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INVESTOR DISPUTES IN NIGERIA: ARBITRATION, LITIGATION AND ENFORCEMENT RISKS EVERY INVESTOR SHOULD UNDERSTAND

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ABSTRACT

Nigeria remains one of Africa's most significant investment destinations, but investors who focus only on market entry may underestimate dispute-design and enforcement risk. The commercial value of a contract depends not only on the substantive bargain, but also on where disputes will be heard, the law that will govern them, the availability of interim relief, and whether an eventual award or judgment can be converted into recoverable value. This article evaluates arbitration and commercial litigation in Nigeria, including the Arbitration and Mediation Act 2023, choice-of-forum and governing-law clauses, recognition and enforcement of arbitral awards and foreign judgments, sovereign immunity, asset preservation, and practical barriers arising from court delay and uneven implementation. It uses Federal Republic of Nigeria v Process & Industrial Developments Ltd as a case study of fraud, corruption, procedural integrity and enforcement risk in international arbitration. The article argues that Nigeria's modern statutory framework is materially pro-arbitration, but that the effectiveness of dispute resolution still depends on institutional capacity, careful contract drafting, early evidence and asset-preservation measures, and disciplined state and corporate governance.

KEYWORDS: *Investor Disputes; Foreign Direct Investment; International Commercial Arbitration; Commercial Litigation; Arbitration and Mediation Act 2023; P&ID; Enforcement of Arbitral Awards; Foreign Judgments; Sovereign Immunity; Choice of Law; Forum Selection; Interim Measures; Asset Preservation; Nigeria.*

INTRODUCTION

Foreign investors should plan for disputes at the same time that they plan for market entry. Nigeria offers a large market, an active private sector and a legal system that recognises arbitration, contractual choice of law and judicial enforcement. It is also a jurisdiction in which procedural delay, public-sector interfaces, fragmented enforcement processes and uncertainty over the location of executable assets can affect the practical value of a legal victory.

Nigeria is a contracting state to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the New York Convention) and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States 1965 (the ICSID Convention). The Arbitration and Mediation Act 2023 (AMA) replaced the Arbitration and Conciliation Act and introduced a more modern framework influenced by the UNCITRAL Model Law. These developments support arbitration, but they do not eliminate the need to examine litigation risk, sovereign immunity, enforcement resistance, public-policy objections and the still-developing judicial interpretation of several provisions of the AMA.

This article therefore adopts a balanced approach. It explains the advantages of arbitration while also examining commercial litigation in Nigerian courts and the practical limits of award and judgment enforcement. Its central proposition is that dispute-resolution planning is not a boilerplate exercise: it is an allocation of legal, procedural, political and recovery risk.

ARBITRATION CLAUSES AND THE 2023 STATUTORY FRAMEWORK

The AMA modernised Nigerian arbitration law and broadened the statutory recognition of contemporary arbitral practice. An arbitration agreement must be in writing, but the writing requirement may be satisfied by an electronic communication that is accessible for subsequent reference. Parties may submit existing or future disputes arising from a defined legal relationship to arbitration.

Where an action is brought before a Nigerian court in a matter covered by a valid arbitration agreement, the AMA requires the court, on a timely application, to refer the parties to arbitration unless the agreement is void, inoperative or incapable of being performed. This is a stronger statutory orientation toward referral than the discretionary approach associated with parts of the earlier regime. The practical outcome will nevertheless depend on prompt invocation of the clause, proper identification of the dispute covered by it and efficient judicial handling of the stay application.

A workable arbitration clause should identify the seat, governing law, institutional or ad hoc rules, number and method of appointment of arbitrators, language, scope of arbitrable disputes and arrangements for urgent relief. The seat is especially important because it determines the procedural law and the courts with supervisory jurisdiction. Parties should avoid using the expressions "seat", "venue" and "place" interchangeably where the intention is not clear.

The AMA also recognises emergency arbitration, interim measures, third-party funding and an optional Award Review Tribunal. These innovations may improve speed and finality, but several have not yet generated a substantial body of Nigerian appellate interpretation. Investors should therefore draft expressly rather than assume that every institutional rule or new statutory mechanism will operate without procedural contest.

COMMERCIAL LITIGATION IN NIGERIAN COURTS

Litigation remains indispensable in investor disputes. Some matters are not arbitrable; some contracts contain court-jurisdiction clauses; and even where arbitration is chosen, Nigerian courts may be required to grant interim relief, compel evidence, determine jurisdictional objections, recognise an award or supervise execution.

Jurisdiction must be assessed before proceedings are commenced. The Federal High Court has exclusive jurisdiction over matters assigned to it by section 251 of the Constitution of Federal Republic of Nigeria 1999 as amended, including specified federal revenue, banking, company, admiralty, intellectual-property and federal-agency matters. State High Courts and the High Court of the Federal Capital Territory exercise broad civil jurisdiction, subject to constitutional and statutory allocations. Selecting "the Nigerian courts" without identifying the competent court may therefore create preliminary objections and delay.

Commercial litigation may offer advantages where coercive orders against third parties are necessary, where the dispute requires extensive joinder, where a public-law remedy is sought, or where an authoritative precedent is commercially valuable. Nigerian courts can grant injunctions, preservation orders, discovery-related relief, garnishee orders and writs of execution, subject to procedural requirements.

The disadvantages are equally material. Complex commercial cases may be affected by interlocutory applications, congested dockets, adjournments and multi-level appeals. The duration of proceedings varies considerably by court, division, case-management practice and the conduct of the parties. It is therefore unsafe to state categorically that Nigerian courts are invariably slow or biased. A more accurate assessment is that delay risk is significant and should be priced into transaction planning, while allegations of institutional bias require evidence rather than assumption.

Parties should also consider specialised and case-management mechanisms, including fast-track procedures where available, frontloading of evidence, electronic filing in participating courts and court-connected alternative dispute resolution. These measures can improve efficiency, but implementation is not uniform across all jurisdictions.

CHOICE OF FORUM AND GOVERNING LAW

Nigerian courts generally attach weight to contractual choice-of-forum and choice-of-law clauses. In Sonnar (Nigeria) Ltd v Partenreedri MS Nordwind (1987) LPELR-3494(SC) the Supreme Court accepted that a foreign-jurisdiction clause is relevant but not invariably conclusive; the court considers whether strong cause exists for refusing a stay. More recent appellate authority has continued to emphasise pacta sunt servanda and the commercial importance of holding parties to freely negotiated jurisdiction clauses.

A foreign governing-law clause does not by itself confer jurisdiction on a foreign court, and a foreign-jurisdiction clause does not ensure that the resulting judgment will be readily enforceable in Nigeria. These are distinct questions. Foreign law is ordinarily proved as a question of fact in Nigerian proceedings, commonly through expert evidence, unless judicial notice is available under applicable law.

Investors should therefore test a forum clause against the likely location of counterparties, witnesses, documents and assets. A clause selecting a commercially respected foreign court may still be unattractive where most assets are in Nigeria and the foreign judgment would require a fresh Nigerian action or contested registration. Conversely, a Nigerian forum may be unsuitable where the transaction requires confidentiality, specialist adjudicators or cross-border enforcement in several jurisdictions.

P&ID V NIGERIA: FRAUD, CORRUPTION AND ARBITRAL INTEGRITY

Federal Republic of Nigeria v Process & Industrial Developments Ltd is an essential case study in the risks surrounding investor-state and state-linked arbitration. The dispute arose from a gas supply and processing agreement. An arbitral tribunal awarded P&ID damages that, with interest, exposed Nigeria to a liability measured in billions of United States dollars.

In 2023, the English Commercial Court upheld Nigeria's challenge under section 68 of the English Arbitration Act 1996. Knowles J found that the awards had been obtained by fraud and that the manner in which they were procured was contrary to public policy. The court's findings included the use of documents known to be false, improper retention and use of Nigeria's privileged internal legal documents, and serious failures in the conduct and defence of the arbitration. The awards were subsequently set aside rather than remitted to the tribunal.

The significance of P&ID extends beyond the successful challenge. First, arbitration's limited review mechanisms do not protect an award procured by fraud or serious procedural abuse. Finality is valuable only where the process is legitimate. Secondly, weak contract administration, deficient record-keeping, changes in public officers, poor coordination among ministries and inadequate defence strategy can transform an ordinary commercial disagreement into a sovereign-scale exposure. Thirdly, confidentiality and document control are not merely procedural concerns; compromised privileged material can distort the fairness of the entire proceeding.

The case also has a double-edged effect on investor confidence. It may initially appear damaging because it revealed serious governance failures and the possibility of corruption around a major state contract. At the same time, the court's willingness to examine the integrity of the process and set aside fraudulently procured awards demonstrates that international arbitration is not a mechanism for enforcing illegitimate claims. For responsible investors, the lasting lesson is the importance of documented procurement, identifiable authority, anti-corruption controls, transparent variation of public contracts, reliable evidence preservation and ethical arbitral practice.

P&ID should not be used to suggest that awards against Nigeria are generally fraudulent or unenforceable. Its value lies in illustrating an exceptional but consequential failure of contract governance and arbitral integrity. It also shows why states and investors must conduct heightened due diligence where contracts depend on government approvals, supply obligations, public assets or long-term fiscal commitments.

RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARDS

The New York Convention and the AMA provide the principal route for recognition and enforcement of foreign commercial awards. An award creditor ordinarily applies to a competent Nigerian High Court and produces the authenticated award, the arbitration agreement and any required translation. Refusal is limited to recognised grounds, including incapacity, invalidity of the arbitration agreement, lack of proper notice, excess of jurisdiction, procedural irregularity, non-binding or set-aside status, non-arbitrability and public policy.

The statutory framework is favourable, but enforcement is not automatic in practice. A respondent may challenge jurisdiction, service, authenticity, limitation, public policy or compliance with procedural requirements. Even an unsuccessful challenge can cause delay through appeals. Investors should therefore distinguish between the legal recognisability of an award and the commercial recoverability of the award debt.

ICSID awards are governed by the ICSID Convention and Nigeria's implementing legislation. A properly certified award may be presented for recognition with the status prescribed by the ICSID framework. However, recognition of the obligation does not answer every execution question, particularly where the debtor is a sovereign and the targeted property may be protected from attachment.

The AMA's innovations, including the enforcement of interim measures and the exclusion of the period spent in arbitration from specified limitation calculations, are important. Nevertheless, several provisions are recent and their boundaries will be clarified over time through judicial decisions. Commentary should therefore avoid presenting every new mechanism as already settled in practice.

FOREIGN JUDGMENTS AND THE RECIPROCITY PROBLEM

The enforcement of foreign court judgments is less predictable than the enforcement of Convention awards. Nigerian law contains the Reciprocal Enforcement of Judgments Ordinance and the Foreign Judgments (Reciprocal Enforcement) Act. Their interaction, commencement and territorial reach have generated judicial and academic debate.

A judgment creditor must identify the correct statutory route, the applicable registration period, the relevant superior court and the grounds on which registration may be refused or set aside. Questions may arise concerning reciprocity, finality, jurisdiction of the foreign court, service, fraud, public policy and whether the judgment is for a definite sum.

Where statutory registration is unavailable, a foreign judgment may in appropriate circumstances form the basis of a fresh common-law action in Nigeria. This is not equivalent to direct execution: the creditor must commence proceedings and establish the enforceable obligation subject to applicable defences.

For transaction design, the practical conclusion is not that foreign court clauses are invalid, but that their enforcement consequences must be investigated country by country. Arbitration often offers a clearer multilateral enforcement framework, though it carries its own costs and challenge risks.

SOVEREIGN IMMUNITY AND ENFORCEMENT AGAINST STATE ASSETS

Sovereign immunity requires separate treatment from jurisdiction and recognition. A state may agree to arbitrate or submit to a court's jurisdiction without necessarily consenting to execution against every category of state property. The distinction between immunity from adjudication and immunity from execution is central.

An award creditor seeking recovery against Nigeria or a Nigerian public entity must examine the legal identity of the debtor, the wording of any waiver, the governing immunity law in the place of enforcement, and the nature and use of the targeted asset. Diplomatic property, central-bank assets and property used for sovereign or public purposes may receive stronger protection than assets used for commercial activity.

The fact that an award has been recognised does not automatically make every government asset attachable. Investors should negotiate express and carefully drafted waivers where lawful, identify commercial assets at the contracting stage, and avoid assuming that a state-owned enterprise's assets are legally interchangeable with those of the federation or another public body.

INTERIM RELIEF AND ASSET PRESERVATION

Interim relief is often the difference between a meaningful final decision and a paper victory. The AMA empowers arbitral tribunals to grant measures aimed at preserving the status quo, preventing harm, protecting assets and preserving evidence. It also provides a route for recognition and enforcement of qualifying interim measures, subject to statutory safeguards.

Nigerian courts may grant interim relief in support of arbitration, including before the tribunal is fully constituted. The Act seeks expedited treatment of such applications. The availability of relief, however, depends on the facts, the court's jurisdiction, full and frank disclosure in ex parte applications, the applicant's undertaking as to damages where required, and proof of a real risk to assets or evidence.

Investors should map assets early, monitor transfers, preserve contractual records and establish an escalation protocol before default occurs. Mareva-type freezing relief, preservation orders, injunctions, receivership and post-judgment garnishee or writ processes serve different purposes and should not be treated as interchangeable.

COMMON DISPUTE TRAPS AND MITIGATION STRATEGIES

- **Defective dispute clauses:** Clauses that omit the seat, rules, governing law, appointment method or scope of disputes invite preliminary litigation. Use a tested clause and reconcile it with multi-tier negotiation or mediation requirements.
- **Unverified corporate or governmental authority:** Confirm that the counterparty and signatories possess the required corporate, statutory, budgetary and regulatory authority. P&ID illustrates the scale of risk where public-contract governance and records are deficient.
- **Assuming that a win equals recovery:** Before proceedings, identify executable assets, competing creditors, security interests, immunity risks and the jurisdictions through which enforcement may be required.
- **Late invocation of the arbitration agreement:** A party sued in court should raise the arbitration agreement promptly and comply with the procedural conditions for referral or stay.
- **Overbroad claims of non-arbitrability:** Criminal liability, status matters and certain public-law or revenue questions may be non-arbitrable, but commercial consequences arising from regulated transactions may still be capable of arbitration. The issue should be analysed claim by claim.
- **Weak document and privilege controls:** Preserve originals, maintain auditable contract files, control privileged communications and implement litigation holds. The misuse of privileged documents in P&ID demonstrates the potential impact of information-governance failures.

- **Ignoring limitation and appeal risk:** Commence recognition and execution steps promptly. Account for the possibility of challenges and appeals even where the statutory grounds for refusal are narrow.
- **Currency and regulatory compliance:** Recovery and repatriation may require compliance with foreign-exchange, banking, tax, anti-money-laundering and sector-specific rules. Avoid categorical assurances that funds will always be freely transferable.

POLICY AND INSTITUTIONAL REFORM PRIORITIES

The AMA provides a modern legislative platform, but legislation alone cannot guarantee efficient dispute resolution. Judicial training, consistent assignment of arbitration-related applications, reliable electronic filing, disciplined case management and timely publication of decisions will influence the practical success of the Act.

Public institutions should maintain central contract repositories, approval trails, performance records and coordinated dispute-response teams. High-value government contracts should receive legal, technical, fiscal and anti-corruption review before execution and material variation. These measures reduce both illegitimate claims and the risk that valid claims are poorly defended.

Further research is needed on the judicial treatment of emergency arbitration, Award Review Tribunals, third-party funding, interim-measure enforcement, limitation under the AMA and the interaction between award enforcement and sovereign immunity. Empirical work on the duration and outcome of recognition proceedings would also improve the quality of investor risk assessment.

CONCLUSION

Nigeria's dispute-resolution framework offers investors meaningful legal tools, but those tools operate within a broader institutional and enforcement environment. The AMA strengthens referral to arbitration, interim protection and award enforcement, while Nigerian courts remain essential for public-law questions, non-arbitrable claims, third-party coercion and execution. The principal unresolved difficulties concern judicial delay, uneven implementation, the developing interpretation of new statutory mechanisms, foreign-judgment reciprocity and execution against sovereign assets.

P&ID demonstrates that neither the size of an award nor the apparent finality of arbitration can substitute for procedural integrity. Fraud, corruption, misuse of privileged material and deficient contract administration can undermine an arbitral process and destabilise investor confidence. The decision also confirms that courts at the seat retain an essential supervisory role where the arbitral process has been seriously abused.

For investors, the practical response is to combine careful dispute-clause drafting with authority verification, anti-corruption due diligence, evidence preservation, realistic forum selection and early asset planning. For policymakers, the priority is to convert modern legislation into predictable institutional performance. Future Nigerian case law will determine how effectively the innovations of the AMA balance finality, fairness, public policy and enforceability.

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