Arbitration Updates Nigeria

JURISDICTION:

NIGERIA

ARBITRATION LEGISLATION:

The Federal law on arbitration is the Arbitration & Conciliation Act, Cap A18 Laws of the Federation of Nigeria (LFN) 2004 (the Act). The Act is based on the UNCITRAL Model Law and incorporates the UNCITRAL arbitration rules. Also, the Act ratifies and incorporates the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (NYC).

Furthermore, apart from the Act, which is a federal law, some constituent states have their respective arbitration laws. The main ones being:

a. The Lagos State Arbitration Law No.10 of 2009 (LSAL) which applies to all arbitrations within the state except where the parties have expressly agreed that another law should apply.
   b. The Lagos Court of Arbitration Law No.8 of 2009 (LCAL) which establishes a court of arbitration in Lagos State

ARBITRATION INSTITUTIONS:

The following arbitration institutions are active in Nigeria:

a. The Chartered Institute of Arbitrators UK (Nigerian Branch)
   b. The Chartered Institute of Arbitrators Nigeria
   c. The Lagos Regional Center for International Commercial Arbitration
   d. The International Chamber of Commerce (Nigerian National Committee)
   e. The Lagos Court of Arbitration

RECENT UPDATES:

a. Case Law
   i. NIGERIAN NATIONAL PETROLEUM CORPORATION V. STATOIL (NIGERIA) LIMITED AND OTHERS CA/L/758/2012
The Nigerian National Petroleum Corporation and Statoil (Nigeria) Limited and Texaco Nigeria Outer Shelf Limited had entered into a production sharing contract. That contract provided that disputes would be resolved through arbitration. A dispute arose from the contract but the Nigerian National Petroleum Corporation (NNPC) sought and obtained an injunction at the Federal High Court (“the FHC”) to prevent the continuation of arbitration. It argued that the subject matter of the claims in the arbitration involved taxation, and that by law, only a tax tribunal could hear the matter.

The Court of Appeal in Nigeria has held in this case that a lower court was wrong to grant an injunction to a party that wanted to prevent the continuation of arbitration proceedings even though that party had entered into an agreement to resolve all disputes through arbitration. It held that nowhere in the ACA is a court empowered to halt arbitral proceedings through the issuance of an injunction. The Act provides for judicial assistance in various ways including through: stay of court proceedings, the removal of an arbitrator for misconduct, the setting aside of the award and the enforcement of an award. As the Act does not provide for the intervention of the court to restrain arbitration by injunction, the court lacks the jurisdiction to do so.

The decision to grant an injunction in the first place was part of a growing trend by lower courts to stop arbitrations commenced by international oil companies against NNPC. In these cases, the central issue has been whether section 34 of the Nigerian Arbitration and Conciliation Act 2004 (“the ACA”) which states that “a Court shall not intervene in any matter governed by this Act except where so provided in this Act” means that the only basis on which a court can intervene to prevent the commencement or continuation of arbitration is as expressly provided for in the Act.

For more information visit: http://aluko-oyebode.com/_uploads/docs/Statoil-Court_of_Appeal_Judgment.pdf

ii. MUTUAL LIFE & GENERAL INSURANCE LTD v KODI IHIME (2013) 2 CLRN 68

The Court of Appeal in this case, rejected counsel’s invitation to set aside an arbitral decision on grounds of misconduct and the proverbial allegation of "error on the face of the award".

The court held that there must be an error of law on the face of the award, to set aside an arbitral award.
This decision of the Court of Appeal is worthy of note as it demonstrates the Nigerian Courts will not be eager to set aside awards where the parties have agreed to resolve their dispute by arbitration and to abide by the decision of the arbitral tribunal.

For more information visit:


b. Legislation

National Alternative Dispute Regulatory Commission Bill

Presently before the Nigerian parliament is a bill which seeks to establish a National Alternative Dispute Resolution Regulatory Commission (the Bill).

The functions of the commission, according to the Bill is to:

“regulate, through the process of accreditation, all Alternative Dispute bodies and institutions engaged in practice training, education or skills acquisition in alternative dispute resolution mechanism; advise the federal and state governments on the use of alternative dispute resolution mechanisms; develop an alternative dispute resolution policy for Nigeria; maintain a register of Alternative Dispute Resolution bodies and Institutions in Nigeria; set and maintain standards in the training curriculum of the Alternative Dispute Resolution bodies in Nigeria; undertake public enlightenment programmes on the benefits of Alternative Dispute Resolution as effective means of settlement of disputes; develop and maintain relations with international Alternative Dispute Resolution bodies and organisations with a view to attaining best international standards and practices in the field of Alternative Dispute Resolution; organise local and international seminars, workshops and conferences for users and practitioners; develop and constantly review, rules and regulations for the practice of Alternative Dispute Resolution in Nigeria; carry out such other activities as the Commission may consider necessary to raise awareness and maintain standards in the use of Alternative Dispute Resolution in Nigeria.”

The Bill has successfully passed through the lower house of parliament and has scaled the First and Second Readings at the upper house of parliament and is now at Committee Stage at the latter.
The Nigerian arbitration community has criticised the Bill, saying that ADR by its nature does not require regulation. They said that the Bill, if passed into law, will impinge on the right of private individuals to choose alternative dispute resolution method. They also noted that the Bill is against international best practices, as generally, ADR is not regulated in any country.

For more information visit:

http://www.vanguardngr.com/2013/05/stakeholders-oppose-regulation-of-alternative-dispute-resolutions/