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Overview of commercial dispute resolution in Nigeria

Nigeria operates a federal political structure under the Constitution of the Federal Republic of Nigeria, 1999 (“CFRN 1999”). The Federation consists of 36 States and a Federal Capital Territory (“FCT”). The judicial powers of the Federation and the States are vested in a restricted list of courts established by the CFRN 1999, and these courts are expressly designated as the only superior courts of record in Nigeria. Of the 10 courts listed in the CFRN 1999, the five that are most significant for the purpose of this chapter are:

(i) the Supreme Court of Nigeria;
(ii) the Court of Appeal;
(iii) the Federal High Court;
(iv) the High Courts of the States and of the Federal Capital Territory, Abuja; and
(v) the National Industrial Court.

The Supreme Court is the apex court in the Nigerian Judiciary and is the final Court of Appeal with broad jurisdiction to entertain matters brought to it on appeal from the Court of Appeal. The Court of Appeal is the next court in the hierarchy of the Nigerian Judiciary, with broad jurisdiction to entertain appeals from: the Federal High Court; the High Courts of the States and of the FCT, Abuja; the National Industrial Court; and the four intermediate courts of appeal established by the CFRN 1999 to deal with matters of Islamic Personal Law and matters of Customary Law emanating from subordinate courts established to adjudicate over such matters.

The CFRN 1999 recognises the powers of the Federal Legislature and the Legislature of the States to establish other courts as they may deem fit, but expressly provides that such courts shall be courts of subordinate jurisdiction to that of a High Court. Thus, the three courts of first instance listed as (iii) – (v) above are the primary judicial institutions for the resolution of commercial disputes in Nigeria. These three courts are courts of coordinate jurisdiction, and appeals from their decisions go straight to the Court of Appeal. The territorial jurisdiction of the Federal High Court and the National Industrial Court covers the whole of Nigeria, and the process of these courts and their judgments can be served and enforced respectively, anywhere within the Federation. However, these courts sit in several divisions for administrative convenience. The territorial jurisdiction of the High Court of the FCT and the High Courts of the 36 States of the Federation are confined to their respective territories, but there is an efficient mechanism for the service of interstate process and for the recognition and enforcement in any State of the judgments obtained in other States of the Federation. This mechanism is provided in the Sheriffs and Civil Process Act, Cap. S6, Laws of the Federation of Nigeria 2004 (“SCPA”).

Litigation is the most common form of domestic dispute resolution in Nigeria and the legal system and method of litigation is modelled after the English common law. As with other common law jurisdictions, Nigeria operates the adversarial system of adjudication, with opposing parties seeking an outcome most favourable to their position, and with the Judge playing a non-inquisitorial role. However, the jury system is not used in the administration of justice and the presiding Judge is both a judge of the law as well as the facts.
Aside from litigation as a means of commercial dispute resolution, the Nigerian legal system also recognises the various other methods of dispute resolution generally described as Alternative Dispute Resolution (“ADR”), and these methods have gained considerable ground in recent times. The better-known types of ADR in Nigeria are Arbitration, Mediation and Conciliation, and rules of procedure encouraging resort to these methods of dispute resolution are incorporated into the Rules of Practice and Procedure of some of the Nigerian Courts. Indeed, under the newly enacted High Court of Lagos State (Civil Procedure) Rules 2012 (“CPR 2012”), which took effect on 31st December 2012, the recourse to ADR has been made mandatory in appropriate cases.

The principal legislation regulating the practice of ADR in Nigeria is the Arbitration and Conciliation Act, Cap A18, Laws of the Federation of Nigeria 2004 (“ACA”), which was enacted in 1988 and is modelled on the UNCITRAL Model Law on International Commercial Arbitration 1985, with minor modifications, and the Rules made thereto. However, some States of the Federation also have their own Arbitration Laws, notable amongst which is Lagos State.

**Efficiency/integrity**

**Efficiency**

Nigerian courts have not been notorious for their efficiency and this has resulted in frustrating delays in the dispute resolution process. This problem has been particularly acute in the commercial nerve centre and former federal capital, Lagos. In commercial disputes, where time is invariably of the essence, the length of time it takes to litigate a matter through the Nigerian courts has frustrated many a litigant and caused them to abandon the pursuit of their claims, or to seek alternative means of resolving their disputes. The causes of this problem are multi-faceted. In some respects, the problem is structural, arising from the ill-defined limits to the jurisdiction of the superior courts of record, and in some cases, it is due to the negative practices engaged in by Legal Practitioners and the courts. These defects in the judicial system have been recognised and various measures are now being taken to address this problem. Some of the most recent of these steps have been radical and far-reaching.

**Jurisdiction**

Jurisdiction is a threshold issue that has affected the efficiency of dispute resolution in Nigerian courts over the years, particularly as it concerns the superior courts of record that are most relevant to commercial dispute resolution; the Federal High Court on the one hand, and the High Courts of the FCT and the States on the other. Litigation is initiated when a claimant files originating processes against other parties in a court with the required jurisdiction to adjudicate over such action. However, the determination of questions of jurisdiction between the Federal High Court and the High Courts of the FCT and the States has proved problematic ever since the establishment of the Federal High Court in 1973. The enabling legislation by which the Federal High Court and the High Courts of the FCT and the States are created make provision for their respective jurisdiction, and these provisions are further supplemented by the provisions of the CFRN 1999 allocating specific causes such as aviation, banking, trademarks and copyright, insolvency, receivership, shareholding, company taxation and other allied corporate issues, shipping, etc. to the exclusive jurisdiction of the Federal High Court; leaving the residue to be determined by the State High Courts. Despite these provisions, the issue of jurisdiction is not always clear-cut. Some of the matters that come before these courts are borderline cases that offer a mixed-bag of causes of action that arguably fall within the jurisdiction of one or the other of these courts, and this has led to interminable jurisdictional challenges. The problem has been compounded by age-old common law principles, establishing that issues of jurisdiction can be raised at any time during a trial or, even after conclusion of a trial. Thus, litigants seeking to initiate proceedings for the resolution of commercial disputes in the Nigerian courts must pay careful attention to the selection of the appropriate forum for the resolution of their disputes so as to avoid the distraction and delays that may arise from challenges to the jurisdiction of the court, which may run to appellate proceedings, lasting several years.

The extent of this problem, and the recognition that litigants with otherwise bad cases were seizing on the opportunity thus created to delay the hearing of matters on the merits, has led in recent times to an innovative attempt to address the problem. **Order 29 of the Federal High Court Rules 2009**
provides that an application contesting the jurisdiction of the Court, or asking the Court not to exercise its jurisdiction, must be made within 21 days after the service of the originating processes on the defendant and if not so made, can only be made at the conclusion of the trial. This was a drastic attempt to limit the delays and inefficiencies being created in the system as a result of challenges to the jurisdiction of the Federal High Court. Although this provision has not been tested on appeal, as far as we are aware, it is doubtful that it will survive appellate challenge, in view of several decisions of the Supreme Court of Nigeria to the effect that a rule of court cannot dictate when and how a fundamental point of law, such as jurisdiction, may be raised, and that it can be raised at any stage of the proceedings in any court, including the appellate courts.

*Advanced Case Management – Lagos State (“CPR 2012”)*

Lagos State has historically suffered the most from congestion and delay in its courts, due to its dense population and the volume of commercial activity that goes on within the state. It is thus no surprise that it has been at the forefront of attempts to address the delays in the dispute resolution process. It pioneered the adoption of “front-loading” in Nigeria in 2004, adopting, in part, the recommendations of the Lord Justice Woolf Commission for the reform of the practice and procedure of the High Court in England. This procedure requires that hardcopies of an originating process to be filed in court will not be accepted for filing unless they are accompanied by witness depositions and copies of every document that the claimant intends to rely upon as an exhibit at the trial – thus eliminating frivolous or unsupportable actions at an early stage. This innovation has since been adopted by the Federal High Court, the High Court of the FCT, Abuja and by several of the High Courts of the States of the Federation, and has greatly enhanced the efficiency of the dispute resolution process.

In its newly made Rules of Civil Procedure, *CPR 2012*, which became effective on 31st December 2012, the Lagos State High Court has introduced further radical measures aimed at decongesting the courts and increasing the speed at which matters are determined. The most radical of these measures is the requirement that in addition to front-loading, all originating processes must be accompanied by a *Pre-action Protocol Form 01*. This Form contains provisions compelling parties to explore settlement and ADR, as a condition precedent to approaching the court. Specifically, the Form requires that the claimant or his Legal Practitioner must provide answers to the following questions under oath and attach supporting documents:

(i) that he has made attempts at amicable resolution of the dispute through mediation, conciliation, arbitration or other dispute resolution options;

(ii) that the dispute resolution was unsuccessful, and that by a written memorandum to the defendant(s), he set out his claim and options for settlement; and

(iii) that he has complied as far as practicable, with the duty of full and frank disclosure of all information relevant to the issues in dispute.

In addition, *Order 3 Rule 11* authorises the High Court Registry to screen all originating processes upon filing, to assess their suitability for ADR. Upon a finding that such a matter is suitable for ADR, the new rules authorise the Registry to automatically refer the matter to the *Lagos Multi Door Court House* or other appropriate ADR institution, in accordance with Practice Directions to be issued by the Chief Judge from time to time. Furthermore, *Order 25 Rules 1(2)(c), 2(l) and 6*, confer extensive case management powers on the courts to promote and compel parties to explore settlement and ADR in appropriate cases, during what used to be called the Pre-Trial Conference but is now described as the Case Management Conference.

As with its precursor, it is expected that the Case Management Conference will increase the efficiency of the dispute resolution process by providing an opportunity for the court and the parties to: explore settlement; consider ADR; narrow the issues in dispute; organise and schedule the discovery, inspection and production of documents; and deal with “such other matters as may facilitate the just and speedy disposal of the action”. The *CPR 2012* stipulates that Case Management Conferences should be concluded within three months of their commencement, with the pre-trial judge subsequently preparing a list of the live issues remaining for determination at trial.

Another innovation in commercial dispute resolution introduced by the Lagos State High Court is the “Fast-Track Procedure”. This innovation was initially put in place by way of a Practice Direction
issued on 1st February 2008, but is now incorporated into the CPR 2012 in a slightly modified form, as Order 56. The main objective of the Fast-Track Procedure is to reduce the time spent on litigation to a period not exceeding nine months. With matters assigned to the Fast-Track, the time limits for taking actions in litigation are reduced and hearing is expected to be conducted from day-to-day as a matter of course, with adjournments granted only as a last resort and for the shortest possible period.

A suit qualifies for Fast-Track where: (a) the total sum of claims or counterclaims is for a liquidated sum of N100,000,000 (one hundred million Naira) or more; (b) the claimant is suing for a liquidated sum and is not a Nigerian national or resident in the Nigeria; or (c) the claim involves a mortgage transaction, charge or other securities.

**Federal High Court – AMCON Practice Directions**

The Federal High Court has also made a set of new rules aimed specifically at accelerating the dispute resolution process. These rules are called the AMCON Practice Directions and they became effective on 1st March 2013. However, unlike the provisions made by the Lagos State High Court, the Federal High Court’s AMCON Practice Directions have been made for the sole benefit of a specific entity, the Asset Management Corporation of Nigeria (“AMCON”).

AMCON was established pursuant to the Asset Management Corporation of Nigeria Act, 2010 (“AMCON Act”) as a resolution trust company created by the Nigerian government for the purpose of resolving the non-performing loan assets of banks in Nigeria. This was a critical element of the government’s response to the banking crisis that reached its peak in 2008. AMCON acquired a large proportion of the portfolio of non-performing loans carried by Nigerian banks, and issued these banks with long-dated government bonds as payment.

In tacit recognition of the fact that the inefficiency of the existing dispute resolution mechanisms were a contributory factor to the inability of Nigerian banks to recover a substantial proportion of their non-performing loans, Section 53 of the AMCON Act made provision for a “special debt recovery procedure”. The section authorises the Chief Judge of the Federal High Court to designate any Judge of the Federal High Court to hear matters for the recovery of debts owed to AMCON, to the exclusion of any other matter, for such period as may be determined by the Chief Judge.

In exercising this power, the Chief Judge has not only designated a select list of named Judges to preside exclusively over AMCON debt recovery matters, but has also issued detailed and innovative Practice Directions to facilitate the swift and efficient implementation of the AMCON debt recovery process.

The highlights of the changes introduced in the AMCON Practice Directions are:

(i) Advanced case management enabling the Court to: unilaterally shorten the time for compliance with any rule, practice direction or order; bring forward a hearing; require a party to attend court; direct that part of any proceedings (such as a counterclaim) be dealt with as separate proceedings; stay the whole or part of the proceedings or judgment either generally or until a specified date or event; consolidate proceedings; try several claims on the same occasion; direct a separate trial of any issue; decide the order in which issues will be tried; exclude an issue from consideration; dismiss or give judgment on a claim after a decision on a preliminary issue; decide or give judgment on the proved part or portion of any case or claim while proceeding with the remainder; consider and treat as many matters as possible; and issue as many orders and directions as appropriate at case management conference.

(ii) Expedited case initiation and case handling processes, with provision for electronic service of processes and service of advance copies prior to filing, with time starting to run from receipt of the advance copy; the time limits for filing and responding to processes under the AMCON Practice Directions are all abbreviated, with provisions for the court to proceed from day-to-day and sit on Saturdays where necessary; the AMCON track courts will not observe and will sit during the period of the Federal High Court’s annual vacation; the trial and final addresses in AMCON track matters are to be concluded within three months from the date the claim is started, and judgment is to be given within 21 days, or as soon as possible after conclusion of addresses, and in any event no longer than 90 days.

(iii) Proof of service is established by the presence of the party served in court, and the AMCON
Practice Directions direct the Judges to disregard traditional technical/formal objections to the mode of service.

The type of innovations contained in the AMCON Practice Directions give a clear indication that they were carefully drafted with a view to circumventing some of the typical causes of delay in dispute resolution in Nigerian courts. When this is coupled with the dedicated resource provided by a set of Judges who will deal with these matters only, to the exclusion of other matters, it is evident that these Practice Directions will make a significant impact on the efficiency of dispute resolution in this particular area.

**Specialised courts**

Other developments aimed at ensuring the speedy resolution of particular disputes is the establishment of specialised courts and tribunals. The National Industrial Court ("NIC"), earlier referred to, is one of such courts and was established to adjudicate over disputes concerning industrial and labour relations. The NIC had been in existence since 2006, but was elevated to the status of a superior court of record by its inclusion in the list of superior courts of record established by the CFRN 1999, by an amendment to the CFRN 1999 made on 4th March 2011. The NIC has exclusive jurisdiction in civil cases and matters relating to or connected with any labour, employment, trade unions, industrial relations and matters arising from the workplace, the conditions of service, including health, safety, the welfare of workers, and matters incidental thereto or connected therewith.

Another specialised court is the Investments and Securities Tribunal ("IST") created pursuant to the provisions of the Investments and Securities Act, 2007 ("ISA"). The ISA confers the IST with exclusive jurisdiction to determine any question of law or dispute arising from a limited list of matters involving the operations of the Nigerian capital market and its primary regulator, the Securities and Exchange Commission ("SEC"). Unfortunately, the experience thus far is that some aspects of the exclusive jurisdiction conferred on the IST have been repeatedly challenged as being in conflict with some aspects of the exclusive jurisdiction conferred on the Federal High Court by the CFRN 1999, thus detracting from the added efficiency it was expected that the IST would provide.

**Integrity**

**Rules of natural justice, independence and impartiality**

The Nigerian justice system is built upon the constitutional foundation of fair hearing (Section 36 CFRN 1999), which, in turn, incorporates the basic attributes that:
- the Court shall hear both sides on all material issues in a case before reaching a decision;
- the Court gives equal treatment, opportunities and consideration to all concerned;
- all proceedings shall be heard in public and all concerned shall be informed of, and have access to, such place of public hearing; and
- having regard to all circumstances, in every material decision in a case, justice must not only be done, but must manifestly and undoubtedly be seen to be done.

In addition, judicial and arbitral proceedings are expected to be fairly and impartially conducted by independent decision maker(s), who must have no interest whatsoever in the proceeding.

**Mode of proceedings**

In Nigeria, every court proceedings must be held in public (Section 36(3), CFRN 1999). Where a court sits in private, its proceedings are a nullity, except where there are specific reasons for doing so, like issues relating to national defence, public safety, public order, public morality, matrimonial proceedings, the welfare of persons under the age of 18, the protection of the private lives of the parties, etc.

The proceedings of the courts must be presided over by an independent and impartial judge, and judgments are based on the facts of the case as presented and the applicable law. A litigant is entitled to a fair hearing within a reasonable time (Section 36(1), CFRN 1999). The verdict of the courts is binding, not advisory; however, both parties have the right to appeal the judgment to the appellate courts.
Proceedings in Nigerian courts are formal and are governed by rules of evidence and the rules of practice and procedure of the various courts.

Until recently, the rules of evidence were based on the provisions of the Evidence Act passed into law in 1945, which governs the reception and admissibility of evidence, written or oral, in all judicial proceedings. However, the Act was recently amended with the enactment of the Evidence Act, 2011 (HB.214). The amendments introduced into the Act were long overdue and were intended to update the rules of evidence to address contemporary issues and demands. The amendments address issues such as the admissibility of electronic signatures, computer-generated evidence and emails, guidelines for the use of confessional statements, receipt of the evidence of a child, etc. (Section 84, Evidence Act).

**Arbitral proceedings**

As earlier noted, the ACA is the primary federal legislation governing arbitration in Nigeria. The Act governs both domestic and international arbitration proceedings, with separate provisions for each. The First Schedule to the ACA contains arbitral rules that govern the procedure to be adopted in arbitral proceedings conducted under the Act. Whereas these rules are binding and must be applied in domestic arbitrations, they only apply by default to international arbitrations, where parties to an arbitration agreement have not expressly agreed a different set of rules, such as the ICC, LCIA or UNCITRAL rules, for example.

It is widely accepted that the ACA needs to be updated in line with modern arbitral trends. Accordingly, the Act is currently being reviewed, and a Bill containing proposed reforms has been submitted to Nigeria’s National Assembly for review and enactment. A major highlight of this Bill is a provision that introduces flexibility in the mode of establishing the existence of arbitration agreements that would be enforceable. In other words, an arbitration agreement can be validly concluded by means other than paper-based documents, as for example, by electronic communications or other forms of data, provided such message is accessible so as to be usable for subsequent reference. Furthermore, the proposed Act provides for a default single-arbitrator panel, instead of the current expensive default three-arbitrator tribunal.

**The Lagos State Arbitration Law 2009**

Whilst the updated ACA is still awaited, Lagos State took a progressive step with the passing into law of the Lagos State Arbitration Law in 2009. The Law incorporates: best arbitral practices on party autonomy and control; limitations on the scope of court intervention; increased procedural flexibility; the sanctity of arbitral rulings and awards, etc.; and applies equally to domestic and international arbitrations that are conducted in Lagos. Section 20 of the Law provides that the arbitral tribunal “shall decide the dispute in accordance with such rules of law as are chosen by the parties and are applicable to the substance of the dispute”.

Arbitral proceedings under the legislation are to be conducted in accordance with the procedure set out in the arbitration rules developed by the Lagos Court of Arbitration (“LCA”), except as otherwise agreed by the parties. Notably, a schedule to the law sets out the Arbitration Application Rules 2009, which govern all applications to be made to the High Court of Lagos State in respect of proceedings conducted under the Lagos State Arbitration Law.

Any concern over which arbitral framework applies to proceedings with their seat in Lagos State, the ACA or the Lagos State Arbitration Law, is cleared up by Section 2 of the Law, which states that “…all arbitration within the State shall be governed by the provisions of this Law except where the parties have expressly agreed that another arbitration law shall apply”. In other words, contracting parties may choose to arbitrate under either the Law or the Act, according to preference. Absent an indication as to which law should apply, the Lagos State Arbitration Law will apply to all arbitral proceedings with their contractual seat in Lagos, or proceedings in which the tribunal has decided to sit in Lagos.

**The Lagos Court of Arbitration**

The LCA is an innovative partnership between the Nigerian business community and arbitral interest groups. The court was designed in the mould of the International Chamber of Commerce and the
London Court of International Arbitration to serve as a resource centre to render arbitration and other ADR services. The LCA, though created by the Lagos Court of Arbitration Law, is a private sector-driven centre for the resolution of commercial disputes by arbitration and other alternative dispute resolution solutions in the West Africa sub-region.

The LCA was inspired by the need to provide a robust regime for the resolution of disputes arising from commercial transactions in Nigeria and the sub-region. The ultimate objective, however, is to provide international standard arbitration within the West Africa sub-region, using resources in Lagos State.

The LCA has built strong relationships with international and regional multi-lateral business groups and organisations, whose members support and have undertaken to use the dispute resolution services of the LCA.

Since May 2012, recognising the potential of the LCA to assist in improving the investment climate in Nigeria and the West Africa sub-region, the Investment Climate Facility for Africa (“ICF”) has provided funding to assist the LCA to become fully operational. The funding will support capacity-building, certification, knowledge-sharing for judges, arbitrators, aspiring arbitrators and LCA staff.

The ICF is also supporting a strategic communications campaign to raise the LCA’s profile in the West Africa sub-region and beyond, and to encourage stakeholders to use its services.

The National Alternative Dispute Resolution Regulatory Commission

There is a Bill currently pending before the Nigerian Federal Legislature for an Act to establish a National Alternative Dispute Resolution Regulatory Commission and for other matters related thereto, which includes: regulating the process of accreditation of all ADR bodies and institutions engaged in the practice; training, education or skills acquisition in alternative dispute resolution mechanisms; advising the Federal and State Governments on the use of alternative dispute resolution mechanisms; developing an alternative dispute resolution policy for Nigeria; setting and maintaining standards in the training curriculum of the alternative dispute resolution bodies in Nigeria; and maintaining a register of alternative dispute resolution bodies and institutions in Nigeria, etc.

This Bill has been vehemently criticised by the arbitration community in Nigeria and by the Nigerian Bar Association. It is seen as striking at party autonomy and the absence of direct governmental interference, two of the fundamental characteristics and advantages of arbitration as a dispute resolution process. It is felt that if this Bill is passed into law, it will constitute a major drawback to the vision and aspirations of the arbitration community of making Nigeria a jurisdiction of choice in international arbitration.

General principles applicable to arbitration in Nigeria

Arbitration is confidential and must be conducted in private unless the parties agree otherwise (Article 25.4, Arbitration Rules), and any award given cannot be made public unless both parties agree (Article 32.5, Arbitration Rules).

Mediation is governed by the Conciliation Rules contained in the Third Schedule to the ACA, or any other Rules that the parties may choose. The proceedings and the settlement agreement, if any, are also confidential, except to the extent required for enforcement (Article 14, Conciliation Rules).

Nigerian law recognises party autonomy as the foundation of ADR processes, and the parties determine applicable procedure. The tribunal decides, subject to the agreement of the parties, whether the proceedings shall be conducted by holding oral hearings, or on the basis of documents, or on both (Section 20 of the Act and Article 25 of the Arbitration Rules) and can administer oaths or take affirmations of parties and witnesses. Cross-examination is allowed. Although the law of evidence does not strictly apply to arbitral proceedings, nonetheless, the arbitral tribunal may apply general evidential principles such as those regarding privilege and waiver. The tribunal has the power to determine the admissibility, relevance, materiality and weight of evidence before it.

An arbitral tribunal has the power to order security for costs, to rule on its own jurisdiction, order interim measures of protection, appoint experts, conduct proceedings in such a manner as to ensure a fair hearing, and terminate proceedings where parties have reached a settlement. Mediators do not, however, have such powers, save to conduct the proceedings in such a way as to encourage the parties to reach an amicable settlement.
Limitation law in arbitral proceedings

Under Nigerian limitation laws, where an arbitration agreement is not under seal, or made under any enactment other than the arbitration law, the applicable limitation period is six years. In *City Engineering Ltd v FHA* (1997) 9 NWLR (Pt 520) 224, the Supreme Court of Nigeria, relying on its earlier decision in *Murmansk v Kano Oil Millers Ltd* (1974)12 SC 1, held that, generally, actions to enforce arbitral awards brought after six years from the date on which the cause of action in the parties’ dispute accrued would be unenforceable, notwithstanding the date of the award. Unsurprisingly, this decision has proved unpopular amongst Nigerian arbitration practitioners, as it does not consider the realities of time spent in conducting the arbitral proceedings prior to seeking enforcement of an arbitral award. Moreover, this decision appeared to be contrary to the settled legal principle that the institution of an action stops time from running for the purpose of limitation.

Section 35(5) of the Lagos State Arbitration Law expressly reversed the adverse effects of this decision as it affects proceedings held in Lagos State, by providing that in computing the time for the commencement of proceedings to enforce an arbitral award, the period between the commencement of arbitral proceedings and the date of the award shall be excluded.

Level of judicial support for, and judicial interference in, the arbitration process

Over time, the relationship between the Nigerian courts and ADR processes has evolved from that of an intrusive supervisor to a friendly supporter. In recent times, the Nigerian courts have repeatedly held that once an arbitration clause is valid, and the dispute is within the contemplation of the clause, the courts will enforce the arbitration clause by staying any litigation commenced in breach thereof, *Onward v MV Matrix* (2010) 2 NWLR (Pt 1179) 530 at 557. The courts have also held that parties to an arbitral agreement choose their arbitrator for better or for worse, both as to decisions of law and decisions of fact in the dispute between them. None of them can, when the award is prima facie good on the face of it, object to the decision either upon the law or the facts, simply because the award is not in his favour, *Aye-Fenus Ltd v Saipem Ltd* (2009) 2 NWLR (Pt 1126) 483 and a valid award on a voluntary arbitral reference operates between the parties as a final and conclusive judgment enforceable by the Courts upon all matters referred, *Ras Pal Gazi Const. v FCDA* (2001) 10 NWLR (Pt 722) 559.

Section 34 ACA makes it clear that a Court shall not interfere in arbitral proceedings except where allowed by the Act. Thus, the Court’s scope for interference with arbitral proceedings lies in specific areas. These are:

(i) The power to stay court proceedings in favour of arbitration, where there is a subsisting arbitration agreement between the parties (Sections 4 & 5 ACA).
(ii) The power to declare an arbitration agreement revoked (Section 2 ACA).
(iii) The appointment, removal and replacement of an arbitrator (Section 7 ACA).
(iv) The power to set aside an award (Section 29 ACA).
(v) The power to enforce an arbitral award (Section 31 ACA).

Enforcement of judgments/awards

Apart from a declaratory judgment, which merely states the rights of the parties and is incapable of enforcement, monetary judgments can be, and are usually enforced through the issue of a writ of execution, garnishee proceedings, a charging order, a writ of sequestration and/or an order for committal, *Govt of Gongola v Tukur* (1989) 4 NWLR (Pt 117) 592.

The domestic judgment of a court in one State in Nigeria can be enforced by a court of like jurisdiction in another State, upon registration of the certificate of the judgment in the enforcing court. It is then enforced in the same manner as a judgment of that court (Sections 104 & 105 SCPA).

Foreign judgments

There are two concurrently applicable pieces of legislation governing the registration of foreign judgments for the purpose of enforcement in Nigeria: The Reciprocal Enforcement of Judgments Ordinance, Cap. 175 Laws of the Federation of Nigeria and Lagos 1958, which was originally enacted on 19th January 1922 (“the 1922 Ordinance”); and The Foreign Judgments (Reciprocal Enforcement) Act, 1961, Cap. F35 Laws of the Federation of Nigeria 2004, (“the FJA 1961 Act”).
The 1922 Ordinance was enacted to provide for the enforcement of judgments of the High Court of England or Ireland, or of the Court of Session in Scotland and the dominions to which the Act has been extended by proclamation in the Commonwealth. Under the 1922 Ordinance, a judgment creditor may apply to register a judgment in a High Court in Nigeria within 12 months after the date of the judgment, or such longer period as may be allowed by the court (Sections 3(1) & 5(1) 1922 Ordinance).

The FJA 1961 Act, on the other hand, provides for the recognition and enforcement of the judgments of any foreign court to which Part 1 of the Act is applicable (not just Commonwealth countries). A foreign judgment creditor may apply to a superior court in Nigeria to register a foreign judgment within six years of the date of the judgment (Section 4, FJA 1961 Act). However, before the provisions of Part 1 could apply to a foreign judgment, the Minister of Justice must have exercised his powers under Section 3 of the Act to extend the Act to judgments given in superior courts of the foreign country where the judgment was made, upon being satisfied that the foreign country gives reciprocal treatment to judgments of superior courts in Nigeria.

Subsequent to the enactment of the FJA 1961 Act, there was a bit of confusion with regard to whether that Act had repealed the 1922 Ordinance, and as to which of these legislations regulate the registration of foreign judgments in Nigeria. This controversy was rested by the Supreme Court in the cases of: Macaulay v. R. Z. B. Austria (2003) 18 NWLR (Pt. 852) 282; and Marine & Gen, Ass. Co. Plc. v. O. U. Ins. Ltd (2006) 4 NWLR (Pt.971) 622, where it was held that the two legislations are both applicable, in the sense that the 1922 Ordinance is still applicable to judgments obtained in the United Kingdom and the Dominions to which it was extended by proclamation under Section 5 of the Ordinance before the coming into force of the FJA 1961 Act, whilst the FJA 1961 Act would apply to every other foreign judgment delivered in a country which accords reciprocity of treatment to Nigerian judgments, and to which the Minister had by order extended the application of Part 1 of the Act. Sadly, the Minister of Justice has never exercised these powers to extend Part 1 of the Act to any country. However, Section 10(a) of the FJA 1961 Act provides that a foreign judgment that was given before the commencement of the Minister’s order may be registered within 12 months from the date of the judgment, or such longer period as the court may allow.

It must be noted that for a judgment to be enforceable it must be that of the superior courts of a foreign country. The judgment must be final and conclusive between the parties. It must be in respect of a fixed sum of money and not for charges, penalties, taxes or fines. It must also be noted that a foreign judgment will not be registered if it is wholly spent (i.e. if the time for enforcing the judgment has expired according to the statute of limitations, or the terms of the judgment have been fully complied with elsewhere), or if it would not be enforceable in the country of the original court. Thus, registration can be set aside on application by the affected party on the grounds inter alia that: (a) the applicable legislation does not apply to the judgment, or it was registered in breach of the legislation; (b) the original court lacked jurisdiction in the circumstances of the case as defined by the Act; or that (c) the judgment was obtained by fraud, or is contrary to the public policy of Nigeria.

Once a foreign judgment is registered, it has the same force and binding effect as a judgment of a Nigerian court.

Arbitral awards
An arbitral award is recognised as binding upon the parties thereto, and will be enforced by municipal courts in the same manner as a judgment or order. An award may be enforced by action, or summarily by an application to court under the relevant arbitration law, Ebokan v Ekwenibe & Sons Trading Company (2001) 2 NWLR (Pt 693) at 32.

Foreign arbitral awards
Nigeria acceded to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards in 1970 with a reservation that it would only enforce awards applicable to commercial relationships made in another contracting State. The Convention is domesticated by virtue of Section 54 of the ACA.
An arbitral award will be recognised as binding, irrespective of the country in which it is made and shall, upon application in writing to the court, be enforced by the court. The party relying on an award or applying for enforcement shall supply: a duly authenticated original award or a duly certified copy; the original arbitration agreement or a duly certified copy; and a certified translation into the English language where the award is not made in the English language.

An award may be refused recognition and enforcement where a party upon whom it is to be enforced furnishes proof of incapacity of a party, invalidity of the arbitration agreement, or that the arbitral procedure was not in accordance with the law of the country where the arbitration took place, or where the courts find that the subject matter is not capable of resolution by arbitration under Nigerian law or is otherwise against public policy (Section 52 ACA).
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