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TEMPLARS ThoughtLab

National Policy on Arbitration and ADR 2024: A Positive Step for Nigeria?

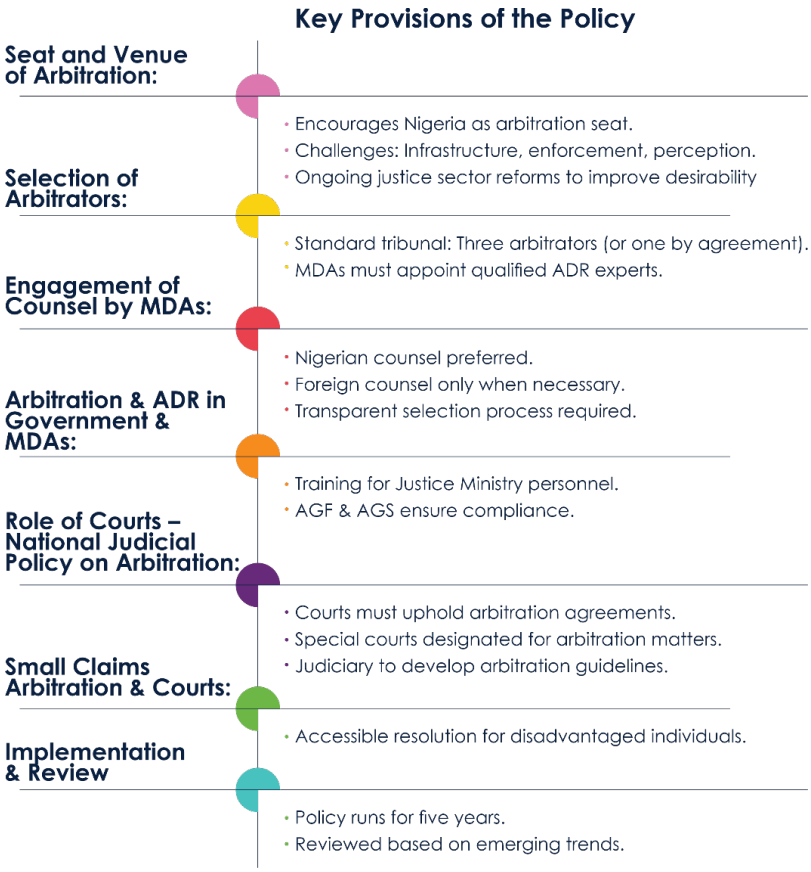
Introduction

In July 2024, the Nigerian Federal Executive Council approved the National Policy on Arbitration and Alternative Dispute Resolution (ADR), 2024 (the **"Policy"**). The adoption of the Policy marks a significant milestone in the promotion of arbitration and other ADR mechanisms (such as negotiation, mediation and conciliation), as viable dispute resolution mechanisms in Nigeria. However, it noteworthy that the Policy is merely a statement of intent by the Nigerian Government and its provisions are recommendatory, rather than binding.

The purpose of the Policy is multifold: it seeks to establish Nigeria as a preferred venue for arbitration and other ADR mechanisms while ensuring compliance with Nigeria's international treaty obligations.[1] The Policy also aims to decongest the Nigerian courts by fostering a judicial culture that supports arbitration and ADR while promoting public awareness of its benefits,[2] and seeks to create a structured process for the adoption and negotiation of arbitration and ADR agreements by government ministries, departments, and agencies (MDAs), capacity building for the critical arbitration stakeholders and personnel, and stimulate the growth of the Nigerian economy through the attraction of foreign investment.[3] In essence, it signals the Nigerian government's commitment to encouraging the use of arbitration and ADR, particularly by government MDAs.

[1] Foreword to the National Policy on Arbitration and Alternative Dispute Resolution (ADR), 2024 by Lateef O. Fagbemi, SAN (Attorney General of the Federation and Minister of Justice). See also, Paragraphs 2.0 and 3.0 of the Policy.
[2] Paragraph 3.0 of the Policy.
[3] Ibid.

In this note, we set out a brief assessment of the provisions of the Policy and its potential implications for the use of arbitration and other ADR mechanisms for settling disputes in Nigeria.



Brief Analysis of Key Provisions in the Policy

Seat and Venue of Arbitration:

In a bid to promote Nigeria as a key arbitration destination, the Policy encourages the use of Nigeria as the seat and venue of arbitration by both MDAs and private institutions alike for the resolution of disputes. The Nigerian government, through the Policy, acknowledges that the Nigerian arbitration landscape faces certain challenges that makes Nigeria a less desirable seat or venue of arbitration.[4]

> These challenges include lack of adequate infrastructure, difficulty of enforcement, as well as low international patronage and negative public perception of the Nigerian arbitration landscape.

[4] Paragraph 13.0 of the Policy.

However, the Policy confirms that there are ongoing efforts to reform the justice sector[5] and these reforms will make Nigeria a more desirable seat and venue for arbitration.

Selection of Arbitrators:

The Policy provides that the standard composition of an arbitral tribunal in Nigeria shall be three (3) arbitrators (although parties can agree to appoint a sole arbitrator), and each arbitrator appointed by the Federal or State MDAs must be an ADR expert with the requisite qualifications and competence to act as an arbitrator.[6] However, in cases of international commercial arbitrations, the Attorney General of the Federation or State (the AGF/AGS) may request for the appointment of such an arbitrator to be made on behalf of the Federal or State MDAs by the Director of the Regional Centre for International Commercial Arbitration Lagos (RCICAL). However, the appointment of an arbitrator in respect of disputes involving claims more than NGN 50,000,000.00 (Fifty Million Naira) requires the approval of the AGF/AGS.

Engagement of Counsel by MDAs:

The Policy outlines the criteria for the engagement of counsel by MDAs and mandates transparency in the process. The engagement shall be based solely on the merit and technical ability of the counsel.[7] The Policy requires that a Nigerian counsel shall be primarily engaged but a foreign counsel may be engaged where necessary to collaborate with Nigerian counsel.

Arbitration and ADR by Federal/State Governments and MDAs:

The Policy requires that the Federal and State Governments as well as MDAs should build capacity for managing arbitration and ADR processes by developing and educating the personnel in the Federal/State Ministries of Justice on contract negotiation, drafting and monitoring implementation of arbitration and ADR contracts, rules and processes.[8]

The Policy further provides that disputes arising from investment agreements shall be managed by representatives of the Federal/State Ministries of Justice in collaboration with officers of the Nigerian Investment Promotion Commission (NIPC) to create an avenue for knowledge building for the negotiation of future international investment arbitrations.[9] The Policy requires the Federal/State MDAs to adopt the template dispute resolution clause provided in the Schedule to the Policy in order to ensure uniformity in the model language adopted across board.[10]

In addition, the Policy provides that arbitration and ADR institutions in Nigeria will be encouraged to consider the development of a unified code of conduct and also ensure the enforcement of arbitral awards/decisions.[11] In the same vein, the Federal/State MDAs are required to keep a

[5] Such as the shortening of the timeline for appeals and adoption of specified practice directions for arbitration and ADR related matters. See Paragraph 15.0 of the Policy.
[6] Paragraph 6.0 of the Policy.
[7] Paragraph 7.0 of the Policy.
[8] Paragraph 10.1 and 10.2 of the Policy.
[9] Ibid.
[10] Paragraph 5.0 of the Policy.
[11] Paragraph 8.0 of the Policy.

record of the details and full particulars of all ongoing and pending investment or commercial arbitration or ADR proceedings in a register to be kept in the Federal/State Ministries of Justice.[12]

The Federal/State Ministries of Justice are also required under the Policy to keep a repository and up to date register of all existing treaties entered into between Nigeria and other countries.[13]

Furthermore, the Policy confirms the commitment of the Federal and State Governments to the regular enhancement of the legislative framework for arbitration and ADR in Nigeria.[14] The Policy further confirms that the AGF and the AGS of each State shall ensure the implementation of the Policy and the Federal or State MDAs shall be required to comply with the Policy in any contracts that they are parties to.[15]

The Role of Courts – National Judicial Policy on Arbitration:

The Policy reemphasizes the importance of the National Judicial Policy on Arbitration in Nigeria,[16] which requires courts to support and encourage arbitration through special rules of procedures to fast-track arbitration related matters and refrain from entertaining actions that parties have agreed to settle through arbitration without first giving effect to the arbitration agreement.[17] Instead, the courts are encouraged to stay litigation proceedings where such actions were brought in disregard of an arbitration agreement between the parties. It also encourages all the heads of courts in Nigeria to designate one or more courts for the hearing and determination of arbitration related matters. In addition, the Policy directs the judiciary to develop a practice directive on arbitration and ADR.[18]

To discourage the frustration of arbitration and ADR mechanisms by lawyers and litigants, the Policy enjoins courts to award punitive costs against such lawyers and litigants that use the instrumentality of the courts to frustrate arbitration and ADR.[19] The Policy proposes for the heads of court to adopt short timelines for the determination of arbitration and ADR related judicial proceedings and appeals. Specifically, the Policy proposes that judicial proceedings arising from arbitration or ADR should be determined within a period not exceeding 60 days from the date of filing while appeals arising from the decisions made in those judicial proceedings should be determined within a period not exceeding 270 days from the date of filing the appeal. In addition, the Policy proposes that the Court of Appeal, rather than the Supreme Court, shall be the final appellate court for arbitration and ADR related disputes.

Small Claims Arbitration and Courts:

The Policy introduces small claims arbitration to provide socially and economically disadvantaged individuals with an accessible dispute resolution mechanism administered by a small claims court.[20] The range of disputes that will be determined by these small courts would include claims for debts, breach of contracts, tenancy matters and consumer rights issues, not exceeding NGN 5,000,000

[12] Paragraph 11.0 of the Policy.
[13] Paragraph 12.0 of the Policy.
[14] Paragraph 14.0 of the Policy.
[15] Paragraph 17.0 of the Policy.
[16] Directive (No. NJI/CJI/CON/IV) of 26 May 2017.
[17] Paragraph 15.0 of the Policy.
[18] Paragraph 15.0 of the Policy.
[19] Paragraph 15.0 of the Policy.
[20] Paragraph 16.0 of the Policy.

(Five Million Naira).[21] The procedures of the small claims arbitration shall be guided by the need to provide an affordable and speedy process for the resolution of disputes without the technicalities and complexities of the traditional court system in regular litigation.

In furtherance of the conduct of small claims arbitration, the Policy states that the Chief Judges of the Federal and State High Courts would issue practice directions to establish small claims procedure and courts for the conduct of arbitration which will be the precursor of the enactment of enabling laws to back up the procedure and courts.[22] The Policy provides that the timeframe for the conduct of a small claim shall not exceed 60 (sixty) days[23] and the timeframe for the hearing of the appeal shall not exceed 30 (thirty) days.[24] In the same vein, it provides that the enforcement of the judgment obtained through these small claims shall be enforced like any other court judgment.[25]

Implementation and Review of Policy:

The Policy will be implemented for a period of five years, after which it shall be reviewed to accommodate the prevailing trends in arbitration and ADR practices.[26] The monitoring and evaluation of the implementation of the Policy, as well as advising the AGF on the review and improvement of the Policy and regional and international development, shall be the responsibility of the Advisory Council established under the Policy. This Advisory Council shall comprise arbitration and ADR experts, including members of the academia, stakeholders and practitioners, and the President of the Nigerian Bar Association.

Implications of the National Policy – A Step in the Right Direction?

The Policy presents a clear statement of the Nigerian Government of its desire and commitment to build a thriving and effective justice system through the prioritization of arbitration and ADR and the reduction of reliance by both public and private entities on the regular court system. The significance of the Policy transcends the shaping of the policy direction of Nigeria towards arbitration but goes further to provide a definitive answer to the question: *what is the Nigerian public policy on arbitration*? And the answer, as expressed in the Policy, is the promotion, and encouragement of the resolution of all commercial disputes involving public entities such as the Federal/State Governments and MDAs through arbitration and ADR. Indeed, the Policy represents a progressive step toward modernizing dispute resolution in Nigeria. By addressing longstanding concerns such as judicial congestion, enforcement challenges, and negative perceptions, it aims to create a more attractive environment for arbitration and other ADR mechanisms. Its emphasis on institutional capacity building, judicial cooperation, and structured arbitration agreements with MDAs positions Nigeria as a viable arbitration hub.

However, the successful implementation of the Policy hinges on adequate funding, government commitment, and consistent enforcement. Additionally, stakeholders must work collaboratively to overcome infrastructural limitations and skepticism from foreign investors. If effectively executed, the Policy could significantly enhance Nigeria's dispute resolution framework, promoting economic growth and investor confidence. Furthermore, it is worthy of note that, while small claims arbitration is commendable, there are concerns that the proposed procedures surrounding the resolution of appeals, could inadvertently erode the flexible and informal nature that makes arbitration

[21] Paragraph 16.2 of the Policy.
[22] Paragraph 16.1 of the Policy.
[23] Paragraph 16.3 of the Policy.
[24] Paragraph 16.5 of the Policy.
[25] Paragraph 16.4 of the Policy.
[26] Paragraph 17.0 of the Policy.

attractive. The risk is that arbitration, which is meant to be a speedy and less bureaucratic process, small claims through small claims courts may make arbitration proceedings resemble traditional litigation. The introduction of a structured court-like mechanism, with specified timeframes and may become bogged down by procedural rigidity akin to court proceedings. Therefore, while the small claims arbitration initiative is a positive step, care must be taken to ensure that it remains a streamlined and effective alternative to litigation rather than mirroring it.

Conclusion

Overall, the Policy signals a renewed commitment to fostering an arbitration-friendly environment in Nigeria. By streamlining procedures, promoting arbitration and other ADR mechanisms, and integrating judicial support, the Policy has the potential to transform Nigeria's dispute resolution landscape. While challenges remain, sustained implementation and review mechanisms provide a pathway for Nigeria to emerge as a leading arbitration hub in Africa and beyond.