

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=io4AVcKfDcPYggSri4FI&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

Advanced Level Training Programme

Learning Objectives: Participants in this course will:

- Have advanced knowledge of international arbitration;
- Understand presentation and evaluation of evidence in international arbitration;
- Be able to deal competently with arbitral proceedings and resulting awards;
- Understand allocation of arbitrator's fees and expenses.

Recommended Texts:

- ✚ Gary Born, International Commercial Arbitration, Wolters Kluwer, (2014), Vols. II & III
- ✚ R. Doak Bishop and Edward G. Kehoe, The Art of Advocacy in International Arbitration, Second Edition, Juris (2010)
- ✚ Alan Redfern and Martin Hunter, Law and Practice of International Commercial Arbitration, Third Edition, Sweet & Maxwell (2009)
- ✚ Fouchard, Gaillard, Goldman, On International Commercial Arbitration, Kluwer, (1999)
- ✚ Christoph H. Schreuer, The ICSID Convention. A Commentary, Second Edition, Cambridge University Press (2009)

Lesson/Date	SUBJECT	READING ASSIGNMENT AND SUB-TOPICS
October 9: Lesson 1	Commencing Arbitration and Preliminary Steps in International Arbitration	<p>Topics:</p> <ul style="list-style-type: none"> • Request for arbitration, Answer (and) Counterclaims, Reply to Counterclaims • Constitution of Arbitral Tribunal • First Procedural Conference and Procedural Directions • Jurisdictional Objections • Advance on Costs • Emergency Arbitration and Interim Measures <p>READING:</p> <ul style="list-style-type: none"> ✚ Born, International Commercial Arbitration, Wolters Kluwer, (2014), Vol. II, Chapter 15 §15.08, pgs 2213 - 2248; Chapter 17 Volume II ✚ Emmanuel Gaillard and Philippe Pinsolle, The ICG Pre-Arbitral Referee: First Practical Experiences, available at http://www.shearman.com/~media/Files/NewsInsights/Publications/2004/01/The-ICC-PreArbitral-Referee--First-Practical-Exp_/Files/IA_ICC-PreArbitral-Referee_040308_07/FileAttachment/IA_ICC-PreArbitral-Referee_040308_07.pdf last visited on 21st September 2016

<p>October 10: Lesson 2</p>	<p>Written Submissions and Hearings in International Arbitration</p>	<ul style="list-style-type: none"> • Statement of Case/Opening Memorial, Statement of Defense/Reply, Rejoinder Memorial, Surrebuttal Memorial • Pre-Hearing Conference • Evidentiary Hearing – Witnesses and Experts <ul style="list-style-type: none"> ○ Appearance of Witnesses and Experts/Oral Testimony at Evidentiary Hearing ○ Conduct of Witness and Expert Examination ○ Direct, Cross and Redirect Examination ○ Presence of Witnesses and Experts Before and After Testimony ○ Party Communication with Witnesses and Experts ○ Sequence of Witness and Expert Examinations • Closing Statements <p>READING:</p> <ul style="list-style-type: none"> ✚ Born, International Commercial Arbitration, Wolters Kluwer, (2014), Vol. II, Chapter 15 (selected materials) ✚ Fouchard, Gaillard, Goldman, On International Commercial Arbitration, Kluwer, (1999), Part IV, Chapter II, Section III. ✚ Alan Redfern and Martin Hunter, Law and Practice of International Commercial Arbitration, Third Edition, Sweet & Maxwell (2009), Chapter 6 – Evidence, pp. 6-76 et seq. ✚ Pierre Bienvenu and Martin Valasek, “Witness statements and experts reports”, in R. Doak Bishop and Edward G. Kehoe, The Art of Advocacy in International Arbitration, Second Edition, Juris (2010), Chapter 10. Online PDF Amazon
---------------------------------	--	---

		<ul style="list-style-type: none"> ✚ Nigel Blackaby, “Direct and redirect examination of the witnesses”, in R. Doak Bishop and Edward G. Kehoe, <i>The Art of Advocacy in International Arbitration</i>, Second Edition, Juris (2010), Chapter 15. Juris Google books (pdf) ✚ Edward Kehoe, “Cross-examination and re-cross in international arbitration”, in R. Doak Bishop and Edward G. Kehoe, <i>The Art of Advocacy in International Arbitration</i>, Second Edition, Juris (2010), Chapter 16. Juris ✚ Guido S. Tawil, “Attacking the credibility of witnesses and experts”, in R. Doak Bishop and Edward G. Kehoe, <i>The Art of Advocacy in International Arbitration</i>, Second Edition, Juris (2010), Chapter 18. Juris
<p>October 11: Lesson 3</p>	<p>Introduction to Evidence in International Arbitration</p>	<ul style="list-style-type: none"> • Burden of Proof in International Arbitration. • The Relevance of Cultural Differences in Evidentiary Matters. • Do Local Regulations have any Relevance in Evidentiary Matters? <p>READING:</p> <ul style="list-style-type: none"> ✚ Born, <i>International Commercial Arbitration</i>, Wolters Kluwer, (2014), Vol. II, Chapter 15 §15.09, pgs 2306 – 2315 ✚ Alan Redfern and Martin Hunter, <i>Law and Practice of International Commercial Arbitration</i>, Third Edition, Sweet & Maxwell (2009), Chapter 6.(5) – Evidence, pp. 6- 61/68. Amazon Google books (pdf) ✚ Jan Paulsson, “Cultural differences in advocacy in international arbitration”, in R. Doak Bishop and Edward G. Kehoe, <i>The Art of Advocacy in International Arbitration</i>, Second Edition, Juris (2010), Chapter 1. Juris Google books (pdf) ✚ Guido S. Tawil <i>Evidence in International Arbitration</i> ✚ Anthony Sinclair, “Differences in the approach to witness evidence between civil and common law traditions”, in R. Doak Bishop and Edward G. Kehoe, <i>The Art of Advocacy in International Arbitration</i>, Second Edition, Juris (2010), Chapter 2. Google books (pdf)

<p>October 12: Lesson 4</p>	<p>Regulations on Evidence in International Arbitration</p>	<ul style="list-style-type: none"> • Evidence in the Arbitration Rules (ICSID, ICC, LCA and UNCITRAL) • The Role of Soft Law in International Arbitration • The 2010 IBA Rules on the Taking of Evidence in International Arbitration <p>READING:</p> <ul style="list-style-type: none"> ✚ Alexander J. Belohlávek, “Rights and duties of parties in connection with taking of evidence in Investor-State Arbitration”, CYArb, 2016, 6. Academia ✚ Born, International Commercial Arbitration, Wolters Kluwer, (2014), Vol. II, Chapter 15 §15.09, pgs 2306 – 2315. (see above) ✚ Christoph H. Schreuer, The ICSID Convention. A Commentary, Second Edition, Cambridge University Press (2009) pp. 640-671. Amazon CUP ✚ Judith Gill – Guido S. Tawil – Richard Kreindler, “The 2010 revisions to the IBA Rules on the Taking of Evidence in International Arbitration”, in Charles Kaplan – Alexis Mourre, Les Cahiers de l’Arbitrage – The Paris Journal of International Arbitration, 2011-1, L.G.D.J., p. 23/32. Lextenso ✚ IBA Arbitration Committee, “Commentary on the revised text of the 2010 IBA Rules on the Taking of Evidence in International Arbitration”. IBAnet CUP ✚ ICSID Convention (Article 43), ICSID Arbitration Rules (Articles 33 to 37), ICC Arbitration Rules (Articles 25 and 26), UNCITRAL Arbitration Rules (Articles 27 to 32).
<p>October 13: Lesson 5</p>	<p>Documentary Evidence in International Arbitration/ Arbitral Tribunal’s Powers to Obtain Evidence</p>	<ul style="list-style-type: none"> • Document Disclosure. U.S.-style Discovery vs. International Arbitration Disclosure • Request for Document Production • Document Production Techniques • Site Inspections • Local Courts assistance in Evidence-taking

- Admissibility and Assessment of Evidence
- The Role of Arbitral Tribunals
- Sanctions for Party's Failure to Produce Evidence
- Adverse Inferences
- Evidence and Arbitration Costs

READING:

- ✚ Born, *International Commercial Arbitration*, Wolters Kluwer, (2014), Vol. II, Chapter 16. (see above)
- ✚ Alan Redfern and Martin Hunter, *Law and Practice of International Commercial Arbitration*, Third Edition, Sweet & Maxwell (2009), Chapter 6 – Evidence, pp. 6-91 et seq. (see above)
- ✚ Vera van Houtte, "Adverse inferences in international arbitration", in Teresa Giovannini and Alexis Mourre, *Written Evidence and Discovery in International Arbitration*, ICC Dossiers 698 (2009). ICC Store
- ✚ Julian D. M. Lew, "Document disclosure, evidentiary value of documents and burden of evidence", in Teresa Giovannini and Alexis Mourre, *Written Evidence and Discovery in International Arbitration*, ICC Dossiers 698 (2009). ICC Store

<p>October 13: Lesson 6</p>	<p>Post Hearing Issues</p>	<ul style="list-style-type: none"> • Post Hearing Briefs • Cost Submissions • Close of Proceedings • Tribunal Deliberations • The <i>Functus Officio</i> Doctrine • Correction of International Arbitral Awards • Review of Draft Awards under ICC Rules • Awards - <ul style="list-style-type: none"> ○ Separate, Concurring and Dissenting Opinions ○ Awards of Costs of Arbitration and Legal Representation ○ Awards of Interest ○ Awards of Injunctive or Declarative Relief ○ Awards of Punitive, Exemplary, or Statutory Damages ○ Conclusive and Preclusive Effect of Arbitral Awards <p>READING:</p> <ul style="list-style-type: none"> ✚ Born, International Commercial Arbitration, Wolters Kluwer, (2014), Vol. III, Chapter 22 (B), pgs 2901-2909; Chapter 23, pgs. 3053-3102, §23.05-23.09; Chapter 24, pgs. 3113-24. (see above)
---------------------------------	----------------------------	---