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From Award to Enforcement: Nigeria's Innovative Award Review Tribunal Through the Eyes Of National Courts and Expanding Appeal Horizon

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As the [Arbitration and Mediation Act 2023](#) (AMA) reshapes the legal landscape of dispute resolution in Nigeria, one of its [remarkable provisions](#) is the establishment of the Award Review Tribunal (ART). At Kluwer Arbitration Blog, posts have already been published that provide an [overview of the AMA](#) and [more insights into the ART](#). To recall, this [innovative mechanism](#), defined in Section 56 of the AMA, adds a new dimension to traditional arbitration proceedings. This new feature allows parties to revisit arbitral awards under specific circumstances. In a sense, the ART is inspired by the joint optional American Arbitration Association-International Centre for Dispute Resolution (AAA-ICDR) arbitral appeal scheme. However, unlike the [joint optional appeal scheme](#) provided by the AAA-ICDR, which allows parties to challenge an award for an “*error of law that is material and prejudicial*” and “*determinations of fact that are clearly erroneous*”, the ART only allows a review on the narrow grounds set out in the AMA. These grounds may be described broadly as jurisdictional, due process, and public policy.

The ART has the potential to significantly influence the strategies and outcomes of arbitration cases, which makes it a subject of considerable interest among legal professionals. Given the importance of this novel dimension, this article discusses the objectives of the ART, its merits, potential challenges, and its impact on arbitration. In addition, it suggests strategic recommendations.

The Objectives and Merits of the Award Review Tribunal

The ART is a new component established within Nigeria's framework of the AMA. It offers parties engaged in arbitration proceedings the opportunity to conduct a secondary review of the initial arbitral award. One crucial feature of the ART is the elective nature of the procedure. The ART's jurisdiction only applies with explicit inclusion in the arbitration agreement, highlighting its reliance on party autonomy. This mechanism operates as a complementary layer within the arbitration process and serves as an additional avenue for reviewing arbitral awards. Its introduction has significant implications for various aspects of arbitration strategies and dispute resolution in Nigeria. Below, we highlight key considerations and impacts to bear in mind.

Under the AMA, the ART operates under a strict framework. It restricts reviews solely to the specific criteria detailed in Section 55, which aligns with [Article 34\(2\) of the 2006 UNCITRAL Model Law](#) and Article V of the New York Convention. It is essential to emphasize that the ART challenge refrains from delving into the original award's substantive legal or factual aspects.

The ART is meticulously designed to ensure the expeditious enforcement of arbitral awards, with a streamlined process. Challenges addressed to the ART must be submitted within three months from the date the party making the application received the award and the ART shall endeavor to render its decision within sixty days from the date it was constituted. In cases where the ART upholds an award, the grounds for court annulment are notably restricted, encompassing only specific scenarios such as non-arbitrability or violations of public policy. This narrow scope empowers courts to efficiently resolve reviews with established arbitration regulations.

Potential Challenges of the ART and Its Impact on the Arbitration Practice

One of the complexities with the ART is that while its opt-in provision allows parties to scrutinize the initial award through an arbitral tribunal before turning to national courts, award beneficiaries are granted authority to initiate enforcement proceedings immediately upon issuance of the award, regardless of whether an ongoing ART review is underway. This signifies that the successful party can move forward with enforcement even as the ART conducts its review, allowing for a simultaneous process.

Throughout the ART review phase, the enforcement court wields discretionary power to assess the likelihood of a successful challenge, whether based on sound arguments or only for delay tactics.

Notably, under Section 56(7)(a) of the Act, it is within the court's purview to suspend enforcement proceedings when they run concurrently with an ongoing ART process. This provision grants the judiciary the power to temporarily halt enforcement actions while an ART review is in progress, a point that underscores the necessity for future case law to provide clarity in its application.

Following the national court's assessment of the pending ART review, the national court can overrule the ART proceedings and issue enforcement orders. This may create a problematic and complex situation – putting the ART on a collision course with national courts. Some of the ways to sidestep these potential concerns may be for parties to include clauses in their contract provisions suspending parties' enforcement rights during the ART review or for the court to establish a judicial approach of staying proceedings where parties have included the ART-related provisions in their contract and the mechanism has been put in motion by one of the parties. This approach would involve the court issuing provisional orders as deemed appropriate, temporarily halting enforcement proceedings while the ART completes its review.

As astutely highlighted by Mr. Isaiah Bozimo in his [earlier post](#) on the ART, the innovative concept of limiting a party's enforcement rights through a contractual clause within the framework of the ART still introduces a landscape of complexities and nuanced concerns, warranting a closer examination.

There is indeed an important challenge in balancing the inherent right to enforce arbitral awards, an indispensable facet of the international arbitration process, with the nuanced legal terrain the ART is now building up. Notably, the enforceability issue unveils intricate questions, such as the

potential for challenges based on the violation of fundamental legal norms, and the risk of conflicting with international treaty obligations, igniting cross-border legal disputes.

Individuals might argue that this judicial scrutiny is an obstacle, with courts poised to assess the compatibility of such restrictions with overarching legal principles and the preservation of arbitration's integrity.

The intricacies of limiting enforcement rights during the ART proceedings are vast and multifaceted. These include the potential for abuse, as parties might exploit the ART process strategically to delay enforcement. Such restrictions also have the potential to undermine the credibility of arbitration as a dependable and expeditious dispute resolution mechanism, impacting stakeholder trust. The global variation in laws concerning enforceability adds yet another layer of complexity, raising questions about which legal framework takes precedence in international arbitration. If used wrongly, it presents a risk of eroding the fundamental principle of finality in arbitration, potentially prolonging dispute resolution processes. Interactions with multi-tiered dispute resolution clauses, the enforcement of interim measures, cost implications, and broader implications for investor-state arbitration all contribute to a multifaceted landscape, which demands case law in the future to have a better view of the advantages and challenges of the ART.

On the other hand, while the ART holds the authority to either partially or entirely set aside an award or, conversely, confirm it, parties should strategically consider the implications of these decisions. There is potentially a broader appeal beyond public policy and non-arbitrability issues.

In the event that a challenge escalates to court, the ART's prior determinations significantly shape the court's course of action.

a) If the ART partially or entirely nullifies the award, the court retains the discretion to reinstate it if it identifies deficiencies in the ART's reasoning (Section 56(8) of the AMA).

b) Conversely, when the ART upholds the arbitration award, the court's power to invalidate the award is limited, primarily encompassing instances involving public policy violations or non-arbitrability (Section 56(9) of the AMA).

Recommendations

Theoretically, while the ART's innovation holds promise, it has the potential for considerable over-litigation and subsequent delays. This could lead to parties challenging the ART's jurisdiction, arbitrator appointments, or pertinent provisions across multiple forums, thereby fostering a complex dispute landscape. Litigators might be tempted to present multiple arguments based on the ART's review in foreign courts to avoid or delay enforcement.

The AMA also lacks precise directions for the ART's conduct of proceedings, as the requirements to align with the parties' agreement and "*appropriate manner*" lack definition. To address this ambiguity, it is advisable for parties to explicitly outline the procedure in the arbitration agreement while awaiting clearer case law on this important point.

Furthermore, to enhance this discussion in line with the provided recommendations, there is also valuable potential for well-defined guidelines, which could be issued by arbitral institutions

operating in Nigeria to optimize the utilization of the ART. Such guidelines would offer clear direction to involved parties and help mitigate uncertainties. Additionally, another opportunity exists for achieving greater clarity through collaborative dialogue among the drafters of the AMA, legislative bodies, and the judiciary to harmonize and refine the mechanisms that govern the ART process, ultimately enhancing the practical application of the ART.

Conclusion

The ART's strict criteria for review, option for immediate enforcement, and potential impact on court proceedings underscore the need for careful consideration by legal practitioners navigating the complexities of arbitration in Nigeria. Additionally, it can increase the time frame of the resolution process. Overall, the innovative ART definitely has the potential to improve arbitration in Nigeria, but its success largely depends on how well it is understood, used, and applied by those involved in the arbitration process.

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