

27 August 2024

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TEMPLARS ThoughtLab

Revolutionising Arbitration: The Impact and Global Alignment of Nigeria's Award Review Tribunals (ARTs) under the Arbitration and Mediation Act 2023

Introduction

Over a year has passed since Nigeria overhauled its arbitration landscape with the passage of the Arbitration and Mediation Act ("AMA") 2023, thereby ushering in a new era of modern dispute resolution aligned with the 2006 UNCITRAL Model Law. A standout innovation in the AMA is the introduction of the Award Review Tribunal (ART) under Section 56, a groundbreaking alternative to traditional court challenges. This fresh approach promises to boost efficiency in dispute resolution while reinforcing the core principles of arbitration.

Section 56(1) of the AMA stipulates:

"Notwithstanding section 55(1) of this Act, parties may agree in their arbitration arrangement that an application to review an arbitral award based on grounds outlined in section 55(3) of this Act shall be directed to an ART."

This article focuses on the potential impact of the ART framework on the efficiency of dispute resolution in Nigeria and how its introduction aligns with international arbitration standards, particularly the UNCITRAL Model Law. Finally, the article will also investigate the practical implementation of ART in arbitration agreements and provide insight into drafting techniques for incorporating ART in arbitration agreements.

Preliminary Considerations - Limitations of traditional court challenges to arbitral awards

Before delving into the ART provisions under the AMA, it is imperative to consider the objectives of the AMA, especially within the context of the limitations of the Arbitration and Conciliation Act (“ACA”) 1988. The AMA is described in its long title as an Act that aims to provide a unified legal framework for the fair and efficient settlement of disputes through arbitration and mediation. One of the major impediments to the efficiency of the arbitral ecosystem under the defunct ACA was the incessant challenges to arbitral awards by award debtors.

In **Metroline (Nig.) Ltd. v Dikko (2021) 2 NWLR (Pt. 1761) 422 at page 445, paras A-F** the Supreme Court per Rhodes-Vivour, JSC summarised the state of play in the following words:

“I intend to comment on the disturbing trend where all manner of appeals are filed against awards. It is time litigants fully understand, respect and appreciate the nature of arbitration agreements they freely enter into. It is the duty of counsel to explain the nature of these agreements and not encourage their clients to disregard them when they get unfavourable awards. Arbitration agreements ought to be respected and the resultant awards complied with. We should always bear in mind the importance of respecting arbitration agreements, more so those that have international connotations. Building up and sustaining a globally respected dispute resolution system are major steps for the growth of our Nation into a preferred investment destination.”

It was against the backdrop of the foregoing that the AMA was enacted in 2023 with several innovative provisions one of which was the introduction of ART mechanism as an alternative to the traditional court challenges.

Objectives and workings of the scheme

This innovative body acts as a secondary arbitral tribunal, mirroring the original tribunal in both constitution and function- unless parties agree otherwise. Operating on an opt-in basis¹, it allows parties to agree to challenge an arbitral award within three months of issuance. Like traditional courts, the ART can overturn or uphold the award, either in full or in part.

Notwithstanding the above, the ART isn't a loophole for contesting arbitral awards based on errors of law or fact but rather operates within a framework defined by Section 55(3) of the Act², with limited grounds for review.³ These grounds encompass, *inter alia*, inquiries into the arbitration agreement's enforceability, the arbitrator's jurisdictional authority, procedural fairness concerning the constitution and appointment of the arbitral tribunal,

¹ The ART operates as an elective procedure, contingent upon explicit inclusion in the arbitration agreement, thereby highlighting party autonomy, a central theme in arbitration. If parties do not opt to include the ART in their arbitration agreement, they forfeit the opportunity to avail themselves of its additional review mechanism.

² These grounds closely mirror the same grounds for setting aside an award, as set out in Article V of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the **New York Convention**)

³ This is unlike the arbitral appeal scheme of the joint optional American Arbitration Association–International Centre for Dispute Resolution (AAA-ICDR). which allows parties to challenge an award for an *“error of law that is material and prejudicial”* and *“determinations of fact that are clearly erroneous”*

and the conformity of the award with essential tenets of Nigerian legal principles rooted in public policy.

Impact of the ART on Efficiency in Dispute Resolution

The ART is intricately structured to facilitate the prompt enforcement of arbitral awards through an efficient process. Upon affirmation of an award by the ART, judicial grounds for annulment are narrowly circumscribed, limited to specific instances such as non-arbitrability or violations of public policy. This focused approach helps resolve disputes more efficiently and swiftly by reducing the potential for prolonged litigation, per established arbitration principles.

Additionally, the ART framework aligns closely with international arbitration standards, notably those outlined in the UNCITRAL Model Law. This alignment is significant because the UNCITRAL Model Law advocates for limited judicial intervention and emphasises the finality of arbitral awards. The ART's restrictive grounds for annulment are consistent with these international principles, reinforcing Nigeria's adherence to global best practices.

This alignment with international standards enhances Nigeria's position as an attractive seat for international arbitration. By adopting a modern and efficient review framework through the ART, Nigeria demonstrates its commitment to upholding international norms. This, in turn, improves Nigeria's reputation as a reliable seat for arbitration, attracting more international disputes with its attendant benefits.

Moreover, a well-structured arbitration system that adheres to global standards fosters confidence among international investors. When parties perceive a jurisdiction as having a robust and progressive arbitration framework, they are more likely to choose it for resolving disputes. This positive perception can in turn lead to increased foreign investment and support Nigeria's economic development.

Drawbacks of the ART

Notwithstanding its noble intentions and significant advantages, the ART framework's impact on efficiency in dispute resolution is not without its challenges and complexities.

1. **Additional Expenses:** While the ART is designed to enhance the efficiency of resolving disputes, it also introduces additional costs that parties must consider. One significant aspect is the fees associated with the tribunal's review process. The ART requires compensating arbitrators for their review of awards. These fees can be significant, especially if the review process is complex or lengthy. Additional costs also include case management and procedural expenses. These are necessary for the ART to operate effectively but add to the financial burden.
2. **Administrative Burdens:** Implementing and maintaining an ART requires substantial administrative resources. Ensuring that the ART operates efficiently and effectively involves not only managing caseloads but also maintaining transparency and accountability. Administrative inefficiencies can counteract the ART's intended benefits.
3. **Potential for Increased Litigation:** Although the ART narrows grounds for setting aside, parties may still seek to challenge arbitral awards through other means or forums. This can lead to a rise in litigation or appeals on procedural grounds, thereby potentially slowing down the enforcement process and undermining the ART's efficiency goals.

Factors that can influence the effectiveness of ART

While the ART is designed to streamline the enforcement of arbitral awards by limiting grounds for annulment and expediting judicial review, several factors can influence its effectiveness:

- i. **Consistency in Application:** The success of the ART's impact on efficiency largely depends on consistent application and interpretation of its rules. Variability in judicial practices or differing interpretations of what constitutes non-arbitrability or public policy violations can affect the predictability and speed of dispute resolution.
- ii. **Quality of Arbitral Tribunals:** The ART's efficiency is also contingent upon the quality and competence of the arbitral tribunals it reviews. If arbitral tribunals fail to adhere to high standards of procedural fairness or jurisdictional boundaries, the ART's role in affirming awards may be complicated, leading to increased scrutiny and potential delays.
- iii. **Adaptability to Evolving Standards:** The legal and commercial landscape is dynamic, with evolving standards and expectations around arbitration. The ART must remain adaptable to these changes to effectively address emerging issues and maintain its efficiency in the face of new challenges or complexities in dispute resolution.
- iv. **Perception of Fairness:** The perceived fairness of the ART's review process is crucial. If stakeholders view the ART's procedures as overly rigid or biased, it could undermine confidence in the system for enforcement of awards as a whole, potentially impacting the willingness of parties to engage in or accept ART outcomes.

Best Practices for Embedding ART Clauses in Arbitration Agreements

To fully leverage the benefits of the ART, parties should carefully consider how to incorporate ART-related provisions into their arbitration agreements. Effective drafting can mitigate potential issues and enhance the operational efficiency of the ART framework. This can be achieved by:

- i. **Drafting Effective ART Clause:** When embedding ART provisions into arbitration agreements, precision is key. Recommendations include:
 - a) **Scope of Review:** Clearly outlining the grounds on which the ART can review an arbitral award. These should align with the limitations specified in Section 55 of the Act to avoid ambiguity.
 - b) **Timing and Procedures:** Specifying the timeframe for initiating an ART review, typically within three months of the award. Include detailed procedures for submitting review applications, necessary documentation, and deadlines to ensure a smooth process.
 - c) **Costs and Fees:** Addressing the financial aspects of the ART review. Define who is responsible for the costs and how they will be allocated. Providing clarity on this can help prevent disputes over expenses and ensure that all parties are aware of their financial commitments.

- ii. **Addressing Potential Challenges:** To navigate the challenges associated with the ART, parties and their counsel should consider the following strategies:
 - a) **Suspension of Enforcement:** Including a clause that suspends the enforcement of the arbitral award while the ART review is pending. This approach helps manage expectations and prevents premature enforcement actions that could compromise the ART's effectiveness.
 - b) **Stay of Proceedings:** Advocating for a judicial approach where courts automatically stay enforcement proceedings if ART-related provisions are invoked. This can help streamline the process and minimise conflicts between different legal actions.
- iii. **Balancing Flexibility and Rigidity:** In drafting ART clauses, it is crucial to strike a balance between flexibility and rigidity. An overly rigid framework might deter parties from opting for ART, while excessive flexibility could lead to uncertainty and potential misuse. Parties should aim for a balanced approach that provides clear guidelines while allowing for necessary flexibility.
- iv. **Training and Awareness:** To ensure effective implementation, parties and practitioners should engage in training and awareness programs regarding the ART. Understanding the ART's operational details and procedural requirements will enhance its effectiveness and help avoid potential misunderstandings.

Conclusion

The introduction of the ART under Nigeria's Arbitration and Mediation Act 2023 represents a significant step forward in the country's arbitration framework. By offering a modern and efficient alternative to traditional court challenges, the ART aligns with international arbitration standards and enhances Nigeria's appeal as an arbitration destination.

While the ART scheme brings considerable advantages, addressing the associated challenges is essential to fully realising its benefits. Thoughtful drafting of arbitration agreements, clear procedural guidelines, and ongoing stakeholder engagement is key to ensuring the ART meets its goals of prompt and efficient dispute resolution.

As Nigeria continues to advance its arbitration practices, the ART embodies a progressive approach that not only aligns with global best practices but also strengthens the country's position as a leading arbitration seat. Embracing these innovations will bolster Nigeria's reputation and support a favourable environment for international business and investment.