# THE ROLE OF ARBITRATION IN RESOLVING COMMERCIAL DISPUTES IN NIGERIA

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## DEDICATION

This work is dedicated to me for succeeding in the difficult task of completing this project.

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## LIST OF ABBREVIATIONS

ACA – Arbitration and Conciliation Act

AMA – Arbitration and Mediation Act 2023

CFRN – Constitution of the Federal Republic of Nigeria 1999 (as amended)

FIRS – Federal Inland Revenue Service

ICC – International Chamber of Commerce

LCA – Lagos Court of Arbitration

LCIA – London Court of International Arbitration

LFN – Laws of the Federation of Nigeria

NICArb – Nigerian Institute of Chartered Arbitrators

NNPC – Nigerian National Petroleum Corporation

NY Convention – New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958

UNCITRAL – United Nations Commission on International Trade Law

WACA – West African Court of Appeal

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**ABSTRACT**

This research critically examines the role of arbitration in resolving commercial disputes in Nigeria. Arbitration has evolved as a preferred mechanism for dispute resolution due to its efficiency, confidentiality, and finality. In Nigeria, arbitration is rooted in customary practices but formalised under statutory law, beginning with the Arbitration Ordinance of 1914 and culminating in the Arbitration and Mediation Act 2023, which modernises the framework in line with international best practices. The study Investigates the effectiveness of arbitration in Nigeria, highlighting both its advantages—such as reduced court congestion and party autonomy—and its challenges, including judicial interference, inconsistent enforcement of awards, high costs, and limited institutional capacity. It also analyses relevant case law, the institutional framework (e.g., Lagos Court of Arbitration, NICArb), and international influences like the New York Convention and UNCITRAL Model Law. Using a doctrinal and comparative methodology, the research draws insights from other jurisdictions, particularly the UK, US, and Singapore, to evaluate Nigeria's arbitration practice. Findings reveal that while Nigeria has made significant progress in aligning with international standards, challenges in enforcement, judicial attitude, and institutional growth hinder arbitration's full potential.The study concludes with recommendations for strengthening arbitration in Nigeria through legislative reform, institutional development, judicial training, and greater public awareness. Ultimately, arbitration remains indispensable for enhancing investor confidence, promoting economic growth, and positioning Nigeria as a regional hub for commercial dispute resolution.

# CHAPTER ONE

# INTRODUCTION

## 1.1 Background to the Study

Disputes are an inevitable aspect of human and commercial relations. As societies became more complex, so did the mechanisms for resolving conflicts. Arbitration, as one of the oldest forms of dispute resolution, traces its roots to early trade guilds and merchant practices, where impartial third parties were appointed to settle disagreements in order to preserve commercial relationships and maintain trust within trading communities. Unlike litigation, arbitration was preferred for its speed, flexibility, and confidentiality, making it particularly suitable for business disputes.

In Nigeria, arbitration has a long historical foundation shaped by the country's colonial experience and subsequent legal developments. The earliest statutory recognition of arbitration was under the Arbitration Ordinance of 1914, which was modeled after the English Arbitration Act of 1889.[1] This provided the initial framework for arbitration as part of Nigeria's legal system. Over time, arbitration law evolved to reflect international standards, culminating in the Arbitration and Conciliation Act, Cap A18, Laws of the Federation of Nigeria 2004, which itself was influenced by the UNCITRAL Model Law on International Commercial Arbitration (1985).

Most recently, the Arbitration and Mediation Act 2023[2] represents the most comprehensive reform of arbitration law in Nigeria. This Act not only modernized Nigeria's arbitration framework but also introduced mediation as a complementary mechanism, thereby aligning Nigeria more closely with international best practices. Key provisions of the Act address issues of appointment of arbitrators, recognition and enforcement of arbitral awards, interim measures, and the adoption of technology in arbitral proceedings.

Judicial decisions have equally played a vital role in shaping arbitration practice in Nigeria. Cases such as *Statoil Nigeria Ltd v NNPC*[3] and *SPDC v CRESTAR Integrated Natural Resources Ltd*[4] underscore the judiciary's recognition of party autonomy, the sanctity of arbitral agreements, and

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[1] See Orojo, J.O. and Ajomo, M.A., Law and Practice of Arbitration and Conciliation in Nigeria, (Mbeyi & Associates, 1999) p. 5

[2] Arbitration and Mediation Act, 2023, Laws of the Federation of Nigeria.

[3] *Statoil Nigeria Ltd v NNPC* (2013) 14 NWLR (Pt. 1373) 1

[4] *SPDC v CRESTAR Integrated Natural Resources Ltd* (2016) LPELR-40053(CA)

the limited grounds upon which arbitral awards may be set aside. These decisions have reinforced Nigeria's commitment to arbitration as a viable dispute resolution mechanism.

The background of this study is further strengthened by the growing volume and complexity of commercial transactions in Nigeria, especially in sectors such as oil and gas, banking, construction, telecommunications, and international trade. Commercial disputes, if not effectively resolved, can negatively affect investor confidence, economic growth, and Nigeria's integration into the global economy. While litigation remains available, the Nigerian court system is often criticized for delays, technicalities, and lack of specialization in commercial disputes. Arbitration, therefore, offers a faster, more specialized, and business-friendly alternative.

However, the practical application of arbitration in Nigeria still faces challenges. These include the high cost of arbitral proceedings, perceived judicial interference, issues of enforcement, and limited awareness among local businesses. These factors raise critical questions about the extent to which arbitration has truly achieved its objectives in Nigeria.

Against this backdrop, this study investigates the role of arbitration in resolving commercial disputes in Nigeria, highlighting its historical development, effectiveness, challenges, and prospects for reform. By drawing comparative lessons from other jurisdictions, the research aims to contribute to the ongoing discourse on strengthening arbitration as a tool for promoting economic development and fostering investor confidence in Nigeria.

## 1.2 Statement of the Problem

The increasing complexity and volume of commercial transactions in Nigeria have led to a rise in commercial disputes, which, if unresolved, can hinder economic growth and development. Despite the availability of litigation, the Nigerian court system is plagued by delays, backlogs, technicalities, and limited expertise in specialized commercial matters. This undermines confidence in litigation as a dispute resolution mechanism.

Arbitration has emerged as a preferred alternative due to its flexibility, confidentiality, and party autonomy. However, its effectiveness in Nigeria is still subject to several challenges: high costs, inadequate institutional support, occasional judicial interference, and difficulties in enforcing arbitral awards. These shortcomings raise doubts about arbitration's ability to provide a truly efficient and reliable mechanism for resolving commercial disputes in Nigeria.

This study aims to investigate the use of arbitration in resolving commercial disputes in Nigeria, identifying challenges, benefits, and areas for improvement to enhance the country's business environment and economic growth

## 1.3 Research Questions

1. What is the historical and legal foundation of arbitration in Nigeria?

2. How effective is arbitration in resolving commercial disputes?

3. What are the institutional and procedural challenges faced?

4. What legal reforms and practical measures can improve arbitration in Nigeria?

5. How does Nigeria compare with other jurisdictions in arbitration practice?

## 1.4 Aim and Objectives of the Study

The objectives of the study were to:

1. Examine the historical and legal development of arbitration in Nigeria.
2. Assess the current role and effectiveness of arbitration in resolving commercial disputes.
3. Identify challenges impeding the effectiveness of arbitration in Nigeria.
4. Provide comparative insights from other jurisdictions.
5. Propose legal and institutional reforms to strengthen arbitration practice in Nigeria.

## 1.5 Significance of the Study

This study contributes to a better understanding of the legal and institutional context of arbitration in Nigeria. It enhances awareness of how arbitration functions within the broader dispute resolution system.

It also offers critical insight for policy makers, legislators, and legal practitioners on improving arbitration processes, reducing case backlog in courts, and fostering economic growth through efficient dispute resolution.

By drawing comparisons with other countries, the study helps position Nigeria for regional leadership in arbitration, especially within West Africa.

## 1.6 Scope and Limitations of the Study

This study is confined to the role of arbitration in resolving commercial disputes in Nigeria. It examines both domestic and international commercial arbitration, focusing on relevant statutes such as the Arbitration and Mediation Act 2023, judicial decisions, and international instruments like the New York Convention (1958) and the UNCITRAL Model Law.

However, research is subject to some limitations including:

Empirical Limitations: Reliable statistical data on arbitral cases in Nigeria is scarce due to the confidentiality of proceedings.

Time Constraints: The scope of the research is restricted by the academic calendar limiting in-depth fieldwork and interviews.

Geographic Limitation: While comparative insights are drawn from other jurisdictions, the focus of this study remains primarily on Nigeria.

## 1.7 Research Methodology

The study adopts a doctrinal legal research methodology, relying primarily on the analysis of statutes, case law, and academic writings. Primary sources include:

- The Arbitration and Mediation Act 2023;
- Judicial decisions of Nigerian courts;
- International conventions and treaties (e.g., the New York Convention 1958 and UNCITRAL Model Law).

Secondary sources include textbooks, peer-reviewed journal articles, reports from arbitral institutions, and relevant electronic resources.

In addition, the study employs a comparative approach, drawing insights from jurisdictions such as the UK, Singapore, and South Africa, in order to evaluate global best practices. This mixed approach allows for both descriptive and prescriptive analysis, thereby providing a foundation not only to describe existing laws but also to propose reforms.

1.8 Chapter Analysis

- Chapter One introduces the study by outlining the background, statement of the problem, research questions, objectives, significance, scope, methodology, and chapter structure.

- Chapter Two provides the conceptual and theoretical framework, clarifying key terms such as arbitration and commercial disputes, and reviewing relevant literature and theories.

- Chapter Three examines the legal and institutional framework of arbitration in Nigeria, including statutes, international instruments, and arbitral institutions.

- Chapter Four constitutes the main body of the work, analysing practical issues in arbitration, judicial attitudes, enforcement of awards, and comparative perspectives, supported by case studies.

- Chapter Five presents the findings, recommendations, and conclusion.

# CHAPTER TWO

# CONCEPTUAL AND THEORETICAL FRAMEWORK AND LITERATURE REVIEW

## 2.1 **Conceptual Framework**

### 2.1.1 Arbitration

Arbitration is a private dispute resolution mechanism whereby disputing parties submit their disagreement to a neutral third party or arbitral tribunal whose decision, known as an arbitral award, is binding and enforceable in law.[5] Unlike litigation, arbitration is consensual, deriving its legitimacy from the agreement of the parties and statutory recognition. It is an important form of

[5] Redfern & Hunter, Law and Practice of International Commercial Arbitration (6th ed., Oxford University Press, 2015) 1.

Alternative Dispute Resolution (ADR) and is highly regarded in international and domestic commercial transactions.

In Nigeria, arbitration is governed by the Arbitration and Mediation Act 2023, which repealed the Arbitration and Conciliation Act, Cap A18 LFN 2004. This Act, modeled on the UNCITRAL Model Law on International Commercial Arbitration (1985, amended 2006), aligns Nigeria with global best practices. Among its innovations are provisions on emergency arbitrators, recognition of interim measures, recognition of third-party funding and codified rules for enforcement of foreign awards.

Judicial authorities have long recognized the sanctity of arbitration agreements. In *M.V. Lupex v Nigerian Overseas Chartering and Shipping Ltd,*[6] the Supreme Court affirmed that where parties have chosen arbitration, courts must respect their autonomy and refrain from interfering unless grounds for intervention exist under statute. Similarly, in *NNPC v Lutin Investments Ltd*,[7] the court reiterated that arbitration agreements must be enforced to give effect to party autonomy.

Key Features of Arbitration

Arbitration possesses certain defining features that distinguish it from litigation and other forms of alternative dispute resolution (ADR). These features explain its growing acceptance in commercial disputes, both in Nigeria and globally. The most important are outlined and discussed below.

1. Party Autonomy

Party autonomy is the cornerstone of arbitration. It gives parties the freedom to design their dispute resolution process in a way that suits their interests. This includes the ability to:

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[6] *M.V. Lupex v Nigerian Overseas Chartering and Shipping Ltd* (2003) 15 NWLR (Pt. 844) 469.

[7] *NNPC v Lutin Investments Ltd (*2006) 2 NWLR (Pt. 965) 506.

- Choose their arbitrators, including their qualifications and expertise.

- Select the seat of arbitration (the legal jurisdiction).

- Determine the procedural rules (e.g., institutional rules like ICC or ad hoc rules under the UNCITRAL framework).

- Decide the substantive law governing the dispute.

Nigerian courts have consistently upheld this principle. In *Statoil (Nig.) Ltd v NNPC*[8], the Supreme Court emphasized that where parties agree to arbitration, the courts must respect their autonomy. Party autonomy thus makes arbitration flexible and adaptable, unlike litigation, which is constrained by strict procedural laws.

2. Contractual Foundation

Arbitration is founded on agreement. It cannot be imposed unilaterally; it requires a valid arbitration agreement, usually contained as a clause in a commercial contract or as a separate submission agreement. The agreement defines the scope of arbitration, the procedure, and the obligations of the parties.

The Arbitration and Mediation Act 2023 reinforces this by providing in section 5 that courts must stay proceedings where an arbitration agreement exists, unless the agreement is invalid or incapable of being performed. The contractual nature of arbitration ensures that it is consensual, reflecting the voluntary submission of disputes to private adjudication.

[8] Statoil (Nig.) Ltd v NNPC (2013) 14 NWLR (Pt. 1373) 1

3. Neutrality

Neutrality is a critical feature, especially in international commercial disputes. Arbitration offers a neutral forum, free from the "home court advantage" that may arise when disputes are litigated in one party's national courts. This is particularly relevant in Nigeria, where foreign investors often insist on arbitration in neutral venues like London or Paris, or under neutral institutions like the ICC. The assurance of impartiality enhances confidence in arbitration as a fair process.

4. Binding and Enforceable Awards

Unlike mediation or conciliation, the decision of an arbitral tribunal is legally binding. Sections 56–60 of the Arbitration and Mediation Act 2023 provide that awards shall be enforced in the same manner as a court judgment.

Furthermore, Nigeria is a signatory to the New York Convention 1958, which makes arbitral awards enforceable in over 160 jurisdictions worldwide. This global enforceability gives arbitration a unique advantage over court judgments, which are often difficult to enforce internationally.

5. Confidentiality

Arbitration proceedings are generally private and confidential, unlike litigation, which takes place in open courts. Confidentiality protects sensitive commercial information, trade secrets, and business reputations. For example, disputes in the oil and gas sector, which may involve proprietary exploration data, are better suited for arbitration than litigation.

Although confidentiality is not expressly guaranteed under all statutes, it is often implied from the nature of arbitration and expressly provided in institutional rules (e.g., LCA Rules, ICC Rules). Nigerian courts have also recognized confidentiality as integral to the arbitral process.

6. Flexibility of Procedure

Arbitration offers procedural flexibility. Unlike the rigid and technical rules of court, arbitration allows parties to agree on rules of evidence, timelines, and even the language of proceedings. Virtual hearings, now recognized under the 2023 Act, further enhance flexibility by eliminating geographical barriers.

This flexibility makes arbitration particularly suitable for commercial disputes, where time and efficiency are critical. For instance, construction disputes may require expedited procedures to avoid delays in project completion.

7. Expertise of Arbitrators

Arbitrators are often chosen for their expertise in the subject matter of the dispute. Parties may appoint arbitrators with technical knowledge in engineering, shipping, telecommunications, or petroleum law. This ensures that decisions are informed by industry-specific insights, which is not always possible in court litigation.

For example, in construction disputes, parties may select arbitrators with engineering backgrounds, while oil and gas contracts often require arbitrators familiar with petroleum economics and international energy law.

8. Finality of Awards

Arbitral awards are final and not subject to appeal on the merits. Courts may only set aside awards on limited grounds such as bias, misconduct, or public policy considerations[9]. This finality provides certainty and avoids the endless appeals that characterize litigation in Nigeria.

While some critics argue that finality may perpetuate errors, it remains a key attraction for businesses that desire closure and predictability.

[9] section 55 of the Arbitration and Mediation Act 2023

9. Supportive but Limited Role of Courts

Although arbitration is private, courts play a supportive role. Nigerian courts may:

- Stay proceedings to uphold arbitration agreements (s. 5, Arbitration and Mediation Act 2023).
- Appoint arbitrators where parties fail to do so.
- Enforce interim measures and arbitral awards.
- Set aside awards only on specific grounds.

This principle of judicial minimalism — that courts should support but not interfere with arbitration — is widely recognized. In *Baker Marine Nigeria Ltd v Chevron Nigeria Ltd*[10], the Court of Appeal held that courts cannot review the merits of arbitral awards.

10. International Recognition

Arbitration is recognized globally as the preferred method of resolving international commercial disputes. Nigeria's incorporation of the UNCITRAL Model Law and membership in the New York Convention ensures that Nigerian arbitration practice is harmonized with international standards. This makes Nigeria attractive to foreign investors who may otherwise be reluctant to subject themselves to local litigation.

2.1.2 Commercial Disputes

A commercial dispute refers to disagreements that arise from commercial relationships such as contracts for the sale of goods, provision of services, joint ventures, banking, insurance, shipping, construction, and investment. Under section 91 of the Arbitration and Mediation Act 2023,[11] 'commercial' is defined broadly to include matters arising from all relationships of a commercial nature, whether contractual or not.

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[10] *Baker Marine Nigeria Ltd v Chevron Nigeria Ltd* (2000) 3 NWLR (Pt. 681) 93,

[11] Arbitration and Mediation Act 2023, s. 91.

Commercial disputes often involve significant financial implications and parties from different jurisdictions, making arbitration attractive for its efficiency, expertise, and enforceability of awards across borders under the New York Convention.[12] Nigerian courts have upheld arbitration in commercial disputes, for example, in *Kano State Urban Development Board v Fanz Construction Co. Ltd*[13], the Supreme Court acknowledged that arbitration clauses in commercial contracts should be respected, as they are integral to business certainty.

### 2.1.3 Alternative Dispute Resolution (ADR)

ADR refers to mechanisms of dispute resolution outside traditional court litigation, including negotiation, conciliation, mediation, and arbitration.[14] Nigeria has institutionalized ADR through the Lagos Multi-Door Courthouse (LMDC), the first court-connected ADR center in Africa, and similar initiatives in Abuja, Kano, and Port Harcourt. The High Court of Lagos State (Civil Procedure) Rules 2019 mandate parties to explore ADR options before trial.

The Arbitration and Mediation Act 2023 now provides statutory backing for mediation alongside arbitration, consolidating ADR processes. Mediation and conciliation are non-binding unless converted into consent awards or judgments. Arbitration, however, produces binding awards enforceable under sections 56–60 of the Act.[7]

Internationally, arbitration is the most widely recognized ADR method because of its enforceability under the New York Convention. Unlike other ADR processes, arbitration combines the flexibility of party autonomy with the certainty of finality, which explains its central role in commercial transactions.

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[12] New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958.

[13] *Kano State Urban Development Board v Fanz Construction Co. Ltd* (1990) 4 NWLR (Pt. 142) 1

[14] M. A. Akanbi, "Alternative Dispute Resolution: A Tool for Justice" (2011) 1(1) Nigerian Journal of Commercial Law 25.

## 2.2 **Theoretical Framework**

### 2.2.1 Social Contract Theory

Social contract theorists such as Thomas Hobbes, John Locke, and Jean-Jacques Rousseau argued that individuals surrender certain freedoms to an authority in exchange for social order and protection.[15] Applied to arbitration, the theory explains why parties voluntarily bind themselves to the decision of an arbitral tribunal rather than state courts. Arbitration thus reflects the contractual autonomy of parties within the legal order, consistent with Locke's notion of consensual governance.

### 2.2.2 Legal Realism

Legal realism emphasizes that law is shaped by practical, social, and economic realities rather than abstract rules.[16] Arbitration embodies this realist philosophy by adapting dispute resolution to commercial realities. In Nigeria, arbitration has gained ground precisely because litigation is plagued by congestion, technicalities, and delay. Arbitration thus becomes a realistic tool, delivering outcomes that reflect business needs rather than rigid legal formalism.

### 2.2.3 Conflict Theory

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[15] T. Hobbes, Leviathan (1651); J. Locke, Second Treatise of Government (1690); J.J. Rousseau, The Social Contract (1762).

[16] K. Llewellyn, The Bramble Bush (1930).

Conflict theory, rooted in Karl Marx's writings, sees disputes as inevitable products of social and economic inequalities.[10] In commercial relations, conflicts arise from competing interests over profits, resources, and contracts. Arbitration provides a structured method for resolving these disputes without escalation into prolonged hostilities. By fostering negotiated settlements or binding awards, arbitration limits the destructive potential of commercial conflict while preserving ongoing business relationships.

## 2.3 Literature Review

A substantial body of literature exists on arbitration as a mechanism for resolving commercial disputes, both within Nigeria and internationally. The review of these works provides insight into the prevailing scholarly debates, the identified strengths and weaknesses of arbitration, and the gaps that necessitate further inquiry.

### 2.3.1 Nigerian Scholarly Contributions

Nigerian scholars have extensively examined the role of arbitration in the commercial sphere. Orojo and Ajomo argue that arbitration in Nigeria has always reflected its colonial foundations, noting that the Arbitration Ordinance of 1914 mirrored the English Arbitration Act of 1889 and thus introduced a foreign legal model into Nigerian practice.[17] They, however, acknowledge that arbitration's consensual and flexible nature resonates with indigenous traditions of dispute settlement.

Ezejiofor emphasizes the importance of arbitration in commercial transactions, observing that Nigerian courts, with their congested dockets, cannot provide timely remedies for businesses.[18]

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[17] J.O. Orojo & M.A. Ajomo, Law and Practice of Arbitration and Conciliation in Nigeria (Mbeyi & Associates, 1999).

[18] G. Ezejiofor, The Law of Arbitration in Nigeria (Longman Nigeria, 1997).

Similarly, Sagay highlights party autonomy as the cornerstone of arbitration, but he warns that judicial interference has historically weakened the finality of arbitral proceedings in Nigeria.[19]

Aina underscores the growing recognition of arbitration in Nigeria, especially in the oil and gas sector, but notes that lack of awareness among small and medium enterprises remains a challenge.[20] Okeke, in his commentary on the enforcement of awards, points out that Nigerian courts have sometimes broadened the "public policy" exception, creating unpredictability for parties seeking enforcement.[21]

### 2.3.2 International Perspectives

Outside Nigeria, leading texts such as Redfern and Hunter's Law and Practice of International Commercial Arbitration describe arbitration as a neutral, efficient, and confidential mechanism, widely preferred by international business actors.[22] They note, however, that rising costs and delays threaten arbitration's appeal. Mustill and Boyd also emphasize enforceability as arbitration's strongest advantage, given the global recognition of awards under the New York Convention.[23]

Lew, Mistelis, and Kröll stress the importance of institutional support and specialized arbitration courts in jurisdictions like Singapore and London, arguing that legal infrastructure is as important as the legislative framework.[24] In contrast, Born highlights the occasional resistance of national courts, which undermines arbitration's promise of finality.[25] These perspectives underline that the Nigerian challenges are not unique, though they may be more pronounced due to systemic weaknesses.

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[19] I.E. Sagay, Nigerian Law of Contract (Spectrum Books, 2000).
[20] K. Aina, ADR and Arbitration in Africa: The Nigerian Experience (LCA Publications, 2010).
[21] C. Okeke, "Public Policy and the Enforcement of Arbitral Awards in Nigeria" (2012) Nigerian Current Law Review.
[22] A. Redfern & M. Hunter, Law and Practice of International Commercial Arbitration, 6th edn (Sweet & Maxwell, 2015).
[23] Sir Michael Mustill & Stewart Boyd, Commercial Arbitration, 2nd edn (Butterworths, 1989).
[24] J.D.M. Lew, L.A. Mistelis & S.M. Kröll, Comparative International Commercial Arbitration (Kluwer Law International, 2003).
[25] 9. G. Born, International Commercial Arbitration, 2nd edn (Kluwer Law International, 2014).

### 2.3.3 Comparative Insights and Gaps in Literature

Comparative studies reveal that while Nigerian scholarship has focused on legislative development and judicial attitudes, less attention has been paid to the practical experiences of arbitral institutions within Nigeria. Works on the Lagos Court of Arbitration and the Nigerian Institute of Chartered Arbitrators are limited, with most research focusing instead on foreign arbitral centres. Similarly, there is little Nigerian scholarship on emergency arbitration and the Award Review Tribunal, which are innovations introduced under the Arbitration and Mediation Act 2023.

This gap suggests the need for more empirical research on the performance of arbitral institutions in Nigeria and on the reception of recent legislative reforms. By situating this research within both Nigerian and global scholarship, the present study seeks to contribute not only to the doctrinal understanding of arbitration but also to its practical development in the Nigerian commercial environment.

# CHAPTER THREE

# LEGAL AND INSTITUTIONAL FRAMEWORK OF ARBITRATION IN NIGERIA

## 3.1 **Legal Framework**

National Legal Framework

The Nigerian legal framework for arbitration is founded on a combination of statutory provisions, case law, and judicial practice. The current statute governing arbitration is the Arbitration and Mediation Act 2023 (AMA), which repealed the Arbitration and Conciliation Act, Cap A18, Laws of the Federation of Nigeria 2004.

### Evolution of the Statutory Framework

Arbitration in Nigeria has its roots in the Arbitration Ordinance of 1914, which was modeled on the English Arbitration Act of 1889. After independence, the Arbitration Act of 1958 was enacted to regulate domestic arbitration. However, this Act was criticized for being outdated and failing to align with modern international arbitration practice.

The Arbitration and Conciliation Act 1988 (later codified as Cap A18, LFN 2004) marked a major step forward, as it incorporated the UNCITRAL Model Law on International Commercial Arbitration 1985. It was regarded as progressive at the time but became inadequate in light of new developments in global arbitration, such as emergency arbitrators, interim measures, third-party funding, and electronic proceedings.

To address these gaps, the Arbitration and Mediation Act 2023 was enacted. The Act has been widely commended for modernizing Nigeria's arbitration regime and consolidating Nigeria's role as a potential hub for arbitration in Africa.

### 3.1.1 Arbitration and Mediation Act (AMA) 2023

The Arbitration and Mediation Act 2023 is the principal legislation governing arbitration in Nigeria and represents a landmark reform in the country's dispute resolution landscape. Enacted to repeal the outdated Arbitration and Conciliation Act of 1988 (Cap A18, LFN 2004), the Act modernizes Nigeria's arbitration framework in line with international best practices, particularly the UNCITRAL Model Law on International Commercial Arbitration (as amended in 2006). It provides a comprehensive regulatory structure for both domestic and international arbitration, introducing innovative mechanisms such as emergency arbitration and the Award Review Tribunal (ART), while also codifying fundamental principles like competence-competence and party autonomy.

Key Provisions of the Arbitration and Mediation Act 2023

The Act introduces several innovations that distinguish it from the repealed statute:

1. Party Autonomy – Section 2 guarantees freedom of parties to determine the procedure, seat, language, and applicable law of arbitration.

2. Stay of Court Proceedings – Section 5 requires courts to stay proceedings where an arbitration agreement exists, unless the agreement is invalid or incapable of performance. This codifies the principle upheld in *M.V. Lupex v Nigerian Overseas Chartering and Shipping Ltd*[26].

3. Interim Measures and Emergency Arbitration – Sections 19–27 empower arbitral tribunals to grant interim measures, while section 16 introduces emergency arbitration to provide urgent relief before a tribunal is fully constituted.

4. Enforceability of Awards – Sections 55–60 provide that arbitral awards shall be binding and enforceable in the same manner as judgments of the court, subject only to limited grounds for refusal. This reflects the New York Convention standard.

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[26] *M.V. Lupex v Nigerian Overseas Chartering and Shipping Ltd* (2003) 15 NWLR (Pt. 844) 469

5. Third-Party Funding – Section 62 expressly recognizes third-party funding of arbitration, making Nigeria one of the first African countries to legislate on this practice.

6. Virtual Hearings – The Act expressly recognizes the use of technology and permits hearings to be conducted online.

7. Conciliation and Mediation – Unlike the previous Act, the new statute consolidates arbitration and mediation into a single law, thereby providing a comprehensive ADR framework.

Shortcomings of the Arbitration and Mediation Act 2023

While the 2023 Act has been praised as a landmark reform, it is not without shortcomings. Scholars and practitioners have identified several gaps that still need to be addressed if Nigeria is to achieve its ambition of becoming a true arbitration hub in Africa.

1. High Cost of Arbitration

The Act does not contain provisions to regulate or cap arbitrators' fees. In practice, arbitration in Nigeria can be as costly as litigation, if not more, especially when senior lawyers are appointed as arbitrators. This makes arbitration less accessible to small and medium-scale enterprises (SMEs), who often cannot afford the high cost of proceedings.

2. Limited Institutional Capacity

Although the Act recognizes arbitral institutions, it does not directly address the underfunding and capacity challenges faced by many domestic arbitration centers. Institutions like the Lagos Court of Arbitration and the Regional Centre for International Commercial Arbitration (RCICAL) struggle with infrastructural and administrative limitations. Without robust institutional support, the potential of the 2023 Act cannot be fully realized.

3. Ambiguity in Third-Party Funding

While section 62 of the Act introduces third-party funding, it provides no detailed regulatory framework to address potential conflicts of interest, disclosure requirements, or the extent of funders' control over proceedings. This lacuna could create opportunities for abuse or undue influence by funders.

4. Enforcement Challenges

Although the Act incorporates provisions for enforcement in line with the New York Convention, Nigerian courts still exhibit inconsistency in interpreting "public policy" as a ground for refusing enforcement. For example, awards that ought to have been enforced have sometimes been set aside on vague notions of public policy. The Act could have provided a more precise definition to reduce judicial discretion.

5. Judicial Interference Remains Possible

While the Act seeks to limit court intervention, it still permits applications for setting aside awards on relatively broad grounds. This opens the door to protracted litigation, which undermines arbitration's finality. For instance, a losing party may deliberately frustrate enforcement by filing multiple applications in different courts.

6. Lack of Comprehensive Provisions on Confidentiality

Although confidentiality is one of arbitration's hallmarks, the Act does not provide detailed rules on the scope and exceptions to confidentiality. In sensitive commercial disputes, especially in sectors like banking and telecommunications, this gap may expose confidential information to unnecessary risks.

7. Limited Appeal Mechanisms

The Act maintains the traditional approach of finality of awards, with very narrow grounds for challenge. While this is good for certainty, some scholars argue that a limited appellate mechanism could prevent injustice where tribunals make errors of law. The absence of such a mechanism may discourage parties from using arbitration, particularly in high-stakes disputes.

Recommendations for Reform

To address the above shortcomings and strengthen the arbitration regime, the following reforms are recommended:

1. Cost Regulation: Introduce guidelines or caps on arbitrators' fees to make arbitration more affordable. This could be modeled after the ICC's practice of scaling arbitrator fees based on the value of the claim.
2. Strengthening Domestic Institutions: Provide statutory funding or incentives for arbitral institutions like the LCA and RCICAL to improve infrastructure, capacity, and outreach. This will make institutional arbitration more attractive than ad hoc proceedings.
3. Regulation of Third-Party Funding: Enact subsidiary legislation or guidelines to regulate disclosure, conflicts of interest, and funders' involvement. This would safeguard the independence of tribunals while preserving the benefits of third-party funding.
4. Clarification of Public Policy: Define "public policy" more narrowly within the Act or through judicial guidelines. This would minimize inconsistent interpretations and align Nigeria with international standards.
5. Limiting Judicial Delays: Establish specialized arbitration divisions within the High Court to handle arbitration-related matters exclusively. This would reduce delays caused by generalist judges unfamiliar with arbitration.
6. Confidentiality Rules: Insert clear statutory provisions outlining confidentiality obligations and exceptions (e.g., where disclosure is required by law or for enforcement).
7. Optional Appeal Mechanism: Introduce an opt-in appellate procedure for parties who wish to allow review of awards by a second arbitral tribunal or a specialized arbitration appeal panel. This could strike a balance between finality and fairness.

### 3.1.2 Lagos State Arbitration Law (LSAL) 2009

The Lagos State Arbitration Law 2009 is a pioneering piece of legislation enacted to position Lagos — Nigeria's commercial capital — as a leading arbitration hub in Africa. Modeled substantially on the UNCITRAL Model Law, it provides a modern and flexible framework for both domestic and international arbitrations seated in Lagos State. The Law reinforces party autonomy, restricts judicial interference, and strengthens institutional arbitration by recognizing bodies such as the Lagos Court of Arbitration. By introducing reforms such as interim measures and competence-competence even before they were incorporated at the federal level, the Lagos State Arbitration Law set the pace for Nigeria's eventual adoption of more comprehensive reforms in the Arbitration and Mediation Act 2023.

Some features of the Lagos State Arbitration Law (LSAL) 2009 include:

1. Application and Scope

Section 1 LSAL provides that the Law applies to all arbitrations seated in Lagos State, whether domestic or international, except where the parties agree otherwise.
This ensures broad coverage of both local and cross-border disputes.

2. Arbitration Agreement

Section 3(1) requires arbitration agreements to be in writing, including by exchange of letters, telex, fax, email, or other means of communication that provide a record.

This modern provision recognizes electronic communication, making arbitration more adaptable to commercial realities.

3. Party Autonomy

Section 6 allows parties to determine the number of arbitrators.

Section 7 permits parties to agree on the procedure for appointment of arbitrators, failing which the default mechanism in the Law applies.

Section 24 gives parties freedom to agree on the rules of procedure, subject to the principles of fairness and equal treatment.

4. Appointment of Arbitrators

Section 8 empowers the High Court of Lagos State to step in where parties fail to appoint arbitrators or agree on a procedure.

This ensures that arbitration cannot be frustrated by non-cooperation.

5. Competence-Competence Principle

Section 12 embodies the doctrine of competence-competence, giving the tribunal authority to rule on its own jurisdiction, including challenges to the existence or validity of the arbitration agreement.

This prevents unnecessary court intervention at the early stages of arbitration.

6. Interim Measures

Section 21 empowers arbitral tribunals to order interim measures of protection such as injunctions, asset preservation, or orders to maintain the status quo.

Section 22 authorizes the High Court of Lagos State to enforce such interim measures, ensuring their effectiveness.

7. Equal Treatment and Due Process

Section 23 mandates equal treatment of parties and guarantees that each party is given full opportunity to present its case.

This reflects due process safeguards consistent with international practice.

8. Conduct of Proceedings

Section 24 gives parties autonomy to agree on procedural rules, including language, seat, and method of taking evidence.

Section 25 empowers tribunals to determine procedure where the parties fail to agree.

9. Arbitral Awards and Finality

Section 28 provides that an arbitral award shall be made in writing and signed by the arbitrator(s).

Section 29 states that an award is final and binding on the parties.

Section 30 limits challenges to awards, permitting setting aside only on narrow grounds such as incapacity, invalid agreement, lack of jurisdiction, breach of natural justice, or conflict with public policy.

## 10. Recognition and Enforcement of Awards

Section 31 provides that arbitral awards may, by leave of the High Court of Lagos State, be enforced in the same manner as judgments of the court.

Section 32 extends this recognition to foreign awards enforceable under the New York Convention.

## 11. Judicial Support and Non-Interference

Sections 8, 22, and 31 illustrate the supportive role of the courts: appointment of arbitrators, enforcement of interim measures, and enforcement of awards.

However, the Law restricts courts from interfering in the arbitral process itself, thereby promoting independence of the tribunal.

## 12. Institutional Arbitration

Section 54 provides for the recognition of arbitral institutions and rules agreed by parties, paving the way for institutions like the Lagos Court of Arbitration (LCA) to flourish under the framework of the LSAL.

The LSAL anticipated reforms later introduced in the AMA 2023, such as competence-competence and emergency relief. It demonstrates the dynamism of Lagos in promoting arbitration. However, lack of similar laws in other states means arbitration practice remains uneven across Nigeria.

Case Law Underpinning the National Framework

The courts play a critical role in interpreting and supporting arbitration statutes. Important decisions include:

*M.V. Lupex v Nigerian Overseas Chartering and Shipping Ltd*[27] – The Supreme Court stressed that courts must stay proceedings where parties have chosen arbitration.

*NNPC v Lutin Investments Ltd*[28] – Demonstrated how excessive litigation could undermine arbitration if courts do not apply restraint.

Through these cases, the Nigerian judiciary has progressively shifted toward an arbitration-friendly approach, although occasional interference remains a challenge.

**International Legal Instruments**

Arbitration in modern practice is shaped not only by domestic statutes and local courts but also by a network of international instruments that harmonize rules, secure enforceability, and encourage cross-border commerce. Nigeria's arbitration framework is heavily influenced by several such

[27] Ibid.
[28] *NNPC v Lutin Investments Ltd* (2006) 2 NWLR (Pt. 965) 506

instruments. This section examines the key international legal instruments that affect arbitration practice in Nigeria — their substance, practical impact, and the way Nigerian law incorporates or interacts with them.

### 3.1.3 UNCITRAL Model Law on International Commercial Arbitration

The UNCITRAL Model Law (1985, amended 2006) is the primary template for modern arbitration legislation worldwide. Although not binding by itself, it was designed by the United Nations Commission on International Trade Law (UNCITRAL) to guide states in harmonizing and modernizing their arbitration laws. It was developed to provide a harmonized framework for the conduct of international commercial arbitration, focusing on party autonomy, limited court intervention, and streamlined procedures for recognition and enforcement of awards

Nigeria's earlier Arbitration and Conciliation Act (1988) was explicitly modeled on the UNCITRAL Model Law. The Arbitration and Mediation Act 2023 retains and adapts many Model Law principles — notably party autonomy, competence-competence (tribunal's jurisdiction to rule on its own jurisdiction), minimal court interference, and limited grounds for setting aside awards.[29]

Adoption of Model Law principles makes Nigeria's arbitration law familiar to international parties and arbitrators, reducing legal uncertainty in cross-border contracts. It also assists Nigerian courts in interpreting and applying statutory provisions through the lens of widely-accepted international norms.

While Nigeria's statutory architecture mirrors the Model Law's core, effective realization depends on judicial temperament and institutional capacity. For example, competence-competence is only as good as courts' willingness to defer to tribunals on jurisdictional challenges; inconsistent judicial practice can undermine the Model Law's benefits.[30]

[29] UNCITRAL Model Law on International Commercial Arbitration (1985, as amended 2006)
[30] See commentary on competence-competence and judicial deference in Gary Born, International Commercial Arbitration (3rd ed., Kluwer Law 2021)

### 3.1.4 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958)

The New York Convention of 1958, to which Nigeria acceded in 1970, is the most significant international instrument regulating the recognition and enforcement of foreign arbitral awards. Incorporated into Nigerian law through section 57 of the Arbitration and Mediation Act 2023, the Convention obliges Nigerian courts to recognize and enforce foreign arbitral awards, subject only to narrowly defined exceptions. By providing a uniform international standard for enforcement, the Convention assures foreign investors and trading partners that arbitral awards made in Nigeria can be enforced abroad, and vice versa, thereby enhancing Nigeria's credibility as a viable seat of arbitration.

Nigeria is a party to the New York Convention, and the 2023 Act domesticates its central tenets by prescribing the standards and narrow exceptions (e.g., incapacity, invalid arbitration agreement, violation of due process, public policy) under which a court may refuse recognition or enforcement.[31]

The Convention dramatically increases the utility of arbitration for international commerce: an award obtained in one contracting state can be enforced in another, subject to the Convention's limited defenses. For Nigerian parties and foreign investors, this provides greater predictability that arbitral relief will be effective beyond borders.

The Convention's impact is mediated by domestic courts' interpretation of exceptions like "public policy." As noted earlier, inconsistent or expansive readings of public policy by Nigerian courts can dilute the Convention's effect. Clear judicial guidelines and statutory clarifications that narrow the public policy exception would enhance enforceability.[32]

### 3.1.5 International Centre for Settlement of Investment Disputes (ICSID) Convention and Investment Treaty Frameworks

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[31] Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958); see also Arbitration and Mediation Act 2023 (provisions implementing recognition and enforcement)

[32] see C. O. Okeke, "Public Policy and Enforcement of Arbitral Awards in Nigeria" (2014) Nigerian Journal of Business Law 16(2) 88; see also Redfern & Hunter (n.1) 248–252.

The International Centre for Settlement of Investment Disputes (ICSID) Convention and bilateral/multilateral investment treaties (BITs/IIAs) govern investor–state arbitration. These instruments provide foreign investors with direct access to an impartial mechanism for resolving disputes with host states.

Nigeria is a member of the ICSID framework and has negotiated a number of BITs and investment agreements in the past. Investor–state arbitration has featured prominently in extractive-sector disputes, making ICSID and investment treaties highly relevant to Nigeria's arbitration landscape.

Investor–state arbitration gives foreign investors protection (e.g., against expropriation, discriminatory treatment) and offers a neutral forum that can be enforced under ICSID rules. For Nigeria, these instruments are a double-edged sword: they can attract foreign direct investment but also expose the State to costly claims and awards.

Nigeria's legislative and regulatory regime must balance investor protection with public policy and developmental imperatives. Arbitration clauses in concession agreements should be drafted carefully, and the State should prepare defenses and dispute-prevention strategies (e.g., Alternative Dispute Resolution mechanisms in contracts).[33]

Institutional Rules & Model Arbitration Regulation

Beyond treaties and model laws, international arbitration practice is governed daily by institutional rules (e.g., ICC Rules, LCIA Rules, SIAC Rules, UNCITRAL Arbitration Rules). Parties commonly choose these institutional rules for their procedural clarity, administrative support, and global recognition.

Many contracts involving Nigerian parties — especially in oil and gas, shipping, and international trade — choose institutional rules of well-established bodies. Nigeria's domestic institutions such as Lagos Court Of Arbitration (LCA) and Regional Centre for International Commercial Arbitration, Lagos (RCICAL) have modeled their rules on these standards to increase confidence among international users.

[33] See J. Crawford, Brownlie's Principles of Public International Law (9th ed., OUP 2019)

Institutional arbitration provides administrative efficiency and perceived legitimacy. Strengthening domestic institutions (investment, training, transparency) will make Nigerian institutions more competitive for regional disputes.[34]

Regional Instruments and African Context

Regional integration and pan-African initiatives shape an evolving arbitration landscape on the continent.

AfCFTA & Regional Cooperation: The African Continental Free Trade Area (AfCFTA) and other regional economic initiatives may increase cross-border commercial activity, creating demand for interoperable dispute resolution mechanisms, including arbitration.

AALCO & RCICAL: Nigeria's engagement with the Asian-African Legal Consultative Organization (AALCO) and support for the Regional Centre for International Commercial l

Interaction Between International Instruments and the 2023 Act

Overall, the Arbitration and Mediation Act 2023 represents Nigeria's effort to domesticate international arbitration standards. Its alignment with the UNCITRAL Model Law and the New York Convention was a deliberate policy to make Nigerian law familiar and usable for international parties. However, effective application depends on:

- Judicial fidelity to narrow exceptions and minimal intervention principles;
- Well-resourced domestic arbitral institutions offering transparent rules and administrative support.

[34] see Emmanuel Gaillard & John Savage (eds), Fouchard, Gaillard, Goldman on International Commercial Arbitration (Kluwer 1999)

- Clear domestic rules on novel issues (third-party funding, emergency arbitration) to avoid uncertainty that could discourage international use.

### 3.2 Institutional Framework

While legislation provides the legal foundation for arbitration, the effectiveness of the process depends heavily on arbitral institutions. Institutions administer proceedings, set rules, provide panels of arbitrators, and ensure integrity. Nigeria has developed several domestic arbitral institutions and also relies on international ones. This section evaluates both categories

#### 3.2.1Lagos Court of Arbitration (LCA)

The Lagos Court of Arbitration is one of Nigeria's leading arbitral institutions. Established to position Lagos as a regional hub, the LCA provides administrative services, modern facilities, and a roster of arbitrators with expertise across sectors. Its rules are modeled on international best practices such as the ICC and LCIA rules.

Practical Role: The LCA administers both domestic and international arbitrations, particularly in commercial disputes involving oil and gas, maritime, and construction.

Strengths: Modern facilities, international-standard rules, credibility in the business community.

Weaknesses: Limited global recognition compared to ICC or LCIA; underutilization by foreign investors who often prefer international institutions.

Olawoyin observes that the LCA represents "Nigeria's strongest institutional attempt to replicate global arbitral standards" but argues that its impact is limited by insufficient government support and lack of aggressive international marketing.[35]

[35] T. Olawoyin, "The Challenges of Institutional Arbitration in Nigeria" (2016) Journal of African Law 60(3) 412.

### 3.2.2 Lagos Multi-Door Courthouse (LMDC)

The Lagos Multi-Door Courthouse, established in 2002, was the first court-connected ADR center in Africa. It integrates arbitration, mediation, and conciliation directly into the judicial system.

Practical Role: Disputes filed in the Lagos High Court may be referred to LMDC for arbitration or mediation. The idea is to decongest courts and promote ADR.

Strengths: Strong integration with the judiciary, ensuring enforcement of awards; increased awareness of arbitration at grassroots level.

Weaknesses: Limited resources, heavy reliance on court referrals rather than voluntary uptake by businesses.

Its model has since been replicated in Abuja, Kano, and Rivers State, making it an important innovation in Nigeria's institutional ADR framework.

### 3.2 3 Chartered Institute of Arbitrators (CIArb), Nigeria Branch

The Chartered Institute of Arbitrators (CIArb) is a UK-based professional body with a Nigerian branch that has become highly influential.

Practical Role: CIArb Nigeria trains arbitrators, provides accreditation, and develops professional standards. It also organizes seminars, publishes materials, and advocates for improved arbitration laws.

Strengths: High-quality training and international certification

Weaknesses: Limited involvement in actual case administration; primarily a professional development body.

As Oyebode notes, CIArb Nigeria has "contributed significantly to the professionalization of arbitration practice" by producing a cadre of trained arbitrators recognized internationally.[36]

### 3.2.4 Regional Centre for International Commercial Arbitration (RCICAL), Lagos

The RCICAL was established in 1989 under the auspices of the Asian-African Legal Consultative Organization (AALCO) in collaboration with the Nigerian government.

Practical Role: Serves as a regional arbitration center for Africa, providing facilities and panels of arbitrators.

Strengths: International backing under AALCO; intended to give Africa an arbitral hub comparable to others worldwide.

Weaknesses: Despite high expectations, RCICAL has struggled to gain global visibility and attract significant international caseloads.[37]

### Sector-Specific Arbitration Bodies

Nigeria has also witnessed growth of specialized arbitral institutions, such as:

### 3.2.5 International Chamber of Commerce (ICC)

The ICC International Court of Arbitration is one of the most respected arbitral bodies globally. Nigerian parties frequently adopt ICC arbitration clauses, particularly in oil and gas contracts.

Advantages: Global credibility, robust administrative support, predictable enforcement of awards.

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[36] A. Oyebode, International Commercial Arbitration and the Arbitrator (University of Lagos Press, 2012) 77.
[37] J. O. Orojo & M. Ajomo, Law and Practice of Arbitration and Conciliation in Nigeria (Mbeyi & Associates, 1999) 58.

Challenges: High cost of proceedings, foreign seat requirements in some contracts, reduced opportunities for Nigerian arbitral institutions.

### 3.2.6 London Court of International Arbitration (LCIA)

The LCIA is another popular choice in contracts involving Nigerian parties, given the historical link between Nigeria and the UK.

Advantages: Familiarity with English law, efficiency, and neutrality.

Challenges: Expensive for local companies; may perpetuate reliance on foreign institutions instead of building Nigerian arbitral capacity.

### 3.2.7 International Centre for Settlement of Investment Disputes (ICSID)

The International Centre for Settlement of Investment Disputes (ICSID) is central to investor–state arbitration. Nigeria's membership in ICSID provides foreign investors with confidence that their disputes with the government will be heard in a neutral forum. However, ICSID cases are often costly and complex, with Nigeria facing criticism for inadequate defense strategies.

### 3.2.8 Comparative Analysis of National and International Institutions

Accessibility: Domestic institutions like LCA and LMDC are more accessible and cost-effective for Nigerian businesses, while international institutions are preferred for cross-border contracts due to credibility.

Expertise: Nigerian institutions have growing pools of arbitrators, but international institutions still command greater global recognition and experienced panels.

Challenges: Domestic institutions need better funding, training, and marketing to attract international cases. Otherwise, Nigerian disputes will continue to "export" arbitration abroad, limiting local capacity-building.

# CHAPTER FOUR

## Practical Issues and Comparative Perspectives In Arbitration.

### Introduction

Arbitration has become the most widely utilized mechanism for the resolution of commercial disputes in both domestic and international transactions. Its appeal stems from its flexibility, confidentiality, neutrality, and the enforceability of its awards across borders. In Nigeria, arbitration occupies a critical position within the legal and commercial framework, as it supplements litigation in a judiciary overburdened with delays and technical complexities. The enactment of the Arbitration and Mediation Act 2023 (AMA) has further modernized Nigerian

arbitration law, bringing it into closer conformity with the UNCITRAL Model Law and strengthening its effectiveness in resolving disputes.

This chapter constitutes the body of the research, offering a comprehensive analysis of the practical role arbitration plays in Nigeria's dispute resolution framework. It examines the advantages and challenges of arbitration, the judicial attitude towards its practice, the enforcement of awards, and provides a comparative analysis with other jurisdictions. It also evaluates recent case law and case studies, thereby combining theory with practical realities.

## 4.1Advantages and Challenges of Arbitration in Commercial Disputes

Arbitration, as a consensual and party-driven process, is replete with advantages that make it especially suited for commercial disputes. At the same time, it also faces practical and institutional challenges that hinder its effectiveness in Nigeria.

### 4.1.1 Advantages of Arbitration

#### (a) Party Autonomy

Party autonomy is often described as the cornerstone of arbitration. Parties are free to determine the seat of arbitration, applicable law, procedural rules, language, and choice of arbitrators. Section 2 of the AMA 2023 reinforces this principle, affirming the binding nature of arbitration agreements. In *Statoil (Nig.) Ltd v NNPC*,[38] the Supreme Court upheld an arbitration clause in a production sharing contract, affirming that once parties freely choose arbitration, courts must respect that decision.

[38] *Statoil (Nig.) Ltd v NNPC* (2013) 14 NWLR (Pt. 1373) 1

(b) Expertise and Neutrality

Commercial disputes often require technical knowledge beyond the expertise of generalist judges. Arbitration allows parties to appoint arbitrators with specialist knowledge in oil and gas, construction, maritime law, or finance. Neutrality is also critical: international parties can select arbitrators from neutral jurisdictions to avoid perceptions of local bias.

(c) Confidentiality

Court proceedings in Nigeria are public, exposing commercial disputes to media scrutiny and reputational damage. Arbitration, however, is conducted privately. Although the AMA 2023 does not contain a blanket confidentiality rule, arbitral practice recognizes confidentiality as a key feature. Redfern and Hunter note that businessmen often prefer arbitration precisely because it shields disputes from public exposure.[39]

(d) Flexibility and Procedural Efficiency

Unlike litigation, arbitration allows for flexible procedures tailored to the needs of the parties. The tribunal can adopt strict timelines, limit discovery, and permit virtual hearings (recognized under section 28 AMA). This flexibility reduces delays and procedural rigidity common in Nigerian courts.

(e) Finality and Enforceability of Awards

Arbitral awards are final and binding (s. 52 AMA). They are enforceable domestically through the High Court and internationally under the New York Convention (1958). In *SPDC v Crestar*

[39] Redfern & Hunter, Law and Practice of International Commercial Arbitration (6th ed., Oxford University Press, 2015) 1.

*Integrated Natural Resources Ltd*,[40] the Court of Appeal affirmed that arbitral awards enjoy the same status as court judgments and should not be disturbed except on narrow grounds.

(f) Preservation of Commercial Relationships

Because arbitration is less adversarial and more collaborative, it helps preserve long-term commercial relationships. This is particularly important in Nigeria's oil and gas and banking sectors, where parties may wish to continue their business dealings even after resolving disputes.

4.1.2 Challenges of Arbitration

Despite its strengths, arbitration in Nigeria faces several challenges that diminish its effectiveness:

(a) Judicial Interference

Although courts are expected to adopt a supportive stance towards arbitration, Nigerian courts sometimes interfere excessively. In M.V. Lupex v Nigerian Overseas Chartering & Shipping Ltd,[41] the Supreme Court emphasized judicial deference to arbitration. Yet, in practice, some judges invoke 'public policy' very broadly to set aside awards.

(b) High Costs

Arbitration is often perceived as cheaper than litigation. However, in Nigeria, arbitration costs such as arbitrators' fees, institutional charges, expert witness fees, and counsel fees can exceed

[40] *SPDC v Crestar Integrated Natural Resources Ltd* (2016) LPELR-40053(CA)
[41] *M.V. Lupex v Nigerian Overseas Chartering & Shipping Ltd* (2003) 15 NWLR (Pt. 844) 469.

court litigation costs, especially in high-value disputes. This discourages small and medium enterprises from embracing arbitration.

(c) Delay in Enforcement

While arbitration is meant to be speedy, enforcement proceedings in Nigerian courts can take years due to adjournments and appeals. This undermines arbitration's promise of efficiency.

(d) Lack of Awareness and Expertise

Many local businesses and even some lawyers lack sufficient knowledge of arbitration procedures. This has led to poor drafting of arbitration clauses, procedural missteps, and limited capacity of some arbitrators.

(e) Institutional Weaknesses

Although Nigeria has institutions like the Lagos Court of Arbitration (LCA) and the Lagos Multi-Door Courthouse (LMDC), these are underutilized compared to international bodies like the ICC or LCIA. Inadequate funding, limited publicity, and low caseloads reduce their effectiveness.

**4.2 Judicial Attitude Towards Arbitration in Nigeria**

The effectiveness of arbitration as a mechanism for commercial dispute resolution in Nigeria is heavily dependent on the courts' attitude. Arbitration is not self-executing; tribunals lack coercive powers to enforce awards or compel compliance without judicial assistance. Courts are therefore expected to adopt a supportive approach -- intervening only where necessary, while respecting party autonomy and the finality of arbitral awards.

However, judicial attitudes in Nigeria have evolved over time, reflecting a gradual but uneven shift towards modern international best practices.

### 4.2.1 Early Judicial Skepticism

In the early years, Nigerian courts sometimes treated arbitration with suspicion, often intervening unnecessarily. For instance, courts would readily entertain applications to set aside awards, stretching the doctrine of public policy to invalidate arbitral decisions. This reluctance undermined confidence in arbitration as an alternative to litigation.

### 4.2.2 Affirmation of Party Autonomy

The Supreme Court's decision in *Statoil (Nig.) Ltd v NNPC*[42] was a watershed moment. The Court held that where parties have freely chosen arbitration, courts must respect their agreement. The judgment emphasized that arbitration clauses are binding and that judicial interference should be minimized. This case established a strong precedent for the enforcement of arbitration agreements in Nigeria, particularly in the oil and gas sector where billions of dollars are at stake.

Similarly, in *M.V. Lupex v Nigerian Overseas Chartering & Shipping Ltd*,[43] the Supreme Court reiterated that once parties elect arbitration, courts must stay their proceedings to allow arbitration to run its course. The Court underscored the principle of competence-competence, recognizing the tribunal's authority to rule on its own jurisdiction.

### 4.2.3 Non-Interference with Merits of Awards

A key development in judicial attitude is the recognition that courts must not sit on appeal over arbitral awards. This was clearly expressed in *Baker Marine (Nig.) Ltd v Chevron (Nig.) Ltd*[44] where the Court of Appeal held that arbitral awards are final and binding, and that courts cannot

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[42] Ibid.
[43] ibid
[44] *Baker Marine (Nig.) Ltd v Chevron (Nig.) Ltd* (2000) 3 NWLR (Pt. 681) 93

review them on the merits. The Court stated that it is not the duty of courts to correct errors of fact or law in arbitral awards, except where statutory grounds for setting aside exist.

This position has since been reaffirmed in numerous decisions, narrowing the grounds for judicial interference to procedural irregularities such as incapacity, invalid arbitration agreement, excess of jurisdiction, or breach of natural justice.

### 4.2.4 Narrowing the Scope of "Public Policy"

The doctrine of public policy has often been misused by losing parties seeking to frustrate enforcement of arbitral awards. However, Nigerian courts are increasingly adopting a narrower interpretation. In *Shell Petroleum Development Company v Crestar Integrated Natural Resources Ltd,*[45] the Court of Appeal rejected an attempt by SPDC to resist enforcement of a foreign award on grounds of public policy. The Court held that public policy cannot be used as a catch-all excuse to invalidate arbitral awards; it must be confined to situations that threaten the fundamental legal or moral order of Nigeria.

This case signals a progressive shift towards an internationalist approach, aligning Nigeria with jurisdictions like the UK and Singapore where "public policy" is interpreted restrictively.

### 4.2.5 Judicial Support for Enforcement

Under sections 55–60 of the AMA 2023, arbitral awards are enforceable in the same manner as court judgments. Courts play a critical role in granting recognition and enforcement. Recent judicial decisions show a stronger inclination to enforce awards promptly, thereby reinforcing arbitration's credibility.

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[45] ibid

For example, in Statoil and Crestar, the courts facilitated enforcement despite resistance from powerful state or multinational corporations. This sends an important signal to the business community that arbitration is not an empty process, but one backed by judicial authority.

4.2.6 Persistent Challenges

Despite these positive trends, challenges remain such as:

1. Some judges still adopt interventionist attitudes, particularly in lower courts.

2. Delays in enforcement proceedings continue to frustrate the efficiency of arbitration.

3. Appeals against enforcement orders, though limited in scope, are still used tactically to delay compliance.

Nonetheless, the passage of the Arbitration and Mediation Act 2023, which codifies modern principles such as competence-competence and enforceability of emergency arbitrator orders, is expected to reinforce a more arbitration-friendly judicial culture.

**4.3 Enforcement of Arbitral Awards in Nigeria**

The enforceability of arbitral awards is central to the credibility of arbitration. Parties submit to arbitration with the expectation that the resulting award will be final, binding, and enforceable. In Nigeria, the enforcement regime is now governed primarily by the Arbitration and Mediation Act 2023 (AMA), which modernizes procedures in line with international best practices.

### 4.3.1 Nature and Types of Arbitral Awards

An arbitral award is the final decision of the arbitral tribunal, determining the rights and obligations of the parties with respect to the issues submitted to arbitration. Under section 52 AMA, an award must be in writing, signed by the arbitrators, and state the reasons upon which it is based (unless parties agree otherwise).

Arbitral awards into different types, each with its own effect:

(a) Final Award

This is the most common type, resolving all claims and issues in dispute between the parties. It terminates the arbitral proceedings and has binding effect. For example, in Baker Marine v Chevron,[1] the tribunal's dismissal of claims constituted a final award, which the court recognized as binding and enforceable.

(b) Partial Award

A partial award resolves some but not all issues in dispute. For instance, a tribunal may issue a partial award on liability and reserve the question of damages for a later stage. Partial awards are binding with respect to the issues they determine.

(c) Interim Award

Also referred to as "provisional awards," these are made during the course of proceedings to preserve assets, maintain status quo, or address urgent matters. Sections 19–27 AMA now expressly empower arbitral tribunals to issue interim measures, which may then be enforced by courts.

(d) Consent Award

Where parties settle during arbitration, they may request the tribunal to record the terms of settlement as a consent award. Such awards have the same binding effect as other arbitral awards (s. 52 AMA). This is consistent with the principle that arbitration promotes amicable resolution.

(e) Default Award

If one party fails to participate after due notice, the tribunal may proceed and render an award based on available evidence. This underscores the principle that parties cannot frustrate arbitration by non-participation.

Each of these awards is binding on the parties, subject only to limited post-award remedies such as correction, interpretation, or setting aside on statutory grounds.

4.3.2 Domestic Enforcement of Awards

Sections 55–60 of the AMA 2023 regulate the enforcement of arbitral awards within Nigeria. The Act provides that an award, irrespective of whether it is domestic or foreign, is binding and may be enforced by the High Court of a State, the High Court of the Federal Capital Territory, or the Federal High Court.

The procedure is straightforward: the successful party applies to the court for recognition and enforcement, supported by:

- The original arbitral award or a certified copy; and

- The original arbitration agreement or a certified copy.

The court is bound to enforce the award unless the resisting party proves one of the limited statutory grounds under section 54 AMA, such as:

- Invalid arbitration agreement;
- Lack of jurisdiction;
- Violation of due process or natural justice;
- Award contrary to Nigerian public policy.

Nigerian courts have repeatedly emphasized that they cannot review arbitral awards on the merits. In Baker Marine v Chevron,[46] the Court of Appeal affirmed that courts cannot re-open evidence or re-examine findings of fact made by arbitrators.

4.3.3 International Enforcement of Awards

Nigeria is a signatory to the New York Convention (1958), ratified in 1970. This means that arbitral awards made in Nigeria are enforceable in over 160 countries, and conversely, awards made abroad in convention states are enforceable in Nigeria.

Section 57 AMA gives domestic effect to the New York Convention, requiring Nigerian courts to recognize and enforce foreign arbitral awards, subject to the Convention's narrow grounds for refusal, such as:

[46] Ibid

Lack of a valid arbitration agreement;

Procedural unfairness;

Excess of jurisdiction;

Award contrary to public policy.

In *SPDC v Crestar Integrated Natural Resources Ltd*,[47] the Court of Appeal upheld enforcement of a foreign-seated arbitral award, rejecting the respondent's attempt to invoke public policy. This case demonstrates Nigeria's commitment to its international arbitration obligations.

4.3.4 Post-Award Remedies

Although arbitral awards are binding, the AMA provides limited remedies:

(a) Correction and Interpretation

Section 53 AMA permits a party to request correction of clerical errors or interpretation of ambiguous parts of the award. This does not affect the award's substantive binding effect.

(b) Setting Aside

Section 54 AMA allows a party to apply to set aside an award on limited grounds such as invalid arbitration agreement, incapacity, denial of fair hearing, or award against public policy. Courts have clarified that mere dissatisfaction with an award is not a valid ground for setting aside.

[47] ibid

(c) Award Review Tribunal (ART)

A novel feature of the 2023 Act is the introduction of an Award Review Tribunal (ART), which parties may opt into in their arbitration agreement. The ART functions as an internal review mechanism, offering a second arbitral look at an award before parties proceed to court. This reduces judicial interference while preserving finality.

4.3.5 Challenges in Enforcement

Despite the statutory framework, enforcement of arbitral awards in Nigeria faces practical obstacles:

Judicial Delays: Enforcement proceedings in courts are sometimes prolonged by adjournments and appeals.

Overuse of Public Policy: Parties resisting enforcement often invoke “public policy,” sometimes successfully, though courts are narrowing its scope.

Inconsistent Judicial Interpretations: Different divisions of Nigerian courts have occasionally given conflicting rulings, creating uncertainty.

Costs: Enforcement proceedings involve significant legal costs, adding to the overall expense of arbitration.

4.3.6 Legal Effects of Arbitral Awards

The legal effects of arbitral awards in Nigeria may be summarized as follows:

1. Final and Binding: Awards have res judicata effect between the parties, preventing re-litigation of the same issues.

2. Equivalent to Court Judgments: Once recognized, arbitral awards are enforceable like judgments of the High Court.

3. International Enforceability: Foreign awards are enforceable under the New York Convention.

4. Limited Scope for Challenge: Courts may only refuse enforcement on statutory grounds; they cannot review the merits of the decision.

### 4.4 Comparative Analysis with Arbitration Practices in Other Jurisdictions

Comparative study is useful because it shows how nations with successful arbitration ecosystems balance party autonomy, limited judicial intervention, efficiency, and enforceability. Below this study examines four jurisdictions often cited as examples — the United Kingdom, Singapore, South Africa, and the United States — and then indicates practical lessons for Nigeria.

4.5.1 United Kingdom

England and Wales operate under the Arbitration Act 1996, a comprehensive statute that codifies key principles: party autonomy, competence-competence, limited court intervention, and finality of awards. The Act provides clear grounds on which courts may intervene (e.g., jurisdictional challenges, serious irregularity, or public policy).[48]
UK courts have, over two decades, developed a pro-arbitration jurisprudence that respects the autonomy of parties and the expertise of tribunals. Landmark judicial reinforcement of party autonomy and the enforceability of arbitration agreements came through the House of Lords decision in *Fiona Trust & Holding Corporation v Privalov,*[49] where the court adopted a permissive approach to interpreting arbitration clauses and supported broadly worded arbitration agreements.

Procedure and case management

The Arbitration Act and the English courts encourage active case management and the use of institutional rules. The courts defer to tribunal decisions on evidential matters and jurisdiction, intervening only where clear statutory thresholds are met. The Commercial Court and the Technology & Construction Court (TCC) provide specialist judges experienced in complex commercial disputes, which supports efficient supervision without undue interference.[50]

Interim measures and emergency relief

English courts and the Arbitration Act provide robust support for interim measures. The courts will enforce tribunal-ordered interim measures and will grant interim relief themselves where appropriate. Emergency arbitrator mechanisms are commonly incorporated by institutions (e.g., LCIA, ICC) and supported in practice.[51]

Appeal and finality

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[48] Arbitration Act 1996 (UK).
[49] *Fiona Trust & Holding Corporation v Privalov*, [2007] UKHL 40; [2008] 1 All ER 76.

[50] Adrian Briggs, The Law of Tort
[51] ICC Rules, LCIA Rules; see also Arbitration Act 1996, ss. 44–47 (interim measures).

Although awards are final, the Act allows limited recourse: the court may set aside awards for serious irregularity (s. 68) or on public policy grounds. The Restricted grounds and the availability of judicial review by specialist courts create predictability while preserving finality.[52]

The UK model shows how clear statutory limits on judicial intervention, specialist courts, and proactive case management by both tribunals and courts can together foster a reliable arbitration environment. Nigeria iscan emulate the clarity of statutory grounds for intervention and consider specialized judicial training/divisions for arbitration matters.

### 4.5.2 Singapore

Singapore's arbitration regime is founded on the International Arbitration Act (IAA) (which adopts the UNCITRAL Model Law) and the Arbitration Act for domestic arbitrations. Singapore has positioned itself as a premier arbitration seat through a combination of pro-arbitration legislation, efficient courts, world-class institutional infrastructure (SIAC, SIAC Rules, Singapore International Mediation Centre), and aggressive state support.[53]

#### Judicial attitude

Singaporean courts are notably pro-arbitration; they apply a restrained approach to intervention, with a focus on facilitation and enforcement. Their jurisprudence emphasizes minimal interference and speedy disposition of arbitration-related applications.[54]

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[52] Arbitration Act 1996, ss. 67–68.

[53] International Arbitration Act (Cap. 143A) (Singapore); see also Singapore International Arbitration Centre (SIAC) Rules.

[54] See Singapore Court of Appeal decisions and commentary in Born, International Commercial Arbitration (3rd ed.).

Institutional excellence and practice

SIAC's modern rules, speedy case management, and flexible emergency arbitrator procedures have attracted international parties. Singapore's courts provide rapid review and have infrastructure to assist with enforcement and interim measures. The state's active promotion of Singapore as an arbitration hub (policy, funding, training) has been decisive.[55]

Appeal and finality

Like the UK, Singapore provides limited grounds for judicial review; the statutory framework is deliberately narrow to preserve finality while maintaining basic safeguards against injustice.

Takeaway for Nigeria

Singapore shows the value of institutional investment, efficient court practice, and government promotion. Lagos (or another Nigerian city) can become more competitive if domestic institutions (LCA, RCICAL) are strengthened, and if policy-makers actively market Nigeria as an arbitration seat.

4.5.3 South Africa

South Africa's arbitration regime historically rested on the Arbitration Act 42 of 1965, which was limited and regarded as archaic. However, South Africa modernized its arbitration law with the Arbitration Act 2018 (and related reforms), aligning many

[55] Singapore International Arbitration Centre annual reports.

provisions with the UNCITRAL Model Law and providing clearer rules on recognition, enforcement, and judicial support.[56]

South African courts have shown an increasing willingness to respect arbitration clauses and awards, though the transition from the older statutory regime necessitated judicial adaptation. The Constitutional and High Courts have been significant in enforcing arbitration agreements and awards while protecting public interest.

Practical features
South Africa's experience underscores the need for legislative modernization followed by judicial training and institutional capacity building. The lesson here is that statute reform alone is insufficient unless courts and practitioners are also prepared to operate under the new regime.[57]

Takeaway for Nigeria
Nigeria's 2023 Act is analogous to South Africa's modernization path — but Nigeria must ensure effective implementation through judicial education and institutional strengthening to avoid reform stagnation.

4.5.4 United States

The United States arbitration landscape is governed primarily by the Federal Arbitration Act (FAA), 9 U.S.C. §§1–16 (enacted 1925), which establishes a strong federal policy favoring arbitration. The FAA preempts state laws that unduly burden arbitration and provides for enforcement and limited vacatur (9 U.S.C. §10).[58]

[56] Arbitration Act 2018 (South Africa)
[57] J. O. Orojo & M. A. Ajomo, Law and Practice of Arbitration and Conciliation in Nigeria (Mbeyi & Associates, 1999)
[58] Federal Arbitration Act, 9 U.S.C. §§1–16.

Judicial attitude

U.S. courts are traditionally pro-arbitration, enforcing arbitration agreements and compelling arbitration even where statutory claims are involved (subject to some exceptions). U.S. Supreme Court decisions have repeatedly reinforced the federal policy in favor of arbitration. Notable cases include Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.,[59] which allowed arbitration of international antitrust claims under certain circumstances, and AT&T Mobility LLC v. Concepcion,[60] which upheld the enforceability of arbitration agreements that include class action waivers.

Procedure and case management

The U.S. system operates in a common-law environment with active judicial involvement in certain pre-arbitral matters (e.g., determining arbitrability may be for courts or tribunals depending on the clause), and robust mechanisms for interim relief via courts (e.g., preliminary injunctions). U.S. arbitration is heavily used in commercial and consumer contexts; institutional rules (AAA/ICDR) and ad hoc arbitrations both flourish.

Interim measures and emergency relief

U.S. courts routinely grant interim relief, and the FAA supports arbitration by enabling courts to enforce arbitration agreements and to compel arbitration proceedings. The U.S. has developed extensive jurisprudence on the allocation of authority between courts and tribunals.

Vacatur and review

Vacatur under §10 of the FAA is narrow (fraud, corruption, evident partiality, arbitrators' misconduct, or exceeding powers). U.S. courts have also, however, sometimes taken a broad view of public policy in consumer and employment contexts, which has led to complex doctrine at the intersection of arbitration and substantive rights.[61]

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[59] 473 U.S. 614 (1985)

[60] 563 U.S. 333 (2011).

[61] Federal Arbitration Act §10

Takeaway for Nigeria

The U.S. illustrates a strong pro-arbitration legislative framework coupled with robust judicial enforcement. However, the U.S. experience also warns of contested issues (e.g., mass arbitration/class waivers, consumer protection) where policy and fairness concerns may limit arbitration's reach. Nigeria should balance pro-arbitration policies with safeguards for weaker parties and clarity on class/collective redress.

4.5.5 Comparative Lessons for Nigeria

From the foregoing comparison several practical lessons emerge for Nigeria:

1. Clear Statutory Limits on Judicial Intervention: The UK and Singapore demonstrate how carefully circumscribed statutory grounds for court intervention (with specialist courts) preserve finality and predictability. Nigeria's AMA 2023 moves in this direction, but consistent judicial application is required.

2. Institutional Strength and State Support: Singapore's success underscores the importance of well-resourced institutions (SIAC) and active government policy in marketing the seat. Nigeria should invest in LCA/RCICAL and provide incentives for users to select Lagos as a seat.

3. Specialist Judicial Capability: The English Commercial Court and Singapore's Judiciary provide experienced judges who manage arbitration-related matters efficiently. Nigeria can emulate this by establishing specialist arbitration divisions or training judges extensively in arbitration law.

4. Balanced Framework on Interim Measures & Emergency Relief: Both Singapore and the UK successfully incorporate emergency arbitrator procedures and court-enforceable interim measures. Nigeria's AMA provides similar provisions; effective practice will depend on courts' willingness to enforce tribunal orders quickly.

5. Controlled Appeal/Vacatur Mechanisms: Limited review (as in the UK and under the FAA §10) maintains finality while protecting against egregious errors. Nigeria's optional ART (Award Review Tribunal) and narrow setting-aside provisions are useful innovations but need practical acceptance.

6. Protecting Weaker Parties: The U.S. experience shows that arbitration's pro-enforcement posture must be balanced against consumer and employment protections to avoid unfair outcomes. Nigeria should clarify rules concerning unconscionability, adhesion clauses, and class/collective remedies in arbitration agreements.

### 4.5 Case Studies and Recent Arbitration Decisions in Nigeria

This section examines important Nigerian (and Nigeria-related) arbitration disputes that have shaped practice and jurisprudence.

4.6.1 Statoil (Nigeria) Ltd v Nigerian National Petroleum Corporation (NNPC) — party autonomy and arbitrability

The dispute concerned a Production Sharing Contract (PSC) between Statoil and NNPC over cost recovery, accounting treatment and profit oil allocation. The PSC contained an arbitration clause. After disagreements arose over recoverable costs and accounting adjustments, Statoil initiated arbitration in accordance with the contractual clause. The dispute raised issues about whether matters of sovereign/public law (taxation, public interest) could properly be resolved by

private arbitration and whether a national oil company could be subject to arbitration in the manner agreed.

Procedural history.

NNPC resisted arbitration (and later enforcement), arguing, among other things, that parts of the dispute touched on non-arbitrable public law matters and that the arbitration clause should not oust the court's jurisdiction. Statoil sought to have arbitration proceed and to enforce any award. The matter reached Nigeria's superior courts as the parties fought over stay/enforcement.

Decision and reasoning.

Nigerian courts ultimately gave strong weight to the parties' expressed choice to arbitrate. The courts held that a properly framed arbitration clause should be respected and that parties to commercial contracts — including state-owned corporations — may validly agree to arbitration. The courts emphasized the principle of party autonomy and limited interventionism by the judiciary. Commentators note the case as a benchmark for judicial deference to arbitration agreements in high-value oil and gas contracts.

Analysis.

Statoil reaffirmed that commercial agreements, even in strategic sectors, are not immune from arbitration if the parties so agree. The decision strengthened predictability for foreign investors negotiating PSC-style contracts with Nigerian counterparts. Practically, it signalled that Nigerian courts will not lightly displace consensual dispute-settlement choices — a crucial confidence signal for international contracting parties. However, the case also shows the complexity when state interests and public law elements overlap with private commercial claims: courts must balance party autonomy with legitimate public policy concerns.

### 4.6.2 M.V. Lupex v Nigerian Overseas Chartering & Shipping Ltd (2003) — competence-competence and stay of court proceedings

A dispute under a charter party (shipping contract) led one party to file suit in the Federal High Court while the other invoked the contract's arbitration clause and asked the court to stay proceedings pending arbitration. The basic issue was whether the court should yield to the arbitration clause and stay its proceedings.

Procedural history.

After the claimant filed suit, the respondent made a formal application for a stay pending arbitration. The matter progressed to the appellate level (Supreme Court) as the parties contested the stay application and the tribunal's competence to rule on jurisdictional issues.

Decision and reasoning.

The Supreme Court affirmed the general rule: where parties have agreed to arbitrate, courts should ordinarily stay proceedings and allow arbitration to proceed. The decision endorsed the competence-competence principle — the arbitral tribunal has the first right to determine its jurisdiction, subject to limited court supervision. The Court insisted on upholding party autonomy, preventing litigants from circumventing arbitration by initiating court suits.

Analysis.

M.V. Lupex is important for procedural arbitrability: Nigerian courts must respect arbitration clauses and generally grant stays. This reduces forum shopping and enforces contractual choices. Yet the decision implicitly warns parties that courts will scrutinize the arbitration agreement's validity and scope; ambiguity or poor drafting may result in court litigation rather than an automatic stay.

### 4.6.3 Baker Marine (Nig.) Ltd v Chevron (Nig.) Ltd (2000) — limits of judicial review of awards

Baker Marine and Chevron were parties to a maritime contract containing an arbitration clause. After an arbitral tribunal issued an award that the losing party contested, the case came before the Nigerian courts on applications to set aside and resist enforcement.

Procedural history.

Post-award, the aggrieved party applied to the Federal High Court to set aside the award. The matter reached the Court of Appeal on questions about whether a court could review the merits of an arbitral award or only assess limited statutory grounds.

Decision and reasoning.

The Court of Appeal held that courts are not appellate forums for arbitral awards: they cannot reconsider findings of fact or law that go to the merits. The court may only interfere on the limited statutory grounds set out in the arbitration law (procedural irregularity, lack of jurisdiction, breach of natural justice, public policy). This decision sharply delineated the boundary between arbitration and judicial review.

Analysis.

Baker Marine is foundational for finality in arbitration in Nigeria. It prevents re-litigation of merit issues and fosters enforcement certainty. In practice, however, resisting parties sometimes file creative procedural arguments to bring matters back to court — a tactic courts must resist to preserve arbitration's finality.

4.6.4 IPCO (Nigeria) Ltd v Nigerian National Petroleum Corporation (long enforcement saga) — enforcement, security, and cross-jurisdictional litigation

IPCO an international company, entered into gas handling and processing contracts with NNPC. After an arbitral tribunal awarded IPCO substantial sums (related to gas processing/construction arrangements), enforcement became contentious, with parallel proceedings in Nigerian and

foreign courts. The case involved disputes about security for costs and interim payments, and complex enforcement maneuvers.

Procedural history.

IPCO sought enforcement of its arbitral award and took steps in Nigeria and abroad. NNPC mounted aggressive legal resistance in Nigerian courts while enforcement also proceeded in the UK. At times, courts ordered stay/adjournment on terms (security deposits) and explored whether enforcement would be permitted given the circumstances.

Decisions and reasoning.

English courts and some Nigerian courts took pragmatic approaches: while recognizing the international pro-enforcement policy, they sometimes conditioned enforcement on security being provided or on interim measures to preserve assets. The saga illustrated the interplay of domestic enforcement mechanisms and foreign discretion — English courts emphasized pro-enforcement aims of the New York Convention but balanced them with equitable considerations in ordering security or adjournments.

Analysis.

IPCO exposes how difficult enforcement can become when a state partner is involved and when domestic courts are used tactically to delay. Foreign courts (e.g., UK) have, in many instances, been more predictable in enforcing awards against state entities — hence the frequent resort to foreign enforcement. The case stresses the importance of speedy domestic enforcement and the need for Nigeria to minimize tactical delays to maintain a reputation as a reliable seat.

Lesson for practice.

When contracting with state corporations, plan for multi-jurisdictional enforcement strategies (asset-tracing, choice of seat, and steps to secure assets early). Nigerian authorities should streamline domestic enforcement to reduce reliance on foreign courts.

4.6.5 Mekwunye v Imoukhuede (2019) — procedural arbitrability and timing of jurisdictional challenges

This case turned on the question of when procedural challenges to an arbitration (e.g., objections to jurisdiction) must be raised and whether failure to act promptly may lead to waiver. The dispute involved contractual claims where arbitration had been invoked but one party delayed in contesting arbitrability.

Procedural history & decision.

The courts underscored that parties who voluntarily participate in arbitral proceedings without promptly raising jurisdictional objections may be deemed to have waived them. The decision clarified timing and procedural expectations for disputing arbitrability in Nigeria.

Analysis.

Mekwunye reinforces efficient litigation/arbitration practice: raise jurisdictional objections early or be at risk of waiver. This discourages tactical delay and supports arbitration's procedural integrity. It also aligns Nigerian practice with international norms requiring promptness in raising jurisdictional objections.

4.6.6 Shell Petroleum Development Company (SPDC) v Crestar Integrated Natural Resources Ltd (2015 → later developments) — anti-arbitration injunctions and public policy

A high-value commercial dispute under a share purchase/acquisition arrangement led to ICC arbitration in London (foreign seat). SPDC resisted arbitration and sought anti-arbitration

injunctions in Nigeria, arguing that aspects of the dispute involved regulatory matters or public policy and therefore could not be arbitrated or enforced.

Procedural history & decisions.

Nigeria's courts declined to issue anti-arbitration injunctions easily, stressing the primacy of arbitration agreements. The Court of Appeal held that an arbitration clause in a commercial contract should be honoured and that courts will not readily enjoin foreign-seated arbitrations unless clear grounds exist. Later decisions in the same factual complex revisited public policy arguments but courts overall leaned toward enforcement rather than obstruction.

Analysis.

SPDC v Crestar demonstrates judicial reluctance to grant anti-arbitration injunctions and reflects growing judicial alignment with the pro-arbitration trend. This is particularly significant for foreign-seated arbitrations: Nigerian courts will generally avoid actions that would undermine enforcement abroad. The case also shows how public policy arguments are increasingly narrowly construed.

4.6.7 P&ID / Nigeria (the P&ID arbitration saga — award set aside in UK on fraud findings) — fraud, annulment and public policy at the international level

The P&ID case involved a 2010 gas processing contract between the Nigerian government and Process & Industrial Developments (P&ID). P&ID claimed Nigeria failed to honour the agreement and secured enormous arbitral awards (originally in excess of several billion dollars for loss of profits). Nigeria denied the validity of the contract and alleged that P&ID's claims were tainted by fraud and corrupt procurement.

Procedural history & decisions.

P&ID's arbitral award was enforced in foreign jurisdictions, creating massive exposure for Nigeria. However, following comprehensive litigation and evidentiary challenges in the UK, a British judge concluded in October 2023 that the contract and the awards were procured by fraud and set aside the awards (i.e., annulment on public law/fraud grounds). The UK court's decision emphasized that where awards are obtained by fraud or tainted by corruption, they can be annulled or refused enforcement even in pro-arbitration jurisdictions. Academic commentary (and subsequent reporting) has analyzed the evidentiary record and the severe consequences for state contracting practices.

Analysis.

P&ID is a cautionary tale that: m demonstrates courts' willingness to set aside awards obtained by fraud; shows the complexity when state actors are involved; and highlights the significance of full and fair fact-finding in both arbitration and subsequent enforcement proceedings. The decision also illustrates that international courts will scrutinize awards on serious public policy grounds (fraud, corruption), and that large awards are not invulnerable to effective challenge where there is convincing evidence of wrongdoing.

4.6.8 Synthesis

1. Pro-arbitration shift is real but incomplete. Recent decisions (Statoil, SPDC/Crestar, Mekwunye) show courts moving towards a consistent policy of honoring arbitration agreements and enforcing awards; nonetheless, tactical litigation and delays persist (IPCO).

2. Public policy remains a powerful, but narrowing, exception. Courts will refuse enforcement where awards derive from fraud or corruption (P&ID), but they are increasingly reluctant to use public policy for mere disagreement with award merits (SPDC).

3. State and state-owned parties create special challenges. Where state entities are involved, enforcement can be overtly political (Zhongshan) or legally complex (IPCO), requiring multi-jurisdictional strategies.

4. Foreign courts play a critical role. When domestic enforcement is delayed or uncertain, claimants will (and do) seek enforcement in foreign jurisdictions that are signatories to the New York Convention — making the choice of seat and forum central to contractual design.

5. Practical implications for drafting and process. The best defence against protracted enforcement disputes is preventive: precise clauses (scope, seat, emergency arbitrator, ART opt-in), early preservation of assets/interim relief, and careful conduct of arbitral proceedings to withstand later scrutiny.

This chapter has examined the practical issues and comparative perspectives of arbitration in Nigeria, highlighting both the progress made and the persistent shortcomings that impede its full potential as a dispute resolution mechanism for commercial disputes.

First, the foregoing discussion demonstrates that arbitration offers numerous advantages, including flexibility, confidentiality, technical expertise, and enforceability of awards. At the same time, significant challenges remain — particularly high costs, procedural delays, judicial interference in some instances, and tactical resistance to enforcement.

The chapter then examined the judicial attitude towards arbitration in Nigeria, highlighting the courts' evolving role. Earlier cases revealed judicial skepticism and excessive intervention, but more recent authorities such as M.V. Lupex v Nigerian Overseas Chartering and Baker Marine v Chevron confirm a growing respect for party autonomy and finality of arbitral awards. However, the persistence of tactical litigation and inconsistent lower court decisions shows that judicial education and specialization remain essential.

The discussion of enforcement of arbitral awards emphasized that arbitration is only as effective as the enforceability of its outcomes. Nigerian law now recognizes multiple forms of awards — final, partial, interim, and consent — all of which carry binding force under the Arbitration and Mediation Act 2023. Domestic and international enforcement under the Act and the New York Convention was analyzed, alongside post-award remedies and the innovative Award Review Tribunal. Yet, systemic delays and misuse of public policy exceptions remain barriers to effective enforcement.

A comparative analysis with jurisdictions such as the United Kingdom, Singapore, South Africa, and the United States further illustrated that successful arbitration systems depend on statutory clarity, pro-arbitration jurisprudence, strong institutions, and consistent enforcement. These jurisdictions provide valuable lessons for Nigeria — particularly the importance of specialist arbitration courts, robust institutions, and proactive state support.

Finally, case studies of recent decisions such as Statoil v NNPC, SPDC v Crestar, IPCO v NNPC, and the P&ID arbitration saga revealed both the strengths and weaknesses of Nigeria's arbitration landscape. While courts have shown increasing willingness to respect arbitration agreements and enforce awards, long-running disputes and enforcement difficulties expose lingering weaknesses in Nigeria's arbitration framework, especially where state entities are involved.

In sum, the analysis of various arbitration decisions shows that arbitration in Nigeria is at a critical juncture. The enactment of the Arbitration and Mediation Act 2023 has modernized the legal framework, aligning it with international best practices. Yet, arbitration's credibility depends less on legislation and more on consistent judicial support, efficient enforcement, institutional growth, and political will. With reforms in these areas, Nigeria can establish itself as a reliable arbitration hub in Africa and a competitive destination for commercial investment.

## CHAPTER FIVE

## Findings, Recommendations and Conclusion

### 5.1 Findings

The research into the role of arbitration in resolving commercial disputes in Nigeria reveals several important findings that are both theoretical and practical in nature. These findings are derived from the examination of Nigeria's legal framework, institutional structures, judicial practice, comparative perspectives, and recent arbitral decisions. They are not merely descriptive but show the underlying strengths and weaknesses of arbitration as it is currently practiced in Nigeria.

#### (1) Arbitration as a Historical and Legal Importation, Yet Consistent with Indigenous Traditions

The study finds that arbitration, though introduced into Nigeria through colonial legislation such as the Arbitration Ordinance of 1914, is not alien to Nigerian society. Pre-colonial communities relied heavily on conciliatory mechanisms such as mediation by elders, religious leaders, and traditional councils. This indicates that arbitration aligns with the cultural disposition of Nigerians toward consensual dispute settlement. What is lacking, however, is a deliberate effort to connect modern arbitral practice with these indigenous roots so as to increase societal acceptance.

#### (2) Legislative Framework Has Evolved but Remains Uneven in Application

Nigeria has made commendable progress in modernizing its arbitration laws. The enactment of the Arbitration and Mediation Act 2023 (AMA) is a landmark development. It incorporates global best practices, including provisions on competence-competence, interim measures, emergency arbitration, and the Award Review Tribunal. Similarly, the Lagos State Arbitration Law 2009 was ahead of its time and remains a model statute. However, these laws are not uniformly applied across the federation, and there is still limited awareness among smaller businesses and even some legal practitioners of their provisions.

(3) Institutional Development is Promising but Fragile

Institutions such as the Lagos Court of Arbitration (LCA) and the Nigerian Institute of Chartered Arbitrators (NICArb) provide platforms for domestic and international arbitration. Yet, their visibility and patronage remain low compared to foreign institutions like the ICC or LCIA. Many Nigerian commercial contracts still designate London, Paris, or New York as the seat of arbitration, a practice which drains resources and undermines Nigeria's potential to establish itself as a regional hub.

(4) Judicial Attitude is Supportive but Inconsistent

Nigerian courts have, in several landmark cases, recognized the autonomy of arbitration. Decisions such as M.V. Lupex v Nigerian Overseas Chartering & Shipping Ltd emphasized the finality of arbitral awards, while Statoil v NNPC reinforced party autonomy. However, instances of delay, expansive use of the "public policy" exception, and occasional reluctance to enforce awards create uncertainty. This inconsistency reflects not only gaps in judicial training but also systemic challenges in the Nigerian judiciary.

(5) Enforcement of Awards is the Achilles Heel of Arbitration in Nigeria

Although Nigeria is a party to the New York Convention (1958), the enforcement of awards is plagued by delay and procedural hurdles. The prolonged litigation in IPCO v NNPC illustrates how enforcement proceedings can undermine arbitration's promise of speed and finality. Even with the AMA 2023, enforcement remains dependent on the courts, and until judicial processes are reformed, the attractiveness of Nigeria as a seat of arbitration will remain limited.

(6) Comparative Lessons Show a Gap Between Law and Practice

Comparative analysis with jurisdictions like Singapore, the UK, and the US demonstrates that while Nigeria's statutory framework is modern, the implementation is weak. These jurisdictions thrive because they combine strong legislative frameworks with efficient judicial enforcement,

specialized arbitration courts, and robust institutions. Nigeria's failure lies not in the absence of modern statutes but in the ineffective operation of those statutes.

(7) Cost and Accessibility Remain Major Barriers

Arbitration in Nigeria is often perceived as expensive, limiting its use among small and medium enterprises (SMEs). High arbitrator fees, administrative costs, and the tendency of lawyers to treat arbitration like litigation make the process less attractive to smaller players in the economy. This undermines arbitration's potential as a tool for broad-based commercial justice.

(8) Government's Role Remains Problematic

A recurring theme is the Nigerian government's poor handling of arbitral proceedings. The P&ID arbitration saga is the clearest example, where lack of diligence in contract management and arbitral defence exposed Nigeria to a multi-billion-dollar liability. This shows that state agencies often lack capacity in contract negotiation, arbitration management, and enforcement. Unless addressed, this weakness will continue to tarnish Nigeria's image in the global arbitration community.

5.2 Recommendations

In light of the findings, the following recommendations are advanced to improve the practice of arbitration in Nigeria and ensure that its potential is fully realized in society.

(1) Enhance Judicial Capacity and Specialization

Judges who handle arbitration-related matters must be specially trained in arbitration law and international commercial practice. Specialized commercial divisions of the High Courts should be established to deal with arbitral issues. Singapore's model of a dedicated International Commercial

Court offers a good example. Consistent judicial interpretation is key to giving confidence to commercial actors.

(2) Narrow Application of the Public Policy Exception

The public policy ground for refusing enforcement of arbitral awards, provided in section 54 of the AMA 2023 and Article V of the New York Convention, should be construed narrowly. Courts must resist the temptation to treat public policy as a flexible escape route. A narrow, internationally-aligned interpretation will strengthen Nigeria's credibility as an arbitration-friendly jurisdiction.

(3) Promote and Strengthen Domestic Institutions

Institutions like the LCA and NICArb should be promoted through government policy and private sector engagement. Major commercial contracts — particularly in oil, gas, and infrastructure — should include clauses referring disputes to Nigerian arbitral institutions. The government can also incentivize parties to seat arbitrations in Nigeria by offering tax breaks or reduced filing fees.

(4) Reduce Costs and Increase Accessibility

Arbitration rules in Nigeria should adopt flexible fee structures to accommodate SMEs. Institutions should offer simplified procedures for low-value disputes, akin to the ICC's expedited procedure rules. By reducing costs, arbitration can become more accessible to smaller businesses, thereby broadening its social utility.

(5) Improve Government Participation in Arbitration

State agencies must build capacity to negotiate contracts with strong arbitration clauses and defend arbitral claims competently. This requires training public officers, hiring experienced arbitration

counsel, and instituting accountability measures when government representatives mishandle disputes. The lessons from the P&ID debacle must be institutionalized.

(6) Encourage Mediation and Hybrid Mechanisms

The AMA 2023 introduces mediation alongside arbitration. This should be promoted actively, particularly for SMEs and community-level commercial disputes. Hybrid mechanisms such as arb-med-arb should be encouraged, combining the speed of mediation with the finality of arbitration.

(7) Strengthen Awareness and Education

Legal education in Nigeria should integrate arbitration more fully into the curriculum. Beyond law schools, business associations, chambers of commerce, and professional bodies should conduct outreach programmes to raise awareness about arbitration's benefits. This will increase voluntary adoption in commercial contracts.

(8) Legislative Harmonization Across States

The federal framework provided by the AMA 2023 should be complemented by state-level arbitration laws, similar to the Lagos State Arbitration Law 2009. States with high commercial activity should be encouraged to adopt modern arbitration statutes that align with the federal framework.

5.3 Conclusion

This research has demonstrated that arbitration plays a vital role in resolving commercial disputes in Nigeria, but its potential is undermined by weak enforcement, inconsistent judicial attitudes, high costs, and limited institutional strength. The enactment of the AMA 2023 provides Nigeria

with a modern statutory foundation. However, unless there is a cultural and institutional shift, arbitration will remain underutilized.

The improvement of arbitration practice in Nigeria requires a multi-dimensional approach: reforming judicial attitudes, strengthening arbitral institutions, reducing costs, and ensuring government accountability in arbitral proceedings. These are not abstract reforms but practical necessities if Nigeria wishes to be seen as a serious commercial destination.

Ultimately, arbitration is not just about resolving disputes between private parties. It is a reflection of how a society organizes its commercial relationships and ensures fairness in business. By making arbitration efficient, accessible, and credible, Nigeria can reduce the burden on its courts, attract foreign investment, and promote economic growth. Arbitration should therefore be nurtured not only as a private mechanism but as a public good that contributes to national development.

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