

Nigeria report: focus on arbitration

By [Jonathon Manning](#) 6 June 2016 00:00

Places such as London and Singapore are still the main hubs for international arbitration but Nigeria has been attempting to raise its status in the past few years. This is in part because Nigerian businesses are increasingly seeing arbitration as a viable means of dispute resolution.

As part of this focus a court was launched in 2012 under the Lagos Court of Arbitration (LCA) Law. This seems an obvious attempt to give Lagos higher standing as a centre for arbitration despite the city already being home to a number of organisations such as the Chartered Institute of Arbitrators Nigeria.

While the LCA has established links with the Kigali International Arbitration Centre and the Mauritius International Arbitration Centre, Nigeria – and Africa in general – is yet to be seen as a top destination for arbitration.

Here, we ask some of Nigeria's leading dispute resolution lawyers how the arbitration market is adapting as businesses flock to the region.

Q: Since the launch of the LCA has Nigeria's status as a centre for arbitration increased?

Uzoma Azikiwe, head of litigation, arbitration and alternative dispute resolution, Udo Udoma & Belo-Osagie: There's been an increase in contractual parties choosing Nigeria as a centre for arbitration for commercial disputes, but it may not be right to attribute the rise in the status of Nigeria as an arbitration centre to the launch of the LCA.

key figures

Nigeria

GDP

\$569bn

Inflation

9%

Population

178m

Life expectancy
at birth

53

Unemployment rate

7.5%

Source: World Bank

“Given the expansion of the value chain in the power sector there is likely to be increased arbitration activity there”



Oghogho Akpata

Before the LCA there were already various institutions in Nigeria offering arbitration services and facilities, such as the Lagos Regional Centre for International Commercial Arbitration; the ICC Arbitration Commission; the UK Chartered Institute of Arbitrators Nigeria Branch; the Chartered Institute of Arbitrators Nigeria; and the Maritime Arbitrators Association of Nigeria.

The LCA has hosted a number of knowledge workshops to promote alternative dispute resolution but the enhanced status of Nigeria as an arbitration centre is attributable to many factors including the fact that Nigerian courts are now more arbitration-friendly, more institutions can efficiently administer several forms of arbitrations, there is a large pool of competent and internationally exposed Nigerian arbitrators, and Nigerian businesses are unwilling to choose foreign seats for their disputes.

Oghogho Akpata, managing partner, Templars: Although the LCA was launched in 2012 its arbitration facilities were only commissioned in mid-2015. The LCA’s permanent site, the International Centre for Arbitration and Alternative Dispute Resolution, is the first purpose-built arbitration and alternative dispute resolution [ADR] institution in Africa.

With rules modelled on the London Court of International Arbitration and the UN Commission on International Trade Law, the LCA has the potential to enhance Nigeria’s status, but this will also require other measures in Nigeria such as improved security, a robust judicial support system and more hospitality and tourist attractions.

Q: How prevalent is the use of arbitration in Nigeria and how open to it are African businesses over other forms of dispute resolution?

Akpata: Arbitration is fast-becoming best practice for resolving commercial disputes. As businesses learn more about the advantages of it compared with court judgments – including the fact that arbitral awards can be enforced globally – they are gradually becoming more open to it.

“Investors and sophisticated Nigerian businesses prefer arbitration to litigation”



Uzoma Azikiwe

This trend has been aided by the developing expertise of arbitrators in particular sectors of the economy and the incorporation of the arbitral process into some judicial systems, such as in Lagos through the state ‘multidoor courthouse’ law.

More frequently these days, we are consulted by foreign and local clients doing or looking to do business in Nigeria and seeking advice on the process and practice of arbitration.

Azikiwe: Arbitration as an alternative dispute resolution mechanism has gained widespread acceptance in Nigeria, largely due to increased commercial activity and the inflow of foreign direct investment.

Typically, investors and sophisticated Nigerian businesses prefer arbitration to litigation. This is not surprising because the litigation process in Nigeria is protracted and businesses are keen to avoid delays and the attendant costs.

African businesses have embraced arbitration over other dispute resolution mechanisms.

Q: Which sectors commonly arbitrate in Nigeria and do you expect any changes in the type of work being carried out?

Akpata: With the growth of businesses in many sectors quite a number have made significant progress in embracing arbitration. These sectors include maritime, oil and gas, power, investment, construction, real estate and telecoms.

Overall, the energy and construction sectors arguably present the most high-stakes arbitration in the Nigerian commercial space. In the past decade a number of oil and gas arbitrations, small and large, have taken place.

And given the expansion of the value chain in the power sector there is likely to be increased activity there too.

Azikiwe: We see a lot of arbitrations in the oil and gas, maritime and international sale of goods sectors. With the slump in oil prices and the resulting fall in the revenues of oil companies we’re already seeing them default in meeting their obligations to drilling and other service companies. In turn, we’ve seen service companies default in

meeting obligations to their suppliers. This may lead to an uptick in arbitration in the oil and gas sector.

With the efforts of the government to diversify the economy and develop sectors such as agriculture and mining, investors in these areas are likely to opt for arbitration over litigation in their contracts and over time these sectors will generate a lot of arbitration work.

Q: How does Nigeria compete with other international arbitration centres?

Azikiwe: We've seen a rise in the number of international arbitrations conducted in Nigeria but most arbitrations involving foreign counterparties – and particularly where the transactions are large or complex – are still conducted in cities such as London and Singapore. These cities have better, more modern and more efficient infrastructures, and their arbitration laws and court systems are perceived to be more supportive of arbitration.

Akpata: Nigeria is not yet at a level to compete with centres such as London and Singapore. Most of the arbitrations centred in Nigeria are either domestic ones or international arbitrations arising out of Nigerian transactions or commercial arrangements. It's rare to find arbitrations that have no direct connection to Nigeria being held in Nigeria.

However, as Nigeria strives to become the commercial hub of Africa it can be reasonably projected that it will become a desired centre for arbitrations out of a number of African countries.

Q: Does your firm plan to expand its arbitration practice and if so, how will this be carried out?

Azikiwe: We have a growing arbitration practice and have represented clients before various arbitration panels. The firm is expanding its practice and has sponsored members in training in the area of international commercial arbitration.

We will continue to be visible in domestic and international arbitration organisations and events. We also publish materials in arbitration journals and other publications.

Akpata: We have a vibrant arbitration team in our dispute resolution practice. Nevertheless, we are looking to expand.

Our goal is to have a standalone specialist international arbitration and ADR practice. We work towards this by the development and enhancement of members' skills and experience both organically and through collaboration with our international partners in both commercial and investment treaty arbitration.