Chapter One

Introduction

1.1 **Background to the Study**

The former President of the Federal Republic of Nigeria, Muhammadu Buhari GCFR, assented to the Arbitration and Mediation Bill 2022 on 26 May 2023 which then became the Arbitration and Mediation Act 2023 (the "AMA"). The AMA repealed the Arbitration and Conciliation Act 2004 (the "ACA") and became the unified legal framework for the fair and efficient settlement of commercial disputes by arbitration and mediation.[1]

The Arbitration and Mediation Act 2023 is made up of 91 sections (as opposed to the 58 sections in the 2004 Act) and is divided into three Parts and three Schedules. Part 1 deals with Arbitration, Part 2 provides guidelines for the conduct of Mediation in Nigeria, and Part 3 comprises of Miscellaneous Provisions. It has been said that The Act has been said to revolutionise Nigeria's Arbitration and Mediation landscape, as it provides a unified legal framework for the fair and efficient settlement of commercial disputes through Arbitration and Mediation.[2]

The key innovations introduced under the AMA are: the validity of electronic communication of Arbitration agreements, power of an Arbitral Tribunal to grant Interim measures pending the determination of a dispute, the introduction of the Award Review Tribunal, reduction in the number of default Arbitrators, expansion of limitation of time in Arbitral Proceedings, legitimisation of Third- party funding of Arbitral Proceedings, establishment of Arbitral Proceedings Rules, abolition of Conciliation and promotion of Mediation as a means of Alternative Dispute Resolution, The appointment of Emergency Arbitrators, Consolidation of

[1] Templars Thought Lab, "*Nigerian Arbitration and Mediation Act, 2023- Key Innovations*", < https://www .google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.templars-law.com/app/ uploads/ 2023/07/Nigerian-Arbitration-and-Mediation-Act-202338.pdf&ved=2ahUKEwjCko_S-cKJAxWyWUEAHf7l G94QFnoECC0QAQ&usg=AOvVaw1i2zY91sRm20FUdxdgz3OO > Accessed 4th November 2024.

[2] Lexworth Legal Partners, "*Key Innovations in Nigeria's Arbitration and Mediation Act, 2023*", < https://www .lexworthlegal.com/key-innovations-in-nigerias-arbitration-and-mediation-act-2023/ > Accessed 4th November 2024.

Arbitration Claims, Joinder of Parties, Immunity of Arbitrators, Arbitral Tribunals and Arbitral Institutions.

1.2 **Statement of the Problem**

To critically analyse how the Arbitration and Mediation Act of 2023 has addressed the shortcomings of the repealed Arbitration and Conciliation Act of 2004 and to identify further challenges by making a comparison with the Federal Arbitration Act 1988 as amended of the United States. The challenges identified are: inability to enforce and recognise an award, partiality and lack of independence in the appointment of Arbitrators, no whistle blowing policies, misconceptions against Arbitration as an ADR Mechanism, abuse of the status of limitation as a delay tactics and inadequate training of Legal Practitioners.

1.3 **Aim and Objectives of the Study**

The aim of the research is to critically examine the latest development provided under the AMA 2023 and its role in resolving corporate disputes between local and foreign businesses in Nigeria.

Specific Objectives

The specific objectives of this research are as follows:

i. Examine the legal framework on Arbitration in Nigeria and the United States of America.
ii. Offer a comparison between the Arbitration and Conciliation Act 2004 and the Arbitration and Mediation Act 2023.
iii. Offer a comparison between the Arbitration and Mediation Act 2023 of Nigeria and the Federal Arbitration Act 1988 as amended of the United States of America.

1.4 **Research Questions**

The Research questions are as follows:

1) What is the legal and institutional framework on Arbitration in Nigeria and the United States of America?

2) How has the Arbitration and Mediation Act 2023 positively affected Arbitral Proceedings?

3) Are there further areas of improvement in the Arbitration and Mediation Act 2023?

1.5 **Methodology**

This research would adopt the Doctrinal and Comparative method of Research for the critical analysis of statutes and rules in arbitration. The materials employed in the study comprises of primary sources which are: the Constitution of the Federal Republic of Nigeria 1999 as amended, the Arbitration and Mediation Act 2023 as amended, the United States Federal Arbitration Act 1988 as amended, the Arbitration Rules of various Arbitration Institution, Judicial precedent and Awards while secondary sources comprises of relevant information from leading authorities, textbooks, journal articles and opinion of specialists and practitioners all of which are expected to add value to the quality of the work.

1.6 **Scope of Study**

The Scope of Study of this research is to analyse the Arbitration and Mediation Act 2023 and examine decided court judgements and awards in Nigeria and make a comparison with the United States Federal Arbitration Act 1988 as amended.

1.7 **Significance of the study**

This study will provide a critical analysis of the legal and conceptual framework of Arbitration and Mediation in Nigeria. This study is significant because the Arbitration and Mediation Act 2023 would be critically reviewed in addition with Arbitral Awards. Furthermore, this research would help address challenges and misconceptions about Arbitration as a dispute resolution mechanism in corporate dispute.

Additionally, this research would aid law makers by providing recommendations which would offer alternatives to dispute mechanisms in statutes and in procedures. Finally, this study is relevant to students, academics and professionals in making comparative analysis between Nigeria and the United States of America.

1.8 **Operational Definition of Terms**

Various definitions of Arbitration would be examined from various sources such as dictionaries, textbooks, journals and online legal materials. The Black's Law dictionary defined Arbitration as a noun and a method of dispute resolution involving one or more neutral third parties who are usually agreed to by the disputing parties and whose decision is binding. The dictionary further describes the word when used as a verb t mean to arbitrate and when used as an adjective to mean arbitral.[3]

Curzon's Dictionary of Law defined Arbitration as the settling of a dispute by an Arbitrator. Where arbitrators cannot agree they may appoint an 'Umpire'. The decision of an arbitrator is known as an 'award'. Procedure on arbitration is based on the ordinary rules of English law. An award may be enforced, with leave of the High Court, as an order of the Court. Where so directed by the High Court, an arbitrator or umpire must state, in the form of a special case for opinion of the High Court, an award or question of law arising.[4]

Osborn Concise Law Dictionary stated that Arbitration is the determination of disputes by the decision of one or more persons called Arbitrators. Many commercial contracts contain an Arbitration Agreement by which the parties agree, in the event of a dispute between them, that the dispute will be referred to arbitration. Arbitration is a legally effective adjudication of a dispute otherwise than by the ordinary procedure of the courts. The parties choose the arbitrator, and he is usually a specialist in the relevant field. The Arbitrator is required to act in a judicial manner. The decision of the Arbitrator is called an Award and is usually binding

[3] Bryan A. Garner, "Black's Law Dictionary", (1999, 7th Edition) 100.
[4] Curzon L. B, "*Dictionary of Law*", (6th Edition 2003) 25.

on the parties. If legal proceedings are instructed in contravention of submission to arbitration the defendant may apply to court to stay the proceedings.[5]

The learned Professor of Law of the University of Nigeria, Enugu Campus, Professor Gaius Ezejiofor in his book titled "The Law of Arbitration in Nigeria", defined Arbitration as the reference of a dispute or difference between not less than two parties for determination, after hearing both sides in a judicial manner, by a person or person's other than a court of competent jurisdiction.[6] This definition was referenced from Halsbury's Law of England 3rd Edition Volume 2. While referring to Section 4 of the Ports (Amendment) Act 1969 and the case of *Nigerian Ports Authority v Panalpina World Transport Nigeria Ltd & Ors*.[7] The Learned Professor further explained that an exercise is not Arbitration, strictly so called, if it does not answer to this definition, notwithstanding that it is described as Arbitration. Thus an Arbitration Board appointed not to settle a dispute, but to determine the value of certain assets taken over by the government from certain companies, is not arbitration within this definition.[8]

Hon. Justice Dele Peters, in his book titled "Alternative Dispute Resolution (ADR) in Nigeria, Principles and Practice", explained that the word "Arbitration" is often wrongly used. More often than not, it is familiarly used with regards to labour and employment disputes. It is used with regards to labour and employment disputes. It is used at times by government officials, officials of labour union, politicians and the press to describe the reference of a labour dispute by both employers and labour unions to a third party neutral (not being a judicial officer) for intervention. It is trite to say that such a procedure is not, truly speaking, an arbitration in the absence of an agreement between the parties.[9]

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[5] Sheila Bone, "Osborn's Concise Law Dictionary", (9th Edition 2001) 35- 36.
[6] Gaius Ezejiofor, "The Law of Arbitration in Nigeria", (1997 Longman Nigeria Plc) 3.
[7] *Nigerian Ports Authority v Panalpina World Transport Nigeria Ltd & Ors* (1974) 4 U.I.LR 89.
[8] Gaius 'The Law of Arbitration' (n 6) 3.
[9] Dele Peters, "Alternative Dispute Resolution (ADR) in Nigeria, Principles and Practice", (2nd Edition, Kraft Book Limited) 37.

The Honourable Judge in explaining his opinion on Arbitration referred to the interpretation section of the Arbitration and Conciliation Act Cap 19 Law of Federation of Nigeria 1990 and held that the Act defines 'arbitration' to mean "a commercial arbitration whether or not administered by a permanent arbitral institution." This definition to him is not helpful. It only begs the question and leaves us no wiser as to what Arbitration means. Besides, it is restrictive in that it applies to settlement of commercial disputes only.[10] He was also of the opinion that the Interpretation Act Cap 192 Laws of Federation of Nigeria 1990 did not provide any useful assistance in this regard.[11]

After considering various definitions from various authors, the Honourable Judge then defined Arbitration in his own opinion as the reference of a dispute or difference between two or more parties for determination, after hearing both sides in a judicial manner, by a person or persons other than a Court of competent jurisdiction. It is a mechanism for settling dispute between two or more parties by seeking and accepting a decision by a third party or their choice.[12] An essential component of Arbitration is an agreement to arbitrate, a submission to Arbitration. Generally, the import is that the submission is voluntary, but there are cases where arbitration is imposed by statute for example the Industrial Arbitration under the Trade Disputes Act Cap 432 Laws of Federation of Nigeria 1990.[13]

Hirst L. J in the case of *O' Callaghan v Coral Racing Ltd* gave his legal opinion on the meaning of arbitration as follows:

> To my mind the hallmark of the arbitration process is that it is a procedure to determine the legal rights and obligations of the parties judicially, with binding effect, which is enforceable in the law, this reflecting in private proceedings the role of a civil court of law.[14]

[10] Dele 'Alternative Dispute Resolution (ADR) in Nigeria' (n 9) 37.
[11] ibid, 37.
[12] ibid, 38.
[13] ibid, 38.
[14] *O'Callaghan v Coral Racing Ltd* (1998) WL 1044030, 1.

Abdulsalam in referring to Lord Justice Hirst in the O'Callaghan's case explained his understanding of the concept of Arbitration to mean that the whole essence of arbitration is private judging in which the disputing parties or institution appoint the Arbitrator to perform. The reference to "judicial" determination apparently means that the Arbitral Tribunal will decide the dispute in accordance with principles of fairness, tantamount to natural justice generally considered applicable to judicial determination.[15]

Halsbury's Laws of England defined Arbitration as the reference of a dispute or difference between not less than two parties for determination, after hearing both sides in a judicial manner, by a person or persons other than in Court of competent jurisdiction.[16]

The New Oxford Thesaurus of English classified the word Arbitration as a noun and used an example in a sentence. "The Council called for arbitration to settle the dispute" Adjudication, Mediation, mediatorship, negotiation, conciliation, intervention, interceding, interposition, peacemaking, judgement, rare arbitrament. While the word Arbitrator as a noun was used in another sentence such as: "The facts of the case were put to an independent arbitrator" Adjudicator, arbiter, judge, refree, umpire: mediator, conciliator, intervener, intercessor, go-between, negotiator, peacemaker.[17]

The Oxford Dictionary of Law defined Arbitration as the determination of a dispute by one or more independent third parties (the arbitrator) rather than by a court. Arbitrators are appointed by the parties in accordance with the terms of the "arbitration agreement or in default by a court". An arbitrator is bound to apply the law accurately but may in general adopt whatever procedure he chooses and is not bound by the exclusionary rules of the law of evidence, he must, however, conform to the rules of natural justice. In English law, Arbitrators are subject to extensive control by the courts, with respect to both the manner in

[15] Abdulsalam O. Ajetunmobi, "Alternative Dispute Resolution and Arbitration in Nigeria: Law, Theory and Practice", 2017, (Princeton & Associates Publishing Co. Ltd) 105- 106.
[16] Halsbury's Law of England (3rd Edition) Vol.2, 2.
[17] Patrick Hanks, "The New Oxford Thesaurus of English", (2000 Edition) Oxford University Press, 45.

which the arbitration is conducted and the correctness of the law that the arbitrators have applied, although this control was loosened to some extent by the Arbitration Act 1996. The judgement of an arbitrator is called his award which can be subject of an appeal to the High Court on question of law under the provisions of the Arbitration Act 1996.[18]

The New Webster's Dictionary of English Language defined Arbitration as the settling of a dispute by an Arbitrator or Arbitrators. The same dictionary defined an Arbitrator as an impartial judge or one of a number, whose decision both parties to a dispute agree to accept.[19]

On the concept of consolidating Arbitration proceedings Chidera explained that, Consolidation of Arbitration proceedings refers to the process of combining two or more separate arbitration cases into a single proceeding. This is particularly beneficial when disputes involve common questions of law or fact, the same parties, or related transactions. The primary aim is to avoid conflicting decisions, reduce costs, and enhance the efficiency of the arbitration process.[20] In addition, the Court of Appeal on the purpose of consolidation of actions or suits held in the case of *Nwaeze & Anor v. Eze & Ors*[21], Per Atinuke Omobonike Ige, JCA that: It is pertinent to add here that consolidation of actions is purposely made to save costs and time. By consolidation too, multiplicity of actions is also avoided.

Peter Stein, a Solicitor and Regius Professor of Civil Law in the University of Cambridge, in his book titled Legal Institutions: The Development of Dispute Settlement[22] explained his opinion on who an Arbitrator is and the kind of decision an Arbitrator makes as compared with a judge or a mediator. He stated that:

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[18] Elizabeth A. Martin, "Oxford Dictionary of Law", (5th Edition) Oxford University Press, 31.

[19] Jone E. Baltzell and 17 others, "The New Webster's Dictionary of the English Language", (International Edition), 47.

[20] Nwokeke Chidera Chukwuemeka, "Towards Efficiency: Consolidation and Concurrent hearing of Arbitration Proceedings in Nigeria", (2024 SSRN Online), < https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https:// papers.ssrn.com/sol3/Delivery.cfm/4911974.pdf%3Fabstractid%3D4911974 %26mirid %3D1&ved=2ahUKEwj5sf7ImY2PAxWDZ0EAHVMTL3AQFnoECBcQAQ&usg=AOvVaw3Mu73ebv5BJjr43cEQkV8_. > Accessed 1st November 2024.

[21] *Nwaeze & Anor v Eze & Ors* (1999) LPELR- 6606 (CA) P11, Paras E- F.

[22] Peter Stein, "Legal Institutions: The Development of Dispute Settlement", (1984 Edition) Butterworth Publishing, London, 5-6.

> The Arbitrator, on the other hand, is someone whom the parties have chosen to reach a decision for them. They submit the issue to him and leave it to him to decide. Unlike the decision of a Court, however, the decision of an Arbitrator binds the parties only so far as they have agreed to accept it. Thus the Arbitrator, to be effective, must be more concerned than a judge to find a solution that he believes will be acceptable to both sides. The judge knows that in the end the parties must accept his decision, whether they like it or not. The Arbitrator, like the mediator, aims to reconcile the parties so that they will abide by his decision. In order to achieve this reconciliation, the Arbitrator may well have to go into matters which are not relevant to the issue that is the immediate cause of the dispute, if those matters have proved to be irritants to the parties in the past. Unless they are removed, no settlement of the main issue, however ingenious, will be accepted, because the parties will be in no mood for any settlement.

Going further into the learned Professor's book, he gave a well summarised meaning of Arbitration and why parties seek Arbitration. He stated that:

> Those involved in disputes do not always wish to have them settled by the process of law, whether in an ordinary Court or a specialised Tribunal. They may be put off by the publicity attendant on a trial, which might lead to the revelation of facts that might embarrass them. They may want to avoid time- consuming procedural formalities and the need to explain to the judge many background features of the case which would be familiar to anyone involved in the relevant milieu. A further reason might be the all or nothing, win or lose aspect of legal proceeding and the fact that they can only be that the sheer expense of legal proceedings makes them seek some alternative. One alternative is Arbitration, the use of contract to exclude the Courts. In an Arbitration, the parties agree to refer their differences to a private individual, without official states, and so long as he keeps within the terms of the agreement, his award will be final. Most legal system recognise the institution of Arbitration but to preserve its utility they have to strictly limit their control of it. For a party who has agreed to Arbitration and does not receive an award which satisfies him may be tempted to try to revert to the law, with a view to upsetting the award or releasing himself from its terms. By recognising Arbitration, the law must restrain itself from interfering in such a situation. But it cannot ignore it altogether.[23]

[23] Stein, 'Legal Institutions', (n 22), 51.

Gary Born, a renowned legal practitioner in the field of Arbitration and Litigation in Europe, America, Asia and elsewhere, explained why International Arbitration warrants attention and study. According to his book titled "International Commercial Arbitration",[24] he stated that:

> International Arbitration warrants attention, if for nothing else, because of its historic, contemporary and future practice importance, particularly in business affairs. For centuries, Arbitration has been a preferred means for resolving transnational commercial disputes. As well as other important categories of international disputes, has become even more pronounced in the past several decades, as international trade and investment have burgeoned. As international commerce has expanded and become more complex, so too has its primary dispute resolution mechanism- international arbitration. The practical importance of international commercial arbitration is one reason that the subject warrants study by companies, lawyers, arbitrators, judges and legislators.
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> At a more fundamental level, international commercial arbitration merits study because it illustrates the complexities and uncertainties of contemporary international society- legal, commercial and cultural while providing a highly sophisticated and effective means of dealing with those complexities. Beyond its immediate practical importance, international arbitration is worthy of attention because it operates within a framework of international legal rules and institutions which with remarkable and enduring success a fair, neutral expert and efficient means of resolving difficult and contentious transnational problems. That framework enables private and public actors from diverse jurisdictions to cooperatively resolve deep- seated and complex international disputes in a neutral, durable and satisfactory manner. At their best, the analyses and mechanisms which have been developed in the context of international commercial arbitration offer models, insights and promise for other aspects of international affairs.

John Parris in his book titled, "Casebook of Arbitration",[25] cited the words of Arbitrium Redivivam of 1694 in explaining the nature of Arbitration. He stated that:

> It is said to be called an Arbitrement either because the Judges elected thereon may determine the controversie not according to the law, but according to their Opinion and Judgement as honest men. Or else because the Parties to the Controversie have submitted themselves to the Judgement of the Arbitrators, not by compulsion or coertion of the Law but of their own accord. It is also called an Award, of the French word Agarder, which signifies to decide or judge and sometime in the Saxon or old English, it was

[24] Gary B Born, "*International Commercial Arbitration*", (2014 Second Edition), Walter Klawer Law & Business Publishing, Volume 1, 1.

[25] John Parris, "*Casebook of Arbitration Law*", (1976 Edition) George Godwin Limited Publishing, 1.

called a Love Day, because of the Quiet and Tranquility that should follow the ending of the controversie.

The online International Arbitration Dictionary defined Alternative dispute resolution as a method by which legal disputes are resolved by the parties privately, rather than through litigation in public courts, typically through mediation, conciliation or arbitration.[26] Other terms defined by the online dictionary such as Arbitrability which is an issue on whether parties are legally entitled to have their dispute decided by an arbitral tribunal as opposed to a national court.[27] Arbitral institutions are institutions that provide administrative services for arbitration disputes, such as the London Court of International Arbitration, the International Chamber of Commerce or the Permanent Court of Arbitration.[28] Arbitral Tribunals have the power to issue binding awards that may be enforced like a domestic court judgment.

An Award is any binding award issued by an Arbitrator establishing the final rights and obligations of the parties. A judgment may be entered for enforcement in a public court pursuant to the rules of the relevant jurisdiction for enforcement of arbitral awards.[29] A Party is any individual or entity who makes a claim or against whom a claim is made, including Claimants and Respondents.[30]

According to Konrad Partners, under many arbitration laws and rules, Tribunals have the power to issue interim measures on a temporary basis to safeguard the rights of a party until the dispute has been finally resolved. These orders are often used to preserve evidence or assets.[31]

[26] Aceris Law LLC, “International Arbitration Dictionary”, (1 April 2024) < https://www.international-arbitration-attorney.com/international-arbitration-dictionary/. > Accessed 15 November 2025.
[27] ibid.
[28] ibid.
[29] National Arbitration and Mediation, “ADR Glossary”, (2025), < https://www.namadr.com/resources/adr-glossary/. > Accessed 15 November 2025.
[30] ibid.
[31] Konrad Partners, “Knowledge base Arbitration Glossary”, (2025), < https://www.konrad-partners.com/knowledge-base/arbitration-glossary. > Accessed 14 November 2025.

1.9 **Structure of Work**

The structure of this study is divided into 5 parts, this consist of the Preliminary Part, the Introduction Part, the Literature and Theoretical Review with Theoretical Framework, the Legal analysis of objectives, the Second legal analysis of objectives and finally the Summary, Conclusion and Recommendations. The Preliminary Part consist of: Title page, Certification page, Dedication page, Acknowledgement page, Abstract, Table of Content, List of Tables, Symbols, Figures and Abbreviations.

Chapter 1 which is the Introduction stage consist of Background to the Study, Statement of the Problem, Aim of Research, Specific Objectives, Research Questions, Significance of the Study, Research Methodology, Limitation, Scope of Study, Operational Definition of Terms and Structure of Work.

Chapter 2 consist the historical background of Arbitration, Literature Review on Law Books and Law Journal Articles, Theoretical Review and Theoretical Framework.

Chapter 3 begins with Legal analysis of the Legal and Institutional Framework of Arbitration in Nigeria which critically analyses the Arbitration and Mediation Act 2023 and compares with the Arbitration and Conciliation Act 2004 by addressing the shortcomings and latest developments of both statutes. Court judgements and Awards would be critically examined as well as Arbitration Rules of 2023 and 2021 adopted by the Nigerian Institute of Chartered Arbitrators of Nigeria.

Chapter 4 consist of a Second Legal analysis of the Legal and Institutional Framework of Arbitration in the United States and the Federal Arbitration Act which would be compared with the Arbitration and Mediation Act 2023.

Chapter 5 would be finalised by Summary of findings, Conclusion on the Statement of Problem and Recommendations. Furthermore, there would be an analysis of how this research has contributed to knowledge and suggested area for further research.

Chapter Two

2.1 Literature Review

2.1.1 General History of Arbitration

Daniel Bernard and Megan Cifresse in their article titled 'A Brief History of Arbitration 'traced the history of the discipline to the biblical story King Solomon, American State men such as George Washington and Rodger Goodell, the Greek historical dispute of Pallas Athene and Venus, Philip II of Macedonia, disputes between Greek and Phoenician traders and the middle ages of England. An example of George Washington's Will of December 14, 1799 was provided by the writers as follows:

> But having endeavoured to be plain, and explicit in all Devises even at the expence of prolixity, perhaps of tautology, I hope, and trust, that no disputes will arise concerning them; but if, contrary to expectation, the case should be otherwise from the want of legal expression, or the usual technical terms, or because too much or too little has been said on any of the Devises to be consonant with law, My Will and direction expressly is, that all disputes (if unhappily any should arise) shall be decided by three impartial and intelligent men, known for their probity and good understanding; two to be chosen by the disputants each having the choice of one and the third by those two. Which three men thus chosen, shall, unfettered by Law, or legal constructions, declare their sense of the Testator's intention; and such decision is, to all intents and purposes to be as binding on the Parties as if it had been given in the Supreme Court of the United States.[32]

The American labour industry embraced the use of arbitration as a dispute-resolution framework. Even before the Industrial Revolution, American labourers were familiar with arbitration to resolve disputes related to wages and working conditions. For example, the Chamber of Commerce of New York used arbitration in 1786 to resolve a dispute related to the wages of seamen and the Bureau of Labour Statistics reported arbitration of disputes in the late 1800s involving iron puddlers in Pittsburgh; shoe workers in Massachusetts; and bricklayers in New York, Boston, and Chicago.[33]

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[32] Daniel Bernard Centner and Megan Cifrese Ford, "*A Brief History of Arbitration*", (September 19, 2019), American Bar Association, < https://www.americanbar.org/groups/torttrialinsurancepractice/resources/brief/archive /brief-history-arbitration/. > Accessed 05 January 2025.

[33] ibid.

The Industrial Revolution transformed the labour market and increased the use of collective bargaining agreements as a way for workers to ensure fair pay and proper working conditions. In 1935, the United States Congress enacted the National Labour Relations Act (NLRA) to protect the rights of employers and employees and to encourage collective bargaining. This, in turn, led to the continued development and expansion of arbitration. For example, in negotiating the terms of a collective bargaining agreement, parties often turn to "interest arbitration" when an impasse arises and risks preventing a final agreement on the specific terms of the contract.[34]

In 1966, the United Nations General Assembly established the United Nations Commission on International Trade Law (UNCITRAL). The UNCITRAL was composed of 36 member states elected by the General Assembly and the following were adopted: the UNCITRAL Arbitration Rules of 1976, the UNCITRAL Model Law on International Commercial Arbitration adopted in 1985 and the UNCITRAL Conciliation Rules of 1980. The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York 1958) which was established before UNCITRAL became an integral part of the UN Commission to promote the New York Convention in which 97 states were part of it.[35]

2.1.2 **History of Arbitration in Nigeria**

With the amalgamation, the first formal statute on Arbitration was promulgated for the entire country on the 31st of December 1914, that is, the Arbitration Ordinance 1914 based on the English Arbitration Act 1889. It was subsequently re-enacted as the Arbitration Ordinance (Act), Cap 13, Laws of the Federation of Nigeria and Lagos 1958. The contents of certain Legal Notices on Arbitration issued in 1947, 1954 and 1955 were included. By paragraph (2) of section 1, the 1958 Act was made applicable "to the Northern, Western and Eastern

[34] Daniel Bernard Centner and Megan Cifrese Ford, '*A Brief History of Arbitration*', (n 26)
[35] "*The United Nations Commission on International Trade Law (UNCITRAL): Origin, Mandate and Composition of* UNCITRAL", < https://www.asil.org/sites/default/files/hharchive/pdfs/UNCITRAL_Origin_Mandate.pdf > Accessed 22nd June 2025.

Regions and to Lagos and the Southern Cameroons as if they were each a Region". Each of the Regions formally adopted it in its own Laws. For instance, it was enacted by the Western Region as the Arbitration Law Cap 8 Laws of the Western Region of Nigeria 1959.[36]

The 1958 Act which consisted of 19 sections provided only for domestic arbitration. It is to be noted that by some coincidence, earlier that year, that is, on 10th June 1958, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, otherwise known as the New York Convention came into force. Nigeria being a colony of the British at the material time and not having enacted any law relating to international commercial arbitration, could not subscribe or accede to the Convention. It is not known whether the British, on behalf of Nigeria, subscribed to it pursuant to Article X of the Convention which provides that "any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible".[37]

Nigeria however adopted the Convention by section 54(1) of the Arbitration and Conciliation Decree 1988 which came into force on 14th March 1988. It is also relevant to state that even though the Convention was not adopted before 1988 and the country enacted no law relating to international commercial arbitration, a foreign arbitral award in an international commercial arbitration made outside the country could be enforced in Nigeria by the combined effect of sections 2(1)and 4(2) of the Foreign Judgment (Reciprocal Enforcement) Act, Laws of the Federation of Nigeria No 31 of 1960, provided, amongst other things, it was registered in the High Court in this country.[38]

Although Nigeria gained its independence as far back as October 1st 1960, it did not embrace international commercial arbitration formally by way of the statute until the enactment of the

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[36] Ummusalmah Adam Ahmad and Mustapha Babalola Toheeb, "*A Brief Overview of History and Challenges of Arbitration in Nigeria*", (December 13 2022, Law Pavilion Blog), < https://lawpavilion.com/blog/a-brief-overview-of-history-and-challenges-of-arbitration-in-nigeria/. > Accessed 22 January 2025.
[37] Ahmad and Toheeb, '*A Brief Overview of History and Challenges of Arbitration in Nigeria*', (n 30).
[38] ibid.

Arbitration and Conciliation Decree 1988. Before then, however, a number of Nigerian Companies and prominent legal practitioners had been well-steeped in international commercial arbitration outside the country. The Decree is embodied in the Laws of the country as the Arbitration and Conciliation Act, Cap 19, Laws of the Federation of Nigeria, 1990.[39]

2.1.3 **Summary of reviewed literature**

Tolu Aderemi in his book titled: "International Arbitration Law and Practice: The Practitioner's Perspective", identified the challenges to Nigeria's ability to attain the stattus of preferred seat for International Arbitration as legislative inadequacy, enforcement of Arbitration agreements, Arbitral awards and general perception.[40] On the first challenge, the writer admitted that the history of Nigeria's Arbitration was challenging. It started with the Arbitration ordinance of 1914, subsequent re-enactment to Arbitration ordinance of 1958. The Federal Military Government then enacted the Arbitration and Conciliation Decree No 11 into existence in March 1988. The decree later became referred to as an Act Cap A18 2004 (the ACA). Between 1988 and 2020, the ACA has enjoyed 32 years of enforcement.[41]

Under legislative inadequacy, the writer pointed out and expanded on the following: requirements for writing, contradictory provisions, default number of Arbitrators, competenz, interim measures of protection, removing an Arbitrator and setting aside an award on the ground of ubiquitous 'misconduct', constitution breach, typographical errors, lacuna in the ACA.[42]

To the writer's understanding, Section 1 (1) and (2) of the ACA does not accord with globally accepted internet- based modern communication, does not need restating an

[39] Ahmad and Toheeb, '*A Brief Overview of History and Challenges of Arbitration in Nigeria*', (n 30).
[40] Tolu Aderemi, "*International Arbitration Law and Practice: The Practitioner's Perspective*", (2020 Lawlexis International Limited), 110.
[41] ibid, 110- 111.
[42] Tolu Aderemi, "*International Arbitration Law and Practice: The Practitioner's Perspective*", (2020 Lawlexis International Limited), 111- 118.

Arbitration clause in some commercial documents, such as computer software agreement etc will clearly be outside the scope of Section 1 (2) of the ACA.[43]

In the contradictory provisions of Section 4 and 5 (2) of the ACA, Section 4 creates a mandatory stay of judicial proceedings when litigation is commenced in defiance of an Arbitration agreement, whilst Section 5 (2) gives courts the same powers but makes it a discretionary power by the use of the word 'may'.[44]

It has been argued that the legislative intent is for Section 4 to apply to International Arbitration and pursuant to Nigeria being a signatory to the Convention on the Recognition and Enforcement of Foreign Awards (New York Convention), the Courts must stay proceedings where an Arbitration agreement has been entered into by the contracting parties. Section 5 (2) is expected to deal with domestic Arbitration. However, this argument is difficult to sustain in view of the fact that both provisions are contained in the Part I of the ACA which deals with both domestic and international Arbitration. Part III makes additional provisions that are applicable to International Arbitrators only. In the further opinion of the writer, Section 5 (2) sets a higher standard than Section 4 of the ACA.[45]

Where parties fail to stipulate the number of Arbitrators, the default number of Arbitrators provided under Section 6 of the ACA is three and in view of the attendant expense, this has often deprived a party who has been impoverished by the respondent from seeking reprieve through their dispute resolution mechanism of choice.[46]

Section 12 of the ACA encapsulates the doctrine of Competenz- Competenz, which departs from its UNCITRAL origin, in that it does not empower the tribunal to continue proceedings whilst an award on jurisdiction is being challenged in Courts. The downside of this is that

[43] Tolu Aderemi, "*International Arbitration Law and Practice: The Practitioner's Perspective*", (n 36), 111.
[44] ibid, 111.
[45] Tolu Aderemi, "*International Arbitration Law and Practice: The Practitioner's Perspective*", (2020 Lawlexis International Limited), 111- 112.
[46] ibid, 112.

Arbitration may be kept in abeyance in definitely thereby causing unnecessary delay and expense.[47]

The writer argued that Section 12 of the ACA which encapsulated the doctrine of competenz-competenze, markedly departs from its UNCITRAL origin. It does not empower the Tribunal to continue proceedings whilst an award on jurisdiction is being challenged in court. This may cause Arbitration to be in abeyance indefinitely thereby causing unnecessary delay and expense.[48]

Another aspect under interim measures of protection is the conflict between Section 13 of the ACA and Article 26 (1) and (2) of the Arbitration Rules which empowers Arbitral tribunal to order interim measures of protection of the subject matter of the dispute, a power that prevents irreparable damage from being inflicted on a party. In observing Article 26 (3) which provides for quest for interim measures addressed by any party to court shall not be deemed it reconcilable with the agreement to Arbitrate or as a waiver of the agreement. This provision gives room for speculation, or at the very least, interpretational challenges, as parties are then in a quandary whether the application should be made to Court or to the Tribunal. The learned writer then gave his opinion that clarity should have been attained if the ACA had in its substantive provisions and the Arbitration rules, contain sections that empower the Courts to grant interim orders, and also affirm the fact that a party approaches the courts for such an order does not abrogate the right to arbitrate the dispute.[49]

In addition, the learned writer observed that the ACA did not incorporate the conditions and procedure to be adopted for dealing with applications for interim orders and this is in contradistinction with the amendments made to the 2006 UNCITRAL model law where the

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[47] Tolu Aderemi, "*International Arbitration Law and Practice: The Practitioner's Perspective*", (2020 Lawlexis International Limited), 112.
[48] ibid, 112.
[49] ibid, 113.

spectrum interim measures has been expanded and the conditions for granting such orders are well articulated.[50]

Another centre of argument by the learned writer is in respect to Article 32 (2) which pronounces that an award shall be final and binding on the parties. It was observed that an award creditor may not enjoy the fruit of that award if the award debtor decides to set aside the award on any of the limited grounds permitted under the law, one of which is the notorious and ubiquitous ground of 'misconduct'.[51]

Section 30 (1) of the ACA empowers the Court to set aside an award on grounds of misconduct and Section 30 (2) empowers the Court to remove an Arbitrator who has misconducted himself. This is why the writer stated that:

> The fear of misconduct is indeed the beginning of wisdom for many Arbitrators in Nigeria.[52]

Another important provision of the ACA is Section 34 which is on relationship between the Courts and the Arbitral process. A Court shall not intervene in any matter governed by this Act except where so provided by this Act. The writer argued that by the use of the word 'intervene', the court is merely to play a supportive role and is not entitled to disrupt Arbitral proceedings.

The writer gave his opinion about Section 7 (4) of the ACA that it constitutes a constitutional breach of right to appeal. The section provides that a Court's decision in appointing an Arbitrator shall not be subject to appeal. In this situation, the decision of the Supreme Court was relied on in *Skye Bank Plc v Iwu*[53] which held that:

> In our view, the correct position under the Nigerian law is that a statutory provision in the ACA cannot overrule a constitutional provision. Indeed, under Section 1 (3) of the Constitution, a conflict between the Constitution and the ACA would render the latter void to the extent of the inconsistency.

[50] Tolu Aderemi, "*International Arbitration Law and Practice: The Practitioner's Perspective*", (2020 Lawlexis International Limited), 113.
[51] ibid, 114.
[52] ibid, 114.
[53] *Skye Bank Plc v Iwu* (2017) LPELR 42595 (SC).

Typographical errors in Section 12 (2) of the ACA was identified by the writer in case were the word 'validity is used rather than 'invalidity' and under Section 33 which erroneously states 'may not derogate' rather than 'may derogate'.[54]

There are areas in Arbitration that are lacking under the ACA, these includes, but not limited to, dealing with issues such as: immunity of Arbitrators, effect of statute of limitation on right to enforce Arbitral awards, multiparty Arbitrations, emergency Arbitration, third party funding, consolidation and concurrent hearings, award of interest, security for cost, power to issue pre emptory orders against a party and head of proactive Arbitration.[55]

There have been challenges on enforcement of agreements and Arbitral awards and this was observed by the 2019 Queen Mary survey by the writer. This was followed by the writer considering James Allsop CJ ideas on the role of the Court of law in international disputes resolution. The Jurist recommended the attributes for the ideal Court for International commercial Arbitration as being a Court that is International in focus and approach. This requires an attitude or state of mind of judges, of Court administration and officers and of practitioners to welcome and encourage foreign commercial parties, judges handling Arbitral proceedings and the Court must understand Arbitration.[56]

The writer lamented about the challenges of recognising and enforcing Arbitral awards which is limited to Section 29 (2), Section 48 of ACA and Article V of the New York Convention in which Nigeria is a signatory.[57]

The Courts can set aside an award within the limits set by the law or take advantage of the fluid nature of the defence of public policy and defence of sovereign immunity. In examining the effect of the Sheriffs and Civil Process Act[58] and the Judgement Enforcement Rules,[59] the

[54] Tolu, 'International Arbitration Law and Practice', (n 44), 117.
[55] ibid, 118.
[56] ibid, 118.
[57] ibid, 123.
[58] Sheriffs and Civil Process Act, Section 85.
[59] Judgement Enforcement Rules, Order V Rule 5.

consent of the Attorney General of the Federation or of a State of the Federation must be sought and obtained before attaching money or property in the custody of or control of a public officer.[60]

According to the Writer, despite the challenges faced in making Nigeria a seat of Arbitral Proceedings, the Survey Report of the International Bar Association 2015 gives hope and it is expected that Johannesburg, Kigali and Lagos would become rival seats within the next 5 years. The reasons given by the writer are: firstly, infrastructural development such as the establishment of several professional bodies and dispute resolution institutions. Examples are the Nigerian Institute of Chartered Arbitrators (NICARB), the Lagos Regional Centre for International Commercial Arbitration (LRCICA), the International Chamber of Commerce (Nigerian National Committee), the Lagos State Multi Door Court House (LMDC) and the International Centre for Arbitration and Mediation Abuja (ICAMA).[61]

Secondly, Nigerian Arbitrators are well trained both at the international and domestic levels. There are Nigerians well trained by international and domestic institutions such as the UK based Chartered Institute of Arbitrators (CIARB), the International Chamber of Commerce Arbitration, the Lagos Court of Arbitration and the Nigerian Institute of Chartered Arbitrators (NICARB). These institutions provide trainings base on international standards all over the world.[62]

The Nigerian judiciary has also provided support for Arbitration. The Chief Justice of the Federation and Heads of Courts recognise Alternative Dispute Resolution as time saving, effective and efficient and has made impact on commercial and economic activities as well as on the Nigerian Foreign Direct Investment.[63]

[60] Tolu, 'International Arbitration Law and Practice', (n 44), 128.
[61] ibid, 131.
[62] Tolu Aderemi, "*International Arbitration Law and Practice: The Practitioner's Perspective*", (2020 Lawlexis International Limited), 132.
[63] ibid, 132.

There are also other laws and rules apart from the ACA 2004 such as the Lagos State Arbitration Law[64] and the UNCITRAL Arbitration Rules which are popular for ad hoc Arbitration. In addition, the writer embraced the effort made by the Arbitration Community set up by the National Committee on the reform of Arbitration and Conciliation Act in 2018 to repeal and re-enact the ACA. Although the Bill was withdrawn with the aim to substitute Conciliation for Mediation in line with the United Nations Convention on International Settlement Agreements resulting from Mediation. This is also known as the Singapore Convention.[65]

According to Collins Ebi Daniel, Arbitration has a Latin root which later acquired both English and legal meanings. It is therefore important for a prospective Arbitrator to be acquainted with all of these. Various definition of Arbitration was provided by the author from dictionaries, online websites like Wikipedia, the Arbitration and Conciliation Act (ACA), and decided court cases[66]. For example, the New International Websters Comprehensive Dictionary of English Language[67] defines 'Arbitration' as the hearing and settlement of a dispute between two parties by the decision of a third party or court to which the matter is referred by the contestants as a means of avoiding war, a strike, a lawsuit.

In *Mutual Life and General Insurance Ltd v Kodi Iheme*,[68] which came before the Court of Appeal for hearing and decision, their Lordships viewed Arbitration as the reference of a dispute or difference between not less than two parties for determination, after hearing both sides in a judicial manner by a person or persons other than a Court of competent jurisdiction.

From the various definitions of Arbitration, the author observed the following elements: A party driven private dispute resolution process for two or more persons involved in a

[64] Lagos State Arbitration Law No. 18 of 2009.
[65] Aderemi, 'International Arbitration Law and Practice', (n 17), 133.
[66] Daniel Collins Ebi, "Arbitration and Dispute Resolution in Nigeria, Practice and Procedure", (2022 Edition, Kraft Books Limited), 2.
[67] The New International Websters Comprehensive Dictionary of English Language, (2003 Edition), 74.
[68] *Mutual Life and General Insurance Ltd v Kodi Iheme* (2004) 1 NWLR Pt 1389.

commercial or non-commercial relationship. The process is conducted outside the Courtroom but the Court can intervene whenever necessary merely to complement the process. The process may be voluntary and mandatory. The process is usually conducted by neutral third-party person (s) or institution. The process involves heating oral or documentary taking and evaluation of evidence in private, using agreed rules before a decision is reached (award). An award rendered by the Arbitral Tribunal is final, binding and enforceable, and can only be set aside or impeached if the proper procedures were not followed.[69]

After giving various definition of Alternative to Dispute Resolution (ADR), the author gave a critical analysis of a question. Is Arbitration an ADR process? This was argued by various learned scholars and book authors. In the author's opinion, in recent times, the use of the term ADR is restricted and now being generally applied by some writers and scholars only to mediation, negotiation and conciliation. The reason often given by these writers, for their exclusion of Arbitration from alternative dispute resolution method, is that Arbitration is now in danger of suffering the same disadvantages as litigation arising from increasing delays, exorbitance, disruptive technicalities. It was further argued by the proponents that if Arbitration is included in the term "ADR", it will be misleading.[70]

According to Sir Lawrence Street's opinion on the question, there has developed an increasing consensus in dispute resolution usage that ADR comprises the whole body of procedures not properly classified either as litigation or as Arbitration. This degree of consensus is now such that we can and should discard any such further suggestion that ADR is to be understood as including Arbitration. Brown and Marriot in their book ADR: Principles and Practice agree with Sir Lawrence Street's opinion.[71]

In addition, the author considered the opinion of Professor Greg C. Nwakoby, he argued that:

[69] Daniel Ebi, 'Arbitration and Dispute Resolution in Nigeria, Practice and Procedure', (n 6), 12.
[70] Daniel Collins Ebi, "Arbitration and Dispute Resolution in Nigeria, Practice and Procedure", (2022 Edition, Kraft Books Limited), 12.
[71] ibid, 12- 13.

> It is a statement of fact that the modern Arbitration process has not lost its simplicity, informality, cheapness and efficiency. Its advantages over litigation are still substantial and enormous.[72]

The author further argued that Arbitration is not a Court process, notwithstanding, that its procedures may be close to litigation. An Arbitrator is not a judicial officer within the context of the meaning. The contention of both schools of thought is quite sound in their argument of the propriety or otherwise for the inclusion of Arbitration as an ADR process. It is, indeed a fact that Arbitration was introduced to serve as an alternative to litigation. However, the practice of Arbitration over the years appears to be sliding gradually, being turned into litigation with all the technicalities and legalistic tendencies that are associated with litigation. This is deactivating to disputants.[73]

The author finally agreed in his opinion that Arbitration is an alternative dispute resolution process, in spite of having some features similar to litigation. However, it must be noted that Arbitration stands in its own class, in distinction to all the other ADR mechanisms. This reason being that the intervention of the court and the binding effect of its process have been built into the laws regulating Arbitration practice to achieve desired purpose. Practitioners and users of Arbitration are to note this, so that the object of Arbitration will not be defeated.[74]

Arbitration is generally conducted based on basic principles, existing laws, conventions and rules. These principles, laws, conventions and rules regulate the Tribunal's existence or appointment, composition, proceedings, award and enforcement. Arbitration cannot be conducted without the regulatory framework.[75] In understanding the basic principles of Arbitration, the author explained that Arbitration may take various forms. It could be voluntary, mandatory or binding. All of these will depend on the agreement between the

[72] Daniel Collins Ebi, "Arbitration and Dispute Resolution in Nigeria, Practice and Procedure", (2022 Edition, Kraft Books Limited), 13.
[73] ibid, 13.
[74] Daniel Collins Ebi, "Arbitration and Dispute Resolution in Nigeria, Practice and Procedure", (2022 Edition, Kraft Books Limited), 13.
[75] ibid, 17- 18.

parties involved in the dispute. In conducting Arbitration, there are basic principles which must serve as a guide to the Arbitrator otherwise the process is prone to suffer setbacks. The author examined the principle in voluntary agreement, properly constituted Tribunal, fair hearing and binding decisions.[76]

A voluntary agreement by the parties to a contract to submit themselves to a neutral third party in the event of a dispute or where there is no previous agreement and a dispute had arisen for the parties to agree to submit themselves for the resolution of the dispute is a key principle. The essence of voluntary submission is akin to the law of contract, whereby parties having contracted on terms are bound by the terms of their contract. Arbitration agreement like all other contracts operates on the principle of "pacta sunt servanda", meaning "agreement must be kept".[77]

Another principle is where a Tribunal for an Arbitration proceeding must be properly constituted in accordance with the agreement of the parties and established procedure. This is provided under Section 6 and 7 of the ACA which provides for the composition of the Arbitral Tribunal which entails the number of Arbitrators to be appointed for a Tribunal and the proper procedures to be followed in the making of such appointment.[78]

In the principle of fair hearing, an Arbitrator must be fair to all the parties, ensuring that all the parties are given equal opportunity. The principle of fair hearing imposes a moral duty and places an obligation on the Arbitrator to ensure that all parties to the dispute are granted fair hearing[79]. Fair hearing entails equal treatment of the parties as provided in Section 14 of the ACA[80] which states that:

[76] Daniel Collins Ebi, "Arbitration and Dispute Resolution in Nigeria, Practice and Procedure", (2022 Edition, Kraft Books Limited), 18.
[77] ibid, 18.
[78] ibid, 19.
[79] ibid, 19.
[80] Arbitration and Conciliation Act, Laws of Federation 2004, Section 14.

> In an Arbitral proceeding, the Arbitral Tribunal shall ensure that the parties are accorded equal treatment and that each party is given full opportunity of presenting his case.

This principle was restated in the case of *Shell Trustees (Nigeria) Ltd v Iman & Sons Ltd*,[81] where the Court held that the principle of fair hearing is not a technical doctrine but rather one of substance. The Arbitrator must be impartial in carrying out his duties. He is to assume the role of an umpire who is required to give a fair hearing to both parties and there after render an award based on the strength and weakness of each party's case. Justice must be seen to be done and not otherwise.

An additional principle is one based on binding decision. The principle of binding decision stems from the fact of a pre- existing agreement or a voluntary submission, by the parties to the dispute to Arbitration proceedings. The options open to disputants is either to have their matter resolved by litigation or through any of the ADR processes. In any given circumstance where the parties have agreed to have their dispute resolved through Arbitration, the outcome is meant to be binding. Binding decision is, therefore, a basic principle which encourages disputants to resolve their dispute by Arbitration.[82]

Another important area critically analysed by the author under the nature and scope of Arbitration are the principles of arbitrability, party autonomy, privacy and confidentiality, limitation of time, advantages and disadvantages of Arbitration process as a mechanism of resolving dispute.[83]

Arbitrability refers to whether or not Arbitrators have the authority to rule on a dispute. This also depends on whether certain parties have agreed to have certain disputes between them resolved through Arbitration. The concepts concerns whether a type of dispute can or cannot be settled by Arbitration, the capability for a matter to be settled by Arbitration. Arbitrability in practical terms therefore provide answers to the question of whether a subject matter of a

[81] *Shell Trustees (Nigeria) Ltd v Iman & Sons Ltd* (2000) 6 NWLR Pt 1662, 639 at 660- 661, CA.
[82] Daniel Ebi, 'Arbitration and Dispute Resolution in Nigeria, Practice and Procedure', (n 70), 19.
[83] Daniel Ebi, '*Arbitration and Dispute Resolution in Nigeria, Practice and Procedure*', (n 70), 38.

claim is or not reserved to the sphere of domestic courts, under the provisions of national laws.[84] In *Econet Wireless Ltd v Bromley Investment Ltd & Ords*,[85] the Court held on the concept of Arbitrability that:

> Arbitrability is concerned with the question of whether a dispute is capable of settlement by Arbitration under the applicable law or whether it falls under the reserved domain of the Courts.

Questions of Arbitrability or otherwise of a dispute and jurisdictions are not the same. Arbitrability is usually determined based on the applicable law of the agreement or the law of the place of enforcement, while jurisdictional question is premised on Arbitration clause but jurisdiction is not always an issue of Arbitrability. Arbitrability relates to the capability of a dispute to be settled by Arbitration, while non arbitrable matters are not within the jurisdiction of the Tribunal. Jurisdiction, on the other hand, is the legal competence for a Tribunal to hear a matter and render an award.[86]

The author also considered the opinions of distinguished scholars such as Orojo and Ajomo. To them Arbitrability is concerned with the question of whether it falls under the reserved domain of the courts, in contrast with whether the subject matter is covered by the words of the Arbitration agreement[87]. In distinguishing arbitrable matters from non arbitrable matters, the authors shared the opinion of another scholar named Adedoyin Rhodes Vivour in his book titled: "Commercial Arbitration Law and Practice in Nigeria through the Cases". To him, in the United Arab Emirate and Nigeria, criminal and regulatory matters that affect the capability or legal status of a person (individual or corporate), including bankruptcy or insolvency matters are usually not Arbitrable.[88]

According to the author, commercial disputes are generally arbitrable under Nigerian laws, though the subject matter may render some disputes non- arbitrable such as cases against

[84] Daniel Ebi, '*Arbitration and Dispute Resolution in Nigeria, Practice and Procedure*', (n 70), 39.
[85] *Econet Wireless Ltd v Bromley Investment Ltd & Ords* (2005) 3 FHCLR 253 FHC 279.
[86] Daniel Ebi, '*Arbitration and Dispute Resolution in Nigeria, Practice and Procedure*', (n 70), 39- 40.
[87] ibid, 40.
[88] ibid, 40.

some failed banks whose control was taken over by the Central Bank of Nigeria (CBN) and handed over to the Nigerian Deposit Insurance Corporation (NDIC) on terms and conditions. This is subject to Section 36 of the Bank and Other Financial Institutions Act (BOFIA)[89] which provides that:

> No suit shall be instituted against a Bank whose control has been assumed by the corporation.

Bankruptcy and Insolvency matter are being regulated by the Bankruptcy Act and the Companies and Allied Matter Act (CAMA). In the case of winding up insolvent companies, the CAMA provides that the Court shall have jurisdiction to wind up any company where such a company is unable to pay debts. The court with jurisdiction on insolvency matters is the Federal High Court and such dispute are exempted from Arbitration.[90]

Also, indictments for criminal offences cannot be subject to an Arbitration agreement, although the Administration of Criminal Justice Act (ACJA) provides for plea bargain in criminal cases.[91] In case of family law, it is regulated by the Matrimonial Causes Act[92]. In *Federal Inland Revenue Service (FIRS) v Nigeria National Petroleum Corporation (NNPC) & 40 Ords*[93], the author used this case to explain the law of non- arbitrality of tax dispute for the benefit of public knowledge. The author referred to *Statoil (Nigeria) Ltd & Anor v FIRS & Anor*[94] and Section 34 and 35 of ACA.[95]

> The law governing the arbitrability of dispute may vary depending on whether it is decided by an Arbitral Tribunal which will decide in accordance with the principle of Kompetenz- Kompetenz by a state court to which one of the parties has simultaneously submitted the dispute within a setting aside procedure or in the context of an enforcement procedure.[96]

[89] Bank and Other Financial Institutions Act 2020, Section 36.
[90] Daniel Ebi, 'Arbitration and Dispute Resolution in Nigeria, Practice and Procedure', (n 70), 41.
[91] Administration of Criminal Justice Act, Section 270 (1) - (18), Laws of Federation of Nigeria 2004.
[92] Matrimonial Causes Act Cap M7 Laws of Federation of Nigeria 2004, Section 2.
[93] *Federal Inland Revenue Service (FIRS) v Nigeria National Petroleum Corporation (NNPC) & 40 Ords.*
[94] *Statoil (Nigeria) Ltd & Anor v FIRS & Anor* (2014) LPELR- 23144 CA.
[95] Arbitration and Conciliation Act, Laws of Federation 2004, Section 34 and 35.
[96] Daniel Ebi, 'Arbitration and Dispute Resolution in Nigeria, Practice and Procedure', (n 70), 42.

The consequences of non- arbitrability of a dispute is that the Arbitration would be rendered invalid. In such a situation, the tribunal lacks jurisdiction and the award might not be recognised and enforced.[97]

The concept of arbitrability in International Conventions and Statutes was explained using the New York Convention (1958).[98] The Convention provides that: each contracting state shall recognise an agreement in writing concerning a subject matter capable of settlement by Arbitration. It further states that recognition and enforcement of arbitral awards may be refused if the court where such recognition and enforcement is sought finds that the subject matter of the difference is not capable of settlement by Arbitration under the law of that country. Article II and V of the New York Convention provide for the law of arbitrability as a ground for a court to refuse recognition and enforcing an award, but is silent as to which law should govern the question of arbitrability at the pre- award stage.

It is to be noted that to ensure enforceability, Arbitration Tribunal have the responsibility to determine arbitrability with specific reference to the law of the place of Arbitration. If a dispute is not arbitrable according to the relevant rules contained in that law, the award will be open to setting aside procedures in that country and may also exclude its enforcement in another country.[99]

Another issue explained by the author is the concept of Party Autonomy. According to the author, party autonomy in Arbitration is the liberty, freedom or independence of the parties to determine how the Arbitration will proceed. Fabian Ajogwu, in his book titled 'Commercial Arbitration in Nigeria Law and Practice', explained that party autonomy is the right of parties to Arbitration and the type of it that will satisfy their desire for prompt and efficient resolution of dispute.[100]

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[97] Daniel Ebi, 'Arbitration and Dispute Resolution in Nigeria, Practice and Procedure', (n 70), 42.
[98] New York Convention on Recognition and Enforcement of Arbitral Awards 1958, Article II and V.
[99] Daniel Ebi, 'Arbitration and Dispute Resolution in Nigeria, Practice and Procedure', (n 70), 43.
[100] ibid, 43- 44.

In understanding the relationship between Party Autonomy, Arbitration Agreement and Procedural Rules, the author explained his opinions as follows: the agreement between the parties is very important in many respects, apart from the fact that it is central to the Arbitration Proceedings. Primarily, it reflects the party autonomy to settle their disputes by Arbitration rather than the Court of Law.[101]

In addition, the essential rules of the principle of Arbitration are that where parties voluntarily enter into an Arbitration agreement, they are free to formulate their own terms of the agreement or design a process, to cater for their needs. Third, an Arbitration agreement precludes judges from resolving the disputes conflicts the parties have agreed to submit to Arbitrate.[102] If one of the parties files a law suit in relation to such matters, the other party may challenge the court's jurisdiction to hear the matter having regard to the fact the jurisdiction of the Court has been waived[103]. It is the right of the parties to the Arbitration to determine the role of the game and the procedure applicable in the settlement of their dispute. Most Arbitration Laws, including rules used for international and domestic Arbitrations recognised and guaranteed the principle of party autonomy.[104]

The author differentiated Privacy from Confidentiality under Arbitration. 'Private' implies something meant for the person concerned, while 'Confidential' include information that is not allowed to be shared with others. In the author's opinion, there is a very tiny difference between the two words; hence often times writers have used both terms inter- changeably. Arbitration is generally confidential to the parties; its hearings are not open and the pleadings are not available for public perusal.[105]

[101] Daniel Ebi, 'Arbitration and Dispute Resolution in Nigeria, Practice and Procedure', (n 70), 44.
[102] ibid, 44.
[103] Arbitration and Conciliation Act, LFN 2004, Section 33. ICC Arbitration Rules 2012, Article 39. WIPO Expedater Arbitration Rules 2014, Article 54. International Centre for Dispute Resolution Rules 2014, Article 25.
[104] Daniel Ebi, 'Arbitration and Dispute Resolution in Nigeria, Practice and Procedure', (n 70), 45.
[105] ibid, 47.

Most institutional procedural rules state that the proceedings of Arbitration are to be kept confidential, except for the award that may become public in the course of enforcement where registration is necessary.[106] In the case of our Court system, court proceedings are constitutionally provided under the principle of fair hearing in Section 36 (3) of the Constitution 1999 as amended.[107]

The issue of limitation of time is quite important in Arbitration as in the regular Courts because time is of essence in every matter. The rule on limitation of set timelines when matters must commence or for the enforcement or setting aside of an award, otherwise persons seeking redress would want to play by their rules. A cause of action is barred if action is not taken in court or a claim made in Arbitration within the period stipulated by law, for example 6 years in case of a contract.[108]

Limitation law is defined under the Lagos State Arbitration Law as such limitation laws as are applicable under the law governing the subject matter of the dispute. It further provides that in computing time for the commencement of proceedings to enforce an arbitral award, the period between the commencement of the Arbitration and the date of the award shall be excluded.[109] In Ondo State for example, the Limitation Law of Ondo State provides that the law and other enactment relating to the limitation of actions shall apply to Arbitration as they apply to actions in Court[110].

Parties can agree for a period longer than what the statutes has given. Section 29 and 30 of the ACA,[111] set out conditions for the impeachment of domestic Arbitration Awards in Nigeria. Section 29 provides for a period of 3 months and grounds to set aside an award are provided under Section 29 (2), 30 (1) and (2) which include Arbitrability, misconduct at the

[106] Daniel Ebi, 'Arbitration and Dispute Resolution in Nigeria, Practice and Procedure', (n 70), 47.
[107] Constitution of the Federal Republic of Nigeria 1999 as amended, Section 36 (3).
[108] Daniel Ebi, 'Arbitration and Dispute Resolution in Nigeria, Practice and Procedure', (n 70), 48.
[109] Lagos State Arbitration Law, Section 35 (4) - (5).
[110] Limitation Law, Cap 61. Volume III, Laws of Ondo State 1978, Section 26 (1).
[111] Arbitration and Conciliation Act, LFN 2004, Section 29 and 30.

Arbitral Tribunal and misconduct of the Arbitrator. Section 36 of the ACA[112] provides for extension of time that Arbitral Tribunal may, if it considers it necessary, extend the time specified for the performance of any act under this Act.

Arbitration and Litigation are not mutually exclusive due to the complementary and supportive roles of the Court in the arbitral process. Nonetheless, Arbitration is preferred to litigation in certain situations. In Arbitration, parties can choose their Tribunal, venue, choice of law and minimise cost. Additionally, Arbitration enables quicker decision making, Arbitral procedures are flexible, parties can represent themselves, irrespective of the fact that Arbitration is quasi- judicial, it is conciliatory in nature and contrasts with litigation, which is adversarial in nature.[113]

Furthermore, where there is a dispute between states, no state would submit to any foreign court for reason of national prestige and sovereignty. States would prefer Arbitration in resolving disputes between foreign businesses. Arbitration is relatively friendly and preferred in resolving commercial disputes. Other reasons are privacy and confidentiality of Arbitral proceedings and Awards are final, irrevocable and non-appealable except on certain grounds.[114]

The author proceeded in explaining about criticisms against Arbitration such as: ouster of jurisdiction, but it was argued that Arbitral Tribunals do not ouster Court's unlimited jurisdiction and any Tribunal to do such renders such proceeding invalid, void and contrary to public policy. Another criticism is bias and partiality. Some professionals argued that appointment of Arbitrators may be based on close friends and associates, but the author argued that this is not true as appointment is based on expertise and experience.[115]

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[112] Arbitration and Conciliation Act, LFN 2004, Section 36.
[113] Daniel Ebi, 'Arbitration and Dispute Resolution in Nigeria, Practice and Procedure', (n), 50- 53.
[114] ibid, 53.
[115] ibid, 54.

Lack of legal education training of some Arbitrators is a serious criticism by legal professionals but the author sees this as an advantage. The author believes that Arbitration brings about experienced professionals of different field of life and this could be an advantage.[116]

In case of disputes that are legal in nature, an Arbitrator not knowledgeable in such area could be a disadvantage. In this case the dispute will be preferred to be resolved in Court instead of the Arbitral Tribunal. Other criticisms are cases where credibility of evidence is to be determined or enforcement of a legal right and where there are multi party disputes.[117]

The various types and forms of Arbitration mentioned by the author are: Domestic Arbitration, Customary law Arbitration, Common Law Arbitration, Islamic Law Arbitration, Arbitration under the Act, Institutional Arbitration, Ad Hoc Arbitration and International Arbitration. Institutional Arbitration is applicable to both domestic and international Arbitration practice. Arbitration is institutional when it is conducted under the auspices of an Arbitral institution or body. Examples are the International Chamber of Commerce (ICC), American Arbitration Association (AAA), International Centre for the Settlement of Investment Disputes (ICSID), the American Legal Consultative Committee Organisation with Regional Centres at Cairo and Kuala Lumper (AALCC), Stockholm Chamber of Commerce, the Nigerian Institute of Chartered Arbitrators (NICARB), the Chartered Institute of Arbitrators United Kingdom (Nigerian branch), Construction Arbitrators of Nigeria, Maritime Arbitrators of Nigeria, the Lagos Court of Arbitration (LCA), Arbitration and ADR in Africa, Int'l Dispute Resolution Institute, the Bayelsa State Multi- Door Court House.[118]

In order to understand the nature of an Arbitration Agreement, the author referred to various definitions at common law, Black's law dictionary, decided court cases and opinions of other

[116] Daniel Collins Ebi, "Arbitration and Dispute Resolution in Nigeria, Practice and Procedure", (2022 Edition, Kraft Books Limited), 55.
[117] ibid, 55- 56.
[118] Daniel Collins Ebi, "Arbitration and Dispute Resolution in Nigeria, Practice and Procedure", (2022 Edition, Kraft Books Limited), 63.

scholars. In the author's opinion, Arbitration agreement is often referred to as the 'foundation stone' of Arbitration. It was also observed by the author that the Arbitration and Conciliation Act and the Lagos State Arbitration Law did not define Arbitration agreement.[119]

At Common Law, an agreement to refer future disputes to Arbitration is referred to as 'an Arbitration agreement' while an agreement to refer to Arbitration disputes which has already arisen is referred to as 'a submission to Arbitration or a submission agreement'. Russel observed that an agreement to refer and submission are being used interchangeably as if both terms mean the same thing but they are very different things, as it is more convenient to distinguish between them. To Russel, the distinction has however become rather more blurred with the term Arbitration Agreement incorporating both future and existing disputes.[120]

In referring to the Black's law dictionary, an Arbitration agreement is an agreement by which the parties' consent to resolve one or more dispute by Arbitration. An Arbitration agreement can consist of a clause in a contract or a stand- alone agreement and can be entered into either before a dispute has arisen between the parties (a pre- dispute Arbitration agreement) or after a dispute has arisen between the parties (a post dispute Arbitration agreement or submission agreement.[121]

The UNCITRAL Model Law defined Arbitration agreement as an agreement by the parties to submit to Arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.[122]

In *CJN Onuselogu Enterprises Ltd v Afribank Nig Ltd*,[123] the Court gave the following opinion that:

> An Arbitration agreement is where two or more persons agree that a dispute or potential dispute between them shall be resolved and

[119] Daniel Collins Ebi, "Arbitration and Dispute Resolution in Nigeria, Practice and Procedure", (2022 Edition, Kraft Books Limited), 66.
[120] ibid, 66.
[121] Bryan A. Garner, "Black's Law Dictionary*, (10th Edition 2014), 126.
[122] Daniel Ebi, 'Arbitration and Dispute Resolution in Nigeria, Practice and Procedure', (n 113), 67.
[123] *CJN Onuselogu Enterprises Ltd v Afribank Nig Ltd* (2005) 1 NWLR Pt 940, 557, (CA), 585.

> decided in a legally binding way by one or more impartial person in a judicial manner, upon evidence put before him or them. The agreement is called Arbitration agreement or a Submission to an Arbitral Proceeding when after a dispute has arisen, it is put before such person or persons for decision.

The qualities of an Arbitrator were examined by the author, which consist of qualification and experience, independence and impartiality. On qualification and experience, the ACA did not provide for such in any of its provisions but the assumption is that Arbitration is specifically preserved for legal practitioners and judicial officers. This is far from being the truth, because professionals in other fields such as Engineering, Architecture, Survey, Accountancy, Insurance, including those in the field of Sport and even the Maritime Industry can be appointed and indeed practice Arbitration.[124]

Most Arbitral institutions (local and international) have recognised the importance of training and experience in the act of Arbitration and have developed both educational and professional training programmes for building the skills of prospective and certified Arbitrators. In Nigeria, the Nigerian Institute of Chartered Arbitrators (NICARB), Arbitration and ADR in Africa, International Dispute Resolution Institute and the Chartered Institute of Arbitrators United Kingdom, Nigerian branch are in the forefront of this crusade.

An Arbitrator is required to be independent and impartial. This is provided under Article 7.1 of the ICC Rules,[125] Article 5.2 of the LCIA Rules,[126] Article 14.1 of the Stockholm Chamber of Commerce (SCC) Arbitration Rules[127] and Section 8 of the ACA.[128]

The author likened the concept of independence and impartiality of an Arbitrator to Siamese twins, co- joined to one umbilical cord, being the Arbitral process. Independence literally means freedom from influence or control. It is concerned with the relationship between an Arbitrator and any of the parties, usually the party appointing him, whether financial or

[124] Daniel Ebi, '*Arbitration and Dispute Resolution in Nigeria, Practice and Procedure*', (n 113), 142.
[125] International Chamber of Commerce Rules, Article 7.1.
[126] London Court of International Arbitration Rules, Article 5.2.
[127] Stockholm Chamber of Commerce Rules, Article 14.1.
[128] Arbitration and Conciliation Act, LFN 2004, Section 8.

otherwise, while in contrast 'partiality' is concerned with the bias of an Arbitrator either in favour of one of the parties or in relation to the issue in dispute.[129]

An Arbitrator must at all times in the discharge of his duties be impartial. As a Judge is expected to hold the scale evenly between the parties, so should the Arbitrator do so as a private judge. He is therefore required to be free from undue influence and be objective. He must not hold a pre conceived position or give or allow such impression to be created. He must be open to evidence and to agreement and must bring a fresh mind to bear on all of these[130].

Rule 5.3 of the International Bar Association (IBA) Ethics for International Arbitrators 1987[131] provides that:

> Throughout the Arbitral proceedings, an Arbitrator should avoid any unilateral communication regarding the case with any party, or its representatives. If such communications should occur, the Arbitrator should inform the other party or parties and the Arbitrators of its substance.

There is also the issue of privileges and professional ethics under Article 7 of the International Centre for Dispute Resolution (ICDR) Rules[132] which provides that:

> The Tribunal respect applicable rules of privilege or professional ethics and other legal impediments. When the parties, their counsel or their documents would be subject under applicable law to different rules, the Tribunal should to the extent possibly apply the same rule that gives the highest level of protection.

An Arbitrator may be challenged by either party or even by all the parties to the agreement if circumstances exist, that give rise to justifiable doubts as to his impartiality or independence. A person is also not permitted to challenge an Arbitrator appointed by him except for reasons of which becomes aware after the appointment made by him. He is also not permitted to

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[129] Daniel Ebi, '*Arbitration and Dispute Resolution in Nigeria, Practice and Procedure*', (n 113), 133- 134.
[130] ibid, 134.
[131] International Bar Association Ethics for International Arbitrators 1987, Rule 5.3.
[132] International Centre for Dispute Resolution Rules, Article 7.

remove an Arbitrator in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.[133]

Chapter 18 of the author's book examined problems associated with Arbitration and Alternative to Dispute Resolution practice and development in Nigeria. Some of the problems discussed are as follows: lack of credible Arbitration Institutions and Centres. The Institutions and Centres are a fountain of knowledge and information about Arbitration. They also act in advisory capacity to users of Arbitration process and the Arbitrators. Nigeria may not be in short supply of Arbitral Institutions and ADR Centres. Rather, it is in general lack of credible, operational institutions and centres comparable to the ones in the advanced countries.[134]

The author provided comprehensive example of Arbitration centres in Nigeria. These examples are: the Asian- African Legal Consultative Organisation with Centres in Cairo-Egypt, Kuala Lumpur and later in Lagos- Nigeria, the Asian- African Legal Consultative Committee (AALCC), the Regional Centre for International Commercial Arbitration inaugurated on 29th March 1989, the Nigerian Institute of Chartered Arbitrators founded by Hon. Judge Bola Ajibola and few others, the Chartered Institute of Arbitrators, United Kingdom, Nigerian Branch, the UK institute was founded in 1915, Arbitration and ADR in Africa and the International Dispute Resolution Institute (IDRI) which was founded by Professor C. J Amasike and few others, the International Centre for Arbitration and Mediation in Abuja was founded by Chief Bayo Ojo, San, CON, FCIArb, a former President of the Nigerian Bar Association (NBA) and Attorney General and Minister of Justice of the Federal Republic of Nigeria, the Lagos Court of Arbitration, the Maritime Arbitrators Association of Nigeria (MAAN) registered in 2005, the Lagos Chamber of Commerce and Industry International Arbitration Centre established in 2010, the Negotiation and Conflict

[133] Daniel Ebi, '*Arbitration and Dispute Resolution in Nigeria, Practice and Procedure*', (n 113), 117.
[134] ibid, 335.

Management group (NCMG) International which was co- founded by Mr Aina Blankson and the organisation's effort led to the establishment, growth and development of Multi- Door Court houses in Nigeria and the Institute of Chartered Mediators and Conciliators (ICMC).[135]

In the author's opinion, lack of credible institutions and centres can hamper the practice, growth and development of Arbitration. Apart from the few institutions listed, of which only a handful are operating at some satisfactory level, Nigeria as a country with over 195 million people need more credible and viable centres for the promotion of Arbitration and dispute resolution, which will invariably attract Foreign Direct Investment (FDI).[136]

Another challenge is limited scope of National Arbitration Law. The first effort at legislation on Arbitration matters in Nigeria was the Arbitration Act of Nigeria 1958 which largely reflects the Arbitration Act of England in terms of its provisions. It was indeed a colonial enactment aimed at fulfilling the desires of the colonial authority. The enactment of the ACA Act did not change the attitude of most judicial officers in the country who continue to render decision on Arbitration matters, relying largely on English Arbitration Act in total disregard of the fact that there is Nigerian Legislation on the matter.[137]

The author explained that the ACA is a great enactment created by making Nigeria a destination on Arbitration matters. However, there is still need to review the legislation as the need arises, so that it will be brought into conformity with international best practices. Also, non-adoption of international Arbitration Convention is another challenge. Nigeria is a signatory to both the New York Convention and the International Centre for Settlement of Investment Disputes (ICSID), but there are other member states of the UN that are yet to adopt either of these conventions which are inapplicable to these states. Nigeria has entered into bilateral investment and commercial agreements with some of these nations, made

[135] Daniel Collins Ebi, "Arbitration and Dispute Resolution in Nigeria, Practice and Procedure", (2022 Edition, Kraft Books Limited), 335- 336.
[136] ibid, 337.
[137] Daniel Collins Ebi, "Arbitration and Dispute Resolution in Nigeria, Practice and Procedure", (2022 Edition, Kraft Books Limited), 338.

subject to dispute arising there from to be resolved by Arbitration, the implication of this is that Nigerians will not be able to enforce any award rendered by any Arbitral Tribunal arising from and dispute between her and any of these nations.[138]

Furthermore, lack of an efficient National Court and the rising cost of Arbitration or ADR. Another scholar Greg Nwakoby explained that, the Nigerian Court is slow on issues of enforcement and impeachment of awards of Arbitration process as it affects international disputes. According to the author, in recent times, the rising cost of Arbitration albeit dispute resolution is of concern to users of Arbitration and Arbitration practice in Nigeria. In a keynote address delivered at the Nigerian Institute of Chartered Arbitrators, Lagos branch, the then Chief Justice of Nigeria and Chairman, Board of Governors of the National Judicial Institute, Hon Justice Walter Onnoghen, explained that:

> Recourse to Arbitration as a method of dispute resolution has been on the increase in Nigeria and of course the nature of the proceedings and the minimal implications were the divers. Therefore, if the cost of the Arbitration fees should be rising, then the purpose of the Institution would be a mirage.[139]

Finally, other challenges are poor infrastructure, political instability and insecurity. The author explained the problem of building facilities, bad roads, electricity, political tensions, Islamic terrorism insurgence and ethical separatist within the country.[140]

The author concluded his book by giving more importance to the advantages of ADR mechanisms and challenges of litigation, history and summary on Arbitration practice in Nigeria. In the author's opinion, Arbitration as a mechanism of dispute resolution is founded and practised on basic principles and laws. These principles include: voluntary agreement, properly constituted Tribunal, fair hearing and binding decisions.[141]

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[138] Daniel Collins Ebi, "Arbitration and Dispute Resolution in Nigeria, Practice and Procedure", (2022 Edition, Kraft Books Limited), 340.
[139] ibid, 342.
[140] Daniel Collins Ebi, "Arbitration and Dispute Resolution in Nigeria, Practice and Procedure", (2022 Edition, Kraft Books Limited), 344- 346.
[141] ibid, 347- 348.

Azubuike and Mgbamoka in their article titled “Comingling of Arbitration and Litigation in Dispute Resolution in Nigeria: A worthy trend or regrettable experience”, explained why arbitration and litigation should work together to promote a speedy dispute resolution system. The writer explained that the judiciary needed to be careful in the early years of arbitration on the grounds that arbitrators were ill equipped, lacked expertise and were rivalry to the traditional courts but this should not hinder both litigation and arbitration from promoting a speedy and accessible dispute resolution system.[142]

The writer agreed that alternative dispute resolution was needed where the litigation process was cumbersome and businesses would prefer to settle disputes friendly before a private judge who is an expert in a particular subject matter and can handle sensitive and confidential matters privately. To the writer, arbitration has come to stay as a veritable tool of alternative dispute resolution despite all its attendant problems associated with it in Nigeria.[143]

Uzoma Azikwe, Festus Onyia and Michael Ugah in their Article titled “Nigeria’s Arbitration and Mediation Act 2023”, explained the legal framework for Arbitration in Nigeria before the enactment of the AMA 2023. The writers also admitted that the AMA 2023 addressed the deficiencies of the ACA and goes a step further in introducing innovative provisions. The writer explained the meaning of an arbitration agreement in writing. To him the word ‘writing’ is broader and more robust than in the ACA which is more focused on documents signed by parties or in physical form. The AMA reflects modern commercial realities whereby contracts are entered into electronically.[144]

[142] Mgbamoka Aleruchi Prince and Azubuike P. I., “Comingling of Arbitration and Litigation in Dispute Resolution in Nigeria: A worthy trend or regrettable experience”, (January 2023, The Journal of Environmental and Human Right Law Volume 3, Issue 6) < https://www.researchgate.net/publication/387976701 > Accessed 8 November 2025.

[143] Ibid.

[144] Azikiwe Uzoma, Onyia Festus and Ugah Michael, “*Nigeria’s Arbitration and Mediation Act 2023*”, (2024, the Middle Eastern and African Arbitration Review), 1- 14, < https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://globalarbitrationreview.com/review/the-middle-eastern-and-african-arbitration-review-archived/2024/article/nigeria/download&ved=2ahU KEwiO8Y6_pOWQAxX6UEEAHYSfHpsQFnoECBgQAQ&usg=AOvVaw0QlfA1xLYrpFT6oJXGbg7Y

On limitation of time, the writer explained that the limitation period for enforcement of an arbitration award in Nigeria was one that needed to be addressed by legislation because of the unfavourable consequences of the pre- AMA judicial authorities on the issue. The writer referred to Section 62 and Section 8(1) (d) of the limitation law of Lagos State on the 6 year limitation period.[145]

According to Ngo- Martins Okonmah in his article titled "Multi- party Arbitration under the recently enacted Arbitration and Mediation Act 2023: What does this mean for Construction and Infrastructure Disputes in Nigeria?" was focused on how the AMA innovative features have positively impacted construction disputes resolution under international best practice in international and domestic arbitration. To him, the recent signing of the African Continental Free Trade Agreement (AFCFTA), the emerging statistics from the International Chamber of Commerce (ICC) and the London Court of International Arbitration promoted the innovations of the AMA 2023. The writer explained how the innovation of the AMA 2023 has helped multi- party disputes such as bipolar multi- party disputes and multi polar multi-party disputes.[146]

On issue of freedom to adopt institutional rules, the writer explained that disputing parties have the freedom to adopt institutional rules of their choice which appropriately suit their dispute. The writer gave examples of Arbitration institutions specialised in construction disputes such as the Society of Construction Arbitrators (SCA) which has published the Construction Industry Model Arbitration Rules (CIMAR). More institutions were encouraged to develop more rules for construction disputes.[147]

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[145] Azikiwe Uzoma, Onyia Festus and Ugah Michael, '*Nigeria's Arbitration and Mediation Act 2023*', (n 138).
[146] Okonmah Ngo- Martins, "*Multi- party Arbitration under the recently enacted Arbitration and Mediation Act 2023: What does this mean for Construction and Infrastructure Disputes in Nigeria?*" (2023, the International Construction Law Review), < https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url= https://www.i-law.com/ilaw/doc/view.htm%3Fid%3D435896&ved=2ahUKEwjEwbmpquWQAxWhUkEAHcCrCdAQFnoECBoQAQ&usg=AOvVaw2cHqyPxktybfdzHYgtFqtR. > Accessed 09 November 2025.
[147] ibid.

Munta Ladipo Abimbola in his article titled "Judicial Interference in Arbitration Matters in Nigeria: Avoidable or Inevitable", explained the extent to which the Court of Law can interfere in Arbitral proceedings under the AMA 2023. These areas were argued such as general court intervention of Section 64, Section 7(3) (c) and Section 16 for appointment of third Arbitrator, Emergency Arbitrators, Section 5 which is for Stay of Proceedings, challenging the appointment of an Arbitrator, setting aside an Award and the enforcement and recognition of Arbitral Award.[148]

The writer argued on Court's interference in arbitral proceeding and award whereby Courts in Nigeria and the United Kingdom will not enforce awards if they with public policy. The writer recommended that to reduce procedural irregularities, jurisdictional disputes and delays there is the need to promote judicial training arbitration, streamline enforcement procedures and ensure consistency in the application of arbitration laws.[149]

Caleb Uchechukwu argued that Arbitration in practice faces limitations under the Arbitration and Mediation Act 2023. In his article titled "A Legal Appraisal of the Limitations to the Practice of Arbitration in Nigeria: A Review of the Arbitration and Mediation Act 2023". The writer identified the following limitations such as independence of awards, minimum number of trained Arbitrators, lack of effective infrastructure and resources for implementation, excessive intervention of the Court, no express regulation of third party funding high Arbitration fees and limited powers of Arbitrators.[150]

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[148] Abimbola Munta Ladipo, "Judicial Interference in Arbitration Matters in Nigeria: Avoidable or Inevitable", (2025, Law Book Reading: Pursuit of Legal Education Essays Marking the 20th Anniversary of Lead City University, Ibadan, Oyo State, Nigeria, < https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.scribd.com/document/862507347/Judicial-Interference-in-Arbitration-Matters-in-Nigeria-Avoidable-or-Inevitable&ved=2ahUKEwjgiLrBveaQAxW-T0EAHSNcCO8QFnoECBoQAQ&usg=AOvVaw0TfWPv5JXLmjK1IlcnbJ3u. > Accessed 09 November 2025.

[149] ibid.

[150] Uchechukwu Caleb, "A Legal Appraisal of the Limitations to the Practice of Arbitration in Nigeria: A Review of the Arbitration and Mediation Act 2023", (May 2024, ReseachGate) < https://www.researchgate.net/publication/380855039_A_Legal_Appraisal_of_the_Limitations_to_the_Practice_of_Arbitration_in_Nigeria_A_Review_of_the_Arbitration_and_Mediation_Act_2023. > Accessed 09 November 2025.

Solhehi Ali and Baghbanno Farazin in their Article titled: "Artificial Intelligence and its role in the Development of the future of Arbitration", was optimistic about the influence of Artificial Intelligence (AI) in Arbitration. To him, AI has proven to be a powerful tool in various fields and its integration in Arbitration is highly anticipated due to its potential to improve efficiency, accuracy and objectivity. The aim of the Article is to analyse how AI can help streamline Arbitration, reduce cost, ensure faster dispute resolution and improve accessibility.[151]

In the introductory aspect of the article, both writers explained the advantages of AI such as case management, by organising and analysing large volume of documents more efficiently than human counterparts, facilitate the recognition of patterns and trends in past decisions, support parties' arguments at hearing, or even predict possible outcome. Both writers cautioned the use of AI to maintain, transparency, accountability, reliability and ethical standards and also, to ensure that the principle of autonomy and due process is upheld.[152]

The concept of AI according to the authors has gained attention and prominence because of its tools such as chart bots but a key area is the review and analysis of contracts. AI in the opinion of the writers should not replace human judgement and expertise in complex legal matters.[153] In examining the legal analysis of AI, the writers considered the word 'liability'. Who will be held liable when the use of AI tools falls short of expectation? In considering this the writer laid emphasis on a framework for AI accountability to benefit and protect individuals. Also, the Article explained the meaning of data protection and privacy. The nature of AI is to handle large and complex data and this is why the writers are calling for an investigation on how to understand how AI handles data and this requires the need for a

[151] Solhehi Mohammed Ali and Baghbanno Faraz, "*Artificial Intelligence and its role in the Development of the future of Arbitration*", International Journal of Law in Changing World, 2 (2) (2023): 56. < DOI: https://doi.org/ 10.54934/ijlcw.v2i2.56.

[152] Solhehi and Baghbanno, 'Artificial Intelligence and its role in the Development of the future of Arbitration', (n 189), 57.

[153] ibid, 57.

regulatory framework. The introduction of AI also poses a threat to intellectual Property (IP).[154]

The threat posed by AI to IP has created legal issues in the aspect of liability, privacy and Intellectual Property and this is why the writers as laying more emphasis on a legal framework to balance the innovation of AI.[155]

Under the subtopic on the evaluation of technology in International Arbitration, the writers explained that the introduction of AI tools in big data analysis, legal research and drafting of legal documents has become more accurate and efficient. Another area of developments is the use of video conferencing, teleconferencing, electronic evidence and presentation systems has helped to reduce cost, present complex documents, exhibits and multimedia presentations resulting in a more streamlined and visually appealing mediation process.[156]

The writers are positive about AI in International Arbitration such as the introduction of online dispute resolution platforms, teleconferencing, digitized case management systems, virtual hearing rooms has ensured efficiency, reduced expenses and expanded the availability of justice.[157]

Apart from the advantages of AI, there are also some challenges. AI can reduce labour cost since there is no human supervision, review documents and evidences but the issue is balancing the advantages of AI and its potential drawbacks poses a challenge for Arbitrators worldwide. The writer suggested that human expertise be combined with the capabilities of machine learning.[158]

The author agreed that AI has revolutionised International Arbitration with its ability to resolve complex and large data but AI has empowered lawyers to be more focused on dispute

[154] Solhehi Mohammed Ali and Baghbanno Faraz," *Artificial Intelligence and its role in the Development of the future of Arbitration*", International Journal of Law in Changing World, 2 (2) (2023), 58.
[155] ibid, 58.
[156] Solhehi Mohammed Ali and Baghbanno Faraz," *Artificial Intelligence and its role in the Development of the future of Arbitration*", International Journal of Law in Changing World, 2 (2) (2023), 59.
[157] ibid, 60.
[158] ibid, 61.

resolution process. The writers cautioned readers that AI should not replace expertise, but its potential to revolutionize International Arbitration cannot be overlooked. AI has the capacity to transform the landscape of cross- border disputes.[159]

In examining the benefits of increasing the efficiency and accuracy through AI based tools in Arbitration is that AI ability to minimize human bias, a potential pitfall in Arbitration proceedings, further fortifies the accuracy to decision. AI based tools also offer real- time comparisons of cases and predictive analytics based on historical pattern, thereby contributing to more informed decision- making in complex dispute. AI tools enhance transparency and accountability.[160]

The authors explain how AI powered tools can help in Arbitration proceedings. For example, managing case files to scheduling hearing and issuing notices, this allows legal professionals to devote their attention to more complex matters. Other functions consist of document analysis and retrieval, case management and scheduling which aid decision making by extracting and analysing large volume of legal documents. The authors also discuss the merits of AI chat bots for providing basic legal advice.[161]

AI is effective in providing evidence and document management by identifying, organising and presenting evidence by analysing vast amount of emails, contracts and invoices and identity patterns or anomalies that may be critical to resolving a dispute[162]. Other advantages are: the use of natural language processing technique to understand complex legal documents, minimizing human error, reducing cost, saving time, increasing accuracy and improving

[159] Solhehi Mohammed Ali and Baghbanno Faraz," *Artificial Intelligence and its role in the Development of the future of Arbitration*", International Journal of Law in Changing World, 2 (2) (2023), 62.
[160] Ibid, 62- 63.
[161] Solhehi Mohammed Ali and Baghbanno Faraz," *Artificial Intelligence and its role in the Development of the future of Arbitration*", International Journal of Law in Changing World, 2 (2) (2023), 64.
[162] ibid, 65.

access to justice for all parties, predicting outcome of legal cases based on historical data and precedent, providing 24/7 client support to answering legal questions.[163]

Another area of law revolutionised by AI is the field of legal research and analysis with the aid of machine learning algorithm. This helps to empower lawyers to fortify their arguments and develop strategies for their clients. AI helps lawyers to produce works of high quality and efficiency. In addition, AI helps to provide real time updates on changes in laws, court rulings to ensure lawyers are up to date on latest developments in the profession.[164]

The judiciary has also benefited from the revolution of AI. AI has assisted judges through the use of machine learning to predict sentencing based on the severity of the crime, the characteristics of the offender or assessing the credibility and reliability of witness testimony. This reduces human bias, increase efficiency and ensures more consistent decision making. The use of algorithms with human judgement builds a fairer, equitable justice system and helps judges in making data driven predictions and recognising patterns. AI can also perpetuate biases present in the data.[165]

The authors advised judges to exercise caution and critically evaluate the results of the algorithms to ensure that they are consistent with legal principles and fairness. The right balance between technology and human judgement is critical to the maintenance of justice and the integrity of the legal system.[166]

AI uses predictive analysis which is the ability to analyse large amounts of data and make accurate predictions about future events, has the potential to revolutionise decision- making

[163] Solhehi Mohammed Ali and Baghbanno Faraz," *Artificial Intelligence and its role in the Development of the future of Arbitration*", International Journal of Law in Changing World, 2 (2) (2023), 66- 67.
[164] ibid, 65.
[165] ibid, 68.
[166] ibid, 68.

in International Arbitration. By using historical case date, machine learning algorithms can identify patters and trends that can help Arbitrators make more informed decisions.[167]

The writers gave their opinion on the position of morality and humanity in using AI. They caution that ethical consideration and the role of humans in AI assisted Arbitration are crucial aspects to be carefully considered. To them, human participation is essential to ensure fairness, accountability and transparency in AI driven Arbitration systems. Furthermore, human involvement can ensure an element of empathy and compassion that machines cannot fully replicate. This can promote equitable resolution of data.[168]

Problems with the use of AI were observed by the authors. The primary problem is that AI algorithms may not be transparent or explained leading to unaccountable, unjust outcomes since AI depends on historical data which may be biased. Another observation by the writers is privacy and confidentiality in storing sensitive personal data. This raises questions regarding the security of data processing and the possibility of unauthorised access or misuse. On these grounds the writer recommended that guidance and control mechanism are needed to ensure fairness, transparency, non- discriminatory and compliance with data protection standards.[169]

Additional recommendations including putting in place accountability and responsibility measures to determine who is liable for any error or biases in decision made by AI. The writers held firm that these legal and ethical considerations must be addressed for AI to be used in a just and fair manner. Also, this could help maintain public confidence.[170]

In balancing the role of AI and human judgement in Arbitral proceedings the writers advised that it is critical to preserve the integrity and fairness of Arbitral proceedings by ensuring that

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[167] Solhehi Mohammed Ali and Baghbanno Faraz," *Artificial Intelligence and its role in the Development of the future of Arbitration*", International Journal of Law in Changing World, 2 (2) (2023), 68.
[168] ibid, 68.
[169] ibid, 68.
[170] Solhehi Mohammed Ali and Baghbanno Faraz," *Artificial Intelligence and its role in the Development of the future of Arbitration*", International Journal of Law in Changing World, 2 (2) (2023), 69.

human judgement remains central. Another advice given by the writers is that despite the invaluable qualities of Arbitrators, to achieve a balance between AI technology and human decision, authority, guidelines must be carefully formulated to determine when to use or override automated judgements based on ethical considerations and specific characteristics of the Arbitration in question.[171]

There is a strict warning by the writers on potential consequences for Arbitrators and legal practitioners. These are the automation of repetitive and time-consuming tasks of sorting large volume of documents during evidence hearing and conducting legal research. There are now AI powered software that can speed up this process and enable professionals to focus on other tasks.[172]

The effect of AI on activities of legal professionals was discussed and analysed. AI has changed the legal profession in ways such as document review, due diligence, reducing time consuming work load, enabling comprehensive analysis and access to a wide range of legal information. But this has led to a potential displacement of certain tasks traditionally performed by lawyers. This does not however erase human input to address ethical considerations and interpret context specific nuances.[173]

The writers suggested that lawyers should adapt their skills with AI and not be replaced by AI. Lawyers should also view AI as a tool for work improvement and not a threat to their profession. Lawyers can use their expertise to ensure that AI systems are designed and implemented to meet ethical standards and respect the rule of law.[174]

The merits of AI to legal professionals are speedy document review, contract analysis, reduced time consumed for attorneys, cost savings for law firms and clients. Despite these merits, the expertise, judgement and empathy of human lawyers are irreplaceable. AI can

[171] Solhehi Mohammed Ali and Baghbanno Faraz," *Artificial Intelligence and its role in the Development of the future of Arbitration*", International Journal of Law in Changing World, 2 (2) (2023), 69.
[172] ibid, 69.
[173] ibid, 70.
[174] ibid, 70.

identify patterns and highlight important findings that are not immediately apparent to human researchers. The writers advised law students in research not to depend on AI tools but use them as a starting point for further investigation and analysis.[175]

Other recommendations made by the article writers are: lawyers must master negotiation strategies and technique to achieve favourable outcomes for their clients, collaboration and teamwork are also critical in a technology- based Arbitration environment, keep up with advances in AI technologies, continuous learning, adaptability and ethical considerations are essential to navigating the evolving landscape of AI- based Arbitration.[176] In conclusion, AI plays a crucial role in shaping the future of Arbitration.

According to Jenna Anne De Jong her Article titled: "Arbitrating disputes involving allegations of Corruption: Considerations and Strategies for Counsels and Client", the Article writer explained how the allegation of corruption in commercial and investment Arbitration have led to reforms in countries such as Canada, the United Kingdom (UK) and the United States of America (USA). For example, an amendment in Canada's Foreign Corrupt Practices Act (CFPOA), the introduction of the UK's Bribery Act 2010 and amendments in the Foreign Corrupt Practice Act (FCPA) of the US. Companies under their country's criminal law and regulations are required to terminate contract with parties involved in corrupt practices but this could lead to subsequent commercial disputes with a counter party.[177]

The article focused on two issues which are: the differences in the standards and thresholds which may apply in the criminal and regulatory context and a contractual dispute subject to Arbitration, legal privilege in terms of protecting internal anti- corruption investigation and how this may become more complicated in cases involving subsequent Arbitrators.

[175] Solhehi Mohammed Ali and Baghbanno Faraz," *Artificial Intelligence and its role in the Development of the future of Arbitration*", International Journal of Law in Changing World, 2 (2) (2023), 71.
[176] ibid, 71.
[177] Jenna Anne de Jong," *Arbitrating disputes involving allegations of Corruption: Considerations and Strategies for Counsels and Client*", (February 2024, Issue 21), Norton Rose Fulbright Publishing, International Arbitration Report, 4, < https://www.nortonrosefulbright.com > Accessed 24 November 2024.

Additionally, the Article considered the challenge that may arise when allegations of bribery are made within the context of investor- state Arbitrations.[178]

The article writer explained two ways in which Arbitration involving corruption allegations arises. Firstly, where a commercial party whose contract has been terminated or who has had performance withheld on the grounds of corruption and who considers such action to be wrongful may seek recourse by commencing Arbitration under the dispute provision of a contract. Another way is where in an investor- state context, an investor may allege that it has suffered discrimination, expropriation or another violation of an applicable investment treaty where the state party's action or in action harms an investor or investment. The State party under this second aspect may respond that the investor's claim is inadmissible on grounds that the investment was obtained by a corrupt state official.[179]

An example of corrupt activity that may lead to criminal prosecution is the bribery of public officials. It was observed that prosecution of bribery of foreign public officials will involve an agent, local partner or other intermediary agents. The writer gave some reason for these corrupt activities such as incentivising an agent to pay bribe, where a domestic law is perceived as lax.[180]

Most companies now have detailed anti- corruption warranties and representations in their agency contract templates to address this risk and enable the company to take steps under the contract where allegations of corruption arise. Some difficulties observed are: where corrupt acts are alleged to have taken place prior to the agency contract being updated to reflect modern anti- corruption legislation, where there is no written contract with the agent, where the law of contract or the law governing an Arbitration following termination of the contract

[178] Jenna Anne, 'Arbitrating disputes involving allegations of Corruption', (n 171), 4.
[179] ibid, 4.
[180] Jenna Anne, 'Arbitrating disputes involving allegations of Corruption', (n 171)

is different from the law of the jurisdiction where the company faced potential criminal or regulatory liability.[181]

To explain more clearly, the writer used an example of facilitation payment which is still allowed in the United States but made illegal under the Canadian law in 2017 and under the UK Bribery Act 2010. This is also known as Grease Payment aimed at expediting an otherwise routine administrative process (such as Customs or Port Clearances). The writer further explained that there could be a disparity between criminal and commercial obligations where criminal law or regulation requires a Company to take steps on the mere suspicion of corrupt activities and whether it is in the Company's best interest to do so. Where corrupt activities are suspected, counsel will want to distance their client as much as possible from the corrupt activity. The Counsel's client aims to prevent any liability by terminating the agent's contract to avoid criminal or regulatory penalties. Corruption by an agent may attract liability for a client.[182]

An example of bribery act committed by Con- way Inc but no charge under criminal act of the FCPA of the US was used. The writer explained that the US wants companies to keep proper book records of all transactions and install internal controls. It is advised that companies are to take proactive steps to end any relationship with parties who cannot provide that their activities are legal. Where an offence is merely regulatory offence, prove of bribery may not be necessary such as improper record keeping but depending on the law and terms of contract it may not justify termination of contract. The writer further advised Arbitrators to consider whether the grounds and evidence required to meet the contractual threshold for termination in a criminal or regulatory context.

After an internal anti-corruption assessment report, Counsel renders legal advice to Client Company on whether an act of an agent constitutes a bribe or liability to be faced. The Agent

[181] Jenna Anne, 'Arbitrating disputes involving allegations of Corruption', (n 171), 4-5.
[182] ibid, 5.

may claim wrongful termination of contract. For a termination of contract to succeed, Arbitrators under governing laws would prove that bribery was involved and Client Company is held liable under an enabling law and regulation. Arbitrators could take further investigation in preventing termination of contract on grounds that the act of the agent fulfils regulatory obligations in a foreign jurisdiction or not and not on another jurisdiction.[183]

In an Investor- State Arbitration, a state making a bribery allegation must prove by gathering evidence to refute the allegations of bribery in the Arbitration and the general need to investigate the allegations and determine if remedial action needs to be taken. Investor- State disputes may face challenges such as where previous witnesses no longer available or the allegation of bribery was a surprise by the investor company in cases where the intention of the investor was for an interpretation and an application of treaty. The writer advised Counsels to be well guided in cases where there is reason to believe that bribery was conducted. Arbitral Tribunals also conduct their own investigations.[184]

A brief fact on a related Arbitration case was reported by the article writer. In *World Duty Fee Co. Ltd v Republic of Kenya*,[185] the Claimant, a company commenced Arbitration against the State of Kenya under a contractual agreement 1989 on grounds that the Kenyan government breached its term of contract in building of two Airports. The Kenyan government than latter claimed that the contract was obtained by bribery under the formal President and therefore the UK Company has no right to engage in the contract. The writer used this case to advice Counsels on the importance of being aware of indicia of bribery by their own client when preparing their case.

[183] Jenna Anne, 'Arbitrating disputes involving allegations of Corruption', (n 171), 6.
[184] ibid, 6.
[185] World Duty Fee Co. Ltd v Republic of Kenya Case No. ARB/00/7.

In conclusion, the writer analysed the argument that the existence of bribery should not be grounds for inadmissibility of an investment claim, since the state shares complicity for the bribery of the officials.[186]

The Canadian writer made some recommendations to proactively address the dynamic issue during an investigation, if Arbitration has not commenced but would likely happen in future, separate opinions following an internal anti- corruption investigation of one giving the client advice on what it should do to protect itself from criminal or regulatory liability and another evidence supports terminating the agent's contract.[187]

Where there is conflicting jurisdiction, the writer advised that parties in Arbitration should seek legal advice on issues on jurisdiction, laws and regulations of different states in this case using the United States and Canada as examples. In the case where there are signs of bribery by the agent or partner but no conviction or other evidence or bribery, the advisable course is to terminate the contract. But this depends on the governing law of the country.[188]

Where Arbitration has commenced, the writer advised that expert report from an anti-corruption expert is needed to address whether the conduct described by evidence meets the threshold for termination in the contract. The expert report also explains what conduct is prohibited. It explains why a conduct is suspicious and indicia of bribery. Another importance of an expert report underlying reasons why a termination of contract is potential to regulatory offence that does not require direct evidence such as books and records offence. In the United States, anti-bribery charges are resolved through negotiated settlement such as Deferred Prosecution Agreement. This makes expert report important.[189]

In the United States (US), Peter Mesitte and three other co- writers explained about the pre and post event of the American Federal Arbitration Act of 1925 (FAA) in the Chapter two of

[186] Jenna Anne, 'Arbitrating disputes involving allegations of Corruption', (n 171), 7.
[187] Jenna Anne, 'Arbitrating disputes involving allegations of Corruption', (n 171), 7.
[188] ibid, 7.
[189] ibid, 7.

their article. The writers examined the historical background in the United States in formal colonies of Maryland. By 1750, the importance of Arbitration had already been acknowledged. It was further discovered that the US Courts only enforced final arbitration awards and refused to compel arbitration by enforcing contractual agreements to arbitrate future disputes. The FAA as observed by the writers changed the landscape by providing that arbitration agreements should be enforced. The enactment of the FAA has made the decision of the US Supreme Court to be in full deterrence to the terms of Arbitration agreements. The Article explained the evolution of Arbitration in the pre and post FAA of the United States.[190]

In other to understand the principle of Arbitration agreement under the FAA, John J. Buckley and Jonathan M. Landy in their article titled "International Arbitration Laws and Regulations USA 2025", explained that the FAA under 9 USC Section 1- 16 governs arbitration agreements in contracts involving interstate commerce and applies in both federal and state courts. The only express requirement for enforceability in the FAA is that the arbitration agreement shall be in writing. The same principles that apply to contracts generally under state law apply to arbitration agreements under the FAA.[191]

Mark W. Friedman, Madelaine J. Horn and Floriane Lavaud are international experts in international arbitration from the United States. In their article, it was explained that Arbitration is a popular alternative to litigation. The principal advantages such as to prevent cumbersome and costly court procedures, avoids civil juries and confidentiality. The writers identified the disadvantages of arbitration as: not providing parties with all protection of

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[190] Messitte J Peter, Mario da Silva Carlos, Bomfim de Carvalho Erico and Banhos Velloso Carlos Joao, "*The Evolution of Arbitration in Light of Supreme Court Decisions*", (22 February 2025, Brill Nijhoff Print Publication), Chapter 2, < https://brill.com/edcollchap/book/9789004715820/BP000002xml. > Accessed 10 November 2025.

[191] Buckley J. John Jr and Landy M. Jonathan, "*International Arbitration Laws and Regulations USA 2025*", (30 September 2025, ICLG) < https://iclg.com/practice-areas/international-arbitration-laws-and-regulations/usa. > Accessed 10 November 2025.

courts such as appeal rights, broad power to compel witnesses and documents, joining additional parties and continuous availability of courts.[192]

According to Dimitrios Ioannidis, the writer argued in his article that lawyers in the United States tend to clutch tightly to outdated practice methods which is partly due to a learning methodology that relies heavily on precedent. To him litigation lawyers do not look to the future as there must be a ripe dispute for adjudication, that is looking at events and conducts of the past to determine liability and damages.[193]

In the writers opinion this is a failing approach when it comes to innovation as technology advances even to the practice of law. The writer therefore encouraged lawyers to master innovation and embrace technology which will enable the legal profession and Arbitration to harmonise a legislative framework and create a human interaction with Cyber sapiens of the future.[194]

Davit Horton, from the University of California, observed that the FAA is in its 100th year in 2025. In his article, he criticised American Corporations and Businesses which exploited the FAA by promoting Forced Arbitration Agreement on workers and other businesses. The article used empirical study to examine large corporation in the United States by studying 582 forced Arbitration clauses.[195]

2.2 **Theoretical Framework**

Gary B. Born in his book titled “International Commercial Arbitration Agreement” argued that there have been numerous theoretical efforts to categorise Arbitration within domestic legal systems. Among other things, these theories have included characterisations of

[192] Friedman W. Mark, Horn J. Madelaine and Lavaud Floriane, “Arbitration Guide: United States”, (April 2024, International Bar Association), 3, < https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.ibanet.org/document%3Fid%3DUnited-states-country-guide-arbitration&ved=2ahUKEwilt_P4seeQAxUQVkEAHdLgHA4QFnoECBcQAQ&usg=AOvVaw3Q0V58iIWC3bKbQ0Js56HG. > Accessed 10 November 2025.

[193] Ioannidis Dimitrios, “*Will Artificial Intelligence replace Arbitrators under the Federal Arbitration Act*”, (2022, Richmond Journal of Law & Technology, Volume XXVIII, Issue 3). Accessed 9 November 2025.

[194] ibid.

[195] Horton David, “*Forced Arbitration in Fortune 500*”, (25 May 2025, Minnesota Law Review, Volume 109, Issue 5), <https://scholarship.law.umn.edu/minn/rev/vol109/iss5/3. > Accessed 9 November 2025.

Arbitration as 'contractual', 'jurisdictional', 'hybrid' and 'autonomous'. Although the practical implications of this debate are often unclear, there is little academic agreement on these various theories.[196]

2.2.1 **The Contractual Theory**

The Contractual theory is based on the presumption that the jurisdiction of Arbitrators to hear and resolve a dispute rest solely on the contract between the parties. The contractual doctrine is probably the historically oldest of all. It dates back to antiquity and has its roots in the very basis of the existence of pre- Roman "primitive justice". The Arbitrator's decision did not constitute the finding of law; his duty was to act as an expert familiar with the respective problem and to creatively supplement the existing legal relationship or eliminate the obstacles preventing its continuation. Consequently, the Arbitrator was supposed to substitute for the agreement of the parties where the parties were not capable of it themselves.[197]

This theory postulates that preference should be given to parties' agreement and as such the laws chosen by the parties in the arbitration agreement should be applicable to the arbitral process. This theory is believed to encourage delocalisation.[198]

The Contractual theory posits that through an agreement or premise to arbitrate that is legally enforceable, two or more individuals can create the mechanism for arbitration as a private dispute resolution mechanism primarily supervised by contractual provisions. This theory therefore posits that, on the basis of party autonomy and freedom of contract, the state's jurisdictional power should be limited if not actually superseded or nullified. The Supreme

[196] Gary B. Born, "International Commercial Arbitration", (2014 Second Edition, Walter Klawer Law & Business Publishing), Volume 1, 214.

[197]Belohlavek Alexander J, "*Arbitration and Basic Rights: Movement from Contractual Theory to Jurisdictional theory*", (2013), 66, < https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https:// papers. ssrn.com/sol3/papers.cfm%3Fabstract_id%3D2344701&ved=2ahUKEwibzM-8iM-KAxViUkEAHd 79E-cQFnoECBYQAw&usg=AOvVaw26HUSiLi-j3RXcYL29HWHk. > Accessed 30 December 2024.

[198] Temitayo Adesina Bello, "*Cacophony of Delocalisation: Emerging Trend in the International Commercial Arbitration*", (2020) Ajayi Crowther University Law Journal, 5, < https://www.google.com/url?sa=t&source= web&rct=j&opi=89978449&url=https://aculj.acu.edu.ng/index.php/lj/article/view/37&ved=2ahUKEwjwms W3u4y PAxX6W0EAHVacLHMQFnoECBcQAQ&usg=AOvVaw1eC885Lsoc1KeoUkxwe04M> Accessed 30th December 2024.

Court of Appeal observed in *Telcordia Technologies v. Telkom*,[199] that deference to the principles of party autonomy and freedom of contract is something that South African courts have consistently done since, at the very least, 1898. Being contractual, arbitration in this case therefore implies that its provisions should be binding on the parties and therefore enforceable in a manner less challenging than that of court judgments.[200]

The contract theory of arbitration does not recognize that there is any justifiable basis for domestic commercial arbitration as a dispute resolution mechanism to be supervised by any sovereign nation through its national instruments such as national legislation or national courts. Thus, various facets of arbitration, such as the contract to arbitrate, its proceedings, the powers of the arbitrator, who can serve and not serve as an arbitrator, and the nature of the awards, should all be solely subject to the terms of the contract to arbitrate. In a very basic form, the contractual theory of arbitration opines that at the point an individual voluntarily seeks to resolve their dispute privately and in the process exclude any form of interference from the state, the provisions of such contract should be strictly observed and adhered to.[201]

The contractual school of thought regarded Arbitration as a form of contractual relations. According to one early proponent of this analysis:

> It is the Arbitration agreement that gives (the Arbitral award) its existence; it is from the Arbitration agreement that it derived all its substance; it has, then, like the Arbitration agreement, the character of a contract; and the precise truth is that it is only the performance of the mandate that the parties have entrusted to the Arbitrators, it is even, to put it precisely, only an agreement to which the parties have bound themselves by the hands of the latter (the Arbitrator).[202]

The contractual school emphasized that Arbitrators were not judges (since they perform no 'public' function and exercise no powers on behalf of the state). In general terms, the

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[199] *Telcordia Technologies v. Telkom* [2006] ZASCA 112; [2006] 139 SCA (RSA); 2007 (3) SA 266 (SCA); [2007] 2 All SA 243 (SCA); 2007 (5) BCLR 503 (SCA) (November 22, 2006).

[200] Udechukwu Ojiako, "*The Finality Principle in Arbitration: A Theoretical Exploration*" (2022, American Society of Civil Engineers), DOI: 10.1061/ (ASCE) LA.1943-4170.0000573, 4, < https://www.google.com/ url?sa= t&source =web&rct=j&opi= 89978449&url=https://ascelibrary.org/doi/10.1061/% 2528ASCE% 2529LA.1943 4170.0000573 &ved=2ahUKEwj7rO2t1daKAxUIWUEAHfXfMo0QFnoEC CsQAQ&usg= AOvVaw3aDh9 ClhSwsS1ydSCG3SyT. > Last accessed 2 January 2025.

[201] Udechukwu Ojiako, 'The Finality Principle in Arbitration', (n 229), 4 - 5.

[202] Gary Born, '*International Commercial Arbitration*', (n 190), 215.

contractualist school placed primary emphasis on the role of party autonomy in the Arbitral process.[203]

Other authors reject the notion that Arbitration including the Arbitral proceedings and award is predominantly contractual and instead adopt a jurisdictional analysis. They reason that Arbitration is essentially adjudicative, involving the exercise of independent, impartial decision- making by the Arbitrators:

> While an Arbitration agreement has the formal aspect of a contract, by its very nature it assumes the absence of any agreement between the parties with respect to a dispute other than on the mode of settlement. Arbitration is a means, a method, a procedure, rather than an agreement.[204]

According to Julian, a second group of writers submit that Arbitration has a contractual character. It has its origins in and depends for its continuity on the parties' agreement. The parties themselves determine the system of Arbitration (institutional- which one? Or ad hoc), directly or indirectly choose the Arbitrators to hear their dispute, select the time and place of the Arbitration proceedings and regulate the procedure to be followed. Furthermore, the parties undertake to accept the Arbitrators' award as having binding contractual force and to voluntarily give effect to it.[205]

2.2.2 **The importance of the Contractual Theory to this Research**

The Contractual theory is focused on the contractual relationship between disputing parties which is legally enforced and binding. The AMA 2023 of Nigeria and the FAA 1988 as amended of the USA promote the legality and validity of a written Arbitration agreement which is binding, valid and enforceable. The Contractual theory guides disputing Companies, Businesses and Investor- State disputes. The theory has protected the practice of Arbitration in an investor- state dispute resolution whereby Foreign Transnational Corporations are

[203] Gary Born, '*International Commercial Arbitration*', (n 190), 215.
[204] ibid, 215.
[205] Julian D. M. Lew, "*Applicable Law in International Commercial Arbitration: A Study in Commercial Arbitration Awards*", (1978 Oceania Publication, Inc Dobbs Ferry, New Yory Sijthaff & Noordhoff International Publishers BV Netherlands), 55- 56.

vested with statutory obligations to engage in arbitration agreements which protect the foreign policy of the contracting state and the interest of the corporate investor.

Chapter Three

3.1 Legal and Institutional Framework Governing Arbitration in Nigeria

3.1.1 Legal Framework Governing Arbitration in Nigeria

3.1.2 The Constitution of the Federal Republic of Nigeria

Section 19d of the Constitution of the Federal Republic of Nigeria promotes the settlement of disputes through Arbitration, Mediation, Conciliation, Negotiation and Adjudication. This section states that:

> respect for international law and treaty obligations as well as the seeking of settlement of international disputes by negotiation, mediation, conciliation, arbitration and adjudication.[206]

Section 254 C (3) and (4) further provides that:

> The National Industrial Court may establish an Alternative Dispute Resolutions Centre within the Court premises on matters which jurisdiction is conferred on the court by this Constitution or any Act or Law: Provided that nothing in this subsection shall preclude the National Industrial Court from entertaining and exercising appellate and supervisory jurisdiction over an arbitral tribunal or commission, administrative body, or board of inquiry in respect of any matter that the National Industrial Court has jurisdiction to entertain or any other matter as may be prescribed by an Act of the National Assembly or any Law in force in any part of the Federation.
> The National Industrial Court shall have and exercise jurisdiction and powers to entertain any application for the enforcement of the award, decision, ruling or order made by any arbitral tribunal or commission, administrative body, or board of inquiry relating to, connected with, arising from or pertaining to any matter of which the National Industrial Court has the jurisdiction to entertain.[207]

Hon Justice Bashir A. Alkali in *Lamabhi Akputa v President of the Federal Republic of Nigeria and 2 Ords*[208] affirmed the jurisdiction of the National Industrial High Court under Section 254.

3.1.3 The Arbitration and Mediation Act 2023

The Arbitration and Mediation Act (AMA) 2023 is divided into three parts. Part I contains provisions for Arbitration, Part II which provides for Mediation and Part III which provides

[206] Constitution of the Federal Republic of Nigeria 2023 as amended LFN 2004, Section 19d.
[207] Constitution of the Federal Republic of Nigeria 2023 as amended LFN 2004, Section 254 C (3- 4).
[208] *Lamabhi Akputa v President of the Federal Republic of Nigeria & 2 Ords* Suit No: NICN/ YEN/ 27/ 2019, Judgement delivered 6 December 2019.

for miscellaneous provisions. Part 1 contains Section 1 to 66; Part II consists of Section 67-87 and Part III consists of Section 88- 92.[209]

Section 1 provides for objectives and application. Under Subsection 1, the objective of this Part is to promote fair resolution of disputes by an impartial Tribunal without unnecessary delay or expense. Parties are empowered with liberty to decide on the means to resolve their disputes provided they adhere to measures for the promotion of peaceful existence and protection of public interest. Subsection (3) provides for an arbitration agreement between parties for settlement of dispute shall be binding on parties and enforceable against each of the parties to the exclusion of any other dispute resolution method unless the parties otherwise provide or the agreement is void. Subsection (4) ensures that all Parties, arbitrators, arbitral institutions, appointing authorities and the court shall do all things necessary for the proper and expeditious conduct of the arbitral proceedings. Subsection (5) is specific about the territorial boundaries of International Commercial Arbitration, subject to any agreement in force between Federal Republic of Nigeria and any other country or countries, inter-state commercial arbitration within the Federal Republic of Nigeria and Commercial Arbitration within the Federal Republic of Nigeria. Subsection (6) provides for jurisdictional power of the AMA, where the seat of the arbitration is in the territory of the Federal Republic of Nigeria. Subsection (7) gives powers of the Court whether the seat of the Arbitration is outside the Federal Republic of Nigeria or the parties have not designated the seat or no seat has been determined for the determination of the section 5 (power to stay court proceedings), section 19 (power of Court to grant interim measures of protection), section 28 (recognition and enforcement of interim measures), section 29 (refusing recognition and enforcement of interim measures), section 43 (securing the attendance of witnesses), section 57 (recognition

[209] Arbitration and Mediation Act 2023.

and enforcement of awards) and section 58 (refusing recognition and enforcement of awards).[210]

Section 2 provides for form of Arbitration agreement which may be in form of an Arbitration clause or a separate agreement. The requirement for an Arbitration agreement is to be in writing. Subsection 3 now makes it compulsory for an Arbitration agreement to be in writing whether its content is recorded in any form or concluded orally by conduct or by any other means. Subsection 4 provides for what it means for an Arbitration agreement to be in writing and conditions to be met. The first condition is subject to Section 91 under electronic communication and the Second condition is where both parties agree to the existence of the Arbitration agreement. Subsection 5 creates a validity and legality of an Arbitration clause. An Arbitration clause is referenced in a manner that makes it part of a contract or an Arbitration agreement. Section 3 enables an Arbitration agreement to be irrevocable subject to Section 5(1).[211]

The death of a party in an Arbitration agreement shall not render the agreement invalid. Also, the authority of an Arbitrator shall not be revoked by the death, bankruptcy, insolvency or other changes in circumstance of a party by whom the Arbitrator was appointed. The right of action shall not be extinguished by the death of a person and for the meaning of the word 'death' is subject to Section 91 (1) of the AMA.[212]

Section 5 provides for power to stay court proceedings. The Court can stay a court proceeding where a matter is subject to an Arbitration agreement unless the agreement is void, inoperative or incapable of being performed. Where an action is brought under subsection (1) this does not affect the commencement or continuation of an Arbitral proceeding or an award while the matter is pending before the Court. The Court under subsection (3) is empowered to make interim or supplementary order to preserve the rights of parties where a stay of

[210] Arbitration and Mediation Act 2023, Section 1 (1) - (7).
[211] Arbitration and Mediation Act 2023, Section 2 and 3.
[212] Arbitration and Mediation Act 2023, Section 4(1) - (4).

proceeding is made subject to subsection (1). The AMA also overrides United Bank of Africa Plc v Trident Consulting Ltd[213], where the Supreme Court held that there is a burden on the party applying for a stay to demonstrate unequivocally by documentary evidence that it is willing to arbitrate. Section 6 gives liberty to parties to agree on the number of Arbitrators and where there is no agreement there the Arbitral Tribunal shall consist of a Sole Arbitrator.[214]

Section 7 gives conditions for the appointment of Arbitrators. A person shall not be precluded, by reason of the person's nationality, from acting as an arbitrator, unless it is agreed to by the parties. Parties may agree on a procedure of appointing an arbitrator, subject to the provisions of subsections (4) and (5). Where parties fail to agree on a procedure to appoint an Arbitrator under Subsection (2) then subject to Section 59, with three Arbitrators, each party shall appoint one Arbitrator, and the two Arbitrators appointed shall appoint the third Arbitrator. Where a party fails to appoint the arbitrator within 30 days of receipt of a request to do so from the other party, or where the two Arbitrators appointed by the parties fail to agree on the third Arbitrator within 30 days of their appointment, the appointment shall be made, upon request of a party, by the appointing authority designated by the parties or, failing such designation, by an Arbitral institution in Nigeria or by the Court.[215]

In the case of a Sole Arbitrator, where the parties are unable to agree on the Arbitrator within 30 days after the receipt of a written communication containing a request for the dispute to be referred to Arbitration by the other party or parties, the Arbitrator shall be appointed, upon request of a party, by the appointing authority designated by the parties or, failing such designation, by any Arbitral institution in Nigeria or by the Court. Subsection (3) (d) then provides for conditions to be followed where an appointing authority, Arbitral institute or the Court is requested to appoint an Arbitrator. These conditions are: copy of the request for a

[213] *United Bank of Africa Plc v Trident Consulting Ltd* (2023) 14 NWLR (Pt 1903) 95.
[214] Arbitration and Mediation Act 2023, Section 5 and 6.
[215] Arbitration and Mediation Act 2023, Section 7(1) – (3) (b).

dispute to be referred to Arbitration, a copy of the contract out of or in relation to which the dispute has arisen and a copy of the arbitration agreement if it is not contained in the contract. The appointing authority, arbitral institution or Court may require from either party such other information as it deems necessary to fulfil its functions under this Act; and where a party proposes the names of one or more persons for appointment as arbitrators, their full names, addresses and nationalities shall be indicated, together with a description of their qualifications.[216]

Under Subsection (4), where, under an appointment procedure agreed upon by the parties: a party fails to act as required under the procedure, the parties, or the two arbitrators appointed by the parties, are unable to appoint the third and presiding arbitrator; or the appointing authority, a third party, including an arbitral institution fails to perform any function entrusted to it under such appointment procedure, any party may request the Court to take the necessary action, or perform the necessary function, unless the appointment procedure agreed by the parties provides other means for securing the appointment, The appointing authority, arbitral institution or the Court exercising its power of appointment under this section shall: appoint within 30 days of the request, have due regard to the qualification required of an arbitrator in the arbitration agreement and to the considerations as are likely to secure the appointment of an independent and impartial arbitrator; and in the case of a sole or third arbitrator, take into account the advisability of appointing an arbitrator of a nationality other than those of the parties, The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the arbitral institution chosen by a party.[217]

The grounds for challenging the appointment of an Arbitrator are provided under Section 8 (1) – (4). The grounds are: where there is doubt as to the impartiality or independence of the Arbitrator, failure to disclose relevant circumstances not within the knowledge of the parties,

[216] Arbitration and Mediation Act 2023, Section 7(3) (c) – (e).
[217] Arbitration and Mediation Act 2023, Section 7(4) – (6).

lacks qualifications agreed by the parties. A party can only challenge the appointment where it participated in the appointment of the Arbitrator.[218]

The procedure for challenging an Arbitrator's appointment is provided under Section 9 (1) – (5). The parties may agree on a procedure for challenging an arbitrator, subject to the provisions of subsection (3). Where agreement is not reached between the parties under subsection (1),a party who intends to challenge an arbitrator shall, within 14 days after becoming aware of the constitution of the Arbitral Tribunal or after becoming aware of any circumstance referred to in section 8(3) and (4) of this Act, send a written statement of the reasons for the challenge to the Arbitral Tribunal and unless the challenged arbitrator withdraws or the other party or parties agree to the challenge, the arbitral tribunal shall decide on the challenge. Where a challenge under any procedure agreed upon by the parties or under subsection (2) is not successful, the challenging party may, within 30 days after having received notice of the decision rejecting the challenge, request either the appointing authority, arbitral institution or the Court that appointed the Arbitrator; or where the party that appointed the Arbitrator, the Court, as may be appropriate to decide the challenge and while the request is pending, the arbitral tribunal, including the challenged Arbitrator, may continue the Arbitral proceedings and make an award. In Subsection (4), the appointing authority, Arbitral institution or Court shall decide on the admissibility and, at the same time, if necessary, on the merits of the challenge after affording an opportunity for the arbitrator concerned, the other party or parties and any other members of the Arbitral Tribunal to comment in writing within a suitable period of time. The submitting party shall communicate the comments to the other party or parties and to the arbitrators.[219]

Where the Arbitrator fails to function by reasons under the law or of facts, termination could be by the Arbitrator's withdrawal or by agreement of the parties. The Court can also decide

[218] Arbitration and Mediation Act 2023, Section 8(1) – (4).
[219] Arbitration and Mediation Act 2023, Section 9(1) – (5).

on the termination of an Arbitrator upon request by any party. Termination under Section 10 or 9(2) shall not imply acceptance of the validity of any ground referred to in Section 10 or Section 8 (3) and (4)[220]. Where the appointment of an Arbitrator is terminated under Section 9 or 10 or by withdrawal or revocation of mandate by agreement of the parties a substitute Arbitrator shall be appointed in accordance with applicable rules under Section 11.[221]

In Section 12, the consequences of the Arbitrator's withdrawal as regard to entitlements, fees, expenses and liability is subject to parties agreement and where parties disagree, the Arbitrator may upon notice to parties apply to appointing authority or the Court for relief from liability and other orders with respect to entitlement, fees, expenses, refund or paid expenses of the Arbitrator as the Court deems fit. Both the appointing authority and the Court must be satisfied that the Arbitrator's withdrawal is reasonable. Under Subsection (3), the authority of an Arbitrator is personal and ceases upon the death of the Arbitrator. On termination of the Arbitrator's mandate under Section 10 of the AMA or by resignation or death, parties may agree on the extent the previous proceedings should, the sum to be paid or refund of expenses incurred on the death of the Arbitrator. The Arbitrator ceasing to hold office does not affect any joint appointment or appointment of a presiding Arbitrator.[222]

The immunity of an Arbitrator is provided under Section 13. An Arbitrator, appointing authority or an Arbitral institution is not liable for any act or omission in the discharge of their function except such act or omission is in bad faith. This applies also to an employee of an Arbitrator, appointing authority or an Arbitral institution. Section 13 does not affect any liability incurred by an Arbitrator as a result of the Arbitrator's withdrawal under Section 12.[223]

[220] Arbitration and Mediation Act 2023, Section 10(1) – (3).
[221] Arbitration and Mediation Act 2023, Section 11.
[222] Arbitration and Mediation Act 2023, Section 12(1) – (6).
[223] Arbitration and Mediation Act 2023, Section 13(1) – (3).

Section 14 is about the competence of Arbitral Tribunal to rule on its jurisdiction including the existence and validity of an Arbitration agreement. Subsection (2) renders an Arbitration clause independent and a void contract does not entail ipso jure the invalidity of the Arbitration clause. The jurisdiction of an Arbitral Tribunal can be challenged not latter that the submission of the point of defence on a party is not precluded from raising such plea. In any arbitral proceeding, a plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the points of defence and a party is not precluded from raising such a plea by the fact that it has appointed or participated in the appointment of an arbitrator. In Subsection (4) a plea that the Arbitral Tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the Arbitral proceedings and the Arbitral Tribunal may, in a case falling either under subsection (3), admit a later plea where it considers the delay justified. Under Subsection (5) the arbitral tribunal may rule on any plea referred to it under subsections (3) and (4), either as a preliminary question or in an award on the merits and the ruling is final and binding. (6) Where the Tribunal rules as a preliminary question that it has jurisdiction, a party may request, within 30 days after having received notice of the ruling, the Court to decide the matter. Where the Arbitral Tribunal rules on its jurisdiction as a preliminary question, it may continue with the proceedings and make an award notwithstanding that a party has recourse to a Court in respect of such ruling.[224]

Power of an Arbitral Tribunal in deciding a dispute is subject to rule of law chosen by the disputing parties. The Tribunal can directly refer to a territorial or jurisdictional rule of a substantive law in not to conflict with chosen rules by the parties. Where parties fail to choose any law of a given jurisdiction or territory, the Arbitral Tribunal has the discretionary power to apply any relevant law it considers applicable under Section 15 (1). The power to

[224] Arbitration and Mediation Act 2023, Section 14(1) – (7).

decide ‘ex aequo et bono’ or as ‘amiable compositeur’ is at the express authority of the party. Section 15 applies to foreign Arbitration between different countries or parties of different countries. In Subsection (5), the decision of a Tribunal is in accordance with terms of contract and applicable trade rules with evidence.[225]

The appointment of an emergency Arbitrator is in accordance with Section 16 (1) - (11) of the AMA. A party that requires emergency relief may, concurrent with or following the filing of a request for a dispute to be referred to arbitration but before the constitution of the Arbitral Tribunal, submit an application for the appointment of an emergency arbitrator to any Arbitral Institution designated by the parties, or, failing such designation, to the Court, as defined in section 91. The party who requires the appointment of an emergency arbitrator shall provide sufficient copies of the application to the arbitral institution or the Court to make one copy available for the emergency arbitrator and one copy for each party, who shall be notified of the proceedings in accordance with subsection (6). Unless the parties agree otherwise, the application shall include the following information such as: a statement of the emergency relief sought, the name in full, description, address and other contact details of each party, a description of the circumstances that give rise to the application and of the underlying dispute referred to arbitration, the reason why the applicant needs the emergency relief on an urgent basis that cannot await the constitution of an arbitral tribunal, the reasons why the applicant is entitled to the emergency relief and any relevant agreement and, in particular, the arbitration agreement. The application may contain any other document or information as the applicant considers appropriate or that may contribute to the efficient examination of the application. Where the Arbitral institution or Court determines that it should accept the application, it shall, unless the parties otherwise agree, appoint an emergency arbitrator within two business days after the date the application is received. Once

[225] Arbitration and Mediation Act 2023, Section 15(1) – (5).

the Emergency Arbitrator has been appointed, the Arbitral institution or Court shall, at the expense of the party making the application, immediately notify the emergency Arbitrator and other party or parties named in the application, not later than the close of business on the business day following the date the application is granted, or any other time, not exceeding two business days, as the arbitral institution or Court considers to be appropriate in the circumstances, and written communications from the parties shall subsequently be submitted directly to the emergency arbitrator with a copy to the other party or parties.[226]

Under Subsection (7), every emergency Arbitrator shall be and remain impartial and independent of the parties involved in the dispute. A prospective emergency arbitrator shall sign and deliver to the parties a statement of acceptance, availability, impartiality and independence. The emergency relief proceedings shall be in accordance with the provisions Article 27 of the First Schedule to the AMA. Section 16 and Article 27 of the First Schedule of the AMA shall not prevent any party from seeking urgent interim measures from a Court under section 19 of this Act, at any First Schedule time before making an application for the measures, and in appropriate circumstances thereafter. Any application for urgent interim measures from a competent Court is not deemed to be an infringement or waiver of the arbitration agreement.[227]

An emergency Arbitrator can be challenged under Section 17, the procedure is within 3 days and the ground for the challenge is in accordance with Section 8. The Arbitral institute o the Court have the power to decide on the challenge by Subsection (2) and a submission is required to be in writing not later than 3 days at the date of the challenge. Where an Arbitrator dies, successfully challenged, removed or withdrawn. The Arbitral institution or Court shall appoint a substitute emergency Arbitrator within two business days. An emergency relief proceeding continues from where the emergency Arbitrator was replaced or

[226] Arbitration and Mediation Act 2023, Section 16(1) – (6).
[227] Arbitration and Mediation Act 2023, Section 16(7) – (11).

ceased to perform assigned functions, unless the substitute emergency Arbitrator decide otherwise.[228]

The seat of the emergency relief proceeding shall be subject to agreement of the parties. Where parties have not agreed, the power then shifts to the Arbitral institute or the Court that appointed the emergency Arbitrator to fix the seat of emergency relief proceeding, without prejudice to the determination of the Seat of Arbitration by the Arbitral Tribunal under Section 32 of the AMA. Acceptable ways of conducting a meeting with an emergency Arbitrator is in- person meeting, Video Conference, Telephone or similar means of communication.[229]

The Court is conferred with the jurisdiction to grant interim measures of protection in relation to Arbitration proceedings within and outside the Federal Republic of Nigeria for the purpose and in relation to proceeding in Court which is exercised within 15 days of any application in accordance with rules of the third Schedule of the AMA.[230]

An Arbitral Tribunal is vested with the power to grant interim measures at the request of parties under Section 20(1). Subsection (2) then explain what an interim measure is and its purpose under Section 20 (2) (a) – (d). It is a temporary measure, whether in the form of an award or in another form. The Tribunal can order a party to: maintain or restore the status quo pending determination of the dispute, take action that may prevent or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the Arbitral process, 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 or preserve the subject matter of the Arbitration itself.[231]

[228] Arbitration and Mediation Act 2023, Section 17(1) – (4).
[229] Arbitration and Mediation Act 2023, Section 18(1) – (3).
[230] Arbitration and Mediation Act 2023, Section 19.
[231] Arbitration and Mediation Act 2023, Section 20(1) – (2).

The conditions for grant of interim measure under Section 20 (2) (a) – (d) are provided under Section 21 (1) and (2) of the AMA. The Tribunal shall be satisfied that: harm not adequately separable by an award of damages is likely to result where the measure is not ordered, and the harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed where the measure is granted; and there is a reasonable possibility that the requesting party may succeed on the merits of the claim, provided that any determination on this possibility does not affect the discretion of the arbitral tribunal to make any subsequent determination. The conditions under Section 20 (2) (d) and 21 (1) (a) – (b) apply to the extent the Tribunal considers appropriate.[232]

In an application for preliminary order, a party may without notice make request to the Arbitral tribunal for an interim measure together with an application for a preliminary order directing a party not to frustrate the purpose of the interim measure requested. The Arbitral Tribunal may grant a preliminary order where a party frustrates an interim measure. Section 20 (1) applies to preliminary order.[233]

Under Section 23, The Arbitral Tribunal has the duty to give notice to parties of the request for the interim measure, application for the preliminary order, the preliminary order, all other communications, indicating oral communication between a party and the Arbitral Tribunal. The Tribunal gives opportunity to any party against whom a preliminary order is directed to present its case at the earliest possible time. The Tribunal has the duty to decide promptly on any preliminary objection. The expiration period for a preliminary order is 20 days from the date of issue by the Arbitral Tribunal provided there is any interim measure issued. Subsection 5 explains the nature of a preliminary order. It binds parties and it is not subject to enforcement by a Court. It does not constitute an award.[234]

[232] Arbitration and Mediation Act 2023, Section 21(1) – (2).
[233] Arbitration and Mediation Act 2023, Section 22(1) – (3).
[234] Arbitration and Mediation Act 2023, Section 23(1) – (5).

The power to modify, suspend and terminate interim measure or a preliminary order is vested on an Arbitral Tribunal on the ground after prior notice to parties that: important facts were concealed from the Arbitral Tribunal, the interim measures or preliminary order was fraudulently obtained, facts have come to the knowledge of the Arbitral Tribunal, which, if the Arbitral Tribunal had known at the material time, it would not have granted the order and it is just and equitable in the circumstance to modify, suspend or terminate the order.[235]

An Arbitral Tribunal may require a part to provide security for interim measure. It may not be required where it is considered inappropriate or unnecessary. In Section 26, parties have the duty to disclose any material change when requesting an interim measure. An applying party has the same obligation to disclose for both preliminary order and interim measure.[236]

Section 27 provides for liability of cost and damage when requesting for interim measure or applying for preliminary order. The party requesting for these is liable for the costs and damages. Cost and damages may be awarded at any point during the Arbitral proceeding.[237]

Recognition and enforcement of interim measure under Section 28 explains that an interim measure issued by an Arbitral Tribunal is binding and enforced in the Court irrespective of the country in accordance with Section 29. A party seeking or has obtained recognition or enforcement on an interim measure has the duty to inform the court of any termination, suspension or modification of the interim measure. The Court may order a requesting party to provide appropriate security for the purpose of protecting the right of a third party.[238]

The grounds for refusing recognition and enforcement of an interim measure are: at the request of the party against whom it is invoked, where the Court is satisfied that the refusal is warranted on the grounds set forth in section 58(2) (a) (i), (ii), (iii), (iv), (v), (vi) or (vii) of this Act, the decision of the arbitral tribunal with respect to the provision of security in

[235] Arbitration and Mediation Act 2023, Section 24(a) – (d).
[236] Arbitration and Mediation Act 2023, Section 25(1) – (2) and 26 (1) – (3).
[237] Arbitration and Mediation Act 2023, Section 27(1) – (2).
[238] Arbitration and Mediation Act 2023, Section 28(1) – (3).

connection with the interim measure issued by the Arbitral Tribunal has not been complied with, or the interim measure has been terminated or suspended by the Arbitral Tribunal or, where so empowered, by a competent authority in the Country in which the Arbitration takes place or under the law of which that interim measure was granted; or where the Court finds that: the interim measure is incompatible with the powers conferred upon the Court, unless the Court decides to reformulate the interim measure to the extent necessary to adapt it to its own powers and procedures for the purposes of enforcing that interim measure and without modifying its substance, or any of the grounds set forth in section 58(2)(b) apply to the recognition and enforcement of the interim measure. Any determination made by the Court on any ground in subsection (1) is effective only for the purposes of the application to recognise and enforce the interim measure. The Court under Section 29 (3) is prevented from reviewing the substance of the interim measure.[239]

The Doctrine of Equity is enshrined under Section 30 (1) and (2) as the parties are treated equally, given reasonable opportunity in presenting their case and accorded a fair resolution of disputes without unnecessary delay or expenses.[240]

Parties are given the liberty to conduct their Arbitral proceeding in accordance with their agreed rules and procedures. Where there is no agreed rules and procedures, the Arbitral rule in the First Schedule applies to the Arbitral proceeding. The Arbitral Tribunal shall conduct Arbitral proceedings in accordance with Section 30 which has enshrined the doctrine of equity where agreed procedure and rules under Subsection (1) of Section 31 contains no provision in respect to matters related to the Arbitral proceedings. The powers vested in an Arbitral Tribunal under Subsection (3) are to determine the admissibility, relevance, materiality and weight of any evidence.[241]

[239] Arbitration and Mediation Act 2023, Section 29(1) – (3).
[240] Arbitration and Mediation Act 2023, Section 30(1) – (2).
[241] Arbitration and Mediation Act 2023, Section 31(1) – (3).

The Seat and Place of Arbitration is provided under Section 32. The seat of the arbitration shall be designated: by the parties to the arbitration agreement, by an arbitral or other institution or person authorised by the parties with powers in that regard; or subject to subsection (2) and by the Arbitral Tribunal. Where the parties have not designated the seat of the arbitration and they have not authorised any arbitral or other institution to designate the seat of the arbitration, the seat of the arbitration shall be any place in Nigeria as the arbitral tribunal may determine, unless the arbitral tribunal decides that a place in another Country should be the seal of the arbitration having regard to all the relevant circumstances, including: the Country with which the parties and the transaction have the closest connection, the law that the parties have selected to govern their substantive rights under the contract, and any law that the parties may have chosen to govern the arbitration. Notwithstanding the provisions of subsections (1) and (2), the Arbitral Tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate to consult among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other properly or documents. The seat of arbitration under Subsection (4) means the juridical seat of the arbitration for purposes of determination of the law that will govern the arbitration proceedings also known as the curial law.[242]

Unless otherwise agreed by parties in Arbitral dispute, Arbitral proceedings in respect of a particular dispute shall commence on the date on which a written communication containing a request for the dispute to be referred to Arbitration is received by the respondent.[243]

On the issue of Statutes of limitation, the AMA under Section 34 (1) provides that statute of limitation is applicable to both Arbitral proceedings and judicial proceedings. Subsection 2 therefore excluded the following for computation of time prescribed by a statute of limitation: an award which the court orders to be set aside or declares to be of no effect, the affected part

[242] Arbitration and Mediation Act 2023, Section 32(1) – (4).
[243] Arbitration and Mediation Act 2023, Section 33.

of an award which the court orders to be set aside in part, or declares to be part of no effect, the period between the commencement of the Arbitration and the date of the order referred to in paragraph (a) or (b) shall be excluded. In determining for the purposes of a statute of limitation when a cause of action accrued, any provision that an award is a condition precedent to bring legal proceedings in respect of a matter to which an arbitration agreement applies shall be disregarded. In computing the time for the commencement of proceedings to enforce an arbitral award, the period between the commencement of the Arbitration and the date of the award shall be excluded[244]. The AMA settles a storm of debate about whether statutory limitation periods may be invoked in arbitration, and regarding the limitation period for enforcing an Arbitral award. Certain state limitation laws, including the Limitation Law of Lagos State, contain provisions which the Supreme Court has interpreted to mean that the six year limitation period for enforcing arbitral awards must be reckoned from the date on which the dispute arose, rather than the date on which the award was rendered. The Nigerian Supreme Court held in City Engineering v Federal Housing Authority,[245] that time begins to run from the date of breach of the underlying agreement between the parties, not from the making of the award. The decision of the Supreme Court reflected in the case of Messrs U. Maduka Ent. (Nig) Ltd v B. P. E.[246]

The language to be used in Arbitral proceedings under Section 35 (1) is basically English language but parties are free to use agreed language or languages. The agreed language or languages to be used in Arbitral Tribunal shall be used in any written statements by the parties in any hearing, award decision or any other communication in the course of the Arbitration. In Subsection 3, an Arbitral Tribunal may order that documentary evidence be translated into the language or languages agreed by the parties.[247]

[244] Arbitration and Mediation Act 2023, Section 34(1) – (4).
[245] *City Engineering v Federal Housing Authority* (1997) 9 NWLR (Pt 520) at 224
[246] *Messrs U. Maduka Ent. (Nig) Ltd v B. P. E* (2019) 12 NWLR (Pt 1607) 429.
[247] Arbitration and Mediation Act 2023, Section 35(1) – (3).

In relation to contents in a point of claim and defence, Section 36 (1) provides for contents stated in point of claim by the claimant such as: state the facts supporting the claim, the points at issue and the relief or remedy sought, and the respondent shall state, in its points of defence, the response in respect of those particulars, unless the parties have otherwise agreed on the required elements of the points of claim and of defence. The parties may submit further statements as they may agree or as the arbitral tribunal may direct. The parties may submit with their statements under subsections (1) and (2), documents they consider to be relevant or they may add a reference to the documents, or other evidence they intend to submit during the course of the arbitral proceedings. Subsection (4) provides for the liberty of parties to amend or supplement their claim or defence but this is limited where the Arbitral Tribunal finds it inappropriate having regard to delay in making it.[248]

Section 37 provides for powers exercisable by the Arbitral Tribunal. They could be by agreement of the parties or powers provided exercisable and provided in Subsection (2). The statutory powers of Arbitral Tribunal under Section 37 (2) of the AMA are: to make a declaration as to any matter to be determined in the proceedings, to order the payment of a sum of money, in any currency claimed by a party; and as the Court, to order: a party to do or refrain from doing anything, specific performance of a contract (other than a contract relating to land), and the rectification, setting aside or cancellation of a deed or other document.[249]

On hearing and written proceedings, except there is a contrary agreement between parties, an Arbitral proceeding shall be conducted either: by holding oral hearings for the presentation of evidence or for oral arguments, on the basis of documents and other materials; or by a combination of the methods described in paragraphs (a) and (b), and, unless the parties have agreed that no hearing be held, the Arbitral Tribunal shall hold such hearings at an appropriate stage of the proceedings if so requested by any party. The arbitral tribunal shall

[248] Arbitration and Mediation Act 2023, Section 36(1) – (4).
[249] Arbitration and Mediation Act 2023, Section 37(1) – (2).

give the parties sufficient advance notice of any hearing and meeting of the arbitral tribunal, held for the purposes of inspection of documents, goods or other property. Except on the application for a preliminary order under section 22 of this Act, every statement, document or other information supplied to the arbitral tribunal or other authority by one party shall be communicated to the other party. Any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties. Unless otherwise agreed by the parties, the Arbitral Tribunal may, for the purposes of the Arbitral proceedings concerned, direct that a party to an arbitration agreement or a witness who gives evidence in proceedings before the arbitral tribunal be examined on oath or on affirmation; and administer oaths or affirmations for the purposes of the examination.[250]

Section 39 provides for Consolidation and Concurrent hearing of two or more parties and could be subject to terms agreed by party or parties. Parties may agree that the Arbitral proceedings shall be consolidated with other Arbitral proceedings. The power of the Arbitral Tribunal to order consolidation of proceedings or concurrent hearing is limited by agreement between the disputing parties.[251]

Section 40 provides for joinder of parties as vested under Subsection (1) provided that prima facie the additional party is bound by the Arbitration agreement. Subsection (2) ensures that the decision of the Arbitral Tribunal is without prejudice to its power to subsequently decide any question as to its jurisdiction arising from such decision.[252]

Unless otherwise agreed to by the parties, if, without showing sufficient cause that the claimant fails to state the claim as required under section 36(1) of the AMA, the Arbitral Tribunal shall terminate the proceedings provided that where a respondent has a counterclaim and has evinced an intention to file same, the proceedings shall not be terminated, the respondent fails to state the defence as required under section 36(1), the Arbitral Tribunal

[250] Arbitration and Mediation Act 2023, Section 38(1) – (5).
[251] Arbitration and Mediation Act 2023, Section 39(1) – (2).
[252] Arbitration and Mediation Act 2023, Section 40(1) – (2).

shall continue the proceedings without treating the failure in itself as an admission of the claimant's allegation, any party fails to appear at a hearing or to produce documentary evidence, the Arbitral Tribunal may continue the proceedings and make an award on the evidence before it. Parties may agree on any additional powers of the arbitral tribunal for the proper and expeditious conduct of the arbitration in case of a party's default. Unless otherwise agreed by the parties, if, after stating the claim as required under section 36(1), the Arbitral Tribunal is satisfied that there has been inordinate and inexcusable delay on the part of the claimant in pursuing the claim and that the delay: gives rise, or is likely to give rise, to a substantial risk that a fair resolution of the issues in that claim may not be possible, or has caused, or is likely to cause serious prejudice to the respondent, the arbitral tribunal may make an award dismissing the claim. Unless otherwise agreed by the parties, if without showing cause, a party fails to comply with an order or directions of the arbitral tribunal, the Arbitral Tribunal may make a peremptory order to the same effect, prescribing such time for compliance with it as the Tribunal considers appropriate. Unless otherwise agreed by the parties, where a claimant fails to comply with a peremptory order of the arbitral tribunal to provide security for costs, the arbitral tribunal may make an award dismissing its claim. Unless otherwise agreed by the parties, where a party fails to comply with any other kind of peremptory order, the arbitral tribunal may: direct that the party in default is not entitled to rely upon any allegation or material which was the subject matter of the order, draw any adverse inference from the act of non-compliance as the circumstances justify, proceed to make an award on the basis of the materials as have been properly provided to it; or make any order as it deems fit about the payment of costs of the arbitration incurred in consequence of the non-compliance.[253]

[253] Arbitration and Mediation Act 2023, Section 41(1) – (6).

The Arbitral Tribunal unless agreed by the parties is vested with powers to appoint an expert. The expert can also participate in a hearing at the request of parties, and have the opportunity to put questions to the expert and present other expert witnesses to testify on their behalf on the points at issue.[254]

In Section 43, the powers to order a writ of subpoena ad testificandum or subpoena duces tecum is vested on an Arbitral Tribunal, a Court or a Judge. This is to compel a witness at the request of parties within Nigeria. The Court or a Judge is vested with authority under Subsection (2) to order a writ of habeas corpus ad testificandum to bring a prisoner for examination before any Arbitral Tribunal. The laws governing subpoena or an order to produce a prisoner in a civil proceeding outside the Nigerian jurisdiction shall apply.[255]

With respect to decision making in an Arbitral Tribunal under Section 44, unless otherwise agreed by the parties, where there are more than one Arbitrator, the decision of the Tribunal shall be by majority of all its members. In any Arbitral Tribunal, the Presiding Arbitrator may decide on questions relating to procedure to be followed in the proceeding subject to the provisions of the AMA and as authorised by the parties.[256]

Parties may settle a dispute between amiably and request that such settlement be recorded as an award. The Arbitral Tribunal shall terminate the proceeding. The award on agreed terms shall be in accordance with the provisions of Section 47 of the AMA and such an award shall have the same status and effect as any other award on the merits of the case.[257]

Section 47 provided for a vivid description of a form and content of an award. The award shall be in writing and signed by the arbitrator or arbitrators. In an arbitral proceeding with more than one arbitrator, the signatures of a majority of all the members of the Arbitral Tribunal shall suffice, provided that the reason for any omitted signature is stated. The award

[254] Arbitration and Mediation Act 2023, Section 42(1) – (2).
[255] Arbitration and Mediation Act 2023, Section 43(1) – (3).
[256] Arbitration and Mediation Act 2023, Section 44(1) – (2).
[257] Arbitration and Mediation Act 2023, Section 45(1) – (2).

shall state the: reasons upon which it is based, unless the parties have agreed that no reason should be given or the award is an award on agreed terms under section 45, date it was made; and seat of the arbitration as agreed or determined under section 32(1) of this Act, which seat is deemed to be the place where the award was made. Subject to the provisions of section 54 of this Act, after the award is made, a copy signed by the arbitrators in accordance with subsections (1) and (2) shall be delivered to each party.[258]

The requirement for termination of Arbitral proceeding under Section 48 is based on the following grounds: The arbitral proceedings shall terminate when the final award is made or when an order of the arbitral tribunal is issued under subsection (2). The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where the: claimant withdraws the claim, unless the respondent objects to it and the Arbitral Tribunal recognises a legitimate interest on its part to obtain a final settlement of the dispute, parties agree to the termination of the arbitral proceedings; or Arbitral Tribunal finds that continuation of the arbitral proceedings has become unnecessary or impossible. Subject to the provisions of sections 49 and 55 (5) and (6) of the AMA, the mandate of the Arbitral Tribunal shall cease on termination of the arbitral proceedings.[259]

Section 49 provides for interpretation of award and additional award. Unless another period has been agreed upon by the parties, a party may, within 30 days of the receipt of an award and with notice to the other party, request the arbitral tribunal: to correct in the award any error in computation, clerical or typographical errors or errors of a similar nature; or where it is agreed by the parties, to give an interpretation of a specific point or part of the award. Where the Arbitral Tribunal considers a request made under subsection (1) to be justified, it shall, within 30 days of receipt of the request, make the correction or give the interpretation, and such correction or interpretation shall form part of the award. The arbitral tribunal may,

[258] Arbitration and Mediation Act 2023, Section 47(1) – (4).
[259] Arbitration and Mediation Act 2023, Section 48(1) – (3).

on its own volition and within 30 days from the date of the award, correct an error of the type referred to in subsection (1) (a). Unless otherwise agreed to by the parties, a party may within 30 days of receipt of the award, request the arbitral tribunal to make an additional award as to the claims presented in the arbitral proceedings but omitted from the award. Where the Arbitral Tribunal considers a request made under subsection (4) to be justified, it shall, within 60 days of the receipt of the request, make the additional award. The arbitral tribunal may, if it considers it necessary, extend the time limit within which it shall make a correction, give an interpretation or make an additional award under subsection (2) or (5). The provisions of section 47 apply to any correction or interpretation or to an additional award made under this section.[260]

The Arbitral Tribunal is vested with the power to fix cost in its award under Section 50. Cost includes: the fees of the arbitrators, the travel and other expenses incurred by the arbitrators, the cost of expert advice and of other assistance required by the Arbitral Tribunal, the travel and other expenses of parties, witnesses and other experts consulted by the parties to the extent that the expenses are approved by the arbitral tribunal having regard to what is reasonable in the circumstances, the costs for legal representation and assistance of the successful party where the costs were claimed during the arbitral proceedings, and only to the extent that the Arbitral Tribunal determines that the amount of such costs is reasonable, administrative costs such as cost of the arbitral institution or the appointing authority, cost of venue, sitting and correspondence, the costs of obtaining Third-Party Funding; and other costs as approved by the arbitral tribunal. The fees of the arbitral tribunal shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject-matter, the time spent by the arbitrators and any other relevant circumstances of the case.[261]

[260] Arbitration and Mediation Act 2023, Section 49(1) – (7).
[261] Arbitration and Mediation Act 2023, Section 50(1) – (2).

In *Polaris Bank v Magic Support (NIG) Ltd*,[262] the Court held:

> The determination of who to bear the cost of arbitration is usually determined by the agreement of the parties or where there is no agreement by the parties, the arbitral Tribunal will determine who pays the cost of the arbitration. It is obvious from the Software License Agreement of the parties that, there is no provision for this. The implication of which is that the applicable law with respect to the determination of cost will be based on the law governing the arbitration which in this case is the Arbitration and Conciliation Act. Though the Arbitration and Conciliation Act is silent as to cost in relation to Domestic arbitration, the Arbitration rules encapsulated in Schedule 1 of the Arbitration and Conciliation Act however, makes provision for cost. This is Article 38 of the Arbitration rules, which provides thus: "38. The arbitral Tribunal shall fix the costs of arbitration in its award. The term "costs" includes only- (a) the fees of the arbitral tribunal to be stated separately as to each arbitrator and to be fixed by the Tribunal itself in accordance with Article 39; (b) the travel and other expenses incurred by the arbitrators; (c) the costs of expert advice and of other Assistance required by the arbitral tribunal; (d) the travel and other expenses of witnesses to the extent that such expenses are approved by the arbitral tribunal; (e) the costs for legal representation and assistance of the successful party if such costs were claimed during the Arbitral proceedings and only to the extent that the arbitral tribunal determines that the amount of such costs is reasonable." The rule has placed the award of cost at the discretion of the Arbitral Tribunal but just like as it is in every discretion, it must he exercised judicially and judiciously. See Eromosele vs. FRN (2018)[263]; Eye vs, FRN (2018)[264]; David vs. CP, Plateau State Command.[265] The law is that cost is not meant to be punitive but compensatory. See Olusanya vs. Osinleye (2013)[266]; Layinka & Anor vs. Makinde & Ors.[267] In line with the general rule that cost follows events, Article 40 of the rules provides thus: 40.1. Except as provided in paragraph 2, the costs of arbitration shall in principle be borne by the unsuccessful party. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable taking into account the circumstances of the case. 2. With respect to the costs of legal representation and assistance referred to in Article 38, paragraph (e), the arbitral Tribunal, taking into account the circumstances of the case, shall be free to determine which party shall bear such costs or may apportion such costs between the parties if it determines that apportionment is reasonable." The law is settled beyond peradventure that a successful party is entitled to cost. See:

[262] *Polaris Bank v Magic Support* (NIG) Ltd (2020) LPELR- 53106 (CA).
[263] *Eromosele vs. FRN* (2018) LPELR-43851 (SC).
[264] *Eye vs, FRN* (2018) LPELR-43599 (SC).
[265] *David vs. CP, Plateau State Command* (2018) LPELR-44911 (SC).
[266] *Olusanya vs. Osinleye* (2013) LPELR-20641 (SC).
[267] *Layinka & Anor vs. Makinde & Ors* (2002) LPELR-1770 (SC).

Obayagbona & Anor vs. Obazee & Anor[268]; URN Ltd & Anor vs. Nwaokolo[269]. It is in line with this principle that the arbitral tribunal awarded cost in favour of the Respondent against the Appellant. The arbitral tribunal may, however, apportion such costs between the parties if it determines that the apportionment is reasonable, taking into account the circumstances of the case." Per EBIOWEITOBI, JCA (Pp 34 - 37 Paras C - B)".

Deposits may be requested by the Arbitral Tribunal of equal amount as an advance for cost subject to Section 50 (1) (a), (b) and (c) under Section 51. During the course of the Arbitral proceedings, the Arbitral Tribunal may request supplementary deposits from the parties where parties fail to pay such deposits from the parties. Where parties fail to pay such deposits within 30 days, the Arbitral Tribunal shall inform the parties to pay or on more parties to pay, if no payment is made then the Tribunal may order suspension or termination of the Arbitral proceedings.[270]

In Section 52, the Arbitral Tribunal is vested with the power to order any claiming or counter claiming party to provide security for the legal or other cost of any other party by way of deposit or bank guarantee or in any other manner and upon the terms as the Arbitral Tribunal considers appropriate. Subsection (2) explains the terms under subsection (1) may include the provision by that other party of a cross indemnity, itself secured in a manner as the Arbitral Tribunal considers appropriate, for costs and losses incurred by the claimant or counterclaimant in providing security. The amount of any costs and losses payable under a cross-indemnity under subsection (1) may be determined by the arbitral tribunal in one or more awards. In the event that a claiming or counterclaiming party does not comply with any order to provide security under this section, the arbitral tribunal may stay that party's claims or counterclaims or dismiss them in an award.[271]

[268] *Obayagbona & Anor vs. Obazee & Anor* (1972) LPELR-2159 (SC).
[269] *URN Ltd & Anor vs. Nwaokolo* (1995) LPELR-3385 (SC).
[270] Arbitration and Mediation Act 2023, Section 51(1) – (3).
[271] Arbitration and Mediation Act 2023, Section 52(1) – (4).

On joint liability for fees and expenses, parties are jointly and severally liable to pay Arbitrators appropriately. Arbitrators include: an Arbitrator who has ceased to act, an Arbitral institution and an appointing authority.[272]

An Arbitral Tribunal under Section 54 may refuse to deliver an award on grounds of non-payment of fees and expenses to Arbitrators or Arbitral institution. Subsection (2) provides for exception to the hash rule of subsection (1). Where the Tribunal or institution refuses to grant an award due to non- payment of fees and expenses, a party may upon notice to the other parties, the Arbitral Tribunal or Arbitral institution, apply to the Court which may order that: the Arbitral Tribunal or Arbitral institution shall deliver the award where the applicant pays the fees and expenses demanded into Court, or pays such lesser amount as the Court may specify, the amount of the fees and expenses properly payable shall be determined by the means and upon the terms as the Court may direct and out of the money paid into Court there shall be paid out the fees and expenses as may be found to be properly payable and the balance of the money (if any) shall be paid out to the applicant. For this purpose, the amount of fees and expenses properly payable is the amount the applicant is liable to pay under section 53 of this Act or any agreement relating to the payment of the Arbitrators. No application to the Court may be made unless every available Arbitral process for appeal or review of the amount of the fees or expenses demanded has been exhausted. References in this section to arbitrators include an arbitrator who has ceased to act. The leave of the Court is required for any appeal from a decision of the Court under this section. Nothing in this section shall be construed as excluding an application under section 55 of this Act, where payment has been made to the Arbitrators in order to obtain the award.[273]

Section 55 vested jurisdictional powers to the Court to set aside an Arbitral award. An application for setting aside an arbitral award shall not be made on the ground of an error on

[272] Arbitration and Mediation Act 2023, Section 53(1) – (2).
[273] Arbitration and Mediation Act 2023, Section 54(1) – (7).

the face of the award, or any other ground except those expressly stated in subsection (3). The Court may set aside an arbitral award, where: the party who makes the application furnishes proof that a party to the arbitration agreement was under some legal incapacity, the arbitration agreement is not valid under the law to which the parties have subjected it, or failing such indication, under the laws of Nigeria, the party who makes the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise not able to present its case, the award deals with a dispute not contemplated by or does not fall within the terms of the submission to arbitration, the award contains decisions on matters which are beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside, the composition of the arbitral tribunal, or the arbitral procedure, was not in accordance with the agreement of the parties, unless the agreement was in conflict with a provision of this Act from which The parties cannot derogate, or where there is no agreement between the parties under subparagraph, that the composition of the arbitral tribunal or the arbitral procedure was not in accordance with this Act; or (b) the Court finds that the: subject matter of the dispute is otherwise not capable of settlement by Arbitration under the laws of Nigeria, or award is against public policy of Nigeria.[274]

Hagler Okorie in his book titled “Arbitration Law: Practice and Procedures”, explained that a Court can order a remission of an award. This happens when a Court, for which an application to set aside an Arbitral award, finds that same grounds set out in Subsection (3) have been satisfactorily proved by the aggrieved party. Remission may be ordered in part or in whole of the award. It means that the Court will send back the award to the same Arbitration Tribunal to reconsider some aspect of the matter, submitted by the parties, which

[274] Arbitration and Mediation Act 2023, Section 55.

justice has not been done on it as complained by the parties before the Court. Remission of award afford the Arbitral Tribunal and, in fact, the parties the opportunity or to have a second bite at the cherry, so as to cure a latent or patent defect inherent in the award.[275]

In *CBN v Data & Scientific Incorporation*,[276] the Court of Appeal held:

> ... Although, the grounds for setting aside an Arbitral award are the same with those for its remission, the two have different connotations. The object of remission is to essentially return the award to the Arbitrator for an error to be corrected, or for further information and a rightful decision to be given by the Arbitrator. It follows therefore that in a situation where the Court thinks that remission will meet the justice of the case, former proceedings in the reference continue to be valid and the case is not started all over. But, setting aside of an Arbitral award renders the whole Arbitration proceedings null and void.

An application for setting aside shall not be made after three months have elapsed from the date on which the party making that application had received the award or, if the quest had been made under section 49 of this Act, from the date on which that request had been disposed of by the arbitral tribunal. Where the Court is satisfied that one or more of the grounds set out in subsection (3) has been proved and that it has caused or will cause substantial injustice to the applicant, the remit the award to the Tribunal, in whole or in part, for reconsideration; or set the award aside in whole or in part. The Court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the Arbitral proceedings or take any other action which in the opinion of the arbitral tribunal will eliminate the grounds for setting aside.[277]

In December 2021, the Nigerian Court of Appeal in *Limak Yatirim Enerji Ureim Isletme Hizmetleri ve Insaat A.S. & Ors v Sahelian Energy and Integrated Services Ltd*,[278] caused

[275] Hagler Okorie, "*Arbitration Law: Practice and Procedure*", (2024 Edition, Princeton & Associate Publishing Co. Ltd), 272.
[276] *CBN v Data & Scientific Incorporation* (2023) LPELR- 60737 (CA).
[277] Arbitration and Mediation Act 2023, Section 55(1) – (6).
[278] *Limak Yatirim Enerji Ureim Isletme Hizmetleri ve Insaat A.S. & Ors v Sahelian Energy and Integrated Services Ltd*. CA/ABJ/CV/795/2020.

uproar among users and practitioners of arbitration in the region when it set aside an arbitral award resulting from a Geneva-seated arbitration. That decision was a consequence of clumsy provisions in the old law, which failed to differentiate between the nature of recourse against foreign and Nigeria-seated arbitral awards. The new statute eliminates the ambiguity by distinguishing between setting-aside proceedings which only apply to awards with a Nigerian seat and refusal of recognition and enforcement proceedings, applicable to foreign-seated awards. It thus succeeds in bringing Nigerian law in step with the New York Convention, which regards annulment as the prerogative of the Court of the seat.[279]

Section 56 created an Award Review Tribunal. The parties may provide in their arbitration agreement that an application to review an arbitral award on any of the grounds set out in section 55(3) of this Act shall be made to an Award Review Tribunal. Where the parties have agreed that or award shall be reviewed by an Award Review Tribunal, a party who is aggrieved by an arbitral award and who seeks to challenge the award on any of the grounds set out in section 55(3) of this Act Shall, within the time frame specified in section 55(4). The Notice of Challenge shall include the documents referred to in section 57(2). Unless the parties otherwise agree, the Award Review Tribunal shall: consist of the same number of arbitrators in the arbitral tribunal that first determined the dispute (in this Act referred to as "the First Instance Tribunal") and be constituted when, in the case of a Sole Arbitrator, the Arbitrator accepts the appointment or, where there is more than one arbitrator, when every Arbitrators accept their respective appointments. The provision of the AMA applies mutatis mutandis to the Award Review Tribunal: Section7, Section8, Section9, Section 10, Section 11, Section 12, Section 13, Section 14, Section 30, Section 41, Section 44, Section 47, Section 50 and Article 49 of the First Schedule, Section 53 and Section 54. Parties may agree

[279] Olaniwun Ajayi, "*Nigeria's New Arbitration and Mediation Act 2023 Gives a Competitive edge to Arbitration in Nigeria*", (June 2023 Newsletter), < https://www.google.com/url?sa=t&source=web&rct= j&opi=89978449&url= https://www.olaniwunajayi.net/blog/wp-content/uploads/2023/06/OALP-Newsletter-Arbitration-and-Mediation-0.1.pdf&ved=2ahUKEwj4wv-1vYyPAxVlRUEAHYfWOHAQFnoECBYQAQ&usg=AOvVaw1TsOrIxhWrZfX O3X6ClRYs. > Accessed 28 January 2025.

on the procedure to be followed by the Award Review Tribunal, otherwise the Award Review Tribunal shall conduct its proceedings in a manner as it considers appropriate and shall endeavour to render its decision in the form of an award within 60 days from the date on which it is constituted. An application for enforcement of an award under section 57 of this Act may be made to the Court notwithstanding that a party has given a Notice of Challenge to the other party under Subsection 2, unless proceedings upon the application for enforcement is stayed until after the decision of the Award Review Tribunal has been rendered, and notwithstanding subparagraph (a), the Court makes such orders as to the interim preservation of the subject of the dispute, or as to giving security for the award as may be just in the circumstances of the case. Where the Award Review Tribunal has set aside the award in whole or ii part, a party may apply to the Court to review the decision of the Award Review Tribunal and where the Court decides that the decision of the Award Review Tribunal is unsupportable having regard to the ground on which the Award Review Tribunal set aside the award, the Court shall reinstate the award, or the part of it that was set aside by the Award Review Tribunal. Where the Award Review Tribunal has affirmed the award in whole or in part, an application to the Court to set aside the award of the First Instance Tribunal or the award of the Award Review Tribunal, the application may only be made on the grounds set out in section 55(3) (b) (i) or section 55(3) (b) (ii) of this Act.[280]

Recognition and Enforcement of awards is provided under Section 57. An Arbitral award shall, irrespective of the country or state in which it is made, be recognised as binding, and on application in writing to the Court, be enforced by the Court subject to the provisions of this section and section 58. The party relying on an award or applying for its enforcement shall supply: the original award or a certified copy of it, the original arbitration agreement or a certified copy of it; and where the award or Arbitration agreement is not made in the English

[280] Arbitration and Mediation Act 2023, Section 56(1) – (9).

language, a certified translation of it into the English Language. An award may, by leave of the Court, be enforced in the same manner as a judgment or order to the same effect.[281]

In *Bolingo Hotel & Tower Ltd v Dee- V- 8 Ltd*,[282] the Court of Appeal stated as follows on the nature of an Arbitral award that:

> An Arbitral Award is a determination on the merits by an Arbitration Tribunal in an Arbitral proceeding. It is analogous to a judgement in a Court of law. An Award, shall upon application in writing to the Court, be enforced by the Court. Once an award has been given, it qualifies for recognition and enforcement under the relevant applicable laws or conventions, subject to right of either party to apply to court to set aside the award.

In *Participant Properties Ltd v Fashola & Ors*, the Court held in relation to Section 26 of the Arbitration and Conciliation Act as follows:

> In the same vein, none of the six items listed under Article 32 of the Arbitration Rules cited by the Appellant's Counsel stated how an Arbitral award shall be titled or headed. In the instant case, the parties to the Arbitration are not only ascertainable from the Award, they are well known to the Appellant and clearly described in the Award. In this light, I endorse the unassailable finding of the learned trial Judge, A. M. Lawal, J., on this issue at page 17 of the judgement, copied at page 1034 of the Record of Appeal...

The Right of a Party to refuse recognition and enforcement of an award upon request to the Court is provided in Section 58. Irrespective of the country in which the award was made, the Court may only refuse recognition or enforcement of an award on the following ground that: at the request of the party against whom it is invoked, if that party furnishes the Court with proof that, a party to the arbitration agreement was under some incapacity, the arbitration agreement is not valid under the law to which the parties have indicated should be applied, or that the arbitration agreement is not valid under the law of the country where the award was made, the party against whom the award was invoked was not given proper notice of the appointment of an Arbitrator or of the Arbitral proceedings or was otherwise not able to present his case, the award deals with a dispute not contemplated by or does not fall within the terms of the submission to arbitration, the award contains decisions on matters which are

[281] Arbitration and Mediation Act 2023, Section 57(1) – (3).
[282] *Bolingo Hotel & Tower Ltd v Dee- V- 8 Ltd* (2021) LPELR- 54670 (CA).

beyond the scope of the submission to arbitration, so however that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters submitted to arbitration may be recognised and enforced, the composition of the Arbitral Tribunal, or the arbitral procedure, was not in accordance with the agreement of the parties, where there is no agreement between the parties under subparagraph (vi), that the composition of the Arbitral Tribunal, or the Arbitral procedure, was not in accordance with the law of the country where the Arbitration took place, or the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, the award was made; or where the Court finds: the subject matter of the dispute is otherwise not capable of settlement by Arbitration under the laws of Nigeria, or that the award is against public policy of Nigeria. Where an application to set aside or suspend an award has been made to a court referred to in subsection (2) (a) (viii), the Court before where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.[283]

In Section 59, Where under an agreement for an international arbitration no procedure is agreed for the appointment of an arbitrator, and appointing authority is designated or agreed to be designated by the parties, the Director of the Regional Centre for International Commercial Arbitration Lagos shall be deemed to be the appointing authority designated by the parties, and the provisions of section 7(2) of this Act shall apply.[284]

Section 60 provides for application of the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards set out in the Second Schedule and applies to awards provided that: a country is a party to the New York Convention; and differences arise

[283] Arbitration and Mediation Act 2023, Section 58(1) – (3).
[284] Arbitration and Mediation Act 2023, Section 59

out of a legal relationship, whether contractual or not considered commercial under the laws of Nigeria. Section 61 abolishes the torts of maintenance and champerty, including being a common barrator do not apply in relation to Third-Party Funding of arbitration and this section applies to arbitrations seated in Nigeria and to arbitration related proceedings in any court within Nigeria.[285]

Disclosure of third-party funding is required under Section 62. Where a Third-Party Funding agreement is made, the party benefitting from it shall give written notice to the other party or parties, the arbitral tribunal and, where applicable, the Arbitral institution, of the name and address of the third-party funder. The written notice shall be made for a funding agreement made: on or before the commencement of the Arbitration, at the commencement of the Arbitration, or after the commencement of the Arbitration, without delay as soon as the funding agreement is made. Where a respondent has brought an application for security for cost based on the disclosure of Third-Party Funding, the Arbitral Tribunal may allow the funded party or its counsel to provide the arbitral tribunal with an affidavit stating whether under the funding arrangement, the Funder has agreed to cover adverse costs order and the affidavit shall be a relevant consideration to the decision of the arbitral tribunal on whether to grant security for costs.[286]

A right to object may be waived under Section 63. A party who knows that a provision of the AMA from which the parties may derogate or a requirement under the arbitration agreement has not been complied with and proceeds with the Arbitration without stating his objection to that non-compliance without undue delay or, where a time-limit is provided for it, within the time, shall be deemed to have waived his right to object[287]. The Court shall not intervene in any matter governed by this Act, except where it provided in this Act. Applications to Court

[285] Arbitration and Mediation Act 2023, Section 60 and 61.
[286] Arbitration and Mediation Act 2023, Section 62(1) – (3).
[287] Arbitration and Mediation Act 2023, Section 63.

in respect of any matter governed by this Act shall be in accordance with the Rules set out in the Third Schedule of the AMA.[288]

Section 65 provides that the AMA does not affect any other law by virtue of which certain disputes may: not be submitted to Arbitration or be submitted to arbitration only in accordance with the provisions of that or another law. Notwithstanding the provisions of the AMA, the Arbitral Tribunal may, where it considers it Extension of time necessary, extend the time specified for the performance of any act under this AMA.[289]

Section 67- 68 contains provisions relating to Mediation under the AMA. The AMA has established substantive and procedural guidelines for international and domestic commercial mediation, along with the agreements arising from mediation processes, in Part II of the AMA. It aligns with the 2018 UNCITRAL Model Law on International Commercial Mediation, laying out a mediation procedure whereby at either party's request, a jointly appointed mediator may review the conflict, hear from the parties, and then submit settlement ideas. The new regime provides that settlement agreements arising from mediation are binding on the parties and can be enforced by a court as a contract, consent award, or consent judgment: section 82(2). Further, communications made during mediation proceedings are inadmissible in any Court or Arbitral proceedings: section 77(1). Section 87 provides that the Singapore Convention on Mediation applies where a party seeks to enforce an international settlement agreement made in a jurisdiction other than Nigeria provided that: State is a signatory to the Convention, and the dispute arises out of what would be considered a 'commercial' legal relationship in Nigeria.

[288] Arbitration and Mediation Act 2023, Section 64(1) – (2).
[289] Arbitration and Mediation Act 2023, Section 65 and 66.

Section 71 provides that when the mediation proceedings commence, the running of the limitation period regarding the claim is suspended. Time resumes upon unsuccessful mediations from the time that mediation ended.[290]

3.1.4 **Innovations under the new Arbitration and Mediation Act 2023**

Under the ACA, Courts had wide discretion to determine whether to enforce or disregard an Arbitration agreement. The old provisions allowed a party to revoke an arbitration agreement by "leave of the Court or judge"[291], and a Court could refuse to stay proceedings despite a valid arbitration agreement if it found "sufficient reason why the matter should not be referred to arbitration in accordance with the arbitration"[292], or if the Defendant had not shown that it was "ready and willing to do all things necessary to the proper conduct of the arbitration"[293]. This permissive attitude often produced incongruous results. However, the new AMA has dispensed with this latitude as it requires a Court to enforce an Arbitration agreement by staying proceedings and referring parties to arbitration unless the Court finds that the agreement is void, inoperative or incapable of being performed.[294]

Whilst like the ACA, the AMA requires that an Arbitration agreement should be in writing, the new law further recognises that an Arbitration agreement is in writing if its content is recorded in any form, whether or not the Arbitration agreement or contract has been concluded orally, by conduct or by other means. The requirement for writing is met if the information is contained in electronic communication which is accessible as to be useable for subsequent reference. Electronic communication in this instance means communication that the parties make by means of data messages. Data messages are defined as information

[290] Abdul Jinadu, "*Arbitration and Mediation Act 2023 Nigeria*", (2024, Keating Legal Update), < https://www.goo gle.com/url?sa=t&source=web&rct=j&opi=89978449&url= https://www.keatingchambers.com/resources/kc-legal-updates/resources/kc-legal-updates/keating-legal-update-autumn/arbitration-and-mediation-act-2023-nigeria&ved= 2ahUKEwjz_MGlvoyPAxVPQ0EAHYuWOQ0QFnoECBYQAQ&usg= AOvVaw1BLo1xHlM7npfk3VEeDMh1 > Accessed 5 January 2025.

[291] Arbitration and Conciliation Act, Cap A. 18 Laws of Federation 2004, Section 5 (2) (a).

[292] Arbitration and Conciliation Act, Cap A. 18 Laws of Federation 2004, Section 5 (2) (b).

[293] Arbitration and Mediation Act 2023, Section 5(1).

[294] Arbitration and Mediation Act 2023, Section 2(2).

generated, sent, received or stored by electronic, magnetic, optical or similar means including electronic data interchange, electronic mail, telegram, telex or telecopy.[295]

Unless the parties agree otherwise, an Arbitral Tribunal will consist of a Sole Arbitrator, down from three Arbitrators under the repealed law. Under the old ACA, if parties in International Arbitration did not specify the procedure for appointing or failed to agree on the choice of an arbitrator, the appointment will be made by the appointing authority, although this usually proved difficult where the parties did not designate an appointing authority. Meanwhile under the AMA, if parties do not specify the procedure for appointing the arbitrator or designate an appointing authority, the appointment will be made by the Director of the Regional Centre for International Commercial Arbitration, Lagos State.[296]

AMA introduced Emergency Arbitrators in section 16, which provides that a party that requires emergency relief may, concurrent with or following the filing of a request for a dispute to be referred to arbitration but before the constitution of the tribunal, submit an application for an Emergency Arbitrator to any arbitral institution designated by the parties, or failing such designation, to the court. If accepted, an Emergency Arbitrator is to be appointed within two business days of the application. Appointments of emergency arbitrators can be challenged within three days of notice on the respondent of the appointment, or of the date when the party was informed of the circumstances on which the challenge is based, where that is after the date of notice. Article 27 of the First Schedule of the AMA prescribes the procedure for emergency relief proceedings. Further, applications for emergency relief shall not prevent a party seeking urgent interim measures from a court under section 19 of the AMA.[297]

Unlike the ACA, the Act contains comprehensive provisions regarding an Arbitral Tribunal's power to grant interim measures. More significantly, the Act recognises interim measures

[295] Olaniwun Ajayi, 'Nigeria's New Arbitration and Mediation Act 2023', (n 273), 1.
[296] ibid, 2.
[297] Abdul Jinadu, 'Arbitration and Mediation Act 2023 Nigeria', (n 284) 18.

issued by the Arbitral Tribunal as binding and further provides that they are enforceable upon application to the court, irrespective of the country in which it was issued. This is of course subject to the grounds for the refusal of the recognition or enforcement of such interim measure specified in section 29 of the Act. Further, the Act expressly empowers Tribunals to order security for costs in appropriate circumstances. Finally, the Act extends the power to order interim measures to the court. Hence, the court shall have the power to issue interim measures of protection for the purposes of and in relation to Arbitration proceedings whose seat is Nigeria or another country as it has for the purpose of and in relation to proceedings in the courts. It is worthy to note that any application for urgent interim measures from a competent court is not deemed to be an infringement or waiver of the Arbitration agreement.[298]

The introduction of Preliminary Order under Section 22 of the AMA provides that, unless agreed otherwise, a party may, without notice, apply to the tribunal for an interim measure together with an application for a preliminary order directing a party not to frustrate the purpose of the interim measure requested. Section 23 provides that the tribunal shall give notice of the preliminary order and request for interim measures, as well as all communications (if any), both written and oral, between the applicant and the Tribunal relating to the applications, immediately after it has determined of preliminary order. Preliminary orders expire after 20 days from the date of issue. The Tribunal may modify or adopt the preliminary order by an interim measure after the respondent has been given notice and an opportunity to present its case.[299]

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[298] Chimezie Onuzuike, Ayomide Abiodun, Owen Umeh," *The Arbitration and Mediation Act of 2023: Notable Innovations*", (2023, G. Elias), < https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url =https: //www.gelias.com/images/Newsletter/Review_of_the_Arbitration_and_Mediation_Act_2023_Article. pdf&ved=2ahUKEwi_ubzwvoyPAxW8Q0EAHVw7HoEQFnoECBgQAQ&usg=AOvVaw0MkIvsD5q6_quMm bK9yyEx > Accessed 25 January 2025.

[299] Abdul Jinadu, 'Arbitration and Mediation Act 2023 Nigeria', (n 284) 19.

The ACA enabled parties to apply to set aside awards on grounds of misconduct on the Arbitrator's part or where the proceedings or award had been improperly procured. Guidance in the case law as to what was considered improper encouraged a multitude of allegations against arbitrators. The AMA creates exhaustive limitations on grounds to set aside under Section 55 (3) (a) – (f) of the AMA[300]. The new statute eliminates the ambiguity by distinguishing between setting-aside proceedings which only apply to awards with a Nigerian seat and refusal of recognition and enforcement proceedings, applicable to foreign-seated awards. It thus succeeds in bringing Nigerian law in step with the New York Convention, which regards annulment as the prerogative of the Court of the seat[301]. For example in Limak Yatirim, Enerji Uretim, Hizmetleri Ve Insaat A.S. & Ors v Sahelian Energy & Integrated Services Ltd,[302] Sahelian Energy & Integrated Services Ltd (Sahelian Energy) a Nigerian company, needed a foreign technical partner with electricity distribution license in a foreign jurisdiction, which was part of the requirements for participating in the Federal Government of Nigeria privatisation process for the Kaduna Energy Distribution Company (Kaduna DISCO) to achieve this, Sahelian Energy executed a Cooperation Framework Agreement (CFA) with Turkish Clogomerate, Limak Yatirim, Enerji Uretim, Hizmetleri Ve Insaat A.S. & Ors (Limak). Under the CFA, Sahelian Energy convenanted to pay Limak USD 17.5 Million over a period of 5 years through yearly instalments of USD 3.5 Million.[303]

Although Limak applied to register the CFA with the National Office for Technology Acquisition and Promotion (NOTAP), the application was denied for being in violation of NOTAP Act and the Regulations made there under. Nonetheless, Sahelian Energy successfully emerged the core investor in Kaduna DISCO in December 2014. Sometime in

[300] ibid, 19.
[301] Olaniwun Ajayi, 'Nigeria's New Arbitration and Mediation Act 2023', (n 273), 3.
[302] *Limak Yatirim, Enerji Uretim, Hizmetleri Ve Insaat A.S. & Ors v Sahelian Energy & Integrated Services Ltd* (2021) LPELR 58182 (CA).
[303] *Limak Yatirim, Enerji Uretim, Hizmetleri Ve Insaat A.S. & Ors v Sahelian Energy & Integrated Services Ltd* (2021) LPELR 58182 (CA).

February 2015, Limak issued a demand letter to Sahelian Energy for payment of the annual fee of USD 3.5 Million. Sahelian Energy denied liability for any payment because the CFA, being a registerable instrument, was not registered with NOTAP and that any payment for the transfer of technology would be in contravention of Nigerian law. After futile attempts to amicably resolve the dispute, Limak commenced ICC arbitration in Switzerland to compel payment of the agreed consideration. On 28 June 2018, the Tribunal published an award in favour of Limak. Subsequently, Limak sought to enforce the award in Nigeria before the High Court of the Federal Capital Territory (FCT). On the other hand, Sahelian Energy applied to the same court to set aside the award on grounds that the award was contrary to public policy and that there was an error on the face of the award. Ultimately, the High Court delivered a consolidated Judgment in respect of both the application to set aside and the application to enforce the award on 17 July 2020. In its judgment, the High Court set aside the award and consequently dismissed the application to recognise and enforce the award. Limak appealed from this decision to the Court of Appeal. The Court of Appeal affirmed the decision of the High Court. It held that sections 48 and 52 of the ACA permit Nigerian courts to refuse recognition and/or enforcement of arbitral awards and also to set aside arbitral awards, irrespective of the country in which the award was made. The Court of Appeal further held that the laws of foreign seats are inapplicable to proceedings for the enforcement of awards in Nigeria and as such, an award can be set aside under sections 48 and 52 of the ACA when it is against the public policy of Nigeria.[304]

Section 56 creates an Award Review Tribunal (ART), providing that, notwithstanding Section 55, the parties may provide in their Arbitration Agreement that an application to review an Arbitral award on any of the grounds set out in Section 55(3) above shall be made to an ART. A party challenging an award on Section 55(3) grounds shall within three months

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[304] *Limak Yatirim, Enerji Uretim, Hizmetleri Ve Insaat A.S. & Ors v Sahelian Energy & Integrated Services Ltd* (2021) LPELR 58182 (CA).

serve on the other party a written communication indicating its intent to do so. The number of arbitrators comprising the ART will be the same as that in the Arbitral Tribunal unless otherwise agreed: section 56 (4) (a). If the ART affirms an award, the court can only set it aside if it finds matters dealt with by the award are not Arbitrable or contrary to public policy.[305]

In relation to Third Party Funding, the historical common law doctrines of maintenance and champerty made it hazardous to finance litigation or arbitration in exchange for a share of any monetary award made in favour of the funded party. These changes with the AMA, which provides that the common law torts of champerty, maintenance and barratry do not apply to third-party funding arrangements in connection with Arbitration seated in Nigeria or Arbitration-related proceedings before a Nigerian Court. Costs of obtaining third-party funding will be accounted as one of the costs of arbitration that the tribunal is obliged to allocate in its final award. The prospect of prosecuting a claims off-balance sheet will make Arbitration clauses an even more popular feature in commercial agreements and it is likely that a niche of specialist third-party funders will develop in response to this development, resulting in a significant increase in Arbitration.[306]

The AMA settles a storm of debate about whether statutory limitation periods may be invoked in arbitration, and regarding the limitation period for enforcing an Arbitral award. Certain state limitation laws, including the Limitation Law of Lagos State, contain provisions which the Supreme Court has interpreted to mean that the six year limitation period for enforcing arbitral awards must be reckoned from the date on which the dispute arose, rather than the date on which the award was rendered. The AMA overrides this position. It provides that statutory limitation periods can be invoked in arbitration and clarifies that the limitation period for enforcing Arbitral awards begins to run from the date on which the party received

[305] Abdul Jinadu, 'Arbitration and Mediation Act 2023 Nigeria', (n 284) 19.
[306] Olaniwun Ajayi, 'Nigeria's New Arbitration and Mediation Act 2023', (n 273), 2 - 3.

the award. Additionally, where a Court sets aside or annuls an arbitral award, the limitation period applicable to the dispute excludes the period between the commencement of the arbitration and the order annulling the award, the limitation period is suspended when parties resort to mediation and resume on the day that the mediation ends without a settlement.[307] Businesses involved in commercial or other disputes which can be settled vide Arbitration or Mediation can now take advantage of the exclusion of the period spent on Arbitration and Mediation in the computation of limitation periods. For instance, a cause of action founded on breach of contract or recovery of debt generally has a limitation of six years from the date of the crystallization of the cause of action. While six years may seem a long time for a debt to be owed, there are also instances where debt can be or has been owed for several years beyond six years. It has been reported that the immediate past administration has in 2017 initiated a process of repaying debts that spanned about two decades. Therefore, while an action for recovery of debt could generally become statute- barred, businesses seeking to maintain good relations with the government may seek to extend their waiting time (within which they may resort to the courts) by commencing Arbitration or Mediation proceedings.[308] Subject to the agreement of parties, the Arbitral Tribunal may order the Arbitral proceedings which shall be consolidated with other Arbitral proceedings or order concurrent hearings of the proceedings. The Arbitral Tribunal may also allow an additional party to be joined subject to the condition that there is prima facie evidence that the additional party is bound by the arbitration agreement which form the basis of the tribunal's jurisdiction. These provisions will ensure that Nigerian-seated Arbitration will henceforth enjoy flexible proceedings as witnessed in other jurisdictions. Special rules aimed at expediting proceedings will apply when an arbitration claim or appeal comes before Nigerian Courts. The new rules modify the ordinary litigation procedures to dispense with red tape and abridge the time for taking steps

[307] Olaniwun Ajayi, 'Nigeria's New Arbitration and Mediation Act 2023', (n 273), 3.

[308] Richnond Ekhosuehi Idaeho, "*Appraisal of the Arbitration and Mediation Act 2023 at its Implications on Businesses*", (May 2024, Journal of Commercial Law), Volume 10 (1), 1262.

in arbitration claims and appeals, and will significantly reduce the time that it takes the Courts of first instance and the appellate Courts to decide Arbitration matters.[309]

3.1.5 The Arbitration Rules of 2023 and the Nigerian Institute of Chartered Arbitrators Arbitration Rules and Regulation of 2021

Article 1 of the Arbitration rules and Article 1 of the NICARB Rules are similar on the grounds that they are subject to the agreement and modification of the parties. Where there is a conflict between the Arbitration Rules and the AMA 2023, the act shall prevail under Article 1(2). Article 1.1 of the NICARB Rules also provides for the superiority of an enabling statutory provision which was the ACA and now the AMA.[310] The NICARB Rules is conducted and administered with the NICARB Arbitration and Alternative Dispute Resolution Centre Rules (AADRC Rules). Where parties agree, the President through the Registrar as the Chief Executive and appointing authority is empowered to exercise all powers conferred on the institute. The NICARB Rules include the 2020 guidance Rules on Virtual Arbitral Proceedings, Administrative charge, Arbitrators fees and interpretation of terms.[311]

Both rules provide for notice and computation of time. Written communication such as delivery by postal or courier services, electronic mail, facsimile and telex are recognised. On computation of time, the Arbitration Rules provides additionally for non business days which are not present in the NICARB Rules.[312]

Article 3 of the Arbitration Rules provides for Written Communication or Request when initiating recourse to Arbitration by the Claimant but the NICARB Rules only provides for a Request. Both rules refer to parties as Claimant and Respondent. Both rules have various demands under Written Communication and Request. The date of receipt of the Request for

309 Olaniwun Ajayi, 'Nigeria's New Arbitration and Mediation Act 2023', (n 273), 4.
310 The Arbitration Rules, Article 1 and the Nigerian Institute of Chartered Arbitrators Rules 2021, Article 1.1.
311 The Nigerian Institute of Chartered Arbitrators Rules 2021, Article 1.2, 1.3, 1.4.
312 The Arbitration Rules, Article 2 and the Nigerian Institute of Chartered Arbitrators Rules 2021, Article 2.1.

Arbitration by the President, through the Registrar shall be deemed the date of commencement of Arbitration.[313]

Article 4 of the NICARB Rules provided an option to the parties to be represented or assisted by Legal Practitioners or any other person or persons of their choice. Such Legal Practitioner or person must provide prove of authority grant by the parties. This is provided under Article 5 of the Arbitration Rules but a Legal Practitioner is not mentioned.[314] Response to Written Communication requesting Arbitration is provided under the Article 4 of the Arbitration Rules and response to the request for Arbitration is provided under Article 5 of the NICARB Rules. Under the NICARB Rules, the Respondent is given 14 days to respond to request for Arbitration with its contents in which a copy is sent to the President through the Registrar. The Arbitration Rules on the other hand provides for 30 days upon receipt of written communication to response along with its content.[315]

Article 6 of the Arbitration Rules provides for designated and appointed authorities. Parties are at the liberty to propose one or more institutions or persons and may include the Director of the Regional Centre for International Commercial Arbitration Lagos (RCICAL). Where parties disagree on an appointing authority within 30 days any party may request the Director of RCICAL to designate the appointing authority. Article 6 of the NICARB Rules provide for Joinder of additional Parties. A party may wish to join an additional party by submitting a request for Arbitration against the additional party to the Registrar. This is also known as the Request for Joinder. The Request for Joinder must be in accordance with Article 6. 2 (a) - (c) and 6. 3. This is also similar in Article 34-38 of the Arbitration Rules. In the case of joinder

313 The Arbitration Rules, Article 3 and the Nigerian Institute of Chartered Arbitrators Rules 2021, Article 3.
314 The Arbitration Rules, Article 5 and the Nigerian Institute of Chartered Arbitrators Rules 2021, Article 4.
315 The Arbitration Rules, Article 4 and the Nigerian Institute of Chartered Arbitrators Rules 2021, Article 5.

of additional parties, a 15 days interval is provided to submit to the Arbitral Tribunal along with other particulars.[316]

Section 11 of the Arbitration Rules provides for composition of the Arbitral Tribunal. This is also similar to Article 7 of the NICARB Rules which provides for number, appointment and confirmation of Arbitrators. Under the Arbitration Rules, where parties have not agreed on the number of Arbitrators and if within 30 days after receipt by the Respondent of the Written Communication containing a request for the dispute to be referred to Arbitration, a Sole Arbitrator shall be appointed. Where parties do not respond to a party's proposal to appoint a Sole Arbitrator within the time limit provided in Article 7 (1) and have failed to appoint a second Arbitrator, the appointing authority shall appoint a Sole Arbitrator at the request of parties. The NICARB Rules under Article 7 provides for conditions to appoint more than one Arbitrator. These conditions are that: the President through the Registrar will consider the proposal of the parties, the complexity, the quantum involved or other relevant circumstances of the disputes, the agreement of the parties under Article 7.2. The terms of appointment shall be fixed by the President through the Registrar in accordance with the NICARB Rules and Practice. An Arbitrator is not to be deemed appointed until confirmation by the Registrar.[317]

Article 8 – 10 of the Arbitration Rules provides for appointment of Arbitrators. Where parties have not agreed on appointment of Arbitrators, a Sole Arbitrator shall be appointed within 30 days and in accordance with Article 8 (2) (a) – (d). Where three Arbitrators are appointed, two Arbitrators have to choose who will be the presiding Arbitrator. A party may request the appointment of a second Arbitrator from an appointing authority within 30 days where the other party has not notified the party on appointment of a first Arbitrator. Also where the two Arbitrators have not appointed a presiding Arbitrator, an appointing authority shall appoint a Presiding Arbitrator the same way a Sole Arbitrator is appointed under Article 8. Under

[316] The Arbitration Rules, Article 34 – 38 and the Nigerian Institute of Chartered Arbitrators Rules 2021, Article 6.

[317] The Arbitration Rules, Article 11 and the Nigerian Institute of Chartered Arbitrators Rules 2021, Article 7.

Article 10, multiple parties have the power and liberty to appoint a single Arbitrator to represent either as Claimant or Respondent. In case where parties fail to constitute an Arbitral Tribunal at the request of any party, the appointing authority may constitute the Arbitral Tribunal, may revoke any appointment already made and appoint or reappoint each of the Arbitrators and designate one of them as the Presiding Arbitrator. This provision is similar to Article 9 and 10 of the NICARB Rules. The only difference is that instead of 30 days interval, it is 21 days on receipt by the President through the Registrar to make decisions on appointment of Arbitrators.[318]

Article 11 of the NICARB Rules provides for the appointment, removal and duties of an Arbitral Secretary. The Disclosure and challenge of Arbitrators as provided under Article 11-13 of the Arbitration Rules. Any Arbitrator to be appointed must disclose any doubt as to his impartiality or independence to parties and other Arbitrators except they have already been informed by him or her of these circumstances. If within 15 days parties have not agreed on the challenge against the Arbitrator or the Arbitrator refuses to withdraw, the parties have additional 30 days to challenge the Arbitrator.[319]

An Arbitrator may be replaced in the course of Arbitral proceeding and a substitute Arbitrator shall be appointed or chosen in accordance with Article 8- 11 under Article 14. The Arbitral proceeding resumes from where the Arbitrator replaced ceased to perform unless parties decide otherwise. Parties are given the power to waive any wrong doing, act or omission against an Arbitrator[320]. Article 12- 17 of the NICARB Rules provides for an Emergency Arbitrator, its mode of appointment, applications, the independence and confidentiality of

[318] The Arbitration Rules, Article 8- 10 and the Nigerian Institute of Chartered Arbitrators Rules 2021, Article 9-10.
[319] The Nigerian Institute of Chartered Arbitrators Rules 2021, Article 11 - 13.
[320] The Arbitration Rules, Article 14, 15 and 16.

Arbitrators, grounds for challenge of Arbitrators, notice of challenge, decision of challenge and replacement of an Arbitrator.[321]

Arbitral proceedings are conducted in accordance with Article 18 of the NICARB Rules such as computation of time, serving of pleadings and procedures as parties may agree. Where parties do not agree on procedures, the Tribunal under the rules shall conduct appropriately in a fair, expeditious, economical and final. The Arbitral Tribunal shall prepare a provisional timetable which shall be provided to the parties and the Registrar. At the request of the parties, the Arbitral tribunal shall hold hearing for presentation of evidence by witnesses such as expert witnesses, oral arguments and documentary evidence or hold such hearings at the tribunal's discretion. All documents supplied shall be communicated to the parties and the Registrar. The proceeding shall be conducted subject to rules, regulations of data protection and cyber security of Nigeria[322]. Under the Arbitration Rules, the procedure is similar only in addition to Article 17 (5) which vested authority to the Arbitral tribunal to make single or final awards.[323]

Article 19 of the NICARB Rules provides for submission of Written Statements and Documents. Parties may agree or at the Arbitral Tribunal's discretion determine procedure for submission of statement of claim, statement of defence, counter claim, reply to counter claim and other documents. The rule ensures proper communication between the Tribunal and parties. A 20 days interval is provided upon receipt of notice from the Registrar that the Tribunal has been constituted for claimant to send statement of claim and relief sought. The rule prescribed the procedures for a statement of claim. The Respondent has the duty to send a statement of defence within 15 days of receipt of statement of claim or where statement of claim was submitted with the request for Arbitration, a 20 days interval. Counter claims are submitted with statement of defence. Any further written statement shall be decided by the

[321] The Nigerian Institute of Chartered Arbitrators Rules 2021, Article 12 - 17.
[322] The Nigerian Institute of Chartered Arbitrators Rules 2021, Article 18.
[323] The Arbitration Rules, Article 17.

Tribunal. The period of time fixed for submission of written statement shall not exceed 30 days. But under the Arbitration rules, it is 45 days in Article 25. All written statements shall be accompanied by copies of all supporting documents. Parties are allowed to amend or supplement their claim or defence during Arbitral proceedings. The Tribunal can order a termination of Arbitral proceeding where a claimant fails to file written statement of claim at appropriate time. Arbitration may proceed even where the Respondent fails to submit a statement of defence at prescribe time.[324]

The seat and venue of Arbitral proceedings can be determined by agreement of the parties or by the Tribunal under Article 18 of the Arbitration Rules. The language for Arbitration is set by agreement between the parties or by the Arbitral Tribunal for point of claim, defence and further written statement. Also, the Arbitral tribunal can order a translation of any original document or as agreed by parties under Article 19. This is similar to Article 22- 23 of the NICARB Rules except that where there is no agreement between parties, the seat of Arbitration is Lagos State, Nigeria.[325]

The Arbitration Rules provides for point of claim, defence and amendment of the claim or defence under Article 20, 21 and 22. These are accompanied with documents to be relied on within an agreed period of time by the parties or determined by the Arbitral tribunal along with other particulars. Either parties are allowed to amend or supplement their point of claim and defence.[326] On memorandum of issues, a period of 15 days interval is given to the Arbitral Tribunal after complete submission of written statement and with consultation with the parties draw up a document defining the issues to be determined by the Tribunal in the Arbitration under Article 20 of the NICARB Rules. In Article 21, in the case where the jurisdiction or constitution of Arbitral Tribunal is challenged, a party's statement of defence

[324] The Arbitration Rules, Article 25 and the Nigerian Institute of Chartered Arbitrators Rules 2021, Article 19.
[325] The Arbitration Rules, Article 18- 19 and the Nigerian Institute of Chartered Arbitrators Rules 2021, Article 22- 23.
[326] The Arbitration Rules, Article 20, 21 and 22.

shall contain the factual and legal bases of such objection. The Tribunal is vested with authority to rule on its jurisdiction, validity of an award, an Arbitration clause. In case jurisdiction is challenged, a plea shall be raised not later than 15 days. This is similar to Article 23 of the Arbitration Rules.[327]

In Article 24 of the NICARB Rules, subject to parties' agreement, the Arbitral Tribunal shall hold hearing or presentation of evidence for oral submission. The time and date of hearing is fixed by the Tribunal. A party which failed to appear for hearing is fixed by the Tribunal. A party which failed to appear for hearing is to provide due notice. Where there is no due notice or insufficient grounds, the Arbitral proceeding shall continue. All meetings and hearings shall be private. The hearing may be declared closed where parties are satisfied not to have any further evidence to produce or submissions to make. An award may be made on motion by the Tribunal or by application by parties. All statements, documents or information supplied to the Tribunal shall simultaneously be communicated to the other party.[328] This has its similarities with Article 37- 40 of the Arbitration Rules.[329]

Section IV of the Arbitration Rules provides for award decisions by the Arbitral Tribunal. In Article 41, an award is decided by majority of Arbitrators or by a Presiding Arbitrator where there is no majority decision. Article 42 provides for form and effect of the award. The Arbitral Tribunal may make separate awards on different issues at different times. Awards shall be in writing and shall be binding on all parties. The reason upon which the Arbitral award is based shall be given except parties agree then no reason is given. The award shall be signed and dated by the Arbitrators. Where one of the Arbitrators failed to sign, the reason shall be given. An award may be made public with consent of the parties. An award may be disclosed by legal duty, to protect or pursue a legal right or in relation to legal proceedings

[327] The Arbitration Rules, Article 23 and the Nigerian Institute of Chartered Arbitrators Rules 2021, Article 20-21.
[328] The Nigerian Institute of Chartered Arbitrators Rules 2021, Article 24.
[329] The Arbitration Rules, Article 37- 40.

before a court or other competent authority. Copies of the award signed shall be communicated to parties. The applicable law for an Arbitral proceeding is determined by the parties or by Arbitral tribunal. The Tribunal shall decide as amiable compositeur or ex aequo et bono only if the parties have expressly authorised the Tribunal to do so. The Tribunal shall decide base on the terms of the contract and shall take into account any usage of trade applicable to the transaction.[330]

Article 44 provides for settlement or other grounds for termination. An Arbitral proceeding may be terminated by agreement of the parties or where parties agree to settle, such settlement shall be recorded as an award and no reason needs to be given, the Arbitral proceeding becomes unnecessary or impossible to continue. The proceeding shall be terminated and he order would be signed and communicated to the parties. Under Article 45, an award an award may be interpreted at the request of parties within 30 days and the interpretation shall be given within 45 days after receipt of the request. The interpretation shall form part of the award. An award may be corrected within 30 days of receipt of award by the Arbitral Tribunal upon a party's request on any error in computation, clerical or typographical error and the correction, if justified shall be made within 45 days. The Arbitral Tribunal may within 30 days correct an award in its own initiative. Any corrections shall form part of an award. Provision for an additional award may be made upon request by any party and shall be completed within 60 days. An additional award made shall apply under Article 42 Paragraph 2- 6.[331]

Under the NICARB Rules, a draft award is submitted to the Registrar by the Arbitral Tribunal within 30 days. The Registrar may suggest modifications as to the form of the award without affecting the Tribunal's liberty of decision. The Arbitral Tribunal is entitled to make interim, interlocutory or partial award. Article 29 of the NICARB Rules is similar with

[330] The Arbitration Rules, Article 41, 42 and 43.
[331] The Arbitration Rules, Article 45 - 47.

Article 43 of the Arbitration Rules. Article 30- 32, share similarities with the Arbitration Rules of Article 44- 47.[332]

The Arbitral Tribunal under Article 48 of the Arbitral Rules shall fix the cost of Arbitration in the final award and if it deems appropriate in another decision. This is similar with Article 34 of the NICARB Rules. Cost consists of separate fees, reasonable travel cost and expenses incurred by an Arbitrator, reasonable cost of expert advice, reasonable travel and expenses of witnesses, legal and other cost incurred, any fees and expenses of the appointing authority as well as fees and expenses of the Director of the RCICAL, the cost of third-party funding and other cost.[333]

Fees and expenses of an Arbitrator are provided under Article 49 of the Arbitration Rules. The fees and expenses shall be reasonable taking into account the amount in dispute, the complexity of the subject matter, the time spent. The Arbitral Tribunal shall take into account and method of fees computation of an appointing authority. The Arbitral Tribunal shall inform parties on the proposed determination of fees. A party can refer the proposal to an appointing authority for review within 15 days. An appointing authority shall make adjustments to the inconsistency within 45 days subject to Article 49 (3) (a) – (d), Article 49 (4) – (5). Article 50 – 51 provides for allocation of cost and deposit of costs. Under the NICARB Rules, similar provisions provide for exclusion of liability, confidentiality and miscellaneous provisions.[334]

3.1.6 **Latest Update on the National Policy on Arbitration and Alternative Dispute Resolution 2024**

The National Policy on Arbitration and ADR was enacted on October 2024 and released to the public on February 2025. The aim of the policy is to drive the implementation of ADR,

[332] The Arbitration Rules, Article 44 - 47 and the Nigerian Institute of Chartered Arbitrators Rules 2021, Article 29 - 32.
[333] The Arbitration Rules, Article 48 and the Nigerian Institute of Chartered Arbitrators Rules 2021, Article 34.
[334] The Arbitration Rules, Article 49 and the Nigerian Institute of Chartered Arbitrators Rules 2021, Article 34-35.

commerce, economic activities, compliance with Treaty obligations of the National Policy on Justice (NPJ) 2024. Additionally, to provide mechanism for articulating and resolving cross institutional issues while also providing the platform for building national consensus on justice issues.[335]

The policy recognised the challenges faced in the practice of Arbitration and ADR such as lack of adequate patronage and institutional development. This is what prompted the Federal Government in establishing a committee to develop a policy under the leadership of Abubakar Malam SAN, CON, the Attorney- General of the Federation and Minister of Justice. The committee is optimistic that with the implementation of the policy, Nigeria would be positioned as an attractive Arbitration hub for domestic regional and international commercial Arbitrations, to create an enabling environment for local and foreign investors to adopt ADR mechanisms while engaging contractual engagements with the Federal government on public and commercial projects in different sectors of the economy.[336]

The goal of the policy is to establish fundamental principle to guide the federal and state governments' participation in Arbitration references, position Nigeria as an attraction hub for domestic, regional and international commercial Arbitration whilst protecting national interest.[337]

The purpose of this policy under Article 3.0 are: to promote the implementation of Nigeria's treaty obligations under various International Arbitration Conventions, promote the growth and practice of ADR in Nigeria, promote implementation of the UNCITRAL Model Arbitration Law and Arbitration and UNCITRAL Model Mediation Law, encourage a judicial culture that support Arbitration and ADR, provide a framework for the continuous review of Arbitration legislations to ensure conformity with the fundamental tenet of international Arbitration as reflected in the UNCITRAL Model Arbitration Law, UNCITRAL

[335] National Policy on Arbitration and Alternative to Dispute Resolution 2024, Article 1.0, Paragraph 1.
[336] ibid, Article 1.0, paragraph 2.
[337] National Policy on Arbitration and Alternative to Dispute Resolution 2024, Article 2.0.

Model Mediation Law, the Convention on the Recognition and Enforcement of Foreign Arbitral Award (New York Convention) and Convention on International Settlement Agreement resulting from Mediation (Singapore Convention) including party autonomy and minimal judicial intervention law and institutions, complement efforts to stimulate the Nigerian economy and attract foreign investment, encourage settlement of dispute of commercial transactions emanating from Nigeria, in Nigeria, strengthen capacity of personnel that are tasked with the responsibility of managing Arbitration in Nigeria, enhance infrastructure required to set up Arbitration hub in Nigeria for critical stakeholders (Arbitration community), encourage reciprocity for Arbitration and ADR experts; present a number of measures and policy direction that the Federal and State Ministry, Department and Agencies (MDAs) should adopt to indicate the country's consolidated approach for negotiating Arbitration and ADR agreement and participating in Arbitral proceedings, in order to avoid the pitfalls prevalent in the current unstructured process, and ensure that the inclusion of ambiguous Arbitration agreements in Federal Government of Nigeria (FGN) contract never recurs and the government is able to manage the conduct of Arbitration arising from previously negotiated Arbitration agreement.[338]

More importantly, the scope of the policy include; Domestic Commercial Arbitration, International Commercial Arbitration and Alternative to Dispute Resolution.[339]

3.1.7 **The New York Convention 1958**

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards also known as the New York Convention was adopted by the United Nations on 10 June 1958 at United Nations Headquarters in New York. The Convention is regarded as one of the most important United Nations treaties in the area of international trade law, and the cornerstone of the international arbitration system. The primary goal of those who drafted the Convention was

[338] National Policy on Arbitration and Alternative to Dispute Resolution 2024, Article 3.0 (a) - (m).
[339] ibid, 4.1 (a) – (c).

to overhaul the existing regime under the Convention on the Execution of Foreign Arbitral Awards, to remove unnecessary obstacles to recognition and enforcement and to maximise the circulation of foreign arbitral awards.[340]

3.3.8 **Institutional Framework for Arbitration in Nigeria**

Statutory Institutions

Section 59 of the AMA 2023 established the Regional Centre for International Commercial Arbitration in Lagos State, Nigeria. the Act provides that where under an agreement for an international arbitration no procedure is agreed for the appointment of an arbitrator, and appointing authority is designated or agreed to be designated by the parties, the Director of the Regional Centre for International Commercial Arbitration Lagos shall be deemed to be the appointing authority designated by the parties, and the provisions of section 7(2) of this Act shall apply.[341]

Domestic Institutions

Domestic Arbitration institutions established in various states in Nigeria are: the Nigeria Institute of Chartered Arbitrators, the Chartered Institute of Arbitrators United Kingdom (Nigerian branch), Construction Arbitrators of Nigeria, Maritime Arbitrators of Nigeria, the Lagos Court of Arbitration (LCA), Arbitration and ADR in Africa, Int'l Dispute Resolution Institute and the Bayelsa State Multi- Door Court House.[342]

International Institutions

International Institutions established in different parts of the world are: the International Chamber of Commerce (ICC), American Arbitration Association (AAA), International Centre for the Settlement of Investment Disputes (ICSID), the American Legal Consultative

[340] Emmanuel Gaillard and Benjamin Siino, "*Enforcement under the New York Convention*", (April 2023, Global Arbitration Review), < https://globalarbitrationreview.com/guide/the-guide-challenging-and-enforcing-arbitration-awards/4th-edition/article/enforcement-under-the-new-york-convention. > Accessed 15 October 2025.

[341] Arbitration and Mediation Act 2023, Section 59

[342] Daniel Collins Ebi, "Arbitration and Dispute Resolution in Nigeria, Practice and Procedure", (2022 Edition, Kraft Books Limited), 63.

Committee Organisation with Regional Centres at Cairo and Kuala Lumper (AALCC) and the Stockholm Chamber of Commerce.[343]

3.3.9 **Critical examination of Court cases, Arbitral Awards in Nigeria, between Nigeria and Foreign Countries**

In the first and final award of Watergate Technical Services Limited v Fathom Offshore Services Limited,[344] the case was before the Sole Arbitrator Eamonn Conlon. The Claimant is Watergate Technical Services Limited which was incorporated in Nigeria with its registered office at No 4, First Crescent, off Road 2 Rumuibekwe, Port Harcourt, Nigeria. The Claimant provides marine services including Remotely Operated Vehicle (ROV) services and hires and represented by Emeka Onyeka & Co during Arbitral proceeding. The Respondent is Fathom Offshore Services Limited and registered in the United Kingdom with its office address at Cirrus building, 6 international Avenue Abz Business Park Dyce, Aberdeen Scotland ABZ1 OBH. The respondent is a shipbroker and provides brokering services for offshore driving ROV and subsea projects in West Africa and elsewhere. The respondent was represented by Brodies LLP.[345]

Both parties entered into a written agreement dated 4th and 5th of October 2017 but was incorrectly written as 2016. The agreement was a Commission Agreement with both parties referring it to as Brokerage Agreement. The claimant claims $225,127.87 USD for ROV services or hire but the respondent claims that the services were provided by the claimant under a contract with CNS Marine Nigeria Limited (CNS) and that CNS not the respondent is responsible for paying the claimant. Clause 6 of the Brokerage Agreement provides as follows:

> This Commission agreement shall be governed by and construed according to the laws of England. Any dispute arising out of or in

[343] Daniel Collins Ebi, 'Arbitration and Dispute Resolution in Nigeria, Practice and Procedure', (n 336), 63.
[344] *Watergate Technical Services Limited v Fathom Offshore Services Limited* ICC Case No. 24514/TO, 15 January 2020.
[345] ibid.

> connection with this agreement shall be solved by amicable settlement. In the case of lack of agreement within a period of two months shall be finally settled under the rules of Arbitration of the International Chamber of Commerce by one or more Arbitrators appointed in accordance with the said rules. This Arbitration shall be held in English language and shall take place in London, England. Therefore, in accordance with the parties' agreement, the seat or juridical place of Arbitration is London, England, English law is applicable and the Arbitration is to be conducted in the English language. The Expedited Procedure Provision of the ICC Rules of Arbitration 2017 Rules applies.[346]

The jurisdiction of the Arbitral proceeding was in accordance with Section 30 of the UK Arbitration Act 1996 and no party objected to the validity of the Arbitration agreement and the constitution of the Arbitral Tribunal. The claimant's claim of interest and the respondent's claim of cost were also not objected.[347]

During the Arbitral proceeding, the Claimant claimed that the Respondent breached the Brokerage Agreement as follows:

> To date the Respondent has failed to process and ensure the payment to the Claimant of the amount due and payable to her under the Brokerage Agreement. The Claimant is entitled to the payment of the sum of $225,127.87 USD from the Respondent for only the equipment hired and delivered on the instructions of the Respondent via a PC dated 8 September 2017 on its client's vessel from 8 September 2017 till 11 January 2018. In accordance with the parties' agreements, the Claimant sent invoice dated 16/10/2017, 8/11/2017, 6/12/2017 and 15/01/2018 to the Respondent for processing and payment. In total breach of the parties' agreements, the Respondent has repeatedly till date failed to discharge its obligations under the parties' agreements on the relevant due dates of the various invoices. It has been more than 2 months since the parties have failed to amicably resolve the issues which arose on the 14 November, 2017 relating to payment of the invoices due and payable from 16/10/2017.[348]

The Claimant therefore seeked the following award: a declaration that the Respondent violated its obligations and therefore in breach of its agreement with the Claimant. A declaration, that the Claimant is entitled to the sum of $225,127.87 USD being the cost of the hire of its equipment at the instance of the Respondent from 8 September 2017 to 11 January

[346] *Watergate Technical Services Limited v Fathom Offshore Services Limited* ICC Case No. 24514/TO, 15 January 2020.
[347] ibid.
[348] ibid.

2018. An order from the Arbitral Tribunal directing the Respondent to pay the claimant $225,127.87 USD being the cost of its equipment hired from 8 September 2017 to 11 January 2018 having failed to process the claimant's invoice in breach of the parties' agreements. An order directing the Respondent to pay all Arbitration costs, thus the claimant counsel's travel and accommodation costs and the cost of this Arbitration. Interest at the Nigerian Banks overall lending rate on the amount claimed at paragraphs ii and iii above from 7 October 2017 when the 1st invoice became due and payable till Award and 10% interest on the entire sum from the date of the award to the date of full payment.[349]

The Respondent claimed that the Claimant contacted with CNS to provide the ROV services on board the Siem Daya 1 through exchange of the claimant's commercial proposals and the CNS purchase order to the Claimant. The Respondent denies that it is in breach of its agreement with the Claimant. It claims that he Claimant has no contractual or other basis for seeking payment of the amount claimed and that the invoices ought to have been sent to CNS. The Respondent pleaded hat it did not breach the Brokerage Agreement by failing to pay the invoices reissued or issued to them by the Claimant. The Brokerage Agreement is clear and unambiguous. Any sums due to the Claimant are payable by CNS, not the Respondent. After the Claimant's reply the Tribunal held that the Brokerage Agreement does not require the Respondent to pay the Claimant, the claim for an amount due under the Brokerage Agreement must fail. On the second issue for liability, the Tribunal held that as the Respondent has discharged its implied obligation to process the Claimant's invoices, the claim for breach of this obligation must fail. The Tribunal also held that the issue of quantum and interest does not arise. The Arbitral Tribunal held on its final award that having carefully considered the evidence and the parties' submission, and having delivered the above findings

[349] *Watergate Technical Services Limited v Fathom Offshore Services Limited* ICC Case No. 24514/TO, 15 January 2020.

and conclusion, as my First and Final Award. In the reference covering all matters in dispute between the parties referred to me for determination, I Award and Direct as follows:

> The Tribunal ha substantive jurisdiction to determine the matters submitted to Arbitration. The matters submitted to Arbitration are the claim of the Claimant Watergate Technical Services Limited, set out in the request for Arbitration, and the defence of the Respondent set out in its answer, including the Claimant's claim of interest and the Claimant's and Respondent's claim of costs. The claim of the Claimant, Watergate Technical Services Limited is dismissed in its entirety. The Claimant Watergate Technical Services Limited shall pay the Respondent Fathom Offshore Services Limited £12,000 (Great Britain Pounds Sterling) in respect of the legal cost incurred by the Respondent in this Arbitration. The Claimant, Watergate Technical Services Limited, shall pay the Arbitrator's fee and expenses and ICC administrative expenses at $35,000 USD, being the amount determined by the ICC Court. All other request and claims are dismissed. The Place of Arbitration is London, England.[350]

In another Court Judgement before the High Court of England and Wales, This clearly showed how Arbitral Proceedings may be set aside by the Court in accordance with enabling law of a state's jurisdiction. In Zhongshan Fucheng Industrial Investment Co Ltd v Federal Republic of Nigeria[351] The Claimant, Zhongshan Fucheng Industrial Investment Co Ltd seeks final charging orders over two properties owned by the Defendant, the Federal Republic of Nigeria. Interim charging orders were made in respect of those properties on 16th June and 18th August 2023. The fact of the case was stated clearly under paragraph 2- 4 that On 26 March 2021 an arbitral tribunal made a final award of $55,675,000 plus interest of $9,400,000 and costs of £2,864,445 payable by Nigeria to Zhongshan.

On 21 December 2021 Mrs Justice Cockerill gave permission to Zhongshan to enforce the Arbitration award in this jurisdiction in the same manner as if it was a judgment or order of the High Court and ordered that Nigeria pay Zhongshan's costs of the application. Nigeria sought to appeal that decision unsuccessfully and a further costs order was made against Nigeria by the Court of Appeal. By the time of the interim charging order applications,

[350] *Watergate Technical Services Limited v Fathom Offshore Services Limited* ICC Case No. 24514/TO, 15 January 2020.
[351] *Zhongshan Fucheng Industrial Investment Co Ltd v Federal Republic of Nigeria* (2024) EWHC 1503.

Nigeria had not complied with the award or made any payment of the costs orders. The outstanding sums were, including the costs and interest, equivalent to around £59.6 million. Nigeria had not made any payment by the date of the hearing. The properties against which the charging orders are sought are 15 Aigburth Hall Road, Liverpool and Beech Lodge, 49 Calderstones Road, Liverpool (Beech Lodge). Nigeria owns both properties. Together, Zhongshan estimates they are likely to be worth between perhaps £1.3 and £1.7 million. Neither property is recorded as diplomatic or consular premises or premises of the mission or residential property notified as a private residence of a member of the mission. None of those listed as resident there on publicly available databases have any connection with the mission.

The Respondent objected to the interim charging order being made final on a number of grounds that the application for the charging order and the interim charging order were not properly served in accordance with s12(1) of the Sate Immunity Act (SIA) 1978,[352] the state immunity applies to the premises as the acting Head of Nigeria's High Commission in London has certified under s13(5) of the SIA[353] that the properties are not in use or intended for use for commercial purposes and Zhongshan has not proven the contrary, there was a failure to give full and frank disclosure at the interim charging order stage by Zhongshan and therefore the court ought not exercise its discretion to make the charging order final, the court should decline to make a final charging order as Zhongshan is taking a multiplicity of enforcement actions and there is no safe way of knowing the totality of the sums which may be recovered in other claims in respect of the same arbitration award.

The Court held that it may make a charging order under Civil Procedure Rules (CPR) of 1998 Part 73.[354] The process in the High Court is that an application is made on a without notice basis for an interim charging order, which is considered by a judge on the papers, then a

[352] The United Kingdom State Immunity Act 1978, Section 12 (1).
[353] The United Kingdom State Immunity Act 1978, Section 13 (5).
[354] The United Kingdom Civil Procedure Rules (CPR) of 1998, Part 73.

hearing is listed to determine whether that order should be made final. CPR Part 73.10A,[355] provides that if any person objects to the making of a final charging order the person must file and serve written evidence setting out the grounds of objections not less than 7 days before the hearing. The court has the discretion to make the order final.

The Claimant's position is that section 12(1) SIA only applies to the service of a writ or other document which institutes proceedings. That was the arbitration enforcement claim. The application for an interim charging order is an application within those proceedings, not separate proceedings which are being instituted and therefore Section 12(1) does not apply. The Claimant relied on the decision of Master Davison in GPGC Limited v The Government of the Republic of Ghana,[356] in which the same argument was raised and in which Master Davison held that an application for a charging order is a further step in the Arbitral enforcement proceedings and not further proceedings. Therefore Section 12(1) does not apply. The Respondent further argued that the GPGC v Ghana case offers no good reason why Section 12 should be read as not affording states the significant protections of Section 12 SIA and there are good reasons for affording these protections where enforcement action is being taken. The application for a charging order is the first time Nigeria would have the opportunity to assert immunity from enforcement under Section 13 of the SIA. They rely on other cases where charging order applications were served through diplomatic channels. The Judge then held in its ruling under paragraph 18 and 19 as follows that:

> In my judgment Section 12(1) does not apply to the application for an interim charging order in these proceedings. The application for an interim charging order is a further step in the enforcement of the Arbitral award, it is not a new proceeding. I agree with and adopt (without repeating) the reasons of Master Davison in paragraph 15 of his judgment. They are the reasons why the Section 12(1) protection is not extended to this sort of application in arbitral enforcement proceedings. In respect of the three cases relied on by Nigeria, in LR Avionics Technologies Ltd v Nigeria,[357] the interim charging order

[355] The United Kingdom Civil Procedure Rules (CPR) of 1998, Part 73. 10 A.

[356] *GPGC Limited v The Government of the Republic of Ghana* (2023) EWHC 2531 (Comm).

[357] *LR Avionics Technologies Ltd v Nigeria* [2016] EWHC 1761

> was served through diplomatic channels. Other than that fact the issue of service is not discussed. In General Dynamics v Libya,[358] the importance of Section 12(1) to immunity from enforcement was emphasised, as it was in Norsk Hyrdo ASA v The State Property Fund of Ukraine[359]. However both of these cases do so in the context of applications under CPR 62.18,[360] which is the application to enforce an Arbitration award as if it were a judgment of the High Court, not applications for interim charging orders once such permission has been given.

After a careful examination of the Arbitral proceeding, the examination of documentary evidence and witnesses, the Court decided in favour of the Chinese company and the Judge concluded as follows that:

> The properties are currently used for the purpose of leases to residential tenants unconnected with Nigeria and its Mission. Those are commercial purposes for the purpose of Section 13 (4) of the SIA and therefore the enforcement against the properties is not barred by state immunity. There is no good reason why I should not exercise my discretion to make the charging orders final, and I do so.

In Promassidor Nigeria Limited v Asa Advance Technologies Limited,[361] the final award was delivered by the Sole Arbitrator named Mr Kamar Gbadegesin Raji. The Claimant commenced this Arbitration vide the Notice of Arbitration dated 5th October 2023, notifying the Respondent of its intention to resort to Arbitration as provided for under clause 18.2 of the Service Level Agreement (SLA) so that the dispute between the parties could be adjudicated by a constituted Arbitration Panel. The Claimant also informed the Respondent in clause 25 of the Notice of Arbitration of the need for the parties to schedule a meeting to discuss in good faith and agree on the appointment of a Sole Arbitrator for the dispute. The Respondent refused to write back to the Claimant on the appointment of a sole arbitrator for the dispute. Following the failure of the Respondent to respond to the Claimant, on 18th October 2023, the Claimant filed applied to the Chartered Institute of Arbitrators (CiArb) Nigeria Branch, requesting for the appointment of a Sole Arbitrator for the parties. On 25th October 2023, the Chairman of CiArb appointed Mr Kamar Gbadegesin Raji as the Sole

[358] *General Dynamics v Libya* (2022) AC 318
[359] *Norsk Hyrdo ASA v The State Property Fund of Ukraine* (2009) BUS LR 588
[360] The United Kingdom Civil Procedure Rules (CPR) of 1998, Part 73, 62. 18.
[361] *Promassidor Nigeria Limited v Asa Advance Technologies Limited*. Final Award delivered 14 March 2024.

Arbitrator for the dispute between the parties. This appointment was accepted on the 6th of November in a letter addressed to the Counsel representing the Claimant and the Respondent, respectively.[362]

On 6th November 2023, the Respondent wrote a protest letter to the CIArb, protesting the Arbitrator's appointment as the Sole Arbitrator and demanding the rescission of the appointment on grounds, among others, that the SLA was not operative, and the Arbitration was premature because in their view, the Police investigation was inconclusive. In response to this protest letter, the Claimant wrote a detailed letter to the CIArb and the Respondent's Counsel, explaining that the SLA was still operative and the Police Report of 22nd May 2023 was conclusive evidence of the involvement of the Respondent's Security Personnel in the theft incident of 3rd April 2023. By a letter dated 20th November 2023 to the parties, the Arbitrator informed the parties, through their respective Counsel that any of the parties who, for whatever reason, wishes to challenge the jurisdiction of the Tribunal was at liberty to raise the issue before the Tribunal having regard to the relevant provisions of the enabling law, the Arbitration and Mediation Act, 2023. In similar vein, the Chairman of the Chartered Institute of Arbitrators, UK (Nigerian Branch) responded to the letter of the Respondent's Counsel, requesting for the recession of the Arbitrator's appointment, in a letter dated 20th November 2023, wherein he stated that:

> Having appointed the Sole Arbitrator upon the application of the Claimant's Counsel and in line with the executed Agreement between the parties, he was functus officio and that any challenge on the jurisdiction of the Tribunal should be directed to the Tribunal, in accordance with the law.[363]

The Claimant and the Respondent executed a Service Level Agreement ("SLA") for the provision of high-level professional security services by the Respondent which included but was not limited to the guarding and protecting of its factory/premises, property, and staff. The SLA commenced on 1st of June 2020. The parties agreed that the SLA shall run from year to

[362] *Promassidor Nigeria Limited v Asa Advance Technologies Limited*. Final Award delivered 14 March 2024.
[363] ibid.

year, hence the SLA was subsequently renewed through Addendums to the SLA dated 18th November 2020, 11th January 2021 and the Extension of Service Agreement dated 1st June 2021 respectively.[364]

Under clause 9.1 of the SLA, the parties agreed that the Respondent would be obligated to ensure that it uses its best endeavour to minimise or prevent loss or damage caused by its Security Personnel to be deployed to the Claimant's business interest, property, or cause bodily injury to the Claimants' employees or visitors. By the provisions of clause 9.2 of the S LA, the parties also agreed that the Respondent would be liable for loss or damage sustained by the Claimant as a result of any wilful act or negligence, or act of violence by the Respondent, its agents, or Security Personnel in the course of providing security services to the Claimant. Furthermore, under clause 9.4 of the SLA, the parties agreed that the Respondent would indemnify the Claimant for any loss that the Claimant may suffer as a result of the action, inaction, or negligence of the security personnel, provided that such actions border on acts of theft committed against the Claimant, and such a claim must be accompanied by a Police Report.[365]

On 3rd April 2023 the Claimant was informed of theft of its products at its warehouse located at Isolo, Lagos. The items suspected to be missing were 1,328 bags of 25kg Powdered Cowbell Plain Butter and Miksi Plain Milk, all valued at as sum of N94,435,898.50 (Ninety-Four Million, Four Hundred and Thirty-Five Thousand Naira, Eight Hundred and Ninety-Eight Naira, Fifty Kobo). The Claimant reported this incident to the Nigerian Police who then launched an investigation into the circumstances that led to the theft incident. Upon conclusion of investigation of the incident, it was reported, via CCTV review and analysis, that one Mr. Lamidi Kekere, the security personnel of the Respondent was involved in the theft with other suspects whom the Police were unable to apprehend at the time the

[364] *Promassidor Nigeria Limited v Asa Advance Technologies Limited*. Final Award delivered 14 March 2024.
[365] ibid.

investigation report was issued to the Claimant. The Police Report dated 22nd May 2023 was subsequently issued by the office of the Assistant Commissioner of Police Area D Command, Isolo Road Mushin. The Police Report was admitted at the hearing of this matter and marked as Exhibit C6. Following the conclusion of the Police Investigation into the suspected theft incident and the issuance of the Police Report, indicting the Respondent's employee, the Claimant notified the Respondent about the development and requested the Respondent to indemnify the Claimant for the losses the Claimant had suffered but the Respondent, apparently, was not satisfied with the Police Report relied upon by the Claimant to demand for indemnification.[366]

The Claimant submitted the following Claims and Reliefs to the Tribunal in the Points of Claim seeking: a declaration that the Respondent violated its obligations under the SLA by wilfully refusing to indemnify the Claimant and to pay the sum of =N= 94,435,898.50 (Ninety-Four Million, Four Hundred and Thirty-Five Thousand Naira, Eight Hundred and Ninety-Eight Naira, Fifty Kobo), being the monetary value of the goods stolen by the Respondent's Security Personnel and his accomplices in breach of the SLA dated 1st June 2020, an Order directing the Respondent to pay the sum of =N= 94,435,898.50 (Ninety-Four Million, Four Hundred and Thirty-Five Thousand Naira, Eight Hundred and Ninety-Eight Naira, Fifty Kobo) to the Claimant being the amount due to the Claimant from the Respondent as monetary worth of the goods stolen by the Respondent's Security Personnel and his accomplices in breach of the SLA dated 1st June 2020, an Order directing the Respondent to pay the sum of =N= 20,000,000 (Twenty Million Naira), as general damages to the Claimant for the negligence, inconvenience and hardship caused on the Claimant by the theft acts of the Respondent's Security Personnel. An Order directing the Respondent to reimburse the Claimant the sum of =N= 2,500,000 (Two Million Five Hundred Thousand

[366] *Promassidor Nigeria Limited v Asa Advance Technologies Limited*. Final Award delivered 14 March 2024.

Naira), being the Respondent's share of the Arbitration expenses that the Claimant paid on behalf of the Respondent, an Order directing the Respondent to pay interest on the final award as well as any other compensation and expenses awarded in favour of the Claimant at the rate of 30% per annum, and for such further order or orders the tribunal may grant in the circumstance.[367]

Following the above analysis of the Claimant's case and the reasoning of the tribunal on the issues raised by the Claimant before this Tribunal, the Award of the Tribunal holds and declares as follows:

> The tribunal has the statutory power to determine its jurisdiction and as a result has heard and determined that it has the jurisdiction to arbitrate the dispute between the parties despite the absence of the Respondent and has therefore rendered this award EX-PARTE., the Claimant has successfully established its claim against the Respondent. the sum of N94,435,898.50 (Ninety-Four Million, Four Hundred and Thirty-Five Thousand, Eight Hundred and Ninety-Eight Naira and Fifty Kobo) being the monetary value of the goods lost by the Claimant as a result of the theft incident involving the employee of the Respondent is hereby awarded in favour of the Claimant against the Respondent, a sum of N4,00,000.00 (Four Million Naira), as Arbitrator's fee, is hereby awarded against the Respondent in favour of the Claimant having successfully established his claim against the Respondent. a sum of N500,000.00 (Five Hundred Thousand Naira), as Tribunal Secretary's Fee, is hereby awarded against the Respondent in favour of the Claimant for being the successful party in this Arbitration, a sum of N10,000,000.00 (Ten Million Naira) is awarded in favour of the Claimant against the Respondent as reasonable Legal Costs incurred by the Claimant in this arbitration, the sum of N20,000,000.00 (Twenty Million Naira) claimed by the Claimant as general damages against the Respondent is hereby declined and dismissed, interest at the rate of 30% per annum on the total sum awarded in this matter shall become payable to the Claimant by the Respondent upon failure to pay the Award sums within 30 (Thirty) days from the date of this Award, the Tribunal hereby ORDERS and DIRECT the Respondent to pay to the Claimant a total sum of =N=108,935,898.50 (One Hundred and Eight Million, Nine Hundred and Thirty-Five Thousand, Eight Hundred Ninety-Eight Naira and Fifty Kobo) within 30 (Thirty) days of this Award failing which an interest in the rate of 30% will become payable on the Award sum until the total sum is finally liquidated.[368]

[367] *Promassidor Nigeria Limited v Asa Advance Technologies Limited*. Final Award delivered 14 March 2024.
[368] *Promassidor Nigeria Limited v Asa Advance Technologies Limited*. Final Award delivered 14 March 2024.

3.3.8 **The impact of the Arbitration and Mediation Act 2023 on two internationally recognised Arbitration awards and Court proceedings involving the Federal Republic of Nigeria**

Nigeria's Arbitration and Mediation Act 2023 made positive impact on two internationally recognised Awards, which are the Zenon Petroleum and Gas Limited v Ignite Investment and Commodity Limited which was before the Federal High Court of Nigeria, Lagos Judicial Division[369] and the London Court of International Arbitration, the Federal Republic of Nigeria v Process & Industrial Developments Limited (2023) EWHC 2638 (Commercial) and Process & Industrial Developments Limited v Ministry of Petroleum of Nigeria Final Award, 31th January 2017.

3.3.9 **The Fact of the case in Zenon Petroleum and Gas Limited v Ignite Investment and Commodity Limited**

In 2019, AbdulWasiu Sowanmi, the Chief Executive Officer of Prudent Energy and Services Limited, through his investment portfolio, Ignite Investments and Commodities Limited, acquired a 74.02% stake in Forte Oil Plc. According to news reports Zenon Petroleum, filed an action at the Federal High Court, Lagos, with Suit Number FHC/L/CP/1450/2022, that a debt was alleged to have arisen from the sale conducted in 2018 where Zenon Petroleum & Gas Limited and its affiliates sold 74.02% of the issued share capital of Forte Oil Plc (now Ardova Plc) to AbdulWasiu Sowanmi and Ignite Investment & Commodities Limited.[370]

According to the filing, the company alleged that the security for the deferred consideration for the sale of the shares, Prudent Energy and Services Limited and Sowanmi had provided a guarantee in favour of Zenon Petroleum & Gas Limited and its affiliates for the prompt payment of the deferred consideration as at when due. It also alleged that $6 million being part of the deferred consideration became due on June 18, 2022, and the company refused to

[369] *Zenon oil and Gas Limited v Ignite Investment and Commodity Limited* Suit No: FHC/L/CP/1450/2022.
[370] The Cable, "*Zenon Petroleum asks Court to windup Ardova Plc over $6m debt*", < https://www.thecable.ng /zenon-petroleum-asks-court-to-wind-up-prudent-energy-over-6m-debt/. > Accessed 26 August 2025.

fulfil the obligation despite several demand letters. It, therefore, urged the court to wind up Prudent Energy and Services Limited over its inability to pay debts. A source told The Cable news that:

> Trouble started with the company when it diverted =N= 25 billion bond fund raised last November. There are also unconfirmed reports that the proceeds of the recent bond issue have been diverted to other uses other than what it is intended for.[371]

In its 2021 financial statement, Ardova Plc showed a =N= 3.9 billion loss in the year compared with a =N= 1.9 billion profit recorded in 2020.[372]

3.3.10 **Breach of Warranties Dispute between Zenon Petroleum and Gas Limited v Ignite Investment and Commodity Limited**

The issues related to the claims and warranties under the Share Purchase Agreement (SPA) between Ignite Investments and Commodities Limited (Ignite) and Zenon and its affiliates for the acquisition of shares in Forte Oil Plc (now Ardova Plc). The debt was alleged to have arisen from the sale conducted in 2018 where Zenon Petroleum & Gas Limited and its affiliates sold 74.02 percent of the issued share capital of Forte Oil Plc (now Ardova Plc) to Sowanmi and Ignite Investment and Commodities Limited. The company changed its name to Ardova Plc in 2019 upon restructuring and rebranding with Ignite Investments and Commodities Limited as its major shareholder.[373]

In June 2019, Zenon Petroleum had completed the sale of 74.02 per cent shares of Forte Oil Plc to Ignite Investments (Ignite). Thereafter, Ignite triggered a dispute notice via a letter dated June 17, 2020, wherein the company had alleged claims for a breach of warranty relating to the Share Purchase Agreement (SPA) executed on the 20th of December 2018. In

[371] The Cable, "*Zenon Petroleum asks Court to windup Ardova Plc over $6m debt*", (n 349).
[372] ibid.
[373] Iheanyi Nwachukwu, "*Ardova confirms N2.6bn Zenon/Prudent Energy battle affects former, current shareholders*", Business Day, August 10, 2022. < https://businessday.ng/companies/article/ardova-confirms-n2-6bn-zenon-prudent-energy-battle-affects-former-current-shareholders/. > Accessed 22 August 2025.

the main, the dispute notice had alleged that Zenon breached certain warranties under the SPA, in consequence of which, the purchaser made the relevant claims against Zenon.[374]

3.3.11 **Arbitration Dispute between Zenon oil and Gas Limited v Ignite Investment and Commodity Limited**

According to Proshare online news Zenon Petroleum and Gas Limited succeeded in an arbitration case instituted by Ignite Investment Limited in the London Court of International Arbitration (LCIA) over the Share Purchase Agreement (SPA) reached on the sale of Forte Oil Plc shares. Zenon was awarded $19.2 million by the LCIA at the conclusion of the arbitration.[375]

In line with the SPA, the parties agreed to meet with the intention to find a solution to the alleged claims by Ignite but parties failed to agree and this followed with Ignite filing a claim at the London Court of International Arbitration (LCIA) on the 18th of December 2020. Zenon filed its response to the claim and counter-claimed against Ignite.[376]

A Tribunal was then appointed by the LCIA consisting of three arbitrators namely Messrs Alain Choo Choy QC (Presiding Arbitrator), Oba Nsugbe QC SAN and Segun Osuntokun. The tribunal held the hearing of the matter on the 6th to 9th of December, 2021, wherein all parties presented their case and cross-examined individual witnesses from both parties.[377]

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[374] Bunmi Aduloju, "*Breach of warranty: UK court orders Ardova to pay $19.2m to Zenon*", the Cable, 19 October 2022, < https://www.thecable.ng/breach-of-warranty-uk-court-orders-ardova-to-pay-19-2m-to-zenon/.> Accessed 25 August 2025.

[375] Proshare. "*Zenon wins Arbitration against Ignite Investment Limited, Awarded $19.2m over sale of Frote Oil*", 18 October 2022, < https://www.proshare.co/articles/zenon-wins-arbitration-against-ignite-investment-limited-awarded-19.2m-over-sale-of-forteoil?menu=Business&classification=Read&category=World%20of %20Busine ss. > Accessed 25 August 2025.

[376] Proshare. '*Zenon wins Arbitration against Ignite Investment Limited, Awarded $19.2m over sale of Frote Oil*', 18 October 2022.

[377] Proshare. '*Zenon wins Arbitration against Ignite Investment Limited, Awarded $19.2m over sale of Frote Oil*', (n 370).

The tribunal then informed all parties that its decision would be given on May 2022. However, due to the large caseload of the tribunal members, the judgement of the panel was delayed beyond the earlier stated date of May 2022.[378]

Finally, on the 7th of October 2022, the tribunal delivered its judgement in the case and made an award in favour of Zenon Petroleum and Gas Limited. Zenon succeeded in three of the four claims and Ignite was ordered to make the SPA agreed payments less the amount awarded for one of the claims. With the award in favour of Zenon, it is expected that all due payments will be made by Ignite in compliance with the award.[379]

It is important to note that under the SPA, there were amounts due to Zenon of which a request had been made to Ignite. Following this request, on the 9th of August 2022, Ignite filed a case in court for an injunction restraining Zenon from claiming for the due payment. Upon which, Zenon filed for the winding up of Ignite due to the unpaid liability in August 2022, a statement explained.[380]

3.3.12 **Winding up Dispute between Zenon Oil and Gas Limited and Prudent Energy & Services Limited**

According to reports, Zenon Petroleum filed a winding up suit at the Federal High Court, Lagos, with Case No. FHC/L/CP/1450/2022.[381] The issue for determination was that Prudent Energy and Services Limited, Ignite's parent company, had provided a corporate guarantee to Zenon concerning Ignite's payment warranties to Zenon. Two issues emerged and were waiting for a judgment for clarity:

1. Arguments about the actual (monetary) obligation of Ignite Investment and Commodity Limited to Zenon oil and gas Limited that fell due for payment; and

[378] ibid.
[379] Proshare. '*Zenon wins Arbitration against Ignite Investment Limited, Awarded $19.2m over sale of Frote Oil*', 18 October 2022.
[380] Ibid.
[381] Zenon Oil and Gas Limited V Prudent Energy and Services Limited FHC/L/CP/1450/2022, Unreported.

2. The allegedly premature winding up petition against Prudent Energy by Zenon to enforce the warranty claim.[382]

In the court filing, the company alleged that the security for the deferred consideration for the sale of the shares, Prudent Energy and Services Limited and Sowami had provided a guarantee in favour of Zenon Petroleum & Gas Limited and its affiliates for the prompt payment of the deferred consideration as at when due. It also alleged that $6 million being part of the deferred consideration became due on June 18, 2022, and the company refused to fulfil the obligation despite several demand letters.[383]

On 16 November 2021, Ardova announced the successful completion of a =N= 25.3bn series 1 Fixed Rate Senior Unsecured Bond Issue under its N60bn Debt Issuance Programme**.** Although the series was completed in 2021, disclosure issues seem to have brought the Bond issuance programme to public discussion. Proshare analysts observed a rising concern about the diversion of proceeds from the 2021 bond programme largely due to the current owners' outstanding payment from the acquisition of Forte Oil Plc from Zenon Petroleum and Gas Limited.[384]

Proshare analysts investigated the use of the proceeds from the bond programme. According to the details of the Bond Programme, there were four published uses for the bond proceeds:

1. Retail expansion projects,
2. Working capital requirements.
3. Upgrade of existing infrastructure, and

[382] The Analyst Proshare Research, “*Ardova Plc: Unbundling a dispute*”, 16 August 2022, < https://proshare.co/ articles/ardova-plc-unbundling-a-dispute?menu=Economy&classification=Read&category=Oil%20%26%20 Gas. > Accessed 26 August 2025.

[383] P. M. Express, “*Zenon Petroleum asks Court to windup Ardova Plc over $6m debt*”, 9 August 2022, < https:// pmexpressng.com/zenon-petroleum-asks-court-to-wind-up-ardova-plc-over-6m-debt/. > Accessed 27 August 2025.

[384] The Analyst Proshare Research, “*Ardova Plc and its =N= 25.3 bn Series 1 Bond: the real issues*”, 8 August 2022, < https://www.proshare.co/articles/ardova-plc-and-its-n25.3bn-series-1-bond-the-real-issues?menu= Market&classification=Read&category=Bonds%20%26%20Fixed%20Income. > Accessed 3 September 2025.

4. Provision for debt service reserve account funding.[385]

It was further observed that the treatment of each item highlighted would not be in the same category of funds in ARDOVA's statement of financial position or balance sheet. The idea of bringing the items together under expansion projects and working capital requirements may create a challenge in understanding the real purpose of the use of funds.[386]

In its 2021 financial statement, Ardova Plc posted N3.9 billion loss in the year compared with a =N= 1.9 billion profit recorded in 2020. The Nigerian Exchange (NGX) Limited suspended trading in the shares of Ardova and some other companies over their failure to file their audited financial statements for the 2021 accounting year. However, the suspension was lifted by NGX Regulation Limited, the regulatory arm of the domestic stock exchange, after the company submitted its results, even though it was poor as it recorded a N3.9 billion loss in the year compared with the profit of N1.9 billion it reported the preceding fiscal year.[387]

The loss recorded by the oil and gas company had stemmed from a high cost of sales and operating costs which affected its margins. Ardova had blamed the losses on its subsidiary, Axles & Cartage, a transport and haulage services business which commenced operations in August 2020. It also blamed transformational challenges with its recently acquired Enyo Business as part of the reasons for the huge loss.[388]

3.3.13 **The Facts in the Federal Republic of Nigeria v Process & Industrial Developments Limited case**

The Government of Nigeria and P & ID Limited entered into a Gas Supply and Processing Agreement (GSPA) in January 2010. The contract was entered into in other to address Nigeria's shortage of electricity by using gas from the recovery of oil instead of flaring it, which caused air pollution in Nigeria's Southern region. Nigeria had a chronic shortage of

[385] The Analyst Proshare Research, '*Ardova Plc and its =N= 25.3 bn Series 1 Bond: the real issues'*, (n 378).
[386] The Analyst Proshare Research, '*Ardova Plc and its =N= 25.3 bn Series 1 Bond: the real issues*', (n378).
[387] The Analyst Proshare Research, '*Ardova Plc and its =N= 25.3 bn Series 1 Bond: the real issues*', (n378).
[388] ibid.

electric power. Yet gas from the recovery of oil in Nigeria was being flared rather than used to generate electricity, causing harmful pollution in the process. The GSPA came as Nigeria embarked on a policy named the Accelerated Gas Development Project to tackle this.[389] Under the terms of the GSPA, Nigeria is to supply wet gas (natural gas) to P & ID in which about 85% is processed in form of lean gas and sent to the Nigerian government. The Nigerian government is under the obligation to construct pipelines to transport the wet gas to P & ID gas processing facility. Both the Nigerian government and P & ID failed in their obligation to participate in the GSPA for 3 years.[390]

On 11th January 2010 Claimant and Respondent (the parties) entered into a written Gas Supply and Processing Agreement (GSPA) whereby the Government agreed that for a term of 20 years it would make available to P&ID, 400 MMScuFD of Wet Gas and P&ID agreed to process the gas and return approximately 85% by volume to the Nigerian government in the form of Lean Gas. For the purpose of enabling the Wet Gas to be processed, P&ID agreed to construct two or more process streams with ancillary facilities.[391]

The supply of Wet Gas by the Nigerian government was to take place in two phases. In Phase 1, the Government was to supply 150 MMScuFD "during or before the last quarter of 2011". In Phase 2, the remaining 250 MMScuFD were to be supplied "on or before the third quarter of 2012". The Claimant alleges that the Government, in breach of its obligations, did not provide any Wet Gas by the dates stipulated. On 20th March 2013, no Wet Gas having been delivered, P&ID wrote to the Ministry alleging that it had repudiated the GSPA and accepting

[389] *Federal Republic of Nigeria v Process & Industrial Developments Limited* (2023) EWHC 2638 (Comm), Para [6].

[390] Wilfred Mutubwa, "*Nigeria v P & ID and its effect on UNCITRAL Model Law Arbitration*", February 2024 (Afronomics Law), < https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.afronomicslaw.org/category/analysis/nigeria-v-pid-and-its-effect-uncitral-model-law-arbitration&ved=2ahUKEwiopans8IqPAxXTTkEAHZN-LSgQFnoECBcQAQ&usg=AOvVaw0K1GbzcE7gVGK7I-VLiZqq. > Accessed 20 May 2025.

[391] JUSMUNDI, "*P & ID v Ministry of Petroleum of Nigeria*", Part Final Award on Jurisdiction, Paragraph B, 3rd June 2014, < https://jusmundi .com/en/document/other/en-process-and-industrial-developments-ltd-v-the-ministry-of-petroleum-resources-of-the-federal-republic-of-nigeria-amended-reply-of-the-federal-republic-of-nigeria-friday-4th-february-2022. > Last accessed 1st June 2025.

the repudiation. It claimed about US$ 6 billion damages for loss of profits. P & ID on the other hand did not make any attempt to construct any gas processing facility.[392]

The Arbitration Tribunal consist of Leonard Hoffmann as President, Christopher Bayo Ojo as Counsel to the respondent and Anthony Evans as Counsel to the Claimant. On the allegation that Nigeria was not properly represented during the Ad hoc arbitration, it was discovered that On 7th May 2014 the Respondent's solicitors notified the Tribunal that "due to the inability of our client to provide us with complete instructions for the engagement of an expert to prepare a statement in rebuttal to the statement of Justice Belgore (Rtd) it would be unable to serve its skeleton argument as provided in Procedural Order No 3 and might not be able to attend the hearing on 14th May 2014. On 8 May 2014 the Presiding Arbitrator asked the Respondent's solicitors for confirmation as to whether or not they would be attending the hearing on 14th May 2014, indicating that if they were not going to attend, the Tribunal might decide to dispense with a hearing and rule on the preliminary issues on the basis of the written material which had been submitted.[393]

On 9th May 2014 the Respondent's solicitors responded by stating that: Due to the inability of our client to provide us with complete instructions in respect of this arbitration, we are constrained to inform the Tribunal that it appears we will be unable to attend the hearing scheduled for the 14th of May 2014. No application was made for an adjournment of the hearing. On 11th May 2014 the Tribunal notified the parties that it proposed to dispense with an oral hearing and by e-mail dated 11 May 2014 the Claimant notified the Tribunal that it did not require an oral hearing. The materials before the Tribunal for the purposes of its rulings on the preliminary issues are accordingly the Claimant's Request for Arbitration and Statement of Case, the Notice of Preliminary Objection and the Respondent's Submissions in

[392] JUSMUNDI, "*P & ID v Ministry of Petroleum of Nigeria*", Part Final Award on Jurisdiction, Paragraph B, 3rd June 2014, Paragraph [B], (n 385).
[393] JUSMUNDI, "*P & ID v Ministry of Petroleum of Nigeria*", Part Final Award on Jurisdiction, Paragraph B, 3rd June 2014, Paragraph 28- 32, (n 385).

support and Reply; the Claimant's Submissions on the Preliminary issues, the witness statement of Mr Quinn and the expert report of Justice Belgore.[394]

Three issues were considered for determination by the arbitral tribunal as follows:

I. Whether the Tribunal has jurisdiction to rule upon its own jurisdiction to decide any of the matters in issue in the arbitration.

II. If the answer to question (a) is yes, whether it has jurisdiction to decide whether the contract is valid and binding upon the parties.

III. If the answer to question (b) is yes, whether the contract is void for any of the reasons stated in the Notice of Preliminary Objection.

The Tribunal held stating that:

> The Tribunal has jurisdiction to rule upon its own jurisdiction to decide any of the matters in issue in the arbitration; the Tribunal has jurisdiction to decide whether the contract (i.e. the GSPA) is valid and binding between the parties; the contract (i.e. the GSPA) is not void for any of the reasons stated in the Notice of Preliminary Objections.[395]

In examining the Part Final Award on Liability before the Tribunal on the 17th July 2015, the following issues were raised by the Nigerian government in its Statement of Defence, the written submissions supplied to the Tribunal by Mr Sasore for the purposes of the hearing, and the Final Submission are as follows:

I. Did the Government have authority to enter into the GSPA? Was the Government's obligation to supply Wet Gas limited to such as Addax and Exxon were willing to provide?

II. Did the Government have any obligations under the GSPA before it commenced the supply of Wet Gas?

III. Was the Government's obligation to supply Wet Gas conditional upon the Claimant having previously constructed the gas processing facilities?

[394] JUSMUNDI, "*P & ID v Ministry of Petroleum of Nigeria*", Part Final Award on Jurisdiction, Paragraph B, 3rd June 2014, Paragraph 28- 32, (n 385).
[395] ibid, Paragraph 51 (1) (a) - (c), (n 385).

IV. Was the GSPA vitiated by a misrepresentation by P&ID or a mistaken belief on the part of both Parties that the OMLS contained 250 MMSCuFD or 4OOMMSCuFD20 of Wet Gas?

V. Was the GSPA frustrated by the refusal of Addax to provide Wet Gas? Was the Government discharged by force majeure?

VI. Is the validity of the GSPA affected by the P&ID's alleged motives for entering into it?

VII. Is the validity of the GSPA affected by the P&ID's alleged lack of a legitimate expectation that the Government would be able to perform its obligations?

VIII. Was the GSPA void as illegal or contrary to public policy?

IX. Did the GSPA become extinct by the P&ID's acceptance of a bilateral offer?[396]

In one of the issues raised in the Nigerian government's statement of defence, the Tribunal was of the opinion that the allegations of misrepresentation (and reliance thereon by the GSPA) therefore depend upon such inferences as can be drawn from the documents and the evidence of Mr Quinn.[397] Mr Quinn said in his witness statement that:

> ....There were numerous natural gas fields off the coast of Calabar, such as those contained in [OML 123 and OML 67]... From information available in the public domain and from our own researches it was clear that there was more than enough Wet Gas off the coast of Calabar to support a gas stripping and propylene plant operation in the Calabar area processing a Wet Gas throughput of 400 MMSCuFD...There were discussions about the possible locations from which to source Wet Gas for the Project. On 15th June I wrote to the Honourable Minister to explain the potential benefits of using, for Phase 1, the 180- 200 MMSCuFD of Wet Gas which was at that time being flared by Addax Petroleum off the coast of Calabar in a concession known as OML 123. In September 2009 a series of meetings commenced, some of which included stakeholders such as P&ID, the Government and Addax, some of which were between P &

[396] JUSMUNDI, "*P & ID v Ministry of Petroleum of Nigeria*", Part Final Award on Liability, Paragraph 39, 17th July 2015, < https://jusmundi .com/en/document/other/en-process-and-industrial-developments-ltd-v-the-ministry-of-petroleum-resources-of-the-federal-republic-of-nigeria-amended-reply-of-the-federal-republic-of-nigeria-friday-4th-february-2022. > Last accessed 1st June 2025.

[397] JUSMUNDI, "*P & ID v Ministry of Petroleum of Nigeria*", Part Final Award on Liability, Paragraph [69], (n 390).

> ID and Addax, and, I believe, some of which were between the Government and Addax. At a meeting chaired by Engineer Tijani, technical adviser to the Ministry, on 13 November 2009...Addax Petroleum confirmed their willingness to deliver 100 MMSCuFD of natural gas from the 168 MMSCuFD Wet Gas that they were currently flaring to the P&ID site...to comply with its domestic obligations.[398]

In another issue, the Nigerian government argued on the issue of frustration that the contract became impossible of performance when Addax refused to provide the necessary 150 MMSCuFD of Wet Gas. But there is no evidence that the contract was incapable of performance.[399] The government further argued in its Statement of Defence that Mr Oguine said in his witness statement that P&ID was motivated by the wish to make a profit. It is unusual for anyone to enter into a business transaction for any other purpose and Mr Sasore said at the hearing that he did not rely upon this feature as a defence.[400]

The Tribunal concluded by rejecting all the defences put forward by the Government and held that the Nigerian government repudiated its obligations under the GSPA. P&ID was entitled to terminate the contract on 20 March 2013 and claim damages for the Government's failure to perform. In delivering an award on liability against Nigeria, the Tribunal held that:

> We, Leonard, Lord Hoffmann, Chief Bayo Ojo SAN and Sir Anthony Evans, having read the parties' written evidence, pleadings and submissions and having heard their oral submissions, and having carefully considered the same and for the reasons stated above, make our second Part Final Award as follows: We declare that the Government repudiated the GSPA by failure to perform its obligations under Articles 6 a) and b) thereof; P&ID was entitled to and did accept the Government's repudiation on 20 March 2013; P&ID is entitled to damages (in an amount to be assessed) for the Government's repudiation of the GSPA; The parties are jointly and severally liable for the unpaid costs of the arbitration and that a party which has paid or pays more than an equal share of such costs is entitled to recover the excess from the other party. We order the parties to consult with each other and the Tribunal to agree upon a procedure and date for hearing to determine the amount of damages to

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[398] JUSMUNDI, "*P & ID v Ministry of P5etroleum of Nigeria*", Part Final Award on Liability, Paragraph [70].
[399] JUSMUNDI, "*P & ID v Ministry of Petroleum of Nigeria*", Part Final Award on Liability, Paragraph [73], (n 390)
[400] JUSMUNDI, "*P & ID v Ministry of Petroleum of Nigeria*", Part Final Award on Jurisdiction, Paragraph B, 3rd June 2014, Paragraph [75].

> which P&ID is entitled; We reserve to ourselves for later decision all other matters in dispute in the reference.[401]

Arbitration commenced in August 2012 before a London tribunal. In 2015 the Tribunal decided that the Nigerian government repudiated the agreement. In 2017, the Tribunal awarded damages to P & ID in sum of $6.6 billion with interest at the rate of 7% starting from March 20th, 2013. The sum increased to $11 billion as at September 2020. Judgement for the enforcement of the Arbitral award was granted in August 2019 at the London High Court.[402] The final award of the Tribunal is stated as follows:

> We, Leonard, Lord Hoffmann and Sir Anthony Evans, having read the parties' written evidence, pleadings and submissions and having heard their oral evidence and submissions, and having carefully considered the same and for the reasons stated above, make our Final Award as follows, namely we order the Respondent to pay to the Claimant the sum of $6,597,000,000 together with interest at the rate of 7% from 20 March 2013 until the date of this award and at the same rate thereafter until payment.[403]

In December 2019, Nigeria applied to the London High Court for an extension of time to challenge the initial arbitral award on the ground that there is a prima facie case of fraud against P & ID. Mr Howard QC (Counsel to Nigeria) argued that: P & ID fraudulently obtained the GSPA by paying bribes to Nigerian government officials, Mr Quinn (the former Chairman of P & ID) gave perjured evidence to the Tribunal to give the impression that P & ID was able and willing to perform its obligations under the GSPA, evidence of bribery against Mrs Grace Taiga, Nigeria's Counsel in the arbitration in bad faith failed to challenge Mr Quinn's false evidence, Nigeria's Counsel colluded with P & ID to defend the case thinly such that the Tribunal would favour P & ID, Nigeria was not adequately represented at the Tribunal, the GSPA was obtained by fraud as part of a larger scheme to defraud Nigeria.[404]

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[401] JUSMUNDI, "*P & ID v Ministry of Petroleum of Nigeria*", Part Final Award on Jurisdiction, Paragraph B, 3rd June 2014, Paragraph [80].
[402] Wilfred Mutubwa, "*Nigeria v P & ID and its effect on UNCITRAL Model Law Arbitration*" (n 436).
[403] JUSMUNDI, "*P & ID v Ministry of Petroleum of Nigeria*", Final Award, Paragraph 112, 31th January 2017, < https://jusmundi .com/en/document/other/en-process-and-industrial-developments-ltd-v-the-ministry-of-petroleum-resources-of-the-federal-republic-of-nigeria-amended-reply-of-the-federal-republic-of-nigeria-friday-4th-february-2022. > Last accessed 1st June 2025.
[404] JUSMUNDI, "*P & ID v Ministry of Petroleum of Nigeria*", Final Award, Paragraph 112.

In September 4th, 2020, the High Court granted Nigeria an extension of time to challenge the award under Section 67, 68 (2) (g), 70 (3) of the UK Arbitration Act 1996 now 2025 as amended[405] to set aside the award. In the words of Justice Knowles before the Business and Property Court of England and Wales, King's Bench Division, Commercial Court, "P & ID has had a fair trial and it has lost". He further stated that "the arbitration was a shell that got nowhere near the truth". The King's Bench Court held while setting aside the award that:

> In the circumstances and for the reasons I have sought to describe and explain, Nigeria succeeds on its challenge under section 68. I have not accepted all of Nigeria's allegations. But the Awards were obtained by fraud and the Awards were in the way they were procured contrary to public policy. What happened in this case is very serious indeed, and it is important that section 68 has been available to maintain the rule of law."[406]

3.3.14 **Content of the Gas Supply Processing Agreement (GSPA)**

The Agreement is stated as follows:

> The Agreement shall be governed by, and construed in accordance with the laws of the Federal Republic of Nigeria. The Parties agree that if any difference or dispute arises between them concerning the interpretation or performance of this Agreement and if they fail to settle such difference or dispute amicably, then a Party may serve on the other a notice of arbitration under the rules of the Nigerian Arbitration and Conciliation Act (Cap A18 LFN 2004)[407] which, except as otherwise provided herein, shall apply to any dispute between such Parties under this Agreement. Within thirty (30) days of the notice of arbitration being issued by the initiating Party, the Parties shall each appoint an arbitrator and the arbitrators thus appointed by the Parties shall within fifteen (15) days from the date the last arbitrator was appointed, appoint a third arbitrator to complete the tribunal. In the event that the arbitrators do not agree on the appointment of such third arbitrator within the aforementioned fifteen (15) days, or any extension of such deadline that the Parties may mutually agree, such an arbitrator shall be appointed by the President of the Court of Arbitration of the International Chamber of Commerce (ICC) in accordance with the relevant ICC rules[408] on the application of either Part (notice of the intention to apply having been duly issued to the other) and, when appointed, the third arbitrator shall convene meetings of the arbitration panel, act as chairman thereof and decide

[405] The United Kingdom Arbitration Act 1996 now 2025 as amended, Section 67, 68, and 70.
[406] *Federal Republic of Nigeria v Process & Industrial Developments Limited*, Para [574- 575].
[407] Arbitration and Conciliation Act Cap A18 LFN 2004 and repealed and re-enacted as the Arbitration and Mediation Act 2023.
[408] International Chamber of Commerce Arbitration Rules.

> the differences or dispute should the arbitrators fail to reach a unanimous decision. No arbitrator shall be appointed by either of the Parties or their respective Affiliates within five (5) years prior to the notice of arbitration.[409] When an arbitrator refuses or neglects to act, or is incapable of acting or dies, a new arbitrator shall be appointed in his place and the above provisions of appointing arbitrators shall, mutatis mutandis, govern the appointment of such arbitrator.[410] The arbitration award shall be final and binding upon the Parties. The award shall be delivered within two months after the appointment of the third arbitrator or within such extended period as may be agreed by the Parties. The costs of the arbitration shall be borne equally by the Parties. Each Party shall, however, bear its own lawyers' fees. The venue of the arbitration shall be London, England or otherwise as agreed by the Parties. The arbitration proceedings and record shall be in the English language. The Parties shall agree to appropriate arbitration terms to exclusively resolve any disputes arising between them from this Agreement.[411]

The GSPA is an arbitration clause aimed at resolving dispute in future should any arise between contracting parties. Both contracting parties agreed that the arbitration clause shall be governed by the law of the Federal Republic of Nigeria and the Arbitration and Conciliation Act LFN 2004. Parties also agreed that the arbitral proceeding after appointment of arbitrators shall be in accordance with the International Chamber of Commerce (ICC) Rules of Arbitration in which the seat of arbitration is London or as agreed by the parties. The language of arbitration shall be English language.[412]

The Arbitral proceeding was resolved between 2012- 2017. This is against the advantages of ADR, but the reason why it took this long period is because it was clearly stated in the GSPA arbitration clause that, "the award shall be delivered within two months after the appointment of the third arbitrator or within such extended period as may be agreed by the parties".[413]

It is also observed that the venue of the arbitral proceeding was in the London Court of International Arbitration and not in any International Branch of the ICC. This is possible because the arbitration clause in the GSPA stated that, "... or otherwise as agreed by the

[409] *Federal Republic of Nigeria v Process & Industrial Developments Limited*, Para [574- 575].
[410] ibid.
[411] *Federal Republic of Nigeria v Process & Industrial Developments Limited*, Para [574- 575].
[412] *Federal Republic of Nigeria v Process & Industrial Developments Limited*, Para [574- 575].
[413] *Federal Republic of Nigeria v Process & Industrial Developments Limited*, Para [574- 575].

parties". While the arbitral proceeding was conducted at the LCIA, the ICC Arbitration Rules was applied.[414]

The GSPA is a General Arbitration Clause which consists of the process of resolving dispute, the administering institution, the seat and venue of arbitration, the language, designation and governoring law. The Arbitration clause is an Institutional Arbitration Clause administered under the ICC in accordance with the ICC Arbitration Rules.[415]

3.3.15 **Examining the decision of the English Commercial Court**

The London King's Bench Court observed the irregularities Nigeria suffered which are:

I. The provision of false witness evidence.

II. The ongoing bribery of an official during the arbitration.

III. The improper retention of the internal legal documents received during the arbitration.

Nigeria suffered these irregularities under Section 68 of the UK Arbitration Act 1996 (now 2025 amended).[416] Section 68 not only considers whether the award was obtained through fraud but also whether the way in which the award was procured was contrary to public policy. The section applies in cases where Nigeria was completely denied its right to legal professional privilege throughout the process. P&ID obtained the Awards only by engaging in severe abuses of the arbitral process. As a result, Nigeria had a right to object under section 68 (2) (g) of the Arbitration Act 1996.[417]

[414] *Federal Republic of Nigeria v Process & Industrial Developments Limited*, Para [574- 575].

[415] Soram Agrawal, "*Arbitration Clause in Contract*", < https://blog.ipleaders.in/arbitration-clause-in-contracts/. > Accessed 27 May 2025.

[416] Hattie Middleditch, "*A Case with No Winners: Lessons from Nigeria v. Process & Industrial Developments Ltd*", (New York Law School Law Review), 68 (2), January 2024, < https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://digitalcommons.nyls.edu/cgi/viewcontent.cgi%3Farticle%3D2621%26context%3Dnyls_law_review&ved=2ahUKEwjdi6vv7IqPAxUgSkEAHV_cLuQQFnoECBYQAQ&usg=AOvVaw0CmrVyWFHH1GZiorndrtFZ. > Accessed 21 May 2025.

[417] Branham-Paul Chima, *"FRN V P&ID: Unveiling key lessons and analyzing their impact on Nigeria's Legal Landscape; (With Commentary of Relevant Nigerian Case Laws on the Lessons)*", < https://www.google.com/url?sa =t&source=web&rct=j&opi=89978449&url=https://www.academia.edu/1086 70222/FRN_v_P_and_ID_UNVEILING_KEY_LESSONS_AND_ANALYZING_THEIR_IMPACT_ON_NIGERIAS_LEGAL_LANDSCAPE_WITH_COMMENTARY_OF_RELEVANT_NIGERIAN_CASE_LAWS_ON_THE_LESSONS&ved=2ahUKEwiY8-PF7YqPAxWRdUEAHUDYCFsQFnoECBYQAQ&usg=AOvVaw0wGR_ECds46GIb3RLIc-tl. > Accessed 20 May 2025.

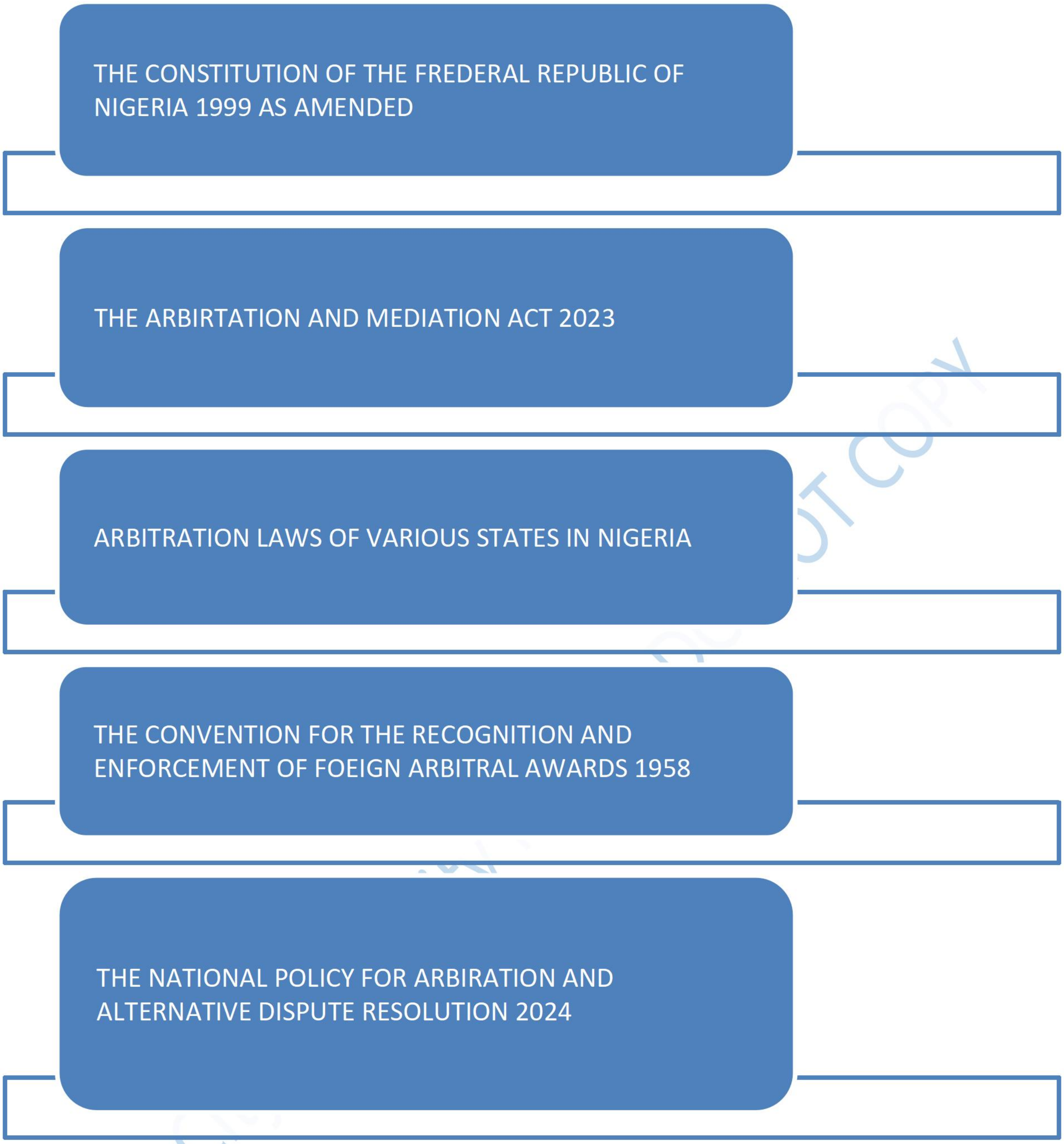
The Court acknowledged that it is true that there were other factors contributing to the Awards, including incompetence and negligence on the part of Nigeria throughout the Arbitration (through various individuals). However, the presence of these factors does not diminish the effects of P&ID's abusive conduct. If this was a fight, it was not a fair one and could not result in a just outcome. Under section 73,[418] Nigeria has demonstrated that at the time it participated in or continued to participate in the Arbitration, it did not have knowledge and could not have reasonably discovered the grounds for its objection under section 68(2) (g). Therefore, Nigeria did not lose its right to object under section 68 (2) (g).[419] The arbitral award against Nigeria was set aside.[420]

In conclusion the decision of Justice Knowles before the High Court of England and Wales was a landmark decision which has exposed the challenges of engaging in an investor- state arbitration. This has also been a lesson to the Nigerian government not to engage in an unprepared contract agreement with intent to commit fraud. The decision has also shed light about corrupt practices among public office holders who engage in contract agreements without due diligence. Another important observation in the landmark decision is the duty of a legal practitioner who is also a qualified chartered arbitrator to ensure that the interest of the client is protected by engaging in proper investigation of documents and examination of witnesses. Furthermore, the setting aside of the award on grounds of fraud and breach of public policy has placed a burden on a sole arbitrator or an arbitrator in chief to adhere to the principles of impartiality and justice. An arbitrator in chief must not rely on evidence brought by parties alone but to ensure that parties are well represented by professionals who have engaged in proper research before handling any arbitral proceeding.

[418] The United Kingdom Arbitration Act 1996 now 2025 as amended, Section 73.
[419] The United Kingdom Arbitration Act 1996 now 2025 as amended, Section 68 (2) (g).
[420] Branham-Paul Chima, '*FRN V P&ID: Unveiling key lessons and analyzing their impact on Nigeria's Legal Landscape; (With Commentary of Relevant Nigerian Case Laws on the Lessons)*', (n 463).

3.3.16 **Organogram of the Legal Framework for Arbitration in Nigeria**

Diagram 1.0



Chapter Four

4.1 **Overview of the Legal and Institutional Framework of Arbitration in the United States of America**

4.1.1 **The United States Constitution**

The United States Constitution does not directly provide for Alternative Dispute Resolution or Arbitration. ADR and Arbitration is implemented under the Federal Arbitration Act 1988 as amended and Alternative Dispute Resolution Act 1998. The 28 United State Code under Section 651 provides for authorisation of ADR for Section 654 through Section 658.[421]

4.1.2 **An Overview of the Federal Arbitration Act 1925 of the United States of America**

The Federal Arbitration Act (FAA)[422] is a federal statute, passed under Congress' power to regulate interstate commerce. It was enacted in 1925 and intended to put arbitration agreements on equal footing with all other contracts. Just prior to the FAA's passage, the Supreme Court signalled its acquiescence to arbitration as an extra-judicial remedy. In Red Cross Line v. Atlantic Fruit Co.,[423] the Court allowed a state to authorize arbitration, so long as common law remedies were preserved. Red Cross Line essentially provided Congress an ex ante assurance the FAA would withstand the Court's judicial review[424]. The United States Congress intended the FAA to place arbitration agreements "upon the same footing as other contracts" and to reverse a general distrust of arbitration by the judiciary while promoting an efficient business practice.[425]

To further the purpose of making arbitration agreements enforceable, Congress amended the FAA in 1988 to allow for an interlocutory appeal of decisions denying a motion to compel arbitration and decisions refusing to stay proceedings pending Arbitration. The drafters of the

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[421] Cornell Law School, Legal Information Institute, < https://www.law.cornell.edu/uscode/text/28/651. > Accessed October 2025.
[422] The United States Arbitration Act 9 U. S. C. S 1- 14.
[423] *Red Cross Line v. Atlantic Fruit Co*. 264 U.S. 109 (1924).
[424] Meyer, Anthony J., "*The Federal Arbitration Act, Rules of Decision, and Congress' Exercise of Judicial Power*", (2021, Minnesota Law Review: Headnotes). 84, < https://scholarship.law.umn.edu/headnotes/84. > Last accessed 15 February 2025.
[425] Michael P. Winkler, "*Interlocutory Appeals under the Federal Arbitration Act and the Effect on the District Court's Proceedings*", (2005 59 Oklahoma Law Review), 597, < https://digitalcommons.law.ou.edu/olr/vol59/ iss3 /3 > Accessed 28 February 2025.

1988 amendment sought to cure the "overload" of cases in the federal courts and the inadequate opportunity for parties to seek justice through the courts. Moreover, the drafters of the amendment sought to encourage the enforcement and utilization of alternative "dispute resolution, such as arbitration.[426]

States may apply their own Arbitration law to purely intra- state relationship or in support of International Arbitration through ancillary measures (such as attachment) not inconsistent with federal law. Thirty-four states (not including New York) have adopted the uniform Arbitration Act. New York's Arbitration law is contained in N. Y. Civil Practice and law and Rules Section 7500 et scq. The United States ratified the 1958 New York Arbitration Convention, but is not a party to the 1961 European Arbitration Convention.[427] The New York Court of Appeals held that New York State Courts should apply Federal Arbitration Law to any Arbitration agreement in a contract involving a maritime transaction or interstate commerce in the case of A/SJ. Ludwig Mowinokels Rederi v Dow Chemical Co.[428]

In Kentucky, which in the case of Fite and Warmth Construction Co., Inc v MYS Corp.,[429] the Court held that when interstate commerce is involved, Kentucky will enforce a contractual agreement to Arbitrate, instead of the common law rule which regards as revocable any agreement to arbitrate future dispute. In Georgia, the case of West- Point Pepperel Inc., v Multistate Industries,[430] an action between two Georgia Companies involving interstate commerce, the Grorgia Supreme Court held that "State law and policy (which denied the validity of Arbitration agreements) ... must yield to paramount federal law."

The FAA which was enacted in 1925, provides that written Arbitration agreements in "a contract evidencing a transaction involving commerce . . . shall be valid, irrevocable, and

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[426] Winkler,' Interlocutory Appeals Under the Federal Arbitration Act', (n 419), 598.

[427] W. Laurence Craig, William W. Park, Jan Paulsson, "*International Chamber of Commerce Arbitration*", (1984 Oceana Publications), INC, Part V S 33.01, Chapter 33, 109.

[428] *Ludwig Mowinokels Rederi v Dow Chemical Co.* 25 N. Y. 2d 576, 307 N. Y. S. 2d 660, 255 N. E. 2d 774, 398 U. S. 939 (1970).

[429] *Fite and Warmth Construction Co., Inc v MYS Corp.* 559 S. W. 2d 729 (1977).

[430] *West- Point Pepperel Inc., v Multistate Industries 231 Ga.* 329, 201 S. E. 2d 452 (1973).

enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." The Supreme Court has explained that Congress enacted the FAA to "overrule the judiciary's longstanding refusal to enforce agreements to arbitrate . . . and to place such agreements upon the same footing as other contracts." Courts therefore generally must "rigorously" enforce the agreements according to their terms. Although the FAA's savings clause permits courts to apply "generally applicable contract defences such as fraud, duress, or unconscionability" to invalidate Arbitration agreements, the FAA pre-empts state laws that "disfavour" Arbitration or interfere with its "fundamental attributes".[431]

The FAA contains the following provisions. Section 1 outlines the scope of the law, including maritime transactions and transactions involving commerce, but it excludes "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce."[432] Controversy initially existed as to the source of Congress' power to enact the FAA. Some courts believed that, in passing the FAA, Congress had exercised its article III power to "ordain and establish" federal courts. However, the prevailing view held that the FAA was enacted pursuant to Congress' substantive power to regulate admiralty and interstate commerce. Consistent with this view of the constitutional basis for the Act, the Supreme Court held that the FAA "is based upon and confined to the incontestable federal foundations of 'control over interstate commerce and over admiralty".[433]

Section 2 is the heart of the law, requiring that arbitration agreements covered by the law "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity."[434] The remaining sections are largely procedural. For instance, Sections 3 through 9

[431] Bryan L. Adkins, "*The Federal Arbitration Act and Class Action Waivers*", (September 13, 2024, Congressional Research Service), < https://crsreports.congress.gov. > Accessed 10 February 2025.
[432] The Federal Arbitration Act 1925, Section 1.
[433] Lisa J. Banks and Mathew S. Stiff, "*The Federal Arbitration Act: Advanced Employment Law and Litigation*", (2013, Katz Marshall & Banks LLP), < https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url =https://katzbanks.com/wp-content/uploads/ALI-CLE-Arbitration-Feb-2013.pdf&ved=2ahUKEwjJ-7nuwIyPAx XhV0EAHTB5JFQQFnoECBgQAQ&usg=AOvVaw1fPhlEdjZk5IqMCx_y2OCN > Accessed 18 February 2025.
[434] The Federal Arbitration Act 1925, Section 2.

concerns what happens before, during, and immediately after Arbitration proceedings. Section 3 provides that courts must stay their proceedings upon application of one of the parties.[435] The validity and scope of the Arbitration agreement would normally be called into question when the party opposing Arbitration initiates a competing court action, or seeks a court order to "stay" Arbitration. On the other hand, the party desiring Arbitration may ask a Court to compel the recalcitrant antagonist to Arbitrate. Both federal and state law generally vest courts with the power to stay or to compel Arbitration, but may differ on the grounds for which these powers are to be exercised.[436] An order to compel or to stay Arbitration may constitute either a final or interlocutory decision, according to the circumstances.[437]

The validity and scope of the agreement may also be contested when one party to an Arbitration proceeding seeks a conservatory measure, such as an attachment, in a state having jurisdiction over the other party or its asset. To compel or to stay Arbitration, or to attach assets, a Court must first determine whether there exist a valid Arbitration agreement covering the dispute, and in so doing must distinguish between the validity of the Arbitration agreement itself and the enforceability of the rest of the contract. For example, a seller of goods may be able to compel Arbitration of a dispute over the payment of the purchase price, even though there may be contractual grounds relieving the buyer or liability to pay. Such grounds, form payment, for example fraudulent representations concerning the quality of goods, might invalidate the contract. This issue, however, would be determined through Arbitration.[438]

Section 4 outlines the procedure by which a party who is aggrieved by a failure to initiate Arbitration may obtain an order for the same.[439] In the United States, a judge may intervene

[435] The Federal Arbitration Act 1925, Section 3.
[436] 9 U. S. Code, Section 3- 4. The Federal Arbitration Act Section 2 (a)- (b). The New York Arbitration Law Section 7503 (a), (b) (Mckinney).
[437] 28 U. S. Code Section 1291 and Section 1292 (a) (1).
[438] Craig, Park and Paulsson, 'International Chamber of Commerce Arbitration', (n 421), Chapter 33, 110.
[439] The Federal Arbitration Act 1925, Section 4.

at the threshold of Arbitration in four instances. These are: to stay Court proceedings commenced in contradiction with an agreement to arbitrate, to compel Arbitration, to stay Arbitration and to grant interlocutory attachments of assets.[440] Section 5 provides guidelines for selecting an Arbitrator should one not be named or there be a lapse.[441] Section 6 simply states an application to compel Arbitration shall be heard as a motion.[442]

Section 7 provides additional lawful procedures that may be employed during Arbitration itself. The FAA provides limited authority to subpoena witnesses or a summons to a hearing. The arbitrators selected either as prescribed in this title or otherwise, or a majority of them, may summon in writing any person to attend before them or any of them as a witness and in a proper case to bring with him or them any book, record, document, or paper which may be deemed material as evidence in the case. The fees for such attendance shall be the same as the fees of witnesses before masters of the United States courts. Said summons shall issue in the name of the arbitrator or arbitrators, or a majority of them, and shall be signed by the arbitrators, or a majority of them, and shall be directed to the said person and shall be served in the same manner as subpoenas to appear and testify before the court; if any person or persons so summoned to testify shall refuse or neglect to obey said summons, upon petition the United States district court for the district in which such arbitrators, or a majority of them, are sitting may compel the attendance of such person or persons before said arbitrator or arbitrators, or punish said person or persons for contempt in the same manner provided by law for securing the attendance of witnesses or their punishment for neglect or refusal to attend in the courts of the United States.[443]

[440] Craig, Park and Paulsson, 'International Chamber of Commerce Arbitration', (n 421), Chapter 33, 111.
[441] The Federal Arbitration Act 1925, Section 5.
[442] The Federal Arbitration Act 1925, Section 6.
[443] The Federal Arbitration Act 1925, Section 7.

Section 8 provides special procedures related to admiralty law.[444] Section 9 allows the arbitrator's award to be entered as a judgment by a court.[445] Sections 10 through 16 cover the remaining steps in the Arbitration process, some special circumstances, and the right to appeal. Section 10 outlines grounds for vacating the Arbitration award.[446] A party must establish a nexus between the alleged fraud or corruption and the arbitrator's decision, and not merely rely on the existence of the fraud. Similarly, to vacate an Arbitration award under Section 10(a)(1), the challenging party must demonstrate "clear and convincing evidence of fraud, that the fraud materially relates to an issue involved in the arbitration, and that due diligence would not have prompted the discovery of the fraud during or prior to the arbitration".[447]

Section 11 outlines the modification powers granted to federal courts having jurisdiction of an award where a mistake was made in the award.[448] Section 12 provides for notice where a party to a lawsuit intends to invoke a right to arbitration.[449] Section 13 states what must be filed in court when a party seeks judicial enforcement of an award.[450] Section 14 provides a time limitation (likely now entirely irrelevant prior to January 1, 1926) for the FAA's scope.[451]

Section 15 states the Act of State doctrine shall not apply to the FAA, meaning foreign sovereigns may submit to Arbitration to be enforced by United States courts, should they so choose.[452] The Statute implementing the 1958 New York Arbitration Convention provides that federal district courts shall have original jurisdiction over any action or proceeding

[444] The Federal Arbitration Act 1925, Section 8.
[445] The Federal Arbitration Act 1925, Section 9.
[446] The Federal Arbitration Act 1925, Section 10.
[447] Banks and Stiff, '*The Federal Arbitration Act*', (n 427), 11.
[448] The Federal Arbitration Act 1925, Section 11.
[449] The Federal Arbitration Act 1925, Section 12.
[450] The Federal Arbitration Act 1925, Section 13.
[451] The Federal Arbitration Act 1925, Section 14.
[452] The Federal Arbitration Act 1925, Section 15.

"falling under the Convention".[453] It should be noted however that the U.S applies the Convention on the basis of reciprocity (to awards made in the territory of another contracting State) and only to commercial transactions.[454] The Convention applies only to awards that are foreign "- awards made in the territory of a State other than the State where recognition and enforcement is sought"- and to international awards, described in negative terms as awards "not considered as domestic".[455] Thus an agreement or award arising out of a commercial relationship entirely between citizens of the United States would normally fall outside the coverage of the Convention. However, the implementing statute applies the Convention if the controversy "involves property located abroad, envisages performance or enforcement abroad, or has some other reasonable relation with one or more foreign states".[456] A Corporation is considered a citizen of the United States if it is incorporated or has its principal place of business in the United States.[457]

Section 16 outlines the procedure for appeals.[458] Before the passage of Section 16 of the FAA, the Enelow-Ettelson doctrine governed the appealability of a district court's decision to grant or deny a motion to stay legal proceedings pending arbitration. Under this doctrine, "a stay of legal proceedings on equitable grounds was analogous to an injunction," and injunctions are immediately appealable under 28 U.S Code Section 1292 (a) (1). "Because arbitration was an equitable defence," decisions about whether to stay the district court's proceedings "pending Arbitration was appealable as an injunction." The U.S. Supreme Court eventually overruled the Enelow-Ettelson doctrine in Gulfstream Aerospace Corp. v. Mayacamas Corp.[459]

In the area of Tax Arbitration, certain U.S. income tax treaties provide for mandatory binding arbitration to resolve eligible cases in which the competent authorities have endeavoured but

[453] 9 U. S. Code, Section 203.
[454] 9 U. S. Code, Section 201 and the Convention on the Recognition and Enforcement of foreign Arbitral Awards, Article 1, 3.
[455] The Convention on the Recognition and Enforcement of foreign Arbitral Awards, Article 1, 1.
[456] 9 U. S. Code, Section 202.
[457] Craig, Park and Paulsson, 'International Chamber of Commerce Arbitration', (n 421), Chapter 33, 111.
[458] The Federal Arbitration Act 1925, Section 16.
[459] *Gulfstream Aerospace Corp. v. Mayacamas Corp* 485 U.S. 271 (1988).

are unable to reach a complete agreement. To date, arbitration is included in the U.S. income tax treaties with Belgium, Canada, France, Germany, Japan, Spain and Switzerland.[460]

During Arbitration, a case is resolved by the determination of an Arbitration board comprised of three members: one member selected by each of the respective competent authorities and a chair chosen by those respective members from a panel of candidates agreed upon by the competent authorities. Depending on the treaty, within 60-90 days of the appointment of the chair, each competent authority will submit for the board's consideration a proposed resolution paper proposing a resolution for each issue presented (not exceeding 5 pages) and a supporting position paper (not exceeding 30 pages) plus annexes.[461]

The arbitration panel must select one of the two proposed resolutions for each issue presented and inform both competent authorities of its determination in writing, depending on the treaty, within 6 and 9 months of the appointment of the chair. The written determination must not include any rationale or analysis for the selection and will not be considered precedential. No information relating to the arbitration proceeding, including the written determination may be disclosed by the board member it is anticipated that the arbitration board will conduct its meetings through telephonic and video conferences. Board members will be compensated for up to three days of preparation, up to two days of meetings, and, if applicable, and depending on the treaty, certain travel days and travel expenses. It is expected that applicants stand ready to serve on at least one arbitration board at any time within 3 years after being named to the registry.[462]

4.1.3 **The United States Tax Convention for Mandatory Arbitration**

In the area of Tax Arbitration, certain U.S. income tax treaties provide for mandatory binding arbitration to resolve eligible cases in which the competent authorities have endeavoured but

[460] Internal Revenue Service, "*Mandatory Tax Arbitration Treaty*", (21 January 2025), an official Website of the United States Government < https://www.irs.gov/businesses/international-businesses/mandatory-tax-treaty-arbitration. > Last accessed 5 March 2025.
[461] Internal Revenue Service, 'Mandatory Tax Arbitration Treaty', (n 454).
[462] Internal Revenue Service, 'Mandatory Tax Arbitration Treaty', (n 454).

are unable to reach a complete agreement. To date, arbitration is included in the U.S. income tax treaties with Belgium, Canada, France, Germany, Japan, Spain and Switzerland.[463]

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4.1.4 **Institutional Framework for Arbitration in the United States of America**

Examples of Arbitration Institutions in the United States are: the International Centre for Dispute Resolution (ICDR) which is an international arm of the American Arbitration Association, the International Chamber of Commerce International Court of Arbitration (ICC) which has a branch in New York, the International Centre for Settlement of Investment Disputes, the International Institute for Conflict Prevention and Resolution and JAMS.

4.1.5 **Organogram of the Legal Framework for Arbitration in the United States**

Diagram 1.0

[463] Internal Revenue Service, "*Mandatory Tax Arbitration Treaty*", (21 January 2025), an official Website of the United States Government < https://www.irs.gov/businesses/international-businesses/mandatory-tax-treaty-arbitration. > Last accessed 5 March 2025.
[464] Internal Revenue Service, 'Mandatory Tax Arbitration Treaty', (n 454).
[465] ibid.

CONSTITUTION OF THE UNITED STATES OF AMERICA 1787

THE FEDERAL ARBITRATION ACT 1988 AS AMENDED

THE CONVENTION FOR THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS 1958

THE UNITED STATES TAX CONVENTION FOR MANDATORY ARBITRATION BETWEEN CANADA, GERMANY AND BELGIUM 2008

4.1.4 **Comparing the Arbitration and Mediation Act 2023 with the Federal Arbitration Act 1988 as amended**

In the United States, an Arbitration agreement has the same status with a contract agreement and enforceable under Section 2 of the Federal Arbitration Act. In AT&T Mobility LLC v.

Concepcion,[466] the Supreme Court held that the FAA pre-empted a state from "conditioning the enforceability of certain Arbitration agreements on the availability of class wide arbitration procedures." Under a California judicial rule established in Discover Bank v. Superior Court,[467] courts applying California law often deemed class action waiver provisions in standard-form consumer contracts "unconscionable" and thus unenforceable. One of the central concerns expressed by the California Supreme Court in Discover Bank was that class action waivers could thwart what the U.S. Supreme Court has identified as "the policy at the very core of the class action mechanism." Whereas "small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights," a "class action solves this problem by aggregating the relatively paltry potential recoveries into something worth someone's (usually an attorney's) labour." Applying the Discover Bank rule, the U.S. Court of Appeals for the Ninth Circuit held that a class waiver provision in an AT&T cell phone contract was unconscionable, and that the FAA did not pre-empt the California judicial rule, which applied equally to class action waivers in arbitration agreements and in other contracts.

The Supreme Court held that the FAA pre-empted California's Discover Bank rule. The Court explained that, although Section 2 of the FAA "preserves generally applicable contract defences," it nonetheless pre-empts such defences where they pose an obstacle to accomplishing the FAA's objectives. Focusing on the FAA's text, the Court reasoned that the FAA's primary purpose is to make arbitration agreements enforceable according to their terms "so as to facilitate streamlined proceedings." In the Court's view, because class arbitration necessarily requires procedural formality, it "sacrifices the principal advantage of arbitration its informality and makes the process slower, more costly, and more likely to generate procedural morass than final judgment." The Court thus concluded that California's

[466] *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011).
[467] *Discover Bank v. Superior Court*, 36 Cal.4th 148 (2005).

Discover Bank rule interfered with "fundamental attributes of arbitration" and was pre-empted under the FAA. Additionally, in addressing the argument that small value claims would "slip through the legal system" without class proceedings, the Court explained that "States cannot require a procedure that is inconsistent with the FAA, even if it is desirable for unrelated reasons."

In Stolt-Nielsen S.A. v. Animal Feeds International Corp.,[468] the Court held that a party to an arbitration agreement under the FAA may not be required to arbitrate on a class wide basis when the agreement is "silent" on the availability of class procedures. Emphasizing that arbitration under the FAA is "a matter of consent," the Court explained that there must be an affirmative contractual basis for concluding that a party has agreed to class action arbitration. The Court reasoned that the "fundamental" differences between individual arbitration and class action arbitration are "too great for arbitrators to presume . . . that the parties' mere silence on the issue of class-action arbitration constitutes consent to resolve their disputes in class proceedings." Whereas Stolt-Nielsen addressed arbitration agreements that are silent as to class arbitration, in Lamps Plus, Inc. v. Varela,[469] the Court followed similar reasoning in ruling that parties also may not be compelled to arbitrate on a class basis when their agreement is ambiguous with respect to class arbitration.

In Nigeria, an Arbitration agreement is valid and enforceable under Section 1 (3) of the Arbitration and Mediation Act 2023 and mode for enforcement is provided under the High Civil Procedure Rules of various States.[470]

The United States FAA clearly defined Arbitrable agreement ranging from properties, employment, maritime, commercial transaction, admirality and investment activities under Section 1 and 8 of the FAA. The AMA does not differentiate Arbitrable from non Arbitrable agreements but the Act is guided by Court decisions, judicial precedents, law reports and text

[468] *Stolt-Nielsen S.A. v. Animal Feeds International Corp.,* 559 U.S. 662 (2010).
[469] *Lamps Plus, Inc. v. Varela*, 587 U.S. 176 (2019).
[470] Order 43 Rule 3 (1) of the High Court of Lagos State Civil Procedure Rules Lagos State 2019.

books. In the area of tax, Nigerian Courts have held that disputes whose essence relate to tax are deemed to be incapable of settlement by Arbitration. Tax disputes are non- arbitrable because they demonstrate “an attempt to delegate to the Arbitrators what is a matter of public interest which cannot be determined within the limitations of a private contractual process. This was the decision of the Court of Appeal in Esso Exploration and Production Nig Ltd & Anor v Nigeria National Petroleum Corporation[471] and the case of Shell Nigeria Exploration and Production Ltd (SNEPCO) & 3 Ors v Federal Inland Revenue Service (FIRS) & Anor.[472] The appeal court held in both cases that tax disputes are non- arbitrable under Nigerian law. Both the Esso v NNPC and SNEPCO v FIRS have similar facts. Esso and SNEPCO are holders of oil mining leases under production sharing contract (PSCs) between NNPC, Esso, SNEPCO and other International Oil Companies (IOCs). The PSCs provided that the contractors (IOCs) shall prepare the Petroleum Profit Tax Returns (PPTA) and submit to the NNPC for filing with the FIRS. Esso and SNEPCO alleged that NNPC failed to file tax returns prepared and submitted to it by them. They further alleged that NNPC unilaterally amended some of the tax returns that they submitted to it. As a result of these breaches, the contractors invoked the Arbitration clause in their PSCs and commenced separate Arbitration proceedings against NNPC before the same Tribunal.

The Tribunal in both cases awarded in favour of the claimants. However, the FIRS instituted court actions challenging the awards and the property of the Arbitration proceedings on the ground that the subject matter related to tax, which is non- arbitrable under Nigerian law. The FIRS was neither a party to the PSCs or the proceedings and it was unclear how FIRS became aware of the Arbitral proceedings. The Court examined whether the Tribunal had jurisdiction over disputes regarding the payment of taxes under the PPTA. Citing Section 251

[471] *Esso Exploration and Production Nig Ltd & Anor v Nigeria National Petroleum Corporation* (unreported) CA/ A/ 507/ 2012, judgement delivered on 22 July 2016.
[472] *Shell Nigeria Exploration and Production Ltd & 3 Ors v Federal Inland Revenue Service & Anor* (unreported) CA/ A/ 208/ 2012, judgement delivered on 31 August 2016.

(1) (b) of the Constitution, the Court held that payment of PPTA is a statutory issue not contractual. The Court also held that FIRS had the exclusive power to administer tax legislation including the PPTA and to assess, collect, account and enforce payment of taxes due to the Nigerian government or any of its agencies from persons, including companies and enterprises chargeable with tax, while the Federal High Court has exclusive jurisdiction over disputes relating to taxation o companies.

In *Esso v Federal Inland Revenue Service*[473], the Court of Appeal refused to follow its decision in *Esso v NNPC and SNEPCO v FIRS* cases, observing that they were reached per incuriam. The Court held that the dispute between the parties was about their rights and obligations under the contract that is the PSCs and that, as such, it was clearly a contractual dispute. While the Court acknowledge that the substance of the complainant was that NNPC violated the provisions of the PSCs in the preparation of the PPTA Returns, on obvious tax issues, it however noted that the fact that parties guide themselves by the provisions of the PPTA in determining the allocation of tax oil or in making PPTA, does not turn the basic contractual dispute into a tax one.

It has been observed that an aggrieved party in the United States can enforce an Arbitral award which has been set aside by another State under the Convention for the Enforcement and Recognition of Foreign Awards also known as the New York Convention 1958. An example is the case of Chromalloy Aeroservices Inc., v Arab Republic of Egypt.[474] In Nigeria, this has not been applied.

Courts in the United States may grant Arbitration Tribunals to proceed with cases involving criminal litigation on corruption and bribery. This has been observed in *Erie R. R. Co v Tompkins* case.[475] Practically in Nigeria, Arbitral proceedings could be suspended and awards

[473] *Esso v Federal Inland Revenue Service* (unreported) CA/ A/ 402/ 2012, judgement delivered on 10 March 2017.
[474] *Chromalloy Aeroservices Inc., v Arab Republic of Egypt* 939 F. Supp. 906 (1996).
[475] *Erie R. R. Co v Tompkins* 304 U. S. 64 1938.

unenforceable as the State would prioritise the criminal proceeding. Luuk Uilenbrock in his article "the Power of Investment Tribunals to enjoin Domestic Criminal Proceedings" provided legal advice on integrity during criminal proceedings and Arbitral proceedings involving criminal elements. To him: The fundamental principle of integrity of the proceedings aims at allowing parties and counsels to freely present their case. It encapsulates various procedural rights, including basic procedural fairness, respect for confidentiality and legal privilege, the parties' right to seek legal advice and the right to advance positions freely and without undue interference.[476]

The writer further referred to Article 26 (2) (b) of the 2010 UNCITRAL Arbitration Rules[477] which expressly states that Tribunals can issue interim measures to preserve the integrity of the proceedings Although the International Centre for Settlement of Investment Dispute (ICSID) Convention and the ICSID Arbitration Rules are silent on this issue. Examples of cases were given by the writer such as In Nova Group Investment v Romania,[478] were the Tribunal concluded that the integrity of the proceedings is not only an existing right of both parties but also 'the central duty of any ICSID tribunal to protect'.

In another case of *Sergei Pugachev v Russia*,[479] the Tribunal concluded that Russia's request for extradition of Mr Pugachev from France to Russia threatened to cause the claimant irreparable harm to his right to procedural integrity of the Arbitration and his right to defend himself. In examining the necessity requirement under Article 26 (3) of the 2010 UNCITRAL Rules, the Tribunal held that Mr Pugachev's possible extradition and subsequent incarceration in Russia would substantially hinder his ability to present his case before the Tribunal, because detention would limit his case access to counsel who were based in France,

[476] Luuk Uilenbrock, "*The Power of Investment Tribunals to enjoin Domestic Criminal Proceedings*", (Arbitration International, Volume 36 Number 3, 2020, Oxford University Press), 323.
[477] UNCITRAL Arbitration Rules of the 2010, Article 26 (2) (b).
[478] *Nova Group Investment v Romania*, Procedural Order No 7, 29 March 2017, ICSID Case No ARB/ 16/ 19, para 232.
[479] *Sergei Pugachev v Russia*, Interim Award, 7 July 2017.

would limit his capacity to react promptly to development in the Arbitration (and be informed on such development), and his participation would anyway be conditional on the terms of his imprisonment.

The writer explained that it is widely accepted that the host state cannot use domestic criminal proceedings as a means of obtaining evidence that will serve as part of its defence in Arbitration proceedings. Such abuse of procedural powers by the host state undermines the integrity of the Arbitral process. To avoid any unfair advantage and protect the level playing field between the parties, Tribunals have ordered host states to ensure that documents coming into the possession of its criminal investigation authorities should not be made available to any person having any role in the Arbitration proceeding. In Churchill Mining v Indonesia,[480] the Tribunal ordered the Respondent to seek leave from the Tribunal before introducing evidence which it had obtained or would obtain through domestic criminal investigations.

In *Lao Holding v Lao People's Democratic Republic*,[481] the Tribunal considered that the integrity of the Arbitration would be compromised by permitting the host state to run a full-scale criminal investigation concurrently with the Arbitration (concerning the same people and involving the same facts), just one month before the merits hearing in the Arbitration. Noting that the police investigation would inevitably divert some of the claimant's resources from final preparations of the Arbitration hearing to dealing with its defence in the criminal investigation, the tribunal held that a deferral of the criminal investigation for another few months, until an award was made, would not seriously prejudice the host state.

Both the AMA and the FAA give disputing parties the liberty to decide where to conduct Arbitral proceeding, appoint an Arbitrator or Arbitrators, adopt Arbitration Rules and adopt any language or languages as agreed by parties. Parties are also allowed to conduct Virtual Arbitral Proceedings which is legally recognised. It has also been observed that an Award

[480] *Churchill Mining v Indonesia* Procedural Order No. 14, 22 December 2014, ICSID Case No. ARB/ 12/ 14.
[481] *Lao Holding v Lao People's Democratic Republic*, ruling on motion to amend the provisional order, 30 May 2014, ICSID Case No. ARB (AF)/ 12/ 6 para 25.

under both statutes can be set aside on grounds of illegality, corruption, impartiality, non arbitrability and improper conduct of an Arbitrator and an award can be appealed before a higher court.

In a pending civil litigation, where parties agree to engage in Arbitration, a party's counsel may make an oral application or file a motion praying the Court to grant the motion or an application for Arbitration before an Arbitration institute or under the AMA. The party must prove to the court that the dispute is Arbitrable and where there is an Arbitration agreement, such agreement may be enforced.

Chapter Five

Conclusion

5.1 **Summary**

The First Chapter which focused on the various definitions of the word 'Arbitration' was explained from dictionaries, textbooks, academic scholars, professionals and law journals. What is common from all these definitions is that, Arbitration is an alternative dispute resolution, presided by a Chief Arbitrator and each disputing party is represented by Chartered Arbitrators, the decision reached which is an award is binding on disputing parties and enforceable by agreement or by a Court of Law. These definitions were derived from the Black's Law dictionary, Curzon's dictionary of Law, Osborn Concise Law Dictionary, Halsbury's Law of England, the New Oxford thesaurus of English, the Oxford Dictionary of Law and the New Webster's Dictionary of English Language. Contributions were also received from learned Scholars and Judges.

The Second Chapter, which is the first literature review, was on a book titled "International Arbitration Law and Practice: The Practitioner's Perspective by Tolu Aderemi a Professional Chartered Arbitrator. Chapter 6 of the book explained the importance of making Nigeria a seat of Arbitration and what must be done. The following chapter explained on what Arbitration practitioners must know when presenting and evaluating evidence in both domestic and international Arbitration. In addition, the precedent rights of lawyers and how Arbitration as a useful dispute resolution mechanism has supported the resolution of disputes in the oil and gas industry as well as on matters of climate change.

The writer explained extensively on issues such as the difference between venue and seat of Arbitration, the function of the United Nations Commission and International Trade Law (UNCITRAL) Model law on International Commercial Arbitrationn1985, the historical background and evolution of Arbitration law in Nigeria, the inadequacy of Arbitration and Conciliation Act 2004 which led to the enactment of the Arbitration and Mediation Act 2023.

In respect of the second literature review by Collins Ebi Daniel in the book titled "Arbitration and Dispute Resolution in Nigeria, Practice and Procedure. The author explained the Latin root of Arbitration as well as various definitions and opinions of judges and academic scholars on Arbitration. The author examined the types of Arbitration agreements, practice and procedures, sources of Arbitration laws in Nigeria, the colonial history of Arbitration in Nigeria, international conventions, the principle of arbitrability, party autonomy, privacy, confidentiality, limitation of time, advantages and benefits of Arbitration.

On the third literature review, the article titled "Artificial Intelligence and its role in the development of the future of Arbitration by Solhehi Mohammed Ali and Baghbanno Faraz explained the importance of Artificial Intelligence (AI), its advantages and benefits to professionals and the judiciary, challenges, mode of usage, the use of machine language, challenges faced by professional experts, the legal and regulatory framework. The writers also provided recommendations such as ensuring accountability and responsibility measures to determine who is liable for any error or biases in decisions made by AI.

The fourth literature review was titled "Arbitrating disputes involving allegations of corruption: considerations and strategies for counsels and clients" by Jenna Anne de Jong. The article focuses on corrupt practices in Commercial and Investment Arbitration in countries such as Canada, the United Kingdom and the United States of America. The article examined specific sections in Canada's Foreign Corrupt Practices Act (CFPOA), the UK's Bribery Act 2010 and the amended Foreign Corrupt Practice Act (FCPA) of the US. The writer also examined how corrupt practices arise with examples from Canada, the UK and the US, with the aid of decided court cases, legal advice to professionals and awareness about corrupt practices between investors and states.

The Contractual theory was used for the purpose of this research. The Contractual theory is based on the presumption that the jurisdiction of Arbitrators to hear and resolve a dispute rests solely on the contract between the parties.

The third Chapter began with the international history of Arbitration which was derived from the American Bar Association up to the history of Arbitration in Nigeria. Legal and critical analysis of the AMA 2023 and its comparison with the ACA 2004 was examined. This chapter examined the AMA 2023 from Section 1- 56 with decided court cases as well as its innovative features. Decided Court cases and Arbitral awards in Nigeria and in foreign countries were critically examined. There was a comparison between the Arbitration Rules of 2023 and the NICARB Arbitration Rules and Regulation of 2021. Lastly, the National Policy on Arbitration and ADR which was enacted in 2024 but released to the public on February

2025 was briefly examined. The institutional framework for Arbitration in Nigeria was examined through the domestic and international arbitration institutions.

There was a critical examination of Court cases, Arbitral Awards and two internationally recognised Arbitral awards which are the LCIA award between Zenon Petroleum and Gas Limited v Prudent Investment and Commodity Limited, and the FRN v P & ID English Commercial Court Judgement,

The Forth Chapter examined the Legal and Institutional Framework for Arbitration in the United States and a comparison between the AMA 2023 and the US FAA 1925 amended in 1988.

5.2 **Conclusion**

In Conclusion, the AMA has positively changed Arbitration in Nigeria through its innovative features but there are still challenges which need to be addressed in order to develop arbitration in Nigeria. Challenges such as partiality and lack of independence, corruption and bribery, costly administrative fees and inadequate training of Arbitrators must be addressed by Arbitration Institutions and the Nigeria government.

5.3 **Recommendations**

Arbitrators should be mainly Legal Practitioners on the grounds that Law students and Legal Practitioners are trained on ethical guidelines and principles of equity and justice. Alternative Dispute Resolution must be taught in the Nigeria Law School as a separate discipline which should not be optional and at the end of the training at the Nigerian Law School, a Law student would be given a double title known as a Legal Practitioner and an ADR Practitioner. This recommendation would reduce training cost and ensure that there are adequate professionals knowledgeable in the field of Arbitration.

Another aspect is to recommend to Arbitration Institutions to serve as either Professional Centres or Training centres. This would help Arbitration institution focus more on their mission and objectives in providing adequate facilities and ensure that professionals are adequately skilled and equipped in the field of Arbitration.

Furthermore, Arbitration institutions must learn to choose a Presiding Arbitrator or a President of an Arbitral Tribunal or a Sole Arbitrator on the principle of impartiality and independence.

Another area of recommendation is on the amendment of Section 7 of the AMA. Section 1 provides that the objective of the AMA 2023 is to promote a fair resolution of disputes by an 'Impartial Tribunal' without unnecessary delay or expense. Section 7 then provides for the procedures for appointing Arbitrators and a Sole Arbitrator. Section 7 (4) - (6) empowers the Court, an Appointing authority and an Arbitral institution to appoint an Arbitrator on the principle of impartiality and independence. The challenge under Section 1 and 7 is that the procedure in constituting an impartial and independent Arbitrator is not provided.

It is recommended that in order to build a strong foundation on impartiality and independence under Section 7 of the AMA, impartiality test and interviews should be included in Section 7 of the AMA. This involves the use of interrogations and filing of confidential forms. The aim is to ensure that selected arbitrators are not closely connected to parties or the subject matter either directly or indirectly. The advantage of this is to prevent any conflict of interest which could render an award null and void when appealed against. Article II (1) of the Rules of Arbitration of the ICC emphasised on the duty of impartiality and independence of Arbitrators and this can also be a guide in amending Section 7 of the AMA.

A sole arbitrator or a presiding arbitrator is recommended to be called an 'impartial arbitrator' after fulfilling all terms and conditions of the selection process. This is aimed at boosting more confidence in arbitration among disputing parties. Section 7(3) of the AMA may be amended to include that "a Sole Arbitrator appointed by an Arbitration Institution or a competent Court shall be titled an Impartial and Independent Sole Arbitrator of the Tribunal".

Where parties intend to choose their own Sole arbitrator for an arbitration proceeding, parties are advised to engage in proper investigation. This could be achieved by ensuring proper cooperation with the national police of a state or the International Police known as INTERPOL. This aim is to ensure that any criminal record of the selected arbitrator is disclosed and where this could jeopardise an arbitral proceeding, this could be a ground to suspend the selection process and choose another professional to act as a sole arbitrator.

Arbitration institutions are not to rely on selecting arbitrators form a list of persons but are recommended to select arbitrators from a list based on qualification, area of specialisation and interest and experience. For example, and arbitrator experienced in the field of labour law and practice cannot handle an arbitral proceeding focused on oil and gas law and practice between two or more countries.

Additionally, whistle blowing policies are recommended to be added to the rules of arbitration of the AMA 2023. The aim is to expose and prevent corrupt practice within an arbitration institution, disputing parties or an investor- state dispute.

Finally, the recommendations of two Legal Practitioners during a Virtual Public Lecture held by the Nigeria Institute of Chartered Arbitrators (NICARB) can be considered. Dr Francis Ohiwere Oleghe FCArb suggested in the Virtual Lecture titled "Challenge Proofing Arbitral Awards" as follows:

> lawyers and litigants must be made to pay for wasting the time of the High Court, the Law must come to the aid of the judiciary by stipulating punitive costs for obvious waste of judicial time, Arbitration claims must end at the High Court with no right to appeal, Arbitrators must guide their award jealously to avoid the award being challenged.[482]

[482] Virtual Public Lecture titled "*Challenge Proofing Arbitral Awards*", held on the 13th February 2025 by the Nigeria Institute of Chartered Arbitrators Lagos Branch.

Mr Nzeakor Cyprian Atulomah FCArb also recommended while relying on a case review in *United Bank for Africa (UBA) v Trident Consulting Ltd* that:

> Defendant party is to be prevented from abusing Arbitration clauses which causes undue delay in court cases, Arbitration is to be a tool to streamline dispute resolution and ensure that Arbitration is used genuinely, not as a tool for procedural manoeuvring.[483]

5.4 **Contribution to knowledge**

This research has contributed to knowledge in the field of Arbitration both in Nigeria and the United States of America by examining the legal framework in both jurisdictions, understanding the key innovations under the AMA 2023 and a critical analysis on latest Arbitral Awards and Court Judgements. Additionally, the role each party plays in the arbitral process was analysed such as the Chartered Arbitrators, the disputing parties and the Arbitration Institution. Furthermore, this research analysed the misconceptions and challenges faced in promoting Arbitration in Nigeria.

5.5 **Suggested area for further Research**

There are various areas for further research in Arbitration such the role of Artificial Intelligence and blockchain technology, Dispute Resolution Management involving economic sanctions, the principle of impartiality and diversity, efficiency and enforcement of foreign awards, comparative study of Arbitration Clauses across jurisdictions and the role of Arbitration in the energy sector.

5.6 **Limitation of Study**

The limitations during the research are high cost of purchasing books, journals, court judgements, internet services and access to comprehensive legal materials, case laws and scholarly analysis may be limited.

The strategies employed to prevent a subjective bias risk are proper footnoting of data sources, opinions of legal professionals, academic scholars, judgements and awards, journals

[483] ibid.

and books in the library and the internet. This strategy would provide credibility and trustworthiness of the Doctrinal and Comparative method adopted.

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