

# Kluwer Arbitration Blog

## Harnessing the Potential of Award Review Tribunals in Nigeria: A Strategic Approach

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In May 2023, Nigeria's [Arbitration and Mediation Act](#) (AMA) was enacted. It replaced the Arbitration and Conciliation Act 1988 with a modernised version that aligns with the 2006 UNCITRAL Model Law. Among its [salient features](#) is the Award Review Tribunal (ART) mechanism, outlined in Section 56. This distinctive, innovative procedural offers an alternative to traditional court challenges that potentially streamlines dispute resolution while preserving the core principles of arbitration.<sup>1)</sup> Yet, the practical implications and application of the ART in arbitration agreements call for meticulous scrutiny. This blog post provides a critical exploration of the ART, discussing its potential impacts, inherent challenges, and strategic integration into the arbitration framework in Nigeria.

### Potential Impact of ART

The ART presents a remarkable shift in dispute resolution mechanics, particularly within Nigeria's legal landscape. The primary advantage of the ART is that it offers an alternative to a court challenge to an arbitral award whilst preserving the expedient and efficient attributes typically associated with arbitration. In essence, the ART embeds an inherent review system within the arbitration process, permitting parties to stipulate in their arbitration agreement the provision for an application to review an arbitral award based on any of the criteria outlined in Section 55(3) of the AMA. By utilising this new option, parties may streamline the arbitral process and enhance the finality of arbitral decisions. This option also significantly reduces the time and resources traditionally invested in court appeals.

Set against Nigeria's current legal framework, where litigation can be lengthy and convoluted, the ART introduces much-needed flexibility and speed to dispute resolution. The mechanism permits parties to opt for a review of an arbitral award by a separate tribunal. This tribunal can confirm, amend, or set aside the award based on the evidence and arguments from the original arbitration – potentially offering a faster path to resolution than court appeals.

However, the introduction of this new dimension into the arbitration landscape is not without its potential pitfalls. One concern is the additional phase that the ART presents, potentially prolonging the overall duration of the dispute resolution. Considering that arbitration is esteemed for, among other features, its speediness, this extra stage may seemingly conflict with one of its defining

principles. Moreover, the requirement for an added set of arbitrators could inflate costs, possibly straining the parties who initially opted for arbitration due to its cost-friendly nature.

Nevertheless, these perceived challenges can be strategically addressed. With judicious scheduling and intelligent negotiation of cost structures, the downsides of the ART might well be curtailed, leading to a dispute resolution pathway that is robust, fair, and nimble. This demands adept navigation and astute planning from arbitration practitioners, maintaining a delicate equilibrium between efficiency and thoroughness.

### **Effective Drafting Techniques for Incorporating ART in Arbitration Agreements**

Incorporating the ART into arbitration agreements demands meticulous drafting and a profound understanding of its potential implications. Effective drafting techniques can optimise the benefits of the ART and proactively control its associated risks.

Considerations around timelines are significant. Arbitration's efficiency is often its main allure, making the careful management of the ART proceedings' timelines crucial. Parties may consider including a clause that outlines a specific timeframe for the ART proceedings, aligning with Section 56(6) of the AMA.<sup>2)</sup> This provision necessitates that the ART delivers its decision within a stipulated duration, ideally within 60 days from its constitution. This foresight can mitigate unexpected delays, preserving the inherent efficiency of arbitration and bringing a measure of predictability to the dispute resolution process.

Managing costs is another fundamental consideration. The incorporation of the ART inevitably incurs additional expenses, which can be controlled with strategic provisions in the agreement. For instance, parties may agree to a single arbitrator conducting the review, reducing the costs associated with a full panel. Alternatively, parties might stipulate a fixed or capped fee for the ART proceedings to offer more predictability in budgeting for the arbitration process.

A document-only review process could also be incorporated to reduce costs further. This provision would allow the ART to review the award based solely on the written submissions and documents from the arbitration, eliminating the need for additional, often costly, hearings. This cost-controlling measure aligns with arbitration's essence as a flexible, party-driven process.

In summary, integrating the ART mechanism into an arbitration agreement demands caution, creativity, and strategic planning. The drafting stage transcends mere clause addition; it requires a holistic approach underpinned by thorough planning and precision. With this approach, parties can effectively harness the potential of the ART, transforming it from a potential obstacle into a valuable asset in their dispute resolution toolkit.

### **Enforcement of Awards Amidst ART Proceedings**

The enforcement of arbitration awards under the umbrella of an ongoing ART proceeding presents a labyrinth of complexities. The crux of the conundrum lies in the legal limbo the award occupies while the ART process continues. This paradoxical state, where the award simultaneously exists and is challenged, can throw up significant obstacles in the award's enforcement.

There are practical implications to this. For instance, an award debtor may leverage an ongoing ART process to delay or resist enforcement. On the other hand, an award creditor could face difficulties securing enforcement while the award's validity is still under review. These dilemmas demonstrate that the interaction between enforcement and the ART process can be delicate.

Despite the potential challenges, effective drafting strategies can alleviate these concerns. Parties must anticipate these complexities in their arbitration agreement. One possible solution could be a clause that delays the enforcement process until the ART has delivered its decision. This could eliminate the issue of enforcement during an ongoing ART process. However, this strategy may have drawbacks, particularly for the award creditor, who might need to enforce the award promptly.

An alternative approach could provide for provisional enforcement of the award, contingent upon the final ART decision. This balances both parties' interests, permitting enforcement while holding the ultimate verdict until the ART concludes.

One must not overlook jurisdictional considerations. The disparity in interpreting and applying the New York Convention across jurisdictions, particularly Article V(1)(e), might impact enforcement. This article empowers courts to reject enforcement if a competent authority from the award-making country has suspended or set aside the award. Therefore, a comprehensive understanding of potential enforcement jurisdictions' legal nuances should inform the arbitration agreement drafting.

Parties could incorporate a choice-of-law clause specifying that the arbitration agreement, and any dispute arising from it, be governed by the laws of a jurisdiction with a supportive legal framework for both the arbitration and ART proceedings. They could also supplement this with a forum selection clause to determine the jurisdiction in which any enforcement action should be initiated. By specifying a jurisdiction that supports arbitration and enforcement of awards, parties can provide added security for enforcing the award. However, parties must maintain an awareness of the enforcement landscape across different jurisdictions, especially those where the other party's assets are located.

While the enforcement of awards amid ART proceedings can present a labyrinth of complexities, strategic foresight, and well-crafted arbitration agreements can guide parties through successfully. With its potential to enhance the integrity and reliability of arbitral awards, the ART can become an integral part of the dispute resolution landscape if navigated correctly.

## **Conclusion**

Delving deeper into the ART landscape renders it increasingly evident that its potential benefits in enhancing arbitration's efficacy can only be harnessed effectively through strategic integration into arbitration agreements. The delicate balancing act of managing timelines, controlling costs, and ensuring the enforceability of awards underlines the importance of meticulous drafting and a profound understanding of the ART's intricate mechanics. This journey is one of foresight, anticipation, and innovation, ensuring that the ART becomes a beneficial instrument in our dispute resolution arsenal rather than a daunting hurdle.

Moreover, the ART significantly impacts Nigeria's arbitration landscape by providing a home-

grown solution to challenges often associated with enforcing arbitral awards. As Nigeria continues to grow as an attractive hub for investment, the quick and efficient resolution of commercial disputes is essential. The ART, designed with the local realities in mind, aims to enhance trust in the arbitration process and accelerate dispute resolution, thus offering a strategic advantage to businesses operating in Nigeria. It presents a viable, efficient alternative to the typically drawn-out court appeals, strengthening the country's arbitration framework.

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### References

Section 56(1) of the Arbitration and Mediation Act provides: “Notwithstanding section 55(1) of this Act, the parties may provide in their arbitration agreement that an application to review an arbitral award on any of the grounds set out in section 55(3) of this Act shall be made to an ART.”

Section 56(6) of the AMA provides: “Parties may agree on the procedure to be followed by the ART, otherwise the ART shall conduct its proceedings in a manner as it considers appropriate and shall endeavour to render its decision in the form of an award within 60 days from the date on which it is constituted.”

This entry was posted on Monday, September 18th, 2023 at 8:07 am and is filed under [Arbitration Act](#), [Legislation](#), [Legislative amendment](#), [Nigeria](#)

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