

ADVANCING OIL AND GAS ARBITRATION IN NIGERIA: A LEGAL ROADMAP FOR DOMICILIATION*

Abstract

This article presents a legal roadmap for the domiciliation of oil and gas arbitration in Nigeria, highlighting strategic reforms, legislative innovations, and policy actions aimed at repositioning Nigeria as a preferred arbitration seat. It critically examines the Arbitration and Mediation Act 2023, the National Arbitration and ADR Policy 2025, and the Petroleum Industry Act 2021, identifying gaps and proposing actionable interventions. Drawing lessons from comparative jurisdictions, the article advocates for legal mandates, specialized frameworks, and institutional enhancements to foster investor confidence and ensure that disputes arising from Nigeria's oil and gas sector are resolved within its jurisdiction to retain capital spend.

Keywords: Arbitration, Oil and Gas, Domiciliation, Legal Roadmap, Nigeria

1. Introduction: Imperative for Localizing Arbitration

Since the commercial discovery of crude oil in 1956, Nigeria's economy has been heavily reliant on hydrocarbon resources. The oil and gas sector contributes over 90% of foreign exchange earnings¹ and approximately 50–60% of government revenue,² depending on global oil prices and domestic output. Given the complexity and scale of operations—from exploration to production—the sector is inherently prone to disputes, which are predominantly resolved through arbitration. However, despite Nigeria being the locus of these transactions, arbitration proceedings from Nigeria are frequently seated abroad,³ particularly in jurisdictions like London, Paris, and Singapore. This practice flies in the face of the Nigerian Oil and Gas Industry Content Development Act 2010 and causes significant capital flight. Recent legislative and policy developments in Nigeria signal a strategic shift toward localizing arbitration. This article critically examines the legal mechanisms available to support the domiciliation of oil and gas arbitration in Nigeria. It compares Nigeria's commercial arbitration framework with other jurisdictions, and proposes actionable reforms to engender effective domiciliation of commercial arbitration⁴ in Nigeria.

2. The National Arbitration and ADR Policy 2025: Aspiration versus Enforcement

Unveiled in February 2025 and approved by the Federal Executive Council in July 2024, Nigeria's National Arbitration and ADR Policy (2024–2028) represents a strategic effort to reposition the country as a regional and international hub for commercial dispute resolution. Developed in response to Nigeria's challenges in high-profile arbitration cases and the need to align with global best practices, the Policy promotes the use of arbitration and mediation for both domestic and international disputes. It emphasizes Nigeria's commitment to international conventions such as the UNCITRAL Model Law and the New York Convention, while encouraging the selection of Nigeria as the seat of arbitration⁵, particularly in contracts involving government agencies and indigenous entities⁶. However, the non-binding nature of this policy significantly limits its practical impact. While it articulates clear aspirations to enhance Nigeria's arbitration infrastructure and reduce reliance on foreign jurisdictions, it lacks the legislative force to compel compliance. Without codification into law, parties remain free to bypass Nigeria as a venue for arbitration, undermining the Policy's core objective of promoting domiciliation. This gap is particularly critical in sectors like oil and gas, where disputes involving Nigerian entities are often resolved abroad, depriving the country of economic and institutional benefits. To achieve meaningful reform, the Policy must evolve beyond aspiration into enforceable mandate. Elevating its provisions into legislation would ensure that disputes involving Nigerian interests—especially those tied to public institutions and strategic industries—are arbitrated within Nigeria. Such a move would not only strengthen Nigeria's legal architecture but also build investor confidence, stimulate the local arbitration ecosystem, and reinforce the country's position as a credible and competitive arbitration destination.

3. The Arbitration and Mediation Act 2023: Modernization without Mandate

The Arbitration and Mediation Act 2023 marks a significant overhaul of Nigeria's dispute resolution framework, replacing the outdated 1988 Act with a modern, unified legal structure. It aligns closely with international standards such as the

*By **Naboth ONYESOH, LLB, LL.M, BL**, Acting Director, Legal Services of NCDMB where he oversees and coordinates the overall direction of legal services functions in the Board, supporting the vision and implementation of local content requirements in the Nigerian Oil and Gas Industry.

¹The CBN Economic Report 2025, CBN Website: www.cbn.gov.ng-extension://mjdgcagmikhblbjnilkmfnjeamfikk/https://www.cbn.gov.ng/Out/2025/RSD/January%202025%20Economic%20Report.pdf accessed on 29 July 2025.

² The revenue is primarily channeled through the Federation Account from crude oil sales, royalties, and petroleum profit (now hydrocarbon) taxes.

³ *Process & Industrial Developments Ltd v Nigeria* [2019] EWHC 2241 (Comm); *IPCO (Nigeria) Ltd v NNPC* [2017] UKSC 16; *Nigerian National Petroleum Corporation v Lutin Investments Ltd. & Anor* [2006] NGSC ; and Lagos Deep Offshore Logistics Base (LADOL) and Samsung Heavy Industries (SHI) <https://www.ladol.com/samsung-heavy-industries-nigeria-shin-and-ladol-integrated-logistics-free-zone-enterprise-ladol/>

⁴ The term 'commercial arbitration' in this article is used in the broad sense to mean the form of alternative dispute resolution (ADR) method for resolving business disputes away from litigation. In this context, it encompasses both domestic, international and investment arbitrations.

⁵ See Clause 13.0, Nigeria's National Arbitration and ADR Policy 2024.

⁶ Enhancing Arbitration and ADR In Nigeria: Key Features of The National Policy on Arbitration and Alternative Dispute Resolution | Kluwer Arbitration Blog

UNCITRAL Model Law and the New York Convention, introducing innovations like the recognition of electronic communications in arbitration agreements and clearer procedural rules. By integrating both arbitration and mediation under one statute, the Act aims to streamline alternative dispute resolution and reduce the burden on Nigeria's congested court system. Despite these advancements, the Act stops short of mandating or strongly incentivizing the domiciliation of arbitration in Nigeria. It lacks provisions that would encourage parties—especially in contracts involving Nigerian interests—to choose Nigeria as the seat of arbitration. There are no tax incentives, regulatory preferences, or mandatory clauses that promote the use of local arbitral institutions or Nigerian arbitrators. This omission leaves Nigeria at a disadvantage compared to jurisdictions like Singapore, Paris, and the UK, which have successfully positioned themselves as global arbitration hubs. Moreover, the Act does not address the systemic challenges that deter parties from arbitrating locally, such as concerns over judicial independence and interference, delays in enforcement, and limited institutional capacity. Without a deliberate policy push to foster confidence in Nigeria as a reliable arbitration seat, the country risks continuing to lose the arbitration of high-value disputes to foreign jurisdictions. In this sense, while the AMA 2023 modernizes the legal landscape, it falls short of delivering the strategic punch needed to transform Nigeria into a preferred seat for commercial arbitrations, generally speaking.

4. Arbitration under the Petroleum Industry Act 2021: Progress and Gaps

The **Petroleum Industry Act (PIA) 2021** is a landmark legislation enacted to consolidate and modernize Nigeria's legal framework for the oil and gas sector. Passed after nearly two decades of legislative deliberation, the Act introduces comprehensive reforms in governance, fiscal regimes, and dispute resolution. It reflects a deliberate shift toward regulatory clarity and investor confidence, including the recognition of arbitration as a viable mechanism for resolving disputes in the oil and gas value chain. The Act contains several provisions that support arbitration. Section 76(1)(f) mandates the inclusion of arbitration clauses in model petroleum licences and leases. Sections 33(t) and 96(1)(l) empower the Nigerian Upstream Regulatory Commission and the Nigerian Midstream and Downstream Petroleum Regulatory Authority, respectively, to establish dispute resolution procedures, including arbitration. Section 120(1)(j) permits the inclusion of arbitration clauses in gas infrastructure agreements. Additionally, the First Schedule, Sections 5(b) and 7, reinforces the use of arbitration in resolving disputes arising from petroleum operations in Nigeria. These provisions collectively embed arbitration within the statutory framework of Nigeria's oil and gas industry⁷. However, the PIA does not mandate Nigeria as the seat of arbitration for disputes arising under its provisions. This omission contrasts with localization strategies adopted in jurisdictions such as Brazil, Indonesia, Angola, and several MENA countries, where legislation requires arbitration to be seated domestically, conducted in the national language, and governed by local law or prescribed procedural rules. The absence of such a mandate in the PIA limits its potential to promote the domiciliation of arbitration and retain the associated economic, legal, and institutional benefits within Nigeria.

5. The NOGICD Act 2010: A Missed Opportunity

The Act was introduced to address the low level of Nigerian participation in the oil and gas industry, which was historically dominated by foreign companies. Despite Nigeria being a major oil producer, the country was not reaping sufficient economic benefits due to: Minimal local content in operations; Limited job opportunities for Nigerians; Underdeveloped indigenous skills and capabilities; and Capital flight, as most contracts and services were awarded to foreign firms. Thus, section 51 of the Nigerian Oil and Gas Industry Content Development Act mandates the domiciliation of legal services. However, the Act fails to explicitly classify arbitration as part of legal consultancy service. This ambiguity weakens its potential to serve as a statutory basis for the domiciliation of commercial arbitration of disputes arising from the Nigerian Oil and Gas Industry. A more precise definition could have positioned the Act as the anchor for enforcing in-country arbitration emanating from oil and gas contracts.

6. Comparative Jurisdictions: Lessons from Brazil, Indonesia, Angola, and the UK

Several jurisdictions have adopted legislative and contractual mechanisms to ensure the localization of arbitration in their oil and gas sectors, offering instructive models for Nigeria. These mechanisms typically mandate that arbitration be seated domestically, conducted in the national language, and governed by local law—without necessarily deterring foreign investment. In *Brazil*, while the arbitration law is generally permissive and pro-arbitration, petroleum contracts involving public entities such as Petrobras and the National Agency of Petroleum (ANP) often require arbitration to be seated in Brazil, conducted in Portuguese, and governed by Brazilian law⁸. Similarly, in *Indonesia*, production sharing contracts (PSCs) administered by the upstream regulator (formerly BPMigas) typically mandate arbitration seated in Indonesia, with Indonesian law as the governing law. Although Indonesian law, like Nigeria respects party autonomy, it disfavors the application of foreign law in domestic courts, reinforcing the preference for local arbitration⁹. *Angola* also imposes localization through its Petroleum Activities Law and arbitration framework. Petroleum contracts are generally governed by Angolan law, and arbitration is expected to be seated in Angola and conducted in Portuguese, reflecting the country's

⁷ SPA Abajibade, 'Dispute Resolution By Arbitration in The Nigerian Oil and Gas Industry', <https://spajibade.com/dispute-resolution-by-arbitration-in-the-nigerian-oil-and-gas-industry-under-the-nigeria-petroleum-industry-act-2021/>; see also 'Resolving disputes under the Petroleum Industry Act 2021'.pdf available at <https://www.pwc.com/ng/en/assets/pdf/resolving-disputes-under-the-petroleum-industry-act%202021.pdf>.

⁸ See The Arbitrability of Oil & Gas Disputes under Brazilian Law | Kluwer Arbitration Blog

⁹ Choice of Forum and Choice of Law under Indonesian Law | IDS Attorneys

civil law tradition and linguistic policy¹⁰. In the *United Kingdom*, the model Joint Operating Agreement (JOA) developed by Offshore Energies UK (formerly OGUK) typically stipulates that disputes be resolved either in English courts or through arbitration seated in England or Scotland, with proceedings conducted in English and governed by English law¹¹. These jurisdictions demonstrate that localization of arbitration can be legislatively or contractually mandated without undermining investor confidence. Instead, such mandates can enhance legal predictability, promote domestic legal infrastructure, and ensure that disputes involving national resources are resolved within the jurisdiction most affected by their outcomes.

7. Challenges to Domiciliation in Nigeria: Judicial Perception and Party Autonomy

Efforts to promote Nigeria as a preferred seat for oil and gas arbitrations face significant hurdles, particularly due to entrenched perceptions about the Nigerian judiciary. These perceptions—rooted in reports of corruption, lack of judicial independence, delays, and inconsistent competence—have led many stakeholders to opt for foreign jurisdictions when drafting arbitration clauses.¹² Concerns persist about undue judicial interference, unpredictable rulings, and procedural inefficiencies that may undermine the finality and speed of arbitration.¹³ The principle of party autonomy, a cornerstone of arbitration, allows parties to freely choose the seat of arbitration. This freedom is often exercised to select jurisdictions perceived as more stable, efficient, and arbitration-friendly. In international oil and gas contracts, parties frequently choose seats like London, Paris, or Singapore, citing the integrity and predictability of these legal systems and supportive judiciary. However, on reliance on party autonomy must be balanced against the jurisdictional theory of arbitration, which posits that arbitration is ultimately anchored in national legal systems. While arbitration is consensual, its legitimacy and enforceability are derived from the legal infrastructure of the seat. National laws provide the framework for legitimacy, recognition, enforcement, and judicial support of arbitral awards.

Therefore, it is not contrary to party autonomy for a sovereign state to legislate that disputes arising from operations within its territory—especially in strategic sectors like energy (oil and gas)—must be seated locally. Nigeria, under its sovereign legislative powers, can validly require that oil and gas licences, leases, and contracts include clauses mandating Nigeria as the seat of arbitration as done in the jurisdictions highlighted. Such a requirement does not infringe on party autonomy, rather reflects a legitimate exercise of jurisdictional authority. This approach is consistent with global practices where countries seek to protect strategic interests and promote local dispute resolution capacity.¹⁴

Furthermore, the attractiveness of a jurisdiction as an arbitration seat is not solely determined by judicial perception. Other critical factors include:

- Legal infrastructure and clarity of arbitration laws
- Availability of skilled arbitrators and legal professionals
- Cost-effectiveness and logistical convenience
- Supportive judicial attitudes and minimal intervention
- Enforcement of arbitral awards under international conventions

Nigeria has made commendable strides in reforming its arbitration framework, notably through the Arbitration and Mediation Act 2023 and the National Arbitration and ADR Policy 2025. These instruments aim to modernize Nigeria's arbitration regime, enhance judicial support, and promote institutional arbitration. While challenges remain, recent judicial decisions have shown a growing willingness to uphold arbitration agreements and minimize court interference.¹⁵ Mandating Nigeria as the seat of arbitration for oil and gas disputes can also yield strategic benefits: it fosters legal development, builds local expertise, and ensures that disputes affecting national resources are resolved within the country's legal ecosystem. Far from deterring investment, such a policy—if backed by robust legal safeguards and institutional support—can enhance investor confidence by demonstrating Nigeria's commitment to transparent and efficient dispute resolution.

8. Strategic Legal Interventions to Promote Domiciliation of Arbitration

Abridging Arbitration Appeals: To enhance the finality and efficiency of arbitration in Nigeria, a constitutional amendment should be considered to limit arbitration-related appeals exclusively to the Court of Appeal. This would prevent protracted litigation and reduce the risk of judicial interference in arbitral outcomes. Establishing a dedicated commercial

¹⁰ See Dispute Resolution in Angola, available on <https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2015/02/dispute-resolution-in-angola-arbitration-in-focus.pdf>. see also Chapter 12: ANGOLA in: *Governing Law and Dispute Resolution in the Oil and Gas Industry*

¹¹ See https://oeuk.org.uk/wp-content/uploads/2024/05/CURRENT-JOA_January-2009-updated-November-2021.pdf.

¹² Emmanuel Ogbuefi, 'Nigerian Judiciary and the Common Man' *The Sun* (30 July 2025) <https://thesun.ng/nigerian-judiciary-and-the-common-man/> accessed 1 August 2025.

¹³ Ademola Eyiotope Ojo, 'Arbitration in Nigeria: An Effective Channel for Dispute Resolution or a Mirage?' (2025) 13(6) *International Journal of Law and Legal Studies*.

¹⁴ Nigerian Bar Association, 'Federal Ministry of Justice Unveils the National Policy on Arbitration and Alternative Dispute Resolution (ADR) 2024–2028' (11 February 2025) <https://blog.nigerianbar.org.ng/2025/02/11/federal-ministry-of-justice-unveils-the-national-policy-on-arbitration-and-alternative-dispute-resolution-adr-2024-2028/> accessed 1 August 2025.

¹⁵ *Ibid* (n13).

panel within the Court of Appeal, with expedited timelines and specialized judges, would further streamline the adjudication of arbitration matters and reinforce investor confidence in Nigeria's dispute resolution framework.¹⁶

Specialized Arbitration Frameworks in Free Zones: Nigeria can enhance its attractiveness as an arbitration destination by creating autonomous arbitration regimes within its Oil and Gas Free Zones. These regimes should be modeled after successful examples such as the Dubai International Financial Centre (DIFC) and the Abu Dhabi Global Market (ADGM), which operate under distinct legal systems with independent courts and arbitration centres. By establishing bespoke legislation, independent commercial courts, and customized procedural rules, Nigeria's free zones can offer a neutral and efficient environment for resolving commercial disputes. Importantly, parties should be allowed to opt into these frameworks even without a physical nexus to the zone, thereby broadening their appeal and utility.¹⁷

Commercial Appeals Panel: A specialized Commercial Appeals Panel within the Court of Appeal should be established to handle commercial and arbitration-related disputes. This panel would consist of judges with expertise in commercial law and arbitration, ensuring consistency, predictability, and speed in the resolution of complex disputes. Such a reform would align with the objectives of the Arbitration and Mediation Act 2023 and the National Arbitration and ADR Policy 2025, which aim to modernize Nigeria's arbitration landscape and reduce judicial bottlenecks. Furthermore, reducing the layers of arbitration appeal would expedite the resolution of disputes and reinforce the notion that arbitration is a cost-effective and efficient alternative to litigation. This measure provides a practical solution to one of the longstanding challenges in arbitration proceedings in Nigeria; it offers insights into how procedural reforms can enhance the effectiveness of the evolving arbitration systems in Nigeria.

Blueprint for Reform: Leveraging the DIFC and ADGM Models: The DIFC and ADGM have successfully established themselves as arbitration-friendly jurisdictions by offering legal autonomy, independent courts, and internationally recognized arbitration centres. Nigeria can replicate this model within its free zones to provide a comparable level of neutrality, efficiency, and enforceability. Such a framework would not only attract foreign investment but also ensure that disputes arising from Nigerian oil and gas operations are resolved within a credible and supportive legal environment¹⁸

9. Conclusion

The domiciliation of oil and gas arbitrations in Nigeria is not merely a legal aspiration—it should be a strategic imperative. As this article has demonstrated, the challenges posed by judicial perception and the doctrine of party autonomy, though significant, are not insurmountable. Through a combination of legislative innovation, institutional reform, and policy foresight, Nigeria can reposition itself as a credible and attractive seat for arbitration. The Arbitration and Mediation Act 2023 and the National Arbitration and ADR Policy 2025 have laid a strong foundation for reform. However, to fully realize the benefits of domiciliation, Nigeria must go further—by limiting arbitration appeals, establishing specialized commercial panels, and creating autonomous arbitration frameworks within its special economic zones, beginning with the oil and gas free zones. These interventions, inspired by successful models like the Dubai International Finance Centre (DIFC) and Abu Dhabi Global Market (ADGM) etc, can offer the neutrality, efficiency, and enforceability that international investors seek. Ultimately, the goal of domiciliation is not to compel parties to arbitrate in Nigeria, but to foster a legal and institutional ecosystem that is fascinating, efficient, and trustworthy to make Nigeria emerge as the natural and preferred choice. By investing in robust and respectable legal reforms, strengthening judicial capacity, and aligning its arbitration infrastructure with global best practices, Nigeria can reposition itself as a premier arbitration hub. In doing so, it will not only safeguard its strategic interests in the oil and gas sector but also inspire confidence to international investors that disputes arising from its territory will be resolved with fairness, professionalism, and finality—within its own jurisdiction and under its laws.

¹⁶ Deborah Chukwuedo, 'Beyond Reform: Next Steps After Nigeria's Arbitration Overhaul' (TheNigeriaLawyer, 11 June 2025) <<https://thenigeria-lawyer.com/beyond-reform-next-steps-after-nigerias-arbitration-overhaul/>> accessed 1 August 2025.

¹⁷ Laura Alakija, 'Nigeria's New Arbitration Act: What You Need to Know' (Kluwer Arbitration Blog, 25 June 2023) <<https://legalblogs.wolterskluwer.com/arbitration-blog/nigerias-new-arbitration-act-what-you-need-to-know/>> accessed 1 August 2025.

¹⁸ Squire Patton Boggs, 'Nigeria Reform of Arbitration Law – A Closer Look at the Major Legislative Changes' (June 2023) <<https://www.squirepattonboggs.com/media/files/insights/publications/2023/06/nigeria-reform-of-arbitration-law/nigeria-reform-of-arbitration-law-a-closer-look-at-the-major-legislative-changes.pdf>> accessed 1 August 2025.