation Rules and the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

4 Domestic arbitration and UNCITRAL

Is your domestic arbitration law based on the UNCITRAL Model Law? What are the major differences between your domestic arbitration law and the UNCITRAL Model Law?

The Nigerian Arbitration Law is largely derived from the UNCITRAL Model Law and the UNCITRAL Arbitration Rules. However, differences exist.

The UNCITRAL Model Law, under section 19, allows for party autonomy, that is, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings; but in domestic arbitration, the parties, as well as the arbitral tribunal, are bound by the provisions of the Arbitration Rules contained the First Schedule to the Arbitration and Conciliation Act, LFN 2004.

Under the Arbitration Act in Nigeria, a contested challenge to an arbitrator's appointment must be decided in the first instance by the appointing authority. No provision exists for the decision of the appointing authority to be final; hence, there may be further reviews, such as by way of appeal. However, with the UNCITRAL Model Law's default mechanism, a challenge is decided by the arbitral tribunal in the first instance and the decision of the arbitral tribunal may then be reviewed by a court, the decision of which is final.

5 Mandatory provisions

What are the mandatory domestic arbitration law provisions on procedure from which parties may not deviate?

The parties must conform to the substantive law. Under Nigerian law, the parties are bound to adopt the Arbitration Rules in domestic arbitration. The parties cannot draw up an arbitration agreement with provisions that conflict with the arbitration rules and the parties are not free to adopt the rules of arbitration institutions such as the ICC if the rules conflict with the arbitration rules in the First Schedule of the ACA.

6 Substantive law

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?

Article 33 of the Arbitration Rules contained in the First Schedule to the ACA provides that the law to be applied by the arbitral tribunal is the law designated by the parties as applicable to the substance of the dispute. The arbitral tribunal shall decide as amiable compositeur or ex aequo et bono only if the parties have expressly authorised the arbitral tribunal to do so, and if the law applicable to the arbitral procedure permits such arbitration.

The arbitral tribunal is to decide, in accordance with the terms of the contract in all cases, taking into account the usage of the trade applicable to the transaction.

7 Arbitral institutions

What are the most prominent arbitral institutions in your country?

The most prominent institutions are:

The Chartered Institute of Arbitrators (UK) Nigeria Branch
Old Niger House, (2nd Floor)
163/165, Broad Street (Marina View)
Adjacent to the Elephant House

Lagos
Tel: +234 1 264 7036
Fax: +234 1 263 6757
aandb@hyperia.com
www.ciarb.org

The Chartered Institute of Arbitrators Nigeria
233 Ikorodu Road
Lagos
Nigeria
Tel: +234 1 803 3349101 / +234 1 854 7483
www.arbitratorsnigeria.org

Maritime Arbitrators Association of Nigeria
Maritime Arbitrators Association of Nigeria Secretariat
C/o Sofunde Osakwe Ogundipe & Belgore
St Nicholas House (7th Floor)
Catholic Mission Street
Lagos
Nigeria
Tel: +234 1 263 1184
Fax: +234 1 2634980
maan@mannigeria.com
www.maanigeria.com

Regional Centre for International Commercial Arbitration Lagos
6th Floor Union Marble House
1 Alfred Rewane Road PO Box 50565
Falomo, Ikoyi
Lagos
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Tel: +234 1 2705516, 2703572, 4798926
Fax: +234 1 2713579
info@rcicalagos.org
www.rcicalagos.org

The Lagos Multi-Door Court House
High Court of Lagos
Lagos Judicial Division
Lagos
Nigeria
Tel: +234 1 7237415 / +234 1 8033076534 / +234 1 8023129002
Hotlines: +234 1 7028162452, +234 1 7028162451
info@lagosmultidoor.org

The Abuja Multi-Door Court House
High Court of the Federal Capital Territory
Wuse Zone 5
FCT
Abuja
Nigeria
Tel: +234 1 8033605506 / +234 1 8023268606

Arbitration agreement

8 Arbitrability

Are there any types of disputes that are not arbitrable?

Although the Act does not specifically set out subject matter that it considers arbitrable, section 57 of the ACA Act defines 'arbitration' as a 'commercial arbitration' and the word 'commercial' is also defined as '[...] all relationships [...] including any trade transaction [...]'. However matters that are not arbitrable are: criminal matters, matrimonial matters of general interest or a status matter, such as the winding-up of a company or bankruptcy.

9 Requirements

What formal and other requirements exist for an arbitration agreement?

Section 1(1) of the ACA states that every arbitration agreement shall be in writing. The arbitration agreement must satisfy the normal legal requirements of a contract, such as:

- consensus;
- capacity of the parties to the arbitration agreement;
- legal relationship;
- terms must be clear and certain like any other contract;
- valid underlying substantive contract in existence;
- certain and enforceable terms of the arbitration agreement;
- mutual agreement, namely that both parties should have the same rights to refer disputes to arbitration;
- clear and express reference of the dispute to arbitration;
- appointment of the arbitrator;
- place of arbitration;
- applicable law;
- arbitration procedure; and
- language of the arbitration.

See Nigeria LNG Ltd v ADIC Ltd (1995) 5 NWLR (Pt 604) 631 at 634.

Arbitration agreements can be contained in general terms and conditions, as long as the agreement is in writing; section 1(2) of the ACA requires every arbitration agreement to be in writing, contained in any means of communication that provides a record of the arbitration agreement. This requirement will be satisfied if the agreement is contained in:

- a document by both parties;
- an exchange of letters, telexes, telegrams or other means of communication that provide a record of the arbitration agreement; or
- an exchange of points of claim or defence in which the existence of an arbitration agreement is alleged by one party and not denied by the other.

10 Enforceability

In what circumstances is an arbitration agreement no longer enforceable?

The ACA makes no provision for non-enforceability; rather, under section 2 of the Act, unless a contrary intention is expressed, an arbitration agreement shall be irrevocable except by the agreement of the parties, or by leave of the court or a judge. Section 3 of the Act provides that an arbitration agreement shall not be invalid by reason of the death of any party, but in such an event, it shall be enforceable by or against the personal representative of the deceased.

11 Third parties – bound by arbitration agreement

In which instances can third parties or non-signatories be bound by an arbitration agreement?

Under Nigerian Law, an arbitral tribunal may assume jurisdiction over individuals or entities that are not themselves parties to an agreement to arbitrate, if the parties to the arbitration agreement consent to the participation of such third parties and if such third parties themselves voluntarily submit to the jurisdiction of the arbitral tribunal.

Section 3 of the ACA provides that, in the event of the death of any party to the agreement, the arbitration agreement shall be enforceable by or against the personal representative of the deceased.

Where the assets and liabilities of a contracting party are being

liquidated by a court order, however, the liquidator may be authorised by the court to bring or defend any arbitration proceedings and therefore be bound by any decisions thereof. In addition, third parties or non-signatories would be bound by an arbitration agreement where there existed any rights and obligations under assignment and agency contract.

12 Third parties – participation

Does your domestic arbitration law make any provisions with respect to third-party participation in arbitration, such as joinder or third-party notice?

There is no statutory provision for joinder or third-party notice in the domestic arbitration law. However, where the arbitration agreement makes specific provision for joinder, third parties may participate in the arbitration. Section 40(3) of the Lagos State Arbitration Law makes provision for joinder. A party may by application and with the consent of the parties be joined to arbitral proceedings.

13 Groups of companies

Do courts and arbitral tribunals in your jurisdiction extend an arbitration agreement to non-signatory parent or subsidiary companies of a signatory company, provided that the non-signatory was somehow involved in the conclusion, performance or termination of the contract in dispute, under the 'group of companies' doctrine?

The Act makes no provision regarding the 'group of companies' doctrine. However, if the incident of the arbitration affects the group of companies, even if the other companies are not formally made parties to the arbitration, they can be bound by it.

14 Multiparty arbitration agreements

What are the requirements for a valid multiparty arbitration agreement?

The ACA makes no provision for a valid multiparty arbitration agreement and there are no special considerations for conducting multiparty arbitrations under the Act. Since there is no prohibition of such an arrangement under the Act, parties may agree to confer on the arbitrator, in the case of multiplicity of claims, power to consolidate the claims or join other claims, if they consider that by so doing they will finally resolve all the disputes.

Constitution of arbitral tribunal

15 Appointment of arbitrators – restrictions

Are there any restrictions as to who may act as an arbitrator?

Judges cannot act as arbitrators while in service, but retired judges can act as arbitrators.

The ACA does not provide for any qualifications as to who can act as an arbitrator. However, before persons can be appointed as arbitrators, the following are usually considered: the relationship of the intended arbitrator to the issues and parties, the nature of dispute, the technical and commercial experience and ability of the arbitrator to resolve the dispute, ability to take charge and to conduct the proceedings expeditiously, arbitral experience in relation to reasonable legal knowledge and special qualification or expertise as stipulated in the arbitration agreement.

16 Appointment of arbitrators – default mechanism

Failing prior agreement of the parties, what is the default mechanism for the appointment of arbitrators?

The parties to an arbitration agreement may determine the number of arbitrators to be appointed under the agreement, but where no such determination is made, section 6 of the ACA provides that the number of arbitrators shall be deemed to be three. Where the arbitral tribunal is deemed to be three and the parties fail to appoint a third arbitrator within 30 days, any party to the arbitration agreement may apply to the court to appoint an arbitrator to preside over the arbitral proceedings. Furthermore, where it is agreed by both parties that there will be a sole arbitrator and the parties fail to agree on a choice of arbitrator, any party can apply to the court within 30 days to appoint an arbitrator to preside over the arbitral proceedings.

17 Challenge and replacement of arbitrators

On what grounds and how can an arbitrator be challenged and replaced?

The ACA, section 8(3), provides that an arbitrator can be challenged and replaced if circumstances exist that give rise to justifiable doubts as to his or her impartiality or independence and, if so, he or she does not possess the requisite qualification agreed by both parties.

Section 9(1) to (3) provides that a party challenging the arbitrator must, within 15 days of becoming aware of the constitution of the arbitral tribunal or the circumstances stated in ACA section 8, send to the arbitral tribunal a written statement stating the reasons for the challenge.

The Act further provides that an arbitrator can be replaced where an arbitrator dies or resigns during the course of proceedings, or where he or she fails to act or in the event of the de jure or de facto impossibility of performing his or her functions.

18 Relationship between parties and arbitrators

What is the relationship between parties and arbitrators?

The arbitrator is required to be independent and impartial. Section 8 of the ACA and article 9 of the Arbitration Rules require a potential arbitrator to disclose to the parties any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence.

The arbitrator must be free from bias or undue influence and should be objective. Each party must be given the opportunity to present its case and, where there is a hearing, it must be done in the presence of both parties. Where the arbitrator receives information from one party, the arbitrator must disclose it to the other party.

In Nigeria, no statute that deals with the liability of an arbitrator in the discharge of his or her function exists. Reliance is placed on the opinions and decisions of the courts and those of jurists and experts. There is no provision in the Act governing liability for negligence of the arbitrator and in such a circumstance an action ought to be maintainable.

However, public policy considerations appear to favour immunity against action; to be entitled to this immunity, the arbitrator must act judicially, that is:

- he or she must have been jointly engaged by the parties as arbitrator;
- a dispute must have been submitted to the said arbitrator;
- the arbitrator must not be a mere investigator but must receive evidence or submission put before him or her for examination and consideration; and
- he or she must give a decision that the parties must have agreed to accept.

See Arenson v Arenson (1977) AC 405 Pp 410-411.

Jurisdiction

19 Court proceedings contrary to arbitration agreements

What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an existing arbitration agreement, and what time limits exist for jurisdictional objections?

Where a party to an arbitration agreement commences an action in court with respect to any matter that is the subject of an arbitration agreement, any party to the arbitration agreement may, at any time after appearance or before delivering any pleadings or taking any other steps on the proceedings, apply to the court for an order of stay of proceedings. If the court is satisfied that there is no reason why the matter should not be referred to arbitration in accordance with the arbitration agreement and that the applicant is still willing and ready to submit to arbitration, the court shall order a stay of proceedings (section 5 ACA). See Bebeji Oil Allied Prod Ltd V Pancosta Ltd (2007) 31 WRN P172.

20 Jurisdiction of arbitral tribunal

What is the procedure for disputes over jurisdiction of the arbitral tribunal once arbitral proceedings have been initiated and what time limits exist for jurisdictional objections?

Section 12(1) of the ACA authorises an arbitral tribunal to rule on questions pertaining to its jurisdiction and on any objections with respect to the existence or validity of an arbitration agreement. A plea that the arbitral tribunal lacks jurisdiction must be raised no later than the time of submission of the points of defence, and a party is not precluded from raising such plea by reason that he or she has appointed or participated in the appointment of an arbitrator. Furthermore, a plea that the arbitral tribunal is exceeding the scope of its authority can be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the proceedings. However, an arbitral tribunal shall rule on any such pleas either as a preliminary question or in an award on the merits, and such ruling is final and binding.

The Act makes no provision for circumstances in which parties can be precluded from raising jurisdictional objections.

Arbitral proceedings

21 Place and language of arbitration

Failing prior agreement of the parties, what is the default mechanism for the place of arbitration and the language of the arbitral proceedings?

According to section 16(1) and section 18 ACA, where parties fail to provide for place of arbitration and language of the arbitral proceedings, the arbitral tribunal shall provide for a place that is convenient to both parties and the language to be adopted shall be a language relevant to the circumstances of the case.

22 Commencement of arbitration

How are arbitral proceedings initiated?

The procedure for the commencement of arbitral proceedings as contained in article 3 of the Arbitration Rules is as follows:

The party initiating recourse to arbitration (claimant) shall give to the other party (respondent) a notice of arbitration.

Article 17 of the Rules states that arbitral proceedings shall commence on the date the request to refer the dispute to arbitration is received by the other party, that is, the date on which the respondent receives the notice of arbitration. The notice of arbitration is to include the following:

- 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 (ie, one or three) if the parties have not previously agreed thereon;
- proposal for the appointment of a sole arbitrator;
- the notification of the appointment of an arbitrator; and
- the statement of claim.

23 Hearing

Is a hearing required and what rules apply?

Section 20 of the ACA allows the arbitral tribunal, subject to any contrary agreement by the parties, to decide whether the arbitral proceedings will be conducted by holding oral hearings for the presentation of evidence and oral arguments, on the basis of documents and other materials, or by both the holding of oral hearings and on the basis of documents and other materials.

The arbitration is to be conducted in accordance with the procedure contained in the Arbitration Rules set out in the first schedule to the ACA. But where the Rules contain no provisions on any matter related to a particular arbitral proceeding, the arbitral tribunal may, subject to the Act, conduct the arbitral proceedings in such a manner as it considers appropriate so as to ensure a fair hearing.

24 Evidence

By what rules is the arbitral tribunal bound in establishing the facts of the case? What types of evidence are admitted and how is the taking of evidence conducted?

In establishing the fact of a case, the normal rules that govern receipt of evidence in judicial proceedings in Nigeria (the Evidence Act) do not apply to proceedings before an arbitral tribunal. The rules of evidence that would be applied by an arbitral tribunal therefore are: any rules arising from or referred to in the parties' arbitration agreement; evidential principles; such rules as the arbitral tribunal may direct; or a combination of these rules and principles.

The types of evidence that are admitted include statements, documents, other information, expert reports and evidentiary documents (section 20(3) and (4)). Section 20(5) of the ACA gives power to the arbitral tribunal, unless otherwise agreed by the parties, to administer oaths to or take the affirmations of the parties and witnesses appearing.

Section 20(6) of the ACA allows any party to an arbitral proceeding to issue out a writ of subpoena ad testificandum or subpoena duces tecum. However, no person shall be compelled under such writ to produce any document that he or she could not be compelled to produce on the trial of an action.

Section 22(1)(a) ACA vests power on the arbitral tribunal to appoint experts on specific issues to be determined by the tribunal. The tribunal, under section 22(1)(b), can request that a party supply the expert with relevant information or produce or provide access to any documents, goods or other property for inspection.

The expert, after delivering the written or oral report, may participate in the hearing at the request of a party or on the consideration of the tribunal as being necessary. The parties will thus be entitled to put questions to the expert and present expert witnesses to testify on their behalf on the points at issue (section 22(2)).

The IBA rules on taking of evidence can be applied to arbitral proceedings so long as the rules are not in conflict with any mandatory provisions of law determined to be applicable to the case by the parties or the tribunal.

25 Court involvement

In what instances can the arbitral tribunal request assistance from a court and in what instances may courts intervene?

The court intervenes in arbitral proceedings when it is necessary to assist the process. Such intervention can arise in any of the following instances: to stay court proceedings brought in defiance of the arbitration agreement (ACA sections 4 and 5), to order revocation of the arbitration agreement (ACA section 2), to appoint an arbitrator where a party fails to appoint or the parties cannot agree (section 7), to compel attendance of witnesses or production of documents (section 23), to set aside or remit an award or to remove an arbitrator and to enforce or refuse the enforcement of an award.

26 Confidentiality

Is confidentiality ensured?

It is an implied term of the arbitration agreement that the arbitral proceedings are private and confidential.

Article 25.4 of the Arbitration Rules provides that hearings shall be 'in camera' unless the parties agree otherwise.

Information pertaining to arbitral proceedings may be disclosed where the parties consent or by an order of court.

Interim measures

27 Interim measures by the courts

What interim measures may be ordered by courts before and after arbitration proceedings have been initiated?

Article 26 of the Rules entitles a court approached by a party to arbitral proceedings to grant interim relief. The Arbitration Rules provide that such a request will not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

Section 5 of the ACA vests power in the court to stay proceedings where a party to the arbitration agreement commences an action with respect to a matter that is the subject of an arbitration agreement and an application is made by the other party to the court to stay proceedings.

28 Interim measures by the arbitral tribunal

What interim measures may the arbitral tribunal order after it is constituted? In which instances can security for costs be ordered by an arbitral tribunal?

The power of the arbitral tribunal to order interim measures of protection is contained in section 13 of the ACA and article 26 of the Arbitration Rules.

Section 13 vests the arbitral tribunal with power to order any party (at the request of a party) to take such interim measures of protection as the tribunal may consider necessary in respect of the subject matter of the dispute and the tribunal may request any party to provide appropriate security in connection with any measure taken.

Article 26 of the Rules contains similar provisions to those of section 13 of the Act, but goes on to list some of the measures, such as 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. Such interim measures may be established in the form of an interim award and the tribunal shall be entitled to require security for the costs of such measures.

Awards

29 Decisions by the arbitral tribunal

Failing party agreement, is it sufficient if decisions by the arbitral tribunal are made by a majority of all its members or is a unanimous vote required? What are the consequences for the award if an arbitrator dissents?

Section 24 of the ACA provides that in an arbitral tribunal comprising more than one arbitrator, any decision of the tribunal shall, unless otherwise agreed by the parties, be made by a majority of all its members. A similar provision is contained in article 31.1 of the Arbitration Rules. Neither the Act nor the Rules makes provision for the requirement of a unanimous vote or for the consequence of an arbitrator failing to sign the award, or both.

30 Dissenting opinions

How does your domestic arbitration law deal with dissenting opinions?

As enunciated in the answer to question 29, where an arbitral tribunal comprises more than one arbitrator, unless otherwise agreed by the parties, any decision of the tribunal shall be made by a majority of its members. This in effect, does not make provision for dissenting opinions as the law clearly states that the decision of the tribunal shall be made by a majority of its members. Article 31.2 of the Arbitration Rules provides that in the case of questions of procedure, when there is no majority or when the arbitral tribunal so authorises, the presiding arbitrator may decide on his own, subject to revision (if any) by the arbitral tribunal.

31 Form and content requirements

What form and content requirements exist for an award?

An award must be in writing and signed by the arbitral tribunal or arbitrators. An award must state:

- the reasons upon which it was based, unless agreed by both parties that no reason should be given;
- the date it was made; and
- the place of arbitration.

32 Time limit for award

Does the award have to be rendered within a certain time limit under your domestic arbitration law?

The ACA does not provide for a time limit within which an award can be rendered; however, awards should be delivered within a reasonable time and without unnecessary delay. Where a time limit is stated in the arbitration agreement, the arbitrator must adhere strictly to it. Any derailment from the time limit stipulated in the arbitration agreement must be agreed upon by the parties to the arbitration.

33 Date of award

For what time limits is the date of the award decisive and for what time limits is the date of delivery of the award decisive?

Though there is no time limit stipulated in the ACA or the Arbitration Rules in its first schedule, awards should be delivered within a reasonable time and without unnecessary delay.

34 Types of awards

What types of awards are possible and what types of relief may the arbitral tribunal grant?

There are different types of awards, namely: final award, consent award, interim or partial award, interlocutory or provisional

award, default award and additional award. The reliefs usually granted by the arbitral tribunal are monetary, declaratory, performance, injunctive and rectification.

35 Termination of proceedings

By what other means than an award can proceedings be terminated?

Under the Rules, article 34 provides that an arbitration proceeding can be terminated where the parties agree on settlement of dispute and thus communicate this to the arbitral tribunal. The tribunal shall either order the termination of the arbitral proceedings or, by the request of both parties and if accepted by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

However, where the arbitral proceedings become unnecessary or impossible for any other reason, the arbitral tribunal shall inform the parties of its intention to issue an order of termination of the proceeding.

36 Cost allocation and recovery

How are the costs of the arbitral proceedings allocated in awards? What costs are recoverable?

Article 38 of the Arbitration Rules allows for the arbitral tribunal to fix the costs of arbitration in its award. Thus, article 40 further provides that the costs of arbitration shall be, in principle, borne by the unsuccessful party. Under the principle, the unsuccessful party is liable to indemnify the successful party; this principle has been enunciated by the courts in Ladega v Akiliyi (1975) 2SC 91.

Costs that are recoverable include fees of the arbitral tribunal to be stated separately for each arbitrator, travel and other expenses incurred by the arbitrators, costs of expert advice and of other assistance required by the arbitral tribunal, travel and other expenses of witnesses as approved by the tribunal and costs for legal representation and assistance of the successful party. However, the arbitral tribunal must take into consideration the circumstances and the reasonableness of the case in awarding costs and fees.

One interesting scenario can occur where a party, having submitted to jurisdiction, fails to pay the assessed costs either by design or default to frustrate further hearings; the other party can pay the costs and recover the sum at the end of the proceedings.

37 Interest

May interest be awarded for principal claims and for costs and at what rate?

The Act does not limit the power of the arbitrator to order interest; hence, the arbitrator may award interest on any sum of money awarded. The arbitrator would, however, be duty-bound to award interest based on evidence presented to the tribunal and upon such legal indices that would be fair and just in the circumstances.

In practice, interest is usually guided by the Nigeria Inter Bank Official Rate (NIBOR), plus any reasonable amount depending on the peculiarities of the case.

Proceedings subsequent to issuance of award

38 Interpretation and correction of awards

Does the arbitral tribunal have the power to correct or interpret an award on its own or at the parties' initiative? What time limits apply?

Section 28(3) of the ACA provides for the arbitral tribunal, on its own volition and within 30 days from the date of the award, to correct any errors in the award relating to computation, clerical or typographical errors or any errors of a similar nature. Similar provisions are contained in article 36 of the Arbitration Rules.

39 Challenge of awards

How and on what grounds can awards be challenged and set aside?

An award can be challenged and set aside if the aggrieved party can furnish proof that:

- the arbitral award contains matters beyond the scope of submission to arbitration;
- the arbitrator misconducted himself or herself; or
- the award was improperly procured.

An award can also be set aside on grounds of public policy, where the issue of jurisdiction comes into question and if any allegations of crime are raised.

If the parties can prove any of the issues listed above, an award can be challenged and the arbitral tribunal can set aside the award based on the proven issues.

40 Levels of appeal

How many levels of appeal are there? How long does it generally take until a challenge is decided at each level? Approximately what costs are incurred at each level? How are costs apportioned among the parties?

No appeal is permitted against an award. An aggrieved party may apply to a court of competent jurisdiction, within three months of delivering the award, to have the arbitral award set aside based on the grounds stated in question 37. In the case of an additional award, aggrieved party may apply to a court from the day the request for the additional award is disposed of by the arbitral tribunal.

41 Recognition and enforcement

What requirements exist for recognition and enforcement of domestic and foreign awards, what grounds exist for refusing recognition and enforcement, and what is the procedure?

With regard to domestic awards, section 31 of the ACA provides that an arbitral award shall be recognised as binding and shall, upon application in writing to the court, be enforced by the court.

With regard to foreign awards, section 51(1) of the ACA, which deals with the Recognition and Enforcement of Awards as contained in part III of the Act (international commercial arbitration), provides that each contracting state shall recognise arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon.

The party relying on an award or applying for its enforcement shall make an ex parte application by originating summons supported by an affidavit and exhibiting the following particulars: the duly authenticated original award or a duly certified copy, and the original arbitration agreement or a duly certified copy, and also, if it is a foreign award, where the award or arbitration agreement is not made in English, a duly certified translation into English.

The applicant must also make full disclosure of any matters that he or she knows may affect the granting of the leave to enforce the award.

Any of the parties to an arbitration agreement may request the court to refuse recognition or enforcement of the award (section 32 ACA). With regard to domestic awards, the Act does not provide any grounds for refusing recognition and enforcement of the award, but section 52 of the ACA makes provision for the grounds upon which a foreign award can be refused for enforcement, as listed in section 52(a)(i) to (viii) and section 52(b (i) and (ii).

The grounds listed in the above sections are not exhaustive; in practice, the courts can also refuse to recognise and enforce an award based on the following grounds:

- jurisdiction: the issue here borders on whether the arbitration can take place in a particular territory;

Update and trends

In a bid to position Lagos State as the arbitration hub for West Africa, the Lagos State government recently passed the Lagos State Arbitration Law (Lagos State Arbitration Law No. 10 of May 2009) and the Lagos State Court Arbitration Law (Law No. 8 of 2009). This serves as the first modern state-enacted arbitration law in Nigeria, although there is a debate as to which tier of government possesses the constitutional competence to legislate on arbitration. The main thrust of the debate from the Lagos State point of view stems from the fact that arbitration, conciliation and other ADR processes are not listed in the exclusive nor concurrent list of the 1999 Constitution of Nigeria; thus, by default, such matters are residual and fall within the legislative competence of the states. However, certain matters in respect of trade and commence which are international or domestic contained within the exclusive list conferred jurisdictional competence on the federal government to legislate on arbitration and conciliation.

To address the dichotomy, the National Committee recommended two sets of legislation, the Federal Arbitration Act and the Uniform States Arbitration Law for adoption by the states. The Lagos State Committee, however, took the position that arbitration is a residual matter within the legislative competence of the states; hence Lagos State promulgated its arbitration law, based on its competence to do so. The debate on this constitutional issue is left for the Supreme Court to decide

The Lagos State Arbitration Law provides for the resolution of disputes by arbitration in Lagos State. Though it retained some provisions of the Federal Act, it modified some provisions and included entirely new provisions closely based on the UNCITRAL Model Law.

The law applies to all arbitrations within the state except where the parties have expressly agreed that another arbitration law shall apply. Some of the modifications and additions to the Law include provisions relating to the number of arbitrators. The Federal Act provides that where parties have not determined the number of arbitrators, the number shall be three; the Lagos State law on the other hand provides that in the absence of determination by the parties, the tribunal will consist of a sole arbitrator. The law also prohibits even-numbered arbitral tribunals unless otherwise agreed by the parties.

Regarding the provisions relating to the challenge procedure for challenge of an arbitrator, the Federal Act provides that the arbitral tribunal shall decide on the challenge procedure in the absence of agreement by the parties under the domestic provisions if the challenged arbitrator does not withdraw from office or the other party does not agree to the challenge. Under the international provisions, the responsibility for determining the challenge procedure vests with the appointing authority. The provision of the Lagos State law, however, allows the parties to agree on the procedure or otherwise designate the responsibility for determining the challenge procedure on an appointing authority of their choice.

While the grounds for challenge contained in the Federal Act relating to the arbitrator's impartiality and independence and lack of qualifications agreed by the parties are retained by the Lagos State Law, the law however, makes provision for two additional grounds which include the physical or mental capacity of the arbitrator in conducting proceedings or justifiable doubts as to the arbitrators capacity to conduct the proceedings as contained under section 10(3)(c) of the Lagos State Arbitration Law.

Other modifications made by the law in comparison to the Federal Act relate to provisions such as appointment of arbitrators, cessation of office, place and time of arbitration, setting aside of awards and costs. New provisions included in the law cover areas such as the form of arbitration agreements to take, cognisance of electronic means of communication and other modern means of communication which are not contained in the Federal Act, provisions on the appointment of umpires in arbitration proceedings, consequences of the termination of an arbitrator's appointment, immunity of arbitrators, consolidation, concurrent hearings and joinder of parties, interest, notification of awards/arbitrator's lien on awards, etc.

- public policy: where the court finds the underlying transaction is contrary to public policy, such as involving gambling, drugs, terrorism, etc, the court may refuse the recognition and enforcement of such an award;
- allegations of crime, such as bribery; or
- fraud, namely if facts material to the proceedings are hidden from the court and the court later finds out those facts, the award can be set aside upon discovery of fraud.

It should be noted that the above grounds often come up in the proceedings for registration.

42 Enforcement of foreign awards

What is the attitude of domestic courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

Where the party seeking enforcement of the award files an application with the required documentation, the courts will order enforcement of the award in the same manner as a judgment of the court.

43 Cost of enforcement

What costs are incurred in enforcing awards?

With regard to the costs incurred in enforcing awards, consideration has to be given to lawyers' fees for the time spent in the preparation of the relevant documentation, administrative charges for the identification of seizable assets in the jurisdiction or abroad on an order issued by the court and payment of supplementary deposits.

Other

44 Judicial system influence

What dominant features of your judicial system might exert an influence on an arbitrator from your country?

The Act empowers arbitrators to seek assistance from the courts when issues arise. The areas in which the courts can intervene include stay of court proceedings, revocation of arbitration agreements, appointment of arbitrators, attendance of witnesses, production of documents, setting aside of awards, remission of awards, enforcement of awards and refusal of enforcement.

On the issue of provision for discovery or production of documents, the power of an arbitral tribunal to order discovery is limited.

Under section 23 of the ACA, which applies to both domestic and foreign arbitration, where a party deems it necessary to compel a witness to testify in an arbitral proceeding or tender and produce documentation, the court can support the arbitral process. According to the provisions of the Act, the court or judge may order that a writ of subpoena ad testificandum or of subpoena duces tecum shall be issued to compel attendance before any tribunal of a witness, wherever he or she may be within Nigeria, for the purpose of testifying or tendering documents. The court can also order that a writ of habeas corpus ad testificandum shall be issued to bring a prisoner for examination before any arbitral tribunal.

45 Regulation of activities

What particularities exist in your jurisdiction that a foreign practitioner should be aware of?

There are no legal or administrative restrictions placed on a foreign arbitrator or counsel involved in arbitration in Nigeria. Such an arbitrator is free to come to Nigeria for the purpose of conducting

the particular arbitral proceeding.

With regard to visa requirements, a foreign practitioner would require a business visa, which would allow him or her to appear in Nigeria and conduct the arbitral proceedings. If, however, the foreign practitioner intends to stay for longer than three months, a work permit will have to be obtained.

On the issue of tax, income is taxable because of the base taxing principle (of accruing or derived from, etc) in Nigeria. The fees charged by the foreign practitioner are subject to VAT, although the practitioner might not be liable to personal income tax under residency rules.

The right of a practitioner (whether foreign or counsel) to appear in an arbitral proceeding is not subject to stringent requirements under the professional rules operative in Nigeria. There is, however, a general requirement for such practitioners to comport themselves in a manner consistent with our rules of professional conduct, including deferment to seniority (if it becomes an issue). However, this requirement ceases if the matter goes to court in any form and, the professional rules would be applicable in such circumstances.

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