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Enhancing Arbitration and ADR In Nigeria: Key Features of The National Policy on Arbitration and Alternative Dispute Resolution

Laura Alakija · Tuesday, April 8th, 2025

On 11 February 2025, the Federal Ministry of Justice Nigeria unveiled the National Policy on Arbitration and Alternative Dispute Resolution for 2024-2028 (the Policy) to bolster commerce and establish Nigeria as a regional and international arbitration hub. The policy highlights Nigeria's commitment to embracing global best practices by promoting arbitration and alternative dispute resolution ("ADR") for both domestic and international commercial disputes. The Policy aims to enhance the government's engagement in arbitration and ADR proceedings involving its Ministries, Departments, and Agencies ("MDAs") while adhering to essential international conventions such as the UNCITRAL Model Law, the New York Convention, and the ICSID Convention. Notably, the Nigerian government also aims to prevent the use of overly ambitious arbitration agreements in contracts involving the Federal and State MDAs, allowing for better management of the arbitration process (paragraph 3 (m)).

Given Nigeria's recent challenges with both commercial and investment arbitrations, as seen in such cases as *P&ID v. Nigeria* and *Zhongshan v. Nigeria* respectively, the country aims to adopt a more proactive and efficient approach, in managing international disputes. In both instances, complex court cases or arbitrations resulting in enforcement proceedings across multiple jurisdictions underscored the tensions between cross-border commercial contracts and investment treaties, on the one hand, and the domestic legal frameworks and international arbitration norms, on the other hand.

In the *P&ID* case, The Hon. Mr. Justice Robin Knowles CBE remarked that "the Arbitration was a shell that got nowhere near the truth" – effectively challenging prevailing norms and suggesting a more interventionist approach to arbitration, given the circumstances of that case. Mr. Justice Knowles CBE also expressed hope that the case would provoke debate and reflection among the arbitration community.

These kinds of complexities, among other factors, contributed to difficulties and reputational damage for Nigeria. The respective outcomes could have broader implications for foreign investment and legal certainty in Nigeria. The Policy is designed to address and mitigate these kinds of challenges.

The Policy was well received as a concerted effort, on the part of the Nigerian government, to promote domestic and international commercial arbitration while strengthening Nigeria's

management of investment disputes, leaning on indigenous expertise, building confidence in Nigerian institutions, and enhancing clarity and predictability in arbitration to stimulate commerce and economic growth in Nigeria.

Starting with the scope of application, paragraph 4 of the Policy addresses both domestic and international commercial arbitration, while paragraphs 10.2, 11, and 12 detail express provisions for investment arbitration. The key interventions covered in the Policy include:

Default Rules, Seat, and Appointing Authority: The Policy provides that, in the absence of contrary agreements, disputes will follow the Rules in the Arbitration and Mediation Act 2023 (paragraph 5). The Policy encourages preference for Nigeria as the seat and venue for arbitration and, where necessary, naming the Director of the Lagos Regional Centre for International Commercial Arbitration ("RCICAL") as the default appointing authority for international arbitrations involving Nigeria (paragraph 13).

Model Arbitration Clause: The Policy provides a model arbitration clause for use by Federal and State MDAs and their counterparties (paragraph 5 & Schedule 1). The Model Clause is a detailed but simple multi-tiered dispute resolution provision that provides a 3-step approach to dispute resolution involving Nigerian parties starting with negotiations (10 days), followed by mediation (30 days), which may be conducted virtually, and then arbitration as a last resort. The model clause also allows for settlement negotiations and requests for interim or emergency reliefs while arbitration proceedings are ongoing.

Appointment of Nigerians and Reciprocity of Appointments: Paragraph 6 of the Policy provides for the appointment of suitably qualified and competent Nigerian arbitrators by the State and Federal MDAs in disputes involving them. Appointments are to be made by the Attorney General of the Federation ("AGF") or State Attorneys General ("State AG") who may invite the Director of RCICAL or other centres to make appointments for the State or Federal MDAs. Additionally, appointments for disputes involving MDAs which exceed 50 million Nigerian Naira require approval from the AGF. In terms of engaging legal counsel, paragraph 7 outlines the criteria for selecting Nigerian counsel, highlighting the importance of technical skill, expertise, and transparency in the selection process. It also emphasizes the necessity for collaboration between foreign counsel—engaged based on their experience and expertise—and Nigerian counsel, who must be informed when foreign counsel is involved. Additionally, Nigerian counsel is permitted to recommend foreign counsel to the AGF or the State AG for consideration.

Ethical Standards, Capacity Development, and Public Awareness: The Policy encourages the development of a unified code of conduct for practitioners (paragraph 8), capacity-building initiatives for personnel in relevant MDAs who are tasked with responsibility for negotiating contracts and/or managing disputes involving Federal and State MDAs and the introduction of Arbitration and ADR in the curriculum for Law Faculties and Law Schools around the country (paragraphs 10 and 18). The policy also provides for collaboration with private sector stakeholders for the development and implementation of the Policy (paragraph 18 (ii)).

Coordinated Oversight and National Registers for Bilateral Investment Treaties, Arbitration, and ADR: The Policy underscores the importance of centralized management and oversight in negotiating contracts involving the Nigerian government and its MDAs, as well as in the handling of investment disputes involving government MDAs (paragraph 10). This responsibility is assigned to joint teams from the Federal Ministry of Justice, State Ministries of Justice, and the Nigerian

Investment Promotion Commission (paragraph 10.2), with a view to ensuring that insights gained from this consolidated approach are applied to future investment agreements. The Policy also establishes the maintenance of registers that document commercial and investment proceedings (paragraph 11) and creates a repository for Bilateral Investment Treaties (BITs) (paragraph 12) to protect Nigeria's interests in this area.

Promotion of ADR and a Judicial Culture of Support: The Policy promotes the use of ADR at Multi-Door Courthouses for both private sector entities and MDAs. It encourages the application of ADR as a primary approach for dispute resolution, particularly for disputes within thresholds to be set by the Federal Ministry of Justice periodically (paragraphs 13 (c) and (d)).

Additionally, it proposes the establishment of small claims commercial courts (paragraph 13) with small claims procedures and small claims appeals procedures for disputes under a threshold of NGN 5 million (paragraphs 16.1 and 16.5).

The Policy also provides for a proactive judiciary that supports arbitration by upholding arbitration agreements and streamlining processes. This includes staying proceedings in favour of arbitration or refraining from entertaining actions which seek to circumvent arbitration clauses (paragraph 15), implementing 60-day timelines for court proceedings (paragraph 16.3(vi)) and 270-day timelines for appeals in arbitration-related matters, as well as imposing punitive costs for obstructive practices (paragraph 15).

It promotes the allocation of additional judicial resources and the development of specialized rules/practice directions to expedite arbitration-related matters (paragraph 15), building on some of the innovations in the Arbitrations Proceedings Rules ("The Rules") in the Third Schedule of the Arbitration and Mediation Act 2023. Among other innovations, the Rules eliminate the need for compiling lower court records for appeals (Rule 10), require appellants to prepare and file their own records (Rule 11) and stipulate that appeals be scheduled for hearing within six months of filing (Rule 12).

Furthermore, the Policy encourages the creation of specialized judicial divisions and strengthening ADR centres to enhance the efficiency of justice delivery (paragraph 13(e)).

Implementation and Review: The provision in paragraph 19.0, which establishes a five-year implementation timeline along with a requirement for review to align with current trends in arbitration and ADR, is among the more proactive aspects of the policy. It reflects a commitment to creating a more flexible and adaptable arbitration and ADR regime in Nigeria.

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Concluding Remarks

The National Policy on Arbitration and Alternative Dispute Resolution represents a significant advancement in Nigeria's legal justice system, building on the foundation established by the Arbitration and Mediation Act 2023. This Policy enhances previous initiatives from the Act, further reinforcing Nigeria's status as a premier arbitration hub in the sub-region and across the continent. It introduces crucial changes to judicial and governmental interventions related to arbitration and ADR. It places responsibility for Implementation with the AGF and State AGs, supported by an Advisory Council composed of ADR experts and the President of the Nigerian Bar Association and ensures that Nigeria's dispute resolution framework remains current and

competitive by providing for regular evaluations and stakeholder engagements for alignment with emerging trends and industry standards.

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