NIGERIA

Law & Practice

Contributed by Ajumogobia & Okeke

Contents

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Ajumogobia & Okeke is a leading commercial law firm with offices in three (3) cities in Nigeria – Lagos, Port Harcourt, Abuja and a strong regional network and international relationships. The dispute resolution practice includes skilled arbitrator, trained mediators and experienced ADR practitioners. Members of the team hold international mediation accreditation and practice experience in construction adjudication. Other key areas of expertise include commercial arbitration, maritime arbitration and investment arbitration.

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1. General

1.1 Prevalence of Arbitration

For the last three decades, international arbitration in Nigeria has been acknowledged to be an effective instrument of dispute resolution. The choice of arbitration has been strengthened by the combination of the enactment in 1988 of the Arbitration and Conciliation Act ('**ACA**') and commercial activities in terms of international investments in key sectors of the Nigerian economy. Motivated by the lack of an effective and alternative method of resolving commercial disputes, institutions were established to cater to the particular needs of disputing parties and arbitration practitioners. Notable amongst these institutions are the Chartered Institute of Arbitration (UK) Nigeria Branch, the Regional Centre for International Commercial Arbitration, the Chartered Institute of Arbitrators Nigeria, the International Chamber of Commerce (Nigeria Branch) and the Lagos Court of Arbitration.

Increasingly, parties to commercial transactions insert arbitration clauses into their contracts. Available data, albeit unprocessed, suggests that 75% of contracts in the oil and gas, construction and maritime sectors contain arbitration agreements. One of the direct benefits of this is the rise in the growth of expertise. Currently, Nigeria is home to at least 30 Fellows and ten Chartered Arbitrators of the Chartered Institute of Arbitrators UK, suggesting an increased reliance on international arbitration, with the assistance of the traditional court system when necessary.

1.2 Trends
No drastically new issue in arbitration has been recorded in the area of arbitration in 2015. However, some interesting arbitration-related issues have recently arisen in Nigeria. Of note is the proposition that legal representation in arbitration be restricted only to legal practitioners qualified to practise in Nigeria. According to its advocates, this should be the case particularly at the initiation of arbitration proceedings in a location where the prevailing law (lex arbitri) is Nigerian law. Article 4 of the Arbitration Rules (First Schedule to the ACA) provides for parties to be represented or assisted by 'legal practitioners' of their choice. The reasoning upon which this proposition is predicated is the definition of a 'Legal Practitioner' in the Nigerian Legal Practitioners Act ('LPA'). The LPA defines a 'Legal Practitioner' as someone entitled to practise as a barrister and solicitor in Nigeria.

This argument has been put forward unsuccessfully at an arbitration, however, no known judicial pronouncement has been made on the matter.

Another development which is considered to be of interest is the incorporation of emergency arbitrator provisions into the Lagos Court of Arbitration Rules, 2013 ('**LCA Rules**'). The LCA Rules now contain provisions for interim measures to be requested prior to the constitution of an arbitral tribunal. The concept of an 'emergency arbitrator' was established to bridge the gap between the commencement of the arbitration and the constitution of the tribunal. Under this scheme, a party in need of urgent, preservatory and/or special measures prior to the constitution of an arbitral tribunal may apply to the LCA Secretariat for such measures and for the appointment of a Special Measures Arbitrator.

In terms of its application, the introduction of emergency arbitrators will have a significant effect upon arbitration in Nigeria as it has now widened the scope of interim measures available to parties to arbitration.

1.3 Key Industries
The oil and gas, construction and infrastructure and maritime sectors have experienced significant international arbitration activities over the years. There are no indications that this will change in 2015.

1.4 Arbitral Institutions
The arbitral institutions mostly used for international arbitration in Nigeria are:

- the London Court of International Arbitration (LCIA);
- the International Chamber of Commerce (ICC);
- the Chartered Institute of Arbitration (UK) (CI-Arb); and
- the Lagos Court of Arbitration.

2. Governing Law

2.1 International Legislation
International arbitration in Nigeria is governed by the ACA and other sub-national legislation, including the Lagos State Arbitration Law of 2009. Although the ACA governs both domestic and international arbitration, Section 43 stipulates that Part III of the ACA which provides for the appointment of arbitrators, the making of awards, the termination of proceedings, and the recognition and enforcement of awards applies only and strictly to international arbitration. There is no such dichotomy in the Lagos State Arbitration Law of 2009.

Both the ACA and the Lagos State Arbitration Law of 2009 are largely based on the UNCITRAL Model Law, with a few modifications.

2.2 Changes to National Law
There has been no amendment to the ACA in the past year. In fact, the ACA has not been amended since its enactment in 1988.

3. The Arbitration Agreement

3.1 Enforceability
Under the ACA, in order for an arbitration agreement to be enforceable, it must be in writing and contained in a written document signed by the parties or in an exchange of letters or other means of communication which provide a record of the arbitration agreement or in 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 another. In addition, any reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if that contract is in writing and the reference is such as to make that clause part of the contract. For the pur-

poses of Section 3 (8) of the Lagos State Arbitration Law, the document containing such an arbitration clause constitutes an arbitration clause.

3.2 Approach of National Courts

Nigerian courts consider arbitration agreements to be binding on the parties and have therefore been consistent in holding parties to their arbitration agreements. In **M.V Lupex v NOC & S Ltd (2003) 15 NWLR (Pt 844) 469**, the Supreme Court (the final court in Nigeria) in enforcing the arbitration agreement held that the mere fact that a dispute is eminently suitable for trial in a court is not a sufficient ground for refusing to give effect to what the parties have, by contract, expressly agreed. In the opinion of the court, as long as an arbitration clause is in a valid contract and the dispute is within the contemplation of the clause, the court ought to give due regard to the voluntary contract of the parties by enforcing the arbitration clause to which they have agreed.

The above view represents the judicial policy in Nigeria with respect to the enforcement of an arbitration agreement.

3.3 Validity of Arbitral Clause

The invalidity of a contract containing an arbitration clause does not affect the validity of the arbitration clause. Arbitration clauses are generally treated as agreements independent of the other terms of the contract in which they are contained. Consequently, a decision by a tribunal that the contract is null and void does not affect the validity of the arbitration clause. This principle, which is commonly referred to as the doctrine of separability, now has statutory recognition. It is contained in Section 12 (2) of the ACA and Section 19 (2) of the Lagos State Arbitration Law.

4. The Arbitral Tribunal

4.1 Selecting an Arbitrator

Generally in Nigeria, parties to (international) arbitration have unlimited autonomy to select arbitrators. In the exercise of this freedom, parties may by agreement vest the power to appoint arbitrators or the presiding arbitrator (where there is a disagreement in that regard) in an institution. Where the power to appoint is vested in an institution, parties' autonomy is subject to the powers vested in such institution.

4.2 Challenging or Removing an Arbitrator

There are statutory provisions regulating the challenge or removal of arbitrators. An arbitrator may be challenged (and removed) if circumstances exist that give rise to justifiable doubts as to their impartiality or independence or if they do not possess the qualifications agreed by the parties. Pursuant to Section 10 (3) (c) and (d) of the Lagos State Arbitration Law, an arbitrator may also be challenged (and removed) if they are physically or mentally incapable of conducting the proceedings or if there are justifiable doubts as to the arbitrator's capacity to conduct proceedings, or the arbitrator has failed to use all reasonable despatch in conducting the proceedings or making an award, and that substantial injustice has been or will be caused to the applicant.

By virtue of Section 7 (2) of the ACA and in the case of an arbitration with three arbitrators, where a party fails to appoint the arbitrator within 30 days of receipt of a request to do so by the other party or if the two arbitrators fail to agree on the third within 30 days of their appointment, the court will make the appointment on the application of any party to the arbitration agreement. In addition, where the parties are unable to agree on the choice of a sole arbitrator, the court will make the appointment on the application of any party to the arbitration agreement within 30 days of the disagreement.

The courts can intervene in the appointment of arbitrators in circumstances where the appointment procedure agreed by the parties fails. In these circumstances, unless the agreed appointment procedure provides otherwise, any party to the arbitration may request the court to take necessary measures for securing the appointment.

4.3 Independence, Impartiality and Conflicts of Interest

Under Section 8 of the ACA and Section 10 of the Lagos State Arbitration Law of 2009, any person who knows of any circumstances likely to give rise to any justifiable doubts as to their impartiality or independence has a duty to disclose those circumstances to the parties when approached in connection with an appointment as an arbitrator. This duty to disclose continues even after a person has been appointed as an arbitrator and subsists throughout

the arbitral proceedings unless the arbitrator had previously disclosed the circumstances to the parties.

5. Jurisdiction

5.1 Matters Excluded from Arbitration

There is no express provision in the ACA to the effect that certain subject matters may not be referred to arbitration. However, the full title of the the ACA states that it is an Act designed to provide a unified legal framework for the fair 'settlement of commercial disputes by arbitration and conciliation.' From that full title of the ACA it may be inferred that the application of the ACA is limited to 'commercial disputes', consequently, disputes arising from non-commercial relationships may not be referred to arbitration under the ACA.

This is in contradistinction to the Lagos State Arbitration Law of 2009. According to Section 1 (c) of that law, an arbitration agreement between parties for the settlement of any dispute shall be binding and enforceable against each of the parties. Similarly, and in line with its title in full, the Lagos State Arbitration Law of 2009 is 'a law to provide for the resolution of disputes by arbitration in Lagos State and for associated purposes.' From this, it is safe to conclude that there is no subject matter that cannot be referred to arbitration under the Lagos State Arbitration Law of 2009.

5.2 Challenges to Jurisidiction

By virtue of Section 12 of the ACA and Section 19 of the Lagos State Arbitration Law of 2009, an arbitral tribunal is competent to rule on questions pertaining to its own jurisdiction and on any objections with respect to the existence or validity of an arbitration agreement. Generally, any such ruling by an arbitral tribunal is final and binding.

There are no circumstances under the ACA and the Lagos State Arbitration Law of 2009 where a court can address issues of jurisdiction of an arbitral tribunal. The powers to do so appear to have been exclusively vested in the tribunal. This is further emphasised by the provisions of Section 34 of the ACA which restricts the intervention of a court in arbitral proceedings. Specifically, Section 34 of the ACA expressly provides that a court is not to intervene in any matter governed by the ACA except where so stated within the ACA. A similar provision is contained in Section 59 (1) of the Lagos State Arbitration Law of 2009.

Both the ACA and the Lagos State Arbitration Law of 2009, therefore, permit a court to intervene where proceedings have been instituted to set aside an award on grounds of jurisdiction, including where a party to the arbitration agreement was under some incapacity, and the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration.

5.3 Timing of Challenge

A party to an arbitration who is seeking to challenge the jurisdiction of the arbitral tribunal (as soon as a case is filed) is to approach the arbitral tribunal whose jurisdiction they seek to challenge. This is in view of the principle of competence-competence, which has been enshrined in Section 12 of the ACA and Section 19 of the Lagos State Arbitration Law of 2009. The decision of the tribunal on that issue is final and binding. There is no 'right' to challenge jurisdiction in court.

Should a party ignore the arbitral tribunal and choose to go to court to challenge the jurisdiction of the arbitral tribunal as soon as a case has been filed, the other party may apply to court to stay proceedings in the matter and request the court to refer the question of the tribunal's jurisdiction to the arbitral tribunal. Section 4 of the ACA empowers a court in which an action that is the subject of an arbitration agreement is brought (if any party so requests) to order a stay of proceedings and refer the parties to arbitration. Such a request, by virtue of Section 5 of the ACA and Section 6 of the Lagos State Arbitration Law of 2009, must, however, be made by an applicant not later than when submitting their first statement on the substance of the dispute. According to Section 6 of the Lagos State Arbitration Law, where the court makes an order of stay of proceedings, it may, for the purpose of preserving the rights of parties, make such interim or supplementary orders as may be necessary.

In view of this, it would therefore appear that parties may have the right to go to court to challenge the jurisdiction of the arbitral tribunal (where necessary) only after an award has been rendered, at which

point it would be in the circumstances contemplated by Section 48 (a) (i) – (iv) of the Arbitration and Conciliation Act and Sections 55 and 57 of the Lagos State Arbitration Law of 2009.

5.4 Standard of Judicial Review for Jurisdiction/Admissibility

Under Nigerian law, the decision (award) of an arbitral tribunal on questions of admissibility and jurisdiction is final and binding. It is not subject to judicial review. The power conferred on the arbitral tribunal under the law includes the power to determine the admissibility, relevance, materiality and weight of any evidence placed before it, see Section 15 (3) of the ACA and Article 25.6 of the Arbitration Rules (First Schedule to the ACA).

Generally, therefore, Nigerian courts do not sit as appellate courts over the decisions of an arbitral tribunal. Under Nigerian law and with respect to the final nature of decisions of arbitral tribunals, the role of the court is to look at the award and determine whether, considering the state of the law as understood by the tribunal and as stated on the face of the award, the arbitrators complied with the law as they themselves, rightly or wrongly, perceived it. Although the approach is subjective, the court is required to place itself in the position of the arbitrators, not above them, and then determine on that premise whether the arbitrators followed the law as they understood and expressed it. See **Baker Marine (Nig.) Ltd v Chevron (Nig.) Ltd (2000) 12 NWLR (Pt 681) 393**.

5.5 Breach of Arbitration Agreement

National courts in Nigeria do not encourage the parties to arbitration agreements to commence court proceedings in breach of the arbitration agreement. To that end, and in the exercise of the powers under Section 5 of the ACA (and Section 6 of the Lagos State Arbitration Law of 2009) the courts have been consistent in granting orders of stay of proceedings at the request of a party where the action is brought in a matter that is subject to an arbitration agreement. The reasoning of the courts is based on the fact that parties have chosen to determine for themselves whether they would refer any of their disputes to arbitration instead of resorting to the regular courts. The court therefore has a duty to act upon their agreement. The courts do not want to be seen to be encouraging a breach of a valid arbitration agreement, particularly if it has international connotations. See also **MV Lupex v NOC & S Limited (2003) 15 NWLR Pt 844 p 469**.

5.6 Right of Tribunal to Assume Jurisdiction

Under Nigerian law, an arbitral tribunal can assume jurisdiction only on parties or signatories to an arbitration agreement. In no circumstance, therefore, can an arbitral tribunal assume jurisdiction over individuals or entities which are neither parties nor signatories to an arbitration agreement or to the contract containing the arbitration agreement.

6. Preliminary and Interim Relief

6.1 Types of Relief

An arbitral tribunal is permitted to award preliminary or interim relief. Section 13 of the ACA empowers the arbitral tribunal to order any party to take any interim measure of protection that the arbitral tribunal may consider necessary in respect of the subject matter of the dispute. The arbitral tribunal may also require any party to provide appropriate security in connection with any measure taken. Similarly, and according to Article 26 of the Arbitration Rules (First Schedule to the ACA), at the request of either party the arbitral tribunal may take any interim measure it deems necessary in respect of the subject matter of the dispute, including measures for the conservation of the goods forming the subject matter in dispute, such as ordering tthat they be deposited with a third person or ordering the sale of perishable goods. The power of the arbitral tribunal to award such an interim relief may be exercised before or during arbitral proceedings.

Under the Lagos State Arbitration Law (Sections 21 (2) and 23), an arbitral tribunal is permitted (unless otherwise agreed by the parties) to grant interim measures at the request of a party. Such interim relief may include:

- A direction to maintain or restore the status quo pending the determination of the dispute;
- A direction to take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the subject matter of the dispute or to the arbitral process itself;

- A direction to provide a means of preserving assets out of which a subsequent award may be satisfied; or
- A direction to preserve evidence that may be relevant to and material to the resolution of the dispute.

6.2 Role of Courts

The courts play a role in preliminary or interim relief in arbitration proceedings. The circumstances in which a court will be involved in the making of interim relief are where the property that is the subject matter of the dispute, or that is sought to be protected, is in the custody of a third party who is not a party to the arbitration agreement. In such an instance, the arbitral tribunal would not have jurisdiction over such a person and would thus be unable to make any order or direction against them. It is only the national court that can exercise such powers pursuant to enabling the statute.

Accordingly, the Arbitration Rules (First Schedule to the ACA) seem to have contemplated the powers of the court to make interim relief in the circumstances described above, where it provides that a request for interim measures addressed by any party to the court shall not be deemed incompatible with the agreement to arbitrate or as a waiver of that agreement. The powers of the court to issue interim measures in relation to an arbitration is, however, expressly contained in Section 21 (1) of the Lagos State Arbitration Law of 2009.

6.3 Security for Costs

The courts are empowered to order security for costs where an application for the recognition of an award has been made to a court. The court before which the recognition or enforcement is sought may, if it considers it proper, postpone its decision and may on the application of the party claiming recognition or enforcement of the award order the other party to provide appropriate security. The ACA and the Lagos State Arbitration Law of 2009 vest similar powers in an arbitral tribunal. Under these statutes, unless the parties agree otherwise, an arbitral tribunal may require any party to provide security as appropriate (including security for costs) in connection with any interim measure of protection that the tribunal may consider necessary in respect of the subject matter of the dispute.

7. Procedure

7.1 Governing Rules

Arbitration procedure in Nigeria is governed by the Arbitration Rules set out in the First Schedule to the ACA and the Rules of the Lagos Court of Arbitration. This fact notwithstanding, parties are at liberty to select their choice of rules. It is, however, important to mention that proceedings in domestic arbitration under the ACA must be in accordance with the Arbitration Rules set out in the First Schedule to the ACA. Where the Arbitration Rules (First Schedule to the ACA) contain no provision in respect of any matter related to or connected with a particular arbitral proceeding, the arbitral tribunal may, subject to the ACA, conduct the arbitral proceedings in such a manner as it considers appropriate in order to ensure a fair hearing. The mandatory application of the Arbitration Rules (First Schedule to the ACA) to proceedings under the ACA does not extend to international arbitration.

Under the ACA, an arbitration is international if the places of business of the parties to an arbitration agreement at the time of the conclusion of the agreement are in different countries or if one of the following places is situated outside the country in which the parties have their places of business:

- the place of arbitration, if that place is determined in, or pursuant to, the arbitration agreement;
- any place where a substantial part of the obligation of the commercial relationship is to be performed or the place with which the subject matter of the dispute is most closely connected; or
- the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country; or
- the parties, despite the nature of the contract, expressly agree that any dispute arising from the commercial transaction shall be treated as an international arbitration.

Unlike the ACA, the Lagos State Arbitration Law does not contain a default set of rules. Applications to court under the Lagos State Arbitration Law are, however, to be made in accordance with the Arbitration Applications Rules. The Arbitration Applications Rules is a schedule to the Lagos State Arbitration Law.

Some institutions also have rules of procedure such as the Lagos Court of Arbitration (LCA) Rules 2013.

7.2 Procedural Steps

Certain particular procedural steps are required by law in Arbitration proceedings conducted in Nigeria. These include the:

- Commencement of arbitral proceedings;
- Power to stay proceedings;
- Number and appointment of arbitrators;
- Language to be used in arbitral proceedings;
- Challenge of an arbitrator;
- Competence of tribunal to rule on its jurisdiction;
- Submission of pleadings, documents or other evidence;
- Hearing and written proceedings;
- Appointment of expert by the tribunal;
- Compelling attendance of witness by the court; and
- Settlement of dispute during arbitration.

7.3 Legal Representatives

There are no express qualifications or other requirements for legal representatives appearing in arbitration in Nigeria. However, the Arbitration Rules permit parties to be represented or assisted by legal practitioners of their choice. This provision of the Arbitration Rules acknowledges party autonomy in arbitration with particular respect to the choice of counsel. It would therefore appear that legal representation in arbitration in Nigeria is not restricted only to persons qualified to practise in Nigeria.

8. Evidence

8.1 Collection and Submission of Evidence

Generally, the approach to be adopted for the collection and submission of evidence at the pleading stage and at the hearing in arbitration in Nigeria (including discovery, disclosure, privilege, expert witness, use of witness statements and cross-examination) is to be as agreed by the parties at the preliminary meeting. This is usually followed by directions contained in a procedural order. The most common approach, however, is for the tribunal to direct parties to submit evidence, including witness statements, in conjunction with pleadings. Where necessary, additional or supplementary evidence may be submitted. The consent of the other party is usually sought and obtained prior to submission of additional evidence/documents. The receiving party is also at liberty to make further or subsequent submission of additional evidence as may be necessary.

In the event of an oral hearing, the arbitral tribunal gives parties and witnesses adequate advance notice of the date, time and place of the oral hearing. The arbitral tribunal determines the admissibility, relevance, materiality and weight of the evidence offered.

Where witnesses give evidence by written statements, it dispenses with the need for examination-in-chief; nevertheless, witnesses are presented for cross-examination and re-examination. Where parties agree, the tribunal must decide whether the proceedings are to be conducted by holding oral hearings or on the basis of documents or on both, and can administer oaths or take affirmations of parties and witnesses.

8.2 Rules of Evidence

Evidence in Nigeria is generally regulated by the Evidence Act. However, the Evidence Act does not apply to proceedings before an arbitrator. Evidence in arbitration in Nigeria is based on the rules of evidence. These include the relevance and admissibility of evidence, proof of evidence, oral and or documentary evidence etc.

Parties are also at liberty to agree on the rules of evidence applicable to proceedings. The IBA Rules of Taking Evidence are sometimes adopted by arbitral tribunals in Nigeria.

8.3 Powers of Compulsion

Section 23(1) of the ACA empowers a court to order a subpoena ad testificandum (a court order compelling a person to appear in court to testify as a witness) or duces tecum (compelling a person to appear before the court and produce documents or other tangible evidence for use at a hearing or trial) to compel the attendance of a witness to testify and/or produce documents before any arbitral tribunal, wherever the witness may be within Nigeria. By virtue of Section 20 (6) of the ACA and Section 43 of the Lagos State Arbitration Law of 2009, no person may be compelled to produce any document which they could not be compelled to produce at the trial of an action. There is no difference between parties and non-parties for the purposes of compulsion by the court to produce documents or give evidence.

9. Confidentiality

Arbitral proceedings and their constituent parts are confidential in Nigeria. Unless the parties agree otherwise, arbitration hearings are held in camera. Therefore, arbitral proceedings are confidential, as between the parties and the arbitrator. However, where parties proceed to court, any aspect of the arbitration that is disclosed in court loses its confidentiality, as court proceedings are conducted in public.

10. The Award

10.1 Legal Requirements

Under Nigerian law, any award made by a tribunal must be in writing and signed by the arbitrator(s). The award is also to state the reasons upon which it is based (unless parties have agreed otherwise or it is an award on agreed settlement terms), the date it was made and the place it was made. A copy of the award made and signed by the arbitrator(s) is also to be delivered to each party.

10.2 Types of Remedies

Unless the parties agree otherwise, an arbitral tribunal may make an award on whichever types of remedies it sees fit, including punitive damages, rectification and injunctions. Although punitive in nature, an arbitrator may award exemplary damages. Generally, under Nigerian law exemplary damages may be awarded when the claim is based on a tort or a tort arising out of or in combination with a contract claim.

10.3 Recovering Interest and Legal Costs

Parties to arbitration in Nigeria are entitled to recover interest and legal costs. Interest is generally awarded on the award sum. Unless the parties agree otherwise, the arbitral tribunal may award simple or compound interest from whatever dates and at whichever rates it considers just.

Subject to the agreement of parties, the arbitral tribunal is empowered to fix costs of arbitration in its award. The term 'costs' under the ACA includes:

- the fees of the arbitral tribunal, to be stated separately according to each arbitrator and to be fixed by the tribunal itself;
- 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 witnesses to the extent that those expenses are approved by the arbitral tribunal;
- the costs for legal representation and assistance of the successful party if any such costs were claimed during the arbitral proceedings, and only to the extent that the arbitral tribunal determines that the amount of those costs is reasonable.

The costs of arbitration are in principle borne by the unsuccessful party. The tribunal may, however, apportion such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case. With respect to the costs of legal representation and assistance, the arbitral tribunal is free to determine which party is to bear the costs or may apportion the costs between the parties if it determines that apportionment is reasonable. However, in doing this the tribunal will take into account the circumstances of the case. It is important to state that the powers of the tribunal with respect to matters relating to costs is subject to the agreement of the parties.

11. Review of an Award

11.1 Grounds for Appeal

Generally, in Nigeria, an arbitral award is final and binding. It is not appealable under any circumstances. However, an award may be challenged, and therefore set aside, on the grounds that the award contains decisions on matters beyond the scope of the submission to arbitration. An award may also be set aside in the case of misconduct by an arbitrator.

With respect to international arbitration, however, grounds on which an award may be set aside include:

- Incapacity of a party to the arbitration agreement;
- Invalidity of the arbitration agreement under the law which the parties have indicated should apply under the laws of Nigeria;
- The party seeking to set aside the award is not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present their case;
- The subject matter of the dispute is not capable of settlement by arbitration under the laws of Nigeria.

As noted above, an award may not be the subject of an appeal. However, a party who is aggrieved by an arbitral award may, within three months from the date of the award or from the date when the request for an additional award is disposed of by the arbitral tribunal by way of an application for setting aside, request the court to set aside the award on the grounds that the award contains decisions on matters which are beyond the scope of submission to arbitration. Where it is possible to separate the decisions on matters submitted to arbitration from those not submitted, only that part of the award which contains decisions on matters not submitted may be set aside. An award may also be set aside where an arbitrator has not conducted themself appropriately, or where the arbitral proceedings or award have been improperly procured.

11.2 Excluding/Expanding the Scope of Appeal

The scope of challenging an award is regulated by law. Parties are therefore unable to exclude or expand the scope of challenge under national law.

11.3 Standard of Judicial Review

In Nigeria, an arbitral award is final and binding. There is therefore no recognised standard of judicial review of the merits of a case, although sometimes hearings to consider applications to set aside can operate in the same way as a merit review.

12. Enforcement of an Award

12.1 New York Convention

Nigeria became a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the '**Convention**') on 17 March 1970, adopting both the reciprocal and commercial reservations. The Convention is reproduced in the Second Schedule to the ACA.

At regional level, Nigeria is a signatory to a treaty with the Asian African Legal Consultative Organisation (AALCO) for the continued operation of the Regional Centre for International Commercial Arbitration established in Lagos in 1989.

12.2 Enforcement Procedure

Under Nigerian law, an arbitral award, irrespective of the country in which it is made, is to be recognised as binding and, subject to a request by any of the parties that the court refuse recognition or enforcement of the award, is to be enforced by the court.

A party seeking to enforce an award in Nigeria must apply to the court, and the application is to be accompanied by the following:

- The duly authenticated original award or a duly certified copy thereof;
- The original arbitration agreement or a duly certified copy thereof; and
- Where the award or arbitration agreement is not made in the English language, a duly certified translation thereof into the English language.

An award may also by leave of the court be enforced in the same manner as a judgment or order to the same effect.

It is important to mention that limitation law applies to arbitral proceedings in the same way as it applies to judicial proceedings. The limitation period within which to bring an application to enforce an arbitral award is six years. The six-year rule, however, applies to an award pursuant to an arbitration agreement which is not under seal or where the arbitration is pursuant to any statute other than the ACA. Thus, an application to enforce an arbitral award in the categories referred to above must be brought within six years. This provision has been interpreted to mean that the six-year limitation period starts to run from the day on which the cause of action resulting in the arbitral award accrued and not from the day the arbitral award was delivered. This was the opinion of the Supreme Court in **City Engineering Nigeria Limited v Federal Housing Authority (1997) 9 NWLR (Part 520), 224**. The implication of this decision is that the accrual of cause of action, the arbitration proceedings, the award and the enforcement of the award must all occur within six years.

The hardship arising from the strict approach adopted by the Supreme Court in the City Engineering case has been somewhat ameliorated by the Lagos State Arbitration Law. For the purposes of the Lagos State Arbitration Law, 2009, in the assessment of 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 is to be excluded. Essentially, therefore, the six-year limitation period starts to run from the day the award is delivered.

12.3 Approach of the Courts

Generally, courts in Nigeria will recognise and enforce an arbitral award in the absence of any valid and compelling grounds for setting it aside or refusing its recognition and enforcement.

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Under Nigerian law, an award may be set aside or refused enforcement if it is contrary to public policy. Although the ACA does not define public policy, the courts have defined it to mean the conditions perceived to be necessary to ensure a community's welfare, so that anything is treated as against public policy if it is generally regarded as injurious to the public interest. Consequently, an arbitral award may not be recognised and enforced where its recognition and enforcement will be injurious to the public interest.