

MARITIME ARBITRATION IN LAGOS¹

BY

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1. INTRODUCTION

Lagos, one of the constituent states of the Federal Republic of Nigeria remains the country's commercial nerve centre.² Nigeria, the most populous Black Country has a coastline of approximately eight hundred and fifty three kilometers. A country with vast resources bordered to the North by the Republics of Niger and Chad, to the West by the Republic of Cameroon and the South by the Atlantic Ocean. Nigeria, a member of the Organisation of Petroleum Exporting Countries' (OPEC) is its sixth largest producer of oil.

Nigeria's maritime infrastructure and facilities include ports and inland waterways.³ The country's principal container port is Lagos.⁴ Other ports include Port Harcourt, Rivers State⁵ and the new port at Onne free trade zone.⁶ Other free ports are also being established in Nigeria.⁷ Ships destined for Nigerian ports carry over seventy percent of the cargo destined for the West African region. Some other West African countries including the land locked ones receive their cargo through Nigeria. Presently, the Nigerian maritime sector is undergoing a radical reform process aimed at increasing its effectiveness and modernisation including the concessioning of ports to private operators.

Maritime activities constitute a vital sector of the Nigerian economy and given the spate of activities within the sector including that relating to incoming and outgoing cargo, maritime disputes are bound to arise. Apart from cargo related claims, there is the area of deep-sea oil exploration activities. The Billion Dollar investments in free trade zones are also bound to increase the level of commercial interactions and potential for disputes.

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² The Federal Republic of Nigeria is composed of thirty six states and the Federal Capital Territory, Abuja.

³ Nigeria Inland Waterways are about 3,000 km

⁴ Lagos main port facilities are at Apapa and Tin Can Island

⁵ Port Harcourt is located 66 kilometers from the Gulf of Guinea along the Bonny River in the Niger Delta

⁶ Onne is located about 25 kilometers South of Port Harcourt

⁷ E.g. Port at Lekki free Trade Zone, Olokola free trade zone

Arbitration and Alternative Dispute Resolution mechanisms are becoming increasingly popular in Nigeria as the preferred means of resolving disputes. The purpose of this paper is to give an overview of the maritime arbitration scene in Nigeria.

2. **LEGAL FRAMEWORK**

ARBITRATION STATUTE

- 2.1 Considerable improvements have been effected to bring Nigeria's arbitration laws in line with international acceptable standards. Nigeria was the first country in Africa to adopt the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration. The Arbitration and Conciliation Act (hereinafter referred as the Arbitration Act) was passed as a Federal law in 1988.⁸ The preamble states thus: -

“An Act to provide a unified legal framework for the fair and effective settlement of commercial disputes by arbitration and conciliation and to make applicable the Convention on the Recognition and Enforcement of Arbitral Awards (New York Convention) to any award made in Nigeria or in any contracting state arising out of International Commercial Arbitration”

The Arbitration Act applies to both domestic and international commercial arbitration. Part I of the Act is a slightly modified version of the UNCITRAL Model Law. Part II a reproduction of the UNCITRAL Conciliation rules, Part III contains additional provisions relating to international commercial arbitration and domesticates Nigerian's treaty obligations under the provisions of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

- 2.2 The Arbitration Act contains three schedules. The first schedule is a reproduction of the UNCITRAL Arbitration Rules, the second schedule a reproduction of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 and the third schedule a reproduction of the UNCITRAL Conciliation Rules.

⁸ Arbitration and Conciliation Decree, 1988 now cited as Cap A18 2004 Law of the Federal Republic of Nigeria. The Arbitration Act is listed on UNCITRAL'S official list as based on the Model Law. Hitherto the different regions constituting Nigeria had arbitration laws based on the 1914 Arbitration Act of England. The arbitration laws of the various states derive their source from the laws of the various regions from which the states were created.

2.3 The Arbitration Act is based on the Model Law but contains some modifications.⁹

3. PROCEDURAL RULES

Section 15(1) of the Act provides that arbitral proceedings shall be in accordance with the procedure contained in the Arbitration Rules in the First Schedule which are based on the Uncitral Arbitration Rules. The rules reflect the principle of party autonomy and most of the provisions are mandatory only to the extent that the parties *do not otherwise agree*.

Parties to an international arbitration under the Act are free to adopt the procedural rules they choose to apply to their arbitration proceedings. Section 53 provides that notwithstanding the provisions of the Arbitration Act the parties to an international commercial agreement may agree in writing that disputes in relation to the agreement shall be referred to arbitration in accordance with the Arbitration Rules set out in the First Schedule to the Act, or the UNCITRAL Arbitration Rules or any other international arbitration rules acceptable to the parties.

4. SOME SALIENT PROVISIONS UNDER THE ARBITRATION ACT

(i) CONFIDENTIALITY

Although there is no specific provision in the main body of the Arbitration Act pertaining to confidentiality of arbitral proceedings the cloak of confidentiality accorded to arbitral proceedings is perceived in Nigeria as one of the major advantages of arbitral proceedings.

However Article 32 of the Arbitration Rules in the First Schedule provides that the award may be made public only with consent of the parties. In the event that the parties have opted for arbitration rules which provide otherwise then they would be regarded as having waived the right to confidentiality.

(ii) EXTENT OF COURT INTERVENTION

Section 34 prohibits the courts from intervening in any matter governed by the Act except as provided under the Act. The Arbitration Act provides for court intervention / support in the following instances -

⁹ E.g. Section 5 of the Arbitration Act is taken from section 5 of the Arbitration ordinance No. 47 of 1955, published as chapter 13 of the Laws of the Federation 1958. The section provides for a discretionary stay of judicial proceedings instituted in violation of arbitration agreements. Section 4 of the Arbitration Act based on the Model law Article provides for a mandatory stay.

- (a) Section 2: - Prohibits revocation of Arbitration Agreement except by agreement of the parties or leave of the court.
- (b) Sections 4 and 5: - Power of the court to stay proceedings before the court and refer the parties to Arbitration as provided in the contract to arbitrate.
- (c) Section 7: - Appointment of arbitrators.
This section is inapplicable to international commercial arbitration. Part III containing additional provisions relating to international commercial arbitration provides for appointments by an *appointing authority*.¹⁰
- (d) Section 23: - Power of court to order attendance of witnesses to testify or produce a document or produce a prisoner to be examined
- (f) Section 29: - Application for setting aside an arbitral award
- (g) Section 30: - Setting aside of award or removal of an arbitrator on the basis of misconduct by arbitrator / improper procurement of award
- (h) Sections 31 and 32: - Recognition and enforcement of awards / Refusal of recognition or enforcement
- (i) Section 48: - Setting aside of international arbitral awards
- (j) Section 51 and 52: - Recognition and Enforcement of awards / Grounds for refusing recognition or enforcement

Article 26(3) of the Arbitration Rules in the First Schedule in addition provide that a request for interim measures addressed by any party to court shall not be deemed incompatible with the agreement to arbitrate or as a waiver of that agreement.

The highest courts in Nigeria appreciate the nature of arbitral proceedings and recognize the inviolability of arbitration agreements and the status of the resultant decision of the arbitrator.¹¹

In the case of *Owners of the M.V Lupex v. NOCS Ltd*¹² the Supreme Court confirmed the duty of courts to enforce Arbitration Agreements entered into by parties. The Court relied on the provisions of the Act, various English authorities and the comments made by the late Ephraim Akpata Justice (Rtd) of the Supreme Court of Nigeria in his book “The Nigeria Arbitration Law” where he stated thus: -

¹⁰ Section 54(2) stipulates that the appointing authority means the Secretary General of the Permanent Court of Arbitration at The Hague.

¹¹ See *Ras Pal Gazi onstruction Company Ltd vs FCDA* (2001) 10 NWLR Pt 722, 559. In that case the court of Appeal had converted an award into its own judgment. The Supreme Court declared that an award is at par with a judgment of the court, has the same force and effect and cannot be interfered with except as provided in the Act.

¹² (2003) 15 NWLR Pt 844, 469

“.....the court should not be seen to encourage the breach of a valid arbitration agreement particularly if it has international flavor. Arbitration which is a means of by which contract disputes are settled by a private procedure agreed by the parties has become a prime method of settling international commercial disputes.....parties generally cannot both approbate and reprobate a contract. A party to an Arbitration Agreement will in a sense be reprobating the agreement if he commences proceedings in court in respect of any dispute which the preview of the agreement to submit to arbitration”¹³

iii. APPEAL PROCESS

Arbitration awards are not appealable under the Arbitration Act. Domestic awards may be set aside under the provisions of section 30(1) and (2) on ground of misconduct or where an award has been improperly procured.¹⁴

International Awards may be set aside on the same grounds on which recognition and enforcement of an award may be refused as provided in Article V of the New York Convention.¹⁵

iv. COSTS

The Arbitration Act contains specific provisions relating to costs. The provisions are contained in Part III- Additional Provisions Relating to International Commercial Arbitration and Conciliation The term “costs” has been defined on the basis of the UNCITRAL Model Law Arbitration Rules and stated to include only:

- (a) The fees of the arbitral tribunal to be stated separately as to each arbitrator and to be fixed by the tribunal itself
- (b) The travel and other expenses incurred by the arbitrators
- (c) The costs of expert advice and of other assistance required by the arbitral tribunal

¹³ Ibid 488 paras A-F

¹⁴ See Taylor Woodrow v. Etina-Werk (1993) 1 NSCC 415; Baker Marine Nigeria vs. Danos and Curole Manna Inc (2001)7 NWLR Pt 712, 337

¹⁵ See also section 52 for grounds for refusing recognition or enforcement of international awards

- (d) The travel and other expenses of witnesses to the extent that such expenses are approved by the arbitral tribunal
- (e) The costs for legal representation and assistance of the successful party if such costs were claimed during the arbitral proceedings, and only to the extent that the arbitral tribunal determines that the amount of such costs is reasonable.

The Act provides that fees are to be reasonable taking into account the amount in dispute, the complexity of the subject-matter, the time spent by the arbitrators and any other relevant circumstances of the case.¹⁶

Section 49(3) mandates the arbitral tribunal in circumstances (where an appointing authority has been agreed by the parties or designated by the Secretary General of the Permanent Court of Arbitration at the Hague) in fixing its fees to take into account the schedule of fees issued by Appointing Authority for Arbitrators in international cases to the extent considered appropriate in the circumstances of the case.¹⁷

SECURITY FOR COSTS

Nigerian judges have a discretion to order security for costs and there is no provision of Nigerian law prohibiting arbitrators from ordering security for costs and or for the claim provided the jurisdiction / power to do so is not restricted or constrained by the arbitration agreement. In exercising this power arbitrators in Nigeria would tend to follow the approach of the courts.¹⁷ The modern practice by Nigerian solicitors is to specifically include the power of the arbitrator to order security for costs and / or the claims in the arbitration agreement. The arbitrator in making an order for security must have full regard to the circumstances of the dispute and must ensure that terms of the order are not oppressive.¹⁸

v. EXTENT OF APPLICATION OF ARBITRATION ACT

Section 35 provides that the Arbitration Act shall not affect any other law by virtue of which certain disputes may not be submitted to arbitration; or may be submitted to arbitration only in accordance with the provisions of that or another law.

The Arbitration Act therefore makes express provisions with respect to the principle of arbitrability and accords respect to other arbitral laws including industry specific legislation

¹⁶ Section 49(2) Arbitration Act. See also Articles 38 of Arbitration Rules in the First Schedule

¹⁷ See sections 49(4) and(3) for provisions where appointing authority has not issued a schedule of fees. Any party may at any time request the appointing authority to furnish a statement setting forth the basis for establishing fees which is customarily followed in international cases. The appointing authority “may” consent to carry out this function.

¹⁷ See C.V. Scheep v. Houtmangracht & anor. 1995 1 NWLR pt 371, 295 at 308 paragraph H

¹⁸ See www.drvtlawplace.com publications’ page:A.O. Rhodes Vivour- Security for the respondent’s costs of arbitral proceedings with particular refrence to the Arbitration and Concilliation Act Cap 19, 1990 Laws of Nigeria. (ACA)

5 MARITIME INDUSTRY SPECIFIC LEGISLATION

The Admiralty Jurisdiction Act 1991 (hereinafter referred to as AJA 91) was enacted pursuant to the Federal legislative powers and vests the Federal High Court with jurisdiction with respect to Admiralty matters.¹⁹

Admiralty jurisdiction is stated under the Act to include jurisdiction to hear and determine any question relating to a proprietary interest in a ship or aircraft or any maritime claim as specified in section 2 of the Act.²⁰

Section 20 deals with the subject of jurisdiction of the court /ouster clauses and renders null and void agreements which seek to oust the jurisdiction of the court. The section provides as follows:-

“Any agreement by any person or party to any cause, matter or action which seeks to oust the jurisdiction of the Court shall be null and void, if-

- (a) the place of performance, execution, delivery, act or default is or takes place in Nigeria; or
- (b) any of the parties resides or has resided in Nigeria or
- (c) the payment under the agreement (implied or express) is made or is to be made in Nigeria or
- (d) in any admiralty action or in the case of maritime lien, the plaintiff submits to the jurisdiction of the court and makes a declaration to that effect or the *res* is within Nigerian jurisdiction; or
- (e) it is a case in which the Federal Military Government or a state of the Federation is involved and the Government or State submits to the jurisdiction of the Court; or
- (f) there is a financial consideration accruing in, derived from, brought into or received in Nigeria in respect of any matters under the admiralty jurisdiction of the Court; or
- (g) under any convention for the time being in force to which Nigeria is a party the national Law of a contracting State is either mandated or has a discretion to assume jurisdiction; or

¹⁹ Section 1(1)(a)

²⁰ Section 1(1)(a) section 2 lists and categories the maritime claims section (1) (1) a refers to.

(h) in the opinion of the Court, the cause, matter or action should be adjudicated upon in Nigeria.

The effect of section 20 on the validity of arbitration agreements with foreign forums has generated controversy and has come up for consideration before Nigerian Courts.

In the case of **Owners of M.V Lupex v. Nigerian Overseas Chartering and Shipping Ltd**²¹ the respondent instituted an action at the Federal High Court Lagos claiming damages for loss allegedly suffered as a charterer of the appellant's ship LUPEX under a charter-party dated 11th April 1991 following an alleged breach by the appellant. After filing the suit the respondent applied *ex parte* for the arrest of the vessel M.V Lupex and the application was granted.

On becoming aware of the order for the arrest of the vessel the appellant applied to the court inter-alia asking that the order of the court for the arrest of the vessel be set aside, the ship be released and the matter be adjourned sine die. The appellant contended that there was an arbitration clause providing for arbitration in London under English law in the event of a dispute. The appellant canvassed the arbitration agreement in the charter-party and argued that when the order was made not all the relevant facts were known to the court especially the existence of proceedings which had commenced before an arbitral tribunal in London.

The trial court declined to grant the appellant's prayers. The appellant appealed to the Court of Appeal which likewise refused to grant the prayer. The respondent argued that the arbitration agreement was invalid as it ousts the court's jurisdiction. The respondent placed reliance on section 20 of AJA 91. The Court of Appeal pronounced that if an arbitration agreement seeks to oust the courts jurisdiction it would be unenforceable as contrary to public policy. The court however found that the arbitration agreement in that case did not seek to oust the courts jurisdiction and rejected the argument that the section nullifies both domestic and foreign arbitration clauses. The court refused to grant a stay of proceedings in deference to the arbitration agreement not on the basis of section 20 but inter-alia on the application of the Brandon Tests as set out in the **Eleftheria**²² and approved by the Supreme Court of Nigeria in the **Nordwind**.²³ The Court of Appeal found that Nigeria was the place with the closest connection.

The appellant appealed to the Supreme Court. The Supreme Court disagreed with the lower court and unanimously allowed the appeal. The Supreme Court adjourned the litigation sine die to enable the continuation of arbitration proceedings in London.

²¹ (2003) 15 NWLR pt 844, 469.

²² (1969) 1 Lloyds L.R 237 at 242

²³ (1987) 1 ANLR 548

The Hon. Justice Utham Mohammed JSC reading the lead judgment stated thus: -

“These uncontroverted facts explain clearly that by submitting to arbitration the respondent had compromised its right to resort to litigation in court.....²⁴Where parties have chosen to determine for themselves that they would refer any of their dispute to arbitration instead of resorting to regular courts a prima facie duty is cast upon the courts to act upon their agreement. See *Willesford v. Watson* (1873) 8 Ch. App.473²⁵

The issue as to whether or not an arbitration agreement ousts the courts jurisdiction was not canvassed by the parties before the Supreme Court. The Supreme Court therefore did not come to a decision on this point. However in the case of **M.V. Parnomous Bay v. Olam (Nig) Plc** the Court of Appeal held that section 20 of the AJA had modified section 2 & 4 of the Arbitration Act and limited enforceable arbitration agreements to those having Nigeria as a forum.²⁶

This decision may be considered within the context of increasing criticisms by Nigerian parties against arbitration clauses in standard form contracts which provide for foreign forums. It would appear that the attitude of the Court appears to have been influenced by the perception that arbitration clauses in standard form contracts are unfair and oppressive.

The Hon. Justice Galadima (JSC) had this to say on the point: -

“It is the contention of the respondent that the clause inserted in the bills of lading were done without any consultation whatsoever with the respondent or its predecessor in title as it is a standard form contract usually lopsided in favor of the carriers, which was not bona fide, as its sole aim is to frustrate legitimate claims having undeserved jurisdictional advantage.

I am quite satisfied that the learned trial judge, apart from the fact he has given due consideration to S.5(2) (b) of the Arbitration and Conciliation Act, he has also considered the legality, genuineness and

²⁴ (2003) 15 NWLR pt 844, 486 – 487 paras A - A

²⁵ Ibid at page 488

²⁶ (2004) 5 NWLR Pt 865

reasonableness of the arbitration clause contained in the bills of lading”²⁷

The current position in Nigeria appears not to favour arbitration agreements with foreign forums where the place of performance, execution, delivery act or default in respect of the contract in dispute is Nigeria or any of the parties to the dispute resides or has resided in Nigeria.²⁸

6. ARBITRAL INSTITUTIONS / FACILITIES IN NIGERIA

There is a large variety of arbitral institutions / organizations in Nigeria. The ones most relevant to maritime claims are the Lagos Regional Centre for International Commercial Arbitration, the Chartered Institute of Arbitrators, England (Nigeria Branch) and the industry specific Maritime Arbitrators Association of Nigeria.

(i) THE LAGOS REGIONAL CENTRE FOR INTERNATIONAL COMMERCIAL ARBITRATION

The Lagos Regional Center for International Commercial Arbitration (hereinafter referred to as Regional Centre) was established in 1989 under the auspices of the Asian African Legal Consultative Committee (hereinafter referred to as AALCO) an intergovernmental organization with membership of forty five Asian and African countries.²⁹ The Regional Center is one of four regional centres worldwide established under the auspices of AALCO. Others are located in Kuala Lumpur Malaysia, Cairo Egypt and Tehran.

The centres are established for the following objectives: -³⁰

- (a) Promoting international commercial arbitration in Asian and African regions;
- (b) Coordinating and assisting the activities of existing arbitral institutions, particularly among those within the two regions;
- (c) Rendering assistance in the conduct of Ad Hoc arbitrations, particularly those held under the UNCITRAL Arbitration Rules;
- (d) Assisting in the enforcement of arbitral awards; and
- (e) Providing for arbitration under the auspices of the Centres where appropriate.

²⁷ Ibid page 15 Paras B-D See also Mr Chidi Ilogu ‘Legislative restriction on jurisdiction / arbitration clauses and anti suit injunctions in Nigeria’ Maritime and Transport law Committee Newsletter Vol. 13 No. 1 February 2006, See also *Lignes Aeriennes Congolaises v. Air Atlantic Nigeria LTD.* (2005)11 CLRN 55

²⁸ *Lignes Aeriennes Congolaises v. Air Atlantic Nigeria LTD.* (2005)11 CLRN 55

²⁹ The members include Nigeria, Japan, Egypt, Malaysia and Ghana. <http://www.aalco.org>.

³⁰ The Secretariat Study on the subject envisaged inter alia the establishment of a network of Regional Centres for Arbitration functioning under the Auspices of the AALCO in different parts of Asia and Africa so that the flow of arbitration cases to arbitral institutions outside the African and Asian region could be minimized. See part 1 section 5 of the Regional Centre for Commercial Arbitration Act Cap R5 LFN

The centres are independent organizations and operate under the host country agreements signed between AALCO and the respective host country. The agreements recognize the status of the centres as intergovernmental organizations and confer on them certain immunities and privileges to enable them function independently.³¹

The Regional Centre for International Commercial Arbitration Act No. 39 of 1999 (the Act) was passed to give legal status to the establishment and activities of the centre in Lagos Nigeria.. The Lagos Regional centre is also vested with a judicial personality as a body corporate with perpetual succession and a common seal³². Pursuant to the Headquarters' Agreement the Federal Government accorded diplomatic privileges and immunities to the Centre.³³

The Regional Centre acts as an administering authority as well as providing top rate facilities which can be used for the conduct of adhoc and institutional arbitration. The centre has formulated arbitration rules which are a modification of the Uncitral Rules. The Rules were modified to reflect the role of the Lagos Regional Center for international Commercial Arbitration as an administering body for arbitration proceedings. The Centre maintains a panel of international / domestic arbitrators and has fixed a scale of fees and administrative costs.

(ii) CHARTERED INSTITUTE OF ARBITRATORS ENGLAND

The Chartered Institute of Arbitrators England has a Nigeria branch composed of over four hundred members a number of whom are seasoned arbitration practitioners.

The Nigeria branch of the Chartered Institute of Arbitrators has been in the forefront of promoting arbitration as the preferred means of resolving disputes in Nigeria and advocating a favorable legal framework for arbitration. Regular training programmes are held and a number of its members have been accorded approved tutor status by the headquarters in London.

Its membership is multidisciplinary and includes practitioners in shipping. There are more lawyers in its fold than any other discipline. The Nigerian branch secretariat has top rate facilities including meeting and hearing rooms for the conduct of arbitral proceedings. A scale of fees has been put in place to ensure consistency in the charging of fees by its members and to ensure that fees charged are reasonable.

(iii) MARITIME ARBITRATORS ASSOCIATION OF NIGERIA (MAAN)³⁴

An association borne out of the need to ensure that the increasing demand for maritime arbitration in Nigeria is effectively met. Its membership is composed of master mariners, maritime / commercial lawyers, shipping companies and other operators in the maritime

³¹ Article III and IV of the Headquarters Agreement

³² See Section 1 of the Act

³³ See Federal Republic of Nigeria official Gazette no.51 vol.88 of 19th June 2001

³⁴ www.maania.com

sector. It was founded by lawyers and other practitioners who have developed expertise in commercial and maritime arbitration.

Its mission is to enhance Nigeria as a maritime arbitration centre and ensure a high standard for practitioners in the specialised field of maritime arbitration. MAAN's priority includes having in place a training programme to ensure the availability of high caliber maritime arbitrators in Nigeria.

MAAN has developed arbitration rules for a short form arbitral procedure as well as for large claims. The MAAN handbook includes a scale of fees and costs. MAAN retains a list of arbitrators composed of persons who have received high quality training in arbitration law and practice. MAAN acts as appointing authority and can make its list of alternative dispute resolvers available to organizations or persons.

(iv) **AVAILABLE ARBITRATORS**

There is a large crop of trained arbitrators, experts and support staff in Nigeria.

These trained arbitrators are essentially members of the legal and engineering professions but there is a concerted effort being made to ensure the availability of commercial men in the maritime arbitration field. MAAN is in the forefront of this reform.

7. LENGTH OF TIME

The advent of professional arbitrators has shortened the time-frame of arbitral proceedings. However in instances where court support is required delays are being encountered. There are ongoing initiatives to reform the Nigerian legal system as it affects arbitral proceedings.

8. ONGOING REFORM OF NIGERIA'S ARBITRATION AND ADR LAWS

The Hon. Attorney General and Minister for Justice in 2006 constituted a National Committee to submit proposals for the reform of Nigerian's Arbitration and ADR Laws. The committee has concluded its work and the proposals include the following: -

(i) **SPECIAL RULES OF PROCEDURE**

Special rules of procedure to ensure the expeditious hearing of court matters in support of arbitral proceedings have been drawn up. Significant features of the rules include: -

- Frontloading of evidence and written submissions
- Fast-tracking and case management mechanisms applicable at both trial and appellate stages
- Severe consequences for dilatory conduct or tactics, and

- Cost penalties

(ii) **ENFORCEMENT OF ARBITRATION AGREEMENTS**

The Arbitration Act appears to contain two inconsistent provisions on the enforcement of Arbitration Agreements. Section 4 makes it mandatory for a court to stay proceedings brought in violation of an arbitration agreement. Section 5 however appears to grant the Court a discretion.³⁵ The Committee proposed that section 5 be deleted and that arbitration agreements be enforceable on a mandatory basis. However excluded from the mandatory provision are international commercial agreements in the context of international carriage of goods. This is to address the perceived injustice to Nigerian consignees of having to arbitrate in foreign shores as provided in the widely used standard form contracts in the shipping industry. Some of these contracts are perceived as generally favoring one party only and the proposal is in line with the position already taken by Nigerian Courts with respect to admiralty matters under the provisions of AJA 91.

(iii) **WRITING REQUIREMENT**

The Revised Arbitration bill has adopted the revised UNCITRAL Article 7(2) to ensure that the requirement of arbitration agreement takes into account modern means of communication.

(iv) **INTERIM MEASURES OF PROTECTION**

The draft bill incorporates the UNCITRAL amendment to Article 17 of the UNCITRAL Model Law. Consequently the power of Nigerian courts to grant interim measures in support of arbitration is more clearly laid down. The proposal clearly states that such measures may be granted in aid of foreign arbitration and in situations where the arbitration is yet to commence. Detailed provisions as to the type of measures which may be granted are also stated.

(v) **SETTING ASIDE OF ARBITRAL AWARDS**

Sections 29 and 30 relating to grounds for setting aside awards on the ground of misconduct and improper procurement are proposed to be deleted. This is to avoid the situation where applications for setting aside awards are brought on the basis of the wide definition given to the term “misconduct” and the resultant delays in enforcing otherwise “good” awards. The proposal of the committee is that awards be set aside only on grounds of due process, jurisdiction and public policy. There is a duty under the proposed amendment for the person wishing to have an award set aside on any of the above grounds to establish that it has sustained substantial injustice as a result of the breach.

³⁵ See footnote 8 at page 2

(vi) **ADDITIONAL PROVISIONS**

Additional provisions to ensure Nigeria's attractiveness as a place for arbitration were also proposed. These include provisions on immunity of arbitrators, reference with umpires, security for costs and application of statutes of limitation to arbitration in the same way as they apply to court proceedings.³⁶

9. **COMMERCIAL COURTS**

Initiatives are being taken to have special fast track commercial courts in Nigeria. A six months time frame is proposed for the determination of matters before the commercial courts.

CONCLUSION

Presently most maritime arbitrations involving Nigerian parties or with close connection to Nigeria are conducted in London. Nigerian consignees believe that they are being put to great cost and expense particularly as these disputes may be arbitrated in Nigeria. Nigerian courts understand the nature of arbitration agreements and its binding nature. However the courts have shown a preference for Nigeria as the seat of arbitration concerning Nigerian parties or arising out of transactions that have close connection to Nigeria particularly where the arbitration agreement is contained in a standard form contract. Furthermore facilities exist in Nigeria for the conduct of arbitration. It is hoped that the traditional places of arbitration would actively encourage the development of other regions. Arbitration is meant to be cost effective. Encouraging the development of other regions apart from the traditional ones can only enhance its cost effectiveness.

³⁶ The Supreme Court in *City Engineering (Nig) Ltd v. FHA* (1997) 9 NWLR pt 520, 224 held that the period of limitation for the enforcement of an award runs from the breach that gave rise to the arbitration i.e. from the date of the accrual of the original cause. To avoid the limitation period lapsing it would be necessary to bring an application before the court that time stops running during the period the matter is locked in the court system. This could be done under the High Court Laws and relevant rules of the court where applicable e.g. (Section 64 of the Limitation Law Cap. 118, Laws of Lagos State 1994 and Order 38 Rule 1 of the High Court of Lagos State (Civil Procedure) Rules 2004)