Nigeria

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GENERAL

1. Please give a brief overview of the main dispute resolution methods used in your jurisdiction for the settlement of large commercial disputes, identifying any recent trends or developments.

Large commercial disputes are resolved through litigation before the state high courts or the Federal High Court, or by arbitration before arbitrators appointed by the parties for that purpose.

Under section 251 of the 1999 Constitution, the Federal High Court has jurisdiction, to the exclusion of the state high courts, over specific areas of law such as:

- Revenue.
- Company taxation.
- Customs and excise.
- Banking.
- Aviation.
- Shipping.

Commercial disputes which arise out of these areas of law are litigated before the Federal High Court (*see Question 4*).

The congestion of cause-lists in the courts has resulted in a move towards the settlement of commercial disputes by arbitration. Where parties have inserted arbitration clauses in their agreements, any disputes that fall within the scope of the arbitration clause are referred to arbitration according to the provisions of the clause (*see Question 18*).

The Arbitration and Conciliation Act (*Cap A18, Laws of Nigeria 2004*) (Arbitration Act) applies to all arbitrations in Nigeria. The Act is modelled on the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration 1985 (Model Arbitration Law), with minor modifications.

To address the problem of cause-list congestion, in 2004 Lagos state became the first state government in Nigeria to adopt new Civil Procedure Rules, the High Court of Lagos State Civil Procedure Rules 2004 (Lagos Civil Procedure Rules), which radically overhauled the civil justice system. Rivers state and the federal capital of Abuja have since adopted similar rules, and other states are also considering following suit (*see Question 30*). The Lagos Civil Procedure Rules provide for speedier conclusion of cases by requiring counsel to front-load their cases, the judge to operate a more proactive case management system and the substitution of written arguments for oral addresses in many cases. In a further effort to speed up the hearing process, Lagos state has created a commercial division of its high court specifically for the hearing of commercial matters.

2. If a contract has some connection with your jurisdiction, are there any areas of local law that would apply to the contract irrespective of the choice of law?

The Personal Income Tax Act and the Companies Income Tax Act apply to all contracts that have a connection with Nigeria, irrespective of any choice of law clauses which they may contain.

3. Are there any circumstances in which the local courts would claim jurisdiction over a dispute irrespective of the choice of jurisdiction expressed in the contract?

Generally, Nigerian courts observe the provisions of any choice of jurisdiction clause included in a contract between the parties and tend to uphold them, under the principle of *pacta sunt servanda* (parties are to be held to the bargain which they have entered). This rule is, however, not inflexible. Nigerian courts have discretion to decline to give effect to a choice of jurisdiction clause. For example, where the claimant's claim is statute barred under the law of the foreign jurisdiction's court, the Nigerian court can refuse to enforce a foreign jurisdiction clause and allow the claimant to bring an action in a Nigerian court.

In addition, where a party to a contract containing an arbitration clause has filed an action in court, the court assumes jurisdiction over the matter despite the arbitration clause, if the opposing party takes any step in the matter without raising the jurisdictional point. In addition, the Arbitration Act applies only to commercial matters (*see head note, Arbitration Act*), and court decisions have held that where there is no dispute (such as an uncontested or admitted claim for a liquidated amount), a court can assume jurisdiction, despite the existence of an arbitration clause.

COURTS

4. In which court are large commercial disputes most likely to be brought?

Major commercial disputes are brought in the state high courts, which have unlimited jurisdiction to hear all matters other than those which fall within the exclusive jurisdiction of the Federal High Court (*see Question 1*). This is because the civil jurisdiction of magistrates' courts is limited to matters involving claims up to a limit of NGN250,000 (about US$1,957).

The answers to the following questions relate to procedures that apply in the Lagos state high courts.

5. Are court proceedings confidential or public? If public, are there any circumstances in which the proceedings will be confidential (or any information will be kept private)?

Court proceedings must be held in public (*section 36(3), Constitution 1999* and *Order 32 Rule 1, Lagos Civil Procedure Rules*). Generally, where a court sits in private, the entire proceedings are null and void (*Menakaya v Menakaya 2001 (16) NWLR 203*). However, in certain circumstances a court can exclude from its proceedings persons other than the parties where there are (*section 36(4)(a), Constitution 1999*):

- Issues of national defence.
- Issues of public safety.
- Issues of public order.
- Issues of public morality.
- Issues relating to the welfare of persons who have not attained the age of 18 years.
- Issues relating to the protection of the private lives of the parties.
- Special circumstances, making publicity contrary to the interest of justice, permitting the court to exclude persons to the extent that it considers necessary.

In addition, if a minister of the federal government or a commissioner of a state satisfies the court that is not in the public interest for any matter to be publicly disclosed, the court makes arrangements for evidence relating to the matter to be heard in private (*section 36(4)(b), Constitution 1999* and *section 221, Evidence Act*). Although proceedings must be in public, a public officer cannot be compelled to disclose communications made to him in official confidence if he considers that the "public interest" would suffer as a result (*section 169, Evidence Act*).

6. In relation to court proceedings:

- **How is a claim started?**
- **How is the defendant given notice of the claim?**
- **What limitation periods apply to bringing a claim?**

Starting proceedings

Actions are started by filing an originating process, which can be in the form of:

- **Writ of summons.** Proceedings are started by writ of summons if the facts in dispute are likely to be contentions. It is the form of originating process used in the high court, unless provided otherwise. The writ is:
  - endorsed; and
  - accompanied with a statement of the nature of the claim or relief sought.
- **Originating summons.** This is used where there is no substantial dispute between the parties in relation to the facts of the matter, and interpretation of a statute or a document is the major relief claimed.
- **Originating motion and petition.** These are used where this is required by a specific statute.

Notice to the defendant

The defendant must be personally served with the originating process, unless it has authorised its legal practitioner in writing to accept service on its behalf, and the legal practitioner enters an appearance (a form of acknowledgment of service) to the action (*Order 7 Rules 2 and 3, Lagos Civil Procedure Rules*). The Lagos Civil Procedure Rules require the originating processes to be served by one of:

- A sheriff.
- A deputy sheriff.
- A bailiff.
- A special marshal.
- Another officer of the Court.

The Chief Judge can also appoint and register any law firm, courier firm or other person to serve court processes. If personal service cannot be achieved, leave must be obtained from the court to serve the process by substituted means, which can involve:

- Pasting (advertising) the process at the last named address of the defendant.

- Publication in a newspaper circulating in the area relevant to the transaction.
- Service on another person as agent for the defendant.

Limitation periods

Limitation periods vary and depend on the nature of the claim. The limitation law of most of the states of the federation provides a limitation period of six years for actions founded on:

- Simple or quasi contracts (generally, subject to any extensions due to disabilities on the part of the claimant, the cause of action accrues from the date the contract was breached).
- Torts (subject to any extensions, the cause of action accrues from the date the tort was committed).
- Arrears of interest.
- Actions to enforce an arbitral award where either:
  - the arbitration agreement is not under seal; or
  - the arbitration is conducted under a statute other than the Arbitration Act.

Actions to recover the principal sum of money secured by a mortgage or charge on land must be brought within 12 years. Actions based on the Convention for the Unification of Certain Rules Relating to International Carriage by Air 1929 (Warsaw Convention) must be brought within two years.

However, some statutory bodies have shorter limitation periods:

- Actions against the National Petroleum Corporation must be started within one year of the cause of action arising.
- Actions against the Ports Authority, the Railway Corporation and the Aviation Authority are subject to a three-month limitation period under their enabling statutes.

7. To what extent do the courts play an active case management role?

The Lagos Civil Procedure Rules provide time limits within which lawyers must take various steps in the litigation process.

Within 14 days after pleadings are closed, the claimant must apply for the issuance of a mandatory pre-trial conference notice. At these conferences, the pre-trial judge must, within a three-month period (*Order 25 Rule 4, Lagos Civil Procedure Rules*):

- Dispose of non-contentious matters.
- Promote, encourage and facilitate amicable resolution of the matter, or adopt alternative dispute resolution (ADR) mechanisms.
- Enter interlocutory judgment or dismiss the claim (if applicable) (*see Question 9*)
- Give directions as to future hearings, and make other scheduling orders.

The major objective of the pre-trial conference is to provide an opportunity to formulate, settle and narrow the issues in dispute, control 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" (*Order 25 Rule 3, Lagos Civil Procedure Rules*). The judge also can, where he believes that there is undue delay, require a party to explain the reasons for delay and may afterwards make any orders and give any directions that will speed up the proceedings (*Order 27 Rule 13, Lagos Civil Procedure Rules*).

8. In relation to court proceedings:

- **Briefly set out the prescribed time limits (if any) for each stage of the proceedings and any penalties that can be imposed on the parties for non-compliance.**
- **How long does it take to obtain judgment after formal commencement of proceedings?**

Stages of proceedings

The Lagos Civil Procedure Rules adopt the front-loading procedure and so although previously a writ on its own could be issued, this is no longer acceptable. A writ of summons is not accepted for filing at the court Registry unless it is accompanied by:

- A statement of claim.
- A list of witnesses to be called at the trial.
- Written statements on oath of the witnesses.
- Copies of every document to be relied on at the trial.

Every originating process must be served within six months (*Order 6 Rule 6(1), Lagos Civil Procedure Rules*). Although a judge can order two renewals of the writ, no originating process will be in force for more than 12 months without being served (*Order 6 Rule 7, Lagos Civil Procedure Rules*).

On service of the originating process, the defendant has 42 days to file a statement of defence and counter-claim (if any) to which the claimant can respond by filing a reply (and defence) within the following 14 days (*Order 15 Rule 1(3), Lagos Civil Procedure Rules*). Within 14 days after close of pleadings, the claimant must apply for a pre-trial conference notice and if it does not, the defendant can do this or apply to dismiss the action (*Order 25 Rule 1(3), Lagos Civil Procedure Rules*).

The pre-trial conference must not exceed three months in duration and the judge has power to dismiss a claim or enter

final judgment against a defendant if the party fails to attend the pre-trial conference, obey a scheduling order or is "substantially unprepared to participate" or fails to participate "in good faith" (*Order 25 Rule 6, Lagos Civil Procedure Rules*) (*see also, in relation to pre-trial conferences, Question 7*). Any such order that is made can be set aside within one day of the judgment, or an extended period (not exceeding the three month pre-conference trial period) as the judge may allow.

For any delay in complying with the time limits, the party in default shall pay to the court a daily default fee of NGN200 (about US$2) for each day of delay in addition to the costs awarded on an application for extension of time (*Order 44 Rule 4, Lagos Civil Procedure Rules*) (*see Question 15*).

It is a constitutional requirement that judgments must be delivered within three months of the conclusion of the hearing, although failure to do so will not invalidate the proceedings and the judgment (*section 294, Constitution 1999*). Judges are mindful of this rule and in most cases judgments are delivered within that time frame.

Duration

The duration of a matter depends on the type and complexity of the action. However, unless a matter is undefended it is unlikely that judgment will be given in less than one year from beginning of the action.

9. Before a full trial, are there any interim procedures available:

- **To apply for summary judgment/the claim to be struck out?**
- **To apply for any other remedies, for example an injunction or interim payment?**

Summary judgment/striking out claims

In an undefended claim for a liquidated demand, a claimant can apply for judgment in default of the defendant's appearance for the amount on the claim, or for a lesser sum.

A claimant who believes that there is no defence to his claim can file with his originating process (to which will be attached the witness statements and copies of the exhibits), an application for summary judgment (*Order 11, Lagos Civil Procedure Rules*). The application must be supported with:

- An affidavit stating the grounds for his belief.
- A written brief (or argument) in support.

If the defendant intends to defend the action, he must respond to the process and the application, and the judge will then determine whether he should be granted leave to defend, on the basis of whether he has a good defence to the claim. Similarly, a defendant, who believes that the claim against it is not sustainable, can, after filing a statement of defence, apply to have the action struck out. This application must also be accompanied by a written argument.

Interim remedies

Before judgment, a party can apply for interim relief, such as:

- Injunctions (both mandatory and prohibitory).
- Preservation orders (that is, orders for the preservation of evidence or the thing in dispute).
- Seizing orders.
- Orders for account.
- Interim payments.
- Orders for security for costs.

The application can be filed simultaneously with the originating process or at a later stage. Where a defendant has paid money into court in satisfaction of one or more causes of action, a claimant who accepts the whole sum paid in satisfaction can apply to withdraw the amount, and after this the proceedings are stayed.

10. What documents must the parties disclose to the other parties and/or the court? Are there any detailed rules governing this procedure?

The Lagos Civil Procedure Rules have introduced the concept of an open trial with "no surprises". The parties must file, along with their pleadings, copies of every document they intend to admit as an exhibit at the trial. However, there is no obligation to supply documents adverse to a party's case. If one of the parties afterwards requires general discovery of documents, it can, within seven days of the close of pleadings, apply for discovery from the other party. The party on whom this request is served must answer on oath, completely and truthfully, within seven days of the request, and with its answer either:

- Attach copies of documents referred to in its witness statement.
- Specify the documents in its possession which it objects to producing, and the reasons for the objection.

The request forms part of the agenda for the pre-trial conference, at which time the judge can make orders in respect of it (*see Questions 7 and 8*).

11. Are any documents privileged (that is, they do not need to be shown to the other party)? In particular:

- **Would documents written by an in-house lawyer (domestic or foreign) be privileged in any circumstances?**
- **If privilege is not recognised, are there any other rules allowing a party not to disclose a document (for example, confidentiality)?**

Privileged documents

The Evidence Act governs the reception and admissibility of evidence, either written or oral. Documents are not in themselves privileged unless they can be classified as official communications (*section 167, Evidence Act*).

Privilege can be claimed over certain communications with a legal practitioner (*section 170, Evidence Act*):

- Any communication (whether written or oral) made to, by or on behalf of the legal practitioner's client.
- Any advice given by the practitioner to his client and also the contents or condition of any document with which he has become acquainted, if they are created or obtained in the course of and for the purpose of his employment.

The client (and only the client) can give consent to disclosure, or waive privilege, as the privilege is the client's and not the legal practitioner's. However, the privilege does not apply to:

- Communications made in furtherance of any illegal purpose.
- Facts that show that a crime has been committed.

The obligation to maintain confidentiality continues after the legal practitioner's employment has ceased and applies to his employees. The Legal Practitioners' Rules of Professional Conduct in the Legal Profession also order a legal practitioner to preserve his client's confidence, a duty that also outlasts his employment.

Whether the legal practitioner is in the full-time employment of the client (for example, as an in-house lawyer) is immaterial. Because the Legal Practitioners Act defines a legal practitioner as a person whose name is on the Roll of Legal Practitioners which is maintained by the Supreme Court, it is unlikely that these privileges against disclosure apply to foreign counsel.

Other non-disclosure situations

Documents marked "Without Prejudice" are admissible in court unless (*section 25, Evidence Act*):

- The document contains an admission against a party's interest.
- The document was made either on the express condition that evidence of the document should not be given, or an inference to that effect can be drawn.

12. In relation to third party experts:

- **What is the procedure for their appointment?**
- **Do they represent the interests of one party or provide independent advice to the court?**
- **Is there a right to cross-examine (or reply to) expert evidence?**
- **Who pays the experts' fees?**

Appointment procedure

Nigeria has an adversarial legal system, and it is therefore up to the parties to appoint any expert witness they intend to call as a witness. The judge has no power to appoint an expert witness to assist the court.

Role of experts

Experts represent the interests of the party that appointed them. The expert report must be attached to that party's pleadings. At the pre-trial conference, the judge will agree with the parties any action that will narrow the field of dispute between expert witnesses. This may involve requiring the experts to produce a joint report indicating areas of agreement and disagreement, together with reasons.

Right of reply

Each party can cross-examine the other party's expert on his evidence during trial. An application to reply to the evidence of an expert as disclosed on the pleadings can be made to the judge at the pre-trial conference, and would take the form of further written expert evidence.

Fees

The instructing party pays an expert's fees (based on the agreement between them).

13. What remedies are available at the full trial stage?

The relief available to a party depends on its cause of action. The courts will not grant a relief that is not sought. Generally, remedies are of four kinds:

- Declarations.
- Orders for specific performance.
- Damages. Punitive (usually known as exemplary or aggravated damages) are available but seldom granted. They are reserved for situations where damage has been caused by abuse of government power, extreme recklessness or malice by the guilty party.
- Injunctions (whether mandatory or prohibitive).

14. What right(s) of appeal exist in relation to first instance judgments?

An automatic right of appeal from first instance judgments to the Court of Appeal exists, as of right, on issues of fact and law. This right must be exercised within 90 days of the judgment.

15. In relation to court costs, expert fees and legal fees:

- **What are the average costs of a simple case and a complex case?**
- **What legal fee structures can be used? (For example, do local lawyers commonly use task-based billing? Are fees fixed by law?)**
- **To what extent, if any, is the unsuccessful party liable to pay the successful party's costs?**

Average costs

The costs of a case (whether simple or complex) depend on:

- The skill, expertise and seniority of the lawyer involved.
- The subject matter of the dispute.
- The importance of the matter to the client.
- The time spent on the matter.

Costs can range from a few thousand Naira to millions of Naira.

Legal fees

The Rules of Professional Conduct in the Legal Profession require that legal fees in contentious matters are based on:

- The complexity of the matter.
- The time spent, effort made and seniority of the legal practitioner handling the transaction.

Most firms prefer task-based billing but will provide an hourly rate if requested. For providing legal documentation of landed properties, the fees chargeable are fixed by law.

Payment of successful party's costs

Costs are generally paid by the unsuccessful to the successful party. The costs of litigation are, as a rule, much lower than those awarded in arbitration proceedings. Although costs are to be awarded on an indemnity basis (*Order 49 Rule 1, Lagos Civil Procedure Rules*) based on the expenses to which the litigant has been put (as well as his time and effort in coming to court), the attitude of the courts has been not to award legal fees expended as an item of special damages (*Guinness Nigeria Plc v Nwoke 2000 15 NWLR 135*). Because of this, the successful party does not, in practice, recover anything near to the amount expended on the litigation. Even for the most protracted litigation, cost awards are unlikely to exceed the level of NGN250,000 (about US$1,616). However, in exercising its discretion as to costs, the court can take into account any:

- Offer or contribution made by any of the parties.
- A payment into court and the amount of this payment.

The court can also take into account costs that arise because of the misconduct or neglect of a party to the action.

16. What procedures are available to enforce:

- **A domestic judgment in the domestic courts?**
- **A domestic judgment in other jurisdictions?**
- **A foreign judgment in the domestic courts?**

Enforcement of domestic judgments

The enforcement of a judgment depends on its terms. A declaratory judgment is not capable of enforcement as it merely states the rights of the parties. Judgments for specific performance, damages and injunctions can be enforced through:

- The issuance of a writ of execution.
- Starting garnishee proceedings.
- Contempt proceedings.

A domestic judgment of a court in one state in Nigeria can be enforced within the jurisdiction of another state court on the registration of the judgment in the enforcing court. It is then enforced in the same manner as a judgment of that court.

Enforcement of domestic judgments abroad

Enforcement of a domestic judgment outside Nigeria depends on whether the court procedures through which the judgment was obtained comply with the provisions of the law of the country in which enforcement is sought.

Enforcement of foreign judgments

Nigeria has a Foreign Judgment (Reciprocal Enforcements) Act which is based on reciprocity of treatment. This statute enables judgments that are given in a foreign country to be enforceable in Nigeria by Nigerian courts.

An application to register a foreign judgment must be made within six years of the date of the judgment or any appeal in relation to that judgment (*section 4, Foreign Judgment (Reciprocal Enforcements) Act*). A judgment is not registered if it is wholly spent (that is, 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 it would not be enforceable in the country of the original court. The registration can also be set aside on application by the affected party on the grounds that:

- The Foreign Judgments (Reciprocal Enforcements) Act does not apply to the judgment or it was registered in breach of the Act.
- The original court lacked jurisdiction.
- Insufficient time was given to the non-appearing defendant in the original court to prepare for the matter.
- The judgment was obtained by fraud or is contrary to the public policy of Nigeria.
- The rights under the judgment are not vested in the person applying for registration, or the registering court in Nigeria is satisfied that before judgment in the original court was given, the matter in dispute had been the subject of a final judgment of a court elsewhere that had jurisdiction in the matter.

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

ARBITRATION

17. Which arbitration bodies in your jurisdiction are commonly used for the resolution of large commercial disputes? (Please give details of both bodies established specifically to provide arbitral services and professional/industry bodies.)

The arbitration bodies most commonly used are:

- **The Nigerian branch of the London based Chartered Institute of Arbitrators.** This was established in 1998 and, with the approval of the London headquarters, provides training courses that enable successful candidates to join the Institute and obtain the ACIArb, MCIArb and FCIArb qualifications.
- **The Regional Centre for International Commercial Arbitration.** This was established under the auspices of the Asian-African Legal Consultative Organisation by the Regional Centre for International Commercial Arbitration Act No.39 of 1999 to promote the resolution of disputes arising from international transactions and commerce. In particular, its main function is to promote Lagos as a venue for international arbitration and provide adequate support services for the holding of arbitration proceedings.

Both organisations maintain a list of qualified arbitrations and provide services such as hearing rooms, libraries, training courses, transcription and secretarial services to support arbitration and other ADR processes (*see Question 29*).

Some chambers of commerce also provide arbitration services to their members.

18. For an agreement to arbitrate to be enforceable:

- **What legal requirements and/or formalities must be satisfied?**
- **Is a separate arbitration agreement required or is a clause in the main contract sufficient?**
- **What statutory rules (if any) will apply to the arbitration agreement, for example, are there any restrictions on the number or method of selection of arbitrators?**

Legal requirements and formalities

There must be a written agreement between the parties to refer a dispute to arbitration.

Form of agreement

Any form of writing which acknowledges the agreement to arbitrate is sufficient.

Impact of statutory rules

Under section 15(1) of the Arbitration Act, the arbitration rules in the First Schedule of the Arbitration Act are applicable to all arbitration proceedings unless the provisions of section 53 (which allows the use of other rules in international arbitrations) apply. The rules in the Arbitration Act are based on the Model Arbitration Law, with minor modifications.

Where the parties do not specify in the arbitration agreement the procedure to be followed in appointing an arbitrator, the provisions of the Act govern the appointment. Similarly, three arbitrators will be appointed where the parties have not previously agreed on the number of arbitrators and do not agree on a single arbitrator within 15 days (*Article 5, First Schedule, Arbitration Act*).

19. What procedural rules are arbitrators likely to follow? Can the parties determine the procedural rules that apply?

For domestic arbitrations, the arbitral panel must apply the procedure in the rules in the First Schedule to the Arbitration Act. Where the rules are silent in relation to a particular matter, the arbitral panel can determine the procedure, as long as any rule adopted ensures a fair hearing (*section 15, Arbitration Act*). In international arbitrations, the parties are free to agree on what rules of procedure to apply (*section 53, Arbitration Act*).

(*See also Question 18.*)

20. What documents must the parties disclose to the other parties and/or the arbitrator(s)? Can the parties determine the rules on disclosure?

The mandatory rules in the Arbitration Act apply to domestic arbitrations (*see Questions 18 and 19*). They provide that the parties can, in their points of claim or defence, either:

- Attach the documents on which they rely.
- Include a reference to the documents.

The arbitral panel can, if it considers it appropriate, require parties to either:

- Deliver a summary of the documents and other evidence.
- Produce the documents and other evidence during the hearing.

In practice, most arbitrators require parties to attach copies of relevant documents to their pleadings.

21. Is arbitration confidential?

Arbitration proceedings are confidential unless the parties agree otherwise, and the award cannot be made public unless both parties give their consent.

22. How far will the local courts intervene to assist arbitration proceedings (for example, by granting an injunction or by compelling witnesses to attend)?

An arbitral tribunal does not have the coercive powers of the court. Therefore, if a witness is not willing or is otherwise unable to attend the hearing and/or produce documents, an application can be made to the court for it to intervene by ordering a writ, which can be (*section 23, Arbitration Act*):

- *Subpoena duces tecum* (an order requiring a person to produce documents).
- *Subpoena ad testificandum* (an order requiring a person to give evidence).
- *Habeas corpus ad testificandum* (an order to bring a prisoner, or a person detained either lawfully or unlawfully, for examination before the court).

Interim measures of protection issued by the arbitral panel in the form of an interim award are enforced by the court in the same manner as a final award. Parties can also apply to court for any interim relief.

23. What is the danger of a local court intervening to frustrate the arbitration? Can one party stall proceedings by frequent court applications?

Because courts cannot intervene in proceedings except where this is provided by the Arbitration Act (*section 34, Arbitration Act*), any application to court with the intention of stalling the proceedings rarely succeeds.

24. What right(s) of appeal to the local courts exist in relation to arbitration proceedings and awards? Can the parties effectively exclude any right(s) of appeal?

There is no right of appeal against arbitration proceedings or awards (*see A Savoia Ltd v Sonubi (2000) [12] NWLR pt 682 at 539*). The courts only have power to set aside an award on the grounds of (*sections 29 and 30, Arbitration Act*):

- Excess of jurisdiction.
- Misconduct by the arbitrator.
- Proof that the award has been improperly procured.

Courts can stay court proceedings and refer disputes to arbitration (*sections 4 and 5, Arbitration Act*). However, arbitration proceedings can be started or continued while the matter is pending in court (*section 4(2), Arbitration Act*).

25. What is the likely duration of arbitration proceedings?

The duration of proceedings depends on the complexity of the matter and the format of the proceedings. The Arbitration Act provides that unless the parties agree that no hearing shall take place, the proceedings will be by way of oral hearing.

26. In relation to arbitration costs, arbitrators' and experts' fees, and legal fees:

- **What are the average costs of a simple case and a complex case?**
- **What legal fee structures can be used? (For example, do local lawyers commonly use task-based billing? Are fees fixed by law?)**
- **To what extent, if any, is the unsuccessful party liable to pay the successful party's costs?**

Average costs

The costs of arbitration proceedings depend on the number of arbitrators appointed, and the complexity of the dispute. By comparison with the costs of litigation proceedings, arbitration is

a more expensive process. However, the successful party is more likely to recover the full costs of participation, if claimed (*see Question 15*).

Legal fees

As with contentious litigation, legal fees are not fixed by law, and task-based billing is a common option. The skill and seniority of the lawyers involved and the complexity and time involved in handling the matter are the usual guidelines used to fix legal fees.

Payment of successful party's costs

In fixing the costs of the arbitration, the costs of legal representation and assistance of the successful party are awarded if claimed, to the extent that the arbitrators decide that the amount is reasonable (*section 49, Arbitration Act*).

27. In what circumstances will:

- **An arbitration award made in your jurisdiction be enforceable in the domestic courts?**
- **An arbitration award made in your jurisdiction be enforceable in other jurisdictions?**
- **A foreign arbitration award be enforceable in your jurisdiction?**

Enforcement of awards

A domestic arbitration award is enforceable on application to the high court by the successful party, who must supply the original or a duly certified copy of both the award and the arbitration agreement. The award is enforced as if it were a judgment of the high court.

Enforcement of awards abroad

The enforcement depends on whether the award complies with the laws and the rules of procedure of the country where enforcement is sought.

Enforcement of foreign awards

Nigeria is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention), which is included in the Second Schedule to the Arbitration Act. Sections 51 and 52 of the Act re-enact the procedures for enforcing a foreign award and the grounds for refusing recognition as provided by the New York Convention.

ALTERNATIVE DISPUTE RESOLUTION

28. In relation to the alternative dispute resolution (ADR) methods commonly used in your jurisdiction to settle large commercial disputes:

- **Name each method and give brief details.**
- **Is ADR used more in certain industries? If yes, please give examples.**
- **Does ADR form part of any court procedures or does it only apply through mutual agreement between the parties?**

Types of ADR

Mediation, conciliation and arbitration are the most common ADR techniques used. Of these, arbitration is the most common.

The Arbitration Act contains mandatory rules for use in domestic conciliation and arbitration proceedings. The conciliation rules provide for one conciliator unless the parties agree on two or three (*Article 3, Third Schedule, Arbitration Act*).

(*See, in relation to the arbitration rules, Question 18.*)

Industry specifics

The Trade Disputes Act provides that all trade disputes must be referred to the Industrial Arbitration Panel. The Industrial Arbitration Panel will attempt to mediate the dispute and move to arbitration if mediation fails. It issues awards.

When ADR is used

Court-annexed ADR becomes available at the pre-trial conference stage, if the pre-trial judge believes that it is in the best interest of the parties. The matter is referred to the ADR judge, who sits as a conciliator. The procedure is guided by practice directions. The pre-trial judge can also refer the parties to arbitration if the parties desire this, before an arbitrator agreed by the parties or selected by the judge.

The Conciliation Rules in the Third Schedule to the Arbitration Act apply to the parties to an international commercial agreement only if they agree. In contrast, the Arbitration Rules in the First Schedule to the Act apply to all domestic arbitrations, and the arbitration agreement must be in writing (*see Question 18*).

29. Please give brief details of the main bodies that offer ADR services in your jurisdiction.

The Nigerian branch of the Chartered Institute of Arbitrators and the Regional Centre for International Commercial Arbitration provide arbitration services (*see Question 17*).

In addition, the following all provide mediation specific training:

- The Negotiation and Conflict Management Group (NCMG).
- The Multi-Door Court House (which provides court annexed ADR services) (*see Question 28*).
- The Chartered Institute of Mediators.

REFORM

30. Please give details of any recent or proposed reforms relating to dispute resolution, for example court procedures, arbitration and ADR.

The new Lagos Civil Procedure Rules, which have been replicated in some states of the federation and are under consideration in other states, introduced court-annexed arbitration under a multi-door court house system (*see Question 29*). At the pre-trial conference stage, the court can refer the parties to conciliation or mediation under the auspices of an ADR judge appointed for that purpose (*see Questions 7 and 29*). The Lagos state government has recently requested the Rules Drafting Committee set up to redraft the rules, to review their implementation.

A national committee has also recently been established by the federal Ministry of Justice to review and propose amendments to the Arbitration Act.

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