

GUIDE TO ARBITRATION PLACES (GAP)

NIGERIA

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 any and all responsibility.

IN-HOUSE AND CORPORATE COUNSEL SUMMARY

The Arbitration and Mediation Act 2023 (**AMA**) is the overarching legislation for international and domestic interstate commercial arbitration in Nigeria, integrating the 2006 amendments from the UNCITRAL Model Law on International Commercial Arbitration. Given Nigeria's Federal composition, each of the 36 Federating States has its own arbitration law, which typically governs disputes seated within that State unless parties decide otherwise..

The most prominent among these are the Lagos State Arbitration Law 2009 (**LSAL**), the Rivers State Arbitration Law 2019 (**RSAL**), and the recently introduced Delta State Arbitration Law 2022 (**DSAL**). Notably, all these laws reflect the 2006 modifications to the UNCITRAL Model Law.

Key places of arbitration in the jurisdiction?	Lagos. Abuja. Port Harcourt, Asaba.
Civil law / Common law environment? (if mixed or other, specify)	Common law.
Confidentiality of arbitrations?	While the AMA, LSAL, and RSAL do not explicitly address confidentiality, they defer to the parties' agreement to dictate arbitral proceedings' confidentiality. On the other hand, the DSAL establishes that arbitral proceedings are deemed private and confidential unless the parties decide otherwise. The DSAL also empowers the tribunal to enforce this confidentiality and highlights specific exceptions to the rule. Generally, in Nigeria, the practice leans towards treating arbitral proceedings as private and confidential.
Requirement to retain (local) counsel?	Parties enjoy broad discretion in selecting their representation in arbitrations governed by the AMA, LSAL, RSAL, and DSAL. However, for those engaged in Nigeria's oil and gas industry, Section 51 of the Nigerian Oil and Gas Industry Content Development Act stipulates that legal services must exclusively be provided by Nigerian legal practitioners or firms with an office in Nigeria, thereby localising legal representation for this specific sector.
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?	The AMA and the DSAL both permit third-party funding. In contrast, the LSAL and RSAL do not specifically address third-party funding. Thus, third-party funding agreements could be considered champertous when governed by these Laws.
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.
Compatibility with the Delos Rules?	Compatible.
Default time-limitation period for civil actions (including contractual)?	<p>For actions based on simple contracts, the limitation period varies: five years, as set out in section 18 of the Delta State Limitation Law and section 16 of the Rivers State Limitation Law, and six years, as mentioned in section 8(1)(a) of the Lagos State Limitation Law and section 7(1)(a) of the Limitation Act, Abuja. Some statutes, like section 11(1) of the Limitation Act, Abuja, and section 12(1) of the Lagos State Limitation Law, prescribe 12 years for contracts under seal or deeds. The Nigerian Supreme Court has determined that initiating legal proceedings suspends the running of the limitation period.¹</p> <p>Furthermore, sections 34 of the AMA and 13 of the DSAL affirm that the same regulations governing limitation periods for judicial proceedings apply to arbitration. Both provisions detail the criteria for identifying commencement dates and enumerate periods exempted from these considerations.</p>
Other key points to note?	<p>Nigeria recently enacted the "Arbitration and Mediation Act 2023" (AMA 2023), replacing the Arbitration and Conciliation Act. The AMA 2023 is modelled on the 2006 UNCITRAL Model Law and incorporates significant additions, such as the introduction of emergency arbitrator provisions and an award review tribunal. This allows parties to bypass national courts for annulment proceedings. Moreover, the law sets specific time limits for arbitration-related court matters.</p> <p>Similarly, Delta State introduced "The Delta State Arbitration Law" to replace the Arbitration Law 1914. This new legislation brings substantial innovations and enhancements to Nigeria's arbitration legal structure.</p>
World Bank, Enforcing Contracts: <i>Doing Business</i> score for 2020, if available?	61.5 (2020).
World Justice Project, Rule of Law Index: <i>Civil Justice</i> score for 2023, if available?	0.46

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

ARBITRATION PRACTITIONER SUMMARY

The Arbitration and Mediation Act 2023 (**AMA**) is the overarching legislation for international and inter-state commercial arbitration in Nigeria, integrating the 2006 amendments from the UNCITRAL Model Law on International Commercial Arbitration. Given Nigeria's federal composition, each of its 36 states has its own arbitration law, which typically governs disputes seated within that State unless parties decide otherwise.

The most prominent among these are the Lagos State Arbitration Law 2009 (**LSAL**), the Rivers State Arbitration Law 2019 (**RSAL**), and the recently introduced Delta State Arbitration Law 2022 (**DSAL**). Notably, all these laws assimilate the 2006 modifications to the UNCITRAL Model Law.

Date of arbitration law?	The AMA was enacted on 26 May 2023, the DSAL on 22 December 2022, the RSAL on 25 June 2019, and the LSAL on 18 May 2009.
UNCITRAL Model Law? If so, any key changes thereto? 2006 version?	The AMA, LSAL, RSAL and DSAL 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, and the Delta State High Court 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 a tribunal to provide reasons for 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 AMA, 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.

<p>If an arbitral tribunal were to order a hearing to be conducted remotely (in whole or in part) despite a party's objection, would such an order affect the recognition or enforceability of an ensuing award in the jurisdiction?</p>	<p>Whilst it remains untested in Nigeria, given the courts' inclination towards remote hearings, a court might likely uphold an arbitral tribunal's decision to conduct a hearing remotely, even against a party's objections. If the arbitration process, including remote hearings, was conducted in line with the principles of fairness and equity and allowed both parties a full opportunity to present their cases, then the resulting award could be recognised and enforced in Nigeria. However, any party objecting to the remote hearings might challenge the recognition or enforceability of the award because their right to a fair hearing was compromised. The final decision would hinge on the case's specific details and the judiciary's interpretation at the time of enforcement.</p>
<p>Key points to note in relation to arbitration with and enforcement of awards against public bodies at the jurisdiction?</p>	<p>Commercial parties frequently arbitrate against public bodies in Nigeria. Enforcing awards against public bodies in Nigeria can be difficult.</p>
<p>Is the validity of blockchain-based evidence recognised?</p>	<p>While recognising blockchain-based evidence remains uncharted territory in Nigeria, the AMA, LSAL, RSAL, and DSAL grant the tribunal the discretion to decide on any evidence's admissibility, relevance, and weight. Section 84B of the Evidence (Amendment) Act 2023 states that information in an electronic record, if it meets specified conditions, is considered a document and is admissible in proceedings without the need for the original. While the Evidence Act does not govern arbitration, it does provide insight into Nigeria's inclination towards accepting electronic evidence.</p>
<p>Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?</p>	<p>While the specific recognition of blockchain-recorded arbitration agreements or awards remains untested in Nigeria, such agreements would likely meet the written requirements stipulated under the AMA, LSAL, RSAL, and DSAL.</p>
<p>Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?</p>	<p>Considering Section 84B of the Evidence (Amendment) Act 2023, which recognises electronic records as admissible evidence under certain conditions, a blockchain-recorded arbitration agreement or award could be deemed an original. However, considering Nigerian courts' traditional procedures and practices, it might still be prudent to provide duly certified copies or translations of any blockchain-based documents for clarity and ease of reference during enforcement proceedings.</p>
<p>Other key points to note?</p>	<p>Nigeria recently enacted the "Arbitration and Mediation Act 2023" (AMA 2023), replacing the Arbitration and Conciliation Act. The AMA 2023 models the 2006 UNCITRAL Model Law and incorporates significant additions, such as the introduction of emergency arbitrator provisions and an award review tribunal. This allows parties to bypass national courts for annulment proceedings. Moreover, the law sets specific time limits for arbitration-related court matters.</p> <p>Similarly, Delta State introduced "The Delta State Arbitration Law" to replace the Arbitration Law 1914. This new legislation brings</p>

	substantial innovations and enhancements to Nigeria's arbitration legal structure.
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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 Mediation Act 2023 (**AMA**), effective from 26 May 2023, is Nigeria's central arbitration enactment, based on the 2006 amendments to the UNCITRAL Model Law. This Act supersedes the Arbitration and Conciliation Act of 1988.

Arbitration is deemed international under the AMA if at least one of the following applies:²

- The parties' businesses are located in separate countries.
- The designated arbitration seat or location of the primary performance obligation is outside the parties' home country.
- The agreement pertains to multiple countries.

Conversely, arbitration is viewed as interstate at least one of the following apply:³

- The parties operate in distinct Federating States within Nigeria.
- The arbitration's designated seat differs from the Federating State(s) of the parties' businesses.
- A principal part of the commercial commitment or the central subject of the dispute is in a different Federating State from where parties conduct their business.
- The arbitration agreement involves several Federating States in Nigeria.

State Legislation

Three Nigerian States have legislation aligned with the 2006 UNCITRAL Model Law. The Lagos State Arbitration Law 2009 (LSAL) governs arbitrations in Lagos State unless parties specify otherwise. Similarly, the Rivers State Arbitration Law 2019 (RSAL) and the Delta State Arbitration Law (DSAL) serve as default regulations in Rivers and Delta States unless contrarily agreed.

The other 33 States follow the 1914 Arbitration Law, rooted in the English Arbitration Act 1889.

Modifications to the Model Law

The ACM, LSAL, RSAL and DSAL include modifications and/or provisions that apply to arbitrations in addition to the Model Law provisions. The AMA 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 Capital Territory of Abuja. Absent the parties' contrary agreement, the LSAL, RSAL and DSAL apply to arbitration within Lagos State, Rivers and Delta State, respectively.

The table below shows modifications to the Model Law:

Arbitration and Mediation Act	Lagos State Arbitration Law	Rivers State Arbitration Law	Delta State Arbitration Law
Death of a party to an arbitration agreement (section 4).	Death of a party to an arbitration agreement (section 5).	Death of a party to an arbitration agreement (section 5).	Death of a party to an arbitration agreement. (Section 7).

² Section 91(5), AMA.

³ Section 91(6), AMA.

Arbitration and Mediation Act	Lagos State Arbitration Law	Rivers State Arbitration Law	Delta State Arbitration Law
Obtaining subpoenas (section 43).	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).	Court's power to stay proceedings initiated in breach of an arbitration clause (Section 10).
The default number of arbitrators in the absence of an agreement of parties shall be a single arbitrator. (Section 6(2)).	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).	If parties do not agree on the number of arbitrators, the arbitral tribunal shall be composed of one arbitrator. (Section 14)
Award Review Tribunal (Section 56)	Parties' joint and several liability to pay the arbitrator's reasonable fees and expenses (Section 54).	Parties' joint and several liability to pay the arbitrator's reasonable fees and expenses (Section 58).	Duties of arbitrators and parties (Sections 22 and 23).
Arbitrator immunity (Section 13).	Arbitrator immunity (Section 18).	Arbitrator immunity (Section 19).	Arbitrator immunity (Section 78)
Application of Limitation Laws to arbitral proceedings (Section 34).	Application of Limitation Laws to arbitral proceedings (Section 35).	Emergency arbitrator proceedings (Sections 20, 21 and 22).	Emergency arbitrator proceedings. (Section 37)
Consolidation, concurrent hearings, and joinder of parties (Sections 39 & 40).	Consolidation, concurrent hearings, and joinder of parties (Section 40).	Application of Limitation Laws to arbitral proceedings (Section 39).	Application of Limitation Laws to arbitral proceedings (section 13).
Emergency arbitrator proceedings (Sections 16, 17 and 18).	Obtaining subpoenas (Section 43).	Consolidation, concurrent hearings, and joinder of parties (section 44).	Consolidation, concurrent hearings (Section 12).
Tribunal's power to award interest (Section 46).	Tribunal's power to award interest (Section 46).	Obtaining subpoenas (Section 47).	Obtaining subpoenas (Section 30).
Tribunal's power to order security for costs (Section 57).	Tribunal's power to order security for costs (Section 57).	Tribunal's power to award interest (Section 50).	Tribunal's power to award interest (Section 54).
Tribunal's power to order security for costs (Section 25).		Tribunal's power to order security for costs (Section 57).	Tribunal's power to order security for

Arbitration and Mediation Act	Lagos State Arbitration Law	Rivers State Arbitration Law	Delta State Arbitration Law
			costs (Section 33(2)(iii)).
			Parties' joint and several liability to pay the arbitrator's reasonable fees and expenses (Section 57).
			Third-party funding (Section 63).

1.2 When was the arbitration law last revised?

The Arbitration and Mediation Act 2023, enacted on 26 May 2023, is the most recent federal revision,⁴ replacing the Arbitration and Conciliation Decree from 1988, itself a successor to the 1914 Arbitration Act.

On the state level, the Lagos State Arbitration Law was enacted on 18 May 2009, the Rivers State Arbitration Law commenced on 31 May 2019, and the Delta State Arbitration Law came into force on 22 December 2022.

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.⁵ 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*,⁶ 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. As articulated in the AMA (section 14(2)), LSAL (section 19(2)), RSAL (section 23(2)), and DSAL (section 24(1)(a)), any potential illegality or invalidity in the main contract doesn't inherently invalidate the arbitration clause.

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

Based on Section 2 of the AMA, the formal requirements for an enforceable arbitration agreement are as follows:

⁴ 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.

⁵ *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).

⁶ (2006) 2 NWLR 506.

1. Form and Existence:

- The arbitration agreement can either be a clause within a contract or a standalone agreement.
- The arbitration agreement must be in writing. "In writing" encompasses any recorded content, irrespective of whether the agreement or contract was made orally, by conduct, or through other means.
- An arbitration agreement is considered written if:
 - a. It is communicated electronically (as defined in section 91), and the content is accessible for future reference.
 - b. It is contained within an exchange of points of claim and defence where one party alleges the agreement's existence, and the other party doesn't deny it.
- A reference in a contract or a standalone arbitration agreement to a document with an arbitration clause qualifies as an arbitration agreement in writing if the reference integrates it into the contract or the arbitration agreement.

2. **Clarity of Terms:** The arbitration agreement's terms must be precise and unequivocal.⁷

3. **Subject of Dispute:** The agreement should focus on a commercial dispute that can be resolved by arbitration under Nigerian law, ensuring it's 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 91 of the AMA defines a party as "*a party to the arbitration agreement or to mediation 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 valuable and persuasive guidance, stating that the term includes a person seeking to enforce or a person seeking to resist the enforcement of an alleged contractual right.⁸

To be bound by a contractual agreement (including an arbitration clause), the Nigerian courts will require compelling 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.⁹

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.¹⁰

⁷ 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.

⁸ 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).

⁹ *Statoil Nigeria Limited v. Federal Inland Revenue Service* (2014) LPELR-23144(CA).

¹⁰ *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.

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.¹¹ 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.¹²

In 2017, the Chief Justice of Nigeria requested all Heads of Courts to introduce Practice Directions to hold parties to their arbitration agreements.¹³ 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.¹⁴ 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*,¹⁵ 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*,¹⁶ 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)

Based on Section 1(7) of the AMA, courts in Nigeria can intervene in arbitrations seated outside the jurisdiction for the following reasons:

¹¹ *Eso 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.

¹² *M.V. Lupex v. N.O.C. & S. Ltd* (2003) 15 NWLR (Pt. 844) 469; *Eso 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.

¹³ The request was contained in a letter dated 26 May 2017 addressed to all Heads of Court.

¹⁴ Unreported decision of the Federal High Court in Suit No. FHC/ABJ/CS/390/2018.

¹⁵ (2003) 12 NWLR (Pt. 844) 469.

¹⁶ (2019) 13 NWLR (Pt. 1960) 439.

1. To stay court proceedings (section 5).
2. To grant interim measures of protection (section 19).
3. For the recognition and enforcement of interim measures (section 28).
4. To refuse the recognition and enforcement of interim measures (section 29).
5. To secure the attendance of witnesses (section 43).
6. For the recognition and enforcement of awards (section 57).
7. To refuse recognition and enforcement of awards (section 58).

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 found that it was oppressive to force the applicant (C.I.N.R. Ltd) to face parallel proceedings in Nigeria and London was oppressive.¹⁷

4. The conduct of proceedings

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

Article 5 of the Arbitration Rules in the first schedule to the AMA permits each party to be represented or assisted by persons of their choosing. Furthermore, neither the LSAL, RSAL, nor the DSAL contain any stipulations restricting self-representation or outside counsel retention. Therefore, parties are generally free to choose their representation.

However, practitioners and parties involved in the Nigerian oil and gas industry must note a specific legislative provision. Section 51 of the Nigerian Oil and Gas Industry Content Development Act mandates all operators, contractors, and other entities engaged in any business or transaction within this industry that require legal services to exclusively retain the services of a Nigerian legal practitioner or a firm of Nigerian legal practitioners with an office located in Nigeria.

This provision from the Nigerian Oil and Gas Industry Content Development Act narrows the general freedom granted under the AMA and the State Laws for Nigerian oil and gas entities. Consequently, while the AMA and State Laws provide a broad framework for representation in arbitration, the specific industry regulation enshrined in Section 51 requires legal representation in the Nigerian oil and gas industry to remain localised.

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*,¹⁸ 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."

¹⁷ 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.

¹⁸ Unreported judgment of the High Court of Lagos State in Suit No. LD/1910^{CM}/2017 (25 February 2020).

This decision does not have binding effect in Lagos or other Nigerian States.¹⁹ 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.²⁰

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 any party may request the Court to take necessary action or perform the required function unless the appointment procedure agreed upon by the parties provides other means for securing the appointment²¹

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?

Under Section 19 of the AMA, the courts have the power to issue interim measures of protection concerning arbitrations, irrespective of whether their seat is within Nigeria or another country. They must decide on these interim measures within 15 days of an application, per the rules set out in the Third Schedule to the AMA.

Both the LSAL (21(1)) and RSAL (Section 25(1)) grant courts the authority to issue interim measures for arbitrations, mirroring the powers they hold for court proceedings.

Section 48 of the DSAL offers a comprehensive framework regarding the court's authority over interim measures:

- Courts can issue interim measures concerning arbitral proceedings as they would for court proceedings.
- Parties can approach courts for interim measures before or during arbitral proceedings without violating the arbitration agreement.
- Courts are mandated to act in a way that supports, rather than disrupts, the arbitral proceedings.
- For urgent matters, courts can entertain an *ex parte* application.
- For non-urgent scenarios, the court will act only upon an application made on notice to all concerned parties.
- The court's intervention is only invoked when the arbitral tribunal or any chosen institution by the parties is either unable or lacks the requisite authority to act effectively.
- The arbitral tribunal or any other designated authority can override any court order regarding interim measures.

¹⁹ Decisions by individual High Court judges are not binding on other High Court judges but are of persuasive authority.

²⁰ *NNPC v. Klifco Nigeria Limited* (2011) 10 NWLR (Pt. 1255) 209.

²¹ AMA, section 7(4). RSAL, section 8(6)(c), DSAL section 15(2,3 & 5).

Given Nigeria's legal practices, especially in urgent cases, interim measures can be sought *ex parte*. Such *ex parte* orders are typically temporary, effective until the court determines an application on notice. It is also customary to concurrently file both *ex parte* and on-notice applications.

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

4.6 Does it provide for the confidentiality of arbitration proceedings?

The AMA underscores the importance of confidentiality in mediation through Section 76. However, the AMA does not provide explicit confidentiality provisions regarding arbitral proceedings. Notably, while the Third Schedule to the AMA addresses arbitration-related applications in court, it allows the court to determine whether an arbitration claim should be conducted publicly or privately.

In routine arbitration practice in Nigeria, even without explicit legal provisions, arbitrators, parties, and arbitral institutions customarily observe a duty of confidentiality. However, a change occurs when a party approaches the court to enforce or challenge an award or settlement. Once this step is taken, the details related to the arbitration may become accessible, depending on the court's procedures and orders.

In contrast, the DSAL explicitly defines rules on confidentiality in Section 79. It also grants the arbitral tribunal the authority to sanction any party disregarding these rules.²²

4.7 Does it regulate the length of arbitration proceedings?

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

4.8 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?

The AMA, LSAL, RSAL, and DSAL uniformly provide that unless parties decide otherwise, the tribunal can choose any suitable location for its meetings. Specifically, this provision can be found in the AMA under section 32(3), the LSAL in section 33(2), the RSAL in section 37(2), and the DSAL in section 32(1).

Regarding remote hearings, the Lagos Court of Arbitration Rules, as applied by section 31 of the LSAL in Article 30(4), grants the tribunal the discretion to examine witnesses through various communication tools, including video conferencing, eliminating the need for in-person attendance. Similarly, sections 11(2) of the RSAL and 18(3) of the AMA specify that an Emergency Arbitrator can hold meetings over video or telephone conferences. The DSAL further supports this flexibility in section 32(2), permitting the tribunal to take oral evidence or submissions through electronic means, be it telephone or video conference.

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

Under section 20(2) AMA, 21(3) LSAL, 25(3) RSAL and 38(2) DSAL, the tribunal may, unless the parties otherwise agree, issue an interim measure to:

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

²² Section 33(2)(xi), DSAL.

The party requesting an interim measure must satisfy the tribunal that they have fulfilled the following conditions (section 21(1), AMA; 22, LSAL; section 26, RSAL; section 39(1)(a-b), DSAL):

- 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.

4.10 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 31(3), AMA; section 31(3) LSAL; section 35(3) RSAL; section 29(1) DSAL). No restrictions are imposed on the testimony of a party employee.

4.11 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 38(1), AMA; section 39(1), LSAL; section 43(1), RSAL; section 31 (1&2) DSAL). If there is no agreement and no request for a hearing, it falls to the tribunal to decide whether to hold a hearing.

4.12 Does it prescribe principles governing the awarding of interest?

Tribunals operating under the AMA (section 46), LSAL (section 46) and RSAL (section 50) and DSAL (section 54) 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.

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

In principle, the losing party bears the costs of the arbitration.²³ Nevertheless, the second sentence of Article 50(1) of the Arbitration Rules in the First Schedule to the AMA 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."

4.14 Liability

4.15 Do arbitrators benefit from immunity from civil liability?

The position under the AMA (section 13(1)), LSAL (section 18), RSAL (section 19) and DSAL (section 78(1)), arbitrators are immune from civil liability for any *bona fide* act or omission in the performance of their functions.

4.16 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

²³ Article 50(1) of the Arbitration Rules in the First Schedule to the AMA.

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 47(3)(a), AMA; section 51(3)(a), DSAL; section 47(3)(a), LSAL).²⁴

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

While Nigeria's constitutional right to access the judicial system is undeniable, the AMA offers an innovative alternative. Section 56(1) of the Act permits parties, through their arbitration agreement, to seek review of an arbitral award by an Award Review Tribunal based on the criteria set out in Section 55(3). This provision allows parties to choose between the traditional court system and the Award Review Tribunal when contesting an award. However, this provision does not prevent a party from approaching the courts if they decide that is the more suitable route.

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 AMA, LSAL, RSAL or DSAL.

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.²⁵

Neither the AMA, the LSAL, the RSAL nor the DSAL 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.²⁶ 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.²⁷

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.

²⁴ The RSAL does not contain a provision that requires an award to state the reasons upon which it is based.

²⁵ In addition, if the award is not made in English, the party must supply a duly certified translation of the award into English. (1997) 9 NWLR (Part 520) 224.

²⁷ *Sifax Nigeria Limited v. Migfo Nigeria Limited* (2018) 9 NWLR (Part 1623) 138.

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 AMA, LSAL, RSAL and DSAL, the annulment of a foreign award at its seat constitutes a ground for refusal of recognition or enforcement of that award in Nigeria.²⁸

5.8 Are foreign awards readily enforceable in practice?

Nigerian courts recognise a pro-enforcement bias. For instance, in *Guinness Nig. Plc v. Nibol Properties Ltd.*,²⁹ the Court held:

"[...] 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.*,³⁰ 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,³¹ 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 AMA and DSAL endorse third-party funding and set aside the historical concerns of maintenance and champerty.³² The DSAL provides more comprehensive guidelines for implementing third-party funding than the AMA.

In addition, the legal community's perspective on such funding mechanisms has evolved. The Rules of Professional Conduct for Legal Practitioners (RPC) allow contingent fee agreements.³³ Although the RPC restricts lawyers from covering their client's litigation expenses, they can cover costs temporarily if they are later reimbursed.³⁴

7. Arbitration and blockchain

7.1 Is the validity of blockchain-based evidence recognised?

Nigerian courts have yet to address the admissibility of blockchain-based evidence explicitly. Nonetheless, the Evidence Act 2011 and its subsequent amendment in 2023 offer some guidance. Section 84 of the Evidence Act 2011 allows for the admissibility of computer-generated evidence, and the more recent Section

²⁸ Section 58(2)(a)(viii), AMA. Section 57(2)(h), LSAL. Section 61(2)(h), LSAL. Section 61(3)(a), DSAL.

²⁹ (2015) 5 CLRN 65 at 71¹⁻⁵.

³⁰ (2009) 2 NWLR (Pt. 1126) 483 at 521^{D-E}.

³¹ Where there are several defendants, on the defendant last served.

³² Sections 61 and 62 of the AMA. Sections 67 and 68 of the DSAL.

³³ RPC, Rule 50.

³⁴ RPC, Rule 51.

84B of the Evidence (Amendment) Act 2023 acknowledges that information within an electronic record can be considered a document and thus be admissible in proceedings, provided certain conditions are met.

While the Evidence Act does not directly apply to arbitration proceedings, it highlights Nigeria's evolving stance towards accepting electronic evidence. In the arbitration context, the AMA, LSAL, RSAL, and DSAL provide tribunals with discretion in determining the admissibility, relevance, and weight of any evidence. This implies that, in arbitral settings, blockchain-based evidence might be considered based on:

- 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.

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

Arbitration agreements documented on a blockchain are consistent with the AMA, LSAL, RSAL, and DSAL definitions. These laws recognise 'writing' as 'data that records the Arbitration Agreement or remains accessible for future reference',³⁵ indicating that a blockchain-based arbitration agreement meets the criteria.

However, for an award, the AMA, LSAL, RSAL, and DSAL definitions do not currently categorise data as 'writing'. Thus, while the arbitration agreement may be recognised, the status of a blockchain-recorded award remains less clear.

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

Section 84B of the Evidence (Amendment) Act 2023 recognises electronic records, including blockchain records, as admissible evidence when specific conditions are met. This implies that courts might regard a blockchain-recorded arbitration agreement and/or award as an original. Nevertheless, given the Nigerian courts' conventional practices, parties should present duly certified copies or translations of blockchain-based documents during enforcement actions, ensuring the process's clarity and smoothness.

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?

Nigeria's Evidence Act 2011 provides a legal basis for accepting electronic and digital signatures. Section 93(2) states, "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." This provision directly supports the validity of electronically signed arbitration awards.

The Act further clarifies the method to prove such signatures. Section 93(3) states: "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."

³⁵ Section 2(4), AMA. Section 3, LSAL. Section 3, RSAL. Section 9(3) DSAL.

Considering these provisions, along with the stipulations of Section 84C of the Evidence (Amendment) Act 2023,³⁶ it becomes evident that the primary concern for courts is the authenticity of electronic signatures. An award that utilises encrypted electronic keys and is authenticated by a third-party certificate will likely be viewed with higher confidence as an original, given its robust authentication measures.

On the other hand, for awards that merely embed an image of the arbitrator's signature, the court may demand supplementary validation. This could involve an affidavit from the arbitrator or other evidence to affirm the signature's authenticity.

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

Following the recent introduction of the Arbitration and Mediation Act 2023, the focus in Nigeria will likely shift towards effective implementation to elevate its arbitration standards. The following measures are expected:

1. **Judicial Training:** Prioritising continuous training for judges ensures they proficiently handle arbitration matters, drawing inspiration from the Chartered Institute of Arbitrators (CI Arb) London Centenary Principles.
2. **Building Institutional Strength:** Consideration towards enhancing the capabilities of institutions overseeing arbitration in Nigeria to offer consistency and inspire confidence in the country's arbitration process.
3. **Elevating Nigeria's Arbitration Profile:** Efforts will likely be geared towards showcasing Nigeria as an appealing venue for international arbitration.
4. **Engaging the Arbitration Community:** Regular interactions with arbitration professionals and institutions to offer insights and help refine arbitration practice under the new law.
5. **Raising Public Awareness:** Educative initiatives to highlight the benefits of the AMA 2023, ensuring the public and businesses understand the implications and opportunities.

9. Compatibility of the Delos Rules with local arbitration law

Section 15(1) of the AMA 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)), RSAL (section 35(1)) and the DSAL (section 4(a)) 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.
- Paul Obo Idornigie. 'The 1988 Nigerian Arbitration and Conciliation Act: Need for Review?'. *International Arbitration Law Review* 6, no. 2 (2003): 50–58.
- Emilia Onyema. 'The Doctrine of Separability under Nigerian Law'. July-September, *Apogee Journal of Business, Property & Constitutional Law* (2009): 65–79.
- C.A. Candide-Johnson & O. Shasore. *Commercial Arbitration Law and International Practice in Nigeria*. LexisNexis, 2012.

³⁶ Section 84C of the Evidence (Amendment) Act 2023 details the authentication of electronic records. It permits individuals to authenticate an electronic record by affixing a digital signature. An electronic record can also be authenticated by a digital signature or electronic authentication method deemed reliable or as specified by the Act. For authentication to be considered reliable, it must be linked exclusively to the signatory; any changes to the digital signature or the authenticated information post-signing must be detectable, and it should meet any other prescribed conditions.

- Adedoyin Rhodes-Vivour. *Commercial Arbitration Law and Practice in Nigeria through the Cases*. LexisNexis, 2016.
- Tinuade Oyekunle and Bayo Ojo. *Handbook of Arbitration and ADR Practice in Nigeria*. LexisNexis, 2018.

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).