

NIGERIA

CHAPTER PREPARED BY

ISAIAH BOZIMO, MARTHA APEH AND CHRISTOPHER AWODIMILA
OF BRODERICK BOZIMO & COMPANY

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JURISDICTION INDICATIVE TRAFFIC LIGHTS

- | | |
|--|---|
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| b. Adherence to international treaties | ● |
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| d. Arbitrator immunity from civil liability | ● |
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| 3. Legal expertise | ● |
| 4. Rights of representation | ● |
| 5. Accessibility and safety | ● |
| 6. Ethics | ● |
| Evolution of above compared to previous year | + |
| 7. Tech friendliness | ● |
| 8. Compatibility with the Delos Rules | ● |

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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 any and all responsibility.

IN-HOUSE AND CORPORATE COUNSEL SUMMARY

The Arbitration and Conciliation Act (Chapter A18, Laws of the Federation of Nigeria 2004) ("**ACA**") governs international and inter-state commercial arbitration in Nigeria. The ACA incorporates the 1985 UNCITRAL Model Law on International Commercial Arbitration ("**UNCITRAL Model Law**"). Given Nigeria's Federal structure, each of the 36 Federating States has an arbitration law that, absent the parties' contrary agreement, applies to arbitrations arising within a given State. The most notable of these are the Lagos State Arbitration Law 2009 ("**LSAL**") and the Rivers State Arbitration Law 2019 ("**RSAL**"), both of which incorporate the 2006 amendments to the UNCITRAL Model Law.

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| Key places of arbitration in the jurisdiction? | Lagos. Abuja. Port Harcourt. |
| Civil law / Common law environment? (if mixed or other, specify) | Common law. |
| Confidentiality of arbitrations? | Neither the ACA, LSAL nor RSAL contain any confidentiality provisions. Therefore, the parties' agreement determines whether arbitral proceedings are confidential. As a matter of practice, however, practitioners and users consider arbitral proceedings as private and confidential in Nigeria. |
| Requirement to retain (local) counsel? | Article 4 of the Arbitration Rules in the first schedule to the ACA confers discretion on Parties to retain counsel in arbitral proceedings. The Rules apply to domestic arbitration under the ACA by virtue of section 15 of the Act. Courts have interpreted the word 'legal practitioner' in Article 4 to mean that only counsel qualified to practice in Nigeria can represent a party. Parties may circumvent these rules in international arbitration. |
| Ability to present party employee witness testimony? | Party employees may give witness testimony. |
| Ability to hold meetings and/or hearings outside of the seat and/or remotely? | Unless the parties agree otherwise, the tribunal may meet at any place it considers appropriate. |
| Availability of interest as a remedy? | Interest is available as a remedy. |
| Ability to claim for reasonable costs incurred for the arbitration? | Parties may claim reasonable costs they incurred for the arbitration. |
| Restrictions regarding contingency fee arrangements and/or third-party funding? | Agreements that include the provision of funding an arbitration in return for a proportion of any recoveries are potentially champertous. |
| Party to the New York Convention? | Nigeria's accession to the New York Convention (on 17 March 1970) is subject to the reciprocity and commercial reservations. |
| Party to the ICSID Convention? | Nigeria is a party to the ICSID Convention. |

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| Compatibility with the Delos Rules? | Compatible. |
| Default time-limitation period for civil actions (including contractual)? | Depending on the applicable law, actions founded on simple contract have a limitation period of five years (e.g., section 18, Delta State Limitation Law. Section 16, Rivers State Limitation Law) or six years (e.g., section 8(1)(a), Lagos State Limitation Law. Section 7(1)(a), Limitation Act, Abuja). Some laws also set out a 12-year limitation period for contracts under seal (i.e., deeds – section 11(1), Limitation Act, Abuja. Section 12(1), Lagos State Limitation Law). The Nigerian Supreme Court has clarified that a claimant's issuance of legal proceedings pauses the operation of a limitation period. ¹ |
| Other key points to note? | A comprehensive Bill to repeal and re-enact the ACA is awaiting passage at the National Assembly. The Bill is modelled on the 2006 version of the UNCITRAL Model Law with some notable additions. These include introducing emergency arbitrator provisions and introducing 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. |
| World Bank, <i>Enforcing Contracts: Doing Business</i> score for 2020, if available? | 61.5 (2020). |
| World Justice Project, <i>Rule of Law Index: Civil Justice</i> score for 2020, if available? | 0.43 (2020). |

¹ *Sifax Nigeria Limited v. Migfo Nigeria Limited* (2018) 9 NWLR (Part 1623) 138.

ARBITRATION PRACTITIONER SUMMARY

The Arbitration and Conciliation Act (Chapter A18, Laws of the Federation of Nigeria 2004) governs international and inter-state commercial arbitration in Nigeria. The ACA incorporates the 1985 UNCITRAL Model Law on International Commercial Arbitration. Given Nigeria's Federal structure, each of the 36 Federating States has an Arbitration Law that, absent the parties' contrary agreement, applies to arbitrations arising within a given State. The most notable of these are the Lagos State Arbitration Law 2009 ("**LSAL**") and the Rivers State Arbitration Law ("**RSAL**") 2019, both of which incorporate the 2006 amendments to the UNCITRAL Model Law.

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| Date of arbitration law? | 14 March 1988 (ACA). 18 May 2009 (LSAL). 25 June 2019 (RSAL). |
| UNCITRAL Model Law? If so, any key changes thereto? 2006 version? | The ACA, LSAL and RSAL are modelled on the UNCITRAL Model Law. |
| Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling 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, currently designates an 'ADR Judge', to whom arbitration matters are typically assigned. |
| Availability of <i>ex parte</i> pre-arbitration interim measures? | In appropriate cases (such as genuine urgency), <i>ex parte</i> pre-arbitral interim measures are available from the courts until the arbitral tribunal's constitution. |
| Courts' attitude towards the competence-competence principle? | Recent judicial policy recognises and gives deference to the competence-competence principle. |
| May an arbitral tribunal render a ruling on jurisdiction (or other issues) with reasons to follow in a subsequent award? | Unless the parties agree otherwise, Nigerian law requires the tribunal's reasons on every substantive decision. |
| Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention? | Regarding international arbitration under the ACA, the grounds for annulment mirror the criteria for refusal of recognition and enforcement of foreign awards set out in the New York Convention. |
| Do annulment proceedings typically suspend enforcement proceedings? | Not automatically. |
| 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 are unlikely to be recognised or enforced in Nigeria. |
| If an arbitral tribunal were to order a hearing to be conducted remotely (in whole or in part) | Unlikely, given the Nigerian judiciary's disposition to remote proceedings. |

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| despite a party's objection, would such an order affect the recognition or enforceability of an ensuing award in the jurisdiction? | |
| Key points to note in relation to arbitration with and enforcement of awards against public bodies at the jurisdiction? | Commercial parties frequently arbitrate against public bodies in Nigeria. Enforcing awards against public bodies in Nigeria can be difficult. |
| Is the validity of blockchain-based evidence recognised? | The validity of blockchain-based evidence is untested. However, the tribunal's powers under the ACA, LSAL and RSAL include determining the admissibility, relevance, and weight of any evidence. |
| Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid? | Untested. Though an arbitration agreement recorded on a blockchain would satisfy the writing requirements under the LSAL and RSAL. Neither the ACA, LSAL nor RSAL currently recognise data as constituting "writing" for an award. |
| Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement? | Given the physical format through which applications for recognition and enforcement are presented to the Nigerian courts, the court would likely require duly certified copies of the blockchain arbitration agreement or award. |
| Other key points to note? | A comprehensive Bill to repeal and re-enact the ACA is awaiting passage at the National Assembly. The Bill is modelled on the 2006 version of the UNCITRAL Model Law with some notable additions. These include introducing emergency arbitrator provisions and introducing 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. |

JURISDICTION DETAILED ANALYSIS

1. The legal framework of the Jurisdiction

1.1 Is the arbitration law based on the UNCITRAL Model Law? 1985 or 2006 version?

Federal Legislation

The Arbitration and Conciliation Act 1988 (“**ACA**”)² is the principal legislation that governs arbitration in Nigeria.³ The Act is modelled on the 1985 version UNCITRAL Model Law and came into force on 14 March 1988.

Part III of the ACA sets out provisions that, in addition to the general provisions under Part I, apply solely to international commercial arbitration. Arbitration is considered international under the ACA where at least one of the following applies:⁴

- The parties to the arbitration agreement had their places of business in different countries at the time they concluded the agreement.
- One of the following is outside the country in which the parties have their places of business:
 - the place of arbitration if determined in, or pursuant to, the arbitration agreement;
 - any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject matter of the dispute is most closely connected.
- The parties expressly agreed that the subject-matter of the arbitration agreement relates to more than one country.
- Notwithstanding the nature of the contract, the parties expressly agreed that any dispute arising from the commercial transaction shall be treated as an international arbitration.

State Legislation

Two Nigerian States have enacted legislation that is modelled on the 2006 version of the UNCITRAL Model Law. The 2009 Lagos State Arbitration Law (“**LSAL**”) applies to all arbitrations within Lagos State, except where the parties agree that another law applies. Similarly, absent the parties’ express indication that another law applies, the 2019 Rivers State Arbitration Law (“**RSAL**”) governs every arbitration in Rivers State.

Each of the other 34 States operate under the 1914 Arbitration Law, which is based on the English Arbitration Act of 1889.

Modifications to the Model Law

The ACA, LSAL and RSAL include modifications and/or provisions that apply to arbitrations in addition to the Model Law provisions. The ACA applies to international arbitration, inter-state arbitration (i.e., where the parties have their businesses in different Federating States within Nigeria), and arbitration within the Federal

² The Arbitration and Conciliation Act was republished as Cap. A18 Laws of the Federation of Nigeria, 2004.

³ 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 permits 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.

⁴ Section 57(2), ACA.

Capital Territory of Abuja. Absent the parties' contrary agreement, the LSAL and RSAL apply to arbitration within Lagos State and Rivers State respectively.

The table below shows modifications to the Model Law:

| Arbitration and Conciliation Act | Lagos State Arbitration Law | Rivers State Arbitration Law |
|--|---|---|
| Death of a party to an arbitration agreement (section 3). | Death of a party to an arbitration agreement (section 5). | Death of a party to an arbitration agreement (section 5). |
| Obtaining subpoenas (section 23). | Court's power to stay proceedings initiated in breach of an arbitration clause without inquiring whether the arbitration clause is null, void, inoperative or incapable of being performed (section 6). | Court's power to stay proceedings initiated in breach of an arbitration clause without inquiring whether the arbitration clause is null, void, inoperative or incapable of being performed (section 6). |
| Grounds for challenging a domestic arbitration award (sections 29 and 30). | The parties' agreement to appoint an even number of arbitrators shall be deemed as requiring the appointment of an additional arbitrator to preside over the arbitration (section 7). | The parties' agreement to appoint an even number of arbitrators shall be deemed as requiring the appointment of an additional arbitrator to preside over the arbitration (section 7). |
| | Consequences of an arbitrator's resignation (section 14). | Consequences of an arbitrator's resignation (section 15). |
| | Arbitrator immunity (section 18). | Arbitrator immunity (section 19). |
| | Application of Limitation Laws to arbitral proceedings (section 35). | Emergency arbitrator proceedings (sections 20, 21 and 22). |
| | Consolidation, concurrent hearings, and joinder of parties (section 40). | Application of Limitation Laws to arbitral proceedings (section 39). |
| | Obtaining subpoenas (section 43). | Consolidation, concurrent hearings, and joinder of parties (section 44). |
| | Tribunal's power to award interest (section 46). | Obtaining subpoenas (section 47). |
| | Tribunal's power to order security for costs (section 57). | Tribunal's power to award interest (section 50). |
| | Parties' joint and several liability to pay arbitrator's reasonable fees and expenses (section 54). | Tribunal's power to order security for costs (section 57). |
| | | Parties' joint and several liability to pay arbitrator's reasonable fees and expenses (section 58). |

1.2 When was the arbitration law last revised?

At the Federal level,⁵ the last revision of the arbitration law occurred in 1988, with the Military Government's promulgation of the Arbitration and Conciliation Decree (now known as the ACA).⁶ Before the Arbitration and Conciliation Decree, the Arbitration Act of 1914 – which mirrored the 1889 English Arbitration Act – regulated Arbitration in Nigeria.

As for the States, the Lagos State House of Assembly enacted the LSLA on 18 May 2009; and the RSAL took effect on 31 May 2019.

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 on 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.⁷ The decision has binding effect across all Nigerian Federating States and the Federal Capital Territory.

2.2 In the absence of an express designation of a 'seat' in the arbitration agreement, how do the courts deal with references therein to a 'venue' or 'place' of arbitration?

In *NNPC v. Lutin Investments Limited*,⁸ the Nigerian Supreme Court interpreted 'place' as referring to the physical venue in which the arbitration proceedings take place and not the "seat" of the arbitration.

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

Nigerian law recognises and enforces the doctrine of separability. The doctrine underpins the ACA (section 12(2)), the LSAL (section 19(2)) and the RSAL (section 23(2)). Any perceived illegality or invalidity concerning the substantive contract does not, of itself, affect the validity of the arbitration clause.

2.4 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;⁹
- 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;¹⁰

⁵ 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.

⁶ After Nigeria's transition to a democratic system of government in 1999, the Arbitration and Conciliation Decree was deemed an Act of the National Assembly under section 315 of the 1999 Constitution.

⁷ *Statoil Nigeria Limited v. Federal Inland Revenue Service* (2014) LPELR-23144(CA). *North Pole Navigation Co. Limited v. Milan Nigeria Limited* (2015) LPELR-25865(CA).

⁸ (2006) 2 NWLR 506.

⁹ 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 defence in which the existence of an arbitration agreement is alleged by one party and not denied by the other. The LSAL and RSAL have a more progressive definition of writing and includes data that provides a record of the arbitration agreement or is otherwise accessible to be useable for subsequent reference.

¹⁰ 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.

- 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.

2.5 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.” While 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.¹¹

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.¹²

2.6 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.¹³

The Nigerian Court of Appeal has stated that disputes solely concerning the operation of tax legislation (and which do not have their basis in contract) are not arbitrable under Nigerian law.¹⁴ Likewise, criminal matters, matrimonial causes, contracts considered illegal at formation, or matters leading to a change of the party’s personal status (e.g., nationality) are not arbitrable under Nigerian law.

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 parties’ agreement by staying any proceedings commenced in court contrary to the arbitration agreement.¹⁵

¹¹ 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 persuasive and 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).

¹² *Statoil Nigeria Limited v. Federal Inland Revenue Service* (2014) LPELR-23144(CA).

¹³ *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.

¹⁴ *Esso Petroleum & Production Nigeria Ltd. & Anor. v. Nigeria National Petroleum Corporation* (2016) 6 CLRN 25. This decision is binding across all Nigerian Federating States and the Federal Capital Territory.

¹⁵ *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.

In 2017, the Chief Justice of Nigeria requested all Heads of Courts to introduce Practice Directions to hold parties to their arbitration agreements.¹⁶ Judges may award substantial costs against parties that issue court proceedings in breach of arbitration agreements.

On 1 March 2019, the Federal High Court declined jurisdiction in a dispute between the Nigerian National Petroleum Corporation and Total E&P Nigeria Limited and referred the parties to arbitration.¹⁷ The Court, through Honourable Justice N.O. Dimgba, stated:

"In my view ... rather than bringing this suit and further delaying matters, the Applicant is better served if it can participate fully in the merits of the substantive arbitration, filing its papers, and showing necessary good faith."

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, previous decisions of the Supreme Court indicate that the courts could uphold an arbitrator's injunction enjoining the parties to refrain from initiating, halt or withdraw litigation proceedings. For example, in *M.V. Lupex v. Nigerian Overseas Chartering and Shipping Limited*,¹⁸ the Supreme Court agreed:

"Where parties have chosen to determine for themselves that they would refer any of their disputes to arbitration instead of resorting to regular courts, a prima facie duty is cast upon the court to act upon their agreement."

In *Mekwunye v. Imoukhuede*,¹⁹ the Supreme Court held that *"a valid arbitration award operates between the parties as a final and conclusive judgment upon all matters referred."* This presumably includes an award enjoining the parties to refrain from initiating, halt or withdraw litigation proceedings.

3.3 On what ground(s) can the courts intervene in arbitrations seated outside the jurisdiction? (Relates to anti-suit injunctions/anti-arbitration injunctions or orders, but not only)

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 party so 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 they were rendered; and
- Section 52 – likewise, the Nigerian courts may refuse to recognise and enforce arbitral awards, irrespective of the country in which they were rendered.

Practitioners should be aware of the decision in *S.P.D.C.N. Ltd. v. C.I.N.R. Ltd*, in which the Nigerian Court of Appeal restrained a party to the proceedings (S.P.D.C.N. Ltd) from continuing with a London-Seated arbitration. The Court emphasised that it would only grant anti-arbitration injunctions in exceptional circumstances, such as where continuing with the arbitration would harm the applicant's legal or equitable rights, or would be vexatious, oppressive, or unconscionable. After evaluating the facts before it, the Court

¹⁶ The request was contained in a letter dated 26 May 2017 addressed to all Heads of Court.

¹⁷ Unreported decision of the Federal High Court in Suit No. FHC/ABJ/CS/390/2018.

¹⁸ (2003) 12 NWLR (Pt. 844) 469.

¹⁹ (2019) 13 NWLR (Pt. 1960) 439.

found that it was oppressive to force the applicant (C.I.N.R. Ltd) to face parallel proceedings in Nigeria and London.²⁰

4. The conduct of proceedings

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

Position under the ACA

The procedural rules governing the arbitration determine the answer to this question. For domestic arbitration under the ACA, section 15(1) triggers the application of the Arbitration Rules in the First Schedule to the Act. Under Article 4 of the said Rules, “[t]he 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.²¹ 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.²²

As it concerns international arbitration,²³ section 53 of the ACA allows the parties to choose any international arbitration rules of procedure acceptable to them, thereby circumventing Article 4 of the of the First Schedule to the ACA.

Position under the LSAL and RSAL

Neither the LSAL nor the RSAL contain any restrictions as to self-representation or retention of outside counsel.

Other Considerations

Practitioners should also be aware that Section 51 of the Nigerian Oil and Gas Industry Content Development Act requires all operators, contractors and other entities engaged in any business or transaction in the Nigerian oil and gas industry, and requiring legal services, 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? For example: does an arbitrator’s failure to disclose suffice for the court to accept a challenge or do courts require that the undisclosed circumstances be of a gravity such as to justify this outcome?

Nigerian courts have set aside arbitral awards based only on an arbitrator’s failure to disclose. In *Global Gas & Refinery Limited v. Shell Petroleum Development Company*,²⁴ the Lagos State High Court took the position that once a party challenges an arbitrator, he or she must resign and not resist the challenge:

“When an objection is raised on the basis of bias, it cast doubts on the process itself, notwithstanding whether the panel was constituted or not by ICC. This being so, the President of the arbitrator must exercise a duty of care towards all the cases that are before them. Therefore, it does not lie in the Arbitrators to raise a defence or put the process in ridicule. What it is expected was to have simply recused himself, even when the system absolved him. This is the standard and nothing more is required.”

²⁰ It appears that the Court of Appeal in *S.P.D.C.N. Ltd. v. C.I.N.R. Ltd* did not consider its earlier decisions in *Statoil (Nig.) Ltd. v. N.N.P.C* (2013) 14 N.W.L.R (Pt.1373) 1 and *Nigerian Agip Exploration Limited & Anor. v. N.N.P.C. & Anor.* (2014) 6 C.L.R.N 150, where it held that Nigerian Courts do not have jurisdiction issue anti-arbitration injunctions.

²¹ 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.

²² 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.

²³ Under Section 57(2)(d) of the ACA, the parties may agree to treat a domestic arbitration as international.

²⁴ Unreported judgment of the High Court of Lagos State in Suit No. LD/1910^{6CM}/2017 (25 February 2020).

This decision does not have binding effect in Lagos or other Nigerian States.²⁵ Nevertheless, unless an appellate court overturns the decision, it is advisable for arbitrators to avoid a dilatory challenge by disclosing any connection they may have to a participant in the arbitration, however tenuous it may seem.

The Supreme Court has, nevertheless, 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.²⁶

4.3 On what grounds do courts intervene to assist in the constitution of the arbitral tribunal (in 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. a party fails to act as required under the procedure; or
- b. the parties or two party-appointed arbitrators are unable to reach agreement as required under the procedure; or
- c. a third party, including an arbitral institution, fails to perform any duty imposed on it under the procedure.²⁷

4.4 Do courts have the power to issue interim measures in connection with arbitrations? If so, are they willing to consider *ex parte* requests?

A court is entitled to issue interim relief under Article 26 of the Arbitration Rules in the First Schedule to the ACA. 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.²⁸

Section 21 LSAL and 25 RSAL allows the appropriate courts to issue interim measures in relation to arbitral proceedings. For this purpose, the court can grant a preliminary order on an *ex parte* basis directing a party not to frustrate the purpose of an interim measure requested (section 23, LSAL; section 27, RSAL).

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. As a matter of practice, however, the arbitrators, the parties and arbitral institutions are under an implied duty of confidentiality.²⁹ However, once either party applies to the court to enforce or set aside an award, the arbitral records become part of the court's record and that arbitration loses its confidential status. The various High Court Civil Procedure Rules do not currently contain confidentiality provisions.

4.5.2 Does it regulate the length of arbitration proceedings?

Neither the ACA, LSAL nor the RSAL regulate the length of arbitral proceedings.

²⁵ Decisions by individual High Court judges are not binding on other High Court judges but are of persuasive authority.

²⁶ *NNPC v. Klifco Nigeria Limited* (2011) 10 NWLR (Pt. 1255) 209.

²⁷ ACA, section 7(3). RSAL, section 8(6)(c).

²⁸ The Bill to repeal and re-enact the ACA contains Emergency Arbitrator provisions, and provisions for court or tribunal issued interim measures of protection.

²⁹ Under Article 32 of the Arbitration Rules in the First Schedule to the ACA, an award may be made public only with the consent of both parties. This provision applies to domestic and, unless the parties have agreed that different rules apply, international arbitration.

4.5.3 Does it regulate the place where hearings and/or meetings may be held, and can hearings and/or meetings be held remotely, even if a party objects?

Unless the parties agree otherwise, the tribunal may meet at any place it considers appropriate (ACA, section 16(2). LSAL, section 33(2). RSAL, section 37(2).)

As regards remote hearings, Article 30(4) of the Lagos Court of Arbitration Rules (applicable through section 31, LSAL) confers discretion on the tribunal to direct that witness be examined through a means of communication (including video conferencing) that does not require their physical presence. Under section 11(2), RSAL, an Emergency Arbitrator may conduct any meeting through video or telephone conference.

4.5.4 Does it allow for arbitrators to issue interim measures? In the affirmative, under what conditions?

Position under the ACA

Under section 13 of the ACA, an arbitral tribunal may grant any interim measures it considers necessary in respect of the subject matter of the dispute. The tribunal may, for this purpose require any party to provide appropriate security in connection with any measure taken.

The ACA does not specify the grounds upon which the tribunal may grant an interim measure. Generally, under Nigerian law, an applicant requesting interim relief must establish that:

- a. there are serious questions to be tried;
- b. damages are not an adequate remedy; and
- c. the balance of convenience favours the applicant.

Position under the LSAL and RSAL

Under section 21(3) LSAL and 25(3) RSAL, the tribunal may, unless the parties otherwise agree, issue an interim measure to:

- Maintain or restore the status quo pending determination of the dispute.
- Take action that would prevent or refrain from taking action that is likely to cause current or imminent harm or prejudice to the arbitral process itself.
- Provide a means of preserving assets out of which a subsequent award may be satisfied.
- Preserve evidence that may be relevant and material to the resolution of the dispute.

The party requesting an interim measure must satisfy the tribunal that they have fulfilled the following conditions (section 22, LSAL; section 26, RSAL):

- a. Damages cannot adequately repair the harm and the harm substantially outweighs the harm by the interim measure against the other party; and
- b. There are reasonable chances that the requesting party may win the case.

4.5.5 Does it regulate the arbitrators' right to admit/exclude evidence? For example, are there any restrictions to the presentation of testimony by a party employee?

The arbitral tribunal determines the admissibility, relevance, materiality, and weight of any evidence placed before it (section 15(3), ACA; section 31(3) LSAL; section 35(3) RSAL). No restrictions are imposed on the testimony of a party employee.

4.5.6 Does it make it mandatory to hold a hearing?

In the absence of party agreement to hold a hearing, either party may request a hearing. The arbitral tribunal must then hold such hearings at an appropriate stage of the proceedings (section 20(1), ACA; section 39(1),

LSAL; section 43(1), RSAL). If there is no agreement and no request for a hearing, it falls to the tribunal to decide whether to hold a hearing.

4.5.7 Does it prescribe principles governing the awarding of interest?

Tribunals operating under the LSAL (section 46) and RSAL (section 50) are expressly empowered to order the payment of interest. Unless the parties agree otherwise, the tribunal may:

- Award simple or compound interest.
- Determine the date from which, the rate at which and the amount on which the interest will run.
- Award pre-award or post-award interest.

The ACA does not expressly address the tribunal's power to award interest. However, under Nigerian law, parties can claim interest:³⁰

- Under their contractual provisions.
- Under an applicable statute.
- Through an applicable industry custom.

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

In principle, the losing party bears the costs of the arbitration – except for legal representation costs, which are treated separately under Article 40(2) of the Arbitration Rules in the First Schedule to the ACA.³¹ Nevertheless, the second sentence of Article 40(1) of the Arbitration Rules modifies the 'loser pays' principle. It provides that the arbitral tribunal may apportion costs between the parties if this seems "reasonable taking into account the circumstances of the case."

4.6 Liability

4.6.1 Do arbitrators benefit from immunity from civil liability?

The ACA does not confer immunity on arbitrators. The position differs under the LSAL (section 18) and RSAL (section 19), where arbitrators are immune from civil liability for any *bona fide* act or omission in the performance of their functions.

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

Nigerian law does not ascribe any criminal liability on the participants in an arbitration proceeding.

5. The award

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

The parties may waive the requirement for an award to provide reasons (section 26(3)(a), ACA; section 47(3)(a), LSAL).³²

5.2 Can parties waive the right to seek the annulment of the award? If yes, under what conditions?

Under Nigerian law, access to the judicial system is a constitutional right that cannot be waived. Nigerian law, therefore, treats an agreement that ousts a court's power of inquiry as contrary to public policy and

³⁰ *Ekwinife v. Wayne (WA) Ltd.* (1989) 5 NWLR (Pt. 122) 422.

³¹ The Arbitration Rules in the First Schedule to the ACA apply to domestic and, unless the parties have agreed that different rules apply, international arbitration.

³² The RSAL does not contain a provision that requires an award to state the reasons upon which it is based.

unenforceable. Agreements that the arbitral award is final and binding, or not subject to appeal, do not affect the disputing party's right to apply to set aside the award.

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, LSAL or RSAL.

5.4 Is it possible to appeal an award (as opposed to seeking its annulment)? If yes, what are the grounds for appeal?

Arbitral awards are not appealable under Nigerian law.

5.5 What procedures exist for the recognition and enforcement of awards, what time-limits apply and is there a distinction to be made 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 Court 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.³³

Neither the ACA, the LSAL nor the RSAL 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* 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.³⁴ Nevertheless, the Supreme Court has clarified that the claimant's issuance of legal proceedings pauses the operation of a limitation period. This presumably includes the commencement of arbitral proceedings.³⁵

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. In deciding the applications, the court typically determines the challenge application first. If it upholds the challenge, a decision on the enforcement application becomes moot. If the court refuses the challenge, it will invariably grant the enforcement application.

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, LSAL and RSAL, the annulment of a foreign award at its seat constitutes a ground for refusal of recognition or enforcement of that award in Nigeria.³⁶

5.8 Are foreign awards readily enforceable in practice?

Nigerian courts recognise a pro-enforcement bias under the ACA. For instance, in *Guinness Nig. Plc v. Nibol Properties Ltd.*,³⁷ the Court held:

³³ In addition, if the award is not made in English, the party must supply a duly certified translation of the award into English.

³⁴ (1997) 9 NWLR (Part 520) 224.

³⁵ *Sifax Nigeria Limited v. Migfo Nigeria Limited* (2018) 9 NWLR (Part 1623) 138.

³⁶ Section 52(2)(viii), ACA. Section 57(2)(h), LSAL. Section 61(2)(h), RSAL.

³⁷ (2015) 5 CLRN 65 at 71¹⁻⁵.

"[...] there is a live Judicial Policy of ascribing priority to the upholding of Arbitral Awards, by the regular Courts, as a mainstream ADR procedure in the Administration of Justice for resolving disputes and that there is a narrow compass that attracts the Courts to override this Policy by setting aside an Award."

Likewise, in *Aye-Fenus Enterprises Ltd. v. Saipem (Nig.) Ltd.*,³⁸ the Court of Appeal stated:

"It is a settled principle of law, that where the parties by consent submit their dispute to [...] Arbitration [...], and the decision is reached thereby, a court of law has a duty to enforce the decision reached in such an arbitration."

The difficulty for parties is that enforcement proceedings can be very time-consuming. Some jurisdictions have attempted to address the time delays. For instance, in Rivers State, the court must list an arbitration application for hearing no later than 40 days after the service of the application on the defendant,³⁹ or, where the defendant is outside Rivers State, not later than 60 days.

6. Funding arrangements

6.1 Are there laws or regulations relating to, or restrictions to, the use of contingency or alternative fee arrangements or third-party funding at the jurisdiction? If so, what is the practical and/or legal impact of such laws, regulations or restrictions?

The common law torts of maintenance and champerty still operate in Nigeria.⁴⁰ 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.⁴¹

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.⁴² Whilst the RPC precludes a lawyer from entering into an agreement to pay for or bear the expenses of his or her client's litigation, the lawyer may, in good faith, advance expenses as a matter of convenience and subject to reimbursement.⁴³

7. Arbitration and blockchain

7.1 Is the validity of blockchain-based evidence recognised?

The Nigerian courts have not addressed the admissibility of blockchain-based evidence. However, section 84 of the Evidence Act 2011 creates an avenue through which courts can admit computer-generated evidence.

As provisions of the Evidence Act do not apply in arbitral proceedings, the tribunal will assess the validity of blockchain-based evidence based on either:

- The parties' agreement to include or exclude certain types of evidence;
- The parties' agreement on applicable rules of evidence; or
- In the absence of the parties' agreement, the tribunal's discretion to determine the admissibility, relevance, materiality, and weight of any evidence.

³⁸ (2009) 2 NWLR (Pt. 1126) 483 at 521^{D-E}.

³⁹ Where there are several defendants, on the defendant last served.

⁴⁰ Some common law jurisdictions refuse to recognise and enforce arrangements under which third parties funded or 'maintained' litigation under the headings of 'maintenance' and 'champerty'. 'Maintenance' is the support of litigation by a stranger without just cause. 'Champerty' is an aggravated form of maintenance. It occurs when the maintaining party pays some or all of a party's costs in return for a share of the action's proceeds.

⁴¹ *Egbor v. Ogbebor* (2015) LPELR-24902(CA).

⁴² RPC, Rule 50.

⁴³ RPC, Rule 51.

7.2 Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?

Under section 1 of the ACA, it is doubtful whether an arbitration agreement would satisfy the writing requirement if it has been communicated through electronic means.⁴⁴ However, the LSAL and RSAL adopt a more progressive definition of writing to include “*data that provides a record of the Arbitration Agreement or is assessable for subsequent reference.*”⁴⁵ An arbitration agreement recorded on a blockchain would, therefore, satisfy the writing requirements under the LSAL and RSAL.

Neither the ACA, LSAL nor RSAL currently recognise data as constituting “writing” for the purpose of an award.

7.3 Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?

Given the physical format through which applications for recognition and enforcement are presented to the Nigerian courts, the court would likely require duly certified copies of the blockchain arbitration agreement or award.

7.4 Would a court consider an award that has been electronically signed (by inserting the image of a signature) or more securely digitally signed (by using encrypted electronic keys authenticated by a third-party certificate) as an original for the purposes of recognition and enforcement?

Though the Nigerian Courts have not had cause to determine this question, section 93(2) of the Evidence Act 2011 validates the notion of signing an arbitration award electronically.⁴⁶

The Court’s primary concern would be to verify that the electronic signature is genuine. Under section 93(3) of the Evidence Act, a party may prove an electronic signature’s authenticity in any manner, including through a “security procedure [to verify] that an electronic record [belongs to the arbitrator in question]”.⁴⁷ To that end, a Nigerian Court is more likely to accept a secure digitally signed award (authenticated by a third-party certificate) as an original for purposes of recognition and enforcement.

If the arbitrator inserts an image of their signature in the award, the Court would likely require an ancillary document (e.g., a verifying affidavit from the arbitrator) that authenticates the signature as genuine.

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

A comprehensive Bill to repeal and re-enact the ACA is awaiting passage at the National Assembly. The Bill is modelled on the 2006 version of the UNCITRAL Model Law with some notation additions. These include introducing emergency arbitrator provisions and introducing 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.

⁴⁴ Under section 1, ACA an arbitration agreement is in writing if it is contained in a document signed by the parties; or in an exchange of letters, telex, telegrams, or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another.

⁴⁵ Section 3, LSAL. Section 3, RSAL.

⁴⁶ Section 93(2) of the Evidence Act 2011 provides: “Where a rule of evidence requires a signature or provides for certain consequences if a document is not signed; an electronic signature satisfies that rule of law or avoids those consequences.”

⁴⁷ Section 93(3) of the Evidence Act 2011 provides: “An electronic signature may be proved in any manner, including by showing that a procedure existed by which it is necessary for a person, in order to proceed further with a transaction to have executed a symbol or security procedure for the purpose of verifying that an electronic record is that of the person.”

9. Compatibility of the Delos Rules with local arbitration law

Section 53 of the ACA allows the parties to an international arbitration to agree in writing to submit their dispute to any international arbitration rules acceptable to them. The LSAL (section 31(1)) and RSAL (section 35(1)) also establish procedural autonomy by recognising the parties' freedom to establish the rules of procedure.

10. Further reading

- Joseph Orojo & M. Ayo Ajomo. *Law and Practice of Arbitration and Conciliation in Nigeria*. Mbeyi & Associates Lagos, 1999.
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- C.A. Candide-Johnson & O. Shasore. *Commercial Arbitration Law and International Practice in Nigeria*. LexisNexis, 2012.
- Adedoyin Rhodes-Vivour. *Commercial Arbitration Law and Practice in Nigeria through the Cases*. LexisNexis, 2016.
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ARBITRATION INFRASTRUCTURE AT THE JURISDICTION

| | |
|---|---|
| Leading national, regional and international arbitral institutions based out of the jurisdiction, <i>i.e.</i> with offices and a case team? | Lagos Court of Arbitration (LCA). Lagos Chamber of Commerce International Arbitration Centre (LACIAC). Regional Centre for International Commercial Arbitration, Lagos (RCICAL). |
| Main arbitration hearing facilities for in-person hearings? | Lagos Court of Arbitration (LCA). Chartered Institute of Arbitrators (CIArb). International Centre for Arbitration and Mediation (ICAMA). Abuja Chamber of Commerce-Dispute Resolution Centre (ACC-DRC). Janada International Centre for Arbitration and Mediation (JICAM). |
| Main reprographics facilities in reasonable proximity to the above main arbitration providers with offices in the jurisdiction? | ϕ |
| Leading local providers of court reporting services, and regional or international providers with offices in the jurisdiction? | ϕ |
| Leading local interpreters for simultaneous interpretation between English and the local language, if it is not English? | ϕ |
| Other leading arbitral bodies with offices in the jurisdiction? | Chartered Institute of Arbitrators (CIArb). |