



Arbitration Guide
IBA Arbitration Committee

NIGERIA

(Updated January 2018)

Olufunke Adekoya

SAN

Oluwaseun Philip-Idiok

Prince-Alex Iwu

ÆLEX

7th Floor, Marble House 1
Kingsway Road, Ikoyi Lagos
Nigeria

oadekoya@aelex.com

ophilp-idiok@aelex.com

piwu@aelex.com

Table of Contents

	Page
I. Background	3
II. Arbitration Laws	4
III. Arbitration Agreements	6
IV. Arbitrability and Jurisdiction	7
V. Selection of Arbitrators	8
VI. Interim Measures	10
VII. Disclosure/Discovery	11
VIII. Confidentiality	11
IX. Evidence and hearings	12
X. Awards	14
XI. Costs	15
XII. Challenges to Awards	16
XIII. Recognition and Enforcement of Awards	17
XIV. Sovereign Immunity	19
XV. Investment Treaty Arbitration	19
XVI. Resources	20
XVII. Trends and Developments	20

I. Background

- (i) **How prevalent is the use of arbitration in your jurisdiction? What are seen as the principal advantages and disadvantages of arbitration?**

Arbitration is increasingly used in sectors such as oil and gas, telecommunication and construction.

The principal advantages of arbitration include the opportunity to appoint a person or persons with relevant knowledge to resolve the dispute, the confidentiality of the arbitration proceedings, as well as the relatively shorter time it takes to resolve a dispute as compared to litigation, which takes much longer.

One of the main disadvantages of arbitration is that the cost of resolving disputes is relatively higher than the cost of resolving disputes through litigation. Also, the tendency of unsuccessful parties to apply to set aside arbitral awards significantly undermines and complicates the arbitration process.

- (ii) **Is most arbitration institutional or *ad hoc*? Domestic or international? Which institutions and/or rules are most commonly used?**

Most arbitrations in Nigeria are *ad hoc* and domestic, although many domestic arbitrations usually have international involvement due to the legal requirement that all foreign entities doing business in the country must incorporate locally. The rules mostly used are the Arbitration Rules contained in the Arbitration and Conciliation Act, Cap A19, Laws of the Federation of Nigeria, 2004, which are mandatory for domestic arbitration (the 'Arbitration Rules'). Most domestic disputes make the Chairman of the Nigerian branch of the Chartered Institute of Arbitrators the appointing authority in case of default. International arbitration clauses commonly refer to either the London Court of International Arbitration (LCIA) or the International Court of Arbitration of the International Chamber of Commerce (ICC).

- (iii) **What types of disputes are typically arbitrated?**

Disputes arising out of basic commercial contracts are common, although energy-related disputes are on the increase.

- (iv) **How long do arbitral proceedings usually last in your country?**

There is no stipulated time-frame for the conclusion of arbitral proceedings. It depends primarily on the parties, the arbitrators and the complexity of the dispute; however, it is rare for domestic arbitration proceedings to last longer than nine

months, while international arbitrations may last upwards of 18 months.

(v) Are there any restrictions on whether foreign nationals can act as counsel or arbitrators in arbitrations in your jurisdiction?

There are no restrictions on appointment of foreign nationals as arbitrators in arbitrations in Nigeria. Although where the arbitration is international, the Arbitration and Conciliation Act Cap A18, Laws of the Federation of Nigeria, 2004 ('the ACA') requires the appointing authority to take into account the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties.

However, there are restrictions on the appointment of foreign nationals as counsel in arbitrations under the Arbitration Rules, if they are not qualified to practice law in Nigeria. Article 4 of the Arbitration Rules contained in the Act provides that 'the parties [to arbitration] may be represented or assisted by legal practitioners of their choice...' Nigerian courts have interpreted 'legal practitioners' as meaning persons qualified to practice law in Nigeria.

But it is useful to note that the restriction on the appointment of foreign nationals as counsel may only extend to an international arbitration where the arbitration is conducted under the Arbitration Rules. Parties to an international arbitration are permitted by Section 53 of the ACA to '*agree in writing that the dispute in relation to the agreement shall be referred to arbitration in accordance with the Arbitration Rules set out in the First Schedule to this Act, or the UNCITRAL Arbitration Rules, or any other international arbitration rules acceptable to the parties*'. The effect is that where parties to an international arbitration do not rely on the Arbitration Rules, the arbitration will not be affected by Article 4 of the Rules which provides that only legal practitioners qualified to practice law in Nigeria can represent the parties.

II. Arbitration Laws

(i) What law governs arbitration proceedings with their seat in your jurisdiction? Is the law the same for domestic and international arbitrations? Is the national arbitration law based on the UNCITRAL Model Law?

The Arbitration and Conciliation Act, Cap A19, Laws of the Federation of Nigeria, 2004, which applies to both domestic and international arbitrations, governs arbitration proceedings. However, where the venue of the arbitration is in Lagos State, and the arbitration agreement does not expressly refer to any other law, the Lagos State Arbitration Law of 2009 will govern the proceedings.

Both the Lagos State Arbitration Law of 2009 and the Arbitration and Conciliation Act, Cap A19, Laws of the Federation of Nigeria, 2004 are modeled after the UNCITRAL Model Law, but the state law incorporates recent amendments

to the Model Law.

(ii) If there is a distinction in your arbitration law between domestic and international arbitration? If so, what are the main differences?

The Arbitration and Conciliation Act, Cap A19, Laws of the Federation of Nigeria, 2004 distinguishes between domestic and international arbitration, while the Lagos State Law does not.

The major differences are:

- The Arbitration Rules in the schedule to the Act are mandatory for domestic arbitrations, while in international arbitrations, parties have the right to select the arbitration rules to apply;
- For domestic arbitrations, the court is the appointing authority in case of default by a party while the Secretary-General of the Permanent Court of Arbitration is the default appointing authority where the parties to an international arbitration did not indicate an appointing authority in their arbitration agreement.
- Domestic arbitration awards may only be set aside on the grounds that the arbitrator exceeded his jurisdiction, or there was misconduct by the arbitrator, or there was improper procurement of the proceedings or the award; international arbitration awards, on the other hand, may only be set aside on grounds similar to those in the New York Convention.

(iii) What international treaties relating to arbitration have been adopted (e.g., New York Convention, Geneva Convention, Washington Convention, Panama Convention)?

Nigeria has adopted the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

(iv) Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?

Yes, Section 47 of the Act provides that where the laws of the country to be applied is not determined by the parties, the arbitral tribunal shall apply the law determined by the conflict of law rules which it considers applicable.

III. Arbitration Agreements

- (i) **Are there any legal requirements relating to the form and content of an arbitration agreement? What provisions are required for an arbitration agreement to be binding and enforceable? Are there additional recommended provisions?**

The only formal requirement is that the arbitration agreement should be in writing, either executed by the parties or evidenced in an exchange of letters, telex, telegrams or other means of communication which provide a record of the agreement.

The arbitration agreement must also be made by parties with the legal capacity and legal relationship to contract.

An exchange of points of claim and of defence in which the existence of an arbitration agreement is alleged by one party and not denied by the other party will also fulfil the legal requirement.

- (ii) **What is the approach of courts towards the enforcement of agreements to arbitrate? Are there particular circumstances when an arbitration agreement will not be enforced?**

Generally, Nigerian courts will enforce an agreement between parties to submit their dispute to arbitration. However, agreements to arbitrate disputes that are not borne out of commercial transactions are not enforceable.

Also, when a party to an arbitration agreement commences an action in the High Court in breach of an arbitration agreement, the other party to the arbitration agreement can apply to stay the proceedings in the High Court. However, to obtain the stay of proceedings, the party making the application must be seen not to have taken any steps to defend the matter in court other than entering an appearance as provided for in sections 4 and 5 of the Arbitration and Conciliation Act. Where a party takes a step to defend the action at the High Court by filing a defence, he is seen as having waived his right to arbitration and cannot seek to enforce the arbitration agreement.

- (iii) **Are multi-tier clauses (eg, arbitration clauses that require negotiation, mediation and/or adjudication as steps before an arbitration can be commenced) common? Are they enforceable? If so, what are the consequences of commencing an arbitration in disregard of such a provision? Lack of jurisdiction? Non-arbitrability? Other?**

Yes, multi-tier dispute resolution clauses are common and enforceable. The consequences of commencing an arbitration in disregard of such provision could lead to the tribunal declaring that the dispute is not ripe for referral to arbitration as all the conditions precedent to referring it to arbitration have not been duly exhausted. Non-compliance is treated as an irregularity which does not remove the

arbitrator's jurisdiction. The arbitrator[s] would usually stay the proceedings until compliance has been attempted.

(iv) What are the requirements for a valid multi-party arbitration agreement?

The Act does not provide any requirements for a valid multi-party arbitration agreement.

(v) Is an agreement conferring on one of the parties a unilateral right to arbitrate enforceable?

Yes, such an agreement would be enforceable.

(vi) May arbitration agreements bind non-signatories? If so, under what circumstances?

As a rule, arbitral agreements are not binding on non-signatories. Non-signatories can however be bound where a name-borrowing provision is included in the contract, or there are inter-connected agreements and if a party in any of the agreements expressly consents to be bound by the arbitration agreement in the other documents and the signatories to that agreement agree.

IV. Arbitrability and Jurisdiction

(i) Are there types of disputes that may not be arbitrated? Who decides – courts or arbitrators – whether a matter is capable of being submitted to arbitration? Is the lack of arbitrability a matter of jurisdiction or admissibility?

Disputes that are not borne out of commercial transactions cannot be arbitrated. The lack of arbitrability is a matter of jurisdiction to be determined initially by the arbitrators, but could also be determined by the courts when enforcement proceedings are being resisted. Typically the test of whether a dispute is arbitrable is whether the subject matter can be compromised by accord and satisfaction. Significantly, a recent court decision which is on appeal has held that disputes arising out of contracts that contain fiscal terms impact upon the tax collection / responsibilities of the government are not arbitrable.

(ii) What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an arbitration agreement? Do local laws provide time limits for making jurisdictional objections? Do parties waive their right to arbitrate by participating in court proceedings?

Unless restrained by injunction, the Arbitral Tribunal can continue arbitration

proceedings and determine its jurisdiction even while court proceedings are pending. In court, the party opposing the institution of an action in court enters a conditional appearance to the suit and, before taking any further step to defend the matter, files an application asking the court to stay proceedings pending the resolution of the dispute by arbitration in accordance with the arbitration agreement. Although Nigerian laws do not specify a definite time for making such jurisdictional challenge, some court civil procedure rules and practice dictate that jurisdictional challenges should be made promptly.

A party waives its right to arbitration by participating in court proceedings to defend the suit. A party may be deemed to have participated in the proceedings if such party files processes in the suit other than the processes challenging the suit.

- (iii) **Can arbitrators decide on their own jurisdiction? Is the principle of *competence-competence* applicable in your jurisdiction? If yes, what is the nature and intrusiveness of the control (if any) exercised by courts on the tribunal's jurisdiction?**

Arbitrators can decide their jurisdiction by virtue of section 12(1) of the Act. The principle of *competence-competence* applies in Nigeria, and the court has no control over the tribunal's jurisdiction during the arbitration proceedings.

V. Selection of Arbitrators

- (i) **How are arbitrators selected? Do courts play a role?**

The mode of selection of the arbitrators is determined by the terms of the arbitration agreement. Where no procedure is specified by the parties, then in the case of an arbitration with three arbitrators each party shall appoint one arbitrator and the two thus appointed shall appoint the third arbitrator.

If a party or arbitrators fail to appoint the arbitrator (or third arbitrator) within 30 days of being required to do so, in a domestic arbitration, the appointment will be made by the court on the application of any party to the arbitration agreement.

In international arbitrations, if within 30 days after the appointment of the second arbitrator, the two arbitrators have not agreed on the choice of the presiding arbitrator, on the application of any of the parties, the presiding arbitrator shall be appointed by the appointing authority designated by the parties to make the appointment. Where the parties have not designated an appointing authority, the default appointing authority for international arbitrations under the Act, which is the Secretary-General of the Permanent Court of Arbitration, will appoint the presiding arbitrator.

(ii) What are the requirements in your jurisdiction as to disclosure of conflicts? Do courts play a role in challenges and what is the procedure?

A person who knows of any circumstances likely to give justifiable doubts as to his impartiality or independence if appointed is obliged to disclose such circumstances when approached in connection with an appointment as arbitrator. This duty to disclose continues after the person has been appointed as an arbitrator and subsists throughout the proceedings unless the arbitrator had previously disclosed the circumstances to the parties.

The parties may determine the procedure to be followed in challenging an arbitrator's independence and impartiality and the courts play a limited role in the challenge process.

Unless the arbitration agreement provides other directions as to challenges, a party who intends to challenge an arbitrator must give notice of its challenge within 15 days after the appointment of the arbitrator it wishes to challenge, or within 15 days after the circumstances it complains of became known to it. The challenge must be in writing with the reasons for the challenge and must be served on the other party, the arbitrator being challenged and the other members of the tribunal.

Upon receipt of the challenge, the other party may agree and the arbitrator may also agree and withdraw from his appointment. However, in domestic arbitrations, where the other party does not agree or the challenged arbitrator refuses to withdraw, the decision on the challenge will be made by the arbitral tribunal or by the court or other appointing authority (if the initial appointment was by the court or other appointing authority). For international arbitrations, the challenge will be determined by the appointing authority (if the initial appointment was made by an appointing authority); or in all other cases, by the designated appointing authority or the PCA where none was designated.

(iii) Are there limitations on who may serve as an arbitrator? Do arbitrators have ethical duties? If so, what is their source and generally what are they?

Except where the parties have agreed on the qualification of an arbitrator, there are no limitations as to who may serve as an arbitrator. The Arbitration and Conciliation Act however requires that the person appointed must be independent and impartial and this imposes ethical duties on the arbitrator.

Where an arbitrator is appointed by an arbitral institution, the arbitrator is expected to comply with the code of conduct and ethics of the appointing institution.

(iv) Are there specific rules or codes of conduct concerning conflicts of interest for arbitrators? Are the IBA Guidelines on Conflicts of Interest in International Arbitration followed?

There are no specific rules or codes of conduct concerning conflict of interest for arbitrators. The IBA Guidelines on Conflicts of Interest in International Arbitration are often used as guidance.

VI. Interim Measures

- (i) **Can arbitrators enter interim measures or other forms of preliminary relief? What types of interim measures can arbitrators issue? Is there a requirement as to the form of the tribunal's decision (order or award)? Are interim measures issued by arbitrators enforceable in courts?**

Arbitrators can grant interim measures of relief or other forms of preliminary relief. These measures will be such as deemed necessary in respect of the subject-matter of the dispute and can include orders for the conservation of the goods which are the subject matter in dispute, the deposit of the subject matter with a third person or the sale of perishable goods. The orders are made by way of an interim award.

The Lagos State Arbitration Law specifically provides that interim measures awarded by an arbitral tribunal are enforceable upon application to the High Court. The Federal legislation has no such provision.

- (ii) **Will courts grant provisional relief in support of arbitrations? If so, under what circumstances? May such measures be ordered after the constitution of the arbitral tribunal? Will any court-ordered provisional relief remain in force following constitution of the arbitral tribunal?**

Courts can grant interim protection measures in support of arbitration. This is particularly so where the property sought to be protected is in the hand, custody or control of a third person against whom the arbitral tribunal has no powers. It is unclear whether such power exists before the Arbitral Tribunal has been constituted.

- (iii) **To what extent may courts grant evidentiary assistance/provisional relief in support of the arbitration? Do such measures require the tribunal's consent if the latter is in place?**

With respect to evidence, the court may order the attendance of witnesses by granting subpoenas on the application of any party to the arbitration. The tribunal's consent is not required.

VII. Disclosure/Discovery

- (i) **What is the general approach to disclosure or discovery in arbitration? What types of disclosure/discovery are typically permitted?**

The Act does not specifically refer to discovery. However, the Arbitration Rules provide that the tribunal may require the parties to produce documents, exhibits, or other evidence within such a period as the arbitral tribunal shall require. In considering a party's request for discovery, the arbitral tribunal must be mindful of the principles of equal treatment of the parties, and of a fair hearing.

The arbitral tribunal will require some basis upon which discovery/disclosure is requested and will usually limit discovery to specific and identified documents or class of documents only.

- (ii) **What, if any, limits are there on the permissible scope of disclosure or discovery?**

The tribunal may limit the form of discovery to documents which it considers relevant to issues in dispute and which are not covered by any privilege. Generally, the following documents are subject to privilege: documents or communications made between a legal practitioner and his client in the course of the legal practitioner's engagement; 'without prejudice' documents or agreements made between parties in the course of negotiations; and documents which by consent and agreement of the parties have been agreed not to be used in proceedings. Furthermore, no one can be compelled under any writ of subpoena to produce any document which he could not be compelled to produce during a trial of an action.

- (iii) **Are there special rules for handling electronically stored information?**

There are no special rules under the Act. For the purpose of admissibility, there are no restrictions because the Evidence Act, Cap. E14, Laws of the Federation of Nigeria, 2011 does not apply to proceedings before an arbitrator.

VIII. Confidentiality

- (i) **Are arbitrations confidential? What are the rules regarding confidentiality?**

Arbitration hearings are private and the award may be made public by the arbitrators only with the consent of both parties. There is an implied duty of confidentiality imposed on the parties although the arbitration rules refer only to privacy of the hearings, and not confidentiality of the whole proceedings.

- (ii) **Are there any provisions in your arbitration law as to the arbitral tribunal's power to protect trade secrets and confidential information?**

No. However, since the Rules provide that the arbitral award may be made public by the arbitrators only with the consent of both parties, any such information in the award is protected, although nothing stops a party from disclosing the information.

- (iii) **Are there any provisions in your arbitration law as to rules of privilege?**

No provision relating to privileges exists.

IX. Evidence and hearings

- (i) **Is it common that parties and arbitral tribunals adopt the IBA Rules on the Taking of Evidence in International Arbitration to govern arbitration proceedings? Is so, are the Rules generally adopted as such or does the tribunal retain discretion to depart from them?**

The IBA Rules are often adopted as a guide to assist the arbitral tribunal and will bind the tribunal if the parties so agree.

- (ii) **Are there any limits to arbitral tribunals' discretion to govern the hearings?**

Yes. Any agreement by the parties as to the hearing procedure limits the arbitral tribunal's discretion. In addition, the arbitral tribunal must ensure that the parties are accorded equal treatment and that each party is given full opportunity of presenting its case.

- (iii) **How is witness testimony presented? Is the use of witness statements with cross-examination common? Are oral direct examinations common? Do arbitrators question witnesses?**

Testimony of witnesses may be presented orally or by written witness statements on oath. The usual procedure is that unless attendance of a witness is dispensed with by the opposing party, witnesses who have given oral evidence or written depositions on oath must be presented for cross-examination.

Nigeria does not follow a civil law system where the arbitrators question the witnesses; however the arbitrators may ask questions to clarify or understand evidence already given as long as the principles of fair hearing, impartiality and independence are maintained.

- (iv) **Are there any rules on who can or cannot appear as a witness? Are there any mandatory rules on oath or affirmation?**

There are no rules on who can appear or cannot appear as witnesses.

The tribunal has the power to administer oaths to or take the affirmations of the parties and witnesses appearing, but it is not obligatory that witnesses be sworn or affirmed.

- (v) **Are there any differences between the testimony of a witness specially connected with one of the parties (e.g., legal representative) and the testimony of unrelated witnesses?**

No such differences exist; the arbitral tribunal will determine the weight to be attached to each witness's testimony.

- (vi) **How is expert testimony presented? Are there any formal requirements regarding independence and/or impartiality of expert witnesses?**

Expert testimony could be presented orally or by way of a written report. Unless dispensed with, expert witnesses must be available for cross-examination. Though a tribunal expert is expected to be impartial and independent, there is no express provision for such requirements in the Act.

- (vii) **Is it common that arbitral tribunals appoint experts besides those that may have been appointed by the parties? How is the evidence provided by the expert appointed by the arbitral tribunal considered in comparison with the evidence provided by party-appointed experts? Are there any requirements in your jurisdiction that experts be selected from a particular list?**

Although it has the power to do so, it is not common for the arbitral tribunal to appoint its own experts where the parties have already done so. No requirements exist that experts must be selected from a particular list or engaged in a particular manner.

- (viii) **Is witness conferencing ("hot-tubbing") used? If so, how is it typically handled?**

"Hot-tubbing" is not a common practice in Nigeria. Experts tend to give their evidence sequentially, although they may have exchanged their expert reports before the hearing, and submitted a joint list indicating areas of agreement and disagreement.

- (ix) **Are there any rules or requirements in your jurisdiction as to the use of arbitral secretaries? Is the use of arbitral secretaries common?**

There are no rules regarding arbitral secretaries, but in practice, arbitrators use arbitral secretaries [commonly called Registrars] for administrative purposes.

X. Awards

- (i) **Are there formal requirements for an award to be valid? Are there any limitations on the types of permissible relief?**

Section 26 of the Act and Article 32 of the Rules provide for formal requirements of an award. These requirements include: the award must be in writing; it must be signed by all the arbitrators or a majority of them; it must detail the reasons for the decision, except where otherwise agreed by the parties; and it must state the date and place of the award.

The Act does not specify the relief and remedies which the arbitrator can give in his award. However, in practice, the arbitrator can make awards for payment of money, of specific performance, of an injunction (where a third-party will not be affected), or of a declaration of the rights of one or both of the parties.

- (ii) **Can arbitrators award punitive or exemplary damages? Can they award interest? Compound interest?**

It is not clear whether arbitrators can award punitive or exemplary damages, but they can award interest on the sum of money awarded. With regard to the rate of interest, the arbitrators are guided by what is fair and just in the absence of any specific provision of the law or agreement of the parties. The arbitrators may award compound interest if it is fair or agreed to by the parties or provided by the law governing the issue or by the custom of the trade in dispute.

- (iii) **Are interim or partial awards enforceable?**

Yes, interim or partial awards are enforceable if they determine a particular aspect of the dispute.

- (iv) **Are arbitrators allowed to issue dissenting opinions to the award? What are the rules, if any, that apply to the form and content of dissenting opinions?**

The Act does not specifically refer to dissenting opinions to an award. The law only specifies that where the arbitral tribunal comprises more than one arbitrator, any decision must be made by a majority of the members, unless otherwise agreed by the parties.

- (v) **Are awards by consent permitted? If so, under what circumstances? By what means other than an award can proceedings be terminated?**

Yes, consent awards are permitted where the parties have settled the dispute during the arbitral proceedings. The arbitration proceedings are terminated by the issuance of the consent award. The tribunal may also terminate the proceedings if the claimant withdraws his claim and the respondent does not object to the withdrawal, or there is no legitimate reason for the proceedings to continue until a final settlement of the dispute; if the parties agree on the termination of the proceedings; or if the tribunal finds that continuation of the proceedings has for any other reason become unnecessary and /or impossible.

- (vi) **What powers, if any, do arbitrators have to correct or interpret an award?**

The arbitrators can either on their own initiative or upon the application of a party correct clerical, typographic or computation errors in the award. The arbitrators can interpret specific points or part of an award and further make additions to an award only on the application of a party.

XI. Costs

- (i) **Who bears the costs of arbitration? Is it always the unsuccessful party who bears the costs?**

In principle, unless the parties have agreed otherwise, the unsuccessful party bears the costs of the arbitration. However, the arbitral tribunal may apportion such costs between the parties if it determines that apportionment is reasonable taking into account the circumstances of the case.

- (ii) **What are the elements of costs that are typically awarded?**

In awarding costs, the arbitral tribunal takes into account the fees of the arbitration tribunal, its travel and other expenses; the cost of expert advice and of other assistance required by the arbitral tribunal; the travel and other expenses of witnesses to the extent that such expenses are approved by the arbitral tribunal; and the cost 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 cost is reasonable.

- (iii) **Does the arbitral tribunal have jurisdiction to decide on its own costs and expenses? If not, who does?**

The arbitral tribunal has the power to decide on its costs by virtue of section 49 of the Act.

- (iv) **Does the arbitral tribunal have discretion to apportion the costs between the parties? If so, on what basis?**

The tribunal has the power to apportion costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case. These circumstances may include where the successful party caused a delay in the proceedings or had earlier refused an offer for settlement in a sum equal to or more than the amount awarded in the final award.

- (v) **Do courts have the power to review the tribunal's decision on costs? If so, under what conditions?**

The courts do not have the power to review the tribunal's decision on costs.

XII. Challenges to Awards

- (i) **How may awards be challenged and on what grounds? Are there time limitations for challenging awards? What is the average duration of challenge proceedings? Do challenge proceedings stay any enforcement proceedings? If yes, is it possible nevertheless to obtain leave to enforce? Under what conditions?**

A party who is aggrieved by a domestic arbitral award may within three months from the date of the award apply to the court to set aside the award, where it is shown, that:

- (1) the award contains decisions on matters which are beyond the scope of the submission to arbitration;
 - (2) there is misconduct of an arbitrator; or
 - (3) the arbitral proceedings or the award has been improperly procured.
- International arbitration awards can be challenged on the grounds for refusing enforcement set out in the New York Convention.

Due to the congested court dockets, challenge proceedings tend to be protracted and can last up to three years. While the award is being challenged, the applicant may apply to the court for a stay of proceedings on the enforcement. Where the order is granted, the party in favour of whom the award was entered cannot enforce it.

- (ii) **May the parties waive the right to challenge an arbitration award? If yes, what are the requirements for such an agreement to be valid?**

A party may decide not to challenge an award. The award, in that case, will be valid under section 29 of the Act, which requires that an application to set aside an award to be made within three months. Recent thinking however is that an agreement waiving the right to challenge an award may be unenforceable as a breach of the constitutionally guaranteed right of a party to access the court

system.

- (iii) **Can awards be appealed in your country? If so, what are the grounds for appeal? How many levels of appeal are there?**

An award cannot be appealed in Nigeria. It may however be set aside or enforcement refused, on limited grounds. However, the court's decision to enforce, set aside or refuse enforcement of an award can itself be appealed from the initial court to the Court of Appeal and finally the Supreme Court on legal grounds arising out of the judgment.

- (iv) **May courts remand an award to the tribunal? Under what conditions? What powers does the tribunal have in relation to an award so remanded?**

Rather than set aside an award, the court may where appropriate, at the request of a party, suspend the proceedings for a period and remit the award to the arbitral tribunal so it can take whatever action may be required to eliminate the grounds for setting aside of the award.

XIII. Recognition and Enforcement of Awards

- (i) **What is the process for the recognition and enforcement of awards? What are the grounds for opposing enforcement? Which is the competent court? Does such opposition stay the enforcement? If yes, is it possible nevertheless to obtain leave to enforce? Under what circumstances?**

The party seeking to enforce the award will apply to the High Court within the jurisdiction where it wishes to have the award recognised or/and enforced. The application must exhibit the original or a certified true copy of the arbitration agreement and the award. The other party must be put on notice and may then request the court to refuse recognition or enforcement of the award.

Grounds for refusal include but are not limited to:

- i. That there was incapacity of a party
- ii. That the arbitration agreement was invalid
- iii. That the party was not served with notice of the proceedings
- iv. That the arbitral tribunal lacked jurisdiction,
- v. That a pre-condition precedent in the arbitration agreement, if any, was not met;
- vi. That the arbitral tribunal was improperly constituted
- vii. The subject matter was not proper for arbitration
- viii. That the award is not binding, was set aside or was suspended at origin, or dictates of public policy.
- ix. Where there is an application urging the court to refuse to recognise an award, the court may upon application stay execution of the award pending the determination of the application.

- (ii) **If an *exequatur* is obtained, what is the procedure to be followed to enforce the award? Is the recourse to a court possible at that stage?**

Once the local court grants recognition and enforcement of an award, the award is treated as a judgment of the registering court and enforced in a similar manner. A writ of execution or garnishee order can be issued to compel payment of a money award. The rules of civil procedure will apply, and a party can apply to the court in respect of the award, usually to seek payment on favourable terms.

- (iii) **Are conservatory measures available pending enforcement of the award?**

Yes.

- (iv) **What is the attitude of courts towards the enforcement of awards? What is the attitude of courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?**

Courts, particularly the High Courts, recognise and enforce awards. Foreign awards, irrespective of the country in which they were made, are recognised as binding and enforceable in Nigeria. However, where the foreign award has been set aside or suspended or refused by a competent court at the place of arbitration and that information is disclosed to the Nigerian court in an affidavit in support of an application not to recognise the award, in accordance with the comity of nations principle, the Nigerian court may refuse to recognise the award.

- (v) **How long does enforcement typically take? Are there time limits for seeking the enforcement of an award?**

The duration of enforcement proceedings depends on whether the other party contests the award or not. There is no expedited procedure for the enforcement of an award. Awards must be enforced within six years from the date the cause of action arose. In calculating the six- year time frame, recent case law has stated that the period during which litigation was commenced and pending will not be taken into account when calculating the six-year limitation period. In the context of arbitration proceedings, this means that the period during which arbitration proceedings were pending will not be taken into account when calculating the six-year limitation period for enforcement purposes. The Lagos State Arbitration Law 2009 has enacted this provision in its section 35(5) which provides that, for the purposes of limitation, the time between the commencement of the arbitration and the date of the award is not to be reckoned, and thus, time freezes while the proceedings are pending.

XIV. Sovereign Immunity

- (i) Do State parties enjoy immunities in your jurisdiction? Under what conditions?**

States enjoy immunity by virtue of Sections 1, 3 and 4 of the Diplomatic Immunity and Privileges Act, Cap D9, Laws of the Federation of Nigeria, 2004.

- (ii) Are there any special rules that apply to the enforcement of an award against a State or State entity?**

There are no special rules that apply to the enforcement of an award against a State or State entity. However, it should be noted that awards may be enforced against a State or State entity where there is a waiver of diplomatic immunity under Section 2, 5(2), 7, 8 10 and 16 of the Diplomatic Immunity and Privileges Act, Cap D9, Laws of the Federation of Nigeria, 2004.

Awards may also be enforced where the State engages in commercial transactions which are subject to arbitration. In these situations, the State's entry into an arbitration agreement is treated as a waiver of immunity.

Where the award is in respect of money in the custody of a state or state entity, and garnishee proceedings have been brought to satisfy the award, the consent of the relevant Attorney-General must be obtained before the money can be released to satisfy the judgement except if the award debt had already been partially satisfied by the state. However, where the funds are held for the state or a state entity in a commercial bank, such funds will not be deemed to be in the custody of the state or state entity account holder and the consent of the Attorney General will not be required. But because the Central Bank of Nigeria is a state entity, the courts have held that consent of the Attorney-General must be obtained before funds in the custody of the Central Bank can be attached in garnishee proceedings. This is particularly significant in view of the Federal Government of Nigeria's Treasury Single Account policy which has directed that funds of state agencies are initially domiciled with the Central Bank of Nigeria.

XV. Investment Treaty Arbitration

- (i) Is your country a party to the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States? Or other multilateral treaties on the protection of investments?**

Nigeria is a signatory to the Convention on the Settlement of Investment Dispute (ICSID).

- (ii) Has your country entered into Bilateral Investment Treaties with other countries?**

Nigeria has entered into Bilateral Treaties with the following Countries namely; Finland, France, Germany, Italy, Republic of Korea, Netherlands, Romania, Serbia, South Africa, Spain, Sweden, Switzerland, Taiwan (Province of China) and the United Kingdom.

XVI. Resources

- (i) **What are the main treatises or reference materials that practitioners should consult to learn more about arbitration in your jurisdiction?**

The Arbitration and Conciliation Act, Cap A18 Laws of the Federation of Nigeria, 2004; the Lagos State Arbitration Law 2009, *Law and Practice of Arbitration and Conciliation in Nigeria* by J.O. Orojo and M. A. Ajomo, Commercial Arbitration In Nigeria: Law And Practice By Dr Fabian Ajogwu, SAN, Commercial Arbitration Law And Practice In Nigeria Through The Cases By Mrs. Adedoyin Rhodes-Vivour, C.Arb, Commercial Arbitration Law And International Practice In Nigeria By C. Adeyemi Candid-Johnson, SAN FCI Arb & Olasupo Shasore, SAN FCI Arb.

- (ii) **Are there major arbitration educational events or conferences held regularly in your jurisdiction? If so, what are they and when do they take place?**

Training programmes and an annual conference are organised by the Chartered Institute of Arbitrators through its Nigerian Branch. The International Chamber of Commerce also holds an annual Arbitration in Africa conference in Nigeria.

XVII. Trends and Developments

- (i) **Do you think that arbitration has become a real alternative to court proceedings in your country?**

It has become a real alternative to court proceedings, particularly for disputes arising from commercial transactions.

- (ii) **What are the trends in relation to other ADR procedures, such as mediation?**

ADR procedures are also gaining wide acceptance. Many courts have amended their Civil Procedure Rules to encourage the use of ADR techniques such as mediation in settlement of disputes by allowing judges to stay court proceedings and refer the suits to mediation, usually at mediation centres conjoined to the court premises. Some court rules now require the filing of a certificate confirming that counsel representing a litigant has discussed with and advised the client as to ADR resolution opportunities before a writ is filed.

- (iii) **Are there any noteworthy recent developments in arbitration or ADR?**



The Nigerian National Assembly has revived the process of repealing the ACA and enacting new Arbitration legislation. The proposed legislation includes the 2006 amendments to the UNCITRAL Model Law. It also provides clarification on the procedure for making applications to court among others.