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International Arbitration 2020

A practical cross-border insight into international arbitration work

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1 Arbitration Agreements

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

The Arbitration and Conciliation Act 1988 (ACA) (Cap A18 Laws of the Federation of Nigeria 2004) is the federal or national law governing arbitration in Nigeria. The basic legal requirement of an arbitration agreement under the ACA is that an arbitration agreement must be in writing or must be contained in a written document signed by the parties. Section 1 of the ACA provides that every arbitration agreement shall be in writing and contained in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of communication which provide a record of the arbitration agreement or in an exchange of points of claim and defence in which the existence of an arbitration agreement is alleged by one party and not denied by another. Any reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if such contract is in writing and the reference is such as to make that clause part of the contract. This provision presupposes that an arbitration must be consensual and indicates that an arbitration agreement may either be an express clause in a contract whereby parties agree to refer future disputes to arbitration, or in a separate document (submission agreement), whereby parties agree to submit their existing dispute to arbitration. An arbitration agreement may also be inferred from written correspondence or pleadings exchanged between parties.

However, there are situations of non-consensual or compulsory arbitration, as depicted in statutes and consumer standard form contracts. For instance, under the extant Pension Reform Act, a party dissatisfied with the decision of the regulator National Pension Commission, PENCOM on any matter referred to it, may refer such dispute to arbitration or to the National Industrial Court. This simply means such a party can, at that stage, choose whether to refer the dispute to arbitration or the national courts. Also, under the Nigerian Investment Promotion Commission Act, any foreign investor who registers under the Act is automatically entitled to bring a treaty arbitration under the ICSID system. Arbitration provisions contained in such statutes are deemed to be binding on any person to whom they apply.

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

- The arbitration agreement must be in respect of a dispute capable of settlement by arbitration under the laws of Nigeria. (See section 48(b)(i) and section 52(b)(i) of the ACA.)
- The parties to the arbitration agreement must have legal capacity under the law applicable to them. (See section 48(a)(i) and section 52(2)(a)(i) of the ACA.)

The arbitration agreement must be valid under the law to which the parties have subjected it or under the laws of Nigeria. In other words, the agreement must be operative, capable of being performed and enforceable against the parties. (See sections 48(a)(ii) and 52(a)(ii) of the ACA.)

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

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

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

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

Apart from the above, the level of qualification or expertise that the arbitrator or arbitrators should have, the timelines for the conclusion of the arbitration and giving the final award, and the governing law, may be stipulated in the arbitration agreement. Parties can choose from a variety of arbitration rules, such as the International Chamber of Commerce (ICC) Rules, London Court of International Arbitration (LCIA) or other international rules, as well as local rules under the ACA and the Lagos State Arbitration Law 2009. The arbitration agreement

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

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

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

Where there is an arbitration clause in a contract that is the subject of court proceedings, a party to the court proceedings may promptly raise the issue of an arbitration clause and the courts will stay proceedings and refer the parties to arbitration. (See sections 4 and 5 of the ACA.) See ***Transnational Haulage Limited v. Afribank Nigeria Plc & Anor*** *(Unreported Suit No. LD/1048/2008)* ruling delivered on 28 September 2010 granting a stay of proceedings pending arbitration. See also the case of ***Transocean Shipping Ventures Private Limited v. MT Sea Sterling*** *(2018) LPELR-45108 (CA)*, where the Appellate Court upheld a judgment granting stay of the court's proceedings pending arbitration.

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

Also, in Nigeria an arbitral award can, irrespective of the country in which it is made, be recognised as binding on the parties by virtue of the provisions of the ACA and the Foreign Judgments (Reciprocal Enforcements) Act. Cap 152 Laws of the Federation of Nigeria 2004 makes foreign arbitral awards registerable in Nigerian courts if, at the date of registration, it could be enforced by execution in Nigeria.

The courts in Nigeria are often inclined to uphold the provisions of sections 4 and 5 of the ACA, provided the necessary conditions are met. In the case of ***Minaj Systems Ltd. v. Global Plus Communication Systems Ltd. & 5 Ors*** *(Unreported Suit No. LD/275/2008)*, the Claimant instituted a court action in breach of the arbitration agreement in the main contract and on the Defendant's application, in a ruling delivered on 10 March 2009, the court granted an order staying proceedings in the interim for 30 days pending arbitration. In ***Niger Progress Ltd. v. N.E.I. Corp.*** *(1989) 3 NWLR (Part 107) 68*, the Supreme Court followed section 5 of the ACA, which gives the court the jurisdiction to stay proceedings where there is an arbitration agreement. In ***M.V. Lupex v. N.O.C*** *(2003) 15 NWLR (Part 844) 469*, the Supreme Court held that it was an abuse of court process for the Respondent to institute a fresh suit in Nigeria against the appellant on the same dispute during the pendency of the arbitration proceedings in London. In ***Akpaji v. Udemba*** *(2003) 6 NWLR (Part 815) 169*, the court held that where a Defendant fails to raise the issue of an arbitration clause and fails to rely on the same at the early stage of the proceeding, but takes positive steps in the action, he would be deemed to have waived his right under the arbitration clause. In ***Williams v. Williams*** *(2014) 15 NWLR (Part 1430) 213 at 239–240*, the Court restated the irrevocability of an arbitration agreement except by an agreement of parties or leave of a judge.

2 Governing Legislation

2.1 What legislation governs the enforcement of arbitration proceedings in your jurisdiction?

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

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

Generally, the ACA and the Rules apply to any arbitration whose seat is in Nigeria or that parties have agreed will be governed by the ACA. (See the long title of the ACA and section 15(1)

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thereof.) However, parties are free to choose the rules applicable to the arbitration proceedings and may even choose arbitration rules of a different country or the rules of an international or foreign arbitral institution. (See section 53 of the ACA.)

Part III of the ACA, comprising sections 43 to 55, contains specific provisions on international commercial arbitration (and conciliation), but the heading of Part III and wording of section 43 suggest that these provisions, in addition to other provisions of the ACA, apply to international arbitration. However, going by the general rule that specific provisions override general provisions, any difference between the other provisions of the ACA and Part III on international arbitration will be resolved in favour of the provisions of Part III. For instance, section 44 slightly differs from section 7 on the appointment of arbitrators in the sense that section 44 provides that an appointing authority shall appoint arbitrators if parties are unable to agree on a sole arbitrator or if party-appointed arbitrators do not agree on a presiding arbitrator; whereas section 7 provides that the court shall make the appointment in both circumstances. Again, section 48 provides elaborate grounds for setting aside an award; whereas, under sections 29 and 30, the grounds for setting aside an award are merely stated as decisions beyond the scope of the submission to arbitration, misconduct of the arbitral tribunal, and improper procurement of the arbitral proceedings. Similarly, section 52 provides elaborate grounds for refusing the recognition or enforcement of an award, whereas the grounds for the refusal of recognition are not stated in the other provisions of the ACA. It has sometimes been argued in applications for the setting aside or refusal of the recognition of awards, that sections 48 and 52 do not apply to domestic arbitration, but this issue has not been fully tested judicially in Nigeria.

The New York Convention, which is incorporated as the Second Schedule to the ACA, is applicable to the recognition and enforcement of arbitral awards arising out of international commercial arbitration.

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

The ACA is largely based on the UNCITRAL Model Law with minimal differences. One such difference is the provision on the power of the court to stay proceedings. The UNCITRAL Model Law does not expressly confer on the court the power to stay proceedings commenced in breach of an arbitration clause, whereas the ACA expressly confers this power on the court. Article 8(1) of the UNCITRAL Model Law, which is headed "*Arbitration agreement and substantive claim before court*", simply provides that the court shall "*refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed*" in such circumstances, whereas section 4 of the ACA, with an identical heading, expressly provides that the court shall "*order a stay of proceedings and refer the parties to arbitration*". While the power of court to stay proceedings may be implied in Article 8(1) of the Model Law, it may be argued that an application for a stay of proceedings finds no direct legal backing under the Model Law, unlike the ACA, which confers an express power of stay of proceedings on the court and goes further in section 5 to make more elaborate provisions on stay of proceedings. Another difference is the provision of Article 13(3) of the Model Law, which allows parties to go to court to challenge the decision of the arbitral tribunal on its own competence. This means that where a challenge is brought by a party against the appointment of an arbitrator, the arbitral tribunal will determine such challenge and where such challenge is unsuccessful, the aggrieved party can still request that the courts determine the challenge. It is important to note that no further appeal can be made to the court's decision. The ACA in section 9(3) thereof, however, gives the tribunal power to decide on a challenge to an arbitrator but does not provide for further recourse to the court against the decision of the tribunal on the issue.

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

Arbitration under the ACA is generally consensual and there is party autonomy in the conduct of arbitration proceedings, including international arbitration proceedings. Most of the provisions in the ACA and the Rules are subject to and may be varied by the parties' agreement. However, section 33(a)(b) of the ACA implies that there are some provisions of the ACA that are deemed mandatory and that parties cannot derogate from. The said section provides that a party who knows that any provision of this Act from which the parties may not derogate or that any requirement under the arbitration agreement has not been complied with, and yet proceeds with the arbitration without stating his objection to non-compliance within the time limit provided, therefore shall be deemed to have waived his right to object to the non-compliance.

In contemporary business-to-business transactions such as telecommunications, pension and capital market transactions like mergers and acquisitions (M&A), mandatory arbitration clauses are increasingly being imposed by statutes or regulators. The basic question would be whether it is reasonable for regulators to insist on the insertion of mandatory arbitration clauses in commercial transactions they regulate or refer disputes to arbitration before taking a final administrative decision. The position is yet to be tested in Nigerian courts, but in Nigeria the mandatory pre-arbitration clause in a commercial agreement, particularly in a capital market transaction regulated by the Securities and Exchange Commission (SEC), is gaining weight and, like the position in the United States relating to a business agreement, the regulators are championing the process particularly for high-value transactions. Agreements like the vending and underwriting agreements and transactions for securities lending must, by regulation in Nigeria, carry an arbitration clause under the Consolidated Securities and Exchange Commission Rules 2013. Statutes such as the Pension Reform Act and Nigeria Communications Commission Act and regulators such as the SEC are increasingly resorting to mandatory arbitration clauses in Nigeria.

3 Jurisdiction

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

The ACA does not stipulate any particular subject matter that may not be referred to arbitration. The question of whether or not a dispute is arbitrable is therefore left for interpretation by the courts. In ***Ogunwale v. Syrian Arab Republic*** *(2002) 9 NWLR (Part 771) 127*, the Court of Appeal held that the test for determining whether a dispute is arbitrable is that the dispute or difference must necessarily arise from the clause contained in the agreement. However, not all disputes are necessarily arbitrable. Generally, non-commercial and non-civil matters are not arbitrable. Criminal matters, divorce, disputes arising out of an

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illegal contract and indictment of an offence of a public nature cannot be the subject of an arbitration agreement.

In ***Kano State Urban Development Board v. Fanz Construction Limited*** *((1990) 6 S.C 103)*, the Supreme Court recognised categories of matters that are not arbitrable in Nigeria – they include: (a) indictment for an offence of a public nature; (b) dispute arising out of an illegal contract; (c) disputes arising under agreements void as being by way of gaming or wagering; (d) disputes leading to a change of status such as divorce petition; and (e) any agreement purporting to give an arbitrator the right to give judgment *in rem*.

Furthermore, section 57(1) of the ACA provides that Arbitration means **Commercial Arbitration**. The section further defines commercial to be: "*…all relationships of a commercial nature including any trade transaction for the supply or exchange of goods or services, distribution agreement, commercial representation or agency, factoring, leasing, construction of works, constructing, engineering licensing, investment, financing, banking, insurance, exploitation, agreement or concession, joint venture and other forms of industrial or business co-operation, carriage of goods or passengers by air, sea, rail, or road.*"

In effect, the above provision of the ACA means that non-commercial transactions (for instance, claims for tort, divorce proceedings, etc.) are not arbitrable in Nigeria.

In 2016, the Nigerian Court of Appeal sitting in Abuja in the case of ***Shell (Nig.) Exploration and Production Ltd & 3 others v. Federal Inland Revenue Service*** **(Appeal No. CA/A/208/2012**, handed down by the Court of Appeal, Abuja on 31 August 2016 – (2016) 11 CLRN), held that by virtue of section 251(1)(b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), only the Federal High Court, not an arbitral tribunal, can exercise jurisdiction over tax matters/issues. In its judgment, the Appellate Court declared that only the Federal High Court and not an arbitration tribunal can exercise jurisdiction on the issue of revenue of the government of the Federation connected with or pertaining to the taxation of companies and other bodies established or carrying on business in Nigeria. The Court in the matter thus held that the disputes submitted before the arbitral tribunal in the referenced case are tax-related and therefore not arbitrable in Nigeria. Although this decision is currently on appeal to the Supreme Court (the appeal to the Supreme Court was filed on 18 October 2016), unless the decision is set aside by the Supreme Court, tax disputes are presently not arbitrable in Nigeria. See also the case of ***Esso Petroleum and Production Nigeria Ltd & SNEPCO v. NNPC*** *Unreported Appeal No. CA/A/507/2012*, delivered on 22 July 2016 where the issue of non-arbitrability of tax disputes was also affirmed by the Court of Appeal.

Also, applications for the immediate enforcement of rights or the preservation of *res*, e.g. the enforcement of fundamental human rights, applications for *Anton Piller*, *Mareva* and other injunctions, are less suitable for arbitration than litigation. In addition, since an arbitrator has no statutory power of joinder under the ACA, multi-party proceedings may be less suitable for arbitration under the ACA, unless the arbitration agreement makes specific provision for it. It is hoped that the ACA will be revised to address multiparty provisions, as other arbitral institutions like the ICC and the UNCITRAL Rules have done.

3.2 Is an arbitral tribunal permitted to rule on the question of its own jurisdiction?

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

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

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

However, while some courts treat an arbitration agreement as a compelling ground for a stay of court proceedings, others treat it as discretionary. This point is illustrated by the cases of ***M.V. Lupex v. N.O.C.*** *(2003) 15 NWLR (Part 844) 469* and ***RCO and S Ltd v. Rainbownet Ltd*** *(2014) 5 NWLR (Part 1401) 516 at 534* on the one hand, and ***K.S.U.D.B. v. Fanz Ltd.*** *(1986) 5 NWLR (Part 39) 74* on the other hand.

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

Generally, by virtue of section 12(4) of the ACA, a ruling by the arbitral tribunal on its jurisdiction is final and binding and is not subject to appeal. This is strengthened by section 34 of the ACA, which provides that "*[a] court shall not intervene in any matter governed by this Act, except where so provided in this Act*". A party who can prove circumstances of lack of impartiality or lack of independence on the part of the tribunal can challenge the tribunal's constitution on the basis of section 8(3)(a) of the ACA, which provides that "*[a]n arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to his impartiality or independence*". Such challenge should be made to the tribunal itself unless the challenged arbitrator withdraws from office or the other party agrees to the challenge. (See section 9(3) of the ACA which provides that such a challenge would be decided by the arbitral tribunal.)

Despite the stipulation of section 12(4) of the ACA and section 9(3) thereof, Article 12 of the Arbitration Rules made pursuant to the ACA provides that where an arbitrator has been challenged by a party, if the other party does not agree to the challenge and the challenged tribunal does not withdraw, the court can address the issue at the instance of the challenging party. This seems to be contrary to the provision of the ACA that say the arbitral tribunal shall decide such a challenge and its decision would be final. There are, however, authorities that show that where there is a conflict between a primary legislation and a subsidiary legislation, the provisions of the primary legislation

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would prevail. See the case of ***Raymond Temisan Omatseye v. Federal Republic of Nigeria*** *(2017) LPELR-42719 (CA)*, where the court held that a subsidiary legislation derives its force or efficacy from the principal legislation to which it is therefore secondary or complimentary. Also, in the case of ***NNPC & Anor. v. Famfa Oil Limited*** *(SC.71/2008)*, the Supreme Court held that the Petroleum Act is the Principal Law, a Statute, and if any provision of the Subsidiary Regulation made pursuant to the Principal Law is inconsistent with the Act/Statute, the provisions of the regulation shall to the extent of its inconsistency be declared void. By parity of reasoning, a conflict between the ACA and the Rules made pursuant to the ACA would be resolved in favour of the provisions of the ACA.

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

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

In the Court of Appeal Case of ***Shell Petroleum Development Company of Nigeria and Ors v. Crestar Integrated Natural Resources Limited*** *(2015) LPELR-40034 (CA)*, the Court granted an anti-arbitration injunction against the Claimant in the arbitral proceedings. It is 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, considering the reasons adumbrated in the Court's ruling.

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

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

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

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

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

Section 8(1)(d) of the Limitation Law of Lagos State (Cap L67 Laws of Lagos State of Nigeria Vol. 5) stipulates the limitation period of six years for an action to enforce an arbitration award 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 six years from when the cause of action arose. It does not apply to the substantive arbitration proceedings. The interpretation section (section 69) of the Limitation Law expressly defines "actions" as "*any proceeding (other than a criminal proceeding) in a court established by law*". The court interpreted the Limitation Law of Lagos State in the case of ***City Engineering Nig. Ltd v. Federal Housing Authority*** *(1997) 9NWLR (Part 520) 224* to state that the six years for enforcing an arbitral award would begin to count from when the substantive cause of action arose, regardless of how long the arbitral proceedings itself took. Since the application to enforce the award in that arbitration was made over six years from when the cause of action accrued, the Supreme Court held that it was statute-barred and could not be enforced.

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It was not clear that the decision in ***City Engineering Nig. Ltd v. Federal Housing Authority*** was with respect to an arbitration agreement under seal or under the ACA, and the authors take the view that the six-year limitation period does not apply to arbitrations conducted on the basis of agreements under seal or under the ACA as stated clearly in section 8(1)(d) of the Limitation Law of Lagos State.

Section 4(a) of the Limitation Law of Lagos State, however, provides that where any other enactment provides the period of limitation for enforcement, the period stated in the Limitation Law would not apply. The Lagos State Arbitration Law 2009 in section 35(5) provides that the period between the commencement of the arbitration and the date of the award shall be excluded from the computation of the limitation period for enforcing an arbitral award. The limitation period as stipulated in the Lagos State Arbitration Law is applicable to all arbitration within Lagos State except where the parties have agreed to be governed by another arbitration law.

Worthy of note is the Supreme Court's decision in ***Sifax Nigeria Limited v. Migfo Nigeria Limited*** *(2018) 9 NWLR (Pt. 1623) 138* where it affirmed the decision of the Court of Appeal that computation of time during the pendency of an action shall remain frozen from the filing of the action until it is determined or abates. Although this case did not bother with arbitration, by parity of reasoning this later decision in 2018 seem to show that should a matter come before the Nigerian courts for determination on limitation of time for enforcement of an arbitral award, the courts will take the position that the time between when arbitration was commenced and when an award was published would not be computed for the purpose of the limitation period.

It is important to note that the Bill presently being considered by Nigeria's Federal legislature to repeal the extant ACA and enact the Arbitration and Mediation Act to provide a Unified Legal Framework for the Fair and Efficient Settlement of Commercial Disputes by Arbitration and Mediation, makes the New York Convention applicable as well as the Singapore Convention, and for related matters would put to rest these issues as it provides in section 35 thereof that in computing the time for commencement of proceedings to enforce an arbitral award, the period between the commencement of the arbitration and the date of the award shall be excluded.

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

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

As regards collective proceedings (e.g. winding-up proceedings and/or arrangements and compromises which are predicated on a liquidation process), a pending insolvency proceeding ought to operate as a stay of all other proceedings against the company. (See sections 412 and 417 of CAMA.) The purpose is to preserve the assets of the company in a single pool so that they are available to satisfy creditors in order of priority. However, the Supreme Court of Nigeria has held that on the basis of section 567 of CAMA, which defines the court as the Federal High Court, sections 412 and 417 of CAMA only operate as a stay of proceedings before the Federal High Court. See the case of ***Federal Mortgage Bank of Nigeria v. NDIC*** *(1999) LPELR-1270 (SC).* The effect of this decision is that collective insolvency proceedings will not affect or stay proceedings before the State High Courts, or arbitral or other tribunals. Nevertheless, the author's view is that the provisions should apply to proceedings before all courts, including Federal and State High Courts, and arbitration and other proceedings. This view is based on the *pari passu* principle on the equality of treatment of different categories of creditors in collective insolvency proceedings. (See sections 494 and 495 of CAMA.) Also, the intendment of sections 412 and 417 of CAMA is to grant a moratorium against all creditor claims which is a useful stopgap in managing insolvency. Such an objective will be defeated if some creditors can pursue their claims whilst others cannot. Best practices of insolvency seek to protect the priority of creditors, and this Supreme Court decision may open a floodgate for "secondary" creditors to obtain "back-door judgments" against a company in liquidation to the detriment of the petitioner in valid winding-up proceedings.

The challenge seems to be created by the not-so-robust insolvency legal framework in Nigeria, but a lot of efforts are currently being made to develop the Nigerian insolvency regime. Several affected Self-Regulatory Organizations (SROs) such as the Business Recovery and Insolvency Practitioners Association of Nigeria (BRIPAN) and the Nigerian Bar Association Section on Business Law (NBA-SBL) have been making concerted efforts with government authorities (the Presidential Enabling Business Environment Council (PEBEC) and the Corporate Affairs Commission (CAC)) to improve the the statutory framework to achieve a more business rescue-friendly and modern insolvency legislation. BRIPAN initially promoted a standalone Insolvency Bill covering personal and corporate insolvency, formal reorganisations, regulation of the profession and integrating the Cross-Border Insolvency Model Law. Also, NBA-SBL has been working with the Nigerian Federal Executive arm through the PEBEC to promote an Omnibus Bill to facilitate ease of doing business, including reform of insolvency provisions of CAMA. On the other hand, an updated CAMA Bill (the Companies and Allied Matters Act (Repeal and Re-enactment) Bill, 2020) is at an advanced stage of approval, having been passed already by the two Federal Legislative bodies and now awaiting the assent of the President to become law. The insolvency provisions of the new CAMA are said to include the introduction of Company Voluntary Arrangements (CVAs) and Administration following the UK Model (in contrast to the NBA-SBL PEBEC report on Ease of Doing Business, which favoured the South African Business Rescue framework instead). They also are said to include provisions introducing the recognition of the need of regulation of insolvency professionals through the request that IPs should be registered with BRIPAN and with the CAC.

4 Choice of Law Rules

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

The law applicable to the substance of a dispute is determined by the particular system of law governing the contract itself, i.e. the interpretation and validity of the contract and the rights and

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obligations of the parties, the mode of performance and the consequences of breach of contract. In a purely domestic arbitration, the applicable law will usually be Nigerian law, unless otherwise expressly agreed by the parties. In international arbitration, two or more different national laws may be applicable to the substance of the contract and parties may, by agreement, choose to be governed by either of the national laws or even a neutral law. The principle of party autonomy largely influences the choice of law applicable to the dispute. The ACA, like the UNCITRAL Model Law, allows the parties to choose the law applicable to their contract, but if parties fail to make such a choice, the arbitral tribunal shall apply the law applicable to the dispute. The conflict of law rules are complex, but follow or mirror English law. Where the subject matter is property located in Nigeria, *lex situs*, i.e. the law of the place where the property is located, will apply, and if located in a foreign country, then that law will apply. For contracts, the law of the place of residence of the Respondent or where the contract was entered into or place of performance will apply. Where personal law is involved, or where a native is involved, the native law and custom would apply except where the person expressed a contrary intention, e.g. marriage under the Marriage Act is expression of contrary intention. For a company, the law of the place of central command and control will apply. Nigerian courts have recognised the right of parties to submit to an applicable law by agreement as seen in ***Stabilini Visinoni Ltd v. Mallinson and Partners Ltd*** *(2014) 12 NWLR (Part 1420) 134 at 182.*

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

Where the seat of arbitration is Nigeria, the 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 cases of: ***M.V. Panormos Bay v. Plam Nig. Plc*** *(2004) 5 NWLR (Part 855) 1 at 14*; and ***Tawa Petroleum v. M.V. Sea Winner*** *3 NSC 25.*

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

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

5 Selection of Arbitral Tribunal

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

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

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

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

Under the ACA, parties are free to agree on the method of appointment of arbitrators, but where they do not stipulate the method or the method chosen by them fails, the arbitrator(s) will be appointed by the court. Section 7 of the ACA prescribes a default procedure. It provides that the parties may specify in the arbitration agreement the procedure to be followed in appointing an arbitrator. Where no procedure is specified, in the case of an arbitration with three arbitrators, each party shall appoint one arbitrator and the two thus appointed shall appoint the third, but if a party fails to appoint the arbitrator within 30 days of receipt of a request to do so by the other party or if the two arbitrators fail to agree on the third arbitrator within 30 days of their appointments, the appointment shall be made by the court on the application of any party to the arbitration agreement. In the case of an arbitration with one arbitrator, where the parties fail to agree on the arbitrator, the appointment shall be made by the court on the application of any party to the arbitration agreement made within 30 days of such disagreement. Where, under an appointment procedure agreed upon by the parties, a party fails to act as required under the procedure, or the parties or two arbitrators are unable to reach an agreement as required under the procedure or a third party, including an institution, fails to perform any duty imposed on it under the procedure, any party may request the court to take the necessary measure, unless the appointment procedure agreed upon by the parties provides other means, for securing the appointment. A decision of the court under subsections (2) and (3) of section 7 shall not be subject to appeal.

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

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

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

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

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

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

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

6 Procedural Rules

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

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

Apart from the national law, subject to the agreement of parties under the arbitration agreement, other laws that may be applicable to arbitral proceedings in Nigeria include the Lagos State Arbitration Law 2009 and the Lagos Court of Arbitration Law 2009, the Arbitration Rules of the Regional Centre for International Commercial Arbitration Lagos (Regional Centre Rules), the Lagos Court of Arbitration Rules 2018, Rules of Court and International Arbitration Laws chosen by the parties.

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

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

1) Issuance or communication of the Notice of Arbitration by the Claimant to the Respondent in the prescribed format. See Article 3 of the Arbitration Rules. Thirty days' notice is required.
2) Appointment and Constitution of the tribunal. See Articles 6–13 .
3) Meetings (Preliminary Meeting, Prehearing Meeting, Prehearing Review, Inspection of Documents or Subject Matter, etc.). See Article 16.
4) Hearing and determination of preliminary issues if any. See sections 12 and 13 of the ACA.
5) Parties' presentation of respective cases, documents and any other evidence. See section 19 of the ACA, Articles 18–23 of the Arbitration Rules.
6) Hearing (if oral evidence is to be taken). Section 20 of the ACA, Articles 24 and 25 of the Arbitration Rules.
7) Re-hearing in the event of the replacement of an arbitrator. Note that re-hearing is mandatory in the event of the

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replacement of a sole or presiding arbitrator, but in the event of the replacement of any other arbitrator, re-hearing is at the discretion of the tribunal. See Article 14 of the Arbitration Rules.

8) Final submissions (oral or written). Article 29 of the Arbitration Rules.
9) Post Hearing meeting – adumbrations on final submissions which would have been made in writing and clarification of any point(s) to the arbitral tribunal. This is as agreed by the parties and permitted by the tribunal.
10) Publication of the final award by the tribunal to the parties. Sections 24–28 of the ACA, Articles 31 and 32 of the Arbitration Rules.
11) Apart from the above, there are other procedural steps under the ACA, such as the procedure for the default of parties in appearance and presentation of a case or pleadings, the procedure for the challenge of arbitrators, the procedure for the enforcement of an award or challenge of enforcement, etc.

6.3 Are there any particular rules that govern the conduct of counsel from your jurisdiction in arbitral proceedings sited in your jurisdiction? If so: (i) do those same rules also govern the conduct of counsel from your jurisdiction in arbitral proceedings sited elsewhere; and (ii) do those same rules also govern the conduct of counsel from countries other than your jurisdiction in arbitral proceedings sited in your jurisdiction?

The First Schedule of the Arbitration Rules made pursuant to the ACA (Article 1, Rule 4) deals with the representation and assistance of the parties. It provides that "*the parties may be represented or assisted by legal practitioners of their choice*". No particular rules of conduct are prescribed or required of counsel in arbitration proceedings in Nigeria. However, Nigerian counsel is generally bound by the Legal Practitioners Act (LPA) Laws of the Federation 1990 (as amended) and the Rules of Professional Conduct (RPC). The LPA and RPC apply to legal practice in Nigeria. Nigerian counsel practising in foreign countries would be expected to abide by the Rules of the foreign countries and it would seem that by Rule 11 of the LPA that they can be punished by the Legal Practitioners Disciplinary Committee of the Body of the Benchers, where they are found to have committed professional misconduct or "*infamous conduct in any professional respect*" in a foreign country, the conduct of which is likely to bring the Nigerian legal profession to disrepute. Therefore, one could say that the RPC remain binding on Nigerian counsel in arbitral proceedings outside Nigeria.

Besides, where parties so agree, the International Bar Association (IBA) Guidelines on Party Representation in International Arbitration can be used as a guide on the conduct of counsel in arbitration proceedings in Nigeria, although they are non-binding rules. It is noteworthy that not all practitioners of arbitration are lawyers. All arbitrators are bound by the RPC promulgated to regulate standards of service and professionalism in the respective arbitral institutions to which they belong. For instance, the Chartered Institute of Arbitrators, UK has its Code of Professional and Ethical Conduct for Members. In a similar manner, the Lagos Multi-Door Courthouse has its Code of Ethics for Arbitrators.

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

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

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

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

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

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

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

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

However, in ***Shell (Nig.) Exploration and Production Ltd & 3 others v. Federal Inland Revenue Service*** **(Appeal No.**

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CA/A/208/2012), handed down by the Court of Appeal, Abuja on 31 August 2016, the Court of Appeal seemed to have delved into the issue of legal representation in domestic arbitral proceedings in Nigeria. The Court of Appeal held that the Notice of Arbitration and Statement of Claim (originating processes) filed during the arbitration were not competent as these were not signed by legal practitioners enrolled to practise law in Nigeria, contrary to the LPA. Simply put, the Court of Appeal in that case took the position that representation of a party as counsel in domestic arbitration in Nigeria amounts to legal practice, which only a lawyer enrolled to practise law in Nigeria can undertake.

The authors do not agree with the view taken by the Court of Appeal in the light of the fact that arbitration is a private dispute resolution mechanism which is different from regular judicial proceedings of courts, and party autonomy in arbitration allows parties to employ the services of lawyers or legal practitioners of their choice, whether domestic or foreign practitioners. As it stands, however, the decision in ***Shell (Nig.) Exploration and Production Ltd & 3 others v. Federal Inland Revenue Service*** (*supra*) is yet to be overturned by a more recent decision of the Court of Appeal or the Supreme Court. Some writers have, however, argued that since the major issue which was submitted for the court's determination in that case was simply the arbitrability of tax disputes, the pronouncement made with regard to the invalidity of the originating processes of the arbitration for not being signed by legal practitioners enrolled in Nigeria could arguably be taken as an *obiter dictum* (an incidental remark) and not *ratio decidendi* (a binding decision). However, even if this argument was correct, there would need to be more certainty under the Nigerian statutes and case law on this subject. Noteworthy is the provision of Article 5 of the Rules made pursuant to the Arbitration and Mediation Bill being considered by Nigeria's legislature, which provides that each party may be represented or assisted by persons chosen by it. This provision does not mention legal practitioners and seems to expand the scope for representation or assistance. This is not yet law as the Bill is yet to be passed.

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

The ACA does not provide for arbitrator immunity, but the Lagos State Arbitration Law 2009 does provide for arbitrator immunity. Section 18 of the Lagos State Arbitration Law provides that an arbitrator is not liable for anything done or omitted in the discharge or purported discharge of the arbitrator's functions as arbitrator unless the act or omission is determined to have been in bad faith. This provision applies to an employee or agent of an arbitrator as it applies to the arbitrator, but it does not affect any liability incurred by an arbitrator by reason of resignation. Article 45 of the Regional Centre Rules provides for absolute immunity on the Regional Centre staff, director, arbitrators and experts for any act or omission in connection with any arbitration conducted under the Rules. If the Bill to repeal the ACA and enact the Arbitration and Mediation Act is successfully passed by Nigeria's Federal legislature, it will require the assent of the President of the Federal Republic of Nigeria to become law. The Bill, in its section 13, accords immunity on arbitrators, appointing authority and arbitral institutions, by protecting them from liability for anything done or omitted to be done in the discharge of their functions. However, this is not yet law in Nigeria.

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

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

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

In the Court of Appeal Case of ***Statoil (Nig) Ltd v. Nigerian National Petroleum Corporation*** (*supra*), 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 the ACA is a court empowered to halt arbitral proceedings through the issuance of an injunction. As the Act does not provide for the intervention of the court to restrain arbitration by injunction, the court lacks jurisdiction to do so.

Unlike the decision in ***Statoil v. NNPC*** (*supra*), in ***Shell v. Crestar*** (*supra*), the Court of Appeal granted an anti-arbitration injunction against the Claimant in the arbitral proceedings. It is, however, important to qualify this position because this decision does not attack the jurisdiction of the arbitral tribunal to continue with its proceedings but restrains the Claimant from pursuing them in light of the reasons adumbrated in the Court's ruling.

7 Preliminary Relief and Interim Measures

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

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

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

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

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

In the case of ***Nigerian Agip Exploration Ltd v. Nigerian National Petroleum Corporation and Oando Oil*** (***NAEL v. NNPC***, *Unreported CA/A/628/2011*), (25 February 2014), the court emphasised that urgency is a condition for the granting 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 State Arbitration Law expressly confers on the court the power to make interim orders in respect of arbitral proceedings. (See sections 6(3) and 21 thereof.)

A party's request for interim relief would, in most cases, have effect on the *res*, i.e. the subject matter of the dispute and the parties' or tribunal's dealings with it, rather than on the tribunal's jurisdiction. However, if the nature of interim relief sought affects the arbitral proceedings itself, such as where the relief is sought to restrain the commencement or continuance of arbitration on the grounds that the dispute is not arbitrable or that the arbitration agreement is not valid, etc., then the tribunal's jurisdiction may be affected by the request for relief. Be that as it may, if an arbitral tribunal has already been constituted, such objections or grounds ought to be brought before the tribunal itself.

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

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

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

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

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

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

7.6 What is the approach of national courts to the enforcement of preliminary relief and interim measures ordered by arbitral tribunals in your jurisdiction and in other jurisdictions?

Arbitral tribunals are empowered to grant interim measures by virtue of section 13 of the ACA, while by virtue of section 34 of the ACA the national courts are restrained from intervention, save as specifically provided under the ACA. There is no express provision for the enforcement of interim measures granted by an arbitral tribunal, but it is foreseeable that in the event that a party attempts to flout such an interim measure, recourse could be had to the national court to prevent such contemptuous attitude.

The Lagos State Arbitration Law of 2009 is of great assistance, however, by virtue of its sections 21 to 30. Specifically, an interim measure granted by an arbitral tribunal is given binding enforceability upon application to the High Court (section 29).

Interestingly, there are two conditions for the grant of an interim measure *viz*: that monetary damages will not be an adequate remedy should the interim measure not be granted, and that there are serious issues to be determined in the substantive claim, which would not fetter the discretion of the arbitral tribunal to make subsequent determination.

The arbitral tribunal is well-empowered to extend, modify, suspend or terminate any interim measure. There is also provision for the tribunal directing for security for the interim measure to be supplied by the applicant party. The applicant party in whose favour an interim measure is granted is also

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mandated to inform the tribunal of any material change in circumstances on which basis the interim measure was granted *ab initio*. Where a tribunal finds that an interim measure ought not to have been granted, it is empowered to award costs against the beneficiary party.

8 Evidentiary Matters

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

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

8.2 What powers does an arbitral tribunal have to order disclosure/discovery and to require the attendance of witnesses?

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

8.3 Under what circumstances, if any, can a national court assist arbitral proceedings by ordering disclosure/discovery or requiring the attendance of witnesses?

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

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

The ACA and the Arbitration Rules do not provide detailed rules of taking evidence in arbitral proceedings. However, Articles 24 and 25 of the Arbitration Rules contain general provisions on written and oral testimony. The arbitral tribunal is free to determine the admissibility, relevance, materiality and weight of the evidence offered. In practice, where witnesses give evidence by written statements, it dispenses with the need for an examination -in-chief; witnesses simply adopt their written statements and are presented for cross-examination and re-examination. The IBA Rules on the Taking of Evidence contain and are often resorted to for a detailed procedure in taking evidence. See, for example, Article 8.2 of the IBA Rules on the order of the presentation of witnesses. It is also important to note that in practice, witnesses in an arbitral proceeding in Nigeria are either sworn-in on the Bible (if they are Christians) or on the Quran (if they are Muslims) or are asked to make an affirmation.

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

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

9 Making an Award

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

Section 26 of the ACA sets out the legal requirements of an arbitral award. It provides that an arbitral award must be written, signed by the arbitrator (or a majority of them in the case of three arbitrators), state the date and place it was made, contain the reasons on which it is based and must be published to the parties. Also, an arbitral award must not contain decisions or deal with disputes or matters not submitted to arbitration, must be in accordance with the arbitration agreement and governing law, must be enforceable and must not be contrary to public

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policy. (See sections 48 and 52 of the ACA.) The ACA does not state that an award be signed on every page by the arbitrator(s), but, in practice, some arbitrators sign every page of the award for authenticity.

9.2 What powers (if any) do arbitral tribunals have to clarify, correct or amend an arbitral award?

An arbitral tribunal is properly empowered to clarify, correct, amend or make an additional award pursuant to the provisions of section 28 of the ACA. This power may be exercised *suo motu* or upon a request by a party.

It is germane to note that this power is limited to 30 days and is therefore not a power open to be wielded in perpetuity.

10 Challenge of an Award

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

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

- Incapacity of a party to the arbitration agreement.
- The arbitration agreement is not valid under the law that the parties have indicated should be applied or under Nigerian law.
- A party is not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise not able to present his case.
- The award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration.
- The award contains decisions on matters that are beyond the scope of the submission to arbitration.
- The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or the law of the country where the arbitration took place.
- The award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, the award was made.
- The subject matter of the dispute is not capable of settlement by arbitration under the laws of Nigeria or the recognition or enforcement of the award is against the public policy of Nigeria.

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 the ACA, 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 the 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) of the ACA provides that: "*An arbitrator who has misconducted himself may, on the application of any party be removed by the Court.*"

Over the years, misconduct has been described to include the following areas: failure to decide all matters referred; deciding matters not included in the reference; material mistake of fact; irregularity in the conduct of the arbitral proceedings; failure to act fairly towards both parties; delegation of arbitral authority; accepting hospitality of one of the parties, where such is offered with the intention of influencing the decision; interest in the subject matter of the reference; and accepting a bribe.

The ACA does not define misconduct, but it has been held that lack of impartiality or independence of an arbitrator amounts to misconduct. In ***Araka v. Ejeagwu (2000) 15 NWLR (Pt 692) 684***, the Supreme Court also held that: "*Although under section 30 of the Arbitration and Conciliation Act, "misconduct" is not defined, it has been taken to denote irregularity and would also cover the cases where there is a breach of natural justice.*"

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

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*". This demonstrates that the Nigerian courts will not be eager to set aside awards where the parties have agreed to resolve their dispute by arbitration and abide by the decision of the arbitral tribunal.

Also, in the case ***NAEL v. NNPC*** (*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*". The ACA provides for certain exceptions for the court to intervene in the "*interest of justice and fair play*".

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

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

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

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

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

Generally, an award is not subject to appeal. However, an application for setting aside an award must be brought by the

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aggrieved party within three months of the date of the award. (See section 29 of the ACA.) The ACA does not stipulate the mode of commencing proceedings to set aside, i.e. whether by originating summons or by motion, etc. Consequently, the mode of commencement will be determined by the Rules of the Court to which the application is made. Under Order 28 Rules 3 and 4 of the Lagos State High Court (Civil Procedure) Rules 2019, it is by motion on notice, while under Order 52 (15) of the Federal High Court Civil Procedure Rules 2019, it is by an originating motion. The court before which an application to set aside an arbitral award is brought may either suspend proceedings and remit the award back to the arbitral tribunal for reconsideration or set aside the award. See ***Triana Ltd v. U.T.B. Plc*** *(2009) 12 NWLR (Part 1155), p. 334.*

11 Enforcement of an Award

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

Nigeria has ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The Convention is contained in Second Schedule to the ACA Cap A18 Laws of the Federation of Nigeria 2004.

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

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

In 1989, RCICAL was established in Lagos, Nigeria under the auspices of the Asian African Legal Consultative Organisation (AALCO) as a non-profit, independent, international arbitral institution to provide, amongst other things, a neutral forum for dispute resolution in international commercial transactions. Its establishment is also geared towards encouraging the 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. The RCICAL renders assistance in the enforcement of awards made under its Rules. See Rules 35.6 and 35.8 of RCIAL Rules.

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

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

(i) the duly authenticated original award or a duly certified copy thereof;
(ii) the original arbitration agreement or a duly certified copy thereof; and
(iii) where the award or arbitration agreement is not made in the English language, a duly certified translation thereof into the English language.

If the application is brought to the Lagos State High Court, the application is by originating motion on notice stating the grounds with supporting affidavit, and the above-mentioned documents and a written address. See Order 28 Rule 3 of the Lagos High Court (Civil Procedure) Rules 2019. Under Order 52 Rule 16 of the Federal High Court Civil Procedure Rules 2019, an application for the enforcement of an award may be made *ex parte*, but the court hearing the application may order it to be made on notice. The application shall be supported with an affidavit which shall:

(a) exhibit the arbitration agreement and the original award or certified copies;
(b) state the name, usual or last known place of abode or business of the applicant and the person against whom it is sought to enforce the award; and
(c) state as the case may require either that the award has not been complied with or the extent to which it has not been complied with at the date of the application.

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

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

Issue estoppel has been held to extend to arbitration. (See ***Middlemiss v. Hartlepool Corporation*** *(1973) 1 A.E.R. 172.*) The question of whether an arbitral award will operate as *res judicata* has not been fully tested in Nigeria, but the provision of section 31 of the ACA implies that an arbitral award has the same effect as the judgment of the court. (See sections 31(1) and (3) which provide that an arbitral award shall be recognised as binding and may be enforced in the same manner as a court

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judgment or order to the same effect.) In the case of ***Aye-Fenus Enterprise Ltd v. Saipem (Nigeria) Ltd*** *(2009) 2 NWLR (Part 1126)*, the court held that "*[b]y virtue of the provisions of section 34 of ACA, a court shall not intervene in any matter governed by the Act except where so provided in the Act. If, in arbitration proceedings, an issue is raised for decision and has been decided, that makes it final. The parties cannot be allowed thereafter to reopen it. The reason is that just as the parties would not be allowed to do so in the case of a judgment not appealed from, the point so decided is res judicata. The only jurisdiction conferred on the court is to give leave to enforce the award as a judgment unless there is a real ground for doubting the validity of the award*".

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

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

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

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

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

12 Confidentiality

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

Arbitral proceedings in Nigeria are confidential and general confidentiality rules apply. Article 25(4) of the Arbitration Rules annexed as First Schedule to the ACA provides specifically for the privacy of arbitration hearings when it states that hearings shall be held *in camera*, unless parties agree otherwise. In practice, the entire arbitral proceedings, not just hearings, are held *in camera*; only parties, their representatives and counsel are usually allowed to attend. This is specifically in relation to the privacy of arbitration.

The ACA, however, does not contain an express provision on confidentiality in respect of arbitral proceedings; but, with regard to conciliation, Article 14 of the Third Schedule to the ACA provides that the conciliator and the parties must keep confidential all matters relating to the conciliation proceedings. However, the practice in arbitration is that the parties to the proceedings adhere to an implied obligation not to use or disclose information or documents from the arbitral proceedings and to hold the same as confidential. Some arbitration clauses, however, provide specifically for confidentiality in the arbitration.

Confidentiality extends to the settlement agreement, except where its disclosure is necessary for the purposes of implementation and enforcement. This explains why there are little or no reported arbitration cases in Nigeria. However, parties may, by agreement, waive confidentiality.

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

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

13 Remedies / Interests / Costs

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

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

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

The ACA does not give an arbitrator express powers to award

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

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

Section 49 of the ACA provides that the arbitral tribunal shall award costs in its award. Costs include the fees of the arbitral tribunal, travel, administrative and other expenses incurred by the arbitrators, the cost of expert advice and of other assistance required by the arbitral tribunal, travel and other expenses of witnesses to the extent approved by the tribunal, reasonable costs of legal representation and assistance of the successful party that were claimed during the arbitral proceedings. The general practice is that costs follow the event and the unsuccessful party pays the costs, subject, however, to the circumstances of each case; for instance, the extent to which the other party has been guilty of a delay in the course of the arbitral proceedings. Article 40 of the Arbitration Rules gives the arbitral tribunal the power to apportion costs between the parties based on the circumstances of the case. The ACA does not list all the circumstances that may affect apportionment of costs. However, the effect of sealed offers or settlement offers is one relevant factor that arbitrators generally consider. The High Court of Lagos State Civil Procedure Rules 2019 has expressly introduced the effect of settlement offers in the award of costs in judicial proceedings by the provision of Order 53(2) that where an offer of settlement made in relation to the pre-action protocol, or in the course of case management or ADR, is rejected by a party and the said party eventually succeeds at trial but is awarded orders not in excess of the offer for settlement made earlier, the winning party shall pay the cost of the losing party from the time of the offer of settlement up to judgment.

13.4 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 that, under a taxable contract or service, is subject to tax. However, in practice, like judgment debts, awards are not usually taxed when enforced.

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

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

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

The ACA does not provide for third-party funding of arbitral proceedings. It also does not prohibit it. However, the recent Bill for an Act to repeal the ACA and enact the Arbitration and Mediation Act provides for third-party funding. It abolished the torts of maintenance and champerty as not applicable in relation to third-party funding of arbitration and provides for disclosure of such third-party funding arrangements. When the Bill is passed into law, this will become a much clearer position in Nigeria.

14 Investor State Arbitrations

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

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

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

Nigeria is a party to a significant number of BITs. The ICSID World Bank Group reports that presently, Nigeria has signed approximately 19 BITs with 11 currently in force. The United Nations Conference on Trade and Development, however, reports that Nigeria has signed 31 BITs, 15 of them in force. For instance, there is the BIT between the Republic of Turkey and the Federal Republic of Nigeria Concerning the Reciprocal Promotion and Protection of Investments. Article VI thereof provides for submission of disputes to the ICSID, or to an *ad hoc* court of arbitration under the UNCITRAL Arbitration Rules or to the Court of Arbitration of the Paris ICC. Others include the U.S.-Nigeria Trade and Investment Framework Agreement (TIFA), Nigeria-Egypt, Nigeria-France, Nigeria-UK, Nigeria-Germany BITs for the Promotion and Protection of Investments, and many others. Nigeria is not a party to the Energy Charter Treaty, although Nigeria became an observer to the Charter in 2003.

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Domestically, the Nigerian Investments Promotion Commission Act allows the settlement of disputes under the ICSID. Section 26 provides that any dispute between a foreign investor and the Nigerian government shall be settled within the framework of any bilateral or multilateral agreement on investment protection to which the Federal Government and the investor's country are parties, and where there is disagreement between the investor and the Federal Government as to the method of the dispute settlement to be adopted, the ICSID Rules shall apply. A more recent treaty signed by Nigeria on 7 July 2019 is the Agreement establishing the African Continental Free Trade Area to increase collaboration and the growth and economic development of African States and to aid the transfer of goods and services across African States. The Singapore Convention on Mediation was also signed by Nigeria on 7 August 2019 which is a uniform framework for international settlement agreements from mediation concluded by parties to resolve a commercial dispute. However, these treaties have not been domesticated in Nigeria.

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

Most of the investment treaties are in the English language, because English is the official language of Nigeria. However, a few of them are in the official language of the other country with which Nigeria has signed the BIT.

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

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

15 General

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

Whilst the ACA remains the federal legislation governing arbitration in Nigeria, a recent trend is the increasing insertion of arbitration clauses with the Lagos State Arbitration Law as applicable law. We therefore expect an increased relevance of the Lagos State Arbitration Law in the future as disputes begin to arise on those contracts.

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

There is a Bill currently pending at the Federal House of Representatives which is presently at the House of Representatives as House Bill 91. The proposed Arbitration and Mediation Bill seeks to improve on the largely antiquated extant ACA. The Bill will provide for interim measures to be granted by the court, the Arbitral Panel or by an emergency arbitrator. The Bill will also provide for multi-party arbitrations in terms of joinder of multiple parties or consolidation of references. The Bill will have provisions pertaining to arbitrator immunity where the Panel acted in good faith in the discharge of its duties. A most interesting and controversial innovation would be the optional Arbitral Award Review Tribunal, a system by which a dissatisfied party (if parties opted for it in the arbitration agreement) can apply for the review of the arbitral award delivered. It is hoped that the Bill will be passed soon.

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

The ICC Rules have been modified to meet with current trends such as cost and time effectiveness. For example, the ICC Arbitration Rules (2017) have one of the most significant amendments as the introduction of expedited procedure providing for a streamlined arbitration with a reduced scale of fees. This procedure is automatically applicable in cases where the amount in dispute does not exceed $2,000,000, unless the party decides to opt out. It will apply only to arbitration agreements concluded after 1 March 2017. One of the important features of the Expedited Procedure Rules is that the ICC Court may appoint a sole arbitrator even if the arbitration agreement provides otherwise. The expedited procedure is also available on an opt-in basis for higher value cases and will be an attractive answer to users' concerns over time and cost. Also, the time limit for establishing terms of reference was reduced from two months to one month, and there are no terms of reference in the expedited procedure. Under the 2017 Rules, ICC arbitrations have become even more transparent as the Court now provides reasons for a wide range of important decisions, if requested by one of the parties. Article 11(4) has been amended to that effect.

The Chartered Institute of Arbitrators, UK (Nigeria Branch) organises a programme of events annually to train its members on current arbitration issues. The Lagos Multidoor Court House (LMDC) has created special process tracks (such as the Banking Track which involves case management components and the profiling of suitable cases for referral to the LMDC) for effective dispute resolution. LMDC also organises a Lagos Settlement Week annually whereby cases that have been litigated for many years are identified and referred to the appropriate forum (arbitration or other ADR) for settlement. The Rules of the Lagos Regional Centre for Arbitration (adapted from the UNCITRAL Arbitration Rules of 1976) are modified to provide for the fixing of arbitrator(s) fees in accordance with the Centre's schedule of fees which are based on the amount in dispute, rather than on a daily rate basis, in order to encourage

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the expeditious conduct of arbitration and to give the parties an indication of costs at the outset. Other modifications include the collection of deposits on account of fees and costs, ensuring compliance with the Rules, and time limits. Likewise, the Lagos Court of Arbitration has its schedule of fees to guide parties as to the arbitral tribunal's fees and administrative charges for the arbitration whilst the Chartered Institute of Arbitrators, UK (Nigeria Branch) has a scale of charges to also guide parties as to the arbitral tribunal's fees and administrative charges for the arbitration.

There is a pending Arbitration and Conciliation Bill currently at the Federal House of Representatives. The proposed Arbitration and Mediation Bill seeks to improve on the largely antiquated extant ACA to bring it in line with the new trends in arbitration.

Also, on 6 July 2017, the Chartered Institute of Arbitrators, UK (Nigeria Branch) launched its Micro, Small and Medium Enterprises Scheme (MSME), which is intended to provide simple, cost-effective and timely resolution of commercial disputes in less than 90 days from the appointment of a sole arbitrator or as soon as practicable. The MSME Arbitration Scheme is applicable for the resolution of commercial disputes with a monetary value from N250,000 to N5,000,000.

With the recent coronavirus pandemic which has stifled and restricted the movement of people in many countries, including Nigeria, since March 2020, various arbitral institutions have come up with Guidelines on Remote Hearing of Arbitrations in order to save time and continue with arbitral proceedings instead of waiting until the pandemic is overcome, which remains largely uncertain. The Chartered Institute of Arbitrators, UK, the ICC and the African Arbitration Academy have issued guidelines for remote hearing to which parties may agree to apply to guide virtual arbitral proceedings in Nigeria.

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In 2017, Elizabeth won the award for best female Managing Partner in Africa at the Law Digest Africa Awards. Between 2017–2019, Elizabeth served as Member of the Executive Committee of the Chartered Institute of Arbitration, UK (Nigeria Branch).

She has experience in arbitration, which includes: Lead Counsel to a Claimant in an arbitration between a catering company and a major oil and gas and exploration company in Nigeria in respect of a dispute regarding unpaid invoices for services rendered on board vessels belonging to the Defendant; Lead Counsel to a Claimant in an arbitration between a public limited liability company in Nigeria and a Kenyan National in respect of a breach of contract of employment; and Counsel to a Respondent in an arbitration between a customer and a Lagos-based water supply company in respect of a dispute regarding charges made by the water supply company, to mention but a few.

She previously served as: General Manager HR/Corporate Services/Company Secretariat, African Petroleum Plc, now Forte Oil Plc; Company Secretary/Legal Adviser, defunct Ivory Merchant Bank Limited; and Associate, Chike Chigbue & Co. (Temple Chambers). She is a Member of the International Bar Association, the International Trademark Association (INTA), the Business Recovery & Insolvency Practitioners Association of Nigeria (BRIPAN), Women in Management & Business, International Federation of Women Lawyers (FIDA), and the Advertising Practitioners Council of Nigeria (APCON).

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Founded in 1947 by a leading Nigerian jurist who later became a Justice of the Nigerian Supreme Court, PUNUKA Attorneys & Solicitors is one of Nigeria's, and indeed Africa's, leading law firms. With its extensive work and reputation in commercial litigation, arbitration & ADR, capital markets and securities regulation, telecommunications, international trade and investment, government regulatory services, privatisation and consultancy, PUNUKA is a fully integrated and multi-dimensional law practice. The firm consists of five Partners and over 35 Associates and provides services to a highly diversified client base from its offices in the cities of Lagos, Abuja and Asaba. PUNUKA is dedicated to delivering the highest standard of services, providing quality legal advice and delivering effective solutions to medium- and large-scale clients across all business sectors within and outside Nigeria.

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