



UNDERSTANDING THE ROLE OF ARBITRATION CLAUSES IN NIGERIAN CONTRACTS

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Article

1. Introduction

Arbitration has become one of the most significant Alternative Dispute Resolution (ADR) mechanisms in Nigeria. In commercial contracts, particularly those involving cross-border transactions, arbitration clauses provide the framework for resolving disputes without resorting to the traditional courts. These clauses are not mere generic provisions; rather, they determine jurisdiction, procedure, and enforceability of awards.

In Nigeria, arbitration clauses are particularly vital due to the backlog of cases in the courts, the need for confidentiality in commercial dealings, and the enforceability of arbitral awards across jurisdictions under international conventions. This article examines the role of arbitration clauses in contracts

2. Legal Framework for Arbitration in Nigeria

The Arbitration and Mediation Act, 2023, repealed the Arbitration and Conciliation Act, Cap A18, LFN 2004, and introduced innovations aligning Nigeria with international best practices.[1]

Key provisions include:

Section 5 of the Arbitration and Mediation Act, 2023, mandating courts to stay proceedings where arbitration agreements exist.

Recognition of emergency arbitrators and interim measures.

Provision for third-party funding of arbitration.

Enforcement of both domestic and foreign arbitral awards.

Nigeria is also a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, ratified in 1970, which ensures that arbitral awards are enforceable internationally.[2]

3. Comparative Perspectives

The Nigerian arbitration framework mirrors international standards, particularly the UNCITRAL Model Law on International Commercial Arbitration.[3] For instance, both Nigerian and UNCITRAL laws provide for party autonomy, limited court intervention, and enforcement of interim measures.

The United Kingdom's Arbitration Act, 1996,[4] and Singapore's International Arbitration Act, Cap 143A, [5] also reinforce the centrality of arbitration clauses. Singapore, in particular, has become a global hub due to its efficient enforcement mechanisms and minimal judicial interference. Nigeria, through the 2023 Act, aspires to replicate this success in Africa.[6]

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4. Key Features of Arbitration Clauses

i. Scope of Disputes

The arbitration clause should be drafted with expansive language to encompass any dispute, controversy, or claim arising out of or in connection with the agreement, including issues related to its validity, interpretation, performance, breach, or termination. This broad formulation ensures comprehensive coverage and minimizes jurisdictional ambiguity, offering a robust mechanism for resolving both anticipated and unforeseen conflicts.[7]

ii. Seat of Arbitration

Selecting the seat of arbitration is a pivotal decision, as it determines the legal framework governing the arbitral process, including procedural rules and the extent of judicial intervention. The chosen jurisdiction will influence enforceability, neutrality, and logistical convenience. Parties should weigh factors such as arbitration-friendly legislation, infrastructure, and familiarity with local courts.[8]

iii. Institutional vs. Ad Hoc Arbitration

Parties must decide whether to submit disputes to a recognized arbitral institution such as the ICC, LCIA, Lagos Court of Arbitration or opt for ad hoc proceedings under frameworks like the UNCITRAL Rules. Institutional arbitration offers administrative support, established rules, and reputational assurance, while ad hoc arbitration provides flexibility, cost-efficiency, and party autonomy.

The choice should reflect the complexity, value, and sensitivity of the potential disputes.

iv. Appointment of Arbitrators

A clause should specify clear procedures for appointing arbitrators, including the number of arbitrators, qualifications, and timelines. This ensures continuity and avoids delays that could compromise the integrity of the arbitration process.[9]

v. Governing Law and Language

In cross-border contracts, specifying the governing law and language of arbitration is essential to avoid interpretive conflicts and procedural confusion. The governing law determines substantive rights and obligations, while the language affects the conduct of proceedings, document submission, and award drafting. Parties should select a legal system and language that align with their commercial expectations and operational fluency.

vi. Multi-tiered Dispute Resolution

Incorporating a tiered dispute resolution mechanism such as mandatory negotiation, followed by mediation, and then arbitration can promote early settlement and preserve business relationships. These pre-arbitration steps encourage dialogue and cost-effective resolution, while arbitration remains the final recourse if amicable efforts fail. Clauses should define timelines, procedures, and consequences of non-compliance to ensure enforceability.[10]

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5. Advantages of Arbitration Clauses

Arbitration clauses offer a compelling alternative to litigation, particularly in commercial and international contracts. Their benefits include:

- **i. Confidentiality:** Arbitration proceedings are typically private, allowing parties to safeguard sensitive business information from public exposure. This is especially valuable in high-stakes commercial disputes where reputational risk or proprietary data is involved.
- **ii. Neutrality:** In cross-border transactions, arbitration provides a neutral forum, mitigating concerns about home-court advantage and unfamiliar legal systems. Parties can agree on a neutral venue and arbitrators from jurisdictions unrelated to either party.
- **iii. International Enforceability:** Awards rendered in arbitration are widely enforceable under the 1958 New York Convention, which has over 170 signatory countries. This global framework ensures that arbitration awards are more readily recognized and enforced than court judgments across borders.
- **iv. Party Autonomy:** Arbitration empowers parties to tailor the dispute resolution process. They can select arbitrators with specific expertise, choose procedural rules, and determine the seat of arbitration, enhancing control and predictability.

- **v. Speed and Expertise:** Arbitration is often faster than litigation due to streamlined procedures and limited appeals. Moreover, arbitrators are frequently subject-matter experts, which can lead to more informed and technically sound decisions.

6. Limitations and Pitfalls of Arbitration Clauses

Despite these advantages, Arbitration Clauses are not without challenges:

- **High Costs:** While arbitration may be faster, international arbitration can be expensive. Arbitrator fees, administrative costs, and venue expenses often rival or exceed those of litigation, especially in complex cases.
- **Non-Arbitrable Matters:** Certain disputes, such as those involving criminal law, family law (e.g., matrimonial causes), or public policy issues, are generally excluded from arbitration due to statutory or jurisdictional limitations.
- **Judicial Interference:** Although arbitration is designed to be autonomous, courts may intervene during enforcement or in challenges to the award, potentially causing procedural delays.
- **Parallel Litigation:** Parties may attempt to bypass arbitration by initiating court proceedings, undermining the arbitration agreement and leading to jurisdictional conflicts.

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7. Judicial Attitude Towards Arbitration Clauses in Nigeria

The Courts have consistently demonstrated a pro-arbitration stance, reinforcing the sanctity and enforceability of arbitration agreements in commercial and maritime disputes. This aligns with global best practices and reflects Nigeria's commitment to fostering an arbitration-friendly legal environment.

In **KANO STATE URBAN DEVELOPMENT BOARD v. FANZ CONSTRUCTION CO. LTD**[11], the Supreme Court emphatically upheld the principle of party autonomy, affirming that parties who freely choose arbitration as their dispute resolution mechanism must be bound by that choice. The Court recognized arbitration as a legitimate alternative to litigation, deserving of judicial respect.

Similarly, in **NNPC v. LUTIN INVESTMENT LTD & ANOR**[12], the Supreme Court reinforced the binding nature of arbitration clauses, holding that once parties have agreed to arbitrate, they are precluded from resorting to litigation unless the arbitration agreement is shown to be invalid or inapplicable. This decision underscored the judiciary's role in preserving the integrity of arbitration agreements.

- In **STATOIL (NIG.) LTD V. NNPC**[13], the Supreme Court further cemented its support for arbitration by upholding the enforceability of arbitral awards.

The Court emphasized that arbitral decisions, once rendered in accordance with the agreed procedure, carry the same weight as judicial pronouncements and should not be lightly set aside.

The case of **OWNERS OF THE M V. LUPEX v. NIGERIAN OVERSEAS CHARTERING AND SHIPPING LTD**[14] is particularly instructive in the maritime context. The Supreme Court held that arbitration clauses in shipping contracts must be respected, and that courts should refrain from interfering where parties have clearly expressed their intention to arbitrate. This decision affirmed the judiciary's commitment to upholding

CONCLUSION

Nigeria has ambitions of becoming an African arbitration hub. Institutions such as the Lagos Court of Arbitration and the Regional Centre for International Commercial Arbitration (RCICA) Lagos provide infrastructure. However, challenges such as judicial delays, limited capacity, and enforcement uncertainties remain. By adopting reforms similar to Singapore[15] and the United Kingdom, [16]Nigeria could enhance its attractiveness as a destination for arbitration.

Arbitration clauses are vital in Nigerian contracts, ensuring enforceability, neutrality, and efficiency. The Arbitration and Mediation Act, 2023 positions Nigeria closer to international best practices, but effective implementation will depend on judicial support and professional drafting. Nigerian lawyers must treat arbitration clauses as critical risk management tools, not generic template.

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