This country-specific Q&A provides an overview to international arbitration laws and regulations that may occur in Nigeria.

For a full list of jurisdictional Q&As visit [here](#)
1. Is your country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?

Nigeria is a signatory to the New York Convention having acceded to it on March 17, 1970. The New York Convention came into force in Nigeria on June 15, 1970. The New York Convention now forms part of the primary legislation having been made expressly applicable to Nigeria by section 54 of the ACA and is set out in the Schedule Two to the ACA.

There are reservations in Nigeria to the New York Convention. Section 54 of the ACA emphasizes the provisions of Articles 1X and XI of the New York Convention. In accordance with Article I(3) of the New York Convention, the New York Convention is applied in Nigeria on the basis that there is a reciprocal recognition and enforcement of awards made in Nigeria in the territory of a member state whose award is to be enforced in Nigeria.

2. What other arbitration-related treaties and conventions is your country a party to?

Nigeria is a party to the (i) Vienna Convention on the Law of Treaties, (ii) Convention on Settlement of Investment Disputes between States and Nationals of other States and (iii) Economic Community of West African States Energy Protocol. These treaties have provisions relating to arbitration.

Also, Nigeria entered into several bilateral investment treaties requiring arbitration as the dispute resolution and regulating the recognition and enforcement of arbitral awards with some countries. These countries with which Nigeria has entered bilateral investment treaties include France, the United Kingdom, the Netherlands, Brazil, Finland, France, Germany, Italy, South Korea, Romania, China, Serbia, Spain, Sweden, Switzerland, and Taiwan.

Further, Nigeria has entered into Investment Promotion and Protection Agreements (IPPAs) with France, the United Kingdom, the Netherlands, Romania, Switzerland, Spain and South Africa. The aim of the IPPAs is to primarily protect investments. The IPPAs allow settlement of investment disputes through arbitration.

Additionally, Nigeria has a treaty with the Asian African Legal Consultative Organisation since April 26, 1999. This treaty guarantees the continued operation of the Regional Centre for International Commercial Arbitration, which was established in Lagos in 1989.

3. Is the law governing international arbitration in your country based on the UNCITRAL Model Law? Are there significant differences between the two?

The ACA regulates international arbitrations. It is largely based on the UNCITRAL Model Law with slight modifications. Part I of the ACA (that is, sections 1 to 36 of the ACA) applies to domestic commercial arbitration while Part III of the ACA (containing sections 43 to 55 of the ACA) applies solely to international commercial arbitration, in addition to other provisions of
the ACA. The ACA also embodies the UNCITRAL Arbitration and Conciliation Rules and the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

4. **Are there any impending plans to reform the arbitration laws in your country?**

There are plans in Nigeria to reform the primary arbitration legislation (the ACA). Currently, there is a bill before the National Assembly (the equivalent of the UK Parliament) to amend the ACA by incorporating 2006 amendments to the Model Law and introduce a body to regulate arbitration in Nigeria.

5. **What are the validity requirements for an arbitration agreement under the laws of your country?**

By section 1(1) of the ACA, an arbitration agreement, to be valid, must be in writing or otherwise evidenced in writing. Further, both parties must have mutually agreed or consented to the arbitration agreement and the arbitration agreement must be in respect of a commercial relationship. The parties must have legal capacity to enter into the arbitration agreement as with every other contract, the arbitration agreement must satisfy the basic legal requirements of a valid contract of offer, acceptance, and consensus *ad idem*.

6. **Are arbitration clauses considered separable from the main contract?**

In Nigeria, arbitration agreements are considered separate from the main contract. In other words, arbitration clauses are generally treated as agreements independent of the other terms of the contract in which they are contained. Both the ACA and the Lagos Law recognize an arbitration agreement as an independent and separate agreement. Section 12(2), ACA and section 19(2), Lagos Law. The fact that the main contract which contains an arbitration clause is not valid does not render the arbitration clause invalid.

7. **Is there anything particular to note in your jurisdiction with regard to multi-party or multi-contract arbitration?**

The ACA is silent on multiparty arbitration agreements and there are no special considerations for conducting multiparty arbitrations. There is no provision precluding multiparty arbitration agreements in Nigeria. The parties have the autonomy to agree on how to organise and present their claims. A third party may apply, and with the consent of the parties, be allowed to participate in an ongoing arbitration. The parties to an arbitration can agree to confer on the arbitrator, in the event of multiplicity of claims, power to consolidate the claims or join other claims. This is especially so if the parties are of the view that the consolidation will finally resolve all the disputes. Section 40(3) of the Lagos Law provides that a person may, by application and with the consent of the parties, be joined to arbitral proceedings.
How is the law applicable to the substance determined? Is there a specific set of choice of law rules in your country?

Article 33 of the ACA Arbitration Rules in the First Schedule to the ACA provides that the substantive law of the dispute is determined by the parties’ agreement. Where there is no express agreement, Nigerian law will apply in cases of domestic arbitration. In cases of international arbitration, the conflict of law rules applied by the tribunal will determine the law to be applied. Under such circumstances generally, the arbitral tribunal is to decide the substantive law, in accordance with the terms of the contract in all cases, taking into account the usage of the trade applicable to the transaction. There is no specific set of choice law rules in Nigeria apart from those established by the case law.

9. Are any types of dispute considered non-arbitrable? Has there been any evolution in this regard in recent years?

The ACA does not set out the disputes that are considered non-arbitrable. However, section 57 of the ACA defines arbitration to mean commercial arbitration, and “commercial” entails all relationships of a commercial nature. Further, the full title of the ACA states that it is an Act to provide a unified legal framework for the fair settlement of commercial disputes by arbitration and conciliation. Disputes arising from non-commercial transactions may not be referred to arbitration under the ACA. Criminal prosecutions, proceedings for the judicial review of administrative action and proceedings to dissolve marriages, for example, are un arbitrable. See United World Ltd Inc v MTS (1998) 10 NWLR (Pt. 568) 106. One can find broader suggestions that issues as to whether a conduct amounts to a crime or a payment or transaction is taxable (Esso Petroleum and Production Nigeria Limited & SNEPCO v NNPC, Appeal CA/A/507/2012), or whether given parties are or were truly married are all non-arbitrable, but these all appear, strictly speaking, to be overbroad. The test is usually whether the dispute can be compromised lawfully by way of accord and satisfaction (United World Ltd Inc v MTS (1998) 10 NWLR (Pt. 568)106).

10. In your country, are there any restrictions in the appointment of arbitrators?

The ACA does not provide for any qualifications as to who can act as an arbitrator. However, before persons can be appointed as arbitrators, certain factors are usually considered such as the relationship of the intended arbitrator to the issues and parties, the nature of dispute, the technical and commercial experience and ability of the arbitrator to resolve the dispute, ability to take charge and to conduct the proceedings expeditiously, arbitral experience in relation to reasonable legal knowledge and special qualification or expertise as stipulated in the arbitration agreement. Serving judges cannot act as arbitrators but retired judges can act as arbitrators.

11. Are there any default requirements as to the selection of a tribunal?

The law makes default provisions on the appointment of arbitrators. Under the ACA, where the parties cannot agree on the number of arbitrators, the default number will be three
12. **Can the local courts intervene in the selection of arbitrators? If so, how?**

A party may apply to the court for the appointment of an arbitrator where (a) a party fails to act as required under the procedure by appointing an arbitrator; or (b) the parties or two arbitrators are unable to reach agreement as required under the procedure; or (c) a third party, including an institution, fails to perform any duty imposed on it under the procedure. See section 7(3) of the ACA. In such situation, the High Court is the default appointing authority (section 7, ACA). Where the arbitration is international in nature and the nationality of the arbitrator(s) is not stated, it is recommended to appoint an arbitrator of a nationality other than the nationality of the parties (section 44(4), ACA). The parties might have also agreed in international arbitrations that the appointing authority, being the Secretary-General of the Permanent Court of Arbitration at the Hague, should appoint the arbitrator in the event of default. Under the Lagos Law, the default appointing authority is the Lagos Court of Arbitration (section 8, Lagos Law).

13. **Are arbitrators immune from liability?**

Arbitrators are not accorded any statutory immunity under the ACA. There is no provision governing liability for negligence of the arbitrator and in such a circumstance an action is likely to be maintainable. The Lagos Law grants arbitrators statutory immunity unless they act in bad faith. Generally, public policy favours immunity for arbitrators from liability for their judicial acts. The recourse that parties have against arbitrators that do not perform their tasks with all due diligence is to terminate the mandate of such arbitrators. The proposed amendments to the ACA include a provision according immunity on arbitrators.

14. **What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?**

Nigerian courts consider arbitration agreements to be binding on the parties and have been consistent in holding parties bound by their arbitration agreements. See *M. V. Lupex v NOC & S Ltd.* (2003) 15 NWLR (Pt. 844) 469. Where a party to an arbitration agreement commences an action in court with respect to any matter that is the subject of an arbitration agreement, any party to the arbitration agreement may, at any time after appearance or before delivering any pleadings or taking any other steps on the proceedings, apply to the court for an order of stay of proceedings. If the court is satisfied that there is no reason why the matter should not be referred to arbitration in accordance with the arbitration agreement and that the applicant is still willing and ready to submit to arbitration, the court may order a stay of proceedings. See sections 4 and 5, ACA. In May 2017, the Chief Justice of Nigeria in collaboration with the National Judicial Institute issued a policy statement and directives mandating Nigerian courts to insist on enforcing arbitration agreements.
How are arbitral proceedings commenced in your country? Are there any key
provisions under the arbitration laws relating to limitation periods or time bars of
which the parties should be aware?

The procedure for the commencement of arbitral proceedings is set out in Article 3 of the
Rules. To commence arbitration, the claimant must serve a notice of arbitration on the
respondent. The arbitral proceedings are deemed to commence on the date on which the
notice of arbitration was received by the respondent, unless otherwise agreed by the parties.
Arbitrations are to commence within six (6) years of the accrual of the cause of action just
like the commencement of actions concerning contracts.

The limitation period within which to bring an application to enforce an arbitral award is six
(6) years. This six-year rule, however, applies to an award pursuant to an arbitration
agreement which is not under seal or where the arbitration is pursuant to any statute other
than the ACA. An application to enforce an arbitral award in the categories referred to above
must be brought within six (6) years. This provision has been interpreted to mean that the
six-year limitation period starts to count from the day of the accrual of the cause of action
resulting in the arbitral award and not from the day the arbitral award was delivered. See
Murmansk Steamship Line v Kano Oil Millers (1974) 12 SC 1; City Engineering Nigeria
Limited v. Federal Housing Authority (1997) 9 NWLR (Pt. 520) 224. This implies that the
accrual of the cause action, the arbitration proceedings, the award and application for
enforcement of the award must all occur within six years.

In a bid to ameliorate the hardship that may arise from the decision in Murmansk Steamship
Line and City Engineering Nigeria Limited (supra), the Lagos Law provides that in
computation of the time for the commencement of proceedings seeking to enforce an arbitral
awards, the period between the commencement of the arbitration and the date of delivery of
the award shall not be reckoned with. See section 35(5) of the Lagos Law.

16. **In what circumstances is it possible for a state or state entity to invoke state
immunity in connection with the commencement of arbitration proceedings?**

Where an arbitration has been commenced in respect of disputes where the State has acted
as a State and not as a commercial actor, state immunity may be successfully invoked. The
restricted doctrine of immunity applies in Nigeria. African Re-insurance Corporation v. AIM
Consultants Ltd. (2004) 12 NWLR (Pt. 884) 223. State immunity can also be claimed where it
is clearly granted by statute.

17. **What interim measures are available? Will local courts issue interim measures
pending the constitution of the tribunal?**

Interim measures that are available include measures for the conservation of goods or
preservation of properties forming the subject-matter of the dispute and for the security of
The High Courts have powers to issue interim measures pending the constitution of an arbitral tribunal. Further, Article 26 of the Rules empowers a court approached by a party to arbitral proceedings to grant interim relief and such a request will not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement. Also, section 6(3) of the Lagos Law empowers the court to make interim or supplementary orders as may be necessary when making an order of stay of proceedings and referring a dispute to arbitration.

18. **What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your country?**

Nigerian lawyers conducting proceedings as counsel or arbitrators are bound by the Rules of Professional Conduct for Legal Practitioners, 2007 in carrying out their services. Also, some arbitral institutions have rules of professional conduct for counsel and arbitrators conducting arbitrations before them. For instance, the Lagos multi-Door Courthouse has its Code of Ethics for Arbitrators.

19. **Can pre- and post-award interest be included on the principal claim and costs incurred?**

The ACA does not limit the power of the arbitrator to order interest. Interest can be awarded based on the parties’ agreements in this regard, at a rate agreed by the parties or proved before the arbitral tribunal. The arbitrator would, however, be duty-bound to award interest based on evidence presented to the tribunal and upon such legal indices as may be fair and just in the circumstances. In practice, interest is usually guided by the Nigeria Inter Bank Official Rate (NIBOR), plus any reasonable amount depending on the peculiarities of the case.

20. **Does the arbitration law of your country provide a different standard of review for recognition and enforcement of a foreign award compared with a domestic award?**

The law does not provide for different standards for recognition and enforcement of foreign and domestic awards. Where the award or arbitration agreement is not made in English language, a duly certified English translation must accompany the application for enforcement. S. 51, ACA.

In addition to the procedure for enforcement of foreign awards under the ACA, foreign awards are also enforced in Nigeria through the following means:

- by an action on the award;
- by registration as judgments under the Reciprocal Enforcement of Judgments Ordinance, Cap. 175, Laws of Federation of Nigeria, 1958;
- by registration as judgments under the Foreign Judgments (Reciprocal Enforcement) Act (Cap. F 35) Laws of Federation Nigeria, 2004;
- by recognition and enforcement under the New York Convention 1958; and
21. **Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts?**

All of the remedies recognised under the relevant laws and made on arbitrable disputes are enforceable by the courts. Unless the parties agree otherwise, an arbitral tribunal may make an award on whichever types of remedies it sees fit, including declarations, injunctions, damages (including punitive and exemplary damages) and rectification.

22. **To what extent might a state or state entity successfully raise a defence of state or sovereign immunity at the enforcement stage?**

A state or state entity may successfully raise the defence of immunity at the enforcement stage only if the arbitral award was not published in a dispute emanating from commercial transactions. Nigerian courts recognize and enforce the doctrine of restricted immunity. See *African Re-insurance Corporation v. AIM Consultants Ltd.* (2004) 12 NWLR (Pt. 884) 223. Because arbitral awards that will be recognised and enforced must have been made in respect of disputes arising from commercial transactions, a state or state-entity may not be able to successfully raise the defence of immunity.

23. **Is emergency arbitrator relief available in your country? Is this frequently used?**

Some arbitral institutions now have provisions in their rules for emergency arbitrators. These include the Lagos Court of Arbitration Rules 2013 (the “LCA Rules”) and the Lagos Chamber of Commerce Arbitration Rules 2016. Under the LCA Rules for instance, interim measures can be requested prior to the constitution of an arbitral tribunal. The idea of an emergency arbitrator was on the need to bridge the gap between the commencement of an arbitration and constitution of the arbitral tribunal. Under the LCA Rules, a party in need of urgent, preservatory or special measures prior to the constitution of the arbitral tribunal may apply to the LCA Secretariat for such measures and for the appointment of a Special Measures Arbitrator. This move will certainly contribute in widening the scope of interim measures available to parties to arbitration.

24. **Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted in your country? If so, how?**

This diversity is not promoted. Arbitrators and counsel are appointed based on their credentials, experience, credibility and availability to carry out the task.

25. **Have there been any recent court decisions in your country considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?**

There are no such decisions. However, arbitral awards will be set aside by courts provided
there are good grounds for such setting aside as provided in the law.

26. **Have there been any recent court decisions in your country considering the definition and application of “public policy” in the context of enforcing or setting aside an arbitral award?**

   No.

27. **Have there been any recent decisions in your country considering the General Court of the European Union’s decision Micula & ors (Joined Cases T-624/15, T-694/15 and T-694.15), ECLI:EU:T:2019:423, dated 18 June 2019? Are there any pending decisions?**

   No.