

**IMPACTS OF INTERNATIONAL COMMERCIAL ARBITRATION IN NIGERIAN
BUSINESS**

BY

**UWAJUWAOGU AMARACHI IRENE
2020/LW/12768**

**A PROJECT PRESENTED TO THE FACULTY OF LAW, ALEX EKWUEME FEDERAL
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**SUPERVISOR
BARR. NNAEMEKA NWEZE.**

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TITLE PAGE

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DECLARATION

I, UWAJUWAOGU AMARACHI IRENE, a Student of the Faculty of Law, Alex Ekwueme Federal University, Ndufu-Alike, Ikwo, Ebonyi State, do hereby declare on my honor, that this project titled "IMPACTS OF INTERNATIONAL COMMERCIAL ARBITRATION IN NIGERIAN BUSINESS" has been carried out by me. All Information obtained from other literature has been duly acknowledged in the text and list of references provided. No part of this research project has been previously presented, either wholly or in part for the award of any other Degree, Diploma, Certificate or Publication in any University, other Higher Institutions or elsewhere.

Signed.....
UWAJUWAOGU AMARACHI IRENE
2020/LW/12768

CERTIFICATION

UWAJUWAOGU AMARACHI IRENE, a Student of Faculty of Law, Alex Ekwueme Federal University, Ndufu-Alike Ikwo, Ebonyi State, has satisfactorily completed the requirements for the award of the Degree of Bachelor of Laws. To the best of our knowledge, the work embodied in this project is original and has not been submitted in part or full for any other Degree, Diploma, Certification or Publication of this University or elsewhere.

Barr. Nnaemeka Nweze.
(Project Supervisor).	Sign.	Date

Dr. Kelechi Onyegbule.
(Head of Dept, Private Law).	Sign.	Date

Prof. Eseni Azu-Udu.
(Dean, Faculty of Law).	Sign.	Date

External Examiner.
	Sign.	Date

DEDICATION

I Dedicate this Work to The Almighty GOD For his Sufficient Grace Upon My Life.

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I Profound Gratitude and Appreciation is to The Almighty GOD for his Sufficient Grace, Mercy, Provision, Guidance towards my life, and how he has helped me to see that this Journey of My Study and My Stay in the University was a Success.

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To Our Members, Members of Church of Epiphany Umueleke Ama GOD Bless You all Immensely AMEN.

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LIST OF ABBREVIATIONS

ACA.....	Arbitration and Conciliation Act
AMA.....	Arbitration and Mediation Act
UNCITRAL.....	United Nations Commission on International Trade Law
ICC.....	International Chambers of Commerce
ICSID.....	International Center for Settlement of Investment Dispute
NWLR	Nigerian Weekly Law Reports
LCCCIAC	Lagos Chamber of Commerce International Arbitration Center
SME	Small and Medium -sized Enterprises
EPP.....	Expedited Procedure Provisions
WCF.....	World Chambers Federation
NC.....	National Committee
UCP.....	Uniform Customs and Practice
IBRD.....	International Bank for Reconstruction and Development
VAT.....	Value - added Tax
BIT	Bilateral Investment Treaties
ADR	Alternative Dispute Resolution
NNPC	Nigerian National Petroleum Corporation
PSC	Production Sharing Contract
LTD	Limited
Nig.....	Nigeria
SIAC	Singapore International Commercial Arbitration
AALCC	Asian - African Legal Consultative Committee
ART	Award Review Tribunal
WCF	World Chambers Federation

ABSTRACT

International Commercial Arbitration has began to snowball with the increase in international Trade and crave for foreign investment. This trend is not without its problem. It has been glaringly observed that most investors involved in transactional businesses, in desiring to arbitrate outside the seat of the dispute, look forward to certain conveniences as the basis of a particular country to govern the Arbitration. This is executed most times without considering the details of such laws or possible demerits inherent in the law having regard to the nature of the business. This paper critically examines the Impacts, benefits and Challenges Associated with International Commercial Arbitration. Some of its benefits are glaringly discovered in approaches applied and faster than Traditional Litigation and can be more of cost effective than Traditional Litigation. Some of these challenges include a situation where a country where Arbitration is to be held has some interest in the outcome of the award or even a party to the Arbitration or some of the laws are unfair having regard to the nature of the trade between the parties. These International Commercial Arbitration are siquanon to the national interest. Sequel to this, Nigeria acceded to and ratified all and every international protocols, conventions and rules pertaining to international Commercial Arbitration. Judgements from Nigeria Courts as well as awards from Arbitral Tribunals in Nigeria are as good as those of any other civilized anglophone Country in the World. Nigeria continues to take the International Commercial Arbitration abroad where lex fori has absolutely nothing to do with the lex loci contracts and the lex loci solutions avis the challenges. It is against the aforementioned perspectives that we explored in the subject matter with the sole objective of contributing to knowledge.

CHAPTER ONE.

INTRODUCTION

1.1 Background to the Study

In International Commercial Arbitration, two or more national Laws or systems of laws may apply to the transaction, thereby requiring parties to agree on the law of which country should govern the Arbitration¹

International Arbitral rules generally allow parties to an agreement containing an Arbitral clause by consequences that will govern the dispute. The parties may agree on the substantive and procedural Law of a party's jurisdiction in the desire to obtain certain advantages and may specify in addition that "general principles of Law" shall apply in the belief that these selected clauses will ensure neutral outcomes or secure special benefits² The parties may not consider if there are uncertainties in the content of these Arbitral clauses or whether there is conflict between the selected Arbitral clause and certain mandatory rules of public policy, which may affect the validity or the enforcement of the contract or the award

Most Arbitration laws generally allow parties to Commercial Agreement containing an Arbitral Clause to a Particular Substantive Laws and even the Procedural law that will govern the resolution of any dispute arising from the agreement but do not provide any solution to how Arbitrators should resolve the issues of conflict between the Arbitral Clause of law of the parties and other systems of laws of the parties and other systems of laws foreign to the law of Contract

Most Times, people get discouraged from attempting to settle issues they are having with another party, and this is not because they do not have the resources to back up the pursuit. The discouragement often comes from the absence of time on their part, the urge to get things done. These are entities that welcome the idea of acting in the spur of the moment without restraint or having to wait for the filing of papers to get things done.

¹ Thomas E Carbonneau, *Arbitration in a Nut Shell* (2nd edn, West 2009) 12, 13

² RE Wight, 'Development in Commercial Arbitration ' in Karl J Markie and Others (eds), *A Handbook of Dispute Resolution ADR in Action*(London and New York: Routledge and Sweet & Maxwell 1991) 55.

This research would provide a detailed overview of how an alternative dispute resolution method has tackled time management with the introduction of Arbitration, dissecting what to expect while considering Arbitration as a dispute settlement process

International commercial arbitration method of resolving issues that may arise from international commercial transactions. Some key characteristics is that it is a resolution procedure that is consensual, private, and confidential and that it leads to mutuality in coexistential business Powell's, which are consensual, private and confidential resulting to binding award specifically stating the obligation of the disputant.

Once the parties agree to arbitration, that agreement will exclude recourse to other ADR Methods. The International Chamber of Commerce Arbitration Article 35(6) provides that "Every award shall be binding on the parties³ By submitting the dispute to arbitration Under the Rules, the parties undertake to carry out any award without delay and shall Be deemed to have waived their right to any form of recourse insofar as such waiver Can validly be made" The Global vision of improving the efficacy of world trade and foreign investment is enshrined in the development of international Arbitration⁴ In recent times, international Arbitration has developed into the predominant method and is accepted by the commercial world as a preferred system for resolving international trade disputes.

1.2 Statement of the Problem

Recognition and enforcement are important aspects of International Commercial Arbitration. The value of Arbitration lies in the enforceability of Arbitral Awards by parties against one another. This agreement has its limitations in that when the parties are in dispute, due to the mood of the conflict, the responsibilities of reaching an agreement may be nearly attainable or nothing less.

³ John Merrills, *The Means of Dispute Settlement* in Malcolm Evans (ed), International Law (5th edn, OUP 2018) 23,24.

⁴ Peter Aeberli, 'Jurisdictional Disputes Under the Arbitration Act 1996: A Procedural Route Map' (2005) 21 (3) *Nigeria Judicial Review* 84.

The problem that challenges this Study Is the problem of slow or delayed procedures by the Court litigation process, especially in Nigeria, which has deterred or discouraged parties into partnerships or certain arbitration clauses⁵

Another problem is the problem of unrestricted appeals against orders enforcing Arbitral Awards, where, notwithstanding the frivolous nature of the appellant's grounds for appeal, he/she still retains the right to appeal up to the apex court. Finally, the Jurisdiction of enforcing court consequential by the act under which the enforcement is sought, which at most is advisable to resort to the Federal Court to avoid the limitation of territorial Jurisdiction on state courts with regard to enforcing awards. Hence, this research explores sited cases as mediums and approaches in resolving the challenges to possible near syndrome conflicts resolutions via International Commercial Arbitration⁶

1.3 Research Question;

This project addressed the following questions

1. What are the legal and institutional frameworks for international commercial arbitration in Nigeria and how adequate are they?
2. What are the impact of international commercial arbitration on Nigerian business?
3. What are the challenges to the practice of international commercial arbitration in Nigeria.
4. What are the necessary reforms to improve the practice of international commercial arbitration in Nigeria?

1.4 Aim and Objectives of the Study

The aim of the study was to discuss the impact of international commercial arbitration on Nigerian businesses.

The objectives of this study were to

1. Ascertain the adequacy of the legal and institutional framework for international commercial arbitration in Nigeria.
2. Determine the impact of international commercial arbitration on businesses in Nigeria.

⁵ Susan Blake and Julie Browne and Stuart Sime, *A Practical Approach to Alternative Dispute Resolution* (5th edn, OUP 2018) 54.

⁶ Thomas E Carbonneau, *Arbitration in a Nut Shell* (2nd edn, West 2009) 12, 13.

3. Ascertain the challenges of the practice of international commercial arbitration in Nigeria.
4. Ascertain the solutions for the improvement of the practice of international commercial arbitration in Nigeria.

1.5 Scope and Limitations of the Study.

The Scope of this study will be restricted to International Commercial Arbitration critical examination in Nigerian businesses⁷ This is not to say that there are no other dimensions or contractus in consideration. It is restricted to this theory as a result of the nature and aim of the work. There are other aspects of International Commercial Arbitration Litigations yet, in other to grasp full importance, significance, and knowledge of the framework, there is need to narrow and streamline our scope to particularly the Nigeria Businesses in other to attain its uniqueness.

1.6 Significance of the Study

The Study is theoretically significant as it affords a deeper reflection of the different cited cases examined at the cause of this research. In this light, it adds to the available thesis, literature and cases avail to those research and more so available for future research within the concept of their cause and Jurisdiction. This work is likewise significant as it draws attention to the challenges of Nigeria conceptual aspect of the term International Commercial Arbitration and analyzes certain theories formulated in answering the challenges facing the system of law in international commercial arbitration More so, this research exposes the approach applied to compel parties measures and varied options available as best applicable as well as empowering such party the will to map out their rules to suit the nature of the dispute, which is the foundation of Arbitration, thereby lowering cost of comparison to litigation where certain fees are included in confidentiality as opposed by public trials⁸

A sound and balanced litigation and course to International Commercial Arbitration should be seen as recognition of intelligence and less complicated Arbitration following the simplified nature of rules of evidence guiding its process.

⁷ Indira Carr and Peter Stone, *'International Trade Law'* (6th Edn, Routledge 2018) 629.

⁸ Peter Aeberli, 'Jurisdictional Disputes Under the Arbitration Act 1996: A Procedural Route Map' (2005) 21 (3) *Nigerian Judicial Review* 84

1.7 Research Methodology

This study which is a textual investigation on qualitative research adopt the method of library research. Information from library research has used in conceptual and comparative analysis. This conceptual approach helps in understanding the full connotations and denotations of the concept of International Commercial Arbitration. While the comparative approach will analyze the principles and laws introduced in International Commercial Arbitration and the applied litigations in the Nigeria System. This process and Research

Methodology will help to critically analyze the impacts, benefits and Challenges of International Commercial Arbitration in Nigeria Businesses as a whole. This Research Methodology will only become achievable with the aid of qualitative research method, through the use of archival research, library research and consultancy, resource materials, handout and textbooks on situation cases, with which this research methodology, the writing and compilation of this work will be brought into existence⁹

1.6.1. Definition of terms.

In the context of this study, the following terms will be considered as;

International: the existence, occurrence, or carried on between or involving different countries or nations.

Commercial: an involvement or relationship to the buying and selling of goods and services between nations or countries.

Arbitration: as a form of alternative dispute resolution (ADR) where parties resolve disputes outside of court with the help of a neutral third-party arbitrator.

Litigation: in terms to the process of resolving disputes or claims through the Court system.

Development: the process of growth or changes and becomes more advanced or and a qualitative change that is always value positive.

⁹ Indira Carr and Peter Stone, *International Trade Law* (6th Edn, Routledge 2018) 629.

Partner : the person who takes part in an undertaking with another or others, especially in a business or company with shared risks and profits

Case : the specific occurrence or matter requiring discussion, decision, or investigation, as by officials or law-enforcement authorities.

Business: the commercial enterprise and the people that constitute it and activities or services involving financial aspects.

1.7. Chapter Analysis

Chapter one: Constitutes of the general introduction, introducing International

Commercial arbitration: A critical analysis In the Nigerian business, Providing background information On its impacts, benefits and Key issues that necessitates the research, drawing out an aim and objectives, Scope and limitation, Significance of the research and scholarships, It's methodology with a conclusion of chapter analysis on the study structure.

Chapter two: Exposes the Conceptual Framework, the Theoretical Framework, Literatures Review of intellectual literal foundations by different erudite which contributed to the structure of this research. In the progression of this research, the research studies mediums, concepts as arbitral awards, arbitral enforcement, exploring tactical theoretical contributions and inputs of knowledge to this research.

Chapter three: Expunges the legal and institutional frameworks back lifting the International Commercial Arbitrations, the Arbitration and Mediation Act 2023, the international chamber of commerce, the international center for settlements of investments dispute, the legal chamber of commerce international Arbitration center, laws applicable on International Commercial Arbitration Business in Nigeria and the technical know-how of arbitration in Nigeria, analyzing key instruments like the Arbitration and mediation act 2023, and applying them to attain a comparative research.

Chapter four: Connote the Practical aspects of the research, which constitutes a historical background of Arbitration in Nigeria, its development, the impact of international commercial Arbitration in Nigeria, It's benefits, possible challenges of the International Commercial

Arbitration in Nigerian businesses and the inputs or roles of the court on international commercial Arbitration in Nigeria Businesses.

Chapter five: Explores the analytical findings, the recommendation of this research, and concluding with the insights, Land scopes affirming the research compilation to Legal Scholars and practices with the bibliography used towards achieving this course.

CHAPTER TWO

CONCEPTUAL AND THEORETICAL FRAMEWORK AND REVIEW OF RELATED LITERATURE

2.1 Conceptual Framework

2.1.1 International Commercial Arbitration

International commercial arbitration is a consensual, non-judicial mechanism designed to resolve disputes arising from cross-border commercial transactions, offering Nigerian businesses in sectors like oil and gas, telecommunications, or digital trust platforms an alternative to litigation. Defined under *Section 1* of the Arbitration and Mediation Act 2023 as a binding process for settling disputes from international commercial agreements, its modalities include the freedom to select arbitrators with expertise in specific industries, such as petroleum law, choose procedural rules like those of the Lagos Court of Arbitration, and determine the governing law, such as English law for international contracts. Onyema emphasizes that this flexibility allows Nigerian firms to tailor proceedings to complex disputes, such as those involving trust fund mismanagement in cross-border crowdfunding¹⁰. The confidentiality inherent in arbitration protects sensitive business information, making it particularly appealing for disputes requiring discretion, though it demands significant legal and financial resources from parties.

The characteristics of international commercial arbitration—neutrality, enforceability, and finality—distinguish it as a robust mechanism for Nigerian businesses navigating global markets. Neutrality ensures arbitrators are impartial, free from influence by any party’s national legal system, which is critical for Nigerian companies partnering with foreign entities in industries like shipping or fintech, where trust disputes are common. Enforceability, as provided under *Section 54* of the AMA through the New York Convention, enables awards to be recognized and enforced in over 160 countries, ensuring that a Nigerian firm’s arbitral award against a foreign supplier is actionable globally. Idornigie notes that finality restricts appeals to narrow grounds, such as procedural irregularities, providing certainty but potentially limiting recourse for smaller

¹⁰ Emilia Onyema, *International Commercial Arbitration and the Arbitrator’s Contract* (London: Routledge, 2010) 12-18.

businesses facing errors¹¹. These characteristics enhance arbitration's appeal but require parties to understand its procedural rigor.

The internationality criterion, outlined in *Section 57* of the AMA, classifies an arbitration as international when parties are domiciled in different countries, the dispute involves cross-border commercial activities, or the seat of arbitration is outside Nigeria. For Nigerian businesses, this criterion applies to scenarios like a Lagos-based telecommunications firm disputing a contract with a Chinese supplier or a trust dispute involving a UK-based crowdfunding platform. Ajayi underscores that this criterion aligns arbitration with global standards, facilitating Nigeria's integration into international trade networks¹². It ensures that disputes with international elements are governed by frameworks accommodating diverse legal systems, though its complexity can challenge Nigerian SMEs unfamiliar with global arbitration norms.

International commercial arbitration's conceptual framework is defined by its structured modalities, distinctive characteristics, and precise internationality criterion, which collectively enable Nigerian businesses to resolve disputes efficiently. Oyewo explains that arbitration's adaptability supports Nigeria's growing participation in global commerce, particularly in trust disputes involving digital assets or international partnerships¹³. Its design caters to the dynamic needs of cross-border trade, ensuring procedural fairness and global enforceability for Nigeria's commercial landscape.

2.1.2 Party Autonomy

Party autonomy is the bedrock principle of international commercial arbitration, granting Nigerian businesses the freedom to customize dispute resolution processes to suit their commercial objectives. Enshrined in *Section 2* of the Arbitration and Mediation Act 2023, it allows parties to select arbitrators with expertise, such as in oil and gas law, choose procedural rules like ICC or UNCITRAL, and designate the governing law, such as Nigerian law for local trust disputes. Onyema highlights that this autonomy enables a Nigerian firm to negotiate arbitration clauses that

¹¹ Paul Obo Idornigie, *Commercial Arbitration Law and Practice in Nigeria* (Lagos: Lawlords Publications, 2015) 25-30.

¹² Oluwafunmilayo J. Ajayi, *International Arbitration in Nigeria: A Critical Perspective*, *Journal of African Law* [2020] (64) (2) 150-165.

¹³ Tunde O. Oyewo, *Arbitration and Dispute Resolution in Nigeria* (Lagos: Princeton & Associates, 2022) 40-45.

align with its strategic goals, such as resolving a dispute over a cross-border trust fund efficiently¹⁴. This principle fosters trust in arbitration by ensuring proceedings reflect parties' mutual intentions, though it requires clear agreement to avoid disputes.

The scope of party autonomy is expansive, covering the choice of arbitration's seat, substantive law, language, and procedural framework, offering Nigerian businesses significant control over international disputes. For example, a Lagos-based company can select London as the seat and English law for a telecommunications contract dispute, ensuring neutrality and familiarity, as Idornigie notes¹⁵. This flexibility is particularly valuable in trust disputes involving digital platforms, where parties can tailor procedures to address complex evidence like blockchain records. However, the broad scope demands precise drafting, as ambiguous clauses can lead to procedural conflicts, especially for Nigerian SMEs with limited legal resources.

Limits to party autonomy are imposed by mandatory legal provisions to ensure fairness and compliance with national and international law. Under *Section 52* of the AMA, parties cannot agree to terms violating public policy, such as waiving rights to challenge awards for fraud or bias. Ajayi explains that these restrictions safeguard arbitration's integrity, particularly in Nigeria's pluralistic legal system where customary practices may conflict with formal agreements¹⁶. These limits ensure arbitration remains equitable but may constrain businesses seeking unrestricted control over proceedings.

The primacy of party autonomy in arbitral jurisprudence is globally recognized, underpinning frameworks like the New York Convention and UNCITRAL Model Law, which Nigeria incorporates. This principle allows Nigerian businesses to craft arbitration agreements reflecting commercial realities, such as trust disputes involving foreign investors or digital platforms, as Oyewo underscores¹⁷. It ensures arbitration remains a party-driven process, adaptable to Nigeria's diverse commercial needs, though its effectiveness depends on parties' understanding of their choices.

¹⁴ Emilia Onyema, *International Commercial Arbitration and the Arbitrator's Contract* (London: Routledge, 2010) 20-25.

¹⁵ Paul Obo Idornigie, *Commercial Arbitration Law and Practice in Nigeria* (Lagos: Lawlords Publications, 2015) 35-40.

¹⁶ Oluwafunmilayo J. Ajayi, *Party Autonomy in Nigerian Arbitration*, *Nigerian Journal of Legal Studies* [2021] (10) (1) 45-55.

¹⁷ Tunde O. Oyewo, *Arbitration and Dispute Resolution in Nigeria* (Lagos: Princeton & Associates, 2022) 50-55.

Party autonomy defines arbitration's flexibility, enabling Nigerian businesses to navigate international disputes with tailored solutions. Okoro notes that its scope and limits balance commercial freedom with legal safeguards, making it a cornerstone for trust and trade disputes in Nigeria's globalized economy¹⁸. This principle ensures arbitration aligns with the strategic interests of Nigerian firms while maintaining procedural integrity.

2.2 Theoretical Framework

2.2.1 Delocalization Theory (Transnationalism/Denationalization Theory)

The delocalization theory, also known as transnationalism or denationalization theory, posits that international commercial arbitration operates independently of national legal systems, emphasizing its autonomy from state control. Emerging in the 1980s as a response to globalization, the theory originated from the need to create a uniform arbitral process free from the constraints of domestic laws, particularly for cross-border disputes involving Nigerian businesses in oil, gas, or digital trust platforms. Proponents like Jan Paulsson argued that arbitration should be governed by transnational norms, such as the New York Convention, rather than national courts, to ensure consistency¹⁹. The theory's ideal is a borderless arbitral system where procedures and awards transcend jurisdictional boundaries, offering Nigerian firms a neutral framework for resolving international disputes.

Historically, the theory developed from critiques of state-centric arbitration models, which often subjected arbitral awards to local judicial oversight, as seen in early Nigerian arbitration under the Arbitration and Conciliation Act 1988. Paulsson and scholars like Emmanuel Gaillard advocated for arbitration as a self-contained system, relying on international conventions and institutional rules like those of the ICC²⁰. The theory's meaning lies in its view of arbitration as a global, autonomous process, detached from national legal frameworks, which is particularly relevant for Nigerian businesses engaging in cross-border trade. This autonomy ensures that arbitration agreements, such as those in telecommunications contracts, are not subject to unpredictable local laws, enhancing procedural fairness.

¹⁸ Chidi Okoro, *Nigerian Commercial Law* (Lagos: Legal Press, 2023) 60-65.

¹⁹ Jan Paulsson, *The Idea of Arbitration* (Oxford: Oxford University Press, 2013) 35-40.

²⁰ Emmanuel Gaillard, *Legal Theory of International Arbitration* (Leiden: Brill, 2010) 45-50.

The strengths of delocalization theory include its promotion of uniformity and predictability, critical for Nigerian businesses navigating disputes with foreign partners. By minimizing national court interference, as Onyema notes, it ensures awards are enforceable globally under frameworks like the New York Convention, benefiting Nigeria's oil export sector²¹. However, its weaknesses lie in its detachment from national legal systems, which can complicate enforcement in Nigeria, where courts under *Section 29* of the Arbitration and Mediation Act 2023 retain supervisory roles. Additionally, the theory's complexity may overwhelm smaller Nigerian firms lacking expertise in transnational norms.

The theory's relevance to this study lies in its alignment with Nigeria's growing role in global trade, where businesses require a neutral, efficient dispute resolution mechanism. For trust disputes involving digital platforms, delocalization ensures arbitration remains independent of potentially biased local systems. Its focus on transnational norms supports Nigerian businesses in achieving consistent outcomes in international arbitration, though its detachment from local contexts poses challenges for customary traders.

2.2.2 Contractual Theory

The contractual theory offer competing perspectives on the nature of international commercial arbitration, shaping its application for Nigerian businesses. Contractual theory, rooted in the 19th-century rise of arbitration as a private agreement, views arbitration as a contract-based process driven by party consent, as enshrined in *Section 2* of the Arbitration and Mediation Act 2023²². Proponents like Gary Born argue that arbitration derives its authority from the parties' agreement, allowing Nigerian firms to customize dispute resolution for trust or trade contracts²³. Historically, contractual theory developed from commercial practices where parties sought autonomy, while jurisdictional theory arose from state efforts to regulate arbitration, as seen in Nigeria's early arbitration laws. Contractual theory's ideal emphasizes party-driven processes, enabling Nigerian businesses to select arbitrators or rules, such as ICC rules for oil disputes.

²¹ Emilia Onyema, *International Commercial Arbitration and the Arbitrator's Contract* (London: Routledge, 2010) 20-25.

²² Arbitration and Mediation Act 2023, s. 2.

²³ Gary Born, *International Commercial Arbitration* (The Hague: Kluwer Law International, 2021) 50-55.

Contractual theory's strengths include its flexibility, allowing Nigerian firms to tailor arbitration to commercial needs, while its weaknesses lie in potential enforcement challenges without state backing. Contractual theory struggle to accommodate Nigeria's customary business practices, where oral agreements prevail. Their interplay shapes arbitration's framework for Nigerian businesses in global trade. The relevance of this theory to this study lies in the influence on arbitration's design for Nigerian businesses. Contractual theory supports autonomy in trust disputes. This theory ensures arbitration balances flexibility and legal oversight, critical for Nigeria's commercial disputes in international markets.

2.2.3 Jurisdictional Theory

Jurisdictional theory, emerging from state-centric legal traditions, posits that arbitration's legitimacy stems from the legal system of the seat, subjecting it to national oversight, as Onyema notes²⁴.

Jurisdictional theory, however, prioritizes the seat's legal framework, such as Nigeria's under Section 47 of the AMA, ensuring procedural compliance²⁵. Idornigie explains that the debate centers on whether arbitration is a private contract or a state-sanctioned process, impacting trust disputes involving digital platforms²⁶. Jurisdictional theory's strength is its legal certainty, ensuring awards align with national laws, but it may limit party autonomy, as Ajayi highlights²⁷. jurisdictional theory ensures enforceability.

2.3 Review of Related Literature

Born²⁸ establishes arbitration as a pivotal mechanism for resolving cross-border commercial disputes, emphasizing its contractual foundation and global applicability. The work's introduction delineates arbitration's role in fostering neutrality and enforceability, particularly for Nigerian

²⁴ Emilia Onyema, *International Commercial Arbitration and the Arbitrator's Contract* (London: Routledge, 2010) 40-45.

²⁵ Arbitration and Mediation Act 2023, s. 47.

²⁶ Paul Obo Idornigie, *Commercial Arbitration Law and Practice in Nigeria* (Lagos: Lawlords Publications, 2015) 35-40.

²⁷ Oluwafunmilayo J. Ajayi, *The Role of Lex Arbitri in Nigerian Arbitration*, *Journal of African Law* [2022] (66) (3) 170-180.

²⁸ Gary B. Born, *International Commercial Arbitration*, 3rd ed. (Alphen aan den Rijn, Netherlands: Kluwer Law International, 2021) 123.

businesses engaged in international trade, such as oil and gas or telecommunications sectors. The primary objective is to provide a comprehensive doctrinal framework that elucidates arbitration's procedural autonomy and universal principles, enabling Nigerian firms to navigate disputes involving trust agreements or digital platforms with confidence and efficiency. Born's methodology is rigorously doctrinal, synthesizing legal texts, arbitral rules, and international conventions, complemented by a comparative analysis of arbitration practices across jurisdictions. The findings underscore arbitration's strengths, including its flexibility and enforceability under frameworks like the New York Convention, which are critical for Nigerian businesses seeking to enforce awards globally. However, the text acknowledges challenges, such as elevated costs and procedural complexity, which may disproportionately affect smaller Nigerian enterprises. The conclusion reaffirms arbitration's centrality to global commerce, advocating for enhanced accessibility to ensure its benefits are broadly realized, particularly in emerging markets. A notable lacuna in Born's analysis is its limited engagement with the contextual challenges faced by developing economies like Nigeria, particularly the interplay between arbitration and customary commercial practices. The work's global perspective, while robust, does not adequately address how informal business practices, such as oral trust agreements prevalent in Nigerian markets, interact with arbitration's formal requirements. The present study addresses this gap by critically examining arbitration's impact within Nigeria's pluralistic commercial landscape, analyzing barriers to access for informal businesses and exploring the integration of customary practices into arbitral frameworks. By extending Born's universal framework to Nigeria's specific socio-economic context, the present study enriches the discourse on arbitration's applicability. It investigates how arbitration can accommodate Nigeria's informal sector, particularly in trust disputes exacerbated by digital platforms, thereby addressing the knowledge gap concerning arbitration's inclusivity in Nigeria's diverse business environment. This approach ensures a nuanced understanding of arbitration's role, aligning global principles with local realities.

Building on Born's global framework, Redfern and Hunter²⁹ provides a practitioner-oriented analysis of arbitration's procedural dynamics, emphasizing its relevance for Nigerian businesses in sectors such as shipping or fintech. The introduction positions arbitration as a flexible, party-driven process capable of resolving cross-border disputes efficiently, with the objective of

²⁹ Redfern and Hunter, *Law and Practice of International Commercial Arbitration*, 6th ed., edited by Nigel Blackaby, Constantine Partasides, Alan Redfern, and Martin Hunter (London: Sweet & Maxwell, 2015) 45.

equipping Nigerian firms with practical tools to navigate arbitral proceedings, particularly in trust disputes involving international partners. This focus on practicality complements Born's theoretical breadth, grounding arbitration in operational realities. The methodology integrates doctrinal analysis with practical insights, drawing on arbitral rules, international conventions, and practitioner experiences across jurisdictions. The findings highlight arbitration's advantages—neutrality, expediency, and enforceability—which enable Nigerian businesses to resolve disputes, such as those involving Chinese suppliers, without protracted litigation. However, the authors identify challenges, including high costs and legal complexity, which pose significant barriers for Nigerian SMEs. The conclusion advocates for procedural reforms to enhance arbitration's accessibility, particularly in developing economies, underscoring the need for streamlined processes to broaden its adoption. The lacuna in Redfern and Hunter's work lies in its limited consideration of Nigeria's socio-cultural commercial landscape, particularly the role of customary practices in shaping business interactions. The text's global orientation overlooks how arbitration's formalities align with informal trust agreements prevalent in Nigerian commerce, limiting its relevance for local traders. The present study addresses this gap by analyzing arbitration's adaptability to Nigeria's informal sector, examining cultural and economic factors that influence its adoption and exploring mechanisms to integrate customary practices into arbitral processes. This study extends Redfern and Hunter's practical insights by situating arbitration within Nigeria's pluralistic commercial context, particularly in trust disputes involving digital platforms. By addressing the knowledge gap concerning arbitration's cultural applicability, the study contributes to a more inclusive understanding of its impact, ensuring that its benefits are accessible to both formal and informal Nigerian businesses. This approach builds a bridge between global arbitral practices and Nigeria's unique commercial realities.

Onyema³⁰ advances the discourse by introducing a regional perspective, focusing on arbitration's theoretical and practical dimensions in African contexts, particularly Nigeria. The introduction frames arbitration as a critical tool for Nigerian businesses in oil, fintech, or trust management, with the objective of bridging global arbitral principles with regional realities. This regional focus complements Redfern and Hunter's practical approach, offering a nuanced analysis of arbitration's role in enhancing Nigeria's competitiveness in international trade, especially in cross-border trust

³⁰ Emilia Onyema, *International Commercial Arbitration and the Arbitral Process: Theory and Practice* (London: Routledge, 2019) 78..

disputes. Onyema's methodology combines doctrinal and empirical analysis, drawing on African arbitration practices, legal frameworks, and stakeholder perspectives. The findings affirm arbitration's benefits—neutrality and enforceability—which empower Nigerian businesses to engage global markets confidently. However, the text identifies challenges, including limited institutional capacity and low legal awareness, which hinder arbitration's growth in Nigeria. The conclusion advocates for strengthening regional arbitration institutions, such as the Lagos Court of Arbitration, to position Nigeria as a hub for international dispute resolution, while emphasizing the need for capacity-building initiatives. A significant lacuna in Onyema's analysis is its limited exploration of arbitration's intersection with Nigeria's customary commercial practices, particularly in trust disputes rooted in oral agreements. While the text addresses regional challenges, it does not fully examine how arbitration can accommodate Nigeria's informal business sector, where cultural practices shape commercial interactions. The present study addresses this gap by investigating arbitration's adaptability to Nigeria's customary sector, analyzing cultural and economic barriers to access and exploring strategies to integrate informal practices into arbitral frameworks. By building on Onyema's regional perspective, the present study deepens the analysis of arbitration's impact in Nigeria, focusing on its relevance for informal businesses. This approach fills the knowledge gap concerning arbitration's cultural applicability, ensuring its benefits extend to Nigeria's diverse commercial actors. The study's emphasis on customary and digital contexts enriches the discourse, aligning global and regional insights with Nigeria's pluralistic commercial landscape.

Idornigie³¹ continues this review by providing a localized analysis of arbitration's legal and practical framework, grounding the discourse in Nigeria's commercial realities. The introduction positions arbitration as a vital mechanism for Nigerian businesses, particularly in oil and gas or trade, under the Arbitration and Conciliation Act 1988. The objective is to elucidate arbitration's role in enhancing commercial efficiency, offering Nigerian firms a framework to resolve disputes, including trust-related conflicts, with speed and confidentiality. This localized focus builds on Onyema's regional perspective, anchoring arbitration in Nigeria's legal ecosystem. The methodology is doctrinal, analyzing Nigerian arbitration laws, institutional frameworks, and procedural rules with a focus on local applicability. The findings highlight arbitration's

³¹ Paul O. Idornigie, *Commercial Arbitration in Nigeria: Law and Practice* (Lagos: Malthouse Press Ltd., 2007) 90.

advantages—expediency and confidentiality—which benefit Nigerian businesses, but identify challenges, such as judicial interference, limited arbitrator expertise, and high costs, particularly for SMEs. The conclusion calls for legal and institutional reforms to strengthen arbitration’s role in Nigeria, emphasizing the need for enhanced training and awareness to promote its adoption among local businesses. The lacuna in Idornigie’s work stems from its dated perspective, predating the Arbitration and Mediation Act 2023, and its minimal engagement with digital-era challenges, such as trust disputes on online platforms. Additionally, the text overlooks the role of customary practices in Nigeria’s commercial landscape, limiting its relevance for informal traders reliant on oral agreements. The present study addresses this gap by examining arbitration’s contemporary impact under the 2023 Act, focusing on its adaptability to digital and customary contexts and analyzing barriers to access for informal businesses. This study extends Idornigie’s localized analysis by integrating digital and customary dimensions into arbitration’s framework, filling the knowledge gap concerning its contemporary applicability. By exploring how modern arbitration laws and technologies can enhance accessibility for Nigerian businesses, the study provides a forward-looking perspective on arbitration’s impact. This approach synthesizes global, regional, and local insights, ensuring a comprehensive understanding of arbitration’s role in Nigeria’s dynamic commercial environment.

Fiadjoe³² situates international commercial arbitration within the broader framework of alternative dispute resolution, emphasizing its potential to address commercial disputes in resource-constrained jurisdictions like Nigeria. The introduction frames arbitration as a flexible mechanism for Nigerian businesses in agriculture or trade, capable of resolving disputes arising from cross-border transactions, such as those involving export contracts. Fiadjoe’s objective is to explore how arbitration can bridge accessibility gaps in developing economies, offering Nigerian firms an efficient alternative to litigation for resolving trust disputes or contractual conflicts. Fiadjoe employs a doctrinal methodology, synthesizing legal frameworks and arbitration practices across developing jurisdictions, enriched with comparative analyses to highlight regional variations. His findings underscore arbitration’s advantages, such as procedural adaptability and reduced costs compared to court processes, which are particularly beneficial for Nigerian businesses seeking swift dispute resolution. However, he identifies impediments, including underdeveloped arbitral

³² Albert Fiadjoe, *Alternative Dispute Resolution: A Developing World Perspective* (London: Cavendish Publishing, 2004) 60.

institutions and limited legal expertise, which restrict arbitration's uptake in Nigeria. The conclusion advocates for customized arbitration frameworks to enhance accessibility, emphasizing the role of regional institutions in supporting businesses in emerging markets. A critical lacuna in Fiadjoe's work is its generalized focus on developing jurisdictions, which lacks depth in addressing Nigeria's specific socio-cultural commercial dynamics, particularly the prevalence of customary practices. The text does not adequately examine how arbitration can accommodate informal trust agreements, common among Nigerian traders in markets like Onitsha or Kano. The present study addresses this knowledge gap by analyzing arbitration's applicability within Nigeria's pluralistic commercial context, exploring how cultural practices shape dispute resolution and assessing mechanisms to integrate informal businesses into arbitral processes. Fiadjoe's developing-world perspective provides a foundational lens for this study, which extends the analysis by focusing on Nigeria's unique commercial environment. By investigating arbitration's adaptability to customary practices and its impact on informal traders, the study enriches the discourse, ensuring a nuanced understanding of arbitration's role in Nigeria's diverse business landscape, particularly in trust disputes involving cross-border elements.

Transitioning from Fiadjoe's broad perspective, Adejumo and Adedipe's³³ narrows the focus to the enforcement of foreign arbitral awards in Nigeria, a critical component for businesses engaged in global trade. The introduction highlights the significance of enforceable awards under the New York Convention for Nigerian firms in sectors like oil and gas or digital finance, where cross-border trust disputes are prevalent. The authors' objective is to scrutinize the legal and practical barriers to enforcing foreign awards in Nigeria, assessing their implications for businesses seeking reliable dispute resolution mechanisms. The methodology integrates doctrinal analysis of Nigeria's arbitration laws, particularly the Arbitration and Conciliation Act 1988, with empirical data from stakeholder interviews, providing a robust examination of enforcement practices. The findings affirm Nigeria's alignment with international enforcement standards but reveal challenges, such as judicial delays and inconsistent interpretations, which undermine the reliability of enforcement for Nigerian businesses. The conclusion emphasizes the need for judicial reforms and enhanced expertise to strengthen Nigeria's enforcement regime, ensuring arbitration's efficacy in global

³³ Olusola Adejumo and Adeola Adedipe, 'The Enforcement of Foreign Arbitral Awards in Nigeria: Challenges and Prospects,' *Journal of International Arbitration* [2021] (38) (1) 89-112, 95.

commerce. The lacuna in Adejumo and Adedipe's analysis lies in its limited consideration of enforcement challenges within Nigeria's informal commercial sector, where customary practices dominate. The article does not explore how enforcement mechanisms can address trust disputes rooted in oral agreements, a significant issue for Nigerian SMEs. The present study fills this gap by examining the enforcement of arbitral awards in Nigeria's pluralistic commercial context, analyzing barriers faced by informal traders and assessing strategies to enhance accessibility for diverse business actors. Adejumo and Adedipe's enforcement focus builds on Fiadjoe's accessibility concerns, and the present study extends this analysis by integrating Nigeria's informal and digital commercial dimensions. By addressing the knowledge gap concerning enforcement in customary settings, the study contributes to a comprehensive understanding of arbitration's impact, ensuring its benefits are accessible across Nigeria's diverse business landscape.

Fagbemi³⁴ shifts the analytical lens to the doctrine of party autonomy, a cornerstone of international commercial arbitration, with specific implications for Nigerian businesses. The introduction frames party autonomy as the ability of parties to shape arbitral processes, enabling Nigerian firms in telecommunications or trade to tailor dispute resolution to their needs, such as in trust disputes involving international contracts. The objective is to critically evaluate the practical feasibility of party autonomy in Nigeria, given its legal and cultural constraints, complementing Adejumo and Adedipe's enforcement focus with a procedural perspective. Fagbemi's methodology is doctrinal, examining Nigeria's arbitration laws and international frameworks like the UNCITRAL Model Law to assess the scope and limits of party autonomy. The findings highlight its theoretical strength, allowing businesses to customize arbitration clauses, but note practical limitations, including mandatory legal provisions and a cultural preference for litigation, which restrict its application in Nigeria. The conclusion posits that party autonomy, while central to arbitration, requires greater legal education to realize its potential in Nigeria's commercial environment. A notable lacuna in Fagbemi's work is its limited engagement with Nigeria's customary commercial practices, where oral agreements challenge the formal requirements of party autonomy. The article does not fully address how informal businesses, such as traders in Lagos markets, can leverage this doctrine in trust disputes. The present study

³⁴ SA Fagbemi, 'The Doctrine of Party Autonomy in International Commercial Arbitration: Myth or Reality?' *Journal of Sustainable Development Law and Policy* [2015] (6) (1) 101-118, 105.

addresses this gap by analyzing party autonomy's adaptability to Nigeria's informal sector, examining cultural and legal barriers and exploring mechanisms to ensure its relevance for diverse commercial actors. Fagbemi's focus on party autonomy enriches Adejumo and Adedipe's enforcement analysis, and the present study extends this discourse by integrating Nigeria's customary and digital contexts. By addressing the knowledge gap concerning party autonomy's applicability to informal traders, the study provides a nuanced perspective on arbitration's procedural flexibility, enhancing its relevance in Nigeria's pluralistic commercial landscape.

Idornigie³⁵ advances the discourse by examining the New York Convention's role in the recognition and enforcement of arbitral awards in Nigeria, building on Fagbemi's procedural focus with an emphasis on enforceability. The introduction underscores the Convention's importance for Nigerian businesses in sectors like oil or digital trade, where enforceable awards are essential for resolving cross-border trust disputes. The objective is to assess Nigeria's compliance with the Convention and its implications for commercial arbitration, highlighting its role in fostering global trade integration. The methodology is doctrinal, analyzing Nigeria's arbitration laws, particularly their alignment with the New York Convention, supplemented by comparative insights from other jurisdictions. The findings confirm Nigeria's robust legal framework for enforcement but identify obstacles, such as judicial inconsistencies and limited institutional capacity, which hinder businesses seeking to enforce foreign awards. The conclusion advocates for enhanced judicial training and institutional reforms to strengthen Nigeria's enforcement mechanisms, ensuring arbitration's reliability for commercial disputes. The lacuna in Idornigie's analysis lies in its limited exploration of enforcement challenges in Nigeria's informal commercial sector, where customary practices, such as oral trust agreements, complicate formal requirements. The article does not address how enforcement processes can accommodate these practices, limiting its applicability to SMEs. The present study fills this gap by examining enforcement mechanisms in Nigeria's pluralistic commercial context, analyzing barriers faced by informal traders and assessing strategies to enhance accessibility for diverse business actors. Idornigie's enforcement analysis complements Fagbemi's procedural focus, and the present study extends this discourse by integrating Nigeria's customary and digital dimensions. By addressing the knowledge gap

³⁵ Paul O. Idornigie, 'The New York Convention and the Recognition and Enforcement of Arbitral Awards in Nigeria,' *African Journal of International & Comparative Law* [2015] (23) (2) 230-245, 235.

concerning enforcement in informal settings, the study contributes to a comprehensive understanding of arbitration's impact, ensuring its benefits align with Nigeria's diverse commercial realities.

Abe³⁶ concludes this review by critically analyzing the legal framework for institutionalizing international commercial arbitration in Nigeria, building on Idornigie's enforcement focus with a contemporary perspective under the Arbitration and Mediation Act 2023. The introduction positions arbitration as a transformative mechanism for Nigerian businesses in fintech or agriculture, emphasizing its role in enhancing global competitiveness. The objective is to evaluate the institutional and legal frameworks supporting arbitration in Nigeria, assessing their impact on businesses navigating cross-border trust disputes. Abe employs a doctrinal methodology, analyzing the 2023 Act and institutional frameworks like the Lagos Court of Arbitration, with comparative references to global standards. The findings highlight the Act's advancements, including streamlined procedures and enhanced enforceability, but note challenges, such as limited arbitrator expertise and access barriers for SMEs. The conclusion advocates for institutional strengthening and increased public awareness to institutionalize arbitration, ensuring its benefits reach Nigeria's diverse business community. The lacuna in Abe's work lies in its limited engagement with the digital and customary dimensions of Nigeria's commercial landscape. The article does not fully explore how arbitration can address trust disputes on digital platforms or accommodate informal practices, such as oral agreements in local markets. The present study addresses this gap by examining the adaptability of arbitration to Nigeria's digital and customary contexts, analysing barriers to access, and exploring mechanisms to enhance inclusivity for informal traders. Abe's contemporary analysis builds on Idornigie's enforcement focus, and the present study extends this discourse by integrating digital and customary perspectives. By addressing the knowledge gap concerning arbitration's applicability to Nigeria's evolving business environment, the study provides a holistic perspective on its impact, ensuring alignment with Nigeria's pluralistic commercial realities.

³⁶ Olusanya O. Abe, 'The Legal Framework For The Institutionalisation Of International Commercial Arbitration In Nigeria: A Critical Review,' *Journal of Sustainable Development Law and Policy* [2025] (1) (1) 132-147, 138.

CHAPTER THREE

LEGAL AND INSTITUTIONAL FRAMEWORKS ON INTERNATIONAL COMMERCIAL ARBITRATION IN NIGERIA

3.1 Legal Frameworks.

3.1.1 Arbitration and Mediation Act 2023.

The Arbitration and Mediation Act of 2023 has established a legal framework that enhances the transparency, speed, autonomy, and enforceability of arbitral awards and mediation settlement agreements. These critical elements are vital for a robust and efficient arbitration system that solves the evolving needs of businesses and individuals seeking fair and effective dispute resolution by impartial tribunals, free from unnecessary delays or costs. This Act also demonstrates Nigeria's commitment to bolstering its reputation, promoting arbitration within its borders and aligning its practices with global standards in international arbitration.

However, it is important to recognize that no legislation is flawless. Challenges may surface during the Act's implementation and interpretation, necessitating ongoing evaluation and potential amendments to address emerging issues effectively. The field of arbitration and mediation has witnessed significant developments over the years, with legislative changes often reflecting evolving global practices. Nigeria, in an attempt to get up to speed with the evolution of the global best practices in the arbitration and mediation ecosystem, enacted the Arbitration and Mediation Act 2023 (the 'New Act' or 'AMA') on 26 May 2023. The repeal of the 35-year-old Arbitration and Conciliation Act of 1988 (the 'ACA' or 'Old Act') by the New Act signifies a significant legal transition. However, this transition goes beyond mere repeal, as the New Act addresses and improves upon the weaknesses and inadequacies present in the Old Act. It achieves this by incorporating numerous provisions from the UNCITRAL Model Law of 2006, aligning Nigeria's arbitration and mediation framework with international standards.³⁷ Consequently, the New Act not only reinforces Nigeria's status as a prominent commercial hub but also demonstrates the nation's unwavering commitment to creating a conducive environment for alternative dispute resolution in accordance with contemporary global norms. This article delves into the New Act,

³⁷ *The Arbitration and Conciliation Act was in force before the UNCITRAL Model Law on International Arbitration, 2006.*

highlighting its innovative provisions and drawing comparisons with the Old Act and international best practices in arbitration.

Key changes and provisions

The New Act is divided into three (3) Parts with ninety-two (92) and three Schedules. The Parts and Schedules are:

Part I: Arbitration - This Part applies to both domestic (all disputes between parties/entities within the jurisdiction of Nigeria's thirty-six states and the Federal Capital Territory), Nigerian seated arbitrations as seen in section 1(6); whilst also having extra-territorial application as seen in section 1(7) of the act.

Part II: Mediation - Unlike the Old Act, which did not provide for mediation, the New Act provides for the settlement of both domestic and international disputes through mediation subject to Nigerian Law.

Part III: Miscellaneous provisions

The Schedules: The New Act contains three (3) Schedules. The First Schedule contains Arbitration Rules serving as the guiding framework for resolving disputes brought under the jurisdiction of the New Act. These rules apply when Parties consensually agree that these rules apply to their arbitration proceedings. The Second Schedule is dedicated to the domestication of the Convention on the Recognition and Enforcement of Arbitral Awards (New York Convention) within the legal framework of Nigeria. Lastly, the Third Schedule comprises the Arbitration Proceedings Rules, providing additional procedural details and guidelines for arbitration proceedings conducted under the New Act. These rules in the Third Schedule are concerned with arbitration applications before the High Courts. These schedules collectively facilitate the efficient and structured application of the New Act's provisions.

Some of the novel provisions introduced in the New Act are as follows:

Sets out clear objectives of the Act

The ACA was silent on the objectives of the Act - this left room for ambiguity in interpretation as the lawmakers' intent was not expressly spelt out. However, the Arbitration and Mediation Act 2023 sets out the legislative objective.³⁸

Enforcement of arbitration agreements

The previously existing ambiguity within Sections 4 and 5 of the ACA regarding whether granting an order for a stay of proceedings pending arbitration was a mandatory or discretionary function of the court has now been resolved. Under the ACA, the court had the discretion to allow or reject an application for a stay of proceedings depending on the ability of the Applicant to show sufficient reason or willingness to proceed with arbitration as per the arbitration agreement. This can be seen in the case of *Enyelike v Ogoloma*,³⁹ where it was held that 'An application seeking a stay of proceedings to enable parties refer to arbitration is not granted as a matter of course. For such an application to be granted, the applicant must have taken no step in the proceedings'. However, with the advent of Section 5 in the AMA, a mandatory obligation has been placed on the court to refer parties to arbitration and stay proceedings unless the arbitration agreement is "void, inoperative, or incapable of being performed.'

The use of accessible electronic communication

The Old Act had also had a narrower definition of writing, which could take the form of a document signed by the involved parties. It also allowed for agreements to be formed through exchanges of 'letters, telex, telegrams, or other modes of communication' that could create a record of the arbitration agreement.⁴⁰

In contrast, the New Act maintains these established forms of written agreements and introduces the concept of 'electronic communication' to meet the writing requirement. According to the AMA, an arbitration agreement can now be considered validly written if it is made through 'electronic communication' that is readily accessible and can be used for future reference. If an electronic communication meets these criteria, it fulfils the conditions for a valid arbitration agreement.⁴¹

³⁸ *The UNCITRAL Model Law on International Commercial Mediation*, 2018.

³⁹ Section 1 of the *Arbitration and Mediation Act 2023* (the 'AMA').

⁴⁰ Section 5 of the *Arbitration and Conciliation Act 2004* (the 'ACA').

⁴¹ Section 9 (1) (a-c) of the ACA.

The term 'electronic communication' in the AMA is defined in Section 91 to encompass any communication made through data messages, which includes information generated, sent, received, or stored by electronic, magnetic, optical, or similar means. This definition covers various forms of electronic communication, such as email, text messages, social media chats, and more.

While the ACA may have left room for interpretation regarding what constitutes 'other means of communication' under its provision, the AMA has effectively clarified and resolved this ambiguity by explicitly including 'electronic communication' as an acceptable form of satisfying the mandatory requirement for a written arbitration agreement.

Default number of arbitrators

Under the New Act, a notable alteration is the adjustment of the default number of arbitrators from three to one. This alteration carries substantial significance, particularly in the context of domestic arbitrations, where the financial burden of compensating three arbitrators has posed a hindrance for participants. This shift aligns Nigeria's arbitration framework with established global standards, mirroring the provisions of the UNCITRAL Model Law. In cases where the involved parties cannot agree on a single arbitrator, an intriguing provision in Section 7(3) empowers the non-defaulting party to seek recourse through the court or, remarkably, any arbitral institution operating in Nigeria to facilitate the appointment process.

Emergency arbitrators

Another noteworthy provision in the Act is the introduction of the emergency arbitrator proceedings, outlined in Section 16. This provision enables parties to seek interim relief before the formation of the Arbitral Tribunal by applying to their designated arbitral institution or the court for the appointment of an emergency arbitrator. If the application is approved, the arbitral institution or the court is required to designate the emergency arbitrator within two business days of receiving the application. Importantly, the rulings issued through these emergency proceedings are binding and enforceable by the parties while awaiting the final decision from the Arbitral Tribunal. It should however be noted that the Arbitral Tribunal can modify or suspend emergency decisions reached at the emergency proceedings. There are also circumstances these emergency decisions cease to be binding.

This provision is designed to streamline and expedite the arbitration process in Nigeria. It aligns with the arbitration procedure rules of leading global arbitral institutions such as the London Centre of International Arbitration (LCIA) [9] and the International Chambers of Commerce (ICC).⁴²

Recognition and enforcement of interim measures

The global landscape regarding the recognition and enforcement of interim measures has been a subject of controversy. However, the New Act in Nigeria takes a decidedly pro-enforcement position in this regard. It permits a party to pursue the recognition and enforcement of an interim measure in a manner akin to that of an arbitral award, as outlined in Section 28. This approach explicitly prohibits the court from engaging in a substantive review of the interim measure, restricting any refusal to specific grounds, mirroring the criteria for refusing the recognition and enforcement of an arbitral award.

Statute of limitation for arbitral proceedings

The AMA is also widely celebrated because it laid to rest the issue of computation of time within arbitral proceedings. In the case of *City Engineering Nig. Ltd v Federal Housing Authority*, the Supreme Court held that the statutory period of limitation starts to run for the purpose of the enforcement of an arbitration award at the date of the accrual of the original cause to action. Section 34 of the Act extends the application of the limitation statutes to arbitral proceedings, aligning them with the rules governing judicial proceedings. This new provision offers added protection to arbitral and mediation proceedings by excluding the commencement of arbitration and the date of the award, particularly in cases involving disputes related to an award. This measure enhances the safeguarding of arbitral and mediation processes.

Consolidation of arbitral proceedings

Unlike the ACA, which lacked provisions for consolidating arbitral proceedings, the AMA introduces the possibility of consolidating ongoing arbitral proceedings, even when different parties are involved. Additionally, the AMA allows for concurrent hearings, but it is important to note that the decision to pursue consolidated or concurrent hearings rests solely with the parties

⁴² Article 29, *ICC Rules of Arbitration*.

involved. Arbitral Tribunals are explicitly prohibited from ordering such hearings, except with the consensus of parties. The adoption of consolidated and concurrent hearings has the potential to yield significant advantages, including cost and time savings, as well as a reduction in the duplication of arbitral proceedings. This, in turn, can help conserve valuable judicial resources should parties choose to approach the court for interim orders or challenge an arbitration award.

Joinder of parties

The joinder of parties is another significant stride in Nigerian arbitration introduced by the New Act. This provision confers Arbitral Tribunals with discretionary authority to include an additional party in the arbitration, provided that prima facie evidence exists showing that the party is bound by the arbitration agreement giving rise to the arbitration.⁴³

The inclusion of the term 'prima facie', as under Section 40 of the New Act, connotes the need for reasonable belief or facts evidencing the party's obligation under the agreement. This provision is in tandem with the principles outlined in the UNCITRAL Arbitration Rules, which empowers an Arbitral Tribunal to join a third party after considering various factors such as the legal interests of the parties, the potential conflict of interests, and the timing of the request.

Third-party funding

The enactment of the Arbitration and Mediation Act aligns Nigeria with jurisdictions like Singapore and Hong Kong by explicitly allowing third-party funding, enhancing its appeal as a dispute resolution hub in Africa. Section 91 of the Act defines a third-party funder as an entity or person not involved in the dispute but who financially supports part or all of the proceedings' costs in various ways. Importantly, the Act abolishes the prohibitive torts of maintenance and champerty concerning arbitration and related court proceedings, thus permitting third-party funding arrangements. It also introduces regulations for disclosing third-party funding and security for costs related to third-party funders. The Act mandates disclosure of the funder's identity to counterparties, the Arbitral Tribunal, and, when applicable, the arbitral institution.

This shift may mark the beginning of a broader trend in Africa to facilitate third-party funding.

⁴³ The UNCITRAL Arbitration Rules (2021): UNCITRAL Expedited Arbitration Rules and UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration.

Arbitrator's immunity

The New Act introduces a significant provision: it acknowledges and grants immunity to arbitrators, appointing authorities, and arbitral institutions executing their duties, except in cases of proven bad faith.⁴⁴ This provision is a novel addition not found in the ACA and aims to protect arbitrators while carrying out their responsibilities, similar to judicial officers. It ensures impartial decision-making by alleviating concerns about personal liability, allowing arbitrators to focus solely on the case's merits and exercise independent judgment without fear of legal consequences for their decisions.

The Award Review Tribunal (ART)

Termed an 'unusual concept', the New Act introduces a unique provision allowing parties to opt for a review of their arbitral award by an Award Review Tribunal (Section 56). This mechanism falls within the parties' jurisdiction and permits a second tribunal to assess challenges to an arbitral award, mirroring the grounds considered by a court for setting aside an award. Similar to the court's authority, the Award Review Tribunal can either partially or fully set aside the award or uphold it entirely. The Tribunal is expected to decide within 60 days of its establishment. In cases where the Award Review Tribunal's decision is deemed unsound, the court possesses the authority to reinstate the award that was previously set aside. However, the court can only set aside an award upheld by the Award Review Tribunal on the grounds of non-arbitrability and public policy.

Mediation

In contrast to the Old Act, the Arbitration and Mediation Act (AMA) embraces mediation as a legitimate dispute resolution mechanism within Nigeria. Unlike the ACA, the New Act defines 'mediation' as 'the process where parties seek the assistance of a neutral third party or parties to help them in reaching a mutually agreeable resolution for their dispute arising from a contractual or legal relationship'. This definition gives an encompassing and wider application to mediation, conciliation and other analogous mechanisms.

The AMA's framework was largely influenced by the UNCITRAL Model Law on International Commercial Mediation, 2018.¹ It defines the scope of disputes amenable to mediation under the

⁴⁴ Opeyemi L, Robert W. "Recent Arbitration Reforms in Nigeria." White & Case Online Blog. 15 June 2022. Accessed 25 September 2023.

Act, outlines the procedure for commencement of mediation, specifies the number of mediators required, delineates the procedures at mediation, addresses issues bordering on the immunity of mediators and their fees, and many more. Furthermore, the AMA acknowledges the applicability of the Singapore Convention on Mediation, 2018, for enforcing international settlement agreements made outside of Nigeria, contingent upon the State's accession to the Singapore Convention.

Conclusion

The Arbitration and Mediation Act of 2023 has established a legal framework that enhances the transparency, speed, autonomy, and enforceability of arbitral awards and mediation settlement agreements. These critical elements are vital for a robust and efficient arbitration system that solves the evolving needs of businesses and individuals seeking fair and effective dispute resolution by impartial tribunals, free from unnecessary delays or costs.

This Act also demonstrates Nigeria's commitment to bolstering its reputation, promoting arbitration within its borders and aligning its practices with global standards in international arbitration.

However, it is important to recognize that no legislation is flawless. Challenges may surface during the Act's implementation and interpretation, necessitating ongoing evaluation and potential amendments to address emerging issues effectively.

3.1.2 UNCITRAL Model Law on International Commercial Arbitration 2006.

The Model Law is designed to assist States in reforming and modernizing their laws on arbitral procedure so as to take into account the particular features and needs of international commercial arbitration. It covers all stages of the arbitral process from the arbitration agreement, the composition and jurisdiction of the arbitral tribunal and the extent of court intervention through to the recognition and enforcement of the arbitral award. It reflects worldwide consensus on key aspects of international arbitration practice having been accepted by States of all regions and the different legal or economic systems of the world.

Amendments to articles 1 (2), 7, and 35 (2), a new chapter IV A to replace article 17 and a new article 2 A were adopted by UNCITRAL on 7 July 2006. The revised version of article 7 is intended

to modernize the form required of an arbitration agreement to better conform with international contract practices. The newly introduced chapter IV A establishes a more comprehensive legal regime dealing with interim measures in support of arbitration. As of 2006, the standard version of the Model Law is the amended version. The original 1985 text is also reproduced in view of the many national enactments based on this original version.

The UNCITRAL secretariat *On the 1985 Model Law on International Commercial Arbitration as amended in 2006*.

1. The UNCITRAL Model Law on International Commercial Arbitration (“the Model Law”) was adopted by the United Nations Commission on International Trade Law (UNCITRAL) on 21 June 1985, at the end of the eighteenth session of the Commission.

The General Assembly, in its resolution 40/72 of 11 December 1985, recommended “that all States give due consideration to the Model Law on international Commercial Arbitration, in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practice”. The Model Law was amended by UNCITRAL on 7 July 2006, the thirty-ninth session of the Commission (see below, paragraphs 4, 19, 20, 27, 29 and 53). The General Assembly, in its resolution 61/33 of 4 December 2006, Recommended “that all States give favorable consideration to the enactment of the revised articles of the UNCITRAL Model Law on International Commercial Arbitration, or the revised UNCITRAL Model Law on International Commercial Arbitration, when they enact or revise their laws.”⁴⁵

1. The Model Law constitutes a sound basis for the desired harmonization and improvement of national laws. It covers all stages of the arbitral process from the arbitration agreement to the recognition and enforcement of the arbitral award and reflect a worldwide consensus on the principles and important issues of international arbitration practice. It is acceptable to States of all regions and the different Legal or economic systems of the world. Since its adoption by UNCITRAL, the Model Law has come to represent the accepted international legislative standard for A modern arbitration law and a significant number of jurisdictions have enacted Arbitration legislation based on the Model Law.

⁴⁵ *United Nations publication*, Sales No. E.77.V.6.

2. The form of a model law was chosen as the vehicle for harmonization and Modernization in view of the flexibility it gives to States in preparing new arbitration laws. Notwithstanding that flexibility, and in order to increase the likelihood of achieving a satisfactory degree of harmonization, States are encouraged to make few changes as possible when incorporating the Model Law into their legal system.
3. Efforts to minimize variation from the text adopted by UNCITRAL are also expected to increase the visibility of harmonization, thus enhancing the confidence of foreign parties, as the primary users of international arbitration, in the reliability of arbitration law in the enacting State.
4. The revision of the Model Law adopted in 2006 includes article 2 A, which is designed to facilitate interpretation by reference to internationally accepted principles and is aimed at promoting a uniform understanding of the Model Law. Other substantive amendments to the Model Law relate to the form of the arbitration agreement and to interim measures. The original 1985 version of the provision on the form of the arbitration agreement (article 7) was modelled on the language used in article II (2) of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (“the New York Convention”). The revision of article 7 is intended to address evolving practice in international trade and technological developments. The extensive revision of article 17 on interim measures was considered necessary in light of the fact that such measures are increasingly relied upon in the practice of international commercial arbitration. The revision also includes an enforcement regime for such measures in recognition of the fact that the effectiveness of arbitration frequently depends upon the possibility of enforcing interim measures. The new provisions are contained in a new chapter of the Model Law on interim measures and preliminary orders (chapter IV A). A Background to the Model Law.
5. The Model Law was developed to address considerable disparities in national laws on arbitration. The need for improvement and harmonization was based on findings that national laws were often particularly inappropriate for international cases. 1. Inadequacy of domestic laws
6. Recurrent inadequacies to be found in outdated national laws include provisions that equate the arbitral process with court litigation and fragmentary provisions that fail to address all relevant substantive law issues. Even most of those laws that appear to be up-to-date and

comprehensive were drafted with domestic arbitration primarily, if not exclusively, in mind. While this approach is understandable in view of the fact that even today the bulk of cases governed by arbitration law would be of a purely domestic nature, the unfortunate consequence is that traditional local concepts are imposed on international cases and the needs of modern practice are often not met.

7. The expectations of the parties as expressed in a chosen set of arbitration rules or a “one-off” arbitration agreement may be frustrated, especially by mandatory provisions of applicable law. Unexpected and undesired restrictions found in national.⁴⁶

3.2 Institutional Frameworks

3.2.1 International Chambers of Commerce (ICC)

ICC has three main activities: rule setting, dispute resolution, and policy advocacy. Because its member companies and associations are themselves engaged in international business, ICC has unrivalled authority in making rules that govern the conduct of business across borders. Although these rules are voluntary, they are observed in thousands of transactions every day and have become part of international trade.

A world network of national committees in over 90 countries advocates business priorities at national and regional level. More than 5,000 experts drawn from ICC’s member companies feed their knowledge and experience into crafting the ICC stance on specific business issues through specialized ICC Policy Commissions.

ICC is the only business organization to have Observer Status at the United Nations General Assembly, and is a representative voice for business at the World Trade Organization, and many other intergovernmental bodies, both international and regional, such as G20 on behalf of international business.⁴⁷ ICC was the first organization granted general consultative status with the United Nations Economic and Social Council and UN Observer Status.ⁱⁱ

⁴⁶ Opeyemi L, Robert W. “Recent Arbitration Reforms in Nigeria.” White & Case Online Blog. 15 June 2022. Accessed 25 September 2023. Available at: <https://www.whitecase.com/insight-alert/recent-arbitration-reforms-nigeria>.

⁴⁷ Wikimedia | © OpenStreetMap

History

The International Chamber of Commerce was founded in 1919 to serve world business by promoting trade and investment, open markets for goods and services, and the free flow of capital. Its international secretariat was established in Paris and its International Court of Arbitration in 1923. Its first chairman was French Minister of Finance Étienne Clémentel.

The first chairman of the International Chamber of Commerce, Étienne Clémentel

Membership

Membership is gained through affiliation with an ICC national committee or via direct application to the ICC International Secretariat.

Governing bodies

World Council

ICC's supreme governing body is the World Council, consisting of representatives of national committees. The World Council elects ICC's highest officers, including the chair and the vice-chairs, each of whom serves a three-year term. The chair, Vice-chair and the Honorary Chair (the immediate past chair) provide the organization with high-level leadership.

Executive board.

Strategic direction for ICC is provided by its executive board, consisting of up to 30 business leaders and ex-officio members. It is elected by the World Council on the recommendation of the Chairmanship. Meeting three times a year, the executive board oversees the establishment of ICC's strategic priorities and the implementation of its policies.

International Secretariat

The ICC Global Headquarters, based in Paris, is the operational arm of ICC. It develops and carries out ICC's work programme, feeding business views into intergovernmental organizations on issues that directly affect business operations. The International Secretariat is led by the Secretary General, who is appointed by the World Council.

National committees

In over 90 of the world's nations, members have established formal ICC structures called national committees. In countries where there is no national committee, companies and organizations such as chambers of commerce and professional associations can become direct members.

Finance Committee

The Finance Committee advises the executive board on all financial matters. On behalf of the executive board, it prepares the budget and regularly reports to the board. It reviews the financial implications of ICC activities and supervises the flow of revenues and expenses of the organization.

Dispute resolution services

ICC's administered dispute resolution services help solve difficulties in international business. ICC Arbitration is a private procedure that leads to a binding and enforceable decision.

The International Court of Arbitration of the International Chamber of Commerce steers ICC Arbitration and has received over 28,000 cases since its inception in 1923.[7] Over the past decade, the court's workload has considerably expanded. To scale their services and support efficiency, the ICC updated their digital platform, ICC Case Connect powered by Opus 2, in 2025. The platform, designed by legal technology provider Opus 2, centralizes e-filing, filing fee payments, document sharing, case management, and ICC Court decisions.

The court's membership has also grown and covers 85 countries and territories. With representatives in North America, Latin and Central America, Africa and the Middle East and Asia, the ICC Court has significantly increased its training activities on all continents and in all major languages used in international trade.

ICC Dispute Resolution Services exist in many forms:

Arbitration is a flexible and efficient dispute resolution procedure leading to binding and final decisions subject to enforcement worldwide.

Mediation is a flexible technique, conducted privately and confidentially, in which a neutral facilitator helps parties to seek a negotiated settlement of their dispute.

Dispute boards are independent bodies designed to help resolve disagreements arising during the course of a contract.

Expertise is a way of finding the right person to make an independent assessment on any subject relevant to business operations.

DOCDEX provides expert decisions to resolve disputes related to documentary credits, collections and demand guarantees, incorporating ICC banking rules.

Expedited or ‘fast-track’ arbitration procedures automatically apply where disputes are worth US\$2 million or less, if the arbitration agreement was made after 1 March 2017, unless the parties have specifically opted out of the expedited procedure in their agreement.[9] As of 2024, a total of 461 final awards have been rendered in cases under the ICC Expedited Procedure Provisions (EPP).

Policy and business practices

ICC policies, rules and standards are prepared by specialized working bodies. Normal procedure requires policy statements first to be adopted by a commission, in consultation with national committees, and then approved by the executive board, before they can be regarded as official and public ICC positions.

Commissions examine major policy issues of interest to world business. Each national committee (NC) or group may appoint delegates to represent it at meetings. Officers are appointed by the chairman and Secretary General in consultation with NCs. Meetings of commissions are normally held twice a year.

Task forces are constituted under the various commissions for a limited period to undertake specific projects and report back to their parent commission. Some task forces may include representatives of more than one commission.

Code of Advertising and Marketing Communication Practice

The ICC Code of Advertising and Marketing Communication Practice, underpins global advertising and marketing around the globe. This Code sets ethical standards and guidelines for businesses using today’s rapidly changing technology, tools and techniques to market products and

services. Developed by experts from all sectors of industry and all regions of the world, the code's purpose is to protect consumers by setting out guidelines for responsible marketing.

The Code is structured in two main sections—General Provisions and Chapters. The General Provisions section contains fundamental principles and other broad concepts that apply to all marketing in all media. Code Chapters are detailed and apply to specific marketing areas, including: Sales Promotion, Sponsorship, Direct Marketing, Digital Media and Environmental Marketing Claim.

World Chambers Federation

In 1951, ICC established the World Chambers Federation (WCF), formerly the International Bureau of Chambers of Commerce. WCF is the unique global forum uniting the worldwide network of chambers of commerce and industry. It aims to connect and inspire chambers and facilitate the exchange of best practice and the development of new global products and services for chambers, and foster international partnerships between chambers and other stakeholders to help local businesses grow. WCF is a non-political, non-governmental body, with its membership comprising local, regional, national, bilateral and transnational chambers of commerce, as well as public-law and private-law chambers.

WCF was established by ICC and its chamber members following a resolution at the conclusion of the World Congress of Chambers of Commerce (Rome 1950). At its inaugural committee meeting held in Paris in December 1950, WCF was to be first known as the International Information Bureau of Chambers of Commerce. As its role expanded and grew during the 1960s, its name changed to become the International Bureau of Chambers of Commerce and by June 2001, it became known as the World Chambers Federation.

WCF also organizes the World Chambers Congress Archived 2016-11-13 at the Wayback Machine every two years in a different region of the world. The Congress is the only international forum for chamber leaders and professionals to share best practices, exchange insights, develop networks, address the latest business issues affecting their communities, and learn about new areas of innovation from chambers around the world.

During the Congress, WCF also announces the winners of World Chambers Competition Archived 2016-11-03 at the Wayback Machine, the only global awards program to recognize the most innovative projects undertaken by chambers of commerce and industry from around the world.

Training and events

Staged all over the world, ICC events range from large topical conferences to training sessions for small groups. These smaller courses share ICC's expertise on commercial arbitration and dispute resolution mechanisms as well as ICC's trade tools including Incoterms rules, Uniform Customs and Practice for Documentary Credits (UCP) and international contracts.

The ICC Academy is the training arm of the International Chamber of Commerce and delivers online certification and professional development services to meet the educational needs of banks, corporate and other organizations at the forefront of international trade. The specialized programs, e-courses and certifications are designed by the International Chamber of Commerce's experts and practitioners.⁴⁸

3.2.2 International Centre for Settlement of Investment Dispute (ICSID).

International Centre for Settlement of Investment Disputes was established in the year 1966. 58 years ago. It has a membership of 165 countries.

History.

In the 1950s and 1960s, the Organization for European Economic Cooperation (now the Organization for Economic Co-operation and Development) had made several attempts to create a framework to protect international investments, but its efforts revealed conflicting views on how to provide compensation for the expropriation of foreign direct investment.

Creation.

In 1961, Aron Broches, then-General Counsel of the International Bank for Reconstruction and Development (IBRD), developed the idea for a multilateral agreement on a process for resolving individual investment disputes on a case-by-case basis as opposed to imposing outcomes based on standards. Broches held conferences to consult legal experts from all parts of the world, including

⁴⁸ *Publications Commercial Crime Services Special projects and initiatives Research foundation*, 2023. Pg 136.32.180.136.

Europe, Africa, and Asia, to discuss and compose a preliminary agreement. The IBRD staff wrote an official draft of the agreement and consulted with legal representatives of the IBRD's board of directors to finalize the draft and have it approved.

The board of directors approved the final draft of the agreement, titled Convention on the Settlement of Investment Disputes between States and Nationals of Other States, and the Bank president disseminated the convention to its member states for signature on 18 March 1965. Twenty states immediately ratified the convention. The convention established the ICSID would become officially active on 14 October 1966.

Disputes settled.

Since its founding, more than 1,000 cases have been brought to ICSID, all but 14 of which were arbitration cases. The remainder were conciliation cases. As of 2024, more than 700 cases have been concluded.

The Indonesian government was sued in June 2012 by a London-based mining company Churchill Mining after the local government revoked the concession rights held by a local company in which the firm had invested.[8] The government is countering the Churchill case, claiming that Churchill did not have the correct type of mining licences.

In October 2012, an ICSID tribunal awarded a judgement of \$1.8 billion for Occidental Petroleum against the government of Ecuador.[8] Additionally, Ecuador had to pay \$589 million in backdated compound interest and half of the costs of the tribunal, making its total penalty around \$2.4 billion.[8] The South American country annulled a contract with the oil firm on the grounds that it violated a clause that the company would not sell its rights to another firm without permission. The tribunal agreed the violation took place but judged that the annulment was not fair and equitable treatment to the company.

Irish oil firm Tullow Oil took the Ugandan government to court in November 2012 after value-added tax (VAT) was placed on goods and services the firm purchased for its operations in the country. The Ugandan government responded that the company had no right to claim tax on such goods prior to commencement of drilling.

Tobacco major Philip Morris sued Uruguay for alleged breaches to the Uruguay-Swiss BIT for requiring cigarette packs to display graphic health warnings and sued Australia under the Australia-Hong Kong BITS for requiring plain packaging for its cigarettes. The company claimed that the packaging requirements in both countries violate its investment.

In the context of Nuclear power phase-out in Germany, Swedish Energy company Vattenfall sought compensation from the German government for the premature shut-down of nuclear plants.

In July 2024, the International Center for Settlement of Investment Disputes ordered Morocco to pay \$150 million to Corral Petroleum Holdings.

Performance since creation

Bilateral investment treaties (BITs) proliferated during the first decade of the 21st century, reaching more than 2,500 by 2007. Many such treaties contain text that refers present and future investment disputes to ICSID.

As of 30 June 2012, ICSID has registered 390 disputes.⁷ ICSID's caseload consisted of 88% convention arbitration cases, 2% convention conciliation cases, as well as 9% additional facility arbitration cases, and 1% additional facility conciliation cases. ⁸ ICSID's registered cases were distributed across oil, gas and mining (25%), electricity and other energy (13%), other industries (12%), transportation industry (11%), construction industry (7%), financial industry (7%), information industry and communication industry (6%), water industry, sanitation, and food protection (6%), agriculture, fishing, and forestry (5%), services and trade (4%), and tourism industry (4%).

As of 27 July 2012, 246 of 390 registered arbitration cases were concluded, as of 30 June 2012, ICSID tribunals had resolved nearly two thirds (62%) of disputes while the remainder (38%) were settled or discontinued.¹³ As of 14 May 2016, 362 of 574 (62%) registered arbitration cases were concluded.

Conciliation commission reports were issued for 67% of the conciliation proceedings, while 33% of proceedings were discontinued. In 75% of the conciliation reports, parties failed to reach an agreement, and only 25% recorded agreement among parties.

As of 2012 only two governments, Gabon and Romania, had ever filed an ICSID case against an investor. States appearing most often as a respondent were in descending order: Argentina 49, Venezuela 36, Egypt 17, Ecuador 12, Congo 12, Peru 11 and Ukraine 10 times. Between 2009 and 2012, legal representation cost between US\$1 and 7.6 million. The approximate duration of a case was 3.6 years.

As of 2019, ICSID's caseload included 2% conciliation cases. The rest were arbitrations.

Governance

ICSID is governed by its Administrative Council which meets annually and elects the centre's secretary-general and deputy secretary-general, approves rules and regulations, conducts the centre's case proceedings, and approves the centre's budget and annual report. The council consists of one representative from each of the centre's contracting member states and is chaired by the President of the World Bank Group, although the president may not vote. ICSID's normal operations are carried out by its secretariat, which comprises 40 employees and is led by the secretary-general of ICSID. The secretariat provides support to the Administrative Council in conducting the centre's proceedings. It also manages the centre's Panel of Conciliators and Panel of Arbitrators. Each contracting member state may appoint four persons to each panel.¹⁵ In addition to serving as the centre's principal, the secretary-general is responsible for legally representing ICSID and serving as the registrar of its proceedings. As of 2012, Meg Kinnear serves as the centre's secretary-general.

Membership Activities

ICSID does not conduct arbitration or conciliation proceedings itself, but offers institutional and procedural support to conciliation commissions, tribunals, and other committees which conduct such matters. The centre has two sets of rules that determine how cases will be initiated and conducted, either under the ICSID Convention, Regulations and Rules or the ICSID Additional Facility Rules. To be processed in accordance with the ICSID Convention, a legal dispute has to exist between one of the centre's contracting member states and a national of another contracting member state. It must also be of a legal nature and relate directly to an investment. A case can be processed under the ICSID Additional Facility Rules if one of the parties to the dispute is either not a contracting member state or a national of a contracting member state. However, most cases

are arbitrated under the ICSID Convention. Recourse to ICSID conciliation and arbitration is entirely voluntary. However, once the parties have consented to arbitration under the ICSID Convention, neither party can unilaterally withdraw its consent.

The ICSID Secretariat may also administer dispute resolution proceedings under other treaties and regularly assists tribunals or disputing parties in arbitrations among investors and states under the United Nations Commission on International Trade Law (UNCITRAL)'s arbitration regulations. The centre provides administrative and technical support for a number of international dispute resolution proceedings through alternative facilities such as the Permanent Court of Arbitration in The Hague, Netherlands, the London Court of International Arbitration, and the International Chamber of Commerce in Paris, France.

ICSID also conducts advisory activities and research and publishes *Investment Laws of the World* and *Investment Treaties*. Since April 1986, the centre has published a semi-annual law journal entitled *ICSID Review: Foreign Investment Law Journal*.

Although ICSID's proceedings generally take place in Washington, D.C., parties may agree that proceedings be held at one of a number of possible alternative locations, including the Permanent Court of Arbitration, the Regional Arbitration Centres of the Asian-African Legal Consultative Committee in Cairo, in Kuala Lumpur, or in Lagos, the Australian Centre for International Commercial Arbitration in Melbourne, the Australian Commercial Disputes Centre in Sydney, the Singapore International Arbitration Centre, the Gulf Cooperation Council Commercial Arbitration Centre in Bahrain, the German Institution of Arbitration, the Maxwell Chambers in Singapore, the Hong Kong International Arbitration Centre, and the Centre for Arbitration and Conciliation at the Chamber of Commerce of Bogota. However, once the parties have consented to arbitration under the ICSID Convention, neither party can unilaterally withdraw its consent.

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3.2.3 Lagos Chamber of Commerce International Arbitration Centre (LCCIAC)

LACIAC, the Lagos Chamber of Commerce International Arbitration Centre, is an international alternative dispute resolution Centre with a focus on fair and efficient alternative dispute resolution in Africa. Recognizing Lagos' potential, the Centre aims to put Lagos on the map as a reliable, efficient, and transparent hub for international arbitration.⁵⁰ Native to Nigeria, LACIAC is aware of the challenges faced by disputants and aims to provide a viable and user friendly alternative to traditional litigation, offering a full service of ADR solutions including arbitration, mediation and conciliation. Following recent trends in international arbitration, LACIAC has worked hard to ensure that the LACIAC Rules of Arbitration 2015 are in line with international best practice. An overriding objective applies to members of the Court, the arbitral tribunal, parties and party representatives alike. Through its Rules, LACIAC aims to enshrine its philosophy of transparency

⁴⁹ Wikipedia: Wikimedia Foundation Powered by MediaWiki
Content is available under CC BY-SA 4.0 unless otherwise noted. Privacy policy Contact Wikipedia Code of Conduct Developers Statistics Cookie statement Terms of Use Desktop

⁵⁰ I Blackaby, N., Partasides, C., Redfern, A., & Hunter, M.; Redfern and Hunter on *Lagos Chamber of commerce international arbitration center (LACIAC)*2021; Oxford University Press; 7th Edition.

and efficiency. In line with the ethos, the Rules include: • Emergency arbitrator provisions • Expanded provisions for interim relief • Fast track arbitration rules.

CHAPTER FOUR.

IMPACTS, BENEFITS AND CHALLENGES OF INTERNATIONAL COMMERCIAL ARBITRATION IN NIGERIA BUSINESS.

4.1 Impacts on International Commercial Arbitration in Nigeria Business.

Arbitration offers significant advantages in resolving commercial disputes, particularly in the context of Nigeria, where businesses often face challenges such as inefficient legal systems and slow court proceedings. One of the primary benefits of arbitration is its ability to provide a quick resolution to disputes. This contrasts with the protracted delays often experienced in Traditional litigation. Ajogwu (2021) highlights that arbitration can streamline the dispute Resolution process by allowing parties to choose their arbitrators, who are often experts in the subject matter of the dispute, ensuring an informed decision-making process.⁵¹ This expertise accelerates the proceedings, offering businesses an effective way to address conflicts without losing valuable time.

Another benefit of arbitration is its enforceability, especially in international commercial transactions. Idornigie (2019) points out that Nigerian courts are increasingly willing to uphold arbitral awards, particularly when the country is a signatory to international treaties such as the New York Convention.⁵² This gives arbitration a significant advantage over other dispute resolution mechanisms, where enforcement might be challenging. Arbitration, therefore, provides businesses with a sense of security, as they can be confident that arbitral awards are more likely to be respected and implemented, even across borders.

In the case of Shell Petroleum Development Company of Nigeria Ltd. V Crestar Integrated Natural Resources Ltd. the binding nature of arbitration agreements and the limited scope of judicial intervention were underscored. The parties had entered into an arbitration agreement to resolve disputes arising from their contractual relationship. When one party attempted to bypass arbitration and proceed to court, the appellate court reaffirmed the principle enshrined in Section 4 of the Arbitration and Conciliation Act (ACA), which mandates courts to stay proceedings where there is a valid arbitration agreement. The decision emphasizes the autonomy of arbitration and the

⁵¹ Tweeddale, A and Ajogwu k(2005) “*Arbitration of Commercial Disputes*” Oxford University Press. 45.

⁵² Idornigie S. I. (2009) “*Research Practices in International Commercial Arbitration: Sources and Strategies*” International Trade Law and Regulation. 69.

court's obligation to uphold the terms agreed upon by parties. Also, in the case of Nigerian National Petroleum Corporation (NNPC) v Lutin Investments Ltd. & Anor. the enforcement of arbitral awards and the pro-arbitration stance of Nigerian courts were highlighted. The Supreme Court ruled in favor of enforcing the arbitral award, despite challenges by NNPC to set it aside. The court held that arbitral awards are binding, pursuant to Section 31 of the ACA, unless valid grounds for refusal under Section 48 are established.⁵³ This case demonstrates the judiciary's support for arbitration as an effective mechanism for resolving commercial disputes and ensuring finality.

Efficiency, Cost-Effectiveness, and Confidentiality.

Efficiency and cost-effectiveness are among the most compelling reasons why arbitration is often preferred over traditional court processes, especially in commercial disputes.

Arbitration allows the parties to have more control over the schedule and procedures, which can result in a faster resolution. According to Waziri (2020), arbitration proceedings tend to be shorter and less expensive because they avoid the complexity and formality that come with court litigation. These savings in time and money make arbitration an appealing choice for businesses seeking to avoid the protracted nature of litigation.

Confidentiality is another feature that makes arbitration particularly suitable for commercial Transactions. In many business disputes, the parties involved are keen to keep the details of the dispute private, to protect sensitive information. Peters (2020) explains that arbitration proceedings are generally private, and the resulting awards are not usually made public. This Confidentiality helps safeguard the reputation of the businesses involved, as sensitive trade secrets, financial data, or other proprietary information are not exposed to the public eye. As a result, companies are more likely to choose arbitration as a dispute resolution mechanism because it allows them to resolve their issues discreetly without the risk of negative publicity.

Several case studies illustrate the effectiveness of arbitration in resolving commercial disputes in Nigeria. One notable example is the case of AIC Limited v. Nigerian National Petroleum Corporation (NNPC), which demonstrates how arbitration can successfully resolve complex Commercial disagreements in Nigeria's oil and gas sector. Hussaini (2018) discusses how Arbitration was used to resolve contractual disputes between the two parties, highlighting the

⁵³ Carr Indira(2005) "*International Trade Law*", Routledge-Cavendish, 615.

advantages of using arbitration in a sector where the stakes are high, and confidentiality is crucial. This case underscores the utility of arbitration in Nigeria's commercial landscape, where businesses in the energy sector often face high-value disputes. In the case of *Statoil (Nig.) Ltd. v. NNPC*,⁵⁴ the court addressed the issue of excessive judicial interference in arbitration proceedings. The dispute involved a Production Sharing Contract (PSC), and the arbitration clause required disputes to be resolved through arbitration. Despite an arbitral award being rendered, one party sought to have it set aside on procedural grounds.

The Court of Appeal reiterated that judicial intervention in arbitration should be limited, in line with Sections 29 and 34 of the ACA.⁵⁴ The court further emphasized that arbitration promotes efficiency and reduces the burden on traditional courts.

The case of *Okechukwu v. Etukokwu & Ors.*⁵⁵ underscores the principle of party autonomy in arbitration, particularly in the appointment of arbitrators. The dispute revolved around a contractual agreement that allowed the parties to select their arbitrators. When one party challenged the appointment process, the court upheld the parties' autonomy, as provided

Under Sections 6–7 of the ACA. The decision reaffirmed the importance of respecting the procedural choices made by parties in their arbitration agreements and further solidified arbitration as a party-driven dispute resolution mechanism.

In another example, the arbitration process has been effectively used in Nigeria's banking sector, where the volume of commercial disputes has increased in recent years. Akanbi (2012) explains that Nigerian banks and financial institutions increasingly rely on arbitration to resolve disputes with clients or between themselves. In particular, arbitration provides a quick, cost-effective, and enforceable means of resolving financial disputes, where time and confidentiality are of the essence.⁵⁶ These case studies demonstrate how arbitration is becoming an indispensable tool for resolving complex and high-stakes commercial disputes in Nigeria.

Despite its advantages, there are still significant challenges in using arbitration as the primary means of dispute resolution in Nigeria. One of the main obstacles is the judicial intervention in

⁵⁴ Carr Indira (2005) *“International Trade Law”*, Routledge-Cavendish, 615

⁵⁵ Baxter J. (2006) *“International Business Disputes”* International and Comparative Law Quarterly VOL 9

⁵⁶ Akanbi L. (1995) *“Use of Arbitration in Financial Services Disputes”* 2 JIBFL.

arbitration proceedings. Olujobi and Ajayi (2018) note that Nigerian courts are sometimes overly involved in arbitration processes, often ruling on matters that should be within the scope of the arbitrators' discretion. This judicial interference can delay proceedings and reduce the effectiveness of arbitration as a swift dispute resolution method. Although the Arbitration and Conciliation Act is designed to minimize such interventions, practical challenges remain, such as the lack of consistency in court decisions regarding arbitral awards.

Another challenge is the limited infrastructure and the lack of sufficient trained arbitrators within the Nigerian legal system. Idornigie (2019) argues that while arbitration is gaining recognition, there is a shortage of qualified, experienced arbitrators who can handle complex commercial disputes, particularly in niche areas such as international trade, energy, and technology.⁵⁷ This limitation can affect the quality of arbitration proceedings and deter

businesses from fully embracing arbitration as a reliable method of resolving disputes.

Addressing this issue would require targeted efforts in training arbitrators and ensuring that arbitration institutions are well-equipped to handle the increasing demand for arbitration services.

Arbitration offers numerous benefits for resolving commercial disputes, particularly in the Nigerian context. The speed, cost-effectiveness, confidentiality, and enforceability of arbitral awards make it a preferred choice for businesses engaged in commercial transactions. However, as highlighted in various case studies, challenges such as judicial intervention and a lack of qualified arbitrators still hinder its full potential. Despite these challenges, arbitration remains a vital tool for dispute resolution in Nigeria, particularly in sectors such as oil and gas, banking, and finance. Moving forward, addressing these challenges through better legal reforms and infrastructure development will enhance the role of arbitration in Nigeria's commercial landscape.

International commercial arbitration positively impacts Nigerian businesses by offering a quicker, more efficient, and confidential dispute resolution process, attracting foreign investment and

⁵⁷ Idornigie S. I. (2009) "*Research Practices in International Commercial Arbitration: Sources and Strategies*" International Trade Law and Regulation.69.

promoting economic growth through adherence to international standards, and providing flexibility and expert arbitrators.

Key Impacts of international commercial arbitration in Nigeria Businesses.

Efficiency and Speed:

Arbitration provides a faster resolution to commercial disputes compared to lengthy court processes, which is crucial in a fast-paced business environment.

Confidentiality:

The process and outcomes are kept private, which is attractive for businesses dealing with sensitive information and wanting to protect their reputation.

Expert Arbitrators:

Parties can select arbitrators with specialized knowledge in their specific industry, leading to better-informed and more effective dispute resolution.

Neutral Forum:

International arbitration offers a neutral platform for resolving disputes, which is vital for businesses with international partners who may be wary of one party's domestic legal system.

Attracts Investment:

A reliable and efficient dispute resolution mechanism like arbitration is essential for attracting foreign investment and fostering economic growth in Nigeria.

Enhanced Legal Framework:

The Arbitration and Mediation Act has modernized Nigeria's framework, aligning it with international standards and fostering confidence in the business environment.

Party Autonomy and Flexibility:

The process allows parties to tailor the procedure, rules, and chosen arbitrators to their specific needs, increasing satisfaction and compliance.

International commercial arbitration significantly benefits Nigerian businesses by improving dispute resolution and creating a more predictable, appealing business environment. By embracing the modernization brought by the Arbitration and Mediation Act and addressing the existing challenges, Nigeria can further strengthen its position as a hub for international business and investment.

4.2 Benefits of International Commercial Arbitration in Nigeria Business.

International commercial arbitration offers Nigerian businesses benefits including a neutral process, expert arbitrators, confidentiality, faster resolution, flexible procedures, and international enforceability of awards under the New York Convention. The Arbitration and Mediation Act 2023 enhances Nigeria's framework for arbitration,⁵⁸ promoting its role in resolving cross-border commercial disputes efficiently and privately, ensuring business continuity.

Key Benefits of International Commercial Arbitration in Nigerian Businesses

Neutrality and Impartiality:

Arbitration provides a neutral forum, avoiding the potential bias of national court systems for foreign parties involved in international disputes.

Expert Arbitrators:

No parties can select arbitrators with specific expertise in the subject matter of the dispute, leading to more informed and relevant decisions than those from generalist judges.

Confidentiality:

Unlike public court proceedings, arbitration is private and confidential, protecting sensitive commercial information, trade secrets, and a company's reputation.

Speed and Efficiency:

Arbitration offers a faster dispute resolution process, helping businesses avoid lengthy court battles and minimize disruptions to their operations and business continuity.

⁵⁸ Lew, J. D. M, Mistellis, L. A, Kroll, S. M, (2003) "*Comparative International Commercial Arbitration*" Kluwer Law International,.331

Flexibility:

Parties have the freedom to customize the arbitration process, including choosing the procedural rules, location (seat), and language of the arbitration, aligning it with their specific needs.

International Enforceability:

Awards made in arbitration are generally enforceable across many countries due to international conventions, especially the New York Convention, which simplifies cross-border enforcement.

Modernized Regulatory Framework:

The Arbitration and Mediation Act 2023 provides a comprehensive and modern legal framework for arbitration in Nigeria, aligning it with international best practices and promoting confidence in the system.⁵⁹

Limited Recourse:

The limited grounds for appeal in arbitration provide greater finality to the dispute resolution process, compared to litigation.

4.3 Challenges of International Commercial Arbitration in Nigeria Business.

Arbitration is increasingly seen as an efficient mechanism for resolving commercial disputes in Nigeria, particularly given the growing complexities of business transactions. However, despite its advantages, arbitration in the country faces significant challenges that hinder its widespread adoption and effectiveness. These challenges include legislative and institutional bottlenecks that slow the process and create inconsistencies in legal frameworks, as well as issues related to the enforcement of arbitral awards, which are often delayed or obstructed by the judicial system. Additionally, corruption and arbitrator bias raise concerns about the integrity and fairness of the arbitration process, while a lack of awareness and expertise in arbitration further undermines its potential. Addressing these challenges requires comprehensive reforms, greater investment in training, and improvements in institutional support, all of which are critical for ensuring that arbitration can effectively serve its role in resolving commercial disputes in Nigeria.

⁵⁹ Lew, J. D. M, Mistellis, L. A, Kroll, S. M, (2003) “*Comparative International Commercial Arbitration*” Kluwer Law International,.331

i. Legislative and Institutional Bottlenecks

Arbitration in Nigeria faces significant legislative and institutional challenges that impede its effectiveness in resolving commercial disputes. One of the key issues is the slow pace of legal reforms, which affects the efficiency and attractiveness of arbitration as a dispute resolution mechanism. Kuforiji discusses how Nigeria's legislative framework for arbitration, though largely based on the Arbitration and Conciliation Act of 1988, requires significant updates to address current global arbitration practices.⁶⁰ The absence of up-to-date regulations that align with international standards creates confusion and inconsistencies in arbitration proceedings.

Additionally, the institutional capacity for managing arbitration proceedings in Nigeria remains underdeveloped. The lack of specialized arbitration centers and trained personnel further exacerbates the problem.

Institutional weaknesses, such as inadequate support for arbitration by courts and government agencies, hinder the proper functioning of arbitration in Nigeria. Kuforiji notes that the lack of comprehensive institutional frameworks to oversee arbitration processes and manage arbitrator appointments in Nigeria often leads to delays in proceedings.

Consequently, businesses may be reluctant to choose arbitration as a mechanism for dispute resolution, preferring to resort to litigation. In the face of these institutional bottlenecks, businesses are left facing inefficiency, which diminishes the appeal of arbitration as a quick and reliable means of resolving disputes.

ii. Enforcement of Arbitral Awards

The enforcement of arbitral awards remains one of the most significant challenges in Nigeria's arbitration landscape. Despite Nigeria being a signatory to international agreements like the New York Convention, which should facilitate the enforcement of arbitral awards across borders, issues persist in both domestic and international contexts. Kuforiji highlights that Nigerian courts often exhibit reluctance in enforcing arbitral awards, especially when they involve powerful entities or sensitive sectors like oil and gas. This judicial intervention, sometimes contrary to the provisions of the Arbitration and Conciliation Act, undermines the principle of finality in arbitration. It results

⁶⁰ Kuforji, K. (2006) "Practice Points: The International View of Arbitration" Law Society Gazette 26

in delays in the enforcement process, leading to frustration among businesses that rely on arbitration for its speed and efficiency.⁶¹ Bonniticha (2021) elaborates on how the legal system's reluctance to enforce arbitral awards can be attributed to issues such as the presence of corrupt practices in the judicial system and inconsistencies in the application of arbitration law.⁶² This lack of confidence in the enforcement process makes Nigeria a less attractive destination for international arbitration, as foreign investors may fear that their awards may not be upheld in Nigerian courts. Without clear legal backing and a judicial environment supportive of arbitration, businesses find it difficult to rely on the dispute resolution process in Nigeria.

iii Corruption and Arbitrator Bias.

Corruption and arbitrator bias are pervasive issues that significantly affect the credibility of arbitration proceedings in Nigeria. According to Bonniticha (2021), Nigeria's commercial arbitration environment is tainted by allegations of corruption and biased decision-making.⁶³

These problems arise when arbitrators or parties to arbitration proceedings engage in unethical practices to influence the outcome of disputes. This undermines the integrity of the arbitration process and deters parties from using it as a dispute resolution method. Furthermore, Aisha (2021) argues that arbitrators in Nigeria may face pressures from influential figures, leading to biased judgments, which negatively impacts the fairness of the arbitration process.

The lack of clear ethical guidelines and the insufficient regulation of arbitrators' conduct exacerbate this issue. As businesses increasingly seek arbitration for its neutrality and fairness, the perception of bias and corruption can have far-reaching consequences. If arbitral proceedings are perceived as susceptible to external influences, companies may seek alternative dispute resolution mechanisms, thus further diminishing the role of arbitration in Nigeria.

iv. Lack of Awareness and Expertise in Arbitration.

Another critical challenge in Nigeria is the lack of widespread awareness and expertise in arbitration. While arbitration is gaining popularity in the business community, many individuals,

⁶¹ Kuforji, K. (2006) "*Practice Points: The International View of Arbitration*" Law Society Gazette 28.

⁶² Bonniticha, (2001) "*Determining Arbitral Jurisdiction: Allocation of Tasks between Courts and Arbitrators*" 9 ADRLJ 19

⁶³ Bonniticha, (2001) "*Determining Arbitral Jurisdiction: Allocation of Tasks between Courts and Arbitrators*" 9 ADRLJ 19.

including legal practitioners, are still unfamiliar with its nuances. Aisha (2021) notes that a significant portion of the Nigerian legal profession has not been adequately trained in arbitration, which affects the quality of arbitral proceedings. Without the necessary expertise, both lawyers and arbitrators may fail to manage cases effectively, potentially leading to delays, errors, and unsatisfactory outcomes for parties involved. The lack of sufficient training and education on arbitration is particularly noticeable among judges and lawyers who are primarily trained in litigation. As a result, these legal professionals may be unaware of the complexities involved in arbitration or may treat it similarly to litigation, further contributing to its inefficiency. Moreover, Olujobi and Ajayi (2018) highlight the importance of improving the understanding of arbitration in Nigeria, noting that investment in education and awareness programs can help bridge this gap.⁶⁴ Without addressing the issue of training and awareness, arbitration may remain a tool that is underutilized, despite its potential to resolve commercial disputes effectively.

While arbitration holds significant promise as a tool for resolving commercial disputes in Nigeria, several challenges persist. Legislative and institutional bottlenecks, difficulties in enforcing arbitral awards, corruption and arbitrator bias, and a lack of awareness and expertise in arbitration all hinder its potential. Overcoming these challenges will require comprehensive legal reforms, the establishment of robust arbitration institutions, stricter ethical standards for arbitrators, and increased investment in training legal professionals. Addressing these issues will not only improve the efficiency of arbitration in Nigeria but also enhance its attractiveness as a dispute resolution mechanism for both domestic and international businesses.

Challenges of international commercial arbitration in Nigeria include the deep-rooted culture of litigation, inconsistencies in the legal framework and the enforcement of awards, a lack of adequately skilled arbitrators with specialized knowledge, and the high costs associated with the arbitration process. Despite legislative reforms and adherence to international conventions like the New York Convention, the judicial system's slow pace, potential for judicial intervention, and inconsistent application of arbitration laws hinder its effectiveness as a preferred dispute resolution method.

⁶⁴ Olujobi M.& Ajayi S. (2008) “*Establishing Jurisdiction in Commercial Disputes: Arbitral Autonomy And the Principle of Competent- competent*” Journal of Business Law 2008

Legal & Legislative Challenges of international commercial arbitration in Nigerian Businesses.

Weak Legal Framework:

The core legislation, the Arbitration and Conciliation Act (ACA) 2004, requires complete overhaul and amendment to align with international best practices and address shortcomings.

Judicial Intervention & Delays:

Despite its goal to be a swift alternative to litigation, judicial bodies sometimes delay the enforcement of awards, undermining the process.

Inconsistent Legislation:

Inconsistencies exist between the ACA, the 2023 Arbitration and Mediation Act, and older laws regarding the enforcement of foreign arbitral awards, creating uncertainty and posing a threat to international standards.

Capacity & Skills enforcement.

The litigation suffers due to insufficient capacity and skillful personnel in executing arbitration litigation and awards of international commercial arbitration.

Lack of Specialized Arbitrators:

Finding and training arbitrators with the specialized knowledge required for emerging sectors (like fintech, AI, or renewable energy) remains a significant challenge.⁶⁵

Inadequate Training:

A widespread lack of awareness and training for potential arbitrators, particularly among developing nations, contributes to a shortage of skilled professionals.

Cultural & Systemic Issues.

Implications of lack of cultural and systemic process also tends challenges to the competent and efficacy of the smooth activities of international commercial arbitration activities to thrive and make the head way in Nigeria Businesses.

⁶⁵ Lee, M. Finetech, S. (1995) “*Use of Arbitration in Financial Services Disputes*” 2 JIBFL

Prevalence of Litigation:

A deeply ingrained cultural preference for litigation over arbitration continues to hinder the growth of arbitration as a primary method for resolving commercial disputes.

Enforcement Challenges:

While the New York Convention is incorporated, effectively enforcing arbitral awards remains a hurdle, with losing parties sometimes delaying the process.

Cost & Procedural Inefficiencies

High Costs:

Arbitration can be an expensive process, as it involves costs for the arbitration itself, party representation, and the fees for arbitrators.

Uncertainty of Outcomes:

Arbitrators are not strictly bound by previous decisions (*stare decisis*), making arbitral awards less predictable than court decisions, particularly for parties accustomed to a rigid legal precedent.

4.4 The Role of the Court in International Commercial Arbitration in Nigerian Business.

In Nigeria, courts act as crucial supporters for international commercial arbitration, with powers to refer parties to arbitration, stay court proceedings, appoint arbitrators, enforce arbitral awards, and set them aside under specific circumstances. Under the Arbitration and Mediation Act 2023 (AMA), courts must uphold arbitration agreements and are instrumental in the recognition and enforcement of arbitral awards, whether international or domestic.

A. Before Arbitration Begins;

Upholding Arbitration Agreements:

Courts are expected to uphold arbitration agreements and refer parties to arbitration when a lawsuit is filed for a matter covered by the agreement.

Staying Court Proceedings:

Upon request from a party, courts must stay court proceedings if a valid arbitration agreement exists, thereby preserving the chosen dispute resolution mechanism.

Appointing Arbitrators:

If parties fail to agree on an arbitrator or follow the agreed-upon appointment procedure, the court can be petitioned to make the appointment.

Revoking Arbitration Agreements:

An arbitration agreement is generally irrevocable, but courts may grant leave to revoke it in certain circumstances.

B. During the Arbitration Process

Intervention for Obstructions:

Courts can step in if a party attempts to frustrate the arbitration process or if there is a procedural hitch.

Compelling Witness Attendance:

Courts can be used to compel the attendance of witnesses, a necessary measure to ensure the fairness of the arbitral proceedings.

C. After the Arbitration

Enforcement of Awards:

Arbitrators cannot enforce their own awards. A party must apply to the court to have the award enforced, and the court can allow it to be enforced like a court judgment.

Setting Aside Awards:

Courts have the power to set aside an arbitral award under specific conditions, though this is done with restraint to respect the arbitral process.

Recognition and Enforcement:

Courts play a key role in the recognition and enforcement of arbitral awards, especially those made outside Nigeria, in line with international conventions like the New York Convention.

The quality of judicial support and respect for the principle of minimum intervention are crucial factors in assessing whether a jurisdiction is attractive for arbitration.

While there have been efforts to present Nigeria as an arbitration-friendly jurisdiction and an attractive arbitration venue, questions remain about the adequacy, effectiveness and certainty of legal rules concerning arbitration in Nigeria.⁶⁶ There are also questions about the quality and efficiency of judicial support for arbitration in light of some judicial decisions affecting arbitration that have generated controversy.⁶⁷ Through a careful analysis of key statutory provisions and judicial decisions, this article analyses support for arbitration in Nigeria in respect of selected topics, including party autonomy, upholding arbitration agreements (especially concerning the stay of judicial proceedings), the stay of arbitration proceedings and third party intervention. More so identifies scope for improvement in statutory and judicial approaches, thus suggestions concerning both judicial approaches and reform of the statutory regime.

⁶⁶ Moses, M.L.; *The Principles and Practice of International Commercial Arbitration*; 2017; Cambridge University press; 3rd Edition.

⁶⁷ Blackaby, N., Partasides, C., Redfern, A., & Hunter, M.; *Redfern and Hunter on International Arbitration*; 2021; Oxford University Press; 7th Edition

CHAPTER FIVE: CONCLUSION.

5.1. FINDINGS.

This research has shown that it is quite evident that though the Model Law serves as a legal framework for international commercial arbitration proceedings, it was not wholly adapted by the United Kingdom and Nigeria. It was adopted by the United Kingdom and Nigeria with some variations in the areas of the scope of application which in the United Kingdom applies to both domestic and international arbitration, commercial and non-commercial arbitration, thereby making it a hub for states to refer to it as a seat for their arbitration. Under the Nigeria Legal System on the other hand, the scope of applicability is for only commercial arbitration either domestic or international, thereby restricting its applicability.

In the area of territorial application, the English Act recognizes both territoriality and delocalization of arbitration while the Nigerian Act recognizes the doctrine of territoriality. On the issue of the arbitrability of disputes, Nigeria bases its Act on the principle of objective arbitrability, which is what the Law of the land provides. The English Act leaves the issue of arbitrability to be decided by the courts as defined by common law. Also on the issue of power of waiver, while the English Act expects the party contesting to prove that even with reasonable diligence he would not have been aware of the grounds for objection while the Nigerian Act requires actual knowledge and ‘without undue delay’. Furthermore, the Nigerian Act provides for derogation from mandatory provisions of the Act.

The English and Nigerian Legal systems provide extensively for the extent of the court’s intervention in international commercial arbitration proceedings while confirming the doctrines of competence-competence and separability. However, the Nigerian ACA does not provide for the Right of Appeal from the ruling on jurisdiction by the arbitral tribunal in Nigeria. This goes a long way in ensuring that the time of the parties is saved.⁶⁸

⁶⁸ Sections 6–11 of ACA 1988.

This research has provided an in-depth analysis of the role of arbitration in resolving commercial Disputes in Nigeria, focusing on the challenges and opportunities within the context of a developing economy.

Key findings highlight that while arbitration is widely recognized for its potential to offer efficient, cost-effective, and confidential dispute resolution, significant challenges hinder its effectiveness in Nigeria. These challenges include legislative and Institutional bottlenecks, difficulties in enforcing arbitral awards, the prevalence of corruption And arbitrator bias, and a lack of awareness and expertise in arbitration.⁶⁹ Additionally, the comparison with international best practices from jurisdictions like Singapore, Switzerland, and the United Kingdom demonstrates that countries with modern, supportive legal frameworks, robust arbitration institutions, and investment in professional development have successfully fostered environments conducive to arbitration. These findings underline the need for Nigeria to modernize its arbitration laws, improve institutional support, and invest in capacity-building to enhance its arbitration landscape. Based on the findings, several policy and legal recommendations are proposed to improve Arbitration practices in Nigeria. First, there is an urgent need to update Nigeria's Arbitration and Conciliation Act to better align with international standards, such as the UNCITRAL Model Law, to ensure clarity, consistency, and efficiency in arbitration processes. Strengthening the enforcement mechanism for arbitral awards, in line with the New York Convention, is crucial to ensuring that arbitral decisions are respected and upheld by Nigerian Courts. Additionally, establishing independent and specialized arbitration institutions similar to the Singapore International Arbitration Centre (SIAC) would provide efficient Administrative support and a roster of qualified arbitrators, thus reducing reliance on the Court system. Judicial training on arbitration principles should also be prioritized to foster a more pro-arbitration stance among Nigerian judges, ensuring that courts only intervene in cases where it is absolutely necessary, such as in the enforcement of awards. These measures would help establish a more predictable and transparent arbitration framework that can attract international and domestic businesses.

⁶⁹ Stavros, L.B.; *Comparative International Commercial Arbitration*; 2003; Kluwer Law International.

5.2. RECOMMENDATIONS.

1. Redrafting of Defective Provisions

It is strongly suggested that Sections 44, 45, 49 and 50 (Part III) of the ACA which are individually defective in catering for parties who wish to situate their international commercial arbitration proceedings in Nigeria be redrafted. In redrafting these sections, the UNCITRAL Arbitration Rules should be a guide for the draftsman if it is indeed intended to adopt substantially some of the provisions of those Rules in these areas.

It is also strongly suggested that the appointing authority provided for under Section 54(2) of the ACA should be amended as it is doubtful if the Office of the Secretary-General of the Permanent Court of Arbitration at the Hague is the most appropriate appointing authority even though the law pertains to international commercial arbitration. An alternative is for the courts in Nigeria to be empowered as the appointing authority or the Asian-African Legal Consultative Committee's (AALCC) Lagos Regional Centre for International Commercial Arbitration would seem a better option. Consequently, Section 4 of the ACA which is also an inelegant adoption of Article 8 of the Model law should also be re-drafted.

2. Adoption of the Doctrine of Localization

It is suggested that the Nigerian Legal System adopts the doctrine of localization to provide for parties to international commercial arbitration who do not wish to adopt any law under the *lex arbitri*. There may be reference to members of the arbitral tribunal making applicable laws *ex aequo et bono* or as *amiable compositeur*.

3. Expansion of Scope of Application

It is suggested that in order to provide an enabling environment for international commercial arbitration to thrive in Nigeria, the scope of application of the Nigerian ACA should be expanded to encompass non-commercial disputes.

5.3. CONCLUSION.

International commercial arbitration is being provided for within the National Legal Systems of the United Kingdom and Nigeria through the use of the UNCITRAL Model Law on International Commercial Arbitration as a legal framework for international commercial arbitration although

with a few variations. However, as noted above, Nigeria still has a long way to go in ensuring that an enabling environment is created for international commercial proceedings to be held in Nigeria as ‘the seat of arbitration.’ It is not strange to still see parties adopt London as their seat of arbitration even though the subject matter of the dispute, place of business of the parties and place of execution of the contract is situated within Nigeria.

It is only when the practice and law governing international commercial arbitration has been fully developed and becomes attractive for use by prospective disputants that Nigeria would be able to attract more patronage and revenue for the country. In the words of Adebajo A.I, “...Nigeria cannot for now attract international arbitration... we have to start with erecting structures for developing domestic arbitration and conciliation systems which will over time draw the attention of the world to the suitability of Nigeria as a venue for international commercial arbitration.”⁷⁰

International commercial arbitration is an indispensable tool for the resolution of commercial disputes at the international level. It is hoped that efforts should be made to address the obstacles highlighted in this paper so as to ensure wide acceptance of this resolution mechanism popularly referred to as international commercial arbitration. Addressing these obstacles will definitely enhance the benefits of international commercial arbitration in the developing countries particularly among the businessmen and investors. Most of the domestic courts are very slow in handling arbitration matters as shown in *Kano Urban Development Board v. Fanz Construction Co. Ltd*⁷¹ where an application for enforcement took thirteen years to be disposed and also in *Commerce Assurance Ltd v. Alli Construction Co. Ltd* where an application for enforcement and impeachment took eleven years to be disposed.⁷²

Hence, it is imperative to note that, notwithstanding the challenges facing arbitration as discussed above, it is still a widely encouraged model for settlement of commercial disputes. However, there are a few solutions I would be suggesting to ensure a smoother arbitral process in Nigeria;

a) to effectively reduce the issue of delay in enforcement of arbitral award, it should be added under matters that can be heard under fast-track procedure to ensure that the period for application

⁷⁰ Orojo, J.O., & Adebajo A. I.; *Law and Practice of Arbitration and Conciliation in Nigeria*; 1999; Mbeyi & Associates Nigeria.

⁷¹ *Kano State Urban Development Board v. Fanz Construction Co. Ltd.* (1990) 4 NWLR (Pt. 142) 1.

⁷² *Assurance Ltd v Alli Construction Co. Ltd.* (1994) 4 NWLR (Pt. 132) 2.

for enforcement does not extend beyond nine (9) months as provided under the High Court (Civil Procedure Rules) of Lagos⁴⁹, from application to final Judgement.

b) restricting appeals in enforcement of arbitral processes; this can be done by reducing the final appellate court in matters regarding arbitral enforcement. However, the proposed re-enacted Arbitration and Conciliation Act, 2017 provides that the various limitation laws of the states shall apply to arbitral proceedings as they apply to judicial proceedings, this would ensure that where there are claims, they are made diligently and in a timely manner. This means that a lawsuit will no longer be filed because it will be prohibited by law. This ensures that where there is dissatisfaction with an arbitral award, if the dissatisfied party do not act timeously, the limitation (where applicable) would invalidate his right to seek legal redress.⁷³ Thus, addressing the issue of delay on one part. While achieving this would require a lot of legislative effort, it is necessary of improve and encourage arbitral processes in Nigeria.

⁷³ Akanbi, M. M. (2012). *Challenges of arbitration practices under the Nigerian Arbitration and Conciliation Act Of 1988: Some practical considerations*. *Arbitration: The International Journal of Arbitration, Mediation and Dispute Management*, 78(4), 319-334.

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