

Introductory Level Training Programme

INTRODUCTION TO DOMESTIC AND INTERNATIONAL ARBITRATION

Course Overview: According to a 2015 *International Arbitration Survey: Improvements and Innovations in International Arbitration* jointly carried out by White & Case and Queen Mary University School of International Arbitration, international arbitration is the preferred mode for resolving international commercial disputes, with about 90% of respondents indicating their preference for international arbitration, either as a stand-alone method (56%) or together with other forms of ADR (34%).

For all its importance and success, international arbitration is not a simple regime. The system is designed to balance party autonomy with the sovereign and transnational regulatory interests that are implicated in disputes, which is achieved through a complex interaction of national laws, contractual agreements, specialized procedural rules, and international treaties, customs and norms.

More often than not, a deep understanding of these complexities and the skills required for good arbitration practice is lacking in developing economies, such as Nigeria. The purpose of this course is to provide Nigerian lawyers with an understanding of the legal rules and standards, strategic considerations, practical skills and policy implications that are required to be an effective international arbitration practitioners.

Learning Objectives: Participants in this course will:

- Understand the legal framework that governs domestic and international arbitration
- Develop skills for negotiating arbitration agreements
- Understand the rules and doctrines that govern international arbitration and the considerations that are essential for making strategic decisions in representing parties in international arbitration

Recommended Texts:

- ✚ Gary Born *International Commercial Arbitration: Law and Practice* (2nd ed. 2015)
- ✚ C.A. Candide-Johnson & Olasupo Shasore *Commercial Arbitration Law and International Practice in Nigeria* (2012)
- ✚ Fabian Ajogwu *Commercial Arbitration in Nigeria: Law & Practice* (2009)
- ✚ J.A. Orojo & M.A. Ajomo *Law and Practice of Arbitration and Conciliation in Nigeria* (1999)

In addition to the recommended texts, the following online resources may be referred to in lectures and useful to review:

New York Convention (text and status table)

<http://www.newyorkconvention.org/texts>

<http://www.newyorkconvention.org/contracting-states/list-of-contracting-states>

UNCITRAL Model Law (texts and status table)

http://www.uncitral.org/pdf/english/texts/arbitration/ml-arb/06-54671_Ebook.pdf

http://www.uncitral.org/pdf/english/texts/arbitration/ml-arb/07-86998_Ebook.pdf

http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/1985Model_arbitration_status.html

2010 IBA Rules on the Taking of Evidence

<http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&ved=0CCIQFjAA&url=http%3A%2F%2Fwww.ibanet.org%2FDocument%2FDefault.aspx%3FDocumentUid%3D68336C49-4106-46BF-A1C6-A8F0880444DC&ei=io4AVcKfDcPYggSri4Fl&usg=AFQjCNFardMNjruQ6ygIR3LZPpPjQTCGeg&bvm=bv.87611401,d.eXY>

2014 IBA Guidelines on Conflicts of Interest

<http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&ved=0CCCEQFjAA&url=http%3A%2F%2Fwww.ibanet.org%2FDocument%2FDefault.aspx%3FDocumentUid%3De2fe5e72-eb14-4bba-b10d-d33dafee8918&ei=zo0AVcCTJMGqNvmVgPAF&usg=AFQjCNFevNZgKiVw0CZPEmhTtW0tnS2QLA&bvm=bv.87611401,d.eXY>

SYLLABUS

Lesson/Date	SUBJECT	READING ASSIGNMENT AND SUB-TOPICS
October 9: Lesson 1	Introduction to Arbitration and Drafting International Arbitration Agreements	<p>READING: Born, Chapters 1 and 2; Candide-Johnson & Shasore, Chapters 1 and 2; Orojo & Ajomo Chapters 1 & 2</p> <p>Topics:</p> <ul style="list-style-type: none"> ▪ Reasons for Domestic and International Arbitration ▪ Differences Between Domestic and International Arbitration ▪ Nigerian Legislative Framework Governing Arbitration ▪ The Legal Framework for International Arbitration <ul style="list-style-type: none"> ○ The Parties' Agreement ○ New York Convention ○ National Arbitration Legislation ○ Arbitral Institutions and Arbitral Rules ○ The legal seat ▪ How to draft international arbitration agreements <ul style="list-style-type: none"> ○ Mandatory Elements ○ Helpful and Unhelpful Elements ○ Negotiation Strategies <p><u>Small Group Practical Exercise: Drafting Arbitration Agreements</u></p>
October 10: Lesson 2	Interpreting and Enforcing Arbitration Agreements	<p>READING: Born, Chapters 2, 3 & 4; New York Convention, Articles I, II & V(a)(1); Ajogwu, Chapter 3</p> <ul style="list-style-type: none"> ▪ Jurisdictional Challenges to an Arbitration Agreement <ul style="list-style-type: none"> ○ The Presumptive Validity of International Arbitration Agreements ○ The Separability Doctrine ○ Allocation of Competence to Decide Disputes over Existence, Validity and Interpretation of International Arbitration Agreements

		<ul style="list-style-type: none"> ▪ Law Applicable to the Formation, Validity and Interpretation of International Arbitration Agreements ▪ Choice of Substantive Law in International Arbitration ▪ Choice of Substantive Law in Absence of Agreement on Applicable Law ▪ Law Applicable to the Arbitration Agreement <p><u>Small Group Practical Exercise regarding Jurisdictional Objections (Separability and Competence-Competence)</u></p>
October 11: Lesson 3	The Arbitral Tribunal & Counsel Ethics	<p>READING: Born, Chapters 7 and 14 (also review the IBA Guidelines on Conflicts of Interest and IBA Guidelines on Party Representation in International Arbitration); New York Convention, Articles II, V(1)(d), V(2)(b);</p> <ul style="list-style-type: none"> ▪ Selection of Arbitrators in International Arbitration ▪ Procedures for Challenging and Replacing Arbitrators ▪ Arbitrators' Ethical Obligations Impartiality, Qualifications and Experience ▪ Contractual Limitations on Arbitrator's Qualifications ▪ Arbitrators' Rights and Duties ▪ Arbitral Immunity <p><u>Small Group Practical Exercise regarding Arbitrator Selection</u></p>
October 12: Lesson 4	Arbitral Proceedings	<p>READING: Born, Chapters 6, 8 and 9; Candide-Johnson & Shasore, Chapters 5 & 6</p> <ul style="list-style-type: none"> ▪ Procedures in Domestic Arbitration ▪ Applicable Procedural Law in International Arbitration ▪ Mandatory Procedural Requirements in Arbitral Proceedings ▪ Arbitrators' Exercise of Procedural Authority in International Arbitration ▪ Major Procedural Steps in International Arbitral Procedures

		<u>Small Group Exercise on Developing Evidence</u>
October 13: Lesson 5	Arbitral Awards	<p>READING: Born, Chapters 15, 16 and 17; Candide-Johnson & Shasore, Chapters 8 & 9; New York Convention, Articles II, V(1) & V(2)</p> <ul style="list-style-type: none"> ▪ Annulment of International Arbitral Awards <ul style="list-style-type: none"> ○ Presumptive Finality of International Arbitral Awards ○ Law Applicable in Annulment Proceedings ○ Nigerian Law on Annulment ○ Consequences of Annulling International Arbitral Award ▪ Recognition and Enforcement of International Arbitral Awards <ul style="list-style-type: none"> ○ Presumptive Obligation to Recognize International Arbitral Awards ○ New York Convention’s Grounds for Non-Recognition of Foreign Arbitral Awards <p><u>Small Group Exercise on Challenging Arbitral Awards</u></p>
October 13: Lesson 6	Investor-State Arbitration	<p>READING: Born, Chapter 18</p> <ul style="list-style-type: none"> ▪ Bi-Lateral Investment Treaties, Investment Contracts and Investment Statutes ▪ Jurisdictional Issues in Investor-State Arbitration ▪ ICSID and Non-ICSID Investment Regimes ▪ The Annulment Process and Standards ▪ Enforcement of Investment Awards ▪ Effects of Corruption on Jurisdiction and Arbitral Proceedings <p><u>Small Group Exercise on Investment Arbitration</u></p>