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The International Comparative Legal Guide to:

International Arbitration 2013

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A practical cross-border insight into international arbitration work

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1 Arbitration Agreements

1.1 What, if any, are the legal requirements of an arbitration agreement under the laws of Nigeria?

The main arbitration law of Nigeria is the Arbitration and Conciliation Act 1988 (ACA) (Cap A18 Laws of the Federation of Nigeria 2004). This is the federal or national law governing arbitration in Nigeria. In 2009, Lagos State enacted its own state law, the Lagos State Arbitration Law 2009. The Regional Centre for Arbitration Lagos, a non-profit, independent, international arbitral institution established in Lagos in 1989, also has its own arbitration rules. However, this chapter focuses on the federal law (ACA), but references will be made to the Lagos State Law where necessary.

The basic legal requirement of an arbitration agreement under this law is that an arbitration agreement must be in writing or must be contained in a written document signed by the parties. Section 1 of ACA provides that every arbitration agreement shall be in writing and contained in a document signed by the parties or in an exchange of letters, telex, telegrams 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. Any reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if such contract is in writing and the reference is such as to make that clause part of the contract. This provision presupposes that arbitration must be consensual and indicates that an arbitration agreement may either be an express clause in a contract whereby parties agree to refer future disputes to arbitration, or in a separate document (Submission Agreement), whereby parties agree to submit their existing dispute to arbitration. An arbitration agreement may also be inferred from written correspondence or pleadings exchanged between parties.

However, there are situations of non-consensual or compulsory arbitration, as depicted in statutes and consumer standard form contracts. For instance, under the Pension Reform Act, the regulator National Pension Commission, PENCOM, can refer any dispute to arbitration. Also under the National Investment Promotion Act, any foreign investor who registers under the Act is automatically entitled to bring a treaty arbitration under the ICSID system. Arbitration provisions contained in such statutes are deemed to be binding on any person to whom they apply.

The following additional legal requirements for a valid arbitration agreement can be distilled from the provisions of ACA:

- The arbitration agreement must be in respect of a dispute capable of settlement by arbitration under the laws of Nigeria. See section 48(b)(i) and 52(b)(i) ACA.
- The parties to the arbitration agreement must have legal capacity under the law applicable to them. See section 48(a)(i) and section 52(2)(a)(i) ACA.
- The arbitration agreement must be valid under the law to which the parties have subjected it or under the laws of Nigeria. In other words, the agreement must be operative, capable of being performed and enforceable against the parties. See section 48(a)(ii) and 52(a)(ii) ACA.

1.2 What other elements ought to be incorporated in an arbitration agreement?

Apart from the requirement of writing (in the case of consensual arbitration), other elements like the place (or seat) of arbitration, language of arbitration, number of arbitrators, governing law of the contract, arbitral rules or institution, etc. ought to be incorporated in the arbitration agreement. Including such elements in the arbitration agreement would ensure the validity of the clause and provide the parties good measure of control and autonomy over the arbitration procedure, especially since most of the provisions of ACA are subject to the express agreement of parties, that is, non-mandatory. See section 16 of ACA.

Section 6 of ACA provides the default number of arbitrators as three in the absence of any express agreement by the parties. The default number of arbitrators under the Lagos State Arbitration Law is one (1) (sole arbitrator), but parties are free to stipulate otherwise by the arbitration agreement. See section 7(3) of the Lagos State Arbitration Law 2009.

The method or procedure for appointment of the arbitrators could also be specified in the arbitration agreement. In the case of a sole arbitrator, it may be a joint appointment by the parties or by an appointing authority and in the case of three arbitrators, each party can appoint one arbitrator and the two appointed will then appoint the third. In the case of multi-party arbitrations (arbitrations between more than two parties), it is more useful for parties to agree on an appointing authority. See section 7 of ACA on the procedure for appointing arbitrators where no procedure is stipulated in the arbitration agreement.

Apart from the above, the level of qualification or expertise which the arbitrator or arbitrators should have, the time lines for conclusion of the arbitration and giving final award, and the governing law may be stipulated in the arbitration agreement. Parties can choose from a variety of arbitration rules, such as ICC Rules, LCIA or other international rules, as well as local rules under ACA and the Lagos State Arbitration Law 2009. The arbitration agreement should state whether the choice of law for the contract also applies to the arbitration agreement.

In view of the increasing number of law suits on arbitration, especially actions to set aside arbitral awards, it is becoming useful to insert a term in the arbitration clause that parties agree to be bound by the decisions of the tribunal and shall not challenge the award except on grounds of misconduct. However, ACA provides grounds for setting aside an award and so there is the question of whether the courts will uphold an agreement that is contrary to law. Also, such a clause may be adjudged to be an ouster of the court's jurisdiction which the court will be reluctant to uphold.

1.3 What has been the approach of the national courts to the enforcement of arbitration agreements?

Nigerian courts have adopted a positive approach to the enforcement of arbitration agreements. A review of the decided cases shows a general recognition by Nigerian courts of arbitration as a good and valid alternative dispute resolution mechanism. In ***C.N. Onuselogu Ent. Ltd. v. Afribank (Nig.) Ltd.*** *(2005) 1 NWLR Part 940 577*, the court held that arbitral proceedings are a recognised means of resolving disputes and should not be taken lightly by both counsel and parties. However, there must be an agreement to arbitrate, which is a voluntary submission to arbitration.

Where there is an arbitration clause in a contract which is the subject of court proceedings, a party to the court proceedings may promptly raise the issue of an arbitration clause and the courts will stay proceedings and refer the parties to arbitration. See sections 4 and 5 of ACA. See ***Transnational Haulage Limited v. Afribank Nigeria Plc & Anor.*** (Unreported Suit No. LD/1048/2008) ruling delivered on 28th September 2010, granting stay of proceedings pending arbitration.

Sections 6(3) and 21 of the Lagos Law empower the court to grant interim orders or reliefs to preserve the *res* or rights of parties pending arbitration. Although ACA in section 13 gives the arbitral tribunal power to make interim orders of preservation <u>before or during arbitral proceedings</u>, it does not expressly confer the power of preservative orders on the court and section 34 of ACA limits the courts' power of intervention in arbitration to the express provisions of ACA. The usefulness of section 6(3) of the Lagos State Arbitration Law 2009 is seen when there is an urgent need for interim preservative orders and the arbitral tribunal is yet to be constituted. Our experience in this regard is that such applications find no direct backing under ACA and have always been brought under the Rules of Court and under the court's inherent jurisdiction to grant interim orders. However, in ***Afribank Nigeria Plc v. Haco*** (Unreported FHC/L/CS/476/2008), the court granted interim relief and directed the parties to arbitrate under the provisions of ACA. Upon the publication of the award, the parties returned to the court for its enforcement as judgment of the court. See also ***Transnational Haulage Limited v. Afribank Nigeria Plc & Anor.*** *supra*.

The courts in Nigeria are often inclined to uphold the provisions of sections 4 and 5 of ACA, provided the necessary conditions are met. In the case of ***Minaj Systems Ltd. v. Global Plus Communication Systems Ltd. & 5 Ors*** (Unreported Suit No. LD/275/2008), the Claimant instituted a court action in breach of the arbitration agreement in the main contract and on the Defendant's application, in a ruling delivered on 10th March 2009, the court granted an order staying proceedings in the interim for 30 days pending arbitration. In ***Niger Progress Ltd. v. N.E.I. Corp.*** *(1989) 3 NWLR (Part 107) 68*, the Supreme Court followed section 5 of ACA, which gives the court the jurisdiction to stay proceedings where there is an arbitration agreement. In ***M.V. Lupex v. N.O.C*** *(2003) 15 NWLR (Part 844) 469*, the Supreme Court held that it was an abuse of court process for the Respondent to institute a fresh suit in Nigeria against the appellant on the same dispute during the pendency of the arbitration proceedings in London. In ***Akpaji v. Udemba*** *(2003) 6 NWLR (Part 815) 169*, the court held that where a Defendant fails to raise the issue of an arbitration clause and relies on the same at the early stage of the proceeding, but takes positive steps in the action, he would be deemed to have waived his right under the arbitration clause.

2 Governing Legislation

2.1 What legislation governs the enforcement of arbitration proceedings in Nigeria?

Parties are free to choose the law governing the arbitration proceedings, but where they have not predetermined the law, the arbitral proceedings will be governed by ACA. Also, if the seat of the arbitration is Nigeria, then ACA will apply as governing law of the arbitration. Parties can also choose the rules that will regulate the arbitration proceedings. Where no rules are specified, the arbitral proceedings shall be in accordance with the procedure contained in the Arbitration Rules set out in the First Schedule to ACA. (See section 15(1) and (2) of ACA.) Where the Rules contain no provision in respect of any matter, the arbitral tribunal may conduct the arbitral proceedings in such a manner as it considers appropriate so as to ensure a fair hearing. If parties have chosen ACA as the governing law, ACA will govern both the arbitral proceedings itself and the enforcement of the award. The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (domesticated as Second Schedule to ACA) governs the enforcement of foreign awards. Nigeria is a signatory to the New York Convention and has domesticated the Convention in compliance with section 12 of the 1999 Constitution as amended through enactment of ACA. Since arbitration is under the concurrent and residuary list of the 1999 Constitution, both the federal and state governments can legislate on it. There are existing arbitration laws by Lagos State and the northern states of Nigeria. Lagos State Arbitration Law is perhaps the most developed and the state aims, by this, to make Lagos the centre for arbitration in Nigeria.

2.2 Does the same arbitration law govern both domestic and international arbitration proceedings? If not, how do they differ?

There is no distinction between domestic and international arbitration under ACA and the Rules made pursuant to it. Generally, ACA and the Rules apply to any arbitration whose seat is in Nigeria or which parties have agreed will be governed by ACA. (See the Long title of ACA and section 15(1) thereof.) However, parties are free to choose the rules applicable to the arbitration proceedings and may even choose arbitration rules of a different country or the rules of an international or foreign arbitral institution. See section 53 ACA.

Part III of ACA, comprising sections 43 to 55, contains specific provisions on international commercial arbitration (and conciliation), but the heading of Part III and wording of section 43 suggest that these provisions, in addition to other provisions of ACA, apply to international arbitration. But going by the general rule that specific provisions override general provisions, any difference between the other provisions of ACA and Part III on international arbitration will be resolved in favour of the provisions of Part III. For instance, section 44 slightly differs from section 7 on appointment of arbitrators in the sense that section 44 provides

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that an appointing authority shall appoint arbitrators if parties are unable to agree on a sole arbitrator or if party-appointed arbitrators do not agree on a presiding arbitrator, whereas section 7 provides that the court shall make the appointment in both circumstances. Again, section 48 provides elaborate grounds for setting aside an award whereas, under sections 29 and 30, the grounds for setting aside an award are merely stated as decisions beyond the scope of the submission to arbitration, misconduct of the arbitral tribunal, and improper procurement of the arbitral proceedings. Similarly, section 52 provides elaborate grounds for refusing recognition or enforcement of an award, whereas the grounds for refusal of recognition are not stated in the other provisions of ACA. It has sometimes been argued in applications for setting aside or refusal of recognition of awards, that sections 48 and 52 do not apply to domestic arbitration, but this issue has not been fully tested judicially in Nigeria.

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), which is incorporated as the Second Schedule to ACA, is applicable to the recognition and enforcement of arbitral awards arising out of international commercial arbitration.

2.3 Is the law governing international arbitration based on the UNCITRAL Model Law? Are there significant differences between the two?

ACA is largely based on the UNCITRAL Model Law with minimal differences. One such difference is the provision on the power of the court to stay proceedings. The UNCITRAL Model Law does not expressly confer on the court the power to stay proceedings commenced in breach of an arbitration clause, whereas ACA expressly confers this power on the court. **Article 8(1)** of the UNCITRAL Model Law, which is headed '*Arbitration agreement and substantive claim before court*', simply provides that the court shall "refer the matter to arbitration" in such circumstances, whereas section 4 of ACA, with an identical heading, expressly provides that the court shall "order a stay of proceedings and refer the parties to arbitration". While the power of the court to stay proceedings may be implied in Article 8(1) of the Model Law, it may be argued that an application for stay of proceedings finds no direct legal backing under the Model Law, unlike ACA, which confers an express power of stay of proceedings on the court and goes further in **section 5** to make more elaborate provisions on stay of proceedings. Another difference is the provision of **Article 13(3)** of the Model Law, which allows parties to go to court to challenge the decision of the arbitral tribunal on its own competence. ACA gives the tribunal power to decide on a challenge to an arbitrator, but does not provide for further recourse to court against the decision of the tribunal on the issue.

2.4 To what extent are there mandatory rules governing international arbitration proceedings sited in Nigeria?

Arbitration under ACA is generally consensual and there is party autonomy in the conduct of arbitration proceedings, including international arbitration proceedings. Most of the provisions in ACA and the Rules are subject to and may be varied by the parties' agreement. However, section 33(a) of ACA implies that there are some provisions of ACA which are deemed mandatory and which parties cannot derogate from.

In contemporary business-to-business transactions such as telecommunications, pension and capital market transactions like mergers and acquisitions (M&A), mandatory arbitration clauses are increasingly being imposed by statutes or regulators. The basic question would be whether it is reasonable for regulators to insist on the insertion of mandatory arbitration clauses in commercial transactions they regulate or refer disputes to arbitration before taking a final administrative decision. The position is yet to be tested in Nigerian courts, but in Nigeria the mandatory pre-arbitration clause in a commercial agreement particularly in a capital market transaction regulated by SEC is gaining weight and, like the position in the United States relating to a business agreement, the regulators are championing the process particularly for high value transactions. Agreements like the vending and underwriting agreements must by regulation in Nigeria carry an arbitration clause under the New Consolidated Securities and Exchange Commission Rules 2011. Statutes such as the Pension Reform Act and Nigeria Communications Commission Act and regulators such as the Securities and Exchange Commission (SEC) are increasingly resorting to mandatory arbitration clauses in Nigeria.

3 Jurisdiction

3.1 Are there any subject matters that may not be referred to arbitration under the governing law of Nigeria? What is the general approach used in determining whether or not a dispute is "arbitrable"?

ACA does not stipulate any particular subject matter that may not be referred to arbitration. The question of whether or not a dispute is arbitrable is therefore left for interpretation by the courts. In ***Ogunwale v. Syrian Arab Republic*** *(2002) 9 NWLR (Part 771) 127*, the Court of Appeal held that the test for determining whether a dispute is referable to arbitration is that the dispute or difference must necessarily arise from the clause contained in the agreement. However, not all disputes are necessarily arbitrable. Only disputes arising from commercial transactions are referable to arbitration (see section 57(1) of ACA on the definition of arbitration and commercial disputes). Disputes not falling within the category of commercial disputes (e.g. domestic disputes), would not be arbitrable under ACA, though they may be referable to customary arbitration. Such disputes as competition or anti-trust disputes with elements of criminality and nullification of patent rights are generally not arbitrable, although there are some exceptions. In ***Federal Inland Revenue Service v. Nigerian National Petroleum Corporation & 2 Ors.*** *- Suit No. FHC/CS/764/2011*, a case involving the Federal Inland Revenue Service (FIRS), NNPC, Shell Petroleum and other international oil companies (IOCs) operating in Nigeria, a Federal High Court in Abuja voided an arbitral award under a Joint Operating Agreement between the government and the IOCs on the ground that the subject matter of the arbitration (interpretation, application and administration of the Petroleum Profit Tax Act, the Deep Offshore Act, Education Tax Act and Company Income Tax Act) was not arbitrable, but was a function solely to be carried out by Federal Inland Revenue Service.

Also, some matters are generally more suitable for litigation than arbitration. For instance, applications for immediate enforcement of rights or preservation of *res*, e.g. the enforcement of fundamental human rights, application for *anton pillar, mareva* and other injunctions, are less suitable for arbitration than litigation. In addition, since an arbitrator has no statutory power of joinder under ACA, multi-party proceedings may be less suitable for arbitration under ACA, unless the arbitration agreement makes specific provision for it. It is hoped that ACA would be revised to address multiparty provisions as other arbitral institutions like the International Chamber of Commerce (ICC) and UNCITRAL Rules have done.

3.2 Is an arbitrator permitted to rule on the question of his or her own jurisdiction?

An arbitrator is permitted to rule on his or her own jurisdiction. Section 12 of ACA provides that an arbitral tribunal shall be 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. In any arbitral proceedings, a plea that the arbitral tribunal does not have jurisdiction or is exceeding the scope of its authority should be raised promptly, as soon as the matter alleged to be beyond the scope of its authority is raised during the proceedings and the tribunal may, in either case, admit a later plea if it considers that the delay was justified. The arbitral tribunal may rule on any plea referred to it under subsection (3) of section 12, either as a preliminary question or in an award on the merits, and such ruling shall be final and binding.

3.3 What is the approach of the national courts in Nigeria towards a party who commences court proceedings in apparent breach of an arbitration agreement?

Where a party in court proceedings raises the issue of an arbitration agreement promptly, the court will uphold the arbitration agreement and stay proceedings pending arbitration. However, the courts will usually require the requesting party not to have taken some positive steps in furtherance of the litigation, apart from appearance in court. The Notice of Arbitration or any other evidence that arbitral proceedings have been set in motion will help to convince the court that the party invoking the arbitration clause is serious and desirous of pursuing arbitration. In the absence of that, the courts are still inclined to stay proceedings in favour of arbitration upon being convinced that there exists a valid arbitration agreement.

However, while some courts treat an arbitration agreement as a compelling ground for stay of court proceedings, others treat it as discretionary. This point is illustrated by the cases of ***M.V. Lupex v. N.O.C.*** *(2003) 15NWLR (Part 844) 469* and ***K.S.U.D.B. v. Fanz Ltd.*** *(1986) 5 NWLR (Part 39) 74*.

3.4 Under what circumstances can a court address the issue of the jurisdiction and competence of the national arbitral tribunal? What is the standard of review in respect of a tribunal's decision as to its own jurisdiction?

Generally, by virtue of section 12(4) of ACA, a ruling by the tribunal on its jurisdiction is final and binding and is not subject to appeal. This is strengthened by section 34 of ACA, which provides that "*A court shall not intervene in any matter governed by this Act, except where so provided in this Act*". However, a party who can prove circumstances of impartiality or lack of independence on the part of the tribunal can challenge the tribunal's constitution in court on the basis of section 8(3) (a) of ACA, which provides that "*An arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to his impartiality or independence*". But even so, the challenge should be first made to the tribunal itself unless the challenged arbitrator withdraws from office or the other party agrees to the challenge. See section 9(3) ACA. If the other party does not agree to the challenge and the challenged tribunal does not withdraw, the court can address the issue at the instance of the challenging party. See Article 12 of the Arbitration Rules.

Also, the court can address the issue of jurisdiction and competence of an arbitral tribunal after the award has been made and proceedings have been instituted for setting aside or refusal of recognition and enforcement of the award. Lack of jurisdiction is not expressly stated to be grounds for setting aside or refusal of recognition and enforcement of an award under ACA so as to make it an issue which the court can address, but it has been held to constitute misconduct on the part of the tribunal for which an award may be set aside under section 30 of ACA. See the case of ***Taylor Woodrow Ltd. v. GMBH*** *(1991) 2 NWLR (Part 175) 604*.

ACA is not specific on the standard of review of a tribunal's decision. The tribunal has the competence to rule on its jurisdiction and under ACA (unlike the UNCITRAL Model law) its decision is not subject to review. If the tribunal rules that it has jurisdiction when he does not, the award will be set-aside and the entire arbitral proceedings would be a waste of time. See ***Triana Ltd v. UTB Plc*** *[2009] 12 NWLR (Part 1155) 313*. However, a tribunal in ruling on its own jurisdiction will decide based on a number of factors like the existence or validity of an arbitration agreement, the express provisions or requirements of the arbitration agreement, the scope of the tribunal's authority or powers, the impartiality and independence of the tribunal in relation to the parties and subject matter of the dispute, and the qualifications of the arbitrator(s) in accordance with the arbitration clause. (See sections 8 and 12 of ACA.)

3.5 Under what, if any, circumstances does the national law of Nigeria allow an arbitral tribunal to assume jurisdiction over individuals or entities which are not themselves party to an agreement to arbitrate?

Under ACA, an arbitration agreement must be valid; otherwise the court may set aside or refuse recognition and enforcement of the award. A valid arbitration agreement is one which unequivocally evidences the parties' agreement to arbitrate whether in the form of a clause in the main contract or a separate submission agreement or an exchange of pleadings or correspondence between the parties. (See section 1 of ACA.) An arbitral tribunal has no jurisdiction under ACA over parties who are not themselves party to an agreement to arbitrate and any award made without jurisdiction will be null and void. In practice, where persons who were not party to the arbitration agreement are sought to be enjoined, a submission agreement is signed by which the parties submit to the jurisdiction of the arbitral tribunal and thereby agree to be bound by the award.

Section 40(3) of the Lagos Arbitration Law provides that a party may, by application and with the consent of the parties, be joined to arbitral proceedings, but ACA does not contain such provision. It follows that whilst Federal law does not allow joinder of non-parties, conceptually such a joinder is possible under the Lagos Arbitration Law. At present, no jurisprudence has developed on this point. In contemporary practice and with the spate of increase in multi-party (and multi-contract) arbitrations, parties who were not parties to the original arbitration agreement are made to submit to the jurisdiction of an arbitral tribunal. For instance in ***FGN v. CTTL*** (Unreported Suit No. FHC/L/CS/421/2009), the Federal High Court refused to set aside an ICC award against the Federal Government of Nigeria, a non-signatory and its state agency which signed the arbitral agreement on the basis that though FGN was not a party to the agreement it had given presumed consent by its conduct and involvement with the execution and implementation of the contract.

3.6 What laws or rules prescribe limitation periods for the commencement of arbitrations in Nigeria and what is the typical length of such periods? Do the national courts of Nigeria consider such rules procedural or substantive, i.e., what choice of law rules govern the application of limitation periods?

Generally, under Nigerian law, there are limitation periods for commencement of various civil actions. For simple breach of contract, it is 6 years; for an action relating to land, it is 12 years; and for actions against public officers, it is 3 months. (See Limitation Laws of the various states, the Fatal Accidents Act and the Public Officers Protection Act.) ACA does not provide limitation periods for commencement of arbitration. However, the Lagos Arbitration Law, in section 35(1), provides that limitation laws shall apply to arbitral proceedings as they apply to judicial proceedings and in section 35(4) defines "limitation laws" to mean "such limitation laws as are applicable under the law governing the subject of the dispute". Thus, limitation laws are considered as substantive law and are determined by the law applicable to the main contract.

Section 8(1)(d) of the Limitation Law of Lagos State (Cap L67 Laws of Lagos State of Nigeria Vol. 5) stipulates the limitation period of 6 years for an action to enforce an arbitration where the arbitration agreement is not under seal or where the arbitration is under any enactment other than the Arbitration Act. The section bars actions (court actions) to enforce an arbitral award from being instituted after 6 years from when the cause of action arose. It does not apply to the substantive arbitration proceedings. The interpretation section (section 69) of the Limitation Law expressly defines "actions" as "*any proceeding (other than a criminal proceeding) in a court established by law*".

3.7 What is the effect in Nigeria of pending insolvency proceedings affecting one or more of the parties to ongoing arbitration proceedings?

There are two categories of insolvency proceedings: non-collective proceedings; and collective proceedings. For non-collective proceedings (e.g. creditor's appointment of a receiver or receiver/manager to realise the assets of the company), a pending insolvency proceeding will not operate as a stay of ongoing arbitration or other proceedings against the insolvent company. However, once a company is in receivership, leave or consent of the receiver or the court is required to commence arbitral proceedings against the company. This is because the receiver or receiver manager becomes subrogated in the rights and liabilities of the company and exercises the powers of the board of directors of such company until the discharge of the receivership by virtue of section 393 of the Companies and Allied Matters Act (CAMA). See ***N.B.C.I. v. Alfijir (Mining) Nigeria Limited*** *(1999) 14 NWLR (Part 638) 176 at 184 – 185.*

As regards collective proceedings (e.g. winding-up proceedings and/or arrangements and compromises which are predicated on a liquidation process), a pending insolvency proceeding ought to operate as a stay of all other proceedings against the company. See sections 412 and 417 of CAMA. The purpose is to preserve the assets of the company in a single pool so that they are available to satisfy creditors in order of priority. However, the Supreme Court of Nigeria has held that on the basis of section 567 of CAMA, which defines the court as the Federal High Court, sections 412 and 417 of CAMA only operate as a stay of proceedings before the Federal High Court. The effect of this decision is that collective insolvency proceedings will not affect or stay proceedings before the State High Courts, or arbitral or other tribunals. Nevertheless, the author's view is that the provisions should apply to proceedings before all courts, including Federal and State High Courts, and arbitration and other proceedings. This view is based on the *pari pasu* principle on equality of treatment of different categories of creditors in collective insolvency proceedings. See sections 494 and 495 of CAMA. Also, the intendment of sections 412 and 417 of CAMA is to grant a moratorium against all creditor claims which is a useful stop gap in managing insolvency. Such an objective will be defeated if some creditors can pursue their claims whilst others cannot. Best practices of insolvency seek to protect priority of creditors and this Supreme Court decision may open a floodgate for 'secondary' creditors to obtain 'backdoor judgments' against a company in liquidation to the detriment of the petitioner in valid winding-up proceedings.

The challenge seems to be created by the not-so-robust insolvency legal framework in Nigeria, but a lot of efforts are currently being made to develop the Nigerian insolvency regime. The Business Recovery and Insolvency Practitioners Association of Nigeria (BRIPAN) is at the forefront of such moves.

4 Choice of Law Rules

4.1 How is the law applicable to the substance of a dispute determined?

The law applicable to the substance of a dispute is determined by the particular system of law governing the contract itself, i.e. interpretation and validity of the contract and the rights and obligations of the parties, the mode of performance and the consequences of breach of the contract. In a purely domestic arbitration, the applicable law will usually be Nigerian law, unless otherwise expressly agreed by the parties. In international arbitration, two or more different national laws may be applicable to the substance of the contract and parties may, by agreement, choose to be governed by either of the national laws or even a neutral law. The principle of party autonomy largely influences the choice of law applicable to the dispute. ACA, like the UNCITRAL Model Law, allows the parties to choose the law applicable to their contract, but if parties fail to make such a choice, the arbitral tribunal shall apply the law applicable to the dispute. The conflict of law rules are complex, but follow or mirror English law. Where the subject matter is property located in Nigeria, *lex situs*, i.e. the law of the place where the property is located, will apply, and if located in a foreign country, then that law will apply. For contracts, the law of place of the residence of the respondent or where the contract was entered into or place of performance will apply. Where personal law is involved, or where a native is involved, the native law and custom would apply except where the person expressed a contrary intention, e.g. marriage under the Marriage Act is an expression of contrary intention. For a company, the law of the place of central command and control will apply.

4.2 In what circumstances will mandatory laws (of the seat or of another jurisdiction) prevail over the law chosen by the parties?

Where the seat of arbitration is Nigeria, mandatory laws of Nigeria would prevail over any agreement of parties that is contrary to public policy or that will amount to a contravention of another relevant law within the jurisdiction. For instance, a choice of foreign law as the law governing the contract, which is perceived to be intended to evade tax laws, or as an outright breach of constitutional provisions, may not be upheld. Similarly, as a matter of public policy, courts in Nigeria, even in applying foreign law as the law chosen by the parties, are not obliged to apply provisions of foreign law that are incompatible with their own mandatory rules or those of another country with which the contract is closely connected. The doctrine of freedom of contract or party autonomy is exercisable to the extent of statutory restriction or intervention. See the case of ***M.V. Panormos Bay v. Plam Nig. Plc*** *(2004) 5 NWLR (Part 855) 1 at 14*; and ***Tawa Petroleum v. M.V. Sea Winner*** *3 NSC 25.*

4.3 What choice of law rules govern the formation, validity, and legality of arbitration agreements?

Where parties have not expressly chosen the law applicable to the arbitration, the law of the seat of arbitration would apply. Thus where the seat of arbitration is Nigeria, ACA and the Arbitration Rules made pursuant to ACA would govern the formation, validity and legality of the arbitration agreement, as well as the entire arbitral procedure, unless parties have expressly stated otherwise. See sections 15 and 53 of ACA.

5 Selection of Arbitral Tribunal

5.1 Are there any limits to the parties' autonomy to select arbitrators?

Under ACA, parties have autonomy to appoint arbitrators of their choice. This autonomy is, however, limited to the extent that the arbitrators so-appointed must be independent and impartial and must make a declaration or disclosure of any circumstances that may affect their independence or impartiality. Also, the parties' choice of arbitrators must be in accordance with the arbitration agreement itself. For instance, the chosen arbitrator(s) must have the experience or professional qualification stipulated in the arbitration agreement, in order to have a properly composed tribunal and, consequently, a valid award.

Joinder of parties in arbitration may limit parties' autonomy to select arbitrators, but an arbitrator has no power of joinder under ACA.

5.2 If the parties' chosen method for selecting arbitrators fails, is there a default procedure?

Under ACA, parties are free to agree on the method of appointment of arbitrators, but where they do not stipulate the method or the method chosen by them fails, the arbitrator(s) will be appointed by the court. Section 7 of ACA prescribes a default procedure. It provides that the parties may specify in the arbitration agreement the procedure to be followed in appointing an arbitrator. Where no procedure is specified, in the case of an arbitration with three arbitrators, each party shall appoint one arbitrator and the two thus appointed shall appoint the third, but if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so by the other party or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointments, the appointment shall be made by the court on the application of any party to the arbitration agreement. In the case of an arbitration with one arbitrator, where the parties fail to agree on the arbitrator, the appointment shall be made by the court on the application of any party to the arbitration agreement made within thirty days of such disagreement. Where, under an appointment procedure agreed upon by the parties, a party fails to act as required under the procedure, or the parties or two arbitrators are unable to reach agreement as required under the procedure or a third party, including an institution, fails to perform any duty imposed on it under the procedure, any party may request the court to take the necessary measure, unless the appointment procedure agreed upon by the parties provides other means, for securing the appointment. A decision of the court under subsections (2) and (3) of section 7 shall not be subject to appeal.

See the case of ***Ogunwale v. Syrian Arab Republic*** *(2002) 9 NWLR (Part 771) 127*, where the court held that by virtue of section 7(4) of the Arbitration and Conciliation Act, a decision of the High Court relating to the appointment of an arbitrator shall not be subject to appeal. However, it is only a decision strictly within section 7(2)(a) and (b) and section 7(3)(a), (b) and (c) of the Act that shall not be subject to appeal. The court further held that sections 7(4) and 34 of the Arbitration and Conciliation Act cannot override the right of appeal conferred on a party by section 241(1) of the 1999 Constitution, as such right of appeal has constitutional backing.

5.3 Can a court intervene in the selection of arbitrators? If so, how?

A court can intervene in the appointment of arbitrators where parties fail to agree on the procedure or method of appointment or where the procedure agreed upon is not complied with. In ***Ogunwale v. Syrian Arab Republic*** *supra*, the court held that by virtue of Article 8(1) of the Arbitration Rules, when a court is requested to appoint an arbitrator pursuant to Article 6 or Article 7, the party who makes the request shall send to the court an affidavit together with 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 and the court may require, from either party, such information as it deems necessary to fulfil its functions. The court further held that the Arbitration Rules govern and regulate the Arbitration Panel. They are to an Arbitration Panel what the Rules of Court are to regular courts. Where non-compliance with a rule of court is peripheral, not affecting the foundation or fundamentals of the case, it could be curable and a court of law and equity will treat it as a mere irregularity and cure it. In the instant case, the names of arbitrators were furnished to the trial court through a letter instead of by an affidavit and the court held it to be a peripheral irregularity that could be cured.

Apart from the power of the court to intervene in the case of non-appointment by the parties, the court can also intervene to replace appointed arbitrators who cannot act due to lack of independence and impartiality or any other circumstance on which an arbitrator may be challenged. Section 11 of ACA provides that where the mandate of an arbitrator terminates under section 9 or 10 of the Act (by challenge or failure or impossibility to act), or because of his withdrawal from office or revocation of his mandate by the parties' agreement, or for any other reason whatsoever, a substitute arbitrator shall be appointed in accordance with the same rules and procedure that applied to the arbitrator who is being replaced. Thus an arbitrator who is appointed by the court and who is unable to act for any reason will be replaced by the court.

5.4 What are the requirements (if any) as to arbitrator independence, neutrality and/or impartiality and for disclosure of potential conflicts of interest for arbitrators imposed by law or issued by arbitration institutions within Nigeria?

It is a fundamental requirement under ACA that an arbitrator must be independent and impartial. The arbitrator has a duty to ensure and maintain his independence and impartiality and to disclose any circumstances which may affect his independence and impartiality. This duty enures throughout the arbitration proceedings and until the final award and a breach of it may constitute misconduct for which an award may be set aside. Even a party-appointed arbitrator is bound by this duty to be and to remain independent and impartial. The requirement of independence and impartiality of an arbitrator is emphasised by section 8 of ACA and the section provides for the challenge of an arbitrator if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.

Generally, the concept of impartiality presupposes that an arbitrator must not be bias in favour of one of the parties or as regards the issues in dispute. Independence and neutrality presupposes that the arbitrator has no such relationship or derives no such benefits from any of the parties as would oblige him to act in favour of that party. From the wordings of section 8 of ACA, the arbitrator's duty to maintain his independence and impartiality or his duty of disclosure is a mandatory provision from which the parties cannot derogate. Article 12 of the 2008 Arbitration Rules of the Regional Centre for International Commercial Arbitration Lagos contains similar provisions on the independence and impartiality of an arbitral tribunal. Article 12.2 thereof emphatically provides that no arbitrator shall act in the arbitration as advocates of any party and no arbitrator, whether before or after appointment, shall advise any party on the merits or outcome of the dispute.

6 Procedural Rules

6.1 Are there laws or rules governing the procedure of arbitration in Nigeria? If so, do those laws or rules apply to all arbitral proceedings sited in Nigeria?

The arbitration procedure in Nigeria is governed by the national law (ACA and the Arbitration Rules made pursuant to ACA) as well as various state laws. ACA and the Arbitration Rules apply to all arbitral proceedings whose seat is in Nigeria, unless the parties have agreed on another choice of law. ACA and the Rules and other state arbitration laws also apply to any arbitration which parties have agreed will govern the dispute. (See the long title of ACA and section 15 thereof.) Enforcement of arbitral awards arising out of international commercial arbitration is governed by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention).

Apart from the national law, other laws that may be applicable to arbitral proceedings in Nigeria include the Lagos State Arbitration Law 2009 and the Lagos Court of Arbitration Law 2009, the Arbitration Rules of the Regional Centre for International Commercial Arbitration Lagos ("Regional Centre Rules"), the Arbitration Law of Northern Nigeria, Rules of Court and International Arbitration Laws chosen by the parties.

6.2 In arbitration proceedings conducted in Nigeria, are there any particular procedural steps that are required by law?

Under ACA and in practice, certain procedural steps are required, especially for a valid institution or commencement of arbitral proceedings. These include:

- Issuance or communication of the Notice of Arbitration by the claimant to the respondent in the prescribed format. See Article 3 of the Arbitration Rules. 30 days' notice is required.
- Appointment and Constitution of the tribunal. See Article 6-13.
- Meetings (Preliminary Meeting, Prehearing Meeting, pre-hearing Review, Inspection of documents or subject matter, etc.). See Article 16.
- Hearing and determination of preliminary issues if any. See sections 12 and 13 ACA.
- Parties' presentation of respective cases, documents and any other evidence. See section 19 ACA, Articles 18-23 of the Rules.
- Hearing (if oral evidence is to be taken). Section 20 ACA, Articles 24 and 25 of the Rules.
- Re-hearing in the event of the replacement of an arbitrator.

  Note that re-hearing is mandatory in the event of the replacement of a sole or presiding arbitrator, but in the event of the replacement of any other arbitrator, re-hearing is at the discretion of the tribunal. See Article 14 of the Arbitration Rules.
- Final submissions (oral or written). Article 29 of the Rules.
- Publication of Final Award by the tribunal to the parties. Sections 24-28 ACA, Articles 31 and 32 of the Rules.

Apart from the above, there are other procedural steps under ACA, such as the procedure for the default of parties in appearance and presentation of a case or pleadings, the procedure for the challenge of arbitrators, the procedure for the enforcement of award or challenge of enforcement, etc.

6.3 Are there any rules that govern the conduct of an arbitration hearing?

ACA and Arbitration Rules contain general provisions on the conduct of arbitral hearings such as the appointment of experts, presentation of evidence and so on. However, they do not contain such detailed provisions, like the IBA Rules of Taking Evidence in International Commercial Arbitration. The IBA Rules of Taking Evidence may be adopted by the arbitral tribunal with the consent of parties.

6.4 What powers and duties does the national law of Nigeria impose upon arbitrators?

Under ACA, the arbitral tribunal has several powers, including the power to:

- Rule on its own jurisdiction.
- Issue interim orders of preservation.
- Appoint experts.
- Order the production of documents or evidence.
- Administer oaths or take affirmations of parties and witnesses appearing before it.
- Extend time for filing case statements, pleadings, written statements, etc.
- On its own volition, correct in the award any errors in computation, clerical or typographical errors or any errors of a similar nature.
- Terminate arbitral proceedings and issue a consent award upon settlement or agreement of parties.
- Determine the admissibility, relevance, materiality and weight of any evidence placed before it.
- Make interim, interlocutory or partial awards.

The arbitrator also has several duties under ACA, some of which are:

- Duty to act in accordance with the arbitration agreement.
- Duty to decide the dispute in accordance with the terms of the contract.
- Duty to maintain its impartiality and independence throughout the arbitral proceedings.
- Duty to give the parties adequate advance notice of the date, place and time of hearings.
- Duty to give each party full and equal opportunity of presenting its case.
- Duty to act fairly between the parties and in accordance with natural justice.
- Duty to act within the scope of its jurisdiction.
- Duty to decide and dispose of all issues submitted to it by the parties.

- Duty to give a reasoned and valid award and to ensure that the award is enforceable.

6.5 Are there rules restricting the appearance of lawyers from other jurisdictions in legal matters in Nigeria and, if so, is it clear that such restrictions do not apply to arbitration proceedings sited in Nigeria?

Under the Legal Practitioners Act, a person who is not called to the Nigerian bar is not entitled to appear before a court in Nigeria or act as a solicitor unless on conditions stipulated in sections 2 and 7 of the Act. By virtue of sections 2 and 7 of the Legal Practitioners Act Cap. L11 Laws of the Federation of Nigeria 2004, a person is only entitled to practise as a barrister and solicitor in Nigeria if he has been called to the Nigerian Bar, or he is admitted by warrant of the Chief Justice on special circumstances or if he is exercising the functions of the office of the Attorney General, Solicitor General or Director of Public Prosecutions or such civil service office specified by the Attorney General.

The above restrictions do not strictly apply to the representation of parties in arbitration. Under ACA, parties need not be represented by lawyers or legal practitioners. Article 4 of the Arbitration Rules provides that the parties may be represented or assisted by legal practitioners of their choice. The wording of Article 4 and the use of the word "may" places no jurisdictional restrictions on persons appearing on behalf of parties before an arbitral tribunal. Further, the restriction in the Legal Practitioners Act seems clearly to be limited to an appearance in "court" and since an arbitral proceeding is not a court proceeding, the restriction is not applicable to foreign legal practitioners appearing before an arbitral tribunal in Nigeria.

6.6 To what extent are there laws or rules in Nigeria providing for arbitrator immunity?

ACA does not provide for arbitrator immunity, but the Lagos Arbitration Law 2009 provides for arbitrator immunity. Section 18 of the Lagos Law provides that an arbitrator is not liable for anything done or omitted in the discharge or purported discharge of the arbitrator's functions as arbitrator unless the act or omission is determined to have been in bad faith. This provision applies to an employee or agent of an arbitrator as it applies to the arbitrator, but it does not affect any liability incurred by an arbitrator by reason of resignation. Article 45 of the Regional Centre Rules provides for absolute immunity on the Regional Centre staff, director, arbitrators and experts for any act or omission in connection with any arbitration conducted under the Rules.

6.7 Do the national courts have jurisdiction to deal with procedural issues arising during an arbitration?

The extent of intervention of the courts is limited by section 34 of ACA, to the extent permitted by ACA. The courts' powers of intervention, as permitted by ACA, are limited to such issues as the appointment of a tribunal or substitute arbitrators, the removal of an arbitrator on grounds of misconduct, making of interim orders, compelling attendance of witnesses, enforcement and recognition of awards or refusal of same, and the setting aside of awards. By virtue of section 33 of ACA, any procedural issues in arbitration ought to be raised before the tribunal and it is only if the tribunal fails to deal with the issues or does not adequately deal with them that the court can be called upon to deal with the procedural issues after the conclusion of arbitral proceedings. This is usually done by way of an application to set aside the award in whole or in part or to refuse recognition and enforcement of same. In this regard, Nigerian law is more in consonance with the Model Law and does not allow the English Arbitration Act 1996 procedure which allows intervention by the courts on various questions of law decided by the tribunal.

Note that Order 52 rule 9 of the Federal High Court Rules 2009 allows an arbitrator or umpire upon any reference by an order of court, if he thinks fit and in the absence of any contrary provision to state its award as to the whole or any part of it in the form of a special case for the opinion of the court. However, the Rules of Court are only binding on the court that is subject to them.

7 Preliminary Relief and Interim Measures

7.1 Is an arbitrator in Nigeria permitted to award preliminary or interim relief? If so, what types of relief? Must an arbitrator seek the assistance of a court to do so?

Under ACA, an arbitrator has the power to order any party to take such interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject matter of the dispute and to require any party to provide appropriate security in connection with any measure taken. (See section 13 of ACA.) There is no restriction on the type of interim reliefs which the arbitrator can grant; however, it is suggested here that in awarding interim reliefs, the arbitrator should be careful to act within the scope of his jurisdiction, as determined from the arbitration agreement and the law applicable to the contract.

Although section 13 of ACA confers on the arbitrator the power to grant interim reliefs without recourse to court, it is doubtful if the arbitrator can enforce compliance with its interim orders since an arbitrator has no coercive powers. The Lagos Arbitration Law 2009 puts it more clearly by providing in section 29(1) that an interim measure issued by an arbitral tribunal shall be binding unless otherwise provided by the arbitral tribunal, recognised and enforced upon application to the High Court by a party, irrespective of the jurisdiction or territory in which it was issued subject to the provisions of subsections (2) and (3) of this section. Article 29 of the Regional Centre Rules also gives the tribunal power to grant interim measures; it provides that such interim measures may be made in the form of an interim award.

7.2 Is a court entitled to grant preliminary or interim relief in proceedings subject to arbitration? In what circumstances? Can a party's request to a court for relief have any effect on the jurisdiction of the arbitration tribunal?

ACA does not expressly give the courts the power to grant interim relief in respect of arbitral proceedings. However, the courts are entitled by the Rules of Court and under their inherent jurisdiction to grant interim orders in any matter where there is a situation of urgency and this power of court can be inferred from Article 26(3) of the Arbitration Rules. Thus, once a party can show that there is a situation of urgency which will cause irreparable harm if not remedied by an interim order of the court, the court is entitled to grant the order. (See ***Afribank v. Haco*** *supra*.) See also ***Maevis v. FAAN*** (Unreported Suit No. FHC/L/CS/1155/2010).

The Lagos Arbitration Law expressly confers on the court the power to make interim orders in respect of arbitral proceedings. (See sections 6(3) and 21 thereof.)

A party's request for interim relief would in most cases have effect on the *res*, i.e. the subject matter of the dispute and the parties' or tribunal's dealings with it, rather than on the tribunal's jurisdiction.

However, if the nature of interim relief sought affects the arbitral proceedings itself, such as where the relief is sought to restrain the commencement or continuance of arbitration on the grounds that the dispute is not arbitrable or that the arbitration agreement is not valid, etc. then the tribunal's jurisdiction may be affected by the request for relief. Be that as it may, if an arbitral tribunal has already been constituted, such objections or grounds ought to be brought before the tribunal itself.

7.3 In practice, what is the approach of the national courts to requests for interim relief by parties to arbitration agreements?

The courts are generally careful about granting interim reliefs. In litigation, the courts will only grant interim relief in situations of real urgency that might cause irreparable damage if not remedied, where there is a threat of violation of the applicant's rights or interest and damages will not be an adequate remedy, etc. Similarly, in relation to arbitral proceedings, the courts will only grant interim relief when there are convincing circumstances of urgency, for instance where the arbitral tribunal has not yet been constituted or will not be constituted in time and there is an urgent need to preserve the *res* from destruction or removal from jurisdiction. Where an arbitral tribunal has already been constituted, it is likely that the courts will require the application for interim relief to be brought first before the tribunal itself under section 13 of ACA.

7.4 Under what circumstances will a national court of Nigeria issue an anti-suit injunction in aid of an arbitration?

ACA does not provide for anti-suit injunctions in aid of arbitration and this procedure has not been tested in Nigeria to our knowledge. The courts are, however, empowered under ACA to order a stay of court proceedings commenced in breach of an arbitration clause.

7.5 Does the national law allow for the national court and/or arbitral tribunal to order security for costs?

The national courts have the power to order security for costs under the various Rules of Court. ACA confers similar powers on an arbitral tribunal, but does not confer an express power on the courts to order security for costs in relation to arbitration proceedings. Section 13(b) of ACA provides that the arbitral tribunal may require any party to provide appropriate security in connection with any interim measure made or taken. Sections 26(1) and 29(3) of the Lagos Law contain similar provisions.

8 Evidentiary Matters

8.1 What rules of evidence (if any) apply to arbitral proceedings in Nigeria?

ACA and the Arbitration Rules contain minimal procedural provisions on rules of evidence. (See section 20 ACA and Articles 24-29 of the Rules.) In Nigeria, the substantive law of evidence in legal proceedings is the Evidence Act 2011. This Act repealed the old Evidence Act (Cap E.14 Laws of the Federation of Nigeria 2004) which provided in section 1(2)(a) that the Evidence Act is not strictly applicable to arbitral proceedings. The 2011 Evidence Act does not expressly exclude arbitral proceedings from its application, but the preamble "*...A New Evidence Act which shall apply to all judicial proceedings in or before courts in Nigeria; and for related matters*" implies that the Act does not strictly apply to arbitration. However, the general rules of evidence, like fair hearing, natural justice, equal treatment of parties and full opportunity of parties to present their case, rule against hearsay evidence, etc., are applicable to arbitral proceedings by virtue of the provisions of ACA and case law. With the agreement of parties, an arbitral tribunal may adopt any other rules of evidence which it considers appropriate. Tribunals in Nigeria sometimes adopt the IBA Rules of Taking Evidence.

8.2 Are there limits on the scope of an arbitrator's authority to order the disclosure of documents and other disclosure (including third party disclosure)?

Article 24(3) of the Arbitration Rules provides that the tribunal may, at any time during the arbitral proceedings, require the parties to produce documents, exhibits, or other evidence within such a period of time as the arbitral tribunal shall determine. Section 20(6) of ACA provides that any party to an arbitral proceeding may issue a writ of subpoena *ad testificandum* or subpoena *duces tecum*, i.e. for the purpose of compelling attendance of a witness to give oral testimony or to produce documents. By these provisions, an arbitral tribunal has the authority to order the disclosure of documents (including third party disclosure). This power is, however, limited by the *proviso* in section 20(6) of ACA to the extent that no person can be compelled under any writ of subpoena to produce any document which he could not be compelled to produce on the trial of an action.

8.3 Under what circumstances, if any, is a court able to intervene in matters of disclosure/discovery?

By virtue of section 23(1) of ACA, a court is able to intervene to compel the disclosure of documents. Section 23(1) provides that the court or judge may order that a writ of subpoena *ad testificandum* or of subpoena *duces tecum*, shall issue to compel the attendance before any tribunal of a witness wherever he may be within Nigeria. Thus where, under section 20(6) of ACA or Article 24(3) of the Arbitration Rules, any person refuses to produce documents requested by a party or by the tribunal, the court can compel the disclosure or production of documents.

8.4 What, if any, laws, regulations or professional rules apply to the production of written and/or oral witness testimony? For example, must witnesses be sworn in before the tribunal or is cross-examination allowed?

ACA and the Arbitration Rules do not provide detailed rules of taking evidence in arbitral proceedings. However, Articles 24 and 25 of the Arbitration Rules contain general provisions on written and oral testimony. The arbitral tribunal is free to determine the admissibility, relevance, materiality and weight of the evidence offered. In practice, where witnesses give evidence by written statements, it dispenses with the need for examination-in-chief; witnesses simply adopt their written statements and are presented for cross-examination and re-examination. The IBA Rules of Evidence contains and is often resorted to for a detailed procedure in taking evidence. See, for example, Article 8.2 of the IBA Rules on the order of presentation of witnesses.

8.5 What is the scope of the privilege rules under the law of Nigeria? For example, do all communications with outside counsel and/or in-house counsel attract privilege? In what circumstances is privilege deemed to have been waived?

By section 20(6) of ACA which provides that "no person can be compelled under any writ of subpoena to produce any document which he could not be compelled to produce on the trial of an action", it appears that the general rules on privileged documents will apply in arbitration. Generally, privileged communications include: any document or communication made between a legal practitioner (whether external or in house counsel) and his client in the course of his engagement (see ***Abubakar v. Chuks*** *(2007) 18 NWLR (Part 1066) SC 386*); documents or agreements made without prejudice between parties in the course of negotiations; and documents which, by consent and agreement of parties, have been agreed not to be used in proceedings. Documents or communications made in furtherance of an illegal purpose or showing that a crime or fraud has been committed are not privileged. Parties may agree that a document which is ordinarily privileged, should be tendered in evidence. In such cases, privilege is deemed to have been waived. Privilege is also deemed to be waived where a party calls his Counsel (external or in house) as a witness and questions are put to the Counsel on privileged matters.

9 Making an Award

9.1 What, if any, are the legal requirements of an arbitral award? For example, is there any requirement under the law of Nigeria that the Award contain reasons or that the arbitrators sign every page?

Section 26 of ACA sets out the legal requirements of an arbitral award. It provides that an arbitral award must be written, signed by the arbitrator (or a majority of them in the case of 3 arbitrators), state the date and place it was made, contain the reasons on which it is based and must be published to the parties. Also, an arbitral award must not contain decisions or deal with disputes or matters not submitted to arbitration, must be in accordance with the arbitration agreement and governing law, must be enforceable and must not be contrary to public policy. (See sections 48 and 52 of ACA.) ACA does not state that an award be signed on every page by the arbitrator(s), but in practice, some arbitrators sign every page of the award for authenticity.

10 Challenge of an Award

10.1 On what bases, if any, are parties entitled to challenge an arbitral award made in Nigeria?

In Nigeria, an arbitral award is final and binding. An award can only be challenged on limited grounds as stipulated in ACA. A party may apply to court to set aside the award or to refuse recognition and enforcement of the award on special grounds under sections 29, 30, 48 and 52 of ACA. Such grounds include:

- Incapacity of a party to the arbitration agreement.
- Arbitration agreement is not valid under the law which the parties have indicated should be applied or under Nigerian law.
- A party is 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 not falling within the terms of the submission to arbitration.
- The award contains decisions on matters which are beyond the scope of the submission to arbitration.
- The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or the law of the country where the arbitration took place.
- 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.
- The subject matter of the dispute is not capable of settlement by arbitration under the laws of Nigeria or the recognition or enforcement of the award is against public policy of Nigeria.

Beyond these, an award cannot ordinarily be challenged in substance. See: ***Baker Marina (Nig.) Ltd. v. Danos & Curole Contractors Inc.*** *(2001) 7NWLR (Part) 712 p. 340;* ***Ebokan v. Ekwenibe & Sons Trading Co.*** *(2001) 2NWLR (Part) 696 p. 32 at 36;* and ***Ras Pal Gazi Const.Co. v. F.C.D.A.*** *(2001) 10NWLR pt.722 p. 559 at 564*.

10.2 Can parties agree to exclude any basis of challenge against an arbitral award that would otherwise apply as a matter of law?

By virtue of Article 30 of the Arbitration Rules and section 33 of ACA, parties may, by conduct or agreement, waive any ground of challenge that would otherwise apply as a matter of law. However, from the wordings of section 33 of ACA, there are some mandatory provisions of ACA from which the parties cannot derogate. These include the existence of a valid arbitration agreement or a valid submission to arbitration and the formal validity of the award.

10.3 Can parties agree to expand the scope of appeal of an arbitral award beyond the grounds available in relevant national laws?

Nigerian courts are not inclined to set aside or refuse recognition of an award unless on convincing proof of any or all of the grounds stipulated in ACA. Parties cannot by agreement expand the statutory grounds for the challenge of an award. Arbitration is a voluntary and statutorily recognised dispute resolution mechanism in Nigeria and once parties agree to resolve their dispute by arbitration, they are bound by the award of an arbitration tribunal. This is without prejudice to the right of parties to compromise an award upon terms.

10.4 What is the procedure for appealing an arbitral award in Nigeria?

Generally, an award is not subject to appeal. However, an application for setting aside an award is to be brought by the aggrieved party within three (3) months from the date of the award. (See section 29 of ACA.) ACA does not stipulate the mode of commencing proceedings to set aside, i.e. whether by originating summons or by motion, etc. Consequently, the mode of commencement will be determined by the Rules of the Court to which the application is made. Under Order 39 rule 4 of the High Court of Lagos State (Civil Procedure Rules) 2004, it is by motion on notice, while under Order 52 (15) of the Federal High Court Civil Procedure Rules 2009, it is by originating motion. The court before which an application to set aside an arbitral award is brought may either suspend proceedings and remit the award back to the arbitral tribunal for reconsideration, or set aside the award.

See ***Triana Ltd v. U.T.B. Plc*** *[2009] 12 NWLR (Part 1155), page 334*.

11 Enforcement of an Award

11.1 Has Nigeria signed and/or ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Has it entered any reservations? What is the relevant national legislation?

Nigeria has ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The Convention is contained in Schedule 2 to the Arbitration and Conciliation Act 1988 Cap. A18 Laws of the Federation of Nigeria 2004.

11.2 Has Nigeria signed and/or ratified any regional Conventions concerning the recognition and enforcement of arbitral awards?

Nigeria is a party to some Regional Conventions concerning the recognition and enforcement of arbitral awards. See, for instance, the ECOWAS Energy Protocol. Article 26 thereof provides for the settlement of disputes between a contracting state and an investor by the ICSID if the investor's country and that of the contracting party are both parties to the ICSID Convention or a sole arbitrator or an *ad hoc* arbitration tribunal established under the UNCITRAL Rules, or an arbitral proceeding under the Organisation for the Harmonisation of Trade Laws in Africa (OHADA). There is also the Treaty of ECOWAS (1993 revised Treaty). Article 16 thereof establishes an Arbitration Tribunal whose powers, status, composition and procedure were to be as set out in a subsequent protocol.

In 1989, the Regional Centre for International Commercial Arbitration Lagos (RCICAL) was established in Lagos, Nigeria under the auspices of the Asian African Legal Consultative Organisation (AALCO) as a non-profit, independent, international arbitral institution to provide, amongst other things, a neutral forum for dispute resolution in international commercial transactions. Its establishment is also geared towards encouraging settlement of disputes arising from international trade and commerce and investments within the region where the contract was performed. The continued operation of the RCICAL in Nigeria was ratified by a treaty executed in April 1999 between Nigeria and the AALCO. The legal framework for the existence of the RCICAL in Nigeria is embodied in the Regional Act No. 39 of 1999. The RCICAL has an autonomous international character and enjoys diplomatic privileges and immunities under international law for the unfettered conduct of its functions. See the Diplomatic Immunities and Privileges (Regional Centre for International Commercial Arbitration) Order 2001. RCICAL renders assistance in the enforcement of awards made under its Rules. See Rules 35.6 and 35.8 of RCIAL Rules.

11.3 What is the approach of the national courts in Nigeria towards the recognition and enforcement of arbitration awards in practice? What steps are parties required to take?

In practice, the courts in Nigeria will recognise and enforce an arbitral award in the absence of any valid and convincing ground for setting aside or for refusal of recognition and enforcement. A party applying for the recognition and enforcement of an arbitral award shall furnish the court with:

(i) the duly authenticated original award or a duly certified copy thereof;

(ii) the original arbitration agreement or a duly certified copy thereof; and

(iii) where the award or arbitration agreement is not made in the English language, a duly certified translation thereof into the English language.

If the application is brought in the Lagos State High Court, the application is by motion on notice stating the grounds with supporting affidavit and the above mentioned documents. See Order 39 Rule 4 of the Lagos High Court Civil Procedure Rules 2012. Under Order 52 Rule 16 of the Federal High Court Civil Procedure Rules 2009, an application for enforcement of an award may be made *ex parte*, but the court hearing the application may order it to be made on notice. The application shall be supported with an affidavit which shall:

(a) exhibit the arbitration agreement and the original award or certified copies;

(b) state the name, usual or last known place of abode or business of the applicant and the person against whom it is sought to enforce the award; and

(c) state as the case may require either that the award has not been complied with or the extent to which it has not been complied with at the date of the application.

11.4 What is the effect of an arbitration award in terms of *res judicata* in Nigeria? Does the fact that certain issues have been finally determined by an arbitral tribunal preclude those issues from being re-heard in a national court and, if so, in what circumstances?

An award disposes of all disputes between parties that are submitted to arbitration. Thus, if a party brings a court action on the same subject matter that has been disposed of by arbitration and on the same cause of action, the court will dismiss the action on the ground that the issues are *res judicata* on the basis of issue estoppel. Issue estoppel arises where an issue had earlier on been adjudicated upon by a court of competent jurisdiction between the same parties. The law is that either party to the proceedings is estopped from raising that same issue in any subsequent suit between the same parties and the same subject matter. (***Oyerogba v. Olaopa*** *(1998) 13NWLR pt. 583 p .512.*) Issue estoppel also arises in respect of issues which ought to have been raised in the former suit, but which were not raised. It applies to issues raised, but not expressly decided; such issues are deemed to have been decided by implication and thus *res judicata*.

Issue estoppel has been held to extend to arbitration. (See ***Middlemiss v. Hartlepool Corporation*** *(1973) 1 A.E.R. 172.*) The question of whether an arbitral award will operate as *res judicata* has not been fully tested in Nigeria, but the provision of section 31 of ACA implies that an arbitral award has the same effect as the judgment of the court. See sections 31(1) and (3) which provide that an arbitral award shall be recognised as binding and may be enforced in the same manner as a court judgment or order to the same effect. In the case of ***Aye-Fenus Enterprise Ltd v. Saipem (Nigeria) Ltd*** *[2009] 2 NWLR (Part 1126)*, the court held that "*By virtue of the provisions of section 34 of ACA, a court shall not intervene in any matter governed by the Act except where so provided in the Act. If, in arbitration proceedings, an issue is raised for decision and has been decided, that makes it final. The parties cannot be allowed thereafter to reopen it. The reason is that just as the parties would not be allowed to do so in the case of a judgment not appealed from, the point so decided is res judicata. The only jurisdiction conferred on the court is to give leave to enforce the award as a judgment unless there is a real ground for doubting the validity of the award*".

11.5 What is the standard for refusing enforcement of an arbitral award on the grounds of public policy?

That an award is contrary to public policy is a ground for setting aside or refusing enforcement of an award under sections 48(2)(b)(ii) and 52(2)(b)(ii) of ACA. ACA does not define the concept of public policy and the concept has not been exhaustively defined, even by Nigerian case law. Generally, public policy is always at the root of the defence of illegality and the concept of breach of public policy connotes breach of Nigerian law or State policies. Nigerian courts may also resort to the standards of public policy as defined by international law, which include:

- That which has *a tendency to be injurious to the public, or against the public good*. (See ***Egerton v. Brownlow*** *(1953) 4 HLC 1;* and ***Renusagar Power Co. Ltd. v. General Electric Co****. (1995) XX YBCA 681, para. 24*.)
  - (a) **Procedural public policy grounds:** fraud in the composition of the tribunal; breach of natural justice; lack of impartiality; lack of reasons in the award; manifest disregard of the law; manifest disregard of the facts; or annulment at place of arbitration.
  - (b) **Substantive policy grounds:** breach of mandatory rules; fundamental principles of law; or actions contrary to good morals and national interest/foreign relations.

  See *International Law Association Committee on International Commercial Arbitration, Public Policy as a bar to the Enforcement of International Arbitral Awards, London Conference Report (2000) 17 – 24.*
- Serious irregularities in the arbitration procedure and allegations of illegality. (***Soleimany v. Soleimany*** *(1998) 3 WLR 811; (1999) QB 785 (CA)*.)
- Corruption or fraud - see ***Westacre Investments Inc v. Jugoimport – SPDR Holding Co. Ltd. and Others*** *(1999) 2 Lloyd's Rep. 65 (CA), (2000) QB 288* CA;and ***European Gas Turbines SA v. Westman International Ltd.*** *Rev. Arb 359 (1994) XX YBCA 198 (1995).*
- The award of punitive damages.
- Breach of competition law - see ***Eco Swiss China Time Ltd. v. Benetton International NV*** *(1999) 2 All ER (Comm) 44.*

See generally, *Julian D.M. Lew, Loukas A. Mistelis & Stefan M. Kroll: Comparative International Commercial Arbitration 2003, p. 730 - 731.*

12 Confidentiality

12.1 Are arbitral proceedings sited in Nigeria confidential? In what circumstances, if any, are proceedings not protected by confidentiality? What, if any, law governs confidentiality?

Arbitral proceedings in Nigeria are confidential and general confidentiality rules apply. Article 25(4) of the Arbitration Rules provides that arbitration hearings shall be held *in camera*, unless parties agree otherwise. In practice, the entire arbitral proceedings, not just hearings, are held *in camera*; only parties, their representatives and counsel are usually allowed to attend. This explains why there are little or no reported arbitration cases in Nigeria. However, parties may, by agreement, waive confidentiality and allow persons who are not parties to the proceedings to attend the hearing.

ACA does not contain an express provision on confidentiality in respect of arbitral proceedings, but with regard to conciliation, Article 14 of the Third Schedule to ACA provides that the conciliator and the parties must keep confidential all matters relating to the conciliation proceedings. Confidentiality extends to the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement.

12.2 Can information disclosed in arbitral proceedings be referred to and/or relied on in subsequent proceedings?

Usually, since arbitration is confidential, information disclosed in arbitral proceedings ought not to be disclosed to third parties except with the consent of parties. However, just as there are exceptions to the rule of privileged evidence, certain circumstances may warrant the disclosure of such information, for instance, where a party is called upon by the court to make a disclose of such matters or to produce documents relating to the arbitral proceedings, where such disclosure is necessary for the purpose of enforcement of an award, to prevent the perpetuation of fraud or illegality, etc. Note that the award itself can be referred to or relied on in subsequent court proceedings. Once the matter gets into the court system then any documents exhibited in the court proceedings may become accessible to the public.

13 Remedies / Interests / Costs

13.1 Are there limits on the types of remedies (including damages) that are available in arbitration (e.g., punitive damages)?

Generally, an arbitrator has a duty to abide by the terms of the arbitration agreement and of the substantive contract in rendering an award. ACA does not specify the measure of reliefs or damages which an arbitrator can award and an arbitrator can award a range of remedies such as injunctions, monetary compensation, general or special damages, declaratory relief, specific performance, interest, cost, and so on. The terms of the substantive contract or arbitration agreement and the law applicable to same would determine how far the arbitrator can go and he must be careful not to exceed it.

13.2 What, if any, interest is available, and how is the rate of interest determined?

ACA does not give an arbitrator express powers to award interest. However, an arbitrator has inherent powers to award interest on amounts successfully claimed based on the overriding principle of award of interest which presupposes that interest should be awarded to the claimant, not as compensation for the damage done, but for being kept out of money which ought to have been paid to him. (See ***N.B.N. Ltd. v. Savol W.A. Ltd.*** *(1994) 3 NWLR (Part 333) Page 435 at 463;* and ***R.E.A. v. Aswani Textile Industries*** *(1991) 2 NWLR (Part 176) 639 at 671*.)

13.3 Are parties entitled to recover fees and/or costs and, if so, on what basis? What is the general practice with regard to shifting fees and costs between the parties?

Section 49 of ACA provides that the arbitral tribunal shall award costs in its award. Costs include the fees of the arbitral tribunal, travel and other expenses incurred by the arbitrators, the cost of expert advice and of other assistance required by the arbitral tribunal, travel and other expenses of witnesses to the extent approved by the tribunal, reasonable costs of legal representation and assistance of the successful party that were claimed during the arbitral proceedings. The general practice is that costs follow the event and the unsuccessful party pays the costs, subject however to the circumstances of each case, for instance, the extent to which the other party has been guilty of delay in the course of the arbitral proceedings. Article 40 of the Arbitration Rules gives the arbitral tribunal the power to apportion costs between the parties based on the circumstances of the case. ACA does not list all the circumstances that may affect apportionment of costs. However, the effect of sealed offers or settlement offers is one relevant factor which arbitrators generally consider. The High Court of Lagos State Civil Procedure Rules 2012 has expressly introduced the effect of settlement offers in the award of costs in judicial proceedings by the provision of Order 49(2) that where an offer of settlement made in the course of Case Management or ADR is rejected by a party and the said party eventually succeeds at trial but is awarded orders not in excess of the offer for settlement earlier made, the winning party shall pay the cost of the losing party from the time of the offer of settlement up to judgment. It is hoped that the proposed amendments to ACA would include this express provision.

13.4 Is an award subject to tax? If so, in what circumstances and on what basis?

ACA does not provide that an award is subject to tax. Since an award may be enforced as a court judgment, the general rules of judgment debt are applicable to an award. Under Nigerian tax laws, certain services or transactions are taxable by law and an award becomes income to the receiving party which under a taxable contract or service is subject to tax. However, in practice, like judgment debts, awards are not usually taxed when enforced.

13.5 Are there any restrictions on third parties, including lawyers, funding claims under the law of Nigeria? Are contingency fees legal under the law of Nigeria? Are there any "professional" funders active in the market, either for litigation or arbitration?

The rule against champerty and maintenance prohibits third parties, including lawyers, from funding claims or litigation with the aim of deriving some benefit from the outcome. ACA does not provide for maintenance and champerty, but Rule 51 of the Rules of Professional Conduct for Legal Practitioners 2007 (RPC) states that "*A lawyer shall not enter into an agreement to pay for, or bear the expenses of his client's litigation, but the lawyer may in good faith advance expenses (a) as a matter of convenience, and (b) subject to reimbursement*". Rule 50(3) of RPC provides that "*Except as provided in sub rule (1) of this rule, a lawyer shall not purchase or otherwise acquire directly or indirectly an interest in the subject matter of the litigation which he or his firm is conducting but he may acquire a lien granted by law to secure his fee and expenses*". Rule 50(1) of RPC provides that a lawyer may enter into a contract with his client for a contingent fee in respect of a civil matter provided that the contract is reasonable and is not vitiated by fraud, mistake or undue influence or contrary to public policy and there is a *bona fide* cause of action (in case of litigation). Rule 50(2) of RPC states that "*A lawyer shall not enter into an arrangement to charge or collect a contingent fee for representing a defendant to a criminal case*". Thus contingency fees are legal in Nigeria except for criminal matters and provided the contingency fees are reasonable.

Note that by Rule 50(4) of RPC, a lawyer must first advise the client of the effect of the contingency arrangement and afford the client an opportunity to retain the lawyer under an arrangement whereby the lawyer would be compensated on the basis of a reasonable value of his service. In other words, contingency fee arrangements should be by the client's choice and should not be imposed on the client.

14 Investor State Arbitrations

14.1 Has Nigeria signed and ratified the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (1965) (otherwise known as "ICSID")?

Nigeria ratified the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States in August 1965. The Convention came into force in Nigeria in October 1966.

14.2 How many Bilateral Investment Treaties (BITs) or other multi-party investment treaties (such as the Energy Charter Treaty) is Nigeria party to?

Nigeria is a party to a significant number of BITs. For instance, there is the BIT between the Republic of Turkey and the Federal Republic of Nigeria Concerning the Reciprocal Promotion and Protection of Investments. Article VI thereof provides for submission of disputes to the ICSID, or to an *ad hoc* court of arbitration under the UNCITRAL Arbitration Rules or to the Court of Arbitration of the Paris International Chamber of Commerce. Others include the U.S-Nigeria Trade and Investment Framework Agreement (TIFA), Nigeria-Egypt, Nigeria-France, Nigeria-UK, Nigeria-Germany BITs for the Promotion and Protection of Investments, and many others. Nigeria is not a party to the Energy Charter Treaty, although Nigeria became an observer to the Charter in 2003.

Domestically, the Nigerian Investments Promotion Commission Act allows settlement of disputes under the auspices of the ICSID. Section 26 provides that any dispute between a foreign investor and the Nigerian government shall be settled within the framework of any bilateral or multilateral agreement on investment protection to which the Federal Government and the investor's country are parties and where there is disagreement between the investor and the Federal Government as to the method of dispute settlement to be adopted, the ICSID Rules shall apply.

14.3 Does Nigeria have any noteworthy language that it uses in its investment treaties (for example in relation to "most favoured nation" or exhaustion of local remedies provisions)? If so, what is the intended significance of that language?

Most of the investments treaties are in the English language because English is the official language of Nigeria. However, a few of the BITs are in the official language of the other country with whom Nigeria signed the BIT.

14.4 What is the approach of the national courts in Nigeria towards the defence of state immunity regarding jurisdiction and execution?

In Nigeria, section 308 of the 1999 Constitution of the Federal Republic of Nigeria provides immunity from court proceedings for the sovereign who is the executive arm of government. Thus actions that are similar to this must be strictly construed in favour of the sovereign. The defence of state immunity does not, however, prevent Nigeria as a state or sovereign from agreeing to submit to the authority of an arbitral tribunal. As regards jurisdictional immunity, where Nigeria, as a sovereign state, has agreed to arbitrate, such agreement would be treated as a waiver of immunity. Generally, by virtue of the New York Convention which is domesticated in Nigeria as Schedule 2 to ACA, Nigerian courts have jurisdiction to recognise an arbitral award made under an agreement to arbitrate where the seat of arbitration is Nigeria. Similarly, by virtue of the New York Convention, where Nigeria has signed a valid agreement to arbitrate, an award against it may be recognised and enforced by courts in a foreign jurisdiction in which she has assets. Thus, a valid and binding agreement to arbitrate to which Nigeria is a party will also operate as a waiver of immunity from execution.

15 General

15.1 Are there noteworthy trends in or current issues affecting the use of arbitration in Nigeria (such as pending or proposed legislation)? Are there any trends regarding the type of disputes commonly being referred to arbitration?

There are draft bills to amend ACA before the National Assembly. ACA is the federal arbitration law in Nigeria and the proposed amendments are intended to meet the dynamics of modern commercial transactions. However, a recent trend is the increasing insertion of arbitration clauses with the Lagos State Arbitration Law as applicable law. We therefore expect increased relevance of the Lagos Arbitration Law in future as disputes begin to arise on those contracts.

Oil and gas, maritime, construction and investment disputes are commonly being referred to arbitration. A noteworthy trend is that such disputes increasingly involve multi-parties and multi-contracts and thus impact on the principle of contractual consent in arbitration.

15.2 What, if any, recent steps have institutions in Nigeria taken to address current issues in arbitration (such as time and costs)?

The International Chamber of Commerce (ICC) Rules have been modified to meet with current trends like cost and time effectiveness. For example, Article 24 of the new ICC Rules (2012) confers case management powers on the arbitral tribunal and gives the tribunal the discretion to employ various case management techniques with the aim of reducing time and cost whilst affording the parties better access to justice. The ICC Nigeria Commission on Arbitration (ICCN) launched the New ICC Rules in Lagos, Nigeria on the 30th of May 2012 in an event which formally presented the Rules to the Nigerian public and achieved capacity building of arbitrators, Counsel, parties and their representatives on the Rules.

The Chartered Institute of Arbitrators (Nigerian Branch) organises a programme of events annually to train its members on current arbitration issues. The Lagos Multidoor Court House (LMDC) has created special process tracks (such as the Banking Track which involves case management components and the profiling of suitable cases for referral to the LMDC) for effective dispute resolution. LMDC also organises a Lagos Settlement Week annually whereby cases which have been litigated for many years are identified and referred to the appropriate forum (arbitration or other ADR) for settlement.

The Rules of the Lagos Regional Centre for Arbitration (adapted from the UNCITRAL arbitration Rules of 1976) are modified to provide for the fixing of arbitrator(s) fees in accordance with the Centre's schedule of fees which are based on the amount in dispute, rather than on a daily rated basis, in order to encourage the expeditious conduct of arbitration and to give the parties an indication of costs at the outset. Other modifications include collection of deposits on account of fees and costs, ensuring compliance with the Rules and time limits.

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