

NIGERIA

DELOS GUIDE TO ARBITRATION PLACES (GAP)

CHAPTER PREPARED BY

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There have not been any material changes requiring an update to this chapter (including the traffic lights) since the date of the latest version. Nonetheless, please note that this chapter does not constitute legal advice and its authors, the contributing law firm and Delos Dispute Resolution decline all responsibility in this regard.

IN-HOUSE AND CORPORATE COUNSEL SUMMARY

Nigerian arbitration law is embodied both in common law (case law) and statute. Three statutory instruments regulate commercial arbitration in Nigeria: The Arbitration and Conciliation Act (the “ACA”),¹ the Lagos State Arbitration Law 2009,² and the 1914 Arbitration Law,³ which is applicable in the other thirty-five States of the Federation.

Key places of arbitration in the jurisdiction	The key places of arbitration within Nigeria are Lagos State and Abuja, the Federal Capital Territory.
Civil law / Common law environment?	Common law.
Confidentiality of arbitrations?	Under Nigerian law, it is an implied term of the arbitration agreement that the arbitral proceedings are private and confidential and, therefore, subject to privilege.
Requirement to retain (local) counsel?	Parties may choose to retain counsel in arbitral proceedings. Where the arbitration rules in the first schedule to the ACA apply, this has been interpreted to mean counsel qualified to practice in Nigeria. Parties may circumvent these rules in international arbitration.
Ability to present party employee witness testimony?	There are no restrictions as to the presentation of witness testimony. The ACA allows the arbitrators to determine the admissibility, relevance, materiality and weight of any evidence placed before it.
Ability to hold meetings and/or hearings outside of the seat?	Unless the parties agree otherwise, the tribunal may meet at any place it considers appropriate.
Availability of interest as a remedy?	Interest may be awarded based on the parties’ agreement.
Ability to claim for reasonable costs incurred for the arbitration?	Parties may claim reasonable costs incurred for the arbitration.
Restrictions regarding contingency fee arrangements and/or third-party funding?	Funding agreements that include the provision of funding an arbitration in return for a proportion of any recoveries are potentially, although not necessarily, champertous.
Party to the New York Convention?	Nigeria is a party to the New York Convention.
Other key points to note	A comprehensive Bill to repeal and re-enact the ACA is awaiting third reading at the Senate of the Federal Republic of Nigeria.
WJP Civil Justice score (2017-2018)	0.44

¹ Enacted in 1988 and republished as Cap. A18, Laws of the Federation of Nigeria, 2004. The ACA governs international and inter-state commercial arbitration.

² Lagos State Arbitration Law No. 18 of 2009. The Law governs arbitration where all elements arise within Lagos State, unless the parties agree otherwise.

³ The 1914 Law is modelled on the English Arbitration Act of 1889 and governs commercial arbitration where all elements arise within the respective States.

ARBITRATION PRACTITIONER SUMMARY

The Arbitration and Conciliation Act 1988 (the 'ACA') governs arbitration in the Federal Republic of Nigeria. The ACA came into force on 14th March 1988 and applies to all arbitration proceedings commenced on or after that date.

The ACA incorporates the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the 'New York Convention') and is modelled on the 1985 version of the UNCITRAL Model Law with minor additions as it concerns domestic arbitration.

Date of arbitration law?	The ACA entered into force in 1988.
UNCITRAL Model Law? If so, any key changes thereto?	The ACA is modelled after the 1985 UNCITRAL Model Law with minor additions with respect to domestic arbitration.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	The ACA designates the High Courts of the respective States and the Federal High Court to handle arbitration-related matters. The Lagos State High Court has a commercial division to which arbitration matters are generally assigned. The High Court of the Federal Capital Territory, Abuja also proposes to introduce a commercial division. It currently designates an 'ADR Judge', to whom arbitration matters are generally assigned.
Availability of <i>ex parte</i> pre-arbitration interim measures?	In appropriate cases (such as cases of genuine urgency), <i>ex parte</i> pre-arbitral interim measures are available from the courts.
Courts' attitude towards the competence-competence principle?	Recent judicial policy recognises and gives deference to the competence-competence principle.
Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?	The grounds for annulment mirror the criteria for refusal of recognition and enforcement of foreign awards set out in the New York Convention.
Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?	The annulment of a foreign award at its seat constitutes a ground for refusal of recognition or enforcement of that award in Nigeria. Under the current judicial policy, these awards will not be recognised or enforced in Nigeria.
Other key points to note?	<p>Partial and Interim Awards are enforceable under the ACA.</p> <p>A comprehensive Bill to repeal and re-enact the ACA is awaiting third reading at the Senate of the Federal Republic of Nigeria. The Bill is modelled on the 2006 version of the UNCITRAL Model Law with some notation additions. These include the introduction of emergency arbitrator provisions and the introduction of an appellate review tribunal if parties elect to circumvent the national courts for annulment proceedings. The Bill also introduces time limits in arbitration related matters before the Courts.</p>

JURISDICTION DETAILED ANALYSIS

1. The legal framework of the Jurisdiction

1.1 Is the arbitration law based on the UNCITRAL Model Law?

The Arbitration and Conciliation Act 1988⁴ (the 'ACA') governs arbitration in the Federal Republic of Nigeria.⁵ The ACA came into force on 14th March 1988 and applies to all arbitration proceedings commenced on or after that date.

The ACA incorporates the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the 'New York Convention') and is modelled on the 1985 version of the UNCITRAL Model Law (the '1985 Model Law') with minor additions.

Most notably, the ACA draws a distinction between domestic and international arbitration. Under Section 57(2) of the Act, an arbitration is international if the parties have their places of business in different countries; or if the arbitral seat or place of contractual performance, or place of the subject matter of the dispute is outside the country in which the parties have their businesses.⁶ Section 57(2) also prescribes opt-in provisions, so that an arbitration will be deemed to be international if the parties have expressly agreed that the subject matter of the arbitration agreement relates to one country or if they expressly agree to treat the dispute as an international arbitration. An arbitration will be domestic where none of the criteria in Section 57(2) of the ACA is met.

As it concerns domestic arbitration, Part I of the Act will generally supply the governing law. As it concerns international arbitration, Part III of the Act provides additional provisions applicable to the proceedings.⁷

On account of the lack of a distinct body of law governing international arbitration, practitioners should be mindful that precedent established in domestic arbitration may supply principles equally applicable in international arbitration, and *vice versa*. For example, Section 32 of the Act does not give the court any guidance as to the grounds for refusing recognition or enforcement of a domestic award. Section 52, on the other hand, sets out a laundry list of grounds for refusal of recognition or enforcement of an international award. Commentators have observed that the grounds listed in Section 52 should guide the court in their application of Section 32.⁸

⁴ The Arbitration and Conciliation Act was republished as Cap. A18 Laws of the Federation of Nigeria, 2004.

⁵ Section 58 of the ACA states that the Act shall apply throughout the Federation. There is, however, some debate as to the Constitutionality of this provision as it concerns the National Assembly's competence to make laws for the States on commercial arbitration. Commenting on this issue, The National Committee on the Reform and Harmonization of Arbitration and ADR Laws in Nigeria (the 'Orojo Committee') found that the Constitution limits the National Assembly to legislate on international and inter-state Arbitration and Conciliation, but not on intra-state Arbitration and Conciliation, which are within the constitutional legislative capacity of the States.

⁶ Section 57(3) of the ACA makes two important clarifications. First, if a party has more than one place of business, the place with the closest relationship to the arbitration agreement prevails. Secondly, if a party does not have a place of business, reference is made to its habitual residence.

⁷ Part III of the Act includes provisions on the appointment, challenge and replacement of arbitrators; rules applicable to the substantive dispute; grounds for setting aside an international award, provisions on costs; recognition and enforcement of an international award and the grounds for refusing recognition or enforcement; and party autonomy concerning the rules applicable to the proceedings.

⁸ J.O. Orojo and M.A. Ajomo, *Law and Practice of Arbitration and Conciliation in Nigeria* (Myebi & Associates, Lagos 1999) at 300-301.

1.2 When was the arbitration law last revised?

Given Nigeria's Federal structure, legislative powers are shared between the Federal Government (through the National Assembly)⁹ and the States (through the respective State Houses of Assembly).¹⁰

At the Federal level,¹¹ the last revision of the arbitration law occurred in 1988, with the enactment of the ACA.¹² As for the States, the Lagos State House of Assembly enacted the Lagos State Arbitration Law, No. 18 of 2009 on 18 May 2009 (the 'LSAL').¹³ The stated aim of the LSAL is the principle that "*The object of arbitration is to obtain the fair resolution of disputes by an impartial Tribunal without unnecessary delay.*"¹⁴ The Law is modelled on the 2006 version of the UNCITRAL Model Law and, except where the parties agree otherwise, applies to domestic arbitration where all the elements emanate within Lagos State.¹⁵

2. The arbitration agreement

2.1 How do the courts in the jurisdiction determine the law governing the arbitration agreement?

The Nigerian Court of Appeal has stated that the proper law of the arbitration agreement is determined in accordance with the Nigerian general principles of the conflict of laws, namely, the law chosen by the parties or, in the absence of such choice, the law of the country with which the agreement is most closely connected.¹⁶

2.2 Is the arbitration agreement considered to be independent from the rest of the contract in which it is set forth?

Section 12 (2) of the ACA states that an arbitration clause which forms part of a contract is independent of the other terms of the contract, and a decision by the arbitral tribunal that the contract is null and void does not affect the validity of the arbitration clause.

2.3 What are the formal requirements (if any) for an enforceable arbitration agreement?

To constitute an arbitration agreement to which the ACA applies:

- an arbitration agreement must be in writing or evidenced in writing;¹⁷
- the parties to the arbitration agreement must have legal capacity under the law applicable to them;
- the terms of the arbitration agreement must be precise and unequivocal;¹⁸

⁹ Section 4(1) of the 1999 Constitution vests federal legislative powers in the bicameral National Assembly, consisting of a Senate and a House of Representatives.

¹⁰ Section 4(7) of the 1999 Constitution vests the legislative powers of a state in a unicameral State House of Assembly.

¹¹ Nigeria is a constitutional democracy and federation with thirty-six states and a Federal Capital Territory. As is conventional in a federation, legislative powers are shared between the federal government and the federating states.

¹² At the time of writing, a Bill to repeal and re-enact the ACA is awaiting third reading before the Senate of the Federal Republic of Nigeria.

¹³ The 1914 Arbitration Law operates in the other thirty-five States of the Federation.

¹⁴ Lagos State Arbitration Law 2009, Section 1(a).

¹⁵ Lagos State Arbitration Law 2009, Section 2.

¹⁶ *Statoil Nigeria Limited v. Federal Inland Revenue Service* (2014) LPELR-23144(CA).

¹⁷ Under the ACA, the requirement of writing is satisfied if the agreement is contained in: (a) a document signed by the parties; (b) an exchange of letters, telex, telegrams or other means of communication which provide a record of the arbitration agreement; or (c) an exchange of points of claim or defense in which the existence of an arbitration agreement is alleged by one party and not denied by the other. The Lagos State Arbitration Law has a more progressive definition of writing and includes data that provides a record of the Arbitration Agreement or is otherwise accessible so as to be useable for subsequent reference. The Bill to repeal and re-enact the ACA also has a more progressive definition of writing, mirroring the definition set out in Option I, Article 7 of the UNCITRAL Model Law.

- the agreement should be mutual, i.e., it should give both parties the same right to refer disputes to arbitration; and
- the agreement must relate to a commercial dispute capable of settlement by arbitration under Nigerian law, i.e., an arbitrable dispute.

2.4 To what extent, if at all, can a third party to the contract containing the arbitration agreement be bound by said arbitration agreement.

Section 52 of the ACA defines a party as meaning “a party to the arbitration agreement or to conciliation or any person claiming through or under him.”

Whilst the Nigerian courts have not ascribed meaning to the phrase: “a person claiming through or under him” , the courts of other common law jurisdictions have provided useful and persuasive guidance, stating that the phrase includes a person seeking to enforce or a person seeking to resist the enforcement of an alleged contractual right.¹⁹

To be bound by a contractual agreement (including an arbitration clause), the Nigerian courts will require cogent evidence of a capacity to contract and an intention to be bound by the agreement.

Practitioners should, therefore, be aware that where a non-signatory to the arbitration agreement seeks either to enforce or resist the enforcement of an alleged contractual right on behalf of a signatory, it could be bound by the said agreement.

Practitioners should also be aware that, in limited circumstances, a third party could intervene to challenge an arbitral tribunal's jurisdiction before the national courts, in circumstances where powers conferred on that third party by the Constitution or by statute are contravened or in need of interpretation.²⁰

2.5 Are there restrictions to arbitrability?

To be arbitrable under Nigerian law, the general test is whether the dispute or difference can be compromised lawfully by way of accord and satisfaction.²¹

Recently, the Court of Appeal found that disputes which solely concern the operation of tax legislation (and which do not have their basis in contract) are not arbitrable under Nigerian law.²² Likewise, criminal matters, illegal and void contracts or matters leading to a change of the status of the parties are not arbitrable under Nigerian law.

¹⁸ The courts will find that the arbitration agreement satisfies this requirement where the reference to arbitration is mandatory: *Frontier Oil Limited v. Mai Epo Manu Oil Nigeria Limited* (2005) 2 CLRN 148; *Fidelity Bank Plc. v. Jimmy Rose Co. Limited* (2012) 6 CLRN 82.

¹⁹ Decision of the High Court of Australia in *Tanning Research Laboratories Inc. v O'Brien* [1990] HCA 8. Nigerian courts have held that where no relevant precedents on a particular matter are available domestically, foreign decisions are not only persuasive but are relevant in the determination of the issue (*Agbaje v. Fashola* (2008) All FWLR (Pt. 443) 1302; *Yahaya v. State* (2002) 2 S.C. (PT. II) 1).

²⁰ *Statoil Nigeria Limited v. Federal Inland Revenue Service* (2014) LPELR-23144(CA).

²¹ *Kano State Urban Development Board v. Fanz Construction Ltd.* (1990) 4 NWLR (Pt. 142) 1; *United World Ltd Inc. v. MTS* (1998) 10 NWLR (Pt. 568) 106.

²² *sso Petroleum & Production Nigeria Ltd. & Anor. v. Nigeria National Petroleum Corporation* (2016) 6 CLRN 25.

3. Intervention of domestic courts

3.1 Will the courts stay litigation if there is a valid arbitration agreement covering the dispute?

The Nigerian Supreme Court has held that where parties have agreed to refer their dispute to arbitration, the court has a duty to enforce the agreement of the parties by staying any proceedings commenced in court contrary to the arbitration agreement.²³

More recently, the Chief Justice of Nigeria has requested all Heads of Courts to introduce Practice Directions in the following terms:²⁴

- That no court shall entertain an action instituted to enforce a contract or claim damages arising from a breach thereof, in which the parties have, by consent, included an arbitration clause, without first ensuring that the clause is invoked and enforced.
- The courts must insist on enforcement of the arbitration clause by declining jurisdiction and awarding substantial costs against parties that introduce proceedings in breach of arbitration agreements.²⁵
- A party who institutes an action in court to claim breach of contract containing an arbitration clause without first invoking the clause is, himself, in breach of the said contract and ought not to be encouraged by the courts.

3.2 How do courts treat injunctions by arbitrators enjoining parties to refrain from initiating, halt or withdraw litigation proceedings?

The Nigerian courts have not had cause to determine this question. Nevertheless, questions of jurisdiction will inevitably arise where an arbitral tribunal enjoins a court to stay its proceedings. Under Nigerian law, a court or tribunal cannot issue injunctive or other reliefs against non-parties.

It would be more prudent for the arbitrators to enjoin the parties to the arbitral proceedings from pursuing litigation before the Nigerian Courts.²⁶

3.3 On what ground(s) can the courts intervene in arbitrations seated outside the jurisdiction?

The following provisions of the ACA apply even where the arbitration is seated outside Nigeria:

- Section 4 – the courts can stay proceedings commenced in breach of an arbitration agreement, where a so party requests before submitting its first statement on the merits of the dispute;
- Section 23 – a court or judge may require a witness within Nigeria to appear and give oral testimony or produce documents before an arbitral tribunal;
- Section 51 – the Nigerian courts are conferred with discretion to recognise and enforce arbitral awards, irrespective of the country in which it was made; and

²³ *M.V Lupex v. N.O.C. & S. Ltd* (2003) 15 NWLR (Pt. 844) 469; *Esso Exploration and Production Nigeria Limited & Anor. v. Federal Inland Revenue Service & Anor* – at the time of writing, unreported judgment of the Court of Appeal in CA/A/402/2012, delivered on 10th March 2017.

²⁴ The request was contained in a letter dated 26 May 2017 addressed to all Heads of Court.

²⁵ This requirement reinforces Section 4 of the ACA by emphasising the negative effect of competence-competence. It should, however, be noted that an arbitration clause does not oust the court's jurisdiction under Nigerian law. *BSG Energy Holdings Ltd. v. Spears* (2013) 4 CLRN 49.

²⁶ Section 29 of the Lagos State Arbitration Law provides for the recognition and enforcement by the court of interim measures issued by an arbitral tribunal. The ACA does not contain similar provisions. The tribunal should, therefore, issue such measures as Interim or Interlocutory Awards, which are capable enforcement before the Nigerian courts.

- Section 52 – likewise, the Nigerian courts may refuse to recognise and enforce arbitral awards, irrespective of the country in which it was made.

4. The conduct of proceedings

4.1 Can parties retain outside counsel or be self-represented?

The applicable rules will depend on the nature of the dispute. As a rule, domestic arbitration is conducted in accordance with the procedure contained in the Arbitration Rules set out in the first schedule of the ACA (the 'Arbitration Rules').²⁷ Article 4 of the said Rules provide that the parties may be represented by legal practitioners of their choice.

The Court of Appeal has interpreted this provision to mean a legal practitioner licenced to practice law in Nigeria.²⁸ Given the discretionary language used in Article 4, this should not fetter a party's choice to be self-represented, or to be represented by persons other than legal practitioners.²⁹

As it concerns international arbitration,³⁰ the parties may circumvent Article 4 of the Arbitration Rules by designating any international rules of procedure acceptable to them.³¹

Practitioners should, nevertheless, be aware that Section 51 of the Nigerian Oil and Gas Industry Content Development Act enjoins all operators, contractors and other entities engaged in any business or transaction in the Nigerian oil and gas industry to retain only the services of a Nigerian legal practitioner of a firm of Nigerian legal practitioners whose office is located in any part of Nigeria.

4.2 How strictly do courts control arbitrators' independence and impartiality?

The courts may set aside or refuse recognition or enforcement of an award in circumstances where an arbitrator fails to disclose any circumstance that might give rise to justifiable doubts to their independence or impartiality.³²

However, the Supreme Court has held that a party who has knowledge of, but fails to raise a jurisdictional plea (presumably including a challenge to an arbitrator's independence or impartiality) before the arbitral tribunal cannot raise it for the first time before the court.³³

4.3 On what grounds do courts intervene to assist in the constitution of the arbitral tribunal (in the case of ad hoc arbitration)?

At a party's request, and as a last resort, a court may intervene to assist in the constitution of the arbitral tribunal where, under the appointment procedure agreed by the parties:

- a party fails to act as required under the procedure; or
- the parties or two party-appointed arbitrators are unable to reach agreement as required under the procedure; or

²⁷ ACA, Section 15(1).

²⁸ Unreported Judgment of the Court of Appeal in *CA/A/208/2012 Shell Nig. Exploration and Production v. Federal Inland Revenue Service*. The Bill to repeal and re-enact the ACA allows parties to be represented or assisted by any person they may choose.

²⁹ This presumably includes lawyers qualified in jurisdictions outside Nigeria, who (except where also qualified in Nigeria) are not recognised as 'legal practitioners' under Nigerian law.

³⁰ Under Section 57(2)(d) of the ACA, the parties may agree to treat a domestic arbitration as international.

³¹ ACA, Section 53.

³² In a domestic arbitration, an arbitrator's failure to disclose could amount to misconduct. In international arbitration, the failure to disclose would be contrary to the rules that govern the arbitration. The arbitral procedure would, therefore, not be in accordance with the parties' agreement.

³³ *NNPC v. Klifco Nigeria Limited* (2011) 10 NWLR (Pt. 1255) 209.

- c. a third party, including an arbitral institution, fails to perform any duty imposed on it under the procedure.³⁴

4.4 Do the courts have the power to issue interim measures in connection with arbitrations?

A court is entitled to issue interim relief under Article 26 of the Arbitral Rules. The Rules provide that such a request will not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement. The courts may, in appropriate circumstances (e.g. in matters of genuine urgency) consider *ex parte* requests.³⁵

4.5 Other than arbitrators' duty to be independent and impartial, does the law regulate the conduct of the arbitration?

4.5.1 Does it provide for the confidentiality of arbitration proceedings?

The ACA does not contain any provisions on the confidentiality of arbitral proceedings. However, the Arbitration Rules make provision for the proceedings to be private, unless the parties agree otherwise.³⁶ It is also an implied term of the arbitration agreement that the arbitral proceedings are private and confidential and, therefore, subject to privilege.

4.5.2 Does it regulate the length of arbitration proceedings?

The ACA does not regulate the length of arbitration proceedings.³⁷

4.5.3 Does it regulate the place where hearings and/or meetings may be held?

Unless the parties agree otherwise, the tribunal may meet at any place it considers appropriate.³⁸

4.5.4 Does it allow for the tribunal to issue interim measures?

The Arbitration Rules allow an arbitrator to grant preliminary or interim relief by way of an interim award.³⁹ This may be a conservatory order, order for sale of perishable goods or order to provide security for costs. A party in whose favour an interim award has been made may approach the court to enforce the said award.⁴⁰

4.5.5 Does it regulate the arbitrators' right to admit/exclude evidence?

Section 15(3) of the ACA confers power on the arbitral tribunal to determine the admissibility, relevance, materiality and weight of any evidence placed before it.

4.5.6 Does it make it mandatory to hold a hearing?

The ACA does not make it mandatory to hold a hearing. Subject to the parties' agreement, the tribunal determines the format of the proceedings.⁴¹

³⁴ ACA, Section 7(3).

³⁵ The Bill to repeal and re-enact the ACA contains Emergency Arbitrator provisions, and provisions for court or tribunal issued interim measures of protection.

³⁶ Article 25(4) of the Rules contained in the first schedule to the ACA.

³⁷ There is, however, a presumptive forty-five-day time limit for the parties to communicate any written statements (including pleadings). The tribunal may extend this time in appropriate circumstances.

³⁸ ACA, Section 16(2).

³⁹ Articles 26 and 32 of the Arbitration Rules in the first schedule to the ACA.

⁴⁰ ACA, Section 31.

⁴¹ ACA, Section 20.

4.5.7 Does it prescribe the principles governing the award of interest?

The ACA is silent as it concerns the award of interest.⁴² Interest can, nevertheless, be awarded based on the parties' agreement.

4.5.8 Does it prescribe the principles governing the allocation of arbitration costs?

Costs generally follow the event. This means that the costs of the arbitration will, in principle, be borne by the unsuccessful party except where the parties agree otherwise. However, the tribunal may exercise its discretion to apportion costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.⁴³

4.6 Liability

4.6.1 Do the arbitrators benefit from immunity to civil liability?

The ACA does not confer immunity on arbitrators.⁴⁴ However, the Lagos State Arbitration Law grants statutory immunity to arbitrators unless they act in bad faith.⁴⁵

4.6.2 Are there any concerns arising from potential criminal liability for any of the participants in an arbitration proceeding?

Under Nigerian law, there is no criminal liability for any of the participants in an arbitration proceeding.

5. The award

5.1 Can parties waive the requirement for an award to provide reasons?

Section 26(3)(a) of the ACA allows the parties to waive the requirement for an award to provide reasons.

5.2 Can the parties waive the right to seek the annulment of the award?

Strictly speaking, the parties may agree to exclude their right of recourse against an award. However, any such agreement is likely to be unenforceable. Under Nigerian law, access to the judicial system is a constitutional right that cannot be waived.

5.3 What atypical mandatory requirements apply to the rendering of a valid award rendered at a seat in the jurisdiction?

No atypical mandatory requirements apply to the rendering of a valid award rendered under the ACA or the Lagos State Arbitration Law.

5.4 Is it possible to appeal an award (as opposed to seeking its annulment)?

There are no grounds to appeal against an arbitral award under Nigerian law. However, a party to a domestic arbitration may apply to the high court to challenge the award on grounds that:

- the tribunal exceeded its jurisdiction;⁴⁶
- the tribunal was guilty of misconduct;⁴⁷ or
- the award was fraudulently procured.⁴⁸

⁴² The Bill to repeal and re-enact the ACA contains express provisions governing the award of interest.

⁴³ Article 40 of the Arbitration Rules in the first schedule to the ACA.

⁴⁴ The Bill to repeal and re-enact the ACA contains provisions that confer immunity on arbitrator and arbitral institutions.

⁴⁵ Lagos State Arbitration Law, Section 18.

⁴⁶ *KUSDB v. Fanz Construction Ltd* (1990) 4 NWLR (Pt. 142) 1.

⁴⁷ *Taylor Woodrow of Nigeria Ltd. v Suddeutsche Etna-Werk GMBH* (1993) 4 NWLR (Pt. 285) 127.

As it concerns international arbitration, the court may, where the seat of arbitration was in Nigeria, set aside an award if the applicant can establish that:

- a party to the arbitration agreement was under some legal incapacity;
- the arbitration agreement is invalid under the law chosen by the parties, or failing such an indication, that the arbitration agreement is invalid under Nigerian law;
- the aggrieved party was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings, or was otherwise unable to present its case;
- the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration;
- the award addresses matters that are beyond the scope of the submission to arbitration;
- the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the parties' agreement;
- where there is no agreement between the parties as to the arbitral tribunal or the arbitral procedure, the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the Arbitration and Conciliation Act;
- the subject matter of the dispute is incapable of settlement by arbitration under Nigerian law; or
- the award is against Nigerian public policy.

5.5 What procedures exist for the recognition and enforcement of awards, what time limits apply and is there a distinction between local and foreign awards?

The procedures for the recognition and enforcement of international awards rendered in or outside Nigeria are modelled on the UNCITRAL Model Law. To establish a *prima facie* case, the enforcing party must apply in writing to the High Court⁴⁹ and must supply the original award or a duly certified copy of it; and the original arbitration agreement or a duly certified copy of it.⁵⁰

Neither the ACA nor the Lagos State Arbitration Law prescribe a time limit for the recognition or enforcement of an award. However, the implication of the Supreme Court's decision in *City Engineering Nigeria Limited v Federal Housing Authority*⁵¹ is that the accrual of cause of action, the arbitration proceedings, the award and the enforcement of the award must all occur within six years.⁵² Nevertheless, the Supreme Court recently clarified that where a limitation period is prescribed, time will stop running against the Claimant from the moment an action is commenced.⁵³ This presumably includes the commencement of arbitral proceedings.

⁴⁸ *Aye-Fenus Enterprises Ltd. v. Saipem (Nig.) Ltd.* (2009) 2 NWLR (Pt. 1126) 483.

⁴⁹ Applications are typically brought by an Originating Motion.

⁵⁰ In addition, if the award is not made in English, the party must supply a duly certified translation of the award into English.

⁵¹ (1997) 9 NWLR (Part 520) 224.

⁵² In assessing of the period of time for commencing enforcing proceedings under the Lagos State Arbitration Law, the period between the commencement of the arbitration and the date of the award is excluded. The Bill to repeal and re-enact the ACA contains a similar provision.

⁵³ *Sifax Nigeria Limited v. Migfo Nigeria Limited* (2018) 9 NWLR (Part 1623) 138.

5.6 Does the introduction of annulment or appeal proceedings automatically suspend the exercise of the right to enforce an award?

Annulment proceedings do not automatically suspend the exercise of the right to enforce an award. It is customary for the courts to consolidate annulment and enforcement proceedings that are issued or that exist simultaneously.

5.7 When a foreign award has been annulled at its seat, does such annulment preclude the award from being enforced in the jurisdiction?

Under the ACA and the Lagos State Arbitration Law, the annulment of a foreign award at its seat constitutes a ground for refusal of recognition or enforcement of that award in Nigeria.⁵⁴

5.8 Are foreign awards readily enforceable in practice?

Foreign awards are readily enforceable in Nigeria through the following means:

- under Section 51 of the ACA, which provides for the recognition and enforcement of international awards;
- under the provisions of the New York Convention;
- under the Convention on the Settlement of Investment Disputes between States and Nationals of other States; and
- by a common law action on the award.

Enforcement proceedings in Nigeria can be very time consuming. Award debtors typically appeal against decisions to enforce an award. The Bill to repeal and re-enact the ACA attempts to mitigate this by prescribing time limits for arbitration related applications. The idea has also been mooted to confer the Court of Appeal with original jurisdiction in enforcement proceedings.⁵⁵

6. Funding Arrangements

6.1 Are there restrictions to the use of contingency or alternative fee arrangements or third-party funding at the jurisdiction?

The common law torts of maintenance and champerty still operate in Nigeria. As a result, funding agreements that include the provision of funding an arbitration in return for a proportion of any recoveries are potentially, although not necessarily, champertous.⁵⁶

This rule has been relaxed in the context of the legal profession. The Rules of Professional Conduct for Legal Practitioners (the 'RPC') allows contingent fee agreements.⁵⁷ Whilst the RPC precludes a lawyer from entering into an agreement to pay for or bear the expenses of his client's litigation, the lawyer may, in good faith, advance expenses as a matter of convenience and subject to reimbursement.⁵⁸

7. Is there likely to be any significant reform of the arbitration law in the near future?

Yes. At the time of writing, the Senate of the Federal Republic of Nigeria has passed a comprehensive Bill to repeal and re-enact the ACA. This Bill is awaiting third reading at the House of Representatives. The Bill

⁵⁴ Section 52(2)(a)(viii) of the ACA.

⁵⁵ Conferring original jurisdiction on the Constitution is a long-term solution that will require a Constitutional Amendment.

⁵⁶ It must be shown that the funding party is wrongfully intermeddling to encourage the proceedings, in order to be given a share in the proceeds. *Egbor v. Ogbemor* (2015) LPELR-24902(CA).

⁵⁷ RPC, Rule 50.

⁵⁸ RPC, Rule 51.

is modelled on the 2006 version of the UNCITRAL Model Law and seeks to introduce a number of provisions designed to make Nigeria a more attractive arbitral seat. These include (but are not limited to):

- A more progressive definition of “writing” to include a record of the arbitration agreement in any form.
- The introduction of Emergency Arbitration Provisions.
- The introduction of provisions concerning interim measures and preliminary orders.
- The introduction of provisions on joinder and consolidation.
- The introduction of the concept of third party funding.
- The introduction of an Award Review Tribunal if the parties do not wish to bring challenge proceedings before the Courts.
- The introduction of immunity provisions.
- The right of parties to be assisted or represented by any person of their choice.
- The introduction of time limits in arbitration related matters before the Courts.