



ARBITRATION

**The Right Choice in Resolving
Commercial Disputes in Nigeria**

Picture this:

Two Nigerian tech companies **InnovateX Ltd** and **Brightcore Solutions** agreed to develop an AI-powered software for financial institutions. Both parties contributed significant resources and intellectual input. However, months after the product launch, a dispute arose over who owned the intellectual property and who had the right to license it internationally. **BrightCore** claimed it held exclusive rights, while **InnovateX** insisted that the software was co-developed and thus co-owned. Tensions escalated, and the matter was taken to court. Product licensing was affected, investors were concerned due to the lengthy court process, and the matter attracted unwanted media attention. Both parties were unhappy.

This fictional scenario reflects a growing reality in Nigeria's commercial landscape. Businesses are increasingly vulnerable to disputes that not only disrupt operations but also expose them to reputational damage and financial losses. The traditional court system is proving too slow, too public, and often too rigid to meet the needs of modern businesses.

This is where arbitration emerges as a superior alternative. In this article, we explore how arbitration meets the unique demands of business disputes in Nigeria and why it stands out as the preferred mechanism for commercial dispute resolution.



What is Arbitration?

Arbitration is a private dispute resolution process where parties agree to submit their conflict to one or more impartial arbitrators, whose decision (known as an award) is final and binding.

The process is governed by the arbitration clause in the parties' contract or, in the absence of such a clause, by mutual agreement after a dispute arises.

In Nigeria, arbitration is principally governed by the Arbitration and Mediation Act, 2023 (AMA, 2023) which repealed the Arbitration and Conciliation Act, Cap A18, Laws of the Federation of Nigeria 2004.

Legal Framework for Arbitration in Nigeria

As earlier stated, the Arbitration and Mediation Act, 2023 ("the Act") currently governs arbitration in Nigeria. This new Act represents a significant step forward in aligning Nigeria's arbitration framework with global best practices, enhancing the country's attractiveness as a hub for both domestic and international commercial arbitration. The Act provides a comprehensive legal structure for the commencement and conduct of arbitral proceedings, from the appointment of arbitrators and conduct of hearings to the recognition, enforcement, and potential setting aside of arbitral awards.

A key feature of the Act is its adoption of the UNCITRAL Model, which serves as a global benchmark for arbitration legislation. This alignment ensures that Nigeria's arbitration regime is consistent with international standards.

It is also noteworthy that while the Arbitration and Mediation Act governs arbitration at the federal level, some Nigerian states have enacted their own arbitration laws. Lagos State, for example, operates under the Lagos State Arbitration Law, 2009, which also reflects the principles of the UNCITRAL Model and remains relevant for arbitrations seated within the state.

Internationally, Nigeria is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which applies to Nigeria by virtue of the AMA, 2023. Arbitral awards made in Nigeria or any contracting state are enforceable in over 170 countries. This international enforceability is important for parties engaged in cross-border commercial transactions

When Should Arbitration Be Considered?

Arbitration is well-suited for a broad range of commercial disputes, including breach of contract, construction and infrastructure disagreements, shareholder and partnership conflicts, financial and investment-related disputes, and maritime or international trade matters.

However, it is important to note that arbitration is not applicable to certain categories of disputes.¹

Parties are therefore advised to consider the nature of their potential disputes before including arbitration clauses in their agreements, and seek legal guidance to ensure that arbitration is the appropriate mechanism for resolving their specific type of dispute.



Why Arbitration is the Right Choice in Commercial Disputes?

- 1. Efficiency and Speed:** Traditional litigation in Nigeria is notoriously slow due to case backlogs and procedural delays. It is not uncommon for commercial disputes to drag on for years before a final judgment is obtained. Arbitration, on the other hand, is a quicker process. The relative speed of arbitration allows businesses to resolve disputes and move forward without undue delay.
- 2. Appointment of Expert Decision-Makers:** Unlike litigation, where parties have no control over the judge assigned to their case, arbitration allows parties to appoint their arbitrators.² Parties can exercise this liberty and appoint arbitrators with specialized knowledge in the relevant industry or subject. For instance, in a construction dispute, parties may select arbitrators who are legal professionals with a background in engineering or construction law. This technical expertise often leads to more informed and commercially practical outcomes.
- 3. Confidentiality:** Unlike court proceedings which are open to the public, arbitration offers privacy. This is important for commercial entities that wish to avoid public scrutiny or the risk of sensitive business information being disclosed in open court. Arbitration proceedings and awards are confidential, helping parties preserve business reputations, protect trade secrets and sensitive business data.
- 4. Flexibility and Party Autonomy:** Arbitration allows parties to tailor the dispute resolution process to suit their unique needs. They can agree on rules of law to govern the dispute, the seat and language of arbitration, number of arbitrators, and even the procedural rules of the arbitral proceedings. This level of flexibility is absent in litigation, where parties must follow rigid procedural rules and court timelines.
- 5. Finality and Enforceability:** Arbitral awards are final and binding on the parties. An arbitral award has the same binding force as a court judgment and is enforceable in Nigerian courts under the Arbitration and Mediation Act, 2023.³ This is unlike mediated or negotiated disputes, which are only binding if parties voluntarily comply or subsequently enter a contract. It's important to note that arbitral awards in Nigeria are enforceable in countries that are signatories to the New York Convention making arbitration especially attractive for international transactions.⁴



Challenges With Arbitration in Nigeria

While arbitration continues to gain traction as a preferred method for resolving commercial disputes in Nigeria, it still faces some practical challenges. Common issues include delays in appointing arbitrators, poorly drafted arbitration clauses, limited availability of skilled arbitrators in some regions, and lack of understanding of arbitration processes.

Fortunately, these challenges can be effectively managed with the right legal support. Businesses can benefit from well-structured arbitration clauses, clear procedural guidance, and representation by professionals who understand the nuances of arbitration law in Nigeria.

Legal practitioners with arbitration expertise can help clients select suitable arbitral institutions, navigate complex procedural rules, and expedite enforcement of awards, both locally and internationally.

Conclusion

Arbitration presents a compelling alternative to litigation in resolving commercial disputes in Nigeria. Its efficiency, flexibility, confidentiality, and enforceability make it particularly well-suited for modern commercial transactions.

With the recent enactment of the Arbitration and Mediation Act, 2023, Nigeria has strengthened its legal framework, ensuring that businesses both local and international can confidently opt for arbitration as a reliable dispute resolution mechanism. As commercial relationships continue to evolve and grow in complexity, arbitration remains the right choice for parties seeking fair, timely, and enforceable outcomes.

Footnote

¹Criminal cases, matrimonial matters, election petitions, matters for statutory interpretation, and urgent applications for interim relief cannot be arbitrated on. These are matters that remain within the exclusive jurisdiction of the courts.

² Section 7 AMA, 2023

³ Section 57 AMA, 2023

⁴ Art. 1 The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958.

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