Operational Guides To Successful Domestic Arbitration Proceedings in Nigeria

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ABSTRACT
ADR is increasingly being viewed as a valuable and integral part of the case management process. The failure or prolong delay of the court system had led to the growing search for alternatives to litigation. This development has accounted as the major factors for the growth of alternative dispute resolution process. One basic fact about ADR is that it is an umbrella term for processes other than Judicial determination of disputes between parties. The Nigeria legal system has taken cognizance of the dual processes of dispute resolution mechanism, the Litigation and ADR options. Among these processes are the Court (Litigation) and ADR which is made up of Arbitration, Mediation, Conciliation and Negotiation. Arbitration which is a private process whereby a disinterested person called an arbitrator, chosen by the parties to a dispute acting in a Judicial fashion without regards to legal technicalities processes is similar to the court processes. This research study hinges on the operational guides to successful domestic Arbitration proceedings in Nigeria taking cognizance on our extant laws.

Keywords: Operational Guides, Domestic Arbitration Proceedings, dispute resolution

INTRODUCTION
Disputes are usual occurrence in every human existence and the quick and fair resolution of disputes is an indispensible requirement for stability and growth of every society. When parties are faced with various types of disputes, they may or can choose any of the adjudication processes as a method to resolve or find solution to the disputes.
All over the world, Nigeria not an exception, the failure of court system had led to the growing search for alternatives to litigation. This development has accounted as the major factor for the growth of Alternative Dispute Resolution Processes globally such as; Negotiation, Mediation, Conciliation and Arbitration.
The National Alternative Dispute Resolution Advisory Council (NADRAC) has defined ADR as an ‘umbrella term for processes, other than judicial determination, in which an impartial person assists parties in a dispute to resolve the issue between them’\(^1\).
One basic fact about ADR is that they are not substitutes to litigation rather they are adjudged as aids to litigation. They are processes which aimed at achieving an expeditious resolution of the disputes between parties and at the same time preserve the interpersonal relationship between them. ADR may be employed by agreement between parties at the suggestion of the court or by direction or order of the court. ADR is increasingly today globally referred to as “appropriate dispute resolution” in recognition of the fact that such approaches are often not just an alternative or aids to litigation, but may be the most appropriate way to resolve a dispute.
The National Alternative Dispute Resolution Advisory Council has classified dispute resolution process as facilitative, Advisory, determinative or hybrid\(^2\).

\(^{1}\)National Alternative Dispute Resolution Advisory Council, Legislating for Alternative Dispute Resolution - A guide for government policy-makers and legal drafter(2005) p100
\(^{2}\)National Alternative Dispute Resolution Advisory Council, Dispute Resolution Terms (2005) p5
Facilitative: In this process, the dispute resolution practitioner assists the parties to a dispute to identify the issues in dispute, develop options, and consider alternative and endavour to reach an agreement about some issues or the whole of the dispute. Facilitative processes include negotiation, facilitation, conferencing and mediation.

Advisory: The dispute resolution practitioner under advisory will consider and appraises the dispute and provide advises as to the fact of the dispute, the law and in some cases, possible or desirable outcomes and how these may be achieved. Advisory processes include expert appraisal, case presentation, mini-trial and early neutral evaluation.

Determinative: Under this process, the practitioner will evaluate the dispute (which may include the hearing of the formal evidence from the parties) and makes a determination. An instance of such processes is arbitration, expert determination and private judging.

Hybrid: The dispute resolution practitioner plays multiple roles for instance in conciliation and conferencing he may facilitate discussions as well as provide advice on the merits of the dispute. In hybrid processes such as med-arb, the practitioner first uses one process (mediation) and then a different one arbitration.

Arbitration is defined in StabiliniVisinomi Ltd v Mavinson & Parner Ltd

Arbitration is a method of dispute resolution involving one or more neutral third parties, who are agreed to by the disputing parties and whose decision is binding. In effect, arbitration is the resolution of a dispute between the parties by a person(s) other than a court of law.

The learned Justice of Court of Appeal citing the work of a learned silk, Fabian Ajogwu (SAN) stated that arbitration is a reference of a dispute by parties thereto for settlement by a person or tribunal of their own choice rather than a court. The basis for it according to him, is the consent of the parties to submit or refer the dispute to arbitration. The strength of arbitration is the enabling laws the Arbitration and Conciliation Act Cap A18 Laws of the Federation of Nigeria 2004 and the Arbitration Rules as contained in the First Schedule of the law. These laws confer arbitration process with sanction of enforcement once a final award is made in a judicious manner. Similarly, Prof. Gaius Ezejiofor (SAN) in his work “The Law of Arbitration in Nigeria”, opined that the obvious gain of arbitration is that once parties resort to arbitration it usually shields them from the rigid formality that characterizes the court trials.

Types of Arbitration
1. Customary Law Arbitration
2. Common Law Arbitration
3. Arbitration under the Act.

Customary Law Arbitration as defined in Agu v Ikewibe

as settlement of dispute founded on the voluntary submission of the parties to the decision of the arbitrators who are either chiefs or elders of their communities and the agreement to be bound by such decision.

The legal basis of all arbitration is voluntary agreement, in the words of our erudite scholar Greg Nwakoby, whenever there is a distinct agreement to appoint an umpire to determine the difference between the parties and other conditions are present, then there is arbitration. It is that agreement of the

1Ibid
3NADRAC (2003) above
4T. Sourdin; Alternative Dispute Resolution (2nd Edition 2005) p31
5Ibid n6
6(2014) 14NWLR (Pt1426) P145
7Arbitration and Conciliation Act Cap A18 LFN 2004
9(1991) 3 NWLR (Pt 180) P385
parties to arbitrate or submission to arbitration that confers jurisdiction on the arbitrators. However, it is the voluntary nature of the parties’ agreement to submit a case or dispute for arbitration that is basic to its binding nature\textsuperscript{13}.

In \textit{Foli v Akese}\textsuperscript{14} Deane C.J. cited with approval the opinion of \textit{Maule J in Fuller v Fenwick} where he stated thus,

\begin{quote}
\textit{If this case had gone on in the usual course, the law would have been determined by a Jury. The parties have thought fit that an arbitration as more proper to decide matters of fact than a Jury and could more conveniently dispose of matters of law than a Judge an account of expenses of contesting before a court on intricate point of law.}\textsuperscript{15}
\end{quote}

It is important to note that where matters in dispute between parties are by mutual consent investigated by arbitrators appointed by them in a meeting held in accordance with native law, a decision given, is binding on the parties and the court will enforce it\textsuperscript{16}. A party who had submitted to an agreement and consented to it under the customary law cannot also resile from the proceedings midstream or after the award is made unless he has evidence to prove that such a right exists under the customary setting in respect of arbitration. A binding customary arbitration must have the following ingredients:

\begin{itemize}
\item That there had been a voluntary submission of the matter in dispute to an arbitration of one or more persons.
\item That it was agreed by the parties either expressly or by implication that the decision of the arbitrator(s) would be accepted as final and binding.
\item That the said arbitration was in accordance with the custom of the parties or of their trade or business.
\item That the arbitrator(s) reached a decision and published their awards.
\end{itemize}

\textit{That the award was accepted at the time it was made.}\textsuperscript{17}

A party who raises a plea of estoppel in customary arbitration must prove same by credible evidence. Such a plea is not one that can be disposed of or determined by a trial court on the affidavit evidence of the parties. It is imperative in law that facts pleaded must be proved by credible and admissible evidence or else the facts pleaded goes to no issue. The Law is that it is not only the ingredients of binding customary arbitration should be pleaded but that such ingredients must be established by credible evidence\textsuperscript{18}. In customary arbitration oath taking is a valid process and a good method known to customary law for establishing the truth of a matter where two parties in a dispute had agreed voluntarily.\textsuperscript{19}

\textbf{Common Law Arbitration}

A common law arbitration agreement is oral and it is concerned with present dispute which had arisen. Oral submission is the main thrust that governed the common law arbitration just like customary law arbitration. A written award based on the oral agreement of the parties under the common law arbitration cannot claim to be an award under the Act\textsuperscript{20}. An arbitrator appointed under the common law arbitration setting can be removed before the award is made, parties too can repudiate their parol agreement to arbitrate by revoking the authority before award is made. A party to common law arbitration can abandon it midstream and proceed to court. The only remedy available to an injured party is to ask for damages for breach of contract to arbitrate under the common law which is a valid contract.

In summary common law arbitration are hardly resorted to.

\textsuperscript{13}\textit{Ankra v Dabra} (1956) 1WALR 89

\textsuperscript{14}1930 IWACA1

\textsuperscript{15}(1846) 16 LJCP 79

\textsuperscript{16}\textit{Assumpon V Amaku} (1932) WACA 192


\textsuperscript{18}\textit{Onyenga& Others v Ebere} (2004) 13 NWLR (Pt888) P24, \textit{Aaron Okarika& Others v Isaiah Samuel&Others} (2003) 7NWLR (Pt 924) p364@ 370

\textsuperscript{19}\textit{Section I(a)(b)(c) and (2) of the Arbitration and Conciliation Act Cap 18 LFN 2004}

\textsuperscript{20}Prof. G.C. Nwakoby, \textit{The Law and Practice of Commercial Arbitration in Nigeria} 2\textsuperscript{nd} edition (Enugu Snap Press Ltd 2014) P 33

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Arbitration under the Act

Arbitration under the Act is governed by the provisions of the Nigerian Arbitration and Conciliation Act Cap A18 Laws of the Federation of Nigeria, 2004. However, various State Laws and Rules of Courts contain the rules governing arbitration proceedings in Nigeria.

Section 1(a)(b)(c) & 2 of the Act provides that every arbitration agreement shall be in writing contained.

(a) In a document signed by the parties or
(b) In an exchange of letters, telex, telegram or other mean of communication which provide record of the arbitration agreement or
(c) In an exchange of points of claim and of defence in which the existence of an arbitration agreement is alleged by one party and not denied by another.

(2) Any reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if such contract is in writing and the reference is such as to make that clause part of the contract.21

Arbitration Agreement

Reference to the provision of Section 1(c) and (2) of the Act arbitration agreement *Ipso facto* as vividly stated is the main thrust and term of every arbitral proceedings. It usually assists parties in the determination of whether or not there should be arbitration at all based on the term entered into by parties.22

Categories of Arbitration Agreement

There are two basic types of arbitration agreement. The first and most common is an agreement to submit future dispute to arbitration. Such type of agreement usually takes the form of an arbitration clause in the principal agreement between the parties. The second is the agreement to submit existing disputes to arbitration; an agreement of such type is commonly referred to as “Submission to arbitration agreement or submission agreement.

Elements of Arbitration Agreement

Arbitration clause are usually short, this is not because of any legal requirements rather it is a reflection of practicalities of the situation because even though parties had provided for it, they do not know whether dispute will actually arise. It is usually referred to as “Midnight clause” as it is the last clause in a contract to be considered sometime late at night or in the early hours of the morning after long negotiation.23

Submission agreement on the other hand deals with an existing dispute and can be followed exactly to fit the circumstances and provide in details how the arbitral tribunal should deal with the dispute24. Usually it serves two purpose, firstly it makes the arbitral tribunal more efficient secondly, the parties will be in a position to prevent the arbitral tribunal from going outside its mandate.

The obvious demerit is that since parties are seised with details of the dispute and mandate, any observed deviation can be a ground for challenge25. Arbitration agreement assists the parties to determine the powers and jurisdiction of the arbitral tribunal26, the applicable procedure to be adopted27, language to be employed28, location/venue29, time within which to commence and complete arbitral proceedings30, applicable governing laws31 and the number of arbitrators to be appointed.32

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21Section 1(a) (b) and (c) and (c) of the Arbitration and Conciliation Act Cap A18 LFN 2004
23Ibid n22
24Ibid n 22 & 23
26Section 12(1) of the Act, Article 21 of the First Schedule of the Arbitration Rules
27Section 15 of the Act & Article 33(1) of the First Schedule of the Arbitration Rules
28Section 18 of the Act & Article 17(1) of the First Schedule of the Arbitration Rules
29Section 16(1) of the Act & Article 16(1) of the First Schedule of the Arbitration Rules
30Section 17 of the Act & Article 23 of the First Schedule of the Arbitration Rules
31Section 47 (1) of the Act & Article 33(1) of the First Schedule of the Arbitration Rules

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Arbitral Proceedings

If parties had agreed to arbitrate, on the occurrence of dispute, the parties or one of them will refer the dispute to arbitration. Parties in an arbitral proceeding are usually referred to as Claimant and Respondent.

In any arbitral proceedings the first consideration would be whether the dispute is the type that is arbitrable or not under the law of the land.

Arbitrability: The Nigerian Law on Arbitration and Conciliation did not list or provide for matters that are not capable of settlement by arbitration. It important to note that all commercial dispute arising under valid arbitration agreement should be arbitrable.

Step I
Notice

The party who intend to undertake arbitration that is the claimant should give notice to the other party of his intention to take the dispute that has arisen to arbitration. Arbitral proceedings are deemed to have commenced on the date on which the notice of arbitration is received by the respondent though parties are free to agree on the manner of service of any notice or other document required or authorized to be given or serviced in pursuance of the arbitration agreement or for the purpose of arbitral proceeding per Ogunwumiju J.C.A in Continental Sales Ltd v R. Shipping Inc. Arbitral proceeding notice should contain a demand to refer dispute to arbitration, names of the parties and address, contract in relation to the dispute, claimed amount, remedy sought, proposed number of arbitrators.

The arbitral tribunal should as a matter of good reasoning ensure that the notice for arbitration is served on the respondent.

Step II
Composition of Arbitral Tribunal

Parties to an arbitration agreement have the autonomy and are at liberty to determine the number of arbitrators to be appointed under the agreement but where no such determination is made the number of arbitrators shall be deemed to be three. The next question of vital importance is who is qualified to be appointed as an arbitrator? Parties may appoint an office holder though not by name but by designating his office as the arbitrator. Where any of the parties failed to appoint his own arbitrator, the other party can apply to the court after 30 days to appoint on behalf of the party. The striking feature of any arbitrator appointed is independence and impartiality. The arbitrator has a duty to disclose any disqualifying claim attached to his person as contained in section 8 of the Act and Article 9 and 10 of the first schedule of the Arbitration Rules.

Step III
Pre-Arbitral Meeting

Issues for discussion in the pre-arbitral meeting

- Issues that led to the dispute
- How would the Res be maintained pending the arbitral proceedings?
- The arbitral tribunal may before or in course of the proceedings make at the request of a party, order any party to take such interim measures of protection as it may consider necessary in

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32 Section 6 of the Act & Article 5 of the First Schedule of the Arbitration Rules
33 Section 1 Article 3 (2) of the First Schedule of the Arbitration Rules
35 Article 3(a) of the First Schedule of the Arbitration Rules
36 Article 3(b) of the First Schedule of the Arbitration Rules
37 Article 3(d) of the First Schedule of the Arbitration Rules
38 Article 3(d) of the First Schedule of the Arbitration Rules
39 Article 3(f) of the First Schedule of the Arbitration Rules
40 Article 3(g) of the First Schedule of the Arbitration Rules
41 Section 6 of Arbitration and Conciliation Act Cap A18 laws of the Federation of Nigeria 2014
42 Article 5, 6 and 7 of First Schedule of the Arbitration Rules
respect of the subject matter of the dispute and require any party to provide appropriate security in connection with any measure taken under this paragraph.

- **Language**: this does not pose a threat since our discussion falls within Nigeria. The English language will be employed, though an interpreter may be called where an illiterate is involved.
- **Venue**: Unless the parties have agreed upon the place where the arbitration is to hold, such place shall be determined by the arbitral tribunal having regard to the circumstances of the arbitration. The arbitral tribunal may decide on the exact location to hear some of the witness having regard to the nature and circumstance of the arbitration. It is important to note that any venue to be chosen must be a neutral place where none of the parties should have an advantage. Choice of venue is often based on neutrality and lack of hostility.

**Choice of Law**

*How is the applicable law determined? Where the applicable law is not certain, Can the arbitral tribunal determine it?*

The applicable law in arbitration is the law chosen by the parties or the law chosen by the arbitral tribunal in the absence of specification by the parties. It is also referred to as the governing laws such laws are, the law that determines the capacity of the parties, the law that determines the validity of the agreement, the law governing the arbitration itself and in particular the procedure, the law applicable to the substance of the dispute and if there is a conflict of applicable substantive laws the law under which that conflict is to be resolved. Where the parties have failed to specify the governing law, in accordance with the provisions of S 47(3) of the Act the arbitral tribunal adopting the conflict of law rules shall specify the law and apply same in the arbitration.

**Time**

The period of time fixed by arbitral tribunal for the communication of written statement (including statement of claim and defence) should not exceed forty five days. The arbitral tribunal may extend it if it is considered necessary and just.

**Step IV**

*Commencement of Arbitral Proceedings*

- Arbitral proceedings should commence within the fixed time and if not, the entire arbitration proceeding will be a nullity because of the issue of time bar.
- Any act undertaken in an arbitral proceeding after the time fixed has elapsed, shall be deemed to be an act done without jurisdiction.
- For the calculation of time, Article 2(2) of the First Schedule provides that time shall begin to run on the day following when a notice, notification, communication or proposal is received and if the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. The arbitral tribunal shall ensure that the parties are accorded equal treatment and each party given full opportunity of presenting his case.
- Arbitral proceedings shall be in accordance with the procedure contained in the Arbitration Rules set out in the First Schedule of the Act.

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43 Section 8 of the Act and Article 9 and 10 of the First Schedule of the Arbitration Rules.
44 Section 13 (a) of the Act
45 Section 13(b) of the Act
46 Article 17 of the First Schedule of the Arbitration Rules
47 Article 16(1) of the First Schedule of the Arbitration Rules. Section 16(1) of the Act
48 Article 16(2) of the First Schedule of the Arbitration Rules
49 Article 23 of the First schedule of the Arbitration Rules
50 Section 14 of the Arbitration and Conciliation Act Cap A18 LFN 2004
Step V

Hearing and Written Proceedings

Section 20 of the Act made provisions for oral hearing or hearing by documentary evidence or both. The parties have the right to choose either of the evidence procedures listed above. The tribunal shall give sufficient notice of its hearing and afford the parties right of inspection of document, exchange of information, reliance on any expert evidence or report, have powers to administer oath or take the affirmation of the parties and witnesses appearing, and have power to subpoena ad testificandum or subpoena duces tecum but note that no person shall be compelled under any such writ to produce any documents which he could not be compelled to produce on the trial of an action.

Step VI

Pleadings: The arbitral tribunal should order for pleadings in their pre-arbitral meeting. Parties may on their own fix time for the exchange of processes. The claimant usually file his processes first and send same to the respondent. The important thing is that all parties to the proceedings must be served with the processes. Section 19 of the Act provides for details of what parties should do during the exchange of pleadings.

Step VII

Non-Filling of Pleadings

➢ If the claimant fails to file his pleadings within the period allowed by the arbitral tribunal and thereafter files, the arbitral tribunal has the right to allow it, but where he failed to file at all the arbitral proceeding shall terminate unless the respondent has a counter claim to make against him.

➢ Where the respondent fails to state his defence as statutory required under Section 19(1) of the Act, the arbitral tribunal shall continue with the proceedings without treating such failure as admission of the claimant allegation. Where any of the parties fails to appear at a hearing or to produce documentary evidence the tribunal may continue the proceedings and make an award.

Step VIII

Point of Claim and Defence

Article 19(1) of the First schedule of the Arbitration Rules provides that the claimant shall within the period agreed by the parties present his claim with supporting facts and the reliefs sought and the respondent shall state his statement of defence unless the two had agreed on the point of claim and of defence.

Parties may still after presenting their claims or defence files additional documents that may be relevant to the proceedings. Parties may amend or supplement their claim or defence during the course of proceedings if the arbitral tribunal considers it appropriate to allow such amendment.

Step IX

Plea as to the Jurisdiction of Arbitral Tribunal

Article 21(1) of the First schedule of the Arbitration Rule provides that the arbitral tribunal has power to rule on objections concerning its jurisdictions, and on the validity of the contract of which the arbitration clause forms part. It is important to state that any plea or objection that an arbitral tribunal does not have jurisdiction must be raised not later than in the statement of defence or with respect to counter claim.

51 Section 15 of the Act
52 Section 20(a) of the Act
53 Section 20(b) of the Act
54 Article 18 & 15 of the First schedule of the Arbitration Rules
55 Section 19 of the Act
56 Section 21(a) of the Act, Article 28(1) of the First schedule of the Arbitration Rules
57 Section 21(b) of the Act
58 Section 21(c) of the Act
59 Article 19 of the First schedule of the Arbitration Rules
60 Article 20 of the First schedule of the Arbitration Rules
61 Article 21(1) of the First schedule of the Arbitration Rules
in the reply to counter-claim.\textsuperscript{62} The arbitral tribunal should rule on it at the preliminary stage. However, the arbitral tribunal may proceed with the arbitration and rule on such a plea in their final award.

\begin{enumerate}
\item **Step X**
\item Appointment of Expert: Section 22 (1)(2) and (4) of the Act and Article 26 (1-3) of the First Schedule of the Arbitration Rules which are the impair materials provides that arbitral tribunal shall have power to appoint an expert to report on specific issues both oral and in written form and such expert shall participate in hearing to enable parties put questions across to him. Where such an expert produced report, the parties shall have right to cross examine the expert on the content of his report\textsuperscript{63}.

\item **Step XI**
\item Trial and Hearing
In accordance with the Constitutional provisions of \textit{Section 36 of 1999 Constitution of Federal Republic of Nigeria as amended}, parties must be heard fairly and adequately. Also as provided in \textit{Article 24(1) of the First schedule of the Arbitration Rules} each party shall have the burden of proving the facts relied upon to support his claim or defence\textsuperscript{64}. If witnesses are to be heard, at least fifteen days before hearing, each party shall communicate to the arbitral tribunal and the other party the names and addresses of the witnesses that he intends to present, the subject upon and the language in which such witness will give their testimony.\textsuperscript{65} Arbitration hearing are usually held in camera unless the parties agreed otherwise because of the private nature of arbitration and also due to the fact of confidentiality attached to it. \textit{Article 29(1) of the First schedule of the Arbitration Rules} empowers the arbitral tribunal to declare the proceedings after inquiry from the parties if they have further proof to offer or witness to be held at the closing of the hearing the arbitral tribunal shall weigh the evidence before it and the claims and counterclaim presented by the parties. The tribunal has a duty to make a final award at the determination of the hearing and the award must be supported by the evidence presented by the parties and their witnesses, the tribunal can reopen on its own motion or upon application by a party\textsuperscript{66}.

\item **Step XII**
\item Payment of Cost
The arbitral tribunal shall fix the cost of arbitration on the award. Cost of arbitration is defined in section 49 of the Act to include the following.
\begin{enumerate}
\item The fees of the arbitral tribunal to be stated separately as to each arbitrator and to be fixed by the tribunal itself.
\item The travel and other expenses incurred by the arbitrators
\item The cost of expert advice and of other assistance required by arbitral tribunal
\item The travel and other expenses of witnesses to the extent that such expenses are approved by the arbitral tribunal.
\item The cost for legal representation and assistance of the successful party if such cost were claimed during the arbitral proceedings and only to the extent that the arbitral tribunal determines that the amount of such costs is reasonable\textsuperscript{67}.
\end{enumerate}

The fees of the arbitral tribunal shall be reasonable taking into account the amount in dispute, the complexity of the subject matter, the time spent by arbitrators and any other relevant circumstances of the case\textsuperscript{68}. Where the arbitral tribunal was appointed by an arbitral institute the schedule of fees of the institute shall be used in determining the payable cost. It is important to note that charging of excessive cost may amount to misconduct.

\begin{footnotesize}
\item Article 21(2) of the First schedule of the Arbitration Rules
\item Article 21(3) of the First schedule of the Arbitration Rules
\item Article 21(4) of the First schedule of the Arbitration Rules
\item Section 22(1)(2) and (4) of the Act, Article 26(1-3) of the First schedule of the Arbitration Rules
\item Article 24(1) of the First schedule of the Arbitration Rules
\item Article 25(2) of the First schedule of the Arbitration Rules
\item Article 29(1) of the First schedule of the Arbitration Rules, Section 29(2) of the Act
\end{footnotesize}
Step XIII

Deposit on Account
At the beginning of arbitral tribunal the tribunal has the right to request the parties to make deposit on account for their running expenses. Where parties fail to make such deposit within 30 days, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.

Step XIV

Fee for Additional Award
The tribunal has the right on its own or at the instance of either of the parties to interpret or correct an award or even make an additional award pursuant to the provisions of section 28 of the Act but the tribunal may not charge additional fees for making of an additional award, as provided in Article 40(4) of the First Schedule of the Arbitration Rules. However, where the arbitrators incurred expenses for making of the additional award, it is expected that additional cost may be paid to the arbitrators.

Step XV

AWARD
Arbitral tribunal usually makes an award based on the available evidence before it as adduced by the parties
- Where there is a sole arbitrator his decision becomes an award.
- Where there is more than one arbitrator the decision of the majority becomes the award section 26(1) & (2) of the Act.

Please note that parties are at liberty to settle their difference outside the tribunal and subsequently request the tribunal to enter it as a consent award.

Immediately an arbitral tribunal makes an award, it becomes functus officio and ceases to have right to deal with the matter again unless for reasons as contain in section 28 of the Act.

The arbitrator or arbitrators will sign the award and publish same to the parties.

We have different types of awards namely:
- Interim Awards
- Ex-parte Awards
- Partial Awards
- Interlocutory Awards
- Self Executing Awards (Declaratory Award)
- Additional Awards
- Consents Awards
- Final Awards

Step XVI

Termination of Proceedings
An arbitral proceeding shall be terminated when the final award is made or when the arbitral tribunal issued an order for the termination of proceedings based on the following:
- Where a claimant withdraws his claim unless there was an objection from the respondent thereof and the arbitral tribunal recognizes legitimate interest on his part in obtaining a final settlement of the dispute.
- Where the parties agreed that the arbitral proceedings be terminated.
- Or where the arbitral tribunal finds that the continuation of the arbitral proceedings has for any other reason become unnecessary or impossible.

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69Section 49 (1) of the Act & Article 38 of the First schedule of the Arbitration Rules
70Section 49(2) of the Act.
71Section 50(1) of the Act & Article 41(1)(2) of the First schedule of the Arbitration Rules
72Section 50(4) of the Act & Article 41(3) of the First schedule of the Arbitration Rules
73Section 26 (1) & (2) of the Act.
74Section 27(1) of the Arbitration and Conciliation Act Cap A18 LFN 2004
Step XVII
Correction and interpretation of Award and Additional Award

Unless another period has been agreed upon by the parties a party may within thirty days of the receipt of an award and with notice to the other party request the arbitral tribunal to correct in the award any errors in computation, clerical or typographical errors or any errors of a similar nature to give an interpretation of a specific point or part of the award. If the arbitral tribunal considers such request as justified it shall within thirty days of the receipt of the request make corrections or give the interpretation and such correction or interpretation shall form part of the award. The arbitral tribunal may on its own volition and within thirty days from the date of the award, correct any error of the typed referred to above.

Unless agreed by the parties, a party may within thirty days of receipt of an award request the arbitral tribunal to make an additional award based on the claims presented in the arbitral proceedings but was omitted form the award. Where the arbitral tribunal considers such request as justified, it shall within sixty days of the receipt of the request make the additional award. It may if considered necessary extend the time limit within which is shall make a correction, give an interpretation or make an additional award. Please note that section 26 of the Act which provided for form and contents of an award shall apply to any correction or interpretation or to an additional award made by the arbitral tribunal under the section.

CONCLUSION
The parties to domestic arbitration agreement have the right to determine the rules of the game with respect to the arbitration. It is within the ambit of their right and freedom to determine, the language, applicable law, venue, time of arbitration and the form of evidence during the hearing, that is, whether it should be oral evidence or document. However, this right to determine the rules of the game in their arbitration is limited by section 15 of the Act which has by implication made the rules in the first schedule to the Act mandatory. The arbitral rules and the Act are made in such a manner to ensure equality in arbitration and fairness in the proceedings.

From the analysis in the study, one is left in no doubt that arbitration ensures speed, informality, cheapness, confidentiality, impartiality, independence of the tribunal, and choice of mode and manner of evidence during hearing. However, it is suggested that section 15 of the Act on domestic arbitration should be tailored to be in line with the provisions of Section 53 of the Act which has provided for flexibility in determining of the applicable procedure.

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75Section 27 (2) (a) of the Act
76Section 27 (2) (c) of the Act
77Section 28(1) of the Act
78Section 28 (1)(a) of the Act
79Section 28(1)(b) of the Act
80Section 28(2) of the Arbitration and Conciliation Act CapA18LFN 2004
81Section 28(3) of the Act
82Section 28(4) of the Act