

THE ROLE OF ARBITRATION IN NIGERIA; POST COVID 19

G.O. SODIPO AND CO.

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Covid-19 has taken its toll on every aspect of the economy and there will be no doubt an increased number of legal disputes, as a result of the slowdown of the economy. Many businesses are suspending their contractual obligations and invoking force majeure provisions, companies downsizing and invoking labour law issues, the list is endless. The pandemic resulted to the lockdown of public gatherings, including the courts.

Prior to now, the courts already had enough on their plate and when they fully re-open, we can expect a backlog of cases. In addition to this, the wave of new claims arising from the COVID-19-related issues will contribute to further delays. From the foregoing, we need to consider other alternatives to dispute resolution, and this is where arbitration comes to play.

Arbitration is a procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute. In choosing arbitration, the parties opt for a private dispute resolution procedure instead of going to court¹. The decision made at the end of the arbitration is called an 'arbitral award', which is final and binding, and can only be challenged in court under certain exceptions.

Some of the advantages of arbitration and what makes it a suitable post COVID 19 dispute resolution alternative include:

- a. It is faster than litigation; for time sensitive issues, arbitration is the best resort. With the absence of continuous adjournments, proceedings move faster and are resolved in a relatively shorter time.
- b. Parties may freely choose their arbitrators as long as they are of an impartial and independent nature².
- c. Parties may also choose important elements as the applicable law, language and venue of the arbitration. This allows them to ensure that no party enjoys a home court advantage³.
- d. Arbitration is private and its proceedings including oral hearings are not open to the public - Parties and arbitrators are often bound by strict rules of confidentiality. Thus,

¹<https://www.wipo.int/amc/en/arbitration/what-is-arb.html>

²<https://www.dispute-resolution-hamburg.com/arbitration/what-is-arbitration/>

³Wipo, ibid

business secrets and sensitive information can be protected from the public, media and / or competitors⁴.

It is important to note that arbitration is consensual, and the decision to resort to arbitration must be consensual. It usually requires an arbitration agreement, stating that both parties have agreed to settle their disputes through arbitration. This most of the time comes in the form of a pre-dispute agreement or arbitration clause found in contractual agreements.

Furthermore, few arbitration agreements arise “post-dispute” and fewer still are drafted “mid-dispute”. However, preparing an arbitration agreement to move a dispute from litigation to arbitration is possible. Like a pre-dispute arbitration clause, a mid-dispute arbitration agreement should consider, at a minimum, (i) the scope of the intended arbitration; (ii) the seat (or legal situs) of the arbitration; (iii) the applicable procedural rules; and (iv) a method for selecting the arbitrator(s)⁵.

In conclusion, arbitration provides a faster alternative for parties seeking dispute resolution, post COVID 19. It helps relieve the courts of the numerous cases waiting to be settled and in itself, the nature of arbitration allows for virtual hearing of cases and the innovation technology brings to the legal system. However, arbitration cannot apply to criminal cases.

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⁴Harmburg , ibid

⁵<https://www.lexology.com/library/detail.aspx?g=1f7ea96d-6c6f-449b-b844-7dd67d1f27bc>