NIGERIA

Anthony Idigbe[[1]](#footnote-2)\* and Omone Tiku[[2]](#footnote-3)\*\*

I.  Introduction: Arbitration in NIGERIA—   
History and Infrastructure

A. History and Current Legislation on Arbitration

1. Historical evolution of law relating to arbitration

Customary arbitration was a recognised form of dispute resolution in Nigeria before the advent of British colonial rule and court system. Hitherto, various indigenous communities in Nigeria practised an organised system of dispute resolution whereby disputes were referred to a village head or elders having some authority over the parties and village head or elders would resolve the dispute in accordance with native law and custom at a meeting at which the disputing parties were present.[[3]](#footnote-4) According to Webster J. B. and Bouhen A.:

Quarrels between individual of different families in the ward were settled before the people in the ward, elders acting as arbiter. Quarrels between wards comes before the full assembly.... A man might attempt to settle with the individual who had aggrieved him, if this failed he could ask a respectable elders to intervene or call members of the family together, he could also ask the ward or village head to solve the case.[[4]](#footnote-5)

For a long time, customary arbitration continued to be a common means of resolving land disputes, matrimonial disputes, chieftaincy and religious disputes in Nigerian indigenous communities until the advent of British colonial rule when more and more cases were being referred to court.[[5]](#footnote-6)

The constant quest for economic growth in Nigeria led to increased business activities which in turn gave rise to commercial disputes that require settlement. In settling commercial disputes, business men often seek to resolve their disputes within the shortest possible time and in a manner that would preserve their business relationships. The 1999 Constitution of the Federal Republic of Nigeria[[6]](#footnote-7) (as amended) sets up the court system and vests in it the right to determine controversies between persons in Nigeria. Section 36(1) of the 1999 Constitution provides that *“In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.”* Access to court is therefore a fundamental right of every Nigerian citizen and litigation has been the traditional means of dispute resolution in Nigeria.

Litigation is usually associated with hostility and does not always achieve the purpose of preserving long standing business relationships. Indeed most litigations end the parties’ business relationship afterwards. Also, the number of disputes occurring on a daily basis and large volumes of case files in the court dockets often outweighs the court facilities. This coupled with strict adherence to rules and procedure affect the speed of justice delivery in the Nigerian court system. Thus, the quest to get justice in a faster way and to keep business relationships intact amongst other reasons gave rise to commercial arbitration and other alternative dispute resolution (ADR) mechanisms. The choice of arbitration also stems from other features of arbitration which make it more attractive than litigation, for instance, party autonomy, privacy, finality and bindingness of award.[[7]](#footnote-8)

Arbitration as a form of dispute resolution in Nigeria finds constitutional justification in section 36(1) of the 1999 Constitution (As Amended). The key word “*entitled*” in section 36(1) implies that parties can waive their constitutional rights to court and choose arbitration. In other words, a party to an agreement with an arbitration clause has the option to either submit to arbitration or have the dispute decided by the court, subject however to an order for stay of proceedings at the instance of the other party.[[8]](#footnote-9) Also, an arbitral tribunal constituted in accordance with an arbitration clause and the relevant law falls within the ambit of the words “*or other tribunal established by law”* under section 36(1) of the 1999 Constituion (As amended).

Arbitration in Nigeria is a system built on law and which relies upon that law to make it effective, both nationally and internationally. The Arbitration and Conciliation Act 1988[[9]](#footnote-10) recognises court intervention in arbitration to the extent permitted by law as well as only to the extent as agreed to by parties.[[10]](#footnote-11)

Thus, the courts[[11]](#footnote-12) still have a role to play in the arbitration process. The relationship between courts and arbitral tribunals is one of “partnership” and constant shifts and changes where each has a different role to play at different times. The Act however stipulates the extent of court intervention in arbitration.[[12]](#footnote-13)

2. Current law

a) Domestic arbitration law

The Arbitration and Conciliation Act*[[13]](#footnote-14)* is the main national arbitration law in Nigeria governing domestic arbitration and conciliation. It is an Act of the National Assembly enacted to provide a unified legal framework for the fair and efficient resolution of commercial disputes by arbitration and conciliation. The Arbitration & Conciliation Act (ACA) was first promulgated as Decree No. 11 of 1988 under the military regime and was later enacted as the Arbitration and Conciliation Act Cap 19 Laws of the Federation of Nigeria 1990.[[14]](#footnote-15) Following the revision of the laws of the federation of Nigeria, the 1988 Act is now known and cited as the Arbitration and Conciliation Act Cap A18, laws of the Federation of Nigeria 2004. The Act is divided into four (4) Parts and three (3) Schedules and contains various provisions on form of arbitration agreement, constitution of the arbitral tribunal, jurisdiction of the arbitral tribunal, conduct of arbitral proceedings, recognition and enforcement of awards, amongst other provisions. The Act applies to all arbitration (usually ad hoc) whose seat is Nigeria unless the parties have agreed in the arbitration clause or by other means on a different governing law. Arbitral proceedings under the Act are conducted in accordance with the Arbitration Rules contained as Schedule 1 to the Act. But, in the absence of any provision in the Rules on 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.[[15]](#footnote-16) Schedule 3 of the Act applies to conciliation.

Arbitration is under the concurrent legislative list of the 1999 Constitution of Nigeria (as amended) and so both the federal and state governments can legislate on it. There are existing arbitration laws by Lagos State and the northern states of Nigeria. The Lagos State Arbitration Law was enacted in 2009 to govern all arbitration with Lagos as the seat unless the parties have expressly agreed otherwise.[[16]](#footnote-17) Also, there is the Lagos Court of Arbitration Law 2009. This law established the Lagos Court of Arbitration (LCA) and vests in it the power to promote resolution of disputes within Lagos State by arbitration and other alternative dispute resolution (ADR) mechanisms. LCA is also empowered to constitute an arbitral tribunal and maintain a panel of neutrals which shall consist of arbitrators, mediators and other dispute resolution experts for the purpose of providing administered dispute resolution services.[[17]](#footnote-18)

ACA is largely modelled after the 1985 UNCITRAL model law on arbitration. However, there are a few significant differences. For instance, the Arbitration and Conciliation Act confers express power on the courts in Nigeria to stay court proceedings commenced in breach of an arbitration clause until the hearing and determination of the arbitration The 1985 UNCITRAL law does not expressly confer power of stay of proceedings on the court, although this power is implied in the UNCITRAL model law.[[18]](#footnote-19) Also, the UNCITRAL model law provides for parties to go to court to challenge the decision of the arbitral tribunal on its own competence but the Arbitration and Conciliation Act gives the tribunal power to decide on challenge of an arbitrator and parties have no further recourse to court against the decision of the tribunal on the issue.[[19]](#footnote-20) The Lagos Arbitration Law contains similar provisions to the Arbitration and Conciliation Act but the Lagos Law has introduced some innovations and improvement on the federal law.[[20]](#footnote-21)

Apart from the federal and state arbitration laws, provisions on arbitration procedure are now being recognised and incorporated into Nigerian Court Rules, especially as regards court-connected arbitration i.e. where the court is called upon to intervene in the arbitration process. For instance, the High Court of Lagos State (Civil Procedure) Rules 20012, the Federal High Court (Civil Procedure) Rules 2009, The Delta State Civil Procedure Rules 2009, Court of Appeal Rules 2016 and the Lagos Multi-Door Court House Law 2007 contain provisions on arbitration procedure. In addition, international arbitration laws and conventions to which Nigeria is a signatory are applicable in Nigeria where parties have stipulated in their arbitration agreement that such laws or conventions will govern their agreement. This is because arbitration is largely party oriented and parties are free to choose the applicable law to their dispute.[[21]](#footnote-22)

Again, in Nigeria mandatory pre-arbitration clause is gaining weight in business to business transactions such as telecommunications, pension and capital market transactions like mergers and acquisitions (M&A). For instance, under the Securities and Exchange Commission Rules and Regulations, vending and underwriting agreements must carry an arbitration clause. Also statutes such as the Pension Reform Act and Nigerian Communications Commission Act provide for arbitration as the means of resolving disputes in those sectors.[[22]](#footnote-23)

b) International arbitration law

ACA and the Arbitration Rules made pursuant to it govern domestic and international arbitration whose seat is Nigeria. Section 53 of the Act provides that:

Notwithstanding the provisions of this Act, the parties to an international commercial agreement may agree in writing that disputes in relation to the agreement shall be referred to arbitration in accordance with the Arbitration Rules set out in the First Schedule to this Act, or the UNCITRAL Arbitral Rules or any other international arbitration rules acceptable to the parties.

Part III of ACA[[23]](#footnote-24) applies specifically to international commercial arbitration (and conciliation) and contains provisions on appointment of arbitrators, grounds for setting aside an award, grounds for refusing recognition or enforcement of an award amongst other provisions. Also, Nigeria has ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) and adopted it as Schedule 2 of the Arbitration and Conciliation Act. This Convention governs the recognition and enforcement of international arbitral awards. Nigeria has also ratified the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID) and the Convention is applicable to an investment dispute between a Nigerian national or entity and a national of another contracting member state.

In addition, Nigeria is a party to a significant number of Bilateral Investment Treaties (BITs). There is the BIT between the Republic of Turkey and the Federal Republic of Nigeria Concerning the Reciprocal Promotion and Protection of Investments which provides for submission of disputes to 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. Nigeria is also a party to other BITs like the U.S-Nigeria Trade and Investment Framework Agreement (TIFA), Nigeria–Egypt, Nigeria–UK, Nigeria–Germany BITs for the Promotion and Protection of Investments, amongst others and such BITs may be applicable to international arbitration involving Nigeria and those states. The Nigerian Investments Promotion Commission (NIPC) Act allows settlement of disputes under the auspices of 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.[[24]](#footnote-25)

3. Law reform projects

Following recognition of the dynamics and modern demands of arbitration as a commercial dispute resolution mechanism and various proposals for amendment of the Nigerian federal arbitration law, a Federal Arbitration and Conciliation Bill has been drafted and presented before the Nigerian legislature.[[25]](#footnote-26) The Bill seeks to cover issues not envisaged by the Arbitration and Conciliation Act and improve on the existing arbitration laws in Nigeria. The Bill is expected to have positive impacts on arbitration practice in Nigeria if passed into law.[[26]](#footnote-27) There have also been proposals for the amendment of the state arbitration laws. Lagos State appears to be at the forefront of arbitration reforms in Nigeria with the enactment of the Lagos State Arbitration Law 2009 and the Lagos Court of Arbitration Law 2009.

4. Confidentiality and publication of awards

a) Privacy of proceedings

In Nigeria, arbitral proceedings are private. Article 25(4) of the Arbitration Rules provides that arbitration hearings shall be held *in camera*, unless parties agree otherwise.[[27]](#footnote-28) In practice, arbitral proceedings are restricted to the parties, their representatives, counsel and witnesses in addition to the arbitrators and administrative secretary.[[28]](#footnote-29) However, parties may, by agreement, waive their right to privacy and allow persons who are not direct parties to the proceedings sit in. For instance, a person interested in the subject matter or outcome of the arbitration or a pupil arbitrator may be allowed to sit in the proceedings and in such cases, the third party maintains the duty of privacy.

Whilst there is express provision on privacy under the Arbitration & Conciliation Act, there is no express provision on confidentiality of arbitral proceedings. The only express provision on confidentiality is Article 14 of the Third Schedule to the Arbitration and Conciliation Act with regards to conciliation. Article 14 provides that “*the conciliator and the parties must keep confidential all matters relating to the conciliation proceedings.”* However, confidentiality is implied in arbitration as a natural effect of the rule on privacy. It is also implied from section 26(4) of the Act which provides that an award signed by the arbitrators shall be delivered to each party. Thus, the arbitration proceedings as well as the award are private and confidential to the parties. This explains why unlike judicial precedents, there are no published arbitration reports in Nigeria. The element of confidentiality makes arbitration an attractive choice for resolution of oil and gas disputes, telecommunication disputes and such disputes which involve huge capital and confidential business arrangements.

Confidentiality and privacy extend to documents and evidence used in arbitration proceedings and such documents may enjoy the status of privileged information or documents under the rules of evidence.[[29]](#footnote-30) Again, there is no express provision on this point under the Arbitration and Conciliation Act and the position has not been fully tested in Nigerian courts. The situation appears even more complex by virtue of the new section 2 of the Evidence Act 2011 to wit: “*For the avoidance of doubt, all evidence given in accordance with section 1*[[30]](#footnote-31) *shall, unless excluded in accordance with this or any other Act, or any other legislation validly in force in Nigeria be admissible in judicial proceedings to which this Act applies: provided that admissibility of such evidence shall be subject to all such conditions as may be specified in each case by or under this Act.”* It may therefore be argued that documents and information derived from arbitration can be used as evidence in court proceedings in so far as such documents or information are relevant to the court proceedings and the Arbitration and Conciliation Act does not exclude the use of such documents or information in court.

On the other hand, the confidentiality or privileged status of arbitration may be waived where a person is compelled by law to disclose such matters or to produce documents relating to the arbitral proceedings, for instance where such disclosure is necessary for the purpose of enforcement of an award, to prevent the perpetuation of fraud, illegality, for the purpose of public policy or public purpose and so on.

b) Publication of awards

There is no provision under the Arbitration and Conciliation Act for publication of the award, other than to the parties to the arbitration. Section 26(4) of the Act provides that the award shall be signed by the arbitrators and delivered to each party. Thus unlike court judgements which are read or delivered in open court, an arbitral award is private and confidential and delivered to the parties directly.

B. Arbitration Infrastructure and Practice in Nigeria

1. Major arbitration institutions

The major arbitral institutions in Nigeria are:

**a. The Chartered Institute of Arbitrators (CIArb)—the Nigeria Branch** of the Chartered Institute of Arbitrators, United Kingdom**.** The Nigeria Branch is one of the 31 branches of the Chartered Institute of Arbitrators, UK. Granted a Branch status in 1998, CIArb Nigeria Branch has over one thousand three hundred (1,300) members from all disciplines including Law, Construction, Shipping, Engineering, Insurance, Banking, Accounting and Medicine. The Institute administers systems for the resolution of business and consumer disputes, as well as nominating and appointing services for ad-hoc arbitrations, adjudications and mediations. The institute’s main objective is to promote and facilitate worldwide the determination of disputes by arbitration and alternative means of private dispute resolution, other than resolution by the Court (collectively called “Alternative Dispute Resolution”). It also provides facilities for arbitration hearings, meetings and other events.[[31]](#footnote-32) The Institute is governed by its Branch Model Rules and administered by a Branch Committee.

**b. The Regional Centre for International Commercial Arbitration Lagos (RCICAL)** was established in 1989 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. RCICAL is 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.[[32]](#footnote-33) RCICAL renders assistance in the enforcement of awards made under its Rules.[[33]](#footnote-34) Some of the functions of the RCICAL are **to –**

(a) promote international arbitration and conciliation in the region,

(b) provide arbitration under fair, inexpensive and expeditious procedure in the region;

(c) act as a coordinating agency in the Consultative Organisation dispute resolution system;

(d) co-ordinate the activities of and assist existing institutions concerned with arbitration, particularly among those in the region;

(e) render assistance in the conduct of ad hoc arbitration proceedings, particularly those held under the Rules;

(f) assist in the enforcement of arbitral awards.

The facilities for arbitration under the auspices of the Lagos Centre can be availed of by parties who may request for it, whether government, individuals or bodies corporate, provided the dispute is of an international character, that is to say, the parties belong to or are resident in two different jurisdictions, or the dispute involves international commercial interests.

**c. The** **Lagos Multi-Door Courthouse** (**LMDC**)[[34]](#footnote-35) was established on June 11, 2002, as a public-private partnership (PPP) between the **High Court of** Lagos State and the **Negotiation and Conflict Management Group** (**NCMG**) to facilitate dispute resolution within the Nigerian justice system. It is the first court-connected Alternative Dispute Resolution Centre in Africa. LMDC handles various types of commercial disputes referred to it by the High Court of Lagos State, courts of other jurisdictions outside Lagos State, Federal High Courts, private persons, corporations, businesses, public institutions, and other dispute resolution organizations. LMDC has alternative “Doors” for resolving disputes instead of the traditional "mono door" of litigation which leads to the courtroom. The LMDC “Doors” include **Mediation, Arbitration, Early Neutral Evaluation and Hybrid Doors.**[[35]](#footnote-36) **LMDC organises a Settlement Week every year, a week set aside by the Chief Judge of Lagos State for specific courts to clear the backlog of cases through arbitration and other ADR procedure. Over 100 civil cases are handled at the Settlement Week annually.**

**d. The International Chamber of Commerce (ICC) This is another arbitral institution commonly resorted to in Nigeria. Generally, more and more commercial contracts in Nigeria contain institutional arbitration clauses due to the fact that administration of arbitration was usually more effective and consequently many contracts contain ICC arbitration clauses. Where a contract contains an ICC clause and parties have failed to nominate their arbitrator(s), the ICC National Committee in Nigeria (ICC Nigeria) proposes or nominates an arbitrator when called upon by the ICC International Court of Arbitration to do so.**[[36]](#footnote-37) **ICC Nigeria interfaces between the Secretariat in Paris and the parties or tribunal where necessary and performs other functions such as organising training and development programmes in consultation with the headquarters in Paris, keeping members abreast of current developments in arbitration, international trade and other business issues. ICC Nigeria in June 2016 held the first ICC Africa Regional Arbitration Conference with the theme: Arbitration and Africa: Prospects and Challenges and is now an annual event.**

**e. Lagos Court of Arbitration** was established in 2012 in Lagos as an independent centre for commercial dispute resolution. It was established by the Lagos Court of Arbitration Law 2009. The LCA was established with the following objectives;

* Limit abuse of court intervention and obstruction of the arbitration process
* Promote party autonomy in regulating how disputes should be determined

The LCA was formally launched on November 9, 2012 at the opening of the Kuramo Conference; an international biennial summit hosted in Lagos, Nigeria.

In December 2014, LCA entered a partnership with the Lagos Chamber of Commerce International Arbitration Centre (LCCIAC), to promote Lagos as the centre of choice for the resolution of Africa related arbitrations.

II.  Current Law and Practice

A. Arbitration Agreement

1. Types and validity of agreement

a) Arbitration Clauses and submission agreements

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. In other words, an arbitration clause in a contract is usually drafted before dispute arises while a submission agreement is drafted after a dispute has arisen.

b) Minimum essential content

ACA does not stipulate the essential content of an arbitration clause but generally, an arbitration clause should indicate the agreement of two or more contracting parties to refer their dispute to arbitration. In other words, there must be a clear and unequivocal reference of future or existing dispute to arbitration and an indication of parties consent to arbitrate. However, there are situations of non-consensual or compulsory arbitration, as depicted in statutes and consumer standard form contracts which do not involve the parties’ prior consent. For instance, in business to business transactions such as telecommunications, pension and capital market transactions, statutes or regulators[[37]](#footnote-38) may impose mandatory arbitration clauses. Agreements like vending and underwriting agreements must by regulation in Nigeria carry an arbitration clause.[[38]](#footnote-39) Under statutes such as the Pension Reform Act, Nigeria Communications Commission Act, Securities and Exchange Commission (SEC) Rules, disputes in such sectors are referred to arbitration.[[39]](#footnote-40) Under the National Investment Promotion Act, any foreign investor who registers under the Act is automatically entitled to bring treaty arbitration under the ICSID system.[[40]](#footnote-41) Arbitration provisions contained in such statutes are deemed to be binding on any person to whom they apply.

Certain features should be clear from an arbitration agreement. There should be an unequivocal adoption of arbitration as the means of resolving disputes between the parties. It should be clear whether the parties intended to make arbitration a mandatory dispute resolution forum and the extent to which they intend to exclude court intervention or reference to other dispute resolution mechanisms. For instance where the dispute resolution procedure involves dual or multiple mechanisms e.g. mediation and expert determination in addition to arbitration, it should be clear from the words of the arbitration clause if arbitration was intended to be final and binding and whether it was mandatory to first exhaust the other dispute resolution options before going to arbitration. This is an essential element which the courts will consider in determining if there has been a breach of an arbitration clause, such as to grant a stay of proceedings under section 4 and 5 of ACA[[41]](#footnote-42) or to grant leave to appeal or joinder of a party who has been adversely affected by a breach of the arbitration agreement. The case of *Federal Airports Authority of Nigeria v. Bicourtney Limited & Attorney General of the Federation*[[42]](#footnote-43) is instructive on this point. The dispute resolution clause provided a 3-tier procedure to wit: (i) amicable settlement between the parties assisted by a Coordinating Committee; (ii) mediation by a panel of experts, and (iii) arbitration in accordance with the Arbitration and Conciliation Act applicable in Nigeria. The clause provided as follows:

22.2 Amicable Settlement by the Coordinating Committee

In the event that any dispute, controversy or claim arises… the unanimous decision of the Coordinating Committee shall be binding upon the parties. In the event that a settlement is not reached pursuant to this Article 22.2 within thirty (30) days of the said request then the provisions of Article 22.2 [sic] shall apply.

22.3.5 Decision

The Panel of Experts shall reach a majority decision and give notice to the parties of their decision within thirty days of the receipt of the documents provided under Article 22.2.3. The decision of the panel of Experts shall be binding unless one party issues a notice of intention within thirty (30) days of the decision to refer the matter to arbitration in accordance with Article 22.3. In such case the Panel of Experts decision shall remain binding until final resolution by the arbitration or until an interim decision of the arbitration tribunal reversing or amending the Panel of Experts’ decision.

22.4 Arbitration

In the event that parties are unable to resolve any dispute, controversy, or claim in accordance with Articles 22.2 or 22.3 and in case of challenge to any decision of the panel of Experts under Article 22.2.5, such dispute, controversy or claim shall be finally settled by arbitration under the Arbitration Rules of the Arbitration and Conciliation Act.

One of the parties to the contract instituted court action to enforce the decision of the Coordinating Committee and the Federal High Court gave judgment in favour of the Plaintiff enforcing the decision of the Coordinating Committee which decision affected a party who was a party to the arbitration agreement but was not a party to the suit at the Federal High Court. The affected party then applied to the Court of Appeal for leave to appeal as an interested party against the judgment of the Federal High Court and the question arose as to whether there was a breach of the dispute resolution procedure; in particular whether the decision of the Coordinating Committee was final and enforceable without affording the affected party the right to arbitrate. In other words, was the decision of the Coordinating Committee final and conclusive by the use of the word “binding” in clause 22.2 over the power of the arbitrators to resolve the dispute ‘finally’ under clause 22.4? Was a party to the arbitration agreement entitled to initiate arbitration proceedings if dissatisfied with the decision of the Coordinating Committee? The Court of Appeal did not pronounce on this issue but dismissed the applicant’s case on alleged procedural technicalities.[[43]](#footnote-44) The matter is now before the Supreme Court to face the herculean task of interpreting the effect of the words ‘final’ and ‘binding’ as used in the above dispute resolution procedure.

Again, the use of the word, “*may*” in describing the right to arbitrate creates the argument on whether or not arbitration was intended to be mandatory. Although the courts have held that “*may*” could connote a mandatory action as “shall” and vice versa,[[44]](#footnote-45) it is safer to state that any disputes “shall” be resolved by arbitration.

In addition to the unequivocal adoption of arbitration as a final and binding means of resolving the dispute, the scope of the arbitration clause should be clear. For instance, it should be clear if the arbitration clause extends to other disputes arising under related contracts between the parties, such as in a construction contract involving the employer and main contractor as well as subcontracts between the main contractor and sub contractors related to the main contract. Whilst it is usual to indicate the scope of an arbitration clause in this manner: *“all disputes arising out of or in relation to this contract shall be referred to arbitration...”* a delicate challenge still arises with regard to the jurisdiction of one arbitral tribunal over the parties to the other contracts. It is difficult to envisage and represent all the issues in the arbitration clause, and even if it were possible, the arbitration clause would be too lengthy and cumbersome and lead to other problems. In practice, the arbitral tribunal may at the preliminary meeting(s) with the parties ask parties to address it on the scope of the arbitration agreement and determine same either as a preliminary issue or as part of the award.

Again it is important to state in the arbitration clause, the number of arbitrators and the procedure for appointing them, otherwise ACA provides for a default of three arbitrators and a procedure for appointment whereby each party appoints one arbitrator and the two so appointed appoint the third.[[45]](#footnote-46) Failure to stipulate the number of arbitrators may occasion unnecessary cost implications for the parties as it is cheaper to have a single arbitrator resolve a simple dispute than a panel of three. Also, failure to stipulate in the arbitration clause the procedure for appointment of the tribunal may rob the parties of their right to choose their arbitrator(s) as such appointment may be made by the court under section 7 of ACA and shall not be subject to appeal.[[46]](#footnote-47) It is worthy of note that the provision of section 7(4) is hinged on the need to avoid lengthy appeals in commercial arbitrations and to promote the speedy nature of arbitral proceedings. It is also hinged on the doctrine of waiver, as the party is deemed to have waived his right to appoint an arbitrator; hence, he cannot turn around to complain about the appointment.

It is also important to state whether the arbitration clause preserves the right of a party to obtain interim measures in situations of real urgency to preserve the subject matter before the arbitral tribunal is constituted. Section 13 of ACA provides for the power of the arbitral tribunal to order interim measures of protection before or during the arbitral proceedings. However in practice, the arbitral tribunal cannot grant interim measures ‘before’ the arbitral proceedings under this provision, for once an arbitral tribunal is constituted, then the arbitral proceedings is deemed to have commenced.[[47]](#footnote-48) Unlike the 2012 ICC Rules, ACA does not contain emergency arbitrator provisions nor does it contain the express power of the court to grant interim reliefs. So recourse is often had to court under the Rules of Court and under the inherent jurisdiction of the court to grant interim measures where the arbitral tribunal is yet to be constituted.[[48]](#footnote-49) In the recent case, Nigerian Agip Exploration Ltd v Nigerian National Petroleum Corporation and Oando Oil (NAEL v NNPC, unreported CA/A/628/2011), (February 25th 2014), the court emphasized that urgency is a condition for the grant of an interim injunction, stating that such injunctions are *“granted in cases of extreme urgency so as to preserve the ‘res’ pending the determination of the motion on notice”.* The Lagos Arbitration Law 2009[[49]](#footnote-50) expressly empowers the court to grant interim measures to preserve the *res* or rights of parties pending arbitration. The Arbitration & Mediation Bill which seeks to amend ACA proposes to introduce the express power of the court and or emergency arbitrator provisions for the purpose of urgent interim measures prior to the constitution of the arbitral tribunal.

Other essential content of an arbitration agreement are the seat of arbitration, language and governing law of the arbitration. If these are not stated in the arbitration clause, the arbitral tribunal shall have a right to determine them.[[50]](#footnote-51)

In all, 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. Several factors may render an arbitration agreement inoperative or unenforceable.

c) Form requirements

The basic formal requirement of an arbitration agreement under ACA this law is that an arbitration agreement must be in writing and signed by the parties. Section 1 of ACA provides that every arbitration agreement shall be in writing 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. Thisprovision presupposes that an arbitration agreement may either be an express clause in a contract whereby parties agree to refer future disputes to arbitration (arbitration clause), or in a separate document whereby parties agree to submit their existing dispute to arbitration (Submission Agreement). An arbitration agreement may also be inferred from written correspondence or pleadings exchanged between parties. From section 1 of ACA, it would seem that the element of consent is an essential condition of a valid arbitration agreement and this raises the question of the justiciability of mandatory or statutory arbitration clauses or provisions. However, the requirement of writing is met where the reference to arbitration is contained in a statute or regulation and consent (constructive consent) is implied or imputed to any person operating in the sector or engaging in any activity to which arbitration applies under the statute. Similarly, in consumer contracts containing arbitration clause, purchase of the product or service signifies consent to arbitrate even where the consumer was not aware of the arbitration clause.

d) Incorporation by reference

An arbitration clause in one document or contract may be incorporated by reference in another contract under which the dispute arises. Section 1(2) of ACA provides that *“Any reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if such contract is in writing signed and the reference is such as to make that clause part of the contract.”*

e) Interpretation

Nigerian courts adopt a liberal approach in the interpretation of arbitration clauses. Section 2 of ACA provides that an arbitration agreement is irrevocable except by agreement of the parties or by leave of court. Thus, an arbitration agreement is binding on the parties and the courts will enforce it unless there is an element which vitiates its validity or enforceability.

In*C.N. Onuselogu Ent. Ltd. v. Afribank (Nig.) Ltd.*(2005) 1 NWLR Part 940 577, the Court of Appeal considered what constitutes an arbitration agreement under sections 1 – 5 of ACA. The court held that arbitral proceedings are a recognized 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. The court said that although under the common law, an oral agreement to submit present or future differences to arbitration may be valid and enforceable, section 1(1) and (2) of the Arbitration and Conciliation Act has clearly displaced this common law principle. The court further held that by virtue of sections 1 – 5 of the Arbitration and Conciliation Act a clause which merely says “dispute to be settled by arbitration” was sufficient (though not desirable) to constitute an arbitration agreement and such a provision in a written agreement governed by English law would be an arbitration agreement and its defect or omission would be corrected by the court if necessary. The court also considered the interpretation of the word “shall” in the articles of the Arbitration Rules. The court held that the real intention of the legislature in the articles where the word “shall” is used is to make those provisions mandatory, therefore, the procedural directions and provisions of the rules must be complied with.

However, an arbitration clause will not be construed as an ouster of the court’s jurisdiction. By sections 4 and 5 of ACA where an action in court is instituted or commenced with respect to any matter which is the subject of an arbitration agreement, any party to the arbitration agreement may after entering appearance but before taking any step in the proceedings apply to court for stay of proceedings pending arbitration.[[51]](#footnote-52) Under section 4 of the ACA, a court before which an action subject of an arbitration agreement is brought shall, if any party so requests not later than when submitting his first statement on the substance of the dispute, order or stay proceedings and refer the parties to arbitration.

It is submitted that the provision of section 4 is a clear circumscription of the discretionary powers of the court to grant or reject applications. The use of the word “shall” as against “may” used in section 5 tends to import the notion that when the court is faced with such application brought pursuant to section 4, it is mandated to grant the application.

If no party raises any objection to the continuation of the legal proceedings, the court can proceed to hear the matter and give judgment as parties will be deemed to have waived their right to arbitrate. In *Obembe V. Wemabod* *Estates Limited* *(1977) 5 S.C.70 at 78 – 80* the Supreme Court of Nigeria held that “arbitration clauses generally fall into two classes. One class is where the provision for arbitration is a mere matter of procedure for ascertaining the rights of the parties with nothing in it to exclude a right of action on the contract itself, but leaving it to the party against whom an action may be brought to apply to the discretionary power of the court to stay proceedings in the action in order that the parties may resort to that procedure to which they have agreed. The other class is where arbitration, followed by an award is a condition precedent to any other proceedings being taken, any further proceedings then being strictly speaking, not upon the original contract but upon the award made under the arbitration clause. Such provisions in an agreement are sometimes termed ‘Scot v. Avery’ clauses, so named after the decision in Scott v. Avery (1856) 5 H.L. Cas. 811...” The court interpreted the following clause in a Model Form Agreement which was incorporated by reference into the agreement between the parties:

Any dispute or difference arising out of this Agreement shall be referred to the arbitration of a person to be mutually agreed upon or failing agreement, of some person appointed by the President for the time being of the Institution of Consulting Engineers.

The court held that the clause was clearly different from the ‘Scott v. Avery’ clause; that it belonged to the first class of arbitration clauses and that either party may before a submission to arbitration or an award is made, commence legal proceedings in respect of any claim or cause of action included in the submission. At common law, the court has no jurisdiction to stay such proceedings but the court has jurisdiction to stay proceedings under section 5 of ACA. Since no stay was asked for by the defendants/respondents after they were served with the Writ of Summons and the defendants filed their Statement of Defence and took part in the proceedings until judgement was delivered, the court was entitled to determine the dispute and settle the rights of the parties.[[52]](#footnote-53)

One important issue which the court will consider in deciding whether to grant a stay of proceedings under section 5 of ACA is the timing of invoking the arbitration clause by the applicant. There seems to be some contradiction in sections 4 and 5 of ACA. Section 4 (1) of ACA provides that “*A Court before which an action which is the subject of an arbitration agreement is brought shall, if any party so requests* ***not later than when submitting his first statement on the substance of the dispute,*** *order a stay of proceedings and refer the parties to arbitration.”* Section 5(1) provides that *“If any party to an arbitration agreement commences any action in any court with respect to any other matter which is the subject of an arbitration agreement, any party to the arbitration agreement may,* ***at any time after appearance and before delivering any pleading or taking any other steps in the proceedings****, apply to the court to stay the proceedings.”* [Underlining ours] So while section 4 allows the application for stay to be filed simultaneously with the filing of the Statement of Defence which is a pleading, section 5 provides that the application for stay must be filed **before** filing the Statement of Defence, or any other pleading (such as counterclaim or reply to defence to counter claim) and before taking any other steps in the proceedings. In other words, all that the applicant is required to do under section 5 is to file his memorandum of appearance and then file his application for stay, a procedure similar to demurrer proceedings under the old High Court civil procedure rules in Lagos State whereby a party could simply file an objection against the suit without filing a statement of defence and such objection was capable of disposing of the entire suit. Section 4 is similar to the new Lagos civil procedure rules[[53]](#footnote-54) whereby a party may raise or file any objection on points of law together with his pleading.

Nigerian courts have interpreted the question of timing under sections 4 and 5 of ACA. In *Akpaji v. Udemba (2003) 6 NWLR (Part 815) 169* the Court of Appeal in considering the appropriate time to invoke an arbitration clause, held that where a defendant fails to raise the issue of arbitration clause and rely on 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. The phrases, ‘early stage’ and ‘positive steps’ are subject to different interpretations. In *Obembe V. Wemabod* supra, the Supreme Court appears to have clarified the point. The Court emphatically held that “*In order to get a stay, a party to a submission must have taken NO step in the proceedings. A party who makes any application whatsoever to the court, even though it be merely an application for extension of time, takes a step in the proceedings. Delivery of Statement of Defence is also a step in the proceedings.”*[[54]](#footnote-55)In *Onward Ent. Ltd. V. MV Matrix (2010) 2 NWLR (Part 1179) 537* the Court of Appeal in interpreting what constitutes “taking steps” in a proceedings under section 5 of ACA, followed the decision in *Obembe v. Wemabod* and held that the applicant must file his application for stay of proceedings after entering appearance and must not have taken any other action like filing an affidavit in opposition to summons for summary judgment, service of a defence and an application to the court for leave to serve interrogatories, or for a stay pending the giving of security for costs, or for an extension of time for serving a defence, or for an order for discovery, or for an order for further and better particulars.

Whilst the difference between sections 4 and 5 of ACA has not been fully tested in Nigerian courts, the cases show that courts rely more often on section 5 of ACA than section 4 in granting a stay of proceedings in favour of an arbitration clause. It is hoped that the difference between section 4 and Section 5 will be clarified in the proposed amendment of ACA.

One writer has suggested that section 5 is to be preferred over section 4 and that section 4 be deleted from ACA as not being necessary[[55]](#footnote-56) but it is our view that section 4(2) is useful in the sense that it allows arbitration proceedings to be commenced even after institution of the court action, so that even where the court refuses stay of proceedings, the arbitral tribunal can determine the dispute during the pendency of the court proceedings and make an award which can be filed and enforced in court. The case of *M.V. Lupex v. N.O.C**(2003)* 15NWLR (Part 844) 469 illustrates this point. In that case, the respondent voluntarily submitted to arbitration in London pursuant to the agreement between the parties. When the arbitration proceedings in London had reached an advanced stage, the respondent went on to file a suit at the Federal High Court, Lagos against the appellant on the same dispute which was the subject matter of the arbitration. The court held that it was an abuse of court process for the respondent to institute a fresh suit in Nigeria against the appellant in respect of the same dispute during the pendency of the arbitration proceedings unless there was a strong, compelling and justifiable reason for such an action. The court further held *inter alia* that where parties have agreed to refer their dispute to arbitration in a contract, it behoves on the court to lean towards ordering a stay of proceedings for 2 reasons namely: (a) the provision of section 4(2) of the Arbitration and Conciliation Act may make the court’s refusal to order a stay ineffective as the arbitral proceedings may nevertheless be commenced or continued and an award made by the arbitral tribunal may be binding on the party that has commenced an action in court; (b) the court should not be seen to encourage the breach of a valid arbitration agreement. In *Ras Pal Gazi Const. Co. v. FCDA**(2001) 10 NWLR (Part 722) 559* the Supreme Court considered the status of an arbitral award under section 4(2) of ACA vis-a-vis a judgment of court and held that a valid award on a voluntary reference operates between the parties as a final and conclusive judgment upon all matters referred because arbitration as an alternative mode of dispute resolution has for decades been given legal backing. Therefore an arbitrator’s award under section 4(2) of the Arbitration and Conciliation Act is binding as between the parties, and when filed in court should for all purposes have the force and effect as a judgment.

However, it would seem from the decisions in *M.V. Lupex* and *Ras Pal Gazi Const. Co* above that voluntary reference to arbitration is an important element for the operation of section 4(2) of ACA even though the Act does not say so. Thus, it is doubtful if a default award under section 4(2) will be binding on a Plaintiff who refuses to submit to arbitration upon the court’s refusal to stay proceedings.

Another issue which the court will consider in interpreting and enforcing an arbitration clause is whether a dispute has arisen under the contract. Where for instance, the defendant admits liability and the claimant’s claim is for the unpaid admitted sum, it can be argued that there is no dispute per se requiring the invocation of the arbitration clause. In such cases, the court can enter summary judgment for the admitted sum unless the parties have expressly reserved this power for the arbitral tribunal. In *Usi Enterprise Ltd. v. Kogi State Government* (2005) 1 NWLR 9 (Part 908) 494, the Court of Appeal considered the issue of what constitutes a dispute for the purpose of reference to arbitration. The court held that the dispute between the parties on whether the balance remaining unpaid was a balance due and unpaid after the completion of the contract works constituted a dispute within the meaning of the Act.

2. Enforcing arbitration agreements

a) Declaratory actions in court

ACA does not provide expressly for declaratory actions. However, declaratory reliefs for enforcement of arbitration agreements in court often come in form of applications for stay of proceedings in favour of an arbitration agreement.

b) Applications to compel or stay arbitration

Where an action has been instituted in court in breach of an arbitration clause, the court will stay proceedings and refer the parties to arbitration. In *Minaj Systems Ltd. v. Global Plus Communication Systems Ltd. & 5 Ors*[[56]](#footnote-57)the Claimant instituted an action in court contrary to the arbitration clause in the main contract which provided that all disputes between the parties shall be referred to arbitration. The Defendants filed a Motion on Notice in opposition to the suit and sought an order of court for the appointment of an arbitrator and for stay of proceedings pending the appointment of arbitrator and conclusion of arbitral proceedings. The Court upheld the argument of the Defendants and granted an order staying proceedings in the interim for 30 days pending arbitration between the parties.

Meanwhile, before the court delivered its ruling, the Defendant commenced arbitration proceedings by issuing a Notice of Arbitration. Even though the court’s order of stay of proceeding was still pending, the Claimant filed an application to set aside the Notice of Arbitration on the ground that the issuance of the Notice of Arbitration by the Defendant amounts to self-help or an attempt to foist accompli on the court. The court rejected the Claimant’s argument and dismissed the Application.

The Claimant being dissatisfied with the above ruling of the trial court filed *an appeal*seeking an order of extension of time and for leave to file an appeal against the ruling of the trial court at the Court of Appeal. The Court of Appeal dismissed the appeal in its entirety for lack of merit and awarded cost of N10, 000.00 (Ten Thousand Naira) in favour of the respondents.[[57]](#footnote-58)

c) Anti-suit and other injunctions

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 court’s power under ACA is limited to granting stay of court proceedings commenced in breach of an arbitration clause.

3. Termination and breach

Section 2 of ACA provides that an arbitration agreement is irrevocable except by agreement or leave of court. Thus, an arbitration agreement can be terminated with the agreement of the parties. There cannot be a unilateral termination of the arbitration agreement. The court may however grant leave to revoke an arbitration agreement but this jurisdiction of the court to grant leave will cease where the tribunal has been constituted and is seized of the case.[[58]](#footnote-59)

B. Doctrine of Separability

1. Statutory provisions

Section 12(2) of ACA provides that an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract and a decision by the arbitral tribunal that the contract is null and void shall not affect the validity of the arbitration clause. This means that the arbitration clause survives the termination of the main contract so that even where a contract is invalid, the arbitral tribunal still has power to hear any dispute on the contract and decide on its validity or otherwise. The jurisdiction of the arbitral tribunal which is derived from the arbitration agreement is therefore not affected by the invalidity of the contract. Indeed section 12(2) is borne out of the tribunal’s power to rule on its own jurisdiction under section 12(1) discussed below.

C. Jurisdiction

1. Which forum decides jurisdiction

The arbitral tribunal has the power to decide on its own jurisdiction. Section 12(1) 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.” This is the doctrine of competence-competence.

Section 12(4) of ACA provides that a ruling by the tribunal on its jurisdiction (either as a preliminary question or in an award on the merits) is final and binding. This presupposes that the tribunal’s ruling on its jurisdiction is not subject to court interference as section 34 of ACA provides that *“A court shall not intervene in any matter governed by this Act, except where so provided in this Act”.* However, where an application is filed in court to set aside an award on the basis of tribunal’s lack of jurisdiction, the court will have power to consider and pronounce on the jurisdiction of the tribunal provided that the applicant had raised the issue of jurisdiction before the tribunal in the course of arbitral proceedings. Although lack of jurisdiction is not an express ground for setting aside or refusal of recognition and enforcement of an award under ACA, 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.[[59]](#footnote-60)

Again, the constitution of the tribunal may be challenged on the basis of impartiality or lack of independence under 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.[[60]](#footnote-61) If the other party does not agree to the challenge and the challenged tribunal does not withdraw, the court can decide on the issue at the instance of the challenging party.[[61]](#footnote-62)

ACA is not specific on the standard of judicial review of a tribunal’s decision but if the tribunal rules that it has jurisdiction when it does not, the court can set aside the award and render the entire arbitral proceedings a nullity.[[62]](#footnote-63) The court willin considering the ruling on the tribunal’s jurisdiction, decide 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.[[63]](#footnote-64)

D. Arbitrability

1. Notion and functions of arbitrability

For an arbitration clause to be valid and enforceable under ACA, the dispute must be arbitrable *i.e*. it must be capable of settlement by arbitration. Section 48 (b) (i) of ACA provides that the court may set aside an arbitral award if the court finds that the subject matter of the dispute is not capable of settlement by arbitration under the laws of Nigeria. Section 35 of ACA provides that ACA shall not affect any other law by virtue of which certain disputes may not be submitted to arbitration.[[64]](#footnote-65)

2. Objective arbitrability

Generally, non-commercial and non-civil matters are not arbitrable. Criminal matters, divorce, disputes arising out of an illegal contract, indictment of an offence of a public nature cannot be the subject of an arbitration agreement.[[65]](#footnote-66)

3. Subjective arbitrability: Natural persons, Legal persons, States and state entities

The capacity of parties to enter into an arbitration contract is a function of subjective arbitrability. The parties must have capacity to arbitrate for the tribunal to have jurisdiction over them.[[66]](#footnote-67) ACA does not define what capacity means but the general principles of capacity under simple contract will apply. This is because an arbitration agreement is itself a contract and so such restrictions on capacity of infants, illiterates, corporations, state entities, etc. to contract will also apply in arbitration. For instance, the element of sovereign immunity may affect capacity and by implication, arbitrability where the contract involves the sovereign or State entity (federal or state government of Nigeria).[[67]](#footnote-68) Although signing of the contract containing the arbitration agreement by the sovereign entity is deemed to be a submission to the jurisdiction of the arbitral tribunal and thus a waiver of sovereign immunity, it is advisable to insert in the contract an express waiver of immunity clause. In privatization or concessioning of public enterprises, it is common to find a government agency such as Bureau of Public Enterprises, Federal Ministry of Finance Incorporated, Ministry of Water Resources, Federal Airports Authority of Nigeria, etc. signing the contract on behalf of the government. If the arbitration agreement in the contract is to bind the government, it is important to ensure that the person or official signing the contract has the consent and authority of the federal government or federal government agency to sign the contract. An unequivocal way of achieving this is to join the federal government as a party to the contract, indicating clearly that the government agency is signing for and on behalf of government. Another way is to request for a legal opinion or letter from the Attorney General representing compliance with local laws and warranting authority to execute on behalf of government.

Generally under Nigerian law, every person (natural and legal person) has the capacity to enter into a binding contract. However, there are certain restrictions or conditions for the enforceability of contracts against some categories of persons. Under the Illiterates Protection Act 1915 as amended and adopted by various states, a contract will be unenforceable against an illiterate person in the absence of the endorsement of a jurat to the effect that the document was explained to the illiterate and that he appears to understand same. Thus for an arbitration clause to be binding on an illiterate person, it must be shown that the arbitration clause was explained to him and that he appeared to understand it. In Nigeria, capacity of infants to contract is governed by native law and custom, common law and statute. Under Nigerian native law and custom, an infant is not bound by any contract entered into before puberty.[[68]](#footnote-69) At common law, an infant below the age of 21 is only bound by contracts for necessaries[[69]](#footnote-70) and for beneficial contracts relating to education and training.[[70]](#footnote-71) The Infant Relief Act 1874 left the common law rule on beneficial contracts and contracts for necessaries and made the following infant contracts void: contract to repay money lent or to be lent, contract for goods supplied or to be supplied other than necessaries, all accounts stated e.g. “IOUs”. In *Labinjo v. Abake (1924) 5 NLR 23* an action was brought to recover a trade debt owed by an infant. The court held that an infant contract was void under the applicable Infant Relief Act of 1874.

Also, an agreement to arbitrate entered into by a bankrupt is void for incapacity if it affects the rights of the creditor unless the trustees in bankruptcy adopt such contract. In the same vein, an arbitration agreement by a mentally insane person may be valid, if it is established that the insanity did not make him incapable of contracting to the knowledge of the other party. Thus, where he is incapable of properly discerning what the contract portends, an award made pursuant to such an agreement may not be recognized and enforced by the court.

A party on whose behalf his solicitor entered into an arbitration agreement without his instruction and authority may request to set aside the award for lack of capacity on the part of the solicitor who entered into the agreement without the requisite consent and authority.[[71]](#footnote-72)

Under Nigerian company law as governed by the Companies and Allied Matters Act,[[72]](#footnote-73) an incorporated company is a legal person and has full capacity of a natural person to sue and be sued, own property and enter into contracts unless such contract is prohibited by its Memorandum and Articles of Association. An unincorporated association on the other hand cannot sue or be sued or enter into contracts other than through its members in representative capacity. It follows that an arbitration clause signed by an unincorporated association in its own name will be invalid unless signed by the duly authorised representative. Like in the agreements signed on behalf of state entities, it is important to ensure that the person signing on behalf of an incorporated or unincorporated body has the authority to bind the corporation.

E. Arbitral Tribunal

1. Status and qualifications of arbitrators

a) Number of arbitrators

Parties are free to stipulate the number of arbitrators in their arbitration agreement. They may appoint a sole arbitrator, or a panel of three (or more arbitrators in case of multi party disputes), or two arbitrators and an umpire. By section 6 of ACA, if parties do not stipulate the number of arbitrators, the default number shall be three. Under the Lagos State Arbitration Law, the default number of arbitrators is one (1) i.e. sole arbitrator, but parties are free to stipulate otherwise by the arbitration agreement.[[73]](#footnote-74)

b) Legal status, Qualifications and accreditation requirements

ACA does not stipulate any express legal or accreditation requirements or qualifications for arbitrators. Parties are free to appoint any person as arbitrator and the arbitrators need not be lawyers. However, since an arbitral award is binding, parties must take their arbitrator as he is and so it behoves on them to ensure that they appoint persons who are skilled or experienced in the subject matter of the contract or field of dispute. The fact that the arbitrator did not know the law or that he misapplied the law is not a ground for challenge of an award under ACA unless there is a manifest error of law on the face of the award.

It is however common to find some arbitration clauses specifying minimum qualifications for the arbitral tribunal or presiding arbitrator. For instance, that the presiding arbitrator or co-arbitrators should be members or fellows of the Chartered Institute of Arbitrators or such other arbitration bodies in Nigeria. Thus even though there is no accreditation requirement for arbitrators under ACA, it is usual for parties to appoint arbitrators who belong to one arbitration body or the other discussed under paragraph IB above. Each arbitration body in Nigeria has its accreditation process. For instance, the Chartered Institute of Arbitrators, UK (Nigerian Branch) has a four-stage pathway programme to wit: (i) Entry Course leading to status of Associate Membership (ii) Membership (iii) Fellowship and (iv) Chartered Arbitrator. Accelerated programmes are also available.[[74]](#footnote-75) By section 8(30) of ACA, an arbitrator may be challenged if he does not possess the qualifications agreed by the parties and the award may be rendered void if the challenge is upheld. Also, in exercising its power of appointment under section 7(2) and (3) of ACA, the court shall have due regard to any qualifications required of the arbitrator by the arbitration agreement.[[75]](#footnote-76)

c) Arbitrators’ rights and duties

An arbitrator has the right to be notified of his appointment and to accept or reject the appointment before the commencement of the arbitral proceedings. He has a right to withdraw from office at any time during the arbitral proceedings.[[76]](#footnote-77) He has a right to receive notice of a challenge to his appointment[[77]](#footnote-78) and to decide on the challenge in the case of domestic arbitration.[[78]](#footnote-79) However in the case of international arbitration under Part III of ACA, the decision on the challenge shall be made by the appointing authority.[[79]](#footnote-80) He also has the right to adopt a procedure which he considers appropriate where there are no provisions on any matter in the arbitration Rules or arbitration agreement.[[80]](#footnote-81) The arbitral tribunal has a right to determine the place of the arbitral proceedings unless otherwise agreed by the parties.[[81]](#footnote-82) In determining the place of arbitration, the arbitral tribunal shall consider the circumstances of the case and the convenience of the parties.[[82]](#footnote-83) Even where the parties have stipulated the seat of arbitration in their contract, the tribunal has the right to conduct proceedings at any place within the seat of arbitration unless there is an express contrary agreement by the parties.[[83]](#footnote-84) The tribunal has the right to order a deposit of costs which would include its fees at the beginning or during the course of the arbitral proceedings.[[84]](#footnote-85) If the parties fail to pay cost, the tribunal has the right to suspend or terminate the arbitral proceedings[[85]](#footnote-86) or it may hold on to the award until the parties have settled cost. Although the right to withhold the award is not an express right under ACA, this right is borne out of the tribunal’s right of lien on the award for its fees.

The arbitral tribunal has the power to hear and determine any question on its own jurisdiction,[[86]](#footnote-87)issue interim orders of preservation,[[87]](#footnote-88) appoint experts to report to it on any issue,[[88]](#footnote-89) order the production of documents or evidence,[[89]](#footnote-90) administer oaths or take affirmations of parties and witnesses appearing before it,[[90]](#footnote-91) extend time for filing case statements, pleadings, written statements or for doing anything under the Act,[[91]](#footnote-92) correct on its own volition any error of computation, clerical or typographical errors or any errors of a similar nature in the award,[[92]](#footnote-93) terminate arbitral proceedings and issue a consent award upon settlement or agreement of parties,[[93]](#footnote-94) terminate the proceedings if the claimant fails to state his claim as required under section 19(1) of ACA or continue the proceedings and give a default award if the respondent fails to state his defence as required, [[94]](#footnote-95) determine the admissibility, relevance, materiality and weight of any evidence placed before it,[[95]](#footnote-96) make interim, interlocutory or partial awards, decide the manner or procedure for conducting hearings,[[96]](#footnote-97) grant amendment of pleadings.[[97]](#footnote-98)

The arbitrator or tribunal also has several duties under ACA including the duty to act in accordance with the arbitration agreement. It is the duty of the tribunal to decide the dispute in accordance with the terms of the contract,[[98]](#footnote-99) to disclose any circumstances likely to give rise to justifiable doubts as to its independence and impartiality and to maintain impartiality and independence throughout the arbitral proceedings,[[99]](#footnote-100) to give the parties adequate advance notice of the date, place and time of hearings,[[100]](#footnote-101) to treat each party equally and give each party full and equal opportunity of presenting its case[[101]](#footnote-102) to act within the scope of its jurisdiction, to decide and dispose of all issues submitted to it by the parties, to give a reasoned and valid award and to ensure that the award is enforceable,[[102]](#footnote-103) to render an account to the parties of the deposits on costs and to return any unexpended balance to the parties.[[103]](#footnote-104)

d) Relevant codes of ethics

The Chartered Institute of Arbitrators, UK Code of Professional and Ethical Conduct for Members

The Chartered Institute of Arbitrators, UK Code of Professional and Ethical Conduct for Members are published pursuant to the bylaws of the Institute to govern the professional and moral conduct of members. The Code sets out the minimum standards of conduct that members should observe and a significant breach of the Code amounts to professional misconduct. The Code is in two parts. Part 1 relates to the conduct of members, including honorary officers, in carrying out the functions, duties and responsibilities of the Institute. It governs the conduct of members when acting as members of the Board of Trustees, the Board of Management, or any committee of the Institute and applies also to the conduct of honorary officers of the Institute when appointing arbitrators, mediators and others to act as neutrals in alternative dispute resolution processes. Part 2 relates to the conduct of members when acting or seeking to act as neutrals in alternative dispute resolution processes, wherever conducted, whether or not they have been appointed so to act by the Institute or any officer of the Institute and whether or not the process is conducted under the auspices of the Institute.[[104]](#footnote-105)

The Code is a reflection of internationally acceptable standards and guidelines. It serves as a guide and point of reference for users of the process and to promote public confidence in dispute resolution techniques. In some instances, the ethics set down in the code may be repeated in legislation governing the process, case law or rules which parties adopt. In many instances, members will also be bound by other codes of practice or conduct imposed upon them by virtue of membership of other professional organisations.

Lagos Multi-Door Courthouse (LMDC) Code of Ethics for Arbitrators

The Lagos Multi-Door Courthouse (LMDC) has set out standards of ethical conduct for the guidance of arbitrators and parties in commercial disputes.

This Code of Ethics was culled from the American Arbitration Association Code of Ethics and emphasizes the need for persons acting as arbitrators to recognize that they have a great responsibility to the parties and an obligation to the public to observe these standards of ethics. The Code is designed to secure and maintain the confidence of parties to a dispute and the society at large in the arbitration process, so that the arbitration process will be perceived as fair, honest and an effective means of resolving commercial disputes. The Code of Ethics provides guidance for arbitrators and arbitral tribunals in all kinds of proceedings, whether they are conducted under the arbitral rules of organizations, trade associations, or by the voluntary agreement of the parties. It merely sets guidelines to regulate the conduct of arbitrators and is not meant to supersede or take the place of the express intention of the parties as contained in their agreement, nor does it seek to take the place of arbitration rules to which the parties have agreed to submit. The Code does not apply to mediation, conciliation or other ADR processes.[[105]](#footnote-106)

Essentially, the Code states the ethical obligation of an arbitrator to conduct the arbitral proceedings with integrity and fairness. The integrity and fairness rule requires that an arbitrator should not solicit for appointment as arbitrator to a dispute although he may indicate an interest to serve as arbitrator in such a general manner as not to appear to have a particular interest in the dispute. It also requires that the arbitrator is available to conduct the arbitration proceeding within the specified time and with the requisite competence, expertise and skill. It requires an arbitrator to be even tempered, not susceptible to external pressures and influences, fair to all the parties and to act in a manner that promotes the prompt and effective resolution of the dispute.[[106]](#footnote-107)

The Code also states an arbitrator’s duty of disclosure of any interest in the outcome of the award whether the interest be direct or indirect, financial or personal. Under the LMDC Code of Ethics, an arbitrator should not hold discussions with one party in the absence of the other party. He must not engage in bargaining with the parties for his payment or compensation or engage in any form of communication as would create an appearance of cohesion or impropriety. An arbitrator must at all times safeguard the relationship of trust that exists between him and the parties and with utmost confidentiality in dealing with information acquired during the proceedings. He must not at anytime use the information to gain personal advantage or to obtain advantage for a third party. An arbitrator may not discuss the arbitration proceedings or the deliberations between co-arbitrators and should not inform anyone of the arbitral award before it is made.[[107]](#footnote-108)

2. Appointment of arbitrators

a) Methods of appointment & appointing authorities

Under ACA, arbitrators may be appointed by the parties, by an appointing authority or by the court. The parties may in their arbitration agreement state the procedure for appointment of arbitrators. Where no procedure is stated, arbitrator(s) shall be appointed in accordance with the provisions of ACA. In the case of 3 arbitrators, each party shall appoint one arbitrator and the two thus appointed shall appoint the third who shall be the presiding arbitrator.[[108]](#footnote-109) The Claimant appoints his party appointed arbitrator in the Notice of Arbitration[[109]](#footnote-110) and the Respondent has 30 days from the receipt of the Notice to appoint a second arbitrator. If the Respondent has not appointed the second arbitrator within 30 days, the Claimant is entitled to apply to court to appoint a second arbitrator on behalf of the respondent. If the two arbitrators do not agree on a third arbitrator within 30 days of their appointments, the third arbitrator shall be appointed by the court.[[110]](#footnote-111) In the case of a sole arbitrator, the appointment is made jointly by the parties, either party proposing to the other, the names of one or more persons to serve as sole arbitrator and the other confirming or rejecting the proposed names. If within 30 days of receipt by a party of the proposal, parties are unable to agree on the sole arbitrator, the appointment shall be made by the court on the application of either party.[[111]](#footnote-112)

Where under an appointment procedure stipulated by the parties, a party fails to act as required, or the parties or two arbitrators are unable to reach agreement as required, or an appointing institution fails to perform any duty imposed on it under the agreed procedure, the appointment shall be made by the court in the absence of any other means for securing the appointment under the agreed procedure.[[112]](#footnote-113)

In exercising its power of appointment, the court shall consider the qualifications, independence and impartiality of the arbitrator. The application for appointment can be filed either in the state high court or federal high court. In *Magbagbeola v. Sanni (2005) 11 NWLR (Part 936) 239* the Supreme Court considered the question of which court has jurisdiction to appoint an arbitrator under ACA. The court held that a court is defined under section 57 of the Act to mean the High Court of a state, the High Court of the Federal Capital Territory, Abuja or the Federal High Court, and “Judge” is defined as a Judge of the High Court of a state, the High Court of the Federal Capital Territory, Abuja or the Federal High Court. Therefore both the State High Court and the Federal High Court have jurisdiction to appoint an arbitrator.

The Court also considered the law governing appointment of an arbitrator in Nigeria and held that the appointment of an arbitrator is governed by the Arbitration and Conciliation Act and not by the Companies and Allied Matters Act. Therefore the appointment of an arbitrator falls outside the ambit of section 251(1) (e) of the 1999 Constitution which gives the Federal High Court exclusive jurisdiction in matters arising from the operation of the Companies and Allied Matters Act or the operation of companies incorporated there under.

The jurisdiction of the court to appoint an arbitrator is not determined by the subject matter of the dispute, as has been argued in some cases. This is because the doctrine of separability makes the arbitration agreement independent of the substantive contract and it is from the arbitration agreement that the court derives the jurisdiction to appoint an arbitrator. In G*eodetic Positioning Services Limited v. Contransar International Nigeria Limited (Unreported Suit No. ID/311M/2000)*,theHigh Court was faced with a challenge to its jurisdiction to appoint an arbitrator in respect of a dispute which arose between the parties on a dredging contract between them. The Defendant argued that the State High Court lacked jurisdiction to entertain the suit on the ground that the subject matter of the contract was one within the exclusive jurisdiction of the Federal High Court. The High Court held that the word “Court” under section 7 of ACA means High Court or Federal High Court and therefore both the High Court and Federal High Court have jurisdiction to appoint an arbitrator for parties in appropriate circumstances. The Court further held that the issue before the court was the appointment of arbitrators and not the subject matter of the dispute and the court had no duty to inquire into the subject matter of the dispute as that was for the arbitrator to decide.

*In Bendex Eng. v. Efficient Petroleum Nigeria Limited (2001) 8 NWLR (Part 715) 333,* the Court of Appeal considered the power of court to appoint arbitrators for parties under sections 7 and 57(1) of ACA as well as the relevant consideration by the court in appointing arbitrators for parties. The Court held that by virtue of the combined provisions of these sections, the High Court has the jurisdiction to entertain a suit seeking the appointment of arbitrators where the agreement between the parties contains no reprehensible appointment procedure and where one of the parties having been put on notice by the other to appoint or nominate an arbitrator fails to do so. The Court further held that where an application is made to the High Court for the appointment of arbitrators, the fundamental parameters within which the court is enjoined to exercise its discretion are defined by the following 3 factors:

(i) Whether there is an arbitration agreement;

(ii) Whether the dispute alleged by the applicant falls within the nature of disputes contemplated in the agreement;

(iii) Whether the parties have failed or neglected to appoint arbitrators to wade into the dispute.

Thus the court is not cloaked with any jurisdiction or duty to inquire into the sustainability or otherwise of the alleged dispute between the parties. Its function in considering the application for appointment of arbitrators is restricted to the construction of the arbitration clause in the parties’ agreement with a view to ascertaining whether the alleged dispute is within the contemplation of the agreement. Therefore, the trial court was right to hold that it is not its duty to decide on the merits of the respondent’s allegation on the ground that it was the duty of the arbitrators to do so.

Interestingly, the Supreme Court had in an earlier case of *Savannah* *Bank Ltd. v. Pan Atlantic (1987) 1 NWLR (Part 49) 212* held that the jurisdiction of the State High Court in respect of arbitration is limited to matters for which no jurisdiction is conferred on the Federal High Court. In other words, the State High Court cannot entertain an application on arbitration where the subject matter falls within the exclusive jurisdiction of the Federal High Court under section 251 of the Constitution. Although this Supreme Court decision was subsequently followed by a few cases after it,[[113]](#footnote-114) we prefer the reasoning of the courts in the later cases of *Magbagbeola v. Sanni,* G*eodetic Positioning Services Limited v. Contransar International Nigeria Limited* and *Bendex Eng. V. Efficient Petroleum Nigeria Limited* cited above. It is the arbitration agreement that confers jurisdiction on the court to intervene or perform any act relating to the arbitration and the court must apply the relevant arbitration law or rules. The court has no jurisdiction to inquire into the subject matter of the contract or the substance of the award and so the substantive jurisdiction of the court under the constitution does not arise. Section 57 of ACA which defines ‘court’ to include Federal and State High Court does not conflict with the constitution. Section 57 confers jurisdiction on both the Federal and State High Courts with regards to arbitration which is a separate matter not listed under the exclusive jurisdiction of the Federal High Court under section 251 of the Constitution.

An appointment made by the court under section 7 of ACA is final and not subject to appeal. In *Ogunwale v. Syrian Arab Republic (2002) 9 NWLR (Part 771) 127* the Court considered the right of appeal against a decision of the High Court appointing an arbitrator. The Court held that by virtue of section 7(4) of ACA, a decision of the High Court relating to the appointment of an arbitrator shall not be subject to appeal. Under section 34 of ACA, a court shall not intervene in any matter governed by the Act unless so provided in the Act. However, it is only a decision strictly within sections 7(2) and (3) of the Act that shall not be subject to appeal. Thus in order to determine whether a decision of the court relating to the appointment of an arbitrator is appealable or not, the court must review the grounds of appeal and the issues formulated there from to discover the grounds upon which the appealed decision is being challenged. In the said case, grounds 1-3 of the grounds of appeal and issues 1-3 formulated there from did not either directly or indirectly make any reference to matters inherent in the appointment of an arbitrator to warrant the invocation of the provisions of section 7(4) of the Act which makes such decisions final and the court held that section 7(4) was inapplicable to the case. The court further considered the constitutionality of sections 7(4) and 34 of the Arbitration and Conciliation Act prohibiting right of appeal from a decision of the High Court appointing an arbitrator. The Court held that by virtue of section 241(1)(a), (b) and (c) of the 1999 Constitution, an appeal shall lie from decisions of the Federal High Court or a High Court to the Court of Appeal as of right in the following cases:

* final decisions in any civil or criminal proceedings before the Federal High Court or a High Court sitting at first instance;
* where the ground of appeal involves question of law alone, decisions in any civil or criminal proceedings;
* decisions in any civil or criminal proceedings on questions as to the interpretation or application or application of the Constitution.

The Court held that section 241 of the constitution unequivocally conferred on any aggrieved party the right to appeal as of right in the circumstances listed. The fact that the Arbitration and Conciliation Act is an existing law is of no consequence in exercising any of the rights conferred by section 241(1) (a) (b) and (c) of the Constitution. Also, the provisions of sections 243 and 315 of the Constitution have not abridged the right of appeal given to a citizen under section 241(1) of the Constitution. Consequently, 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 Constitution as such right of appeal has constitutional backing. The Court held that for section 7(4) to apply, the following conditions must co-exist:

(i) a binding, valid, compellable arbitration clause;

(ii) a dispute capable of being referred to arbitration; and

(iii) a party must have refused or defaulted to make an appointment.

In that case, even though the appellant refused to nominate an arbitrator, the court held that the absence of the first two factors stated above sufficiently constituted the ground for challenging the decision of the trial court on appeal.

Apart from the court, arbitration institutions like the Chartered Institute of Arbitrators and the Lagos Multi-Door Court House also serve as appointing authorities.

b) Payment agreements

ACA does not stipulate how arbitrators will be paid. Section 50 of ACA empowers the arbitral tribunal to request the parties to make a deposit on costs upon establishment of the tribunal and to request a supplementary deposit in the course of the arbitral proceedings. In practice, arbitrators are entitled to discuss and agree on their fees with the parties. The advantage of agreeing on arbitrator’s fees and making a deposit towards it at commencement of arbitration is to avoid a situation where one or both parties fail or refuse to pay and the arbitrator has to institute legal action to recover his fees. This may affect the impartiality of the tribunal.

Arbitrators are expected to charge reasonable fees depending on the amount in dispute, the complexity of the matter, time spent by the arbitrators and other circumstances of the case.[[114]](#footnote-115) The court held that the court can reduce exorbitant fees of an arbitrator.[[115]](#footnote-116) The Chartered Institute of Arbitrators, UK (Nigerian Branch) has Guidelines for Scale of Fees for Arbitrators in adhoc arbitration. Under the Guidelines, arbitrators can charge their fees based on the amount in dispute (Part I Fees) or on time spent (Part II Fees). Part I Fees are largely based on the ICC Scale of Fees for Arbitrators while Part II Fees are based on the qualification of the arbitrator i.e. whether he is a Fellow, Member or Associate Member of the Institute or a Chartered Arbitrator. The tribunal has the right to choose whether to charge under Part I or Part II but the tribunal may allow parties to address it on this. Once the tribunal has taken a decision on its fees, the amount and mode of payment may be recorded in an Order for Direction/Procedural Order or in a separate document and communicated to the parties by the administrative secretary or secretariat. Non compliance or breach of payment agreement by the parties entitles the tribunal to suspend or terminate the arbitral proceedings or to withhold the award. Under section 50(4) of ACA, where only one party defaults in its payment obligations, the other party is entitled to pay the full amount and have the award delivered to him.

c) Resignation and its consequences

Under the Lagos State Arbitration Law, parties are free to agree with an arbitrator as to the consequences of the arbitrator’s resignation as regards the arbitrator’s entitlement to fees or expenses if any and any liability incurred by the arbitrator. In the absence of such agreement, an arbitrator who resigns may upon notice to the parties, apply to Court for relief from any liability incurred and for such order as the court thinks fit with respect to the arbitrator’s entitlement to fees or expenses or repayment of any fess or expenses already paid. If the Court is satisfied that the arbitrator’s resignation was reasonable in the circumstances, the court may grant the relief sought.[[116]](#footnote-117)

3. Challenge and removal

a) Grounds for challenge

Under section 8(3) of ACA the grounds on which an arbitrator may be challenged are lack or justifiable doubts of his impartiality or independence or that he does not possess the qualifications required by the arbitration agreement. It is the duty of the arbitrator to disclose any circumstance which may give rise to a challenge of his appointment.[[117]](#footnote-118) Such disclosure should be made as soon as the arbitrator becomes aware of any such circumstance and the duty of disclosure exists from the time of appointment and subsists throughout the arbitral proceedings. This means that an arbitrator should constantly do a conflict check on his appointment and inform the parties of any doubts. Once he has informed the parties, they parties are free to decide on whether he should continue to act. The duty of disclosure is thus discharged upon disclosure of the doubtful circumstances to the parties.[[118]](#footnote-119)

ACA does not define ‘impartiality’ or ‘independence’. However, impartiality means that the arbitrator must treat the parties equally and give them equal opportunity to present their case. For instance if the arbitrator extends the time for oral testimony or address by one party beyond the time previously agreed upon, he should also give an equal extension to the other party. Independence on the other hand means that the tribunal should have no direct relationship with the parties or subject matter of the dispute which may affect his ability to give a dispassionate award.

b) Procedure for challenge, removal and replacement of arbitrator

The parties may determine (by the arbitration agreement) the procedure for challenge of an arbitrator. Where no procedure has been determined, a party who intends to challenge an arbitrator shall within fifteen days of becoming aware of the constitution of the tribunal or of any of the grounds for challenge under section 8(3) of ACA send to the arbitral tribunal a written statement of the reasons for the challenge.[[119]](#footnote-120) The arbitrator who has been challenged has the right to voluntarily withdraw from office and cease to serve on the tribunal or if the other party agrees to the challenge, the arbitrator must cease to serve. Where the arbitrator does not voluntarily resign upon a challenge and other party disputes the challenge, the tribunal shall make a decision on the challenge.[[120]](#footnote-121) ACA is silent on whether a decision by the arbitral tribunal on the challenge of an arbitrator is subject to appeal or judicial review and since the Act does not confer on the court the power to hear an appeal on a challenge, it would seem that the tribunal’s decision is final by virtue of section 34 of the Act. However, this procedure seems to be inconsistent with the rule of natural justice that no man shall be a judge in his own course represented in the Latin maxim, *nemo judex in causa sua,* as the arbitrator being challenged takes part in the decision on his challenge and in the case of a sole arbitrator he takes the decision alone. It has been suggested that a party who disagrees with the tribunal’s decision can only wait and apply for the award to be set aside under section 30(1) of ACA[[121]](#footnote-122) which provides that “*Where an arbitrator has misconducted himself, or where the arbitral proceedings, or award, has been improperly procured, the Court may on the application of a party set aside the award.”* In our view, the aggrieved party can even before the award, apply to court to remove the challenged arbitrator under section 30(2) on the ground that the lack of impartiality or independence amounts to misconduct. Section 30(2) provides that *“An arbitrator who has misconducted himself may, on the application of any party be removed by the Court.”* ACA does not define misconduct but it has been held that lack of impartiality or independence of an arbitrator amounts to misconduct.

Also the award can be set aside where the arbitrator was challenged on the basis of lack of qualifications stipulated in the arbitration agreement which is a ground for setting aside under section 48 (a)(vi) to wit: “that the composition of the arbitral tribunal was not in accordance with the agreement of the parties.”

A party may challenge the arbitrator appointed by him only for reasons of which he becomes aware after the appointment has been made.[[122]](#footnote-123) The test is however a subjective one, for it is difficult to determine when a party became aware of any fact or circumstance.

An arbitrator may be removed by the court for misconduct under section 30(2). He may also be removed by the appointing authority or by the agreement of parties for inability or failure to perform his functions without undue delay.[[123]](#footnote-124) An arbitrator who is removed shall be replaced in accordance with the same rules and procedure under which the arbitrator who is being replaced was appointed.[[124]](#footnote-125) Thus, if he was appointed by a named arbitral institution or appointing authority under section 7, the appointing authority shall appoint a substitute arbitrator in his place. If he was a party appointed arbitrator in a panel of three, the party who appointed him shall appoint a substitute arbitrator in his place even if that party had failed to exercise his right to appoint or to participate in the process of appointment of the challenged arbitrator.[[125]](#footnote-126)

Under the Lagos State Arbitration Law there is an additional provision that if the parties had designated an arbitral institution or person with power to remove an arbitrator, the Court shall not exercise its power of removal unless the applicant has first exhausted any available recourse to that institution or person.[[126]](#footnote-127) While an application to Court for removal is pending the arbitral tribunal may continue the arbitral proceedings and make an award.[[127]](#footnote-128) The affected arbitrator is entitled to appear before and be heard by the Court with or without legal representation before it makes any Order under section 12(3).[[128]](#footnote-129) Where the Court removes an arbitrator, it may make such Order as it thinks fit with respect to the arbitrator’s entitlement (if any) to fees and expenses including indemnity for legal expenses, or the refund of any fees or expenses already paid.[[129]](#footnote-130)

4. Arbitrator liability and immunity

There is no provision on liability or immunity of arbitrators under ACA. However, under the Lagos Arbitration Law 2009,[[130]](#footnote-131) 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 immunity extends 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. The Arbitration Rules of the Regional Centre for International Commercial Arbitration Lagos 2008[[131]](#footnote-132) 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.

F. Conducting the Arbitration

1. Law governing procedure

a) Determination of law and rules governing procedure

In accordance with the Party autonomy doctrine in arbitration, parties can in their arbitration agreement determine the governing law and rules of arbitration. In the absence of parties’ agreement on choice of procedural law, ACA and the Arbitration Rules will apply to all arbitral proceedings whose seat is in Nigeria. Even where the parties have chosen a different law, an arbitral tribunal sitting in Nigeria will likely apply the mandatory rules of ACA. ACA does not expressly provide for supremacy in case of conflict between mandatory provisions of ACA and parties’ choice of law but the tribunal can exercise its discretion to apply the law which it thinks would meet the justice of the case by virtue of section 15(2) of ACA. Section 15(2) provides that where the Arbitration Rules contain no provision on any arbitration proceedings under ACA, the arbitral tribunal shall conduct the proceedings in such manner as it considers appropriate so as to ensure fair hearing.

Enforcement of international arbitral awards made in Nigeria is governed by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) which is domesticated as the Second Schedule to ACA.

The Lagos State Arbitration Law 2009 and the Lagos Court of Arbitration Law 2009 govern arbitrations whose seat is Lagos as from its commencement date (Mary 2009), unless the parties have expressly agreed otherwise.

b) Notion and role of seat of arbitration

Arbitration is governed by the law of the seat of arbitration i.e. the place of arbitration. 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; Tawa Petroleum v. M.V. Sea Winner 3 NSC 25.*

c) Mandatory rules of procedure

Most of the provisions in ACA and the Arbitration Rules are subject to and may be varied by parties’ agreement. However, section 15 (1) ACA which deals with domestic arbitral proceedings provides that the arbitral proceedings “shall” be in accordance with the procedure contained in the Arbitration Rules set out in the First Schedule to this Act. Also, section 15(2) states that where the rules referred to in section 15(1) above contain no provision in respect of any matter related to or connected with a particular arbitral proceedings, the arbitrate tribunal may subject to the Act, conduct the arbitral proceedings in such manner as it considers appropriate as to ensure fair hearing.

On the flip side, section 53 which governs international arbitral proceedings states that:

notwithstanding the provisions of this Act, the parties to an international commercial agreement “may” agree in writing that disputes in relation to the agreement shall be referred to arbitration in accordance with the arbitration rules set out in the First schedule to this Act, or the UNCITRAL Arbitration Rules or any other international arbitration rules acceptable to the parties.

A clear implication of the above provisions is that the party autonomy doctrine in arbitration has to a large extent been circumscribed and restricted with regards to domestic arbitration. Hence, the use of the word “shall’ in section 15(1) limits the freedom of parties to a domestic arbitration to tweak the arbitral procedure the way it suits them. According to Olakunle Orojo and Ayodele Ajomo, the effect of these provisions are first, that in domestic arbitration, the parties as well as the arbitral tribunal are bound by the provisions of the Arbitration Rules. Thus, the much flaunted party autonomy in respect of arbitral procedure is very much limited in domestic arbitration under the Act than under the UNCITRAL Model Law[[132]](#footnote-133). Both learned authors argue that in domestic arbitration, parties are not free to adopt the rules of an arbitration institution, if the rules conflict with those of the First Schedule of the ACA.

In international commercial arbitration, section 53 unlike section 15(1) has made it clear that the arbitration rules in the First Schedule to the ACA are not mandatory or compulsory, but that they are optional as the parties may decide to incorporate the UNCITRAl Arbitration Rules or those of any other international institution.[[133]](#footnote-134)

2. Conduct of arbitration

a) Basic procedural principles

There are basic procedural steps required for the institution and conduct of valid arbitral proceedings under ACA and the Arbitration Rules. The Notice of Arbitration must be issued by the claimant and communicated to the respondent in the prescribed format under Article 3 of the Arbitration Rules. The respondent has 30 days within which to respond and nominate or appoint his arbitrator. The appointment and constitution of the tribunal shall be in accordance with Articles 6-8 of the Arbitration Rules An arbitrator may be challenged and replaced in accordance with the procedure set forth in Articles 9 to 12 of the Arbitration Rules. The tribunal when constituted holds meetings (preliminary meeting, prehearing meeting, pre-hearing review, inspection of documents or subject matter, hearing, etc.) with the parties at any place agreed by the parties or determined by the tribunal in accordance with Article 16. Where a sole arbitrator is replaced, hearings shall be repeated but if a co-arbitrator is replaced, hearings may be repeated at the discretion of the tribunal.[[134]](#footnote-135)

The tribunal may hear and determine any preliminary issue in accordance with section 13 ACA before proceeding to hear the substantive case. In the substantive hearing, parties present their respective cases, documents and any other evidence in turns in accordance with sections 19 and 20 ACA and Articles 18 to 25 of the Arbitration Rules. At the close of hearing, the parties may make oral or written final submissions. Article 29 of the Arbitration Rules requires the tribunal to inquire and ensure that parties have no further evidence or submissions to make before declaring the hearings close. The tribunal is entitled in exceptional circumstances to re-open the hearings at any time before the award is made on the application of a party or on its own motion. After the final close of hearings, the arbitral tribunal shall proceed to write and deliver its award to the parties in the form prescribed by section 26 of ACA and Article 32 of the Arbitration Rules. The tribunal is entitled to make an interim, interlocutory or partial award in addition to a final award.

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

b) Party autonomy and arbitrators’ power to determine procedure

Arbitration procedure under ACA is largely based on consent or agreement of the parties. Most of the provisions of ACA and the Arbitration Rules are subject to and may be varied by parties’ agreement. Where parties have not agreed on procedure as regards any matter under ACA, the arbitral tribunal has the power to determine the procedure. However, in determining such procedure the arbitral tribunal is required to act fairly and reasonably and to have regard to the convenience of the parties. For instance, section 16 ACA provides that where the parties have not previously agreed, the arbitral tribunal shall determine the place of the arbitral proceedings having regard to the circumstances of the case, including the convenience of the parties. Section 18 of ACA provides that where the parties have not determined the language of the arbitral proceedings, the arbitral tribunal shall determine the language to be used bearing in mind the relevant circumstances of the case. By section 20 of ACA, the parties also have the right to determine whether the arbitral proceedings shall be conducted by oral hearings, on the basis of documents only or both and where they have not agreed, the arbitral tribunal shall decide how the proceedings will be conducted. Sections 21, 22 and other sections of ACA also contain arbitrator’s powers to determine procedure or take certain decisions where parties have not exercised their right of autonomy.

c) Style and characteristics of the oral hearing

Oral hearings are done in camera unless otherwise agreed by the parties.[[135]](#footnote-136) Oral hearing[[136]](#footnote-137) is characterised by sworn or affirmed oral evidence of witnesses (direct witnesses or expert witnesses).[[137]](#footnote-138) 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 and the arbitral tribunal is free to determine the admissibility, relevance, materiality and weight of the evidence offered. Article 25(5) of the Arbitration Rules provides that evidence of witnesses may be presented in the form of written statements signed by them. In practice, the party presenting the witness shall have a right to examine the witness in chief and then re-examine the witness to clarify any ambiguity after the other party has had the opportunity to cross examine the witness. 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. Evidence of witnesses or documents may be compelled under section 20(6) of ACA.

The tribunal may with the agreement of parties resort to other rules of evidence in arbitration such as the IBA Rules of Evidence which contain detailed procedure for taking evidence. Section 15(2) gives the tribunal this power.

d) Documents only arbitrations

Section 20(1)(b) of ACA provides for arbitration proceedings to be conducted on the basis of documents or other materials. This means that in cases where the facts are largely document based such as financial, security or accounting transactions, parties can dispense with the need for oral evidence and ask the tribunal to decide the case on the basis of the documents only.

e) Submissions and notifications

Section 19(1) of ACA provides that the Claimant shall within the time agreed by the parties or determined by the tribunal submit his points of claim stating the facts supporting his claim, the points in issue and the relief or remedy sought by him. The respondent shall in turn state his points of defence within the time specified or agreed upon. Section 19(2) provides that each party may submit with its points of claim or defence, all relevant documents or evidence they intend to rely on at the arbitral proceedings, a procedure similar to the frontloading procedure under the High Court Rules which seeks to eliminate surprises and allow each party know and meet the case of the other party.

Every document, statement or other information supplied to the tribunal shall be communicated to the other party by the party supplying it and every such document, statement or information supplied by the arbitral tribunal to one party shall be supplied to the other party.[[138]](#footnote-139) In other words, one party should not communicate with the tribunal without putting the other party on notice and the tribunal should ensure that it maintains transparency in dealing with the parties by communicating with them simultaneously. The tribunal’s communication with one party alone may amount to misconduct. In practice, communications between the parties and the arbitral tribunal are done through the administrative secretary or registrar.

Any notice, communication or proposal under the Arbitration Rules is deemed to have been received if it is physically delivered to the addressee or at his residence, place of business or mailing address, or if none of these can be found after reasonable inquiry, then at his last known address. Notice is deemed to be received on the day it is so delivered and periods of time under the Rules shall be begin to run from the next day after receipt. If the last day of the period of time falls on an official holiday or non-business day, the period is extended until the first business which follows. However, official holidays or non-business days occurring during the running of the period of time are included in calculating the period.[[139]](#footnote-140)

f) Deadlines, and methods for their extension

Under section 19(1) of ACA, the parties can agree on the time within which they shall state their claim or defence and if they do not agree, the tribunal shall fix the time but the time fixed shall not exceed 45 days.[[140]](#footnote-141) Section 19(3) provides that a party may amend or supplement his claim or defence during the course of the arbitral proceedings if the arbitral tribunal considers it appropriate to allow such amendment or supplement having regard to the time that has elapsed before the making of the amendment or supplement. This is however subject to any contrary agreement by the parties. In practice, where one party is allowed to amend his pleadings, the other party is granted a consequential right of amendment. Article 20 of the Arbitration Rules provides that a claim shall not be amended in such manner as the amended claim falls outside the scope of the arbitration clause or separate arbitration agreement.

g) Legal representation

Article 4 of the Arbitration Rules provides that the parties may be represented or assisted by legal practitioners of their choice. The names and addresses of such legal practitioners must be communicated to the other party in writing, specifying whether the appointment is being made for representation or assistance.

h) Default proceedings

If without showing sufficient cause the claimant fails to state his claim as required under section 19 of ACA, the arbitral tribunal shall terminate the proceedings. But, where the defendant fails to state his defence as required or any party fails to appear at the hearing or to produce documentary evidence, the tribunal shall continue the proceedings and give a default award. However, the failure of the defendant to participate shall not in itself be treated as an admission of the claimant’s allegation. The claimant shall still be required to prove his claim and the arbitral tribunal shall decide the case on the merits.[[141]](#footnote-142)

3. Taking of evidence

a) Admissibility

Section 15(3) of ACA provides that the arbitral tribunal shall have the power to determine the admissibility, relevance, materiality and weight of any evidence placed before it.

b) Burden of proof & production of documents

The burden is on each party to prove the facts relied on to support his claim or defence. However, the arbitral tribunal is entitled at any time during the proceedings to request the production of any documents, exhibits or evidence by any party within such period of time as the tribunal shall determine.[[142]](#footnote-143)

c) Standards of proof

ACA does not stipulate the standard of proof required. But in practice arbitral tribunals tend to apply the standard of balance of convenience under general rules of evidence. In other words the tribunal will look at the totality of facts and evidence and decide on the party whose evidence is more credible and convincing and whose side the scale of justice tilts.

d) Evidentiary means, witnesses—in general

Evidence may be by oral testimony of witnesses which may be the parties themselves or other persons seized of the facts. It may also be in form of documentary or other materials such as objects, drawings, pictures and such materials which represent a state of things relevant to the facts in dispute. Electronic evidence may also be given even though ACA does not expressly provide for it.[[143]](#footnote-144) Evidence on technical or specialised areas may also be given by experts appointed by the parties or by the tribunal under Article 27 of the Arbitration Rules.

e) Documentary evidence and privilege

Section 20(6) of ACA 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”. Other than this provision, ACA does not contain rules on privileged evidence. However, it will appear that the general rules on privileged documents will apply in arbitrations under the Act. Generally, documents or communications made between a legal practitioner and his client in the course of his engagement,[[144]](#footnote-145) 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 are treated as privileged evidence. Documents or communications made in furtherance of an illegal purpose or showing that a crime or fraud has been committed are not privileged. Nonetheless, a privileged document may by agreement of the parties be used 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.

f) Tribunal-appointed experts & party-appointed experts

If the parties have not appointed expert witnesses, the arbitral tribunal may appoint one or more experts to report to it on a specific issue. Where the tribunal appoints an expert, it may require a party to give to the expert, any relevant information or document or other property for inspection and upon delivery of the expert report (written or oral), the parties shall be entitled to put questions to the tribunal appointed expert or to appoint expert witnesses to testify on their own behalf on the points in issue.[[145]](#footnote-146) Thus in addition to the tribunal-appointed expert(s), parties can appoint their own experts to give joint or separate opinions. Appointing multiple experts increases cost of arbitration.

The role and duty of an expert witness is to assist the tribunal in arriving at the true facts and position regarding the points in issue within his area of technical expertise. The independence of an expert witness is an important factor in determining the credibility and weight to be attached to his report. Whilst the independence of a tribunal-appointed expert is easier to maintain since his primary duty is owed to the court in the first place, a party-appointed expert may easily be tainted with bias may as there is the tendency for the expert witness to be loyal to or biased towards the party who appoints and pays him. The *Chartered Institute of Arbitrators* *(CIArb) Protocol for the Use of Party Appointed Expert Witnesses in International Arbitration* provides Guidelines to facilitate a tribunal’s assessment of the independence and usefulness of party-appointed expert witnesses. One of such guidelines is that an expert’s written opinion should contain the following expert declarations:

* An acknowledgement that the expert’s duty in giving evidence is to assist the arbitral tribunal to decide the issues in respect of which expert evidence is adduced, and that the expert has complied with and will continue to comply with that duty;
* A confirmation that the expert is independent of the appointing party;
* A confirmation that his opinion is independent, objective and unbiased, and has not been influenced by the pressures of the dispute resolution process or by any party to the arbitration;
* A confirmation that all matters upon which the expert has expressed an opinion are within the expert’s area of expertise;
* A confirmation that the expert has referred to all matters which the expert regards as relevant to the opinions the expert has expressed and has drawn the attention of the tribunal to all matters of which the expert is aware, which might adversely affect the expert’s opinion;
* A confirmation that the expert considers the opinion to be complete and accurate and constitute the expert’s true, professional opinion; and
* A confirmation that if the expert subsequently considers that the opinion requires any correction, modification or qualification, the expert will notify the parties to the arbitration and the arbitral tribunal forthwith.[[146]](#footnote-147)

An expert opinion should not be a substitute for the tribunal’s opinion; it should merely assist the tribunal to form an opinion on the technical points in issue. Expert evidence is not usually admitted on questions of credibility of a witness. See *A.G. Federation v. Abubakar* (2007) 10 NWLR (Part 1041) 37. An expert must possess knowledge and information on the issues on which he is called upon to give an opinion, beyond that which is ordinarily available. This means that the expert must be specifically trained in those areas. Thus, the educational background and professional experience of the expert must be established to qualify a person as an expert witness.

ACA does not stipulate the form or content of an expert report. However, an expert report should not contain facts or opinion given to the expert by some other person who is not called in evidence. His report should be restricted to matters peculiarly within the expert’s knowledge or investigation. Any opinion outside this limit is inadmissible. *See A.N.P.P. v. Usman* (2008) 12 NWLR (Part 1100) 28.[[147]](#footnote-148)

4. Interim measures of protection

a) Jurisdiction for granting interim measures

Section 13 of ACA confers jurisdiction on the arbitral tribunal to grant interim measures of protection before or during the arbitral proceedings. Unlike the Lagos Arbitration Law 2009, ACA does not provide for the power of court to grant interim measures and parties often have recourse to court under the Rules of Court and under the inherent jurisdiction of the court to grant interim measures where the arbitral tribunal is yet to be constituted.[[148]](#footnote-149)

Under section 13 ACA an arbitrator has power to require any party to provide appropriate security in connection with any interim measure taken. Although ACA does not stipulate the type of interim reliefs which the arbitrator can grant, it is important for the arbitrator to be mindful of the scope of his jurisdiction and to act within that scope as any interim relief granted by the arbitrator in excess of his jurisdiction may be invalid and set asides by the court. Recourse is often had to court for the enforcement of interim orders of an arbitrator since an arbitrator has no coercive powers.

b) Availability of preliminary or ex parte orders

ACA does not provide for ex parte orders of an arbitral tribunal. However, under the Lagos Arbitration Law, an arbitral tribunal has the power to *issue ex parte* preliminary orders directing a party not to frustrate the purpose of the interim measure requested at the same time as it makes a request for the interim measure, and also provides a specific procedure for the grant of Preliminary Orders[[149]](#footnote-150). In such cases, the tribunal shall decide promptly on any objection to the preliminary order and a preliminary order shall expire after 20 days from the date on which it is issued by the tribunal. The tribunal may extend, modify, suspend or terminate an interim measure or a preliminary order it has granted, upon application of any party or in exceptional circumstances where important facts were concealed from the tribunal, the order was obtained by fraudulent misrepresentation.[[150]](#footnote-151) The tribunal shall require the party applying for a preliminary order or interim measure to provide security in connection with the order unless the tribunal considers it inappropriate or unnecessary to do so.[[151]](#footnote-152)

c) Security for costs

ACA confers power on an arbitral tribunal 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) & 29(3) of the Lagos Law contain similar provisions. Under section 28 of the Lagos Arbitration Law, the party applying for a preliminary order or interim measure shall be liable for costs and damages caused by the measure or the order to the party against whom it is directed if the tribunal later finds that the order or measure should not have been granted in the circumstances. The arbitral tribunal may award such costs and damages at any point during the proceedings.

d) Enforcement mechanisms

An arbitrator has no coercive powers under ACA and so recourse is often had to court for enforcement of interim or preliminary orders. Such orders may be enforced in the same manner as a judgment of court.

5. Interaction between national courts and arbitration tribunals

ACA provides for court’s intervention in arbitration. Although arbitration derives largely from the agreement of parties, it is a system built on law and which relies on law to make it effective. Thus whilst courts can exist without arbitration, arbitration cannot exist without the courts. The relationship between courts and arbitral tribunals is one of constant shifts and changes; it is one of “partnership”. It is one in which each has a different role to play at different times. However, the real issue is in identifying the point at which the interaction begins and where it ends.[[152]](#footnote-153)

a) Court assistance before arbitration begins

The Court intervenes before the commencement of arbitration in situations such as (i) enforcement of the arbitration agreement (ii) establishment of the tribunal and challenge to jurisdiction (iii) preservative orders pending arbitration.

If a party to an arbitration agreement institutes proceedings in a court in breach of an arbitration clause, the court will stay proceedings unless the other party does not object to the legal proceedings. In *Hallam v A.G Plateau State*,[[153]](#footnote-154)the court opined that “*where an agreement made by the parties stipulates that any dispute arising therefrom must be referred to the referee, it would amount to jumping the queue for any of the parties to revert to the Court first before the dispute between them is referred to an appointed arbitrator*.” Also, in *Commerce Assurance Ltd v. Alli*,[[154]](#footnote-155) the court stated that “compliance with the agreement of the parties by going to arbitration is a condition precedent to be observed before the commencement of action in Court”.

Where the Defendant insists on his right to have the matter resolved by arbitration the court will enforce the arbitration agreement and refer the parties to arbitration by granting a stay of proceedings pending arbitration under sections 4 & 5 of ACA. A recent cases on this point include the case of *Neural Proprietary Limited v. UNIC Ins. Plc* (2016) 5NWLR (Pt 1505)374 @376 & 377.

Where the parties do not make adequate provision for the constitution of the arbitral tribunal, and there are no applicable institution or other rules, court intervention can be invoked under section 7 of ACA for the appointment of arbitrators.

The arbitral tribunal has the power to rule on questions pertaining to its own challenge and jurisdiction**.**[[155]](#footnote-156) However, the final decision on jurisdiction rests with the court as a dissatisfied party may chose to apply to court.[[156]](#footnote-157) The result is that there is concurrent control of the arbitration by the court and the arbitral tribunal on the question of an arbitrator’s challenge or jurisdiction.[[157]](#footnote-158)

b) Court assistance during the arbitration

Generally, an arbitral tribunal is independent of the court and the parties have autonomy to dictate the procedure to be followed by the tribunal. However, party autonomy is restricted by the tribunal’s consideration of fairness and equality of access in accordance with section 14 ACA. The arbitral tribunal has no coercive power; it relies on the court to exercise such powers and assist the arbitral process. Court intervention is necessary for instance to compel attendance of witnesses or production of documents before the tribunal under section 23 of ACA and to grant interim or preservative measures in respect of the property or subject matter of the dispute under section 13 ACA or Article 26 during arbitration proceedings.[[158]](#footnote-159)

In the Court of Appeal case of *Statoil (Nig) Ltd v. Nigerian National Petroleum Corporation*[[159]](#footnote-160) it was held that a lower court was wrong to grant an injunction to a party that wanted to prevent the continuation of arbitration proceedings even though that party had entered into an agreement to resolve all disputes through arbitration. The Court held that nowhere in ACA is a court empowered to halt arbitral proceedings through the issuance of an injunction and as the Act does not provide for the intervention of the court to restrain arbitration by injunction, the court lacks jurisdiction to do so.

However, in the recent unreported Nigerian Court of Appeal **Case No: CA/L/331M/2015 – Shell Petroleum Development Company of Nigeria and Ors v Crestar Integrated Natural Resources Limited**, the Court granted an anti-arbitration injunction against the Claimant in the arbitral proceedings taking place in London.

*The decision of the Court of Appeal in this case is a landmark one because it represents a pioneer decision of an appellate Court on the issue of whether Nigerian Courts have jurisdiction to make Orders of injunction to restrain a party from taking further steps in respect of an international arbitration seated outside Nigeria.*

*It is however noteworthy that this decision does not attack the jurisdiction of the arbitral tribunal to continue with its proceedings but restrains the Claimant from pursuing them in the light of the reasons adumbrated in the Court’s ruling.*

Technically, there is no express statutory provision or case law prohibiting the tribunal from proceeding with the arbitration. This is because as stated above, a court cannot grant an order to stay arbitral proceedings. However, in the very interesting case of Shell v. Crestar cited above, the anti-arbitration injunction granted was not an in rem order against the tribunal but an impersonam order against the parties. The peculiar facts of the case at the Court of Appeal was such that the court considered that ruling otherwise would be oppressive, vexatious or unconscionable to Crestar’s interest.

c) Court assistance after the arbitration

At the end of the arbitral process, the tribunal gives an Award which is binding on parties and upon application to court the award is enforceable like a court judgment[[160]](#footnote-161). The award may also be set aside or refused recognition by the court on the application of a party to the arbitration agreement.[[161]](#footnote-162)

By section 34 of ACA, the court’s intervention in arbitration is restricted to those areas stipulated under ACA.

d) Case law examples of best and worst practices

In *Ogunwale v. Syrian Arab Republic (2002) 9 NWLR (Part 771) 127* the Court of Appeal considered the mode of appointing an arbitrator under ACA, mode of furnishing names of arbitrators for appointment by the court, right of appeal against decision of the High Court appointing an arbitrator, the constitutionality of sections 7(4) and 34 of ACA prohibiting right of appeal from decision of the High Court appointing an arbitrator amongst other issues.

On mode of appointing an arbitrator under the Act, the Court held that by virtue of section 7(3) of the Arbitration and Conciliation Act, where an arbitrator is not appointed under any appointment procedure agreed upon by the parties, 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.

On mode of furnishing names of arbitrators for appointment by the court 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 contract has arisen and a copy of the arbitration agreement if it is not contained in the contract. The court may require from either party such information as it deems necessary to fulfil its functions. 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 fundamental 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. This in our view is a good decision which will prevent undue and mischievous reliance on technicalities which some lawyers use as a tactics to delay legal proceedings.

On the right of appeal against decision of High Court appointing an arbitrator the court held that by virtue of section 7(4) of the Arbitration and Conciliation Act, a decision of the High Court on the appointment of an arbitrator shall not be subject to appeal. In order to determine whether a decision of the court on appointment of an arbitrator is appealable or not, the court must review the grounds of appeal and the issues formulated there from to discover the grounds upon which the appealed decision is being challenged. In the instant case, grounds 1-3 of the grounds of appeal and issues 1-3 formulated there from did not either directly or indirectly make any reference to matters inherent in the appointment of an arbitrator to warrant the invocation of the provisions of section 7(4) of the Act which makes such decisions final and the court held that section 7(4) was inapplicable to the case.

On constitutionality of sections 7(4) and 34 of the Arbitration and Conciliation Act prohibiting right of appeal from decision of the High Court appointing an arbitrator the Court held that by virtue of section 241(1)(a), (b) and (c) of the 1999 Constitution, an appeal shall lie from decisions of the Federal High Court or a High Court to the Court of Appeal as of right in the following cases:

* Final decisions in any civil or criminal proceedings before the Federal High Court or a High Court sitting at first instance;
* Where the ground of appeal involves question of law alone, decisions in any civil or criminal proceedings;
* Decisions in any civil or criminal proceedings on questions as to the interpretation or application or application of the Constitution.

The Court also held that the above section has by its provisions unequivocally conferred on any aggrieved party the right to appeal as of right in the circumstances listed above. The fact that the Arbitration and Conciliation Act is an existing law is of no consequence in exercising any of the rights conferred by section 241(1) (a) (b) and (c) of the Constitution. Also, the provisions of sections 243 and 315 of the Constitution have not abridged the right of appeal given to a citizen under section 241(1) of the Constitution. Consequently, 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 Constitution as such right of appeal has constitutional backing.

6. Multiparty, multi-action and multi-contract arbitration

a) Consolidation of arbitrations

b) Joinder of third parties

c) Parallel and concurrent proceedings

An arbitrator has no statutory power of joinder under ACA and ACA does not contain provisions on multi-party proceedings, consolidation or concurrent proceedings. The proposed revisions of ACA seek to address these aspects. However it would seem that an arbitrator can exercise the power of joinder and consolidation under his inherent powers in section 15 of ACA to conduct the arbitral proceedings in a manner it considers appropriate in the absence of any provision in the Act or Rules or in the absence of parties’ agreement on the issue.

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.

7. Law and rules of law applicable to the merits

a) Determining the applicable law and rules

b) Party autonomy

c) Determination by arbitrators

d) Non-national substantive rules, general principles of law and transnational rules

e) Mandatory rules

Parties can in their arbitration agreement determine the governing law of the substantive contract. Parties are free to choose foreign law to apply to the contract but if they do not exclude the conflict rules of Nigeria as the seat of arbitration, the tribunal (or court) may uphold Nigerian law on the subject matter in case of conflict. In the absence of parties’ agreement on governing law, Nigerian law applicable to the subject matter will apply. Where there is a dispute on the applicable law, the tribunal can invite parties to address it to enable it decide on the governing law.

Mandatory rules such as regulatory procedure may apply to the contract irrespective of parties’ choice of law where the contract is to be performed in Nigeria. For instance, under the Investment and Securities Act and the Securities and Exchange Rules in force in Nigeria, certain regulatory approvals are required for capital market transactions, mergers and acquisitions performed in Nigeria and certain obligations are statutorily imposed on the operators irrespective of the parties’ choice of law.

8. Costs

a) Arbitration costs

Under section 49(1) ACA an arbitral tribunal shall fix costs of arbitration in its award. Cost of arbitration includes: the fees of the arbitral tribunal, the arbitrators’ travel or other expenses, cost of expert advice or other assistance required by the tribunal (such as administrative services), travel or other expenses of witnesses approved by the tribunal, cost of legal representation of the successful party which were claimed during the arbitral proceedings provided that such cost is reasonable in the opinion of the tribunal. In practice, the tribunal may at the beginning of the arbitral proceedings inform parties of how it would award cost. The tribunal has the power to award cost as a deterrent against undue delay or non compliance by a party with the arbitration procedure.

b) Security for costs

ACA confers the power on an arbitral tribunal to order security for costs 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) & 29(3) of the Lagos Law contain similar provisions.

G. Arbitration Award

Upon conclusion of arbitration, the tribunal renders a binding award and it is the duty of the tribunal to ensure that the award is enforceable. The Award informs the parties of the tribunal’s reasoned decision; it should dispose of all issues submitted to the arbitral tribunal and should be complete in itself. The form of award is dictated by the arbitration agreement and the law governing the arbitration (ACA).[[162]](#footnote-163) The tribunal can render different types of awards.

1. Types of awards

a) Partial awards

By section 12 of ACA a tribunal can give a partial award on its jurisdiction and scope of authority, governing law, validity of the arbitration agreement, language of arbitration or any aspect of the dispute which is intended to be disposed of before going into substantive trial or hearing. Section 12 (4) of ACA provides that tribunal may rule on any plea referred to it as a preliminary question or in an award on the merits and such ruling shall be final and binding. Thus a tribunal has the option of deciding all issues in the final award or bifurcating them by means of a partial and final award. A tribunal can also grant interim measures of protection of the subject matter by means of an interim award. A partial award is similar to an interim award save that a partial award can deal with non-preliminary issues such as a decision on liability, and the decision on that issue in a partial award is final and enforceable like a final award provided it complies with the formal requirements of an award.

b) Final awards

A final award is the award that completes the arbitral tribunal’s mission and renders the arbitral tribunal *functus officio.* A final award is binding and enforceable as judgment of court. However, in practice, parties may negotiate and compromise an award.

c) Consent awards

The tribunal can give a consent award where parties resolve their disputes amicably before the end of the arbitral proceedings. Section 25(1) of ACA provides that *“If during the arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the arbitral proceedings, and shall, if requested by the parties and not objected to by the arbitral tribunal, award on agreed terms.* A consent award must also comply with the formal requirements of an award and shall have the same status and effect as an award on the merits but the tribunal shall state on the face of the award that it is a consent award.[[163]](#footnote-164)

d) Default awards

If a party fails, refuses or neglects to participate in the arbitral proceedings, the arbitral tribunal can continue with the proceedings and give a default award in the absence of the defaulting party under Section 21(b) & (c) of ACA. However, the tribunal in making a default award must decide the case on the merits, meaning that the claimant still has the burden to prove his claims. The tribunal must ensure that the defaulting party is given adequate notice of the date and place of hearing and of the tribunal’s intention to proceed if the party fails to attend, as failure to do so may result in a challenge of the award on ground of misconduct.[[164]](#footnote-165)

e) Awards and other decisions of the tribunal

An arbitral tribunal may give a declaratory award which merely pronounces on the rights of the parties without awarding any monetary or other reliefs.

2. Form requirements

The form requirements of an award are contained in section 26 of ACA. By section 26, an award shall be in writing and shall unless otherwise expressly agreed by the parties, the tribunal shall give reasons for the award. It must be signed by the arbitrator(s), dated and the seat of arbitration noted on it. Where there are three arbitrators and one of them is unable to sign, the award must state the reason for the absence of the signature.[[165]](#footnote-166)

a) Essential content

Apart from the formal requirements, it is essential that an award identifies or describes the parties, the background or history of the dispute in question, a confirmation of the tribunal’s jurisdiction and scope of authority, the pleadings and documents filed by the parties, the issues for determination and such chronological information that will make the award complete and leave nothing in doubt. It is usual but not compulsory to have the signature of the Arbitrator witnessed.

An award should be complete, certain, final and capable of enforcement. For instance, it must be clear from the award who is to pay what, the exact amount to be paid including the rate of pre and post-award interest. An important feature of an award in an international commercial arbitration is that it should be readily transportable. It should be capable of being taken from the state in which it was made to other states for the purpose of recognition and enforcement under different systems of law.[[166]](#footnote-167)

b) Reasons

By section 26(3) of ACA, an award shall contain the reasons on which it is based, unless the parties have agreed that no reasons should be given or the award is a consent award. However, in giving reasons, the tribunal is not necessarily compelled to undertake a detailed legal essay. It is sufficient if the tribunal gives reasons why it prefers the evidence or submissions of one party to the other. In other words, the tribunal should give the underlying reasons for the decision.

c) Time limits for making award

ACA does not contain time limits for making an award but parties may in their agreement specify the time within which the award must be delivered. Such time may be stipulated to run from the date of the Preliminary Meeting, commencement or close of hearing. Whatever time is agreed upon should be reasonable to allow the tribunal review the documents, evidence, submissions and materials before it to enable it to give a fair, just and enforceable award.

d) Notification to parties and registration

Upon signing the award, the tribunal shall communicate or deliver it to the parties.[[167]](#footnote-168) The award is confidential and may be made public only with the consent of the parties. Section 47(6) of ACA provides that *“If the arbitration law of the country where the award is made requires that the award be filed or registered by the arbitral tribunal, the arbitral tribunal shall comply with this requirement within the period of time required by law.”* ACA does not require the tribunal to register the award. However, an award may be filed in court for the purpose of enforcement.[[168]](#footnote-169) Under the Foreign Judgements (Reciprocal Enforcements) Act of Nigeria, an award which has not been wholly satisfied is registrable in court within 6 years from the date of the award.

3. Remedies

ACA does not stipulate the remedies which an arbitrator can award. However, an arbitrator has inherent power to award a range of remedies such as injunctions, monetary compensation, general or special damages, punitive damages, declaratory relief, specific performance, interest, cost, and so on. In awarding damages, the arbitrator must comply with the terms of the substantive contract or arbitration agreement and the law applicable to same. The tribunal can award interest on amounts successfully claimed based on the overriding principle of award of interest which presupposes that interest should be awarded to the Plaintiff, not as compensation for the damage done, but for being kept out of money which ought to have been paid to him.[[169]](#footnote-170)

4. Decision making

Section 24(1) ACA provides that where the arbitral tribunal comprises of more than one arbitrator, the decision shall be made by a majority of the members. This means that the majority decision forms the award but there can be a dissenting opinion. In practice, arbitrators avoid giving dissenting opinions as part of the award as dissenting opinions tend to whittle down the majority award and open a flood gate for challenge of the award. By section 24(2) of ACA the presiding arbitrator has an important role to play in coordinating the deliberations of the tribunal leading to the final award. His decision may carry the day if the tribunal is unable to reach a consensus on an award.

All members of the tribunal must sign the award whether their opinion is majority or dissenting. Article 32(4) requires that in the event of inability or failure of any member of the arbitral tribunal to sign the award, the reason must be stated in the award.[[170]](#footnote-171)

5. Settlement

By section 25 of ACA, if before the conclusion of arbitration proceedings and award, parties settle, the tribunal can give a consent award which shall be enforceable as an award on the merits. However, the tribunal is not obliged to give reasons for an award based on settlement.[[171]](#footnote-172) The tribunal is also not obliged to record the settlement in form of an award if the proposed settlement will in the tribunal’s view be contrary to public policy. In other words, the tribunal has a duty to ensure that an award on agreed terms is enforceable.[[172]](#footnote-173)

6. Effects of award

a) Effects between parties

By section 31(1) of ACA and Article 32(2) of the Arbitration Rules, an award is final, binding and enforceable as between the parties (to the arbitration agreement).

b) Effects against third parties

The arbitration agreement is the foundation of any arbitration. A valid agreement to arbitrate is a sine qua non for a valid arbitration.[[173]](#footnote-174) It is the source of the tribunal’s jurisdiction. ACA does not give the arbitral tribunal jurisdiction over third parties in the absence of a submission agreement or joinder, nor does it provide for enforcement of an award against third parties. In *Federal Government of Nigeria & 2 Others v. Continental Transfert Technique Limited*[[174]](#footnote-175) the Plaintiffs instituted an action to set aside the arbitral award on a government concession contract on ground of tribunal’s misconduct and other grounds. The contract was between the 3rd Plaintiff (the Minister of Interior) and the Defendant. One of the arguments of the Plaintiffs was that the arbitration agreement and award was unenforceable against the 1st and 2nd Plaintiffs (Federal Government of Nigeria & Attorney General of the Federation) as they were not parties to the contract. The arbitration clause was only valid and enforceable as between the 3rd Plaintiff and the Defendant and was not binding on the 1st and 2nd Defendants in the absence of a submission agreement or express authority from the 1st Defendant to the 3rd Defendant to sign the arbitration agreement. The Federal High Court dismissed the suit on grounds inter alia that the 1st and 2nd Defendants participated in the arbitral proceedings without raising any objection to the tribunal’s jurisdiction over them. Although the matter is currently on appeal, it seems that the decision of the Federal High Court may have been different if the 1st and 2nd Plaintiffs had raised the issue before the tribunal in the course of the arbitration proceedings or not participated in it.

c) Res judicata

An award has the same effect as a court judgment;[[175]](#footnote-176) it disposes of all disputes between the parties finally and thus renders them *res judicata* as between the same parties and subject matter. A final award also amounts to issue estoppel. In *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.*”

In *Ras Pal Gazi Const. Co. v. FCDA**(2001) 10 NWLR (Part 722) 559* the Supreme Court of Nigeria considered the status of an arbitral award vis-a-vis the judgment of court. The Court held that a valid award on a voluntary reference operates between the parties as a final and conclusive judgment upon all matters referred. Therefore, an arbitrator’s award under ACA is binding as between the parties, and when filed in court should for all purposes have the force and effect as a judgment. The Court further held that arbitration proceedings are not the same as negotiations for settlement out of court. An award constitutes final judgment; it has binding effect and is at par with a judgment of the court. However, the court has no jurisdiction to make an arbitral award the judgment of the court; i.e. to convert an arbitration award into its own judgment. The only jurisdiction conferred on the court is to give leave to enforce the award as a judgment unless there is real ground for doubting the validity of the award. By virtue of section 34 of the Arbitration and Conciliation Act, the court has no other business with regard to the award except where it is expressly provided in the Act.

7. Correction, supplementation, and amendment

a) Correcting & interpretation of the award

The tribunal may after rendering the final award be called upon by the parties to correct the award of any errors in computation, any clerical or typographical errors or any errors of a similar nature or to give an interpretation of a specific point or part of the award under section 28(1) of ACA. Such request must be made within 30 days of receipt of the award by the party making the request and must be made on notice to the other party. The tribunal may also on its own volition correct any computation, clerical, typographical or similar error in the award under section 28(3) but such correction must be made within 30 days from the date of the award.

Within thirty days after the receipt of the award, either party with notice to the other party, may request that the arbitral tribunal give an interpretation of the award. The tribunal shall give the interpretation within 45 days after the receipt of the request. Such interpretation shall form part of the award.[[176]](#footnote-177) The tribunal has the power to extend the time limits for correction or interpretation of an award.[[177]](#footnote-178) A correction or interpretation under section 28 forms part of the award and must meet the formal requirements of an award under section 26 ACA.[[178]](#footnote-179)

b) Additional award

A tribunal may make an additional award under section 28 (4) to (7) of ACA. A party may request the tribunal to make an additional award in respect of claims or issues raised in the course of arbitration but on which the tribunal omitted to decide. Such request must be made within 30 days of receipt of the award. This provision gives the parties the opportunity of recourse to the tribunal to completely dispose of all the issues rather than applying to court to set aside the award on ground of misconduct of the arbitrator(s). Section 28(5) provides that the tribunal may within sixty days of receipt of the request make the additional award if the request is ‘justified’. The word ‘justified’ implies that the tribunal is entitled to refuse the application if it considers that the request is unfounded or unreasonable. The tribunal has the power to extend the time limit within which to make an additional award and an additional award shall also comply with the formal requirements of an award under section 26 of the Act.

H. Challenge and Other Actions against the Award

1. Setting aside

a) Grounds

The grounds for setting aside an award are contained in sections 29, 30 & 48 of ACA. The grounds include:

* That the award contains decisions on matters which are beyond the scope of the submission to arbitration.
* Misconduct of the arbitral tribunal.
* Incapacity of a party to the arbitration agreement.
* Arbitration agreement 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.
* That the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration.
* That 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.
* That 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.
* That 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.

In considering an application for setting aside, the court will not inquire into the substance of the award. In *Baker Marina (Nig.) Ltd. V. Danos & Curole Contractors Inc.**(2001) 7NWLR (Part) 712 p. 340* the Supreme Court considered amongst others, the proper approach for determining proceedings challenging an arbitral award. The Court held that the court before whom an arbitral award is challenged cannot assume appellate jurisdiction over the award of the arbitrator. What the court should do is to look at the award and determine whether on the state of the law as understood by the arbitrators and as stated on the face of the award, the arbitrators complied with the law as they themselves rightly or wrongly perceived it. The approach is subjective. The court places itself in the position of the arbitrators and not above them and then determines on the hypothesis whether the arbitrators followed the law as they understood and expressed it.[[179]](#footnote-180)

In the case of *Mutual Life and General Insurance Ltd v Kodi Iheme**(2013) 2, CLRN, 68, the court held that “there must be an error of law on the face of the award to set aside an arbitral award*”.It demonstrates that Nigerian Courts will not be eager to set aside awards where the parties have agreed to resolve their dispute by arbitration and to abide by the decision of the arbitral tribunal.

Also, in *Nigerian Agip Exploration Ltd v Nigerian National Petroleum Corporation and Oando Oil (NAEL v NNPC, unreported CA/A/628/2011), (February 25th 2014)* supra, the Court of Appeal justified the restrictions for setting aside an award by stating that “*the underlining principle of arbitration is to ensure that parties who have voluntarily elected independent umpires whom they trust to settle their matters should be bound by the decision of the arbitrator without resort to the courts*” and adding that the ACA provides certain exceptions for the court to intervene in the “*interest of justice and fair play*”.

More recent cases which the Court of Appeal stated the principles governing setting aside an award is the case of Adamen Publishers (Nig) Ltd v. Abhulimen (2016) 6 NWLR (pt 1509) 431 @ 439. Also, the case of Atoju v. Triumph Bank Plc (2016) 5 NWLR (part 1505) 252.

b) Time limits

Time limit for applying to court to set aside an arbitral award is 3 months from the date of the award or 3 months from the date of an additional award.[[180]](#footnote-181)

c) Procedure

The procedure for setting aside is by filing an affidavit stating that the award has not been complied with and exhibiting the original or certified true copy of the award and arbitration agreement.[[181]](#footnote-182) The mode of commencement of an action to set aside an arbitral award varies depending on the court in which the application is filed. Under the High Court Civil Procedure Rules of Lagos, it is by motion on notice stating the grounds of the application and affidavit in support. Under the Federal High Court Civil Procedure Rules 2009,[[182]](#footnote-183) it is by originating motion.

d) Limiting judicial review of awards by contract

It is not unusual to find provisions in an arbitration agreement to the effect that “parties agree to be bound by and to comply with the award immediately.” However, such provisions do not take away the rights of parties to challenge an award in court, for if there is manifest misconduct or the existence of grounds for setting aside an award, the court will be inclined to refuse recognition of such award and to set it aside or remit it back to the arbitral tribunal for reconsideration.

e) Effects of successful challenge

A successful challenge leads to setting aside the award, or refusal of recognition or enforcement or remission to the tribunal for reconsideration.

2. Appeal on the merits

ACA does not provide for appeal against an award on the merits.

III.  Recognition and Enforcement of Awards

A. Domestic Awards

1. Statutory or other regime

a) Distinction between recognition and enforcement

An award may be recognised without being enforced. However the enforcement of an award means that the award is recognised.

b) Grounds for refusing recognition and enforcement

The grounds for refusal of recognition are stated in section 52 ACA as follows:

* Incapacity of a party to the arbitration agreement.
* Arbitration agreement 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.
* That the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration.
* That the award contains decisions on matters which are beyond the scope of the submission to arbitration.
* That 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.
* That 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.
* That recognition or enforcement of the award is against public policy of Nigeria.

c) Enforcement procedure

ACA provides that an award is enforceable as a judgment of court. Unless there are valid grounds for setting aside or refusing enforcement of an award, Nigerian courts will recognize and enforce the award. The procedure for enforcement is by application to court furnishing the original or certified true copy of the award and arbitration agreement. By sections 31 and 51 of ACA 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.

Under Order 39 Rule 4 of the Lagos State High Court Civil Procedure Rules 2012, application for enforcement of an award is by motion on notice stating the grounds for enforcement with supporting affidavit and the above-mentioned documents.

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.

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. By virtue of the New York Convention, foreign awards made in foreign countries (that are also signatories to the Convention) are enforceable in Nigeria.

Also, the Foreign Judgments (Reciprocal Enforcements) Act of 1961 provides for registration of a foreign arbitral award in the Nigerian High Courts at any time within six years after the date of the award, if the award has not been wholly satisfied and if at the date of the application for registration the award could be enforced by execution in the country of the award.

It is important to note that ACA does not provide for limitation period for enforcement of awards but the Lagos State Arbitration Law 2009, in section 35(1), provides that limitation laws shall apply to arbitral proceedings as they apply to judicial proceedings. Section 35(4) of the Lagos Arbitration Law 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 a limitation period of 6 years for an action to enforce 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.

d) Execution

Execution may be done by garnishee proceedings, writ of fifa, attachment etc.

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

The 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.

Does an arbitration clause in a commercial contract hinder investigation of crime?

In the recent case of Danfulani v. E.F.C.C. (2016) 1 NWLR (Pt 1493) 223@232, the Court of Appeal held thus:

“Where a crime has been committed or is suspected, an arbitration clause in a commercial contract may not be held to bind the aggrieved party and prevent him from making a complaint. In the instant case, the 3rd respondent had the right to make the complaint to the 1st respondent and the 1st respondent had the authority to investigate the complaint of the 3rd respondent.”

1. \* **Anthony Idigbe** is a Senior Advocate of Nigeria (SAN) and Senior Partner of PUNUKA Attorneys & Solicitors, a leading full service and multidimensional law firm in Lagos, Nigeria. He is a Fellow of the Chartered Institute of Arbitrators, UK and Member of the International Chamber of Commerce National Commission on Arbitration in Nigeria. He has handled many arbitration cases in the capacities of presiding arbitrator, co-arbitrator or counsel. Anthony has published several works on arbitration and other areas of legal practice. [↑](#footnote-ref-2)
2. \*\* **Omone Tiku** is an Associate Member of the Chartered Institute of Arbitrators, UK and has been involved in arbitration as counsel to parties or administrative secretary. She has also been involved in litigation cases borne out of arbitration. [↑](#footnote-ref-3)
3. *See* *Ohiaeri v. Akabeze [1992] 2 NWLR (Part 221) 7.* However, recognition and enforceability of a customary award is subject to the following conditions: (i) a voluntary submission of the matter to elders, chiefs or other non judicial body, (ii) an indication of willingness of parties to be bound by the decision of non judicial body or freedom to reject the decision where not satisfied, (iii) neither of the parties have resiled from the decision, (iv) arbitration is in accordance with the custom of the parties or their trade or usage (v) the Arbitrators reached a decision and published the award, (vi) the decision or award was accepted at the time it was made. *See* *Ehoche v. Ijegwa* (2003) 7 NWLR (Part 818) 142; OKEREKE V. NWANKWO (2003) 9 NWLR (Part 826) 600. [↑](#footnote-ref-4)
4. Webster J. B. and Bouhen A. A: (1967) The Revolutionary Years of West Africa since 1800; Longman (Nig) pages 102-103. [↑](#footnote-ref-5)
5. *See* Ibrahim Imam, ‘The Legal Regime of Customary Arbitration in Nigeria Revisited’*,* Department of Public Law, Faculty of Law, University of Ilorin, available on <http://www.unilorin.edu.ng/publications/imami> accessed on 3rd September 2012. [↑](#footnote-ref-6)
6. Section 6. [↑](#footnote-ref-7)
7. Idigbe, A., *Arbitration Practice in Nigeria,* Distinct Universal Limited, Lagos, 2010 p. 2. However, the spate of applications to court to set aside arbitral awards tends to whittle down this feature of arbitration. [↑](#footnote-ref-8)
8. *See* Sections 4 and 5 of the Arbitration and Conciliation Act. [↑](#footnote-ref-9)
9. Cap A18 Laws of the Federation of Nigeria 2004. [↑](#footnote-ref-10)
10. *E.g,* for the grant of preservatory or Injunctive reliefs pending the arbitral award. Section 13 of ACA provides for the power of the arbitral tribunal to order interim measures of protection before or during the arbitral proceedings. [↑](#footnote-ref-11)
11. ‘Court’ is defined under section 57(1) of the Act as State High Courts, High Court of the Federal Capital Territory, Abuja and Federal High Court. [↑](#footnote-ref-12)
12. Idigbe, A., op cit. [↑](#footnote-ref-13)
13. *Supra* note 8. [↑](#footnote-ref-14)
14. Uwechia, C., *Nigerian Arbitration Law and Practice,* Fairford and Company Limited, 1st Edition, 1997, p. 20. [↑](#footnote-ref-15)
15. Section 15 (2) of the Act. [↑](#footnote-ref-16)
16. *See* section 2, Lagos Arbitration Law 2009. [↑](#footnote-ref-17)
17. Idigbe, A. op cit. p. 11. [↑](#footnote-ref-18)
18. *See* Article 8(1) of the UNCITRAL Model Law on International Commercial Arbitration and sections 4 & 5 of the Arbitration and Conciliation Act Cap. A18 Laws of the Federation of Nigeria 2004. [↑](#footnote-ref-19)
19. *See* Article 13(3) of the UNCITRAL Model Law 1985. See also Anthony Idigbe and Omone Tiku in *The International Comparative Legal Guide to: International Arbitration 2012,* Global Legal Group, Chapter 50, p. 419. [↑](#footnote-ref-20)
20. *See* Idigbe, A. op cit, pp. 10 -11 for some of the innovations. [↑](#footnote-ref-21)
21. Ibid pp. 12 – 17. [↑](#footnote-ref-22)
22. *See* Anthony Idigbe, “Multi-Party Arbitration: The Ambit of Contractual Consent”, LL.M. Dissertation, Robert Gordon University, Aberdeen Business School, 2010/2012 pp. 93 – 95. [↑](#footnote-ref-23)
23. Sections 43 to 55. [↑](#footnote-ref-24)
24. Anthony Idigbe and Omone Tiku in *The International Comparative Legal Guide to: International Arbitration 2012 supra* note 17 at p. 431. [↑](#footnote-ref-25)
25. Another version of the Bill, the Federal Arbitration and Mediation Bill is also being prepared. [↑](#footnote-ref-26)
26. For instance, section 7(1) of the proposed bill states that “Subject to subsections (3) and (4) of this section, the parties may specify in the arbitration agreement the procedure to be followed in appointing an arbitrator provided:

    *(a)* that the place of arbitration shall be within the locality of Nigeria to all disputes arising out of—(i) contracts executed in Nigeria; *(ii)* contracts where the parties are subject to the applicable laws in Nigeria; *(iii)* contracts where the parties require that Nigerian law shall govern the substance of the contract. [↑](#footnote-ref-27)
27. Article 27(3) of the Lagos Court of Arbitration (LCA) Rules 2011 contains a similar provision. [↑](#footnote-ref-28)
28. Other persons providing administrative services *e.g.* recording, refreshments, etc. may also be allowed. [↑](#footnote-ref-29)
29. However, the award itself can be tendered and relied on in subsequent court proceedings, for once the award is registered or filed in court for the purpose of enforcement, it becomes a public document and loses its confidential or private status. [↑](#footnote-ref-30)
30. Section 1 provides that evidence of all relevant facts are admissible in court but no person shall be compelled to give evidence of a fact which he is disentitled to prove by law (such as privileged information). Section 1 is similar to section 20(6) of the Arbitration and Conciliation Act 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.” [↑](#footnote-ref-31)
31. *See* the official website of the Chartered Institute of Arbitrators, UK (Nigeria Branch) at <http://ciarbnigeria.org/> accessed on September 12, 2012. [↑](#footnote-ref-32)
32. Anthony Idigbe & Omone Tiku in *The International Comparative Legal Guide to: International Arbitration 2012* op citp. 429. See also the official website of the Regional Centre for International Commercial Arbitration, Lagos at <http://www.rcicalagos.org/> accessed on September 12, 2012. [↑](#footnote-ref-33)
33. *See* Rules 35.6 and 35.8. [↑](#footnote-ref-34)
34. There is also the Abuja Multi-Door Courthouse (AMDC), Akure Multi-Door Courthouse (AKMDC), The Kano Multi-Door Courthouse (KMDC), Akwa-Ibom Multi-Door Courthouse (AKMDCH) and the Delta Multi-Door Courthouse (DMC). [↑](#footnote-ref-35)
35. *See* the official website of the Lagos Multi Door Court House at <http://www.lagosmultidoor.org> accessed on September 12, 2012. [↑](#footnote-ref-36)
36. The proposed arbitrator is subject to confirmation by the ICC International Court of Arbitration. [↑](#footnote-ref-37)
37. The Securities and Exchange Commission, Nigeria. [↑](#footnote-ref-38)
38. *See* the Securities and Exchange Commission Rules and Regulations 2013 (Sundry amendments in April 2015). [↑](#footnote-ref-39)
39. Section 107 (1) and (2) of the Pension Reform Act 2014. [↑](#footnote-ref-40)
40. Section 26 of the National Investment Promotion Act, Chapter N117, Laws of the Federation of Nigeria 2004. [↑](#footnote-ref-41)
41. Section 5(2)(a) of ACA gives the court power to stay proceedings on the prompt application of a party to an arbitration agreement if the court is satisfied that there is no sufficient reason why the matter should not be referred to arbitration in accordance with the arbitration agreement. [↑](#footnote-ref-42)
42. Unreported Suit No. FHC/L/CS/50/2009 (Appeal No. CA/A/239/M/2010). [↑](#footnote-ref-43)
43. (2011)-LPELR-19742 CA. [↑](#footnote-ref-44)
44. *See Ude V. Nwara (1993) 2 NWLR (Part 278) 638.* [↑](#footnote-ref-45)
45. Sections 6 and 7 ACA. [↑](#footnote-ref-46)
46. Note that the courts have held that Section 7 of ACA precluding the right of appeal against a decision on appointment of tribunal is unconstitutional. See *Ogunwale v. Syrian Arab Republic (2002) 9 NWLR (Part 771) 127*. [↑](#footnote-ref-47)
47. By section 17 of ACA and Article 3(2) of the Arbitration Rules, arbitral proceedings commence on the date the notice of arbitration is received by the respondent and under Article 3(g) of the Arbitration Rules, the notice of arbitration shall contain a proposal or nomination of arbitrators which sets in motion the process of constitution of the tribunal. [↑](#footnote-ref-48)
48. In *Afribank Nigeria Plc v Haco* (unreported FHC/L/CS/476/2008), the court in exercise of its inherent powers granted interim relief and directed the parties to arbitrate under the provisions of ACA. Upon the publication of the award, the parties returned to court for its enforcement as judgment of the court. [↑](#footnote-ref-49)
49. Sections 6(3) and 21. [↑](#footnote-ref-50)
50. *See* sections 16 and 18 of ACA. [↑](#footnote-ref-51)
51. (1996) 9 NWLR (Part 411) 242. *Fawehinmi Construction Co Ltd v O.A.U.* (1998) 6 NWLR(Part 553) 171. [↑](#footnote-ref-52)
52. *See also* the case of *K.S.U.D.B. v. Fanz Ltd.**(1986) 5 NWLR (Part 39) 74.* [↑](#footnote-ref-53)
53. *See* Order 22 of the High Court of Lagos State Civil Procedure Rules 2004 and Order 22 of the High Court of Lagos State Civil Procedure Rules 2012. [↑](#footnote-ref-54)
54. *See also* *Niger Progress Ltd. v. N.E.I. Corp. (1989) 3 NWLR (Part 107) 68.* [↑](#footnote-ref-55)
55. Uwechia, C. op cit p. 38. [↑](#footnote-ref-56)
56. (Unreported Suit No. LD/275/2008). [↑](#footnote-ref-57)
57. (2010) LPELR-CA 279M 2009. [↑](#footnote-ref-58)
58. Akpata, E., *The Nigerian Arbitration Law in Focus,* 1997, West African Book Publishers Limited, p. 21. [↑](#footnote-ref-59)
59. *Taylor Woodrow Ltd. V. GMBH (1991) 2 NWLR (Part 175) 604.* [↑](#footnote-ref-60)
60. Section 9(3) ACA. [↑](#footnote-ref-61)
61. *See* Article 12 of the Arbitration Rules. [↑](#footnote-ref-62)
62. *See* Triana Ltd Vy6. UTB Plc (2009) 12 NWLR (Part 1155) 313. [↑](#footnote-ref-63)
63. *See* sections 8 and 12 of ACA. [↑](#footnote-ref-64)
64. *United World Ltd V M.T.S Ltd* (1998) 10 NWLR (pt 568) 106 at 110. [↑](#footnote-ref-65)
65. *See* Uwechia C, p. 30 *supra* note 12. [↑](#footnote-ref-66)
66. Section 48(a) (ii) ACA. [↑](#footnote-ref-67)
67. *See* for instance section 308 of the Constitution of the Federal Republic of Nigeria 1999 as amended. [↑](#footnote-ref-68)
68. Native law may vary from place to place and is a matter of fact to be proved in each case. [↑](#footnote-ref-69)
69. *Nash v. Inman* (1908)2 KB 1. [↑](#footnote-ref-70)
70. *Doyle v. White City Staduim* (1935) 1 KB 110. [↑](#footnote-ref-71)
71. G. Nwakoby, The Law and Practice of Commercial Arbitration in Nigeria, 2nd ed, Enugu, pg 296. [↑](#footnote-ref-72)
72. Sections 38 and 39 Cap C20 Laws of the Federation of Nigeria 2004. [↑](#footnote-ref-73)
73. *See* section 7(3) Lagos State Arbitration Law 2009. [↑](#footnote-ref-74)
74. *See* the official website of the Chartered Institute of Arbitrators, UK (Nigerian Branch) at <http://ciarbnigeria.org/> accessed on 16th October 2017. [↑](#footnote-ref-75)
75. Section 7(5) ACA. [↑](#footnote-ref-76)
76. Section 10(1) (a) ACA. [↑](#footnote-ref-77)
77. Section 9(2) and 45(6) ACA. [↑](#footnote-ref-78)
78. Section 9(3) ACA. [↑](#footnote-ref-79)
79. Section 45(9) ACA. [↑](#footnote-ref-80)
80. Section 15(2) ACA. [↑](#footnote-ref-81)
81. NNPC V Lutin Inv Ltd (supra). [↑](#footnote-ref-82)
82. Section 16(1) ACA. [↑](#footnote-ref-83)
83. Section 16(2) ACA. [↑](#footnote-ref-84)
84. Section 50 ACA. [↑](#footnote-ref-85)
85. Section 50(4) ACA. [↑](#footnote-ref-86)
86. Section 12(1) ACA. [↑](#footnote-ref-87)
87. Section 13 ACA. [↑](#footnote-ref-88)
88. Section 22 ACA. [↑](#footnote-ref-89)
89. Section 22(b) ACA. [↑](#footnote-ref-90)
90. Section 20(5) ACA. [↑](#footnote-ref-91)
91. Section 36 ACA. [↑](#footnote-ref-92)
92. Section 28 ACA. [↑](#footnote-ref-93)
93. Section 25 ACA. [↑](#footnote-ref-94)
94. Section 21 ACA. [↑](#footnote-ref-95)
95. Section 15(3) ACA. [↑](#footnote-ref-96)
96. Section 20 ACA. [↑](#footnote-ref-97)
97. Section 19(3) ACA. [↑](#footnote-ref-98)
98. Section 47 ACA. [↑](#footnote-ref-99)
99. Section 8(1) & (2) ACA. [↑](#footnote-ref-100)
100. Section 20(2) ACA. [↑](#footnote-ref-101)
101. Section 14 ACA. [↑](#footnote-ref-102)
102. Section 26 ACA. [↑](#footnote-ref-103)
103. Section 50(5) ACA. [↑](#footnote-ref-104)
104. [http://www.ciarb.org/information-and-resources/membership-rules-and- regulations/code-of-conduct/](http://www.ciarb.org/information-and-resources/membership-rules-and-%20regulations/code-of-conduct/) accessed on October 12, 2012. [↑](#footnote-ref-105)
105. [http://www.lagosmultidoor.org/tutorials/code-of-ethics-for-arbitrators accessed on October 12](http://www.lagosmultidoor.org/tutorials/code-of-ethics-for-arbitrators%20accessed%20on%20October%2012), 2012. [↑](#footnote-ref-106)
106. Ibid. [↑](#footnote-ref-107)
107. Ibid. [↑](#footnote-ref-108)
108. Section 7(2) (a) ACA, Article 7 Arbitration Rules. [↑](#footnote-ref-109)
109. Article 3(4) Arbitration Rules. [↑](#footnote-ref-110)
110. Section 7(2) ACA. [↑](#footnote-ref-111)
111. Article 6, Arbitration Rules; section 7(2)(b) ACA. [↑](#footnote-ref-112)
112. Article 7 (3) ACA. [↑](#footnote-ref-113)
113. *See* Afocon Nigeria Limited v. The Registered Trustees of Ikoyi Club 1938 Unreported Suit No. FHC/L/CS/751/95 cited in Uwechia, C. op cit p. 102. [↑](#footnote-ref-114)
114. Section 49(2) ACA. [↑](#footnote-ref-115)
115. In *Hussman V. Al Ameen* (2000) 2 Lloyd’s Reports 83 at 84. [↑](#footnote-ref-116)
116. Section 14 Lagos Arbitration Law. [↑](#footnote-ref-117)
117. Section 8(1) ACA. [↑](#footnote-ref-118)
118. Section 8(2) ACA. [↑](#footnote-ref-119)
119. Section 9(1) & (2) ACA. [↑](#footnote-ref-120)
120. Section 9(3) ACA. [↑](#footnote-ref-121)
121. Uwechia, C. op cit p. 44. [↑](#footnote-ref-122)
122. Section 45(4) ACA. [↑](#footnote-ref-123)
123. Section 10(1) ACA. [↑](#footnote-ref-124)
124. Section 11; section 44 ACA. [↑](#footnote-ref-125)
125. Section 44(8) ACA. [↑](#footnote-ref-126)
126. Section 12(2) Lagos Arbitration Law. [↑](#footnote-ref-127)
127. Section 12(3) Lagos Arbitration Law. [↑](#footnote-ref-128)
128. Section 12(4) Lagos Arbitration Law. [↑](#footnote-ref-129)
129. Section 12(5) Lagos Arbitration Law. [↑](#footnote-ref-130)
130. Section 18 Lagos Arbitration Law. [↑](#footnote-ref-131)
131. Article 45 Regional Centre Rules. [↑](#footnote-ref-132)
132. J.O. Orojo & M.A.Ajomo, Law and Practice of Arbitration and Conciliation in Nigeria, Mbeyi & Associate Nig. Ltd., Lagos, 1999,166. [↑](#footnote-ref-133)
133. G. Nwakoby, The Law and Practice of Commercial Arbitration in Nigeria, op cit pg 368. [↑](#footnote-ref-134)
134. Article 14 Arbitration Rules. [↑](#footnote-ref-135)
135. Article 25(4) Arbitration Rules. [↑](#footnote-ref-136)
136. This could be full or partial in nature as agreed to by parties during the preliminary meeting. [↑](#footnote-ref-137)
137. Section 20(5) ACA. [↑](#footnote-ref-138)
138. Section 20(3) ACA. [↑](#footnote-ref-139)
139. Article 2 Arbitration Rules. [↑](#footnote-ref-140)
140. Article 23 Arbitration Rules. [↑](#footnote-ref-141)
141. Section 21 ACA. [↑](#footnote-ref-142)
142. Article 24 Arbitration Rules. [↑](#footnote-ref-143)
143. *See* generally Articles 24 and 25 ACA. [↑](#footnote-ref-144)
144. *See* *Abubakar v. Chuks (2007) 18 NWLR (Part 1066) SC 38.* [↑](#footnote-ref-145)
145. Section 22 ACA; Article 27 Arbitration Rules. [↑](#footnote-ref-146)
146. *See* Article 4.5(n) and Article 8, CIArb Protocol for the Use of Party-appointed Expert Witnesses in International Arbitration. [↑](#footnote-ref-147)
147. *See* generally Omone Foy-Yamah, “The Use of Expert Witnesses” in Executive View Article, Litigation and Dispute Resolution Digital Guide 2010. [↑](#footnote-ref-148)
148. In *Afribank Nigeria Plc v Haco* (unreported FHC/L/CS/476/2008), the court in exercise of its inherent powers granted interim relief and directed the parties to arbitrate under the provisions of ACA. Upon the publication of the award, the parties returned to court for its enforcement as judgment of the court. [↑](#footnote-ref-149)
149. Sections 23 and 24 Lagos Arbitration Law. [↑](#footnote-ref-150)
150. Section 25 Lagos Arbitration Law. [↑](#footnote-ref-151)
151. Section 26 Lagos Arbitration Law. [↑](#footnote-ref-152)
152. Idigbe, A. op cit. p. 2. [↑](#footnote-ref-153)
153. (1996)9 WLR (pt. 411) 242. [↑](#footnote-ref-154)
154. (1992) 3 NWLR (pt. 232) 710. [↑](#footnote-ref-155)
155. *See* section 12 ofArbitration and Conciliation Act. [↑](#footnote-ref-156)
156. Article 12 Arbitration Rules. [↑](#footnote-ref-157)
157. Idigbe, A. op cit p. 19 to 26. [↑](#footnote-ref-158)
158. Ibid. [↑](#footnote-ref-159)
159. [2013] 14 NWLR (Part 1373) 1. [↑](#footnote-ref-160)
160. *See* Order 39 Rule 4 of the Lagos State High Court Civil Procedure Rules 2012, and Order 52 Rule 16 of the Federal High Court Civil Procedure Rules 2009. [↑](#footnote-ref-161)
161. *See* sections 31 & 51, 29(2)), 30 (1), 48, 32 & 52 ACA. [↑](#footnote-ref-162)
162. Idigbe, A. op cit p. 25. [↑](#footnote-ref-163)
163. Section 25(2). [↑](#footnote-ref-164)
164. *See* Taylor Woodrow Ltd v GMBH (1991) 2 NWLR Pt 175 at 604. [↑](#footnote-ref-165)
165. Article 32(4). [↑](#footnote-ref-166)
166. *See* Idigbe, A. op cit p. 28. [↑](#footnote-ref-167)
167. Article 32(6); section 26(4) ACA. [↑](#footnote-ref-168)
168. Section 31(2) & (3) ACA. [↑](#footnote-ref-169)
169. *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). [↑](#footnote-ref-170)
170. Article 32(4). [↑](#footnote-ref-171)
171. Article 34 Arbitration Rules. [↑](#footnote-ref-172)
172. Akpata, E. op cit p. 73. [↑](#footnote-ref-173)
173. Section 1(1); 48(a) (ii) ACA. [↑](#footnote-ref-174)
174. Unreported Suit No. FHC/L/CS/421/2009. [↑](#footnote-ref-175)
175. Section 31(3) ACA. [↑](#footnote-ref-176)
176. Article 35 Arbitration Rules. [↑](#footnote-ref-177)
177. Section 28(6) ACA. [↑](#footnote-ref-178)
178. *See* section 28(2) & (7). [↑](#footnote-ref-179)
179. *See also* *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. [↑](#footnote-ref-180)
180. Section 29(1) ACA. [↑](#footnote-ref-181)
181. Section 31(2) ACA. [↑](#footnote-ref-182)
182. Order 52(15). [↑](#footnote-ref-183)