STREN & BLAN PARTNERS

Strengthening Nigeria as a Seat for Arbitration:

Lessons From the United Kingdom (UK) Arbitration Act 2025

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Introduction

In the United Kingdom (UK), the Arbitration Act 2025 (the UK Act), which received Royal Assent on 24 February 2025 and came into force on 1 August 2025, introduced refined amendments to the Arbitration Act 1996 (the 1996 Act). These amendments clarify unclear provisions that existed under the 1996 Act to provide a more defined stance to assist parties, practitioners, arbitral tribunals, and the Court whenever they arrive at a crossroad. Although the Nigeria Arbitration and Mediation Act 2023 (AMA) still feels recent, with a number of its provisions yet untapped, there are lots of insights to be drawn from the evolutionary amendments introduced by the UK Act. It is the amendments introduced by the UK Act, its role in further improving the efficiency of London-seated arbitrations or arbitrations governed by English law, and the key lessons the AMA can take from these reforms that form the focal point of this Article.

Overview of the Key Amendments in the UK's Arbitration Act 2025 and the Position under the Nigerian Arbitration and Mediation Act 2023

1. The law of the seat of the arbitration is the applicable law of the arbitration agreement, except the parties agree otherwise. [1]

Before this amendment, the 1996 Act was not specific about which law applied to an arbitration agreement, especially in circumstances where the parties failed to specify the applicable law. This left the determination of these complex issues to the courts in several litigations concerning the governing law. [2] This process birthed the unintended effect of extending arbitration proceedings beyond the typically anticipated shorter timeline. The UK Act has settled this quagmire by overriding the decision in Enka v. Chubb and providing that:

I. The law applicable to an arbitration agreement is the law expressly chosen by the parties.

II. Where the parties fail to expressly choose a law, the law of the seat of the arbitration is the applicable law.

III. Where parties agree on a law to govern a contract that contains an arbitration agreement, it does not constitute an agreement that such law will govern the arbitration agreement. Hence, so in cases like this, the law of the seat of the arbitration will apply.[3]

In comparison to the UK Act, the AMA has no equivalent provision for the determination of the applicable law to the arbitration agreement. Indeed, the law remains unsettled in Nigeria as to the law that would govern the arbitration agreement in the absence of an express choice of seat. The question is, will it be the law of the seat (if one is selected by the parties) or the law of the contract (where an express choice is made)? While the answer remains uncertain, these authors believe that the Nigerian courts may toe the line of common law courts in finding that the law of the seat (where one is provided) will govern the arbitration agreement, in the absence of express choice as was held in the Sulamerica case (supra) and failing such indication as to seat, the law of the contract or the law with the closest connection will govern the arbitration agreement. [4]

However, adopting a legislative approach that clearly distinguishes between the governing law of the contract and that of the arbitration agreement (which is separable from the contract), while specifying what should apply where the parties have not agreed on the latter, would help to resolve any issues that may arise on this subject.

1 Section 6A of The UK Act.
2 See Sulamerica v Enesa Engenharia 2012-EWCA-Civ-638 where the English Court of Appeal held that the law of the seat will govern the arbitration agreement and the later decision in Enka v Chubb (2020) UKSC 38 where the UK Supreme Court took the view that the law of the contract will govern the arbitration agreement and only in the absence of express law governing the contract will the law of the seat apply.
3 This provision was enacted to correct the mischief created by the decision in Enka v Chubb (supra).
4 See the reasoning of the Court in Zenith Global Merchant Limited v Zhongfu Int'l Investment Nig FZE & 2 Ors (2017) 7 CLRN 69

2. Codified duty of arbitrators' disclosure[5]

While this may seem like an already established protocol for arbitrators to disclose facts which may give rise to justiciable doubts and the arbitrator's impartiality, the codification of disclosure requirements further reiterates the importance of disclosure in an arbitration proceeding. The UK Act mandates an arbitrator to disclose, as soon as reasonably practicable upon being approached to be appointed, relevant circumstances that may give rise to justiciable doubts. The introduction of this section further aligns the UK Act with international best practices on disclosure already contained in institutional rules such as the International Chamber of Commerce Rules of Arbitration (ICC Rules), London Court of International Arbitration Rules (LCIA Rules), and the United Nations Commission on International Trade Law (UNCITRAL Model Law).

In Nigeria, the AMA reflects the position under the UK Act, as arbitrators are required to disclose material information that may give rise to justiciable doubt as to their impartiality at the point of being approached for appointment and throughout the entire proceedings.[6] Failure to abide by this duty is a ground to challenge the arbitrator.

5 Section 23A of The UK Act.
6 Section 8 of the AMA.

3. New regime for jurisdictional objections [7]

To further solidify the authority of arbitral tribunals, the UK Act has restricted parties to an arbitral proceeding from bringing a jurisdictional challenge to the Court, as a preliminary point under section 32 of the 1996 Act, where the tribunal has decided on its own jurisdiction.[8] Such challenge may only be brought under section 67 of the 1996 Act as a ground to challenge the award after the tribunal has ruled on its jurisdiction. [9] To further limit the rate of an award challenge on the substantive jurisdiction of the tribunal under Section 67, and subject to a ruling "in the interest of justice", the UK Act restricts a party seeking to set aside an award from: [10]

I. Raising a ground of objection that was not raised at the tribunal unless the applicant did not know and could not, with reasonable diligence, have discovered that ground during the arbitral proceedings;

II. Putting forward evidence that was not put before the tribunal, unless the applicant could not, with reasonable diligence, have put the evidence before the tribunal during the arbitral proceedings;

III. Urging the Court to rehear evidence that was not heard by the tribunal.

While these restrictions are subject to the court giving a ruling in the interest of justice, the existence of these restrictions will reduce the number of challenges to an award and further promote the finality of arbitral awards.

Under the AMA, a party is required to raise any jurisdictional challenge before the tribunal not later than when submitting its points of defence.[11] However, there are no express provisions under the AMA restricting a party from putting forward evidence that was not put before the tribunal or urging the court to hear evidence that was not heard by the tribunal in an action challenging the jurisdiction of the tribunal. Nevertheless, it must be noted that Section 55(3) AMA unequivocally declares that no action for setting aside an arbitral award shall be entertained except on grounds contained therein. This presupposes that, even in the absence of express provisions as highlighted above, the challenge cannot be made, nor will the court be persuaded to hear new evidence in the challenge of an arbitral award on grounds not similar to the provisions of Section 55(3) AMA.

7 Section 5 of The UK Act.
8 Section 32(1A) of The UK Act.
9 Section 67(1B) of The UK Act.
10 Section 67(3C) of The UK Act.
11 Section 14(3) of the AMA.

4. Arbitral Tribunals may make summary awards [12]

While this provision already exists in many institutional rules,[13] a statutory assent to the powers of an arbitral tribunal to issue awards on summary basis promotes the efficiency of arbitration, particularly in situations where a party's claim before a tribunal is completely hopeless or where a party has refused to present their case. The provision in the UK Act empowers arbitral tribunals to render awards on a summary basis.[14] While the UK Act adopts the test of "no real prospect of succeeding", it also mandates arbitral tribunals to give parties a reasonable opportunity to present their case.

In Nigeria, there are no provisions under the AMA empowering an arbitral tribunal to issue summary awards, even in situations where the claim or an issue arising from the claim has no real chance of succeeding on the part of the claimant or the defendant.

5. Arbitral Tribunal's Power to Award Costs despite Jurisdictional Challenge

The UK Act introduces a novel provision on the point that even where a tribunal, or a court, determines that the tribunal lacks substantive jurisdiction to resolve a dispute, the tribunal retains the power to award costs incurred in the arbitration proceedings up to that point. [15] This ensures that a party that succeeds in raising a valid jurisdictional objection may still recover its costs, thereby promoting fairness and discouraging unwarranted, abusive, or premature arbitration claims.

The AMA empowers an arbitral tribunal to fix the costs of the arbitration in the award.[16] Additionally, a tribunal may also award costs and damages at any stage during the arbitration proceedings in a situation where, based on a party's request, a tribunal makes an order which ought not to have been made. While it may be debatable that a tribunal has the power to make an order for costs, notwithstanding its eventual decline of substantive jurisdiction or a court's ruling on the tribunal's lack of jurisdiction, an express provision under the AMA empowering an arbitral tribunal to award costs even when it has no substantive jurisdiction over the dispute will dissipate any dispute on this subject

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12 Section 7 of The UK Act.
13 The International Chamber of Commerce (ICC) Rules; the Singapore International Arbitration Centre (SIAC) Rules and Stockholm Chamber of Commerce (SCC) Rules.
14 Section 39A of The UK Act.
15 Section 61(1A) of The UK Act.
16 Section 50 of the AMA.

6. Arbitrator Immunity

In response to the alarming rise in suits against arbitrators, the UK Act expanded the scope of arbitrator immunity to reaffirm their protection and bolster confidence in the arbitral process. Under the UK Act, except it is established that an arbitrator's resignation was unreasonable in all circumstances, an arbitrator will not be held for any liability upon his resignation.[17] Also, the UK Act clarifies that arbitrators are not personally liable for the costs of court proceedings seeking their removal, except where they have acted in bad faith. [18] Interestingly, this novel provision addresses and corrects a problematic line of case law suggesting that an arbitrator could be held liable for the costs incurred in filing an application in court to remove such arbitrator.[19] It is anticipated that the introduction of these provisions will strengthen the independence of arbitrators and mitigate undue pressure from parties who may seek to influence or disrupt proceedings through the strategic use of cost threats.

In Nigeria, the AMA shields arbitrators from liability for actions taken while performing their duties, except where it can be shown that such actions were carried out in bad faith. [20] However, unlike the UK Act, an arbitrator is not automatically absolved from any liability upon withdrawal or resignation from appointment. In such circumstances, the arbitrator may need to reach an agreement with the parties regarding his liability or, if no agreement is reached, apply to the appointing authority or the court for relief from any liability arising from his withdrawal or resignation. [21]

7. Enlarged Authority for Emergency Arbitrators

Under the 1996 Act, arbitral tribunals could issue peremptory orders under Section 41 of the Arbitration Act when a party failed to comply, with further enforcement available through court applications under Sections 42 or 44. The UK Act extends these enforcement mechanisms to emergency arbitrators, giving legal effect to emergency orders, such as those preserving evidence or securing assets. [22] While the UK Act does not establish a statutory process for appointing emergency arbitrators (leaving that to institutional rules), it clarifies that their orders are enforceable like those of a fully constituted tribunal. This removes uncertainty and strengthens the effectiveness of emergency arbitration, ensuring that urgent interim measures remain reliable, enforceable, and binding in practice.

Like the UK Act, the AMA provides a clear procedure for conducting emergency arbitration proceedings. [23] Hence, in Nigeria, a party may apply for the appointment of an emergency arbitrator where the party seeks emergency relief before the constitution of the arbitral tribunal. Likewise, an emergency arbitrator can make emergency orders to achieve the purpose for which the emergency tribunal was constituted.

17 Section 25(3 & 4) of The UK Act.
18 Section 24(5A) of The UK Act.
19 Halliburton v Chubb [2020] UKSC 48.
20 Section 13(1) of the AMA.
21 Section 12 of the AMA.
22 Section 41A, 42 and 44 of The UK Act.
23 Section 16 of the AMA

8. Court Powers supporting Arbitral Proceedings against Third Parties

A notable development under the UK Act is the extension of court powers exercisable in support of arbitral proceedings to third parties. Under the 1996 Act, courts were empowered to assist arbitral proceedings by making orders on matters such as the taking and preservation of evidence, orders relating to property or the sale of goods subject to the arbitration, the granting of interim injunctions, and the appointment of a receiver. The UK Act now expressly extends these powers to apply not only to parties to the arbitration but also to third parties, those not directly involved in the arbitral proceedings. This change brings the arbitration framework more in line with court proceedings, where such judicial powers, particularly preservative orders, are already exercisable against third parties. [24]

In Nigeria, a court has the power to grant interim measures of protection in respect of an arbitration seated in Nigeria or outside Nigeria. The court is mandated to grant such an application within 15 days of the application, per the AMA. [25] However, the AMA does not expressly clarify whether this power applies solely to parties involved in an arbitration proceeding or if it also extends to third parties.

9. Court may remit the Award or declare the Award to be of no effect

Unlike the 1996 Act, which only expressly provides three orders that a Court can make in an award-challenge proceedings, which are to confirm, vary, or set aside the award, the UK Act now expressly provides further orders to include remitting the award back to the tribunal or declaring the award to be of no effect. However, the UK Act restricts the Court from exercising its powers to set aside an award or declare it to be of no effect unless it is inappropriate to remit the matters in question to the tribunal for reconsideration. [26] The inclusion of this restriction gives another opportunity to arbitral tribunals to have one more bite at the cherry rather than have the award set aside, and render the time, cost of efforts of parties and the tribunal for nought. This present regime further promotes the finality of arbitration as an effective dispute resolution mechanism and ensures that an award should only be set aside where there is no way out for the parties and the tribunal.

Under the AMA, a court faced with an application to set aside an award may, where the grounds relied on by the applicant succeed and will cause substantial injustice to the applicant, remit the award back to the tribunal in whole or in part for reconsideration. [27]

24 Section 44 of The UK Act.
25 Section 19 of the AMA.
26 Section 67(3 & 3A) of The UK Act.
27 Section 55(5)(a) of the AMA..

10. Appeals to the Court of Appeal from the High Court

The 2025 Act resolves the long-standing uncertainty surrounding rights of appeal from High Court decisions under Part 1 of the 1996 Act. Historically, several provisions in Part 1, such as applications to stay legal proceedings,[28] were silent on whether appeals to the Court of Appeal required the leave of the High Court. The provision on failure of appointment procedure expressly stated that the leave of the High Court is required. [29] This ambiguity arose from a drafting error in the 1996 Act,[30] which was interpreted as limiting appeal rights only to provisions that expressly allowed them. The UK Act now makes it clear that appeals to the Court of Appeal may be brought under any section of Part 1, except where permission from the High Court is expressly required. This amendment brings clarity, consistency, and legal certainty to arbitration-related appeals.

In Nigeria, arbitration-related disputes may be appealed from the High Court to the Supreme Court without any requirement for leave, thereby defeating the purpose of finality of arbitral awards and time-consciousness in arbitration.

11. Defined Time Limits for Challenging an Arbitration Award

Under the 1996 Act, an arbitral award may be challenged before English courts on three grounds: lack of jurisdiction,[31] serious irregularity,[32] and on point of law. [33] In all cases, the 1996 Act imposes further requirements, including exhausting any arbitral appeal or review process and seeking corrections or additional awards. [34] The applications to challenge the awards under the 1996 Act must be filed within 28 days of the date of the award or, if there has been any arbitral process of appeal or review, of the date when the applicant or appellant was notified of the result of that process.[35] However, The UK Act [36] amends the provision to clarify that the 28-day limit begins to count:

I. Upon notification of the result of any arbitral appeal or review;

II. On the date of any material correction or additional award under Section 57;

III. When a Section 57 application is refused, on the date of that refusal; or

IV. In all other cases, on the date of the award itself.

In Nigeria, an application to set aside an arbitral award must be made within three (3) months from the date on which the applicant received the award, or where a request for the correction or interpretation of the award was sought, within three (3) months from the date the tribunal dispenses with the request. [37]

28 Section 9 of the 1996 Act.
29 Section 18(5) of the 1996 Act.
30 Schedule 3 paragraph 34 of the 1996 Act.
31 Section 67 of the 1996 Act.
32 Section 68 of the 1996 Act.
33 Section 69 of the 1996 Act.
34 Section 70 (1) & (2) and 57 of the 1996 Act.
35 Section 70(3) of the 1996 Act.
36 Section 70(3A & 3B) of The UK Act.
37 Section 55(4) of the AMA.

The UK Arbitration Act 2025 closes long-standing gaps in the 1996 framework, strengthening efficiency, finality and fairness in arbitration while offering lessons Nigeria's AMA cannot afford to overlook.

Key lessons for the Arbitration and Mediation Act 2023

While the AMA may seem to have been ahead in time, having codified some of the amendments introduced by the UK Act, such as emergency arbitrators, remittance of awards, arbitrators' duty of disclosure, etc, some insights could be drawn from the UK Act to further position Nigeria as an attractive seat of arbitration, and they are as follows:

1. Applicable law to the Arbitration Agreement:

The AMA has no clear guidance on the applicable law to an arbitration agreement, especially in a situation where the parties have not expressly agreed on the applicable law to the arbitration agreement. Typically, the governing law of the contract is usually considered the governing law of the arbitration agreement. However, this is subject to various judicial approaches in the case of a dispute on the subject, as seen in the UK case of *Enka Insaat Ve Sanayi A.S. v OOO Insurance Company Chubb*.[38] Hence, adopting a clearer approach like the UK Act dissipates any potential issues that may arise where parties fail to agree on a particular law to govern an arbitration agreement.

2. Summary Awards:

In Nigeria, Arbitrators are not empowered under the AMA to render summary awards, whether on a claim or an issue arising from a claim, even where it is so obvious to the tribunal that there is no prospect of succeeding on or defending such a claim. However, the introduction of this provision in the UK Act aims to expedite arbitration proceedings and save costs on unmeritorious claims or defences.

3. Jurisdictional Challenge:

Often, a party challenging an award on the ground that the tribunal lacked the substantive jurisdiction to determine the dispute raises an objection that was not raised before the tribunal or urges the court to hear evidence that the tribunal did not hear. Perhaps, like the UK Act, there is a need to incorporate such restrictions under the AMA to reduce the extent of challenges to arbitral awards and to promote finality of arbitral awards.

4. Right of Appeal:

The laxity that exists under the AMA, which allows parties to arbitration disputes to appeal to the Supreme Court, defeats the intendment of arbitration as a time-conscious dispute resolution process and the purpose of finality of arbitral awards. The current dispensation of appealing a post-award decision of the court as or right allows for frivolous appeals geared towards time-wasting or frustrating the award creditor. Hence, the introduction of strict grounds of leave to appeal arbitration-related decisions of the High Court to the Court of Appeal and the Court of Appeal to the Supreme Court is necessary to preserve the time-conscious purpose of arbitration and the finality of arbitral awards.

38 [UKSC/2020/0091].

Conclusion

The UK Act represents a measured and well-informed response to the evolving needs of international arbitration.

By addressing specific pain points identified through extensive consultation and judicial developments, the UK Act enhances legal certainty while preserving the fundamental strengths of English arbitration law. One thing is sure, the evolutionary commercial amendments introduced by the UK Act will solidify the finality of arbitral awards and efficiency of arbitral proceedings.

For Nigeria, these reforms offer valuable lessons. By adopting similar measures, such as clarifying the governing law for arbitration agreements, introducing summary awards, and tightening loose ends on jurisdictional challenges and right of appeal to reflect obtainable commercial realities will not only position Nigeria as a competitive and attractive seat of arbitration but will also increase investor confidence and enhance Nigeria's reputation as an efficient and reliable hub for dispute resolution in Africa.

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