RESOLUTION OF INVESTMENT DISPUTES IN NIGERIA THROUGH ARBITRATION

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Abstract

States enter treaties to enable their nationals to invest abroad for mutual economic advantage, but the complexity of commerce and divergent interests of host States and investors generate disputes. In Nigeria, disputes between an investor and a Government of the Federation are governed principally by section 26 of the Nigerian Investment Promotion Commission Act (NIPC Act), which requires amicable settlement and, failing that, arbitration, defaulting to the ICSID Rules where the parties cannot agree on a mechanism. This regime is materially distinct from the Arbitration and Mediation Act 2023 (AMA), which, by its section 91 definition, governs commercial arbitration and is not designated by any Nigerian bilateral investment treaty (BIT) as the mechanism for investment disputes. This article distinguishes investment arbitration — a treaty, statute, and contract-based regime between investor and host State — from commercial arbitration proper, and examines Nigeria's framework for resolving investment disputes: the NIPC Act, the ICSID Convention and its enabling legislation, and Nigeria's BIT network. The doctrinal approach is adopted, complemented by analytical and comparative methods. It finds that investment arbitration in Nigeria, though available and increasingly used, faces genuine constraints: cost and delay; States' practical reluctance to submit to proceedings despite prior treaty consent; admission of evidence that would not survive stricter domestic rules; the limited role of domestic courts once consent to arbitrate is perfected; and the absence of a single binding, globally uniform code of conduct for counsel drawn from diverse legal systems.

Keywords: Commercial Arbitration, International Centre for Settlement of Investment Disputes (ICSID), Nigerian Investment Promotion Commission Act, Bilateral Investment Treaties.

Introduction

Arbitration is a form of alternative dispute resolution that can be used to obtain remedies for, or resolve, investment disputes.[1] Treaties are negotiated between States to permit nationals of one State to make investments in another, generating returns for both the foreign investor and the host nation.[2] To resolve any investment dispute that might arise, arbitration clauses are commonly included in bilateral investment treaties (BITs), and the International Centre for Settlement of Investment Disputes

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[1] This is true even under Native Law and Customs in Nigeria. See Unogwu, C.N & Odoeme, C.V. "An Overview of the Frontiers of Customary Arbitration under the Idoma Native Law and Customs." (2025) Nnamdi Azikiwe University Journal of Customary and Religious Law (JOCARL), Vol. 2)1, February 2025. p 99

[2] It is the potential for huge returns, saving foreign investors from the vagaries of governance of developing states, and developing states' perception that BITs guarantee foreign investment inflows that made BITS very attractive. See details in Odoeme, C.V. (2025) "Reevaluating developing states continued engagement with the Bilateral Investment Treaty Regime. *OMANARP International Journal of Law*, *1*(2), 41-53. https://acadrespub.org/index.php/oijl/article/view/89

(ICSID) was founded by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States for that purpose, among others.[3]

Arbitration is increasingly used to settle conflicts around the world, and disputes arise between parties to commercial agreements involving oil and gas, energy, banking and finance, construction, and development projects, among others. Contracting parties include an arbitration clause in their agreements as a means of dispute resolution rather than resorting to litigation, to find a faster and more efficient method of handling any type of issue that may emerge.[4]

It is important, at the outset, to distinguish the legal architecture that regulates commercial disputes of this kind from the legal architecture that regulates disputes between a foreign investor and the Nigerian State. Investment disputes in Nigeria are governed principally by the Nigerian Investment Promotion Commission Act, the ICSID Convention and the International Centre for Settlement of Investment Disputes (Enforcement of Awards) Act which implements it domestically, and the network of BITs to which Nigeria is a party.[5] Commercial disputes, by contrast, including most disputes arising from ordinary commercial contracts even where a foreign party is involved, are governed by the Arbitration and Mediation Act 2023 (AMA), which by its own definitional provision in section 91 is a statute for commercial arbitration and mediation, and which incorporates the New York Convention for the recognition and enforcement of foreign commercial awards.[6] These two regimes overlap at points, most notably because an investor who is a Nigerian national is directed, under section 26(2)(a) of the NIPC Act, to arbitrate in accordance with the procedural rules of Nigeria's general arbitration statute, but they remain conceptually and institutionally distinct, and this article treats that distinction as central to any accurate account of how investment disputes are actually resolved in Nigeria.

Arbitration in Nigeria has not been without its procedural and legal challenges. This prompted the federal legislature to take the step of enacting the Arbitration and Mediation Act 2023, with innovative provisions addressing some of the challenges that had attended the repealed Arbitration and Conciliation Act 1988.[7]

Conceptual Framework

Investment: Investment, in ordinary usage, is the commitment of capital with a legitimate expectation of profit or return, as distinct from speculation or gambling, and investments are commonly divided into ownership investments such as stocks, businesses, and real estate, lending investments such as bonds, and cash equivalents such as money market instruments.

For the purposes of investment arbitration, however, the operative definition is the legal one found in the applicable treaty or statute, not the general financial definition above. Nigeria's bilateral investment treaties typically define 'investment' broadly and non-exhaustively. The Agreement between the Kingdom of the Netherlands and the Federal Republic of Nigeria for the Promotion and Protection of Investments, for example, defines investment to include every kind of asset invested either directly or through an investor of a third State, and gives as illustrative categories movable and immovable property and related rights, shares and other forms of interest in companies, claims to money and to performance under contract having a financial value, intellectual property rights, and rights granted under public law or contract, including concessions to search for, extract, or exploit

[3]Convention on the Settlement of Investment Disputes between States and Nationals of Other States 1965 (ICSID Convention).

[4]Redfern A and Hunter M, Law and Practice of International Commercial Arbitration (5th edn, Sweet & Maxwell 2009) ch 1.

[5]Nigerian Investment Promotion Commission Act, Cap N117 Laws of the Federation of Nigeria 2004, s 26; International Centre for Settlement of Investment Disputes (Enforcement of Awards) Act, Cap I20 Laws of the Federation of Nigeria 2004.

[6]Arbitration and Mediation Act 2023, s 91.

[7]Arbitration and Mediation Act 2023; see Keating Chambers, 'Arbitration and Mediation Act 2023, Nigeria' (Keating Chambers, October 2024) <https://www.keatingchambers.com/resources/kc-legal-updates/resources/kc-legal-updates/keating-legal-update-autumn/arbitration-and-mediation-act-2023-nigeria> accessed 18 August 2026.

natural resources.[8] This treaty definition, and definitions in materially similar terms in Nigeria's other BITs, is what actually determines whether a given asset is a protected 'investment' capable of grounding a claim, a question of considerably greater legal consequence than the general financial meaning of the word.

***Investment Dispute*:** Any conflict resulting from an investment contract, treaty, or statute, between two contracting States, or between a contracting State and an investor who is a national of another contracting State, is referred to as an investment dispute.[9] Arbitration is the dominant method of resolving disputes of this kind, and the parties to BITs and other international investment agreements typically agree in advance on the dispute resolution procedure to be applied, most often by the host State making a standing offer to arbitrate that a qualifying investor may later accept.

Arbitration: Arbitration involves a process where the parties choose a person or persons to hear their dispute and make a binding decision. It is the voluntary referral of a dispute to individuals of the parties' choosing for a legally enforceable decision, and the arbitrator's decision is called an award, which the courts will uphold subject to limited grounds of challenge.[10]

Commercial arbitration, investment arbitration, maritime arbitration, customary arbitration, and industrial arbitration are commonly identified as distinct categories of arbitration, and this article's central methodological point is that investment arbitration must be treated as genuinely distinct from commercial arbitration rather than as a subspecies of it, since the two are governed by different bodies of law, different institutions, and, as Part 3 shows, different enforcement regimes.

Investment Arbitration: Investment arbitration is the arbitration of a dispute between a foreign investor and a host State arising from a protected investment, and its jurisdictional basis may be found in a treaty, in a domestic statute containing a standing offer to arbitrate, or in a contract between the investor and the State.[11] In Nigeria, the Nigerian Investment Promotion Commission Act is the pertinent statute providing a domestic law basis for the settlement of investment disputes. The Act, first enacted in 1995, deals extensively with the promotion of investment in Nigeria, and section 26 specifically addresses the resolution of disputes between an investor and any government or agency of the Nigerian Federation.[12] Section 26 does not itself comprehensively regulate the procedure, substance, or enforcement of investment arbitration; rather, it provides the consent mechanism, directing a Nigerian investor to the procedural rules of Nigeria's general arbitration statute, directing a foreign investor to the framework of any applicable BIT or multilateral investment protection agreement, and providing that the ICSID Rules apply by default where the parties disagree on the dispute settlement mechanism to be adopted.

Several of Nigeria's BITs make express recourse to international arbitration. The ICSID arbitration process is the mechanism designated under the BITs with France, Germany, Korea, the Netherlands, and the United Kingdom, among others. In line with the UNCITRAL Arbitration Rules or such other rules as the parties mutually agree, investors may in principle also pursue a claim through ad hoc arbitration under other BITs.[13] Where a contracting party to a BIT is not itself a member of the ICSID Convention, recourse to the ICSID Additional Facility, a mechanism created by the ICSID Additional Facility Rules adopted by ICSID's own Administrative Council rather than by any individual BIT, may be available where the relevant treaty permits it; Nigeria's BIT with Spain is one

[8]Agreement between the Kingdom of the Netherlands and the Federal Republic of Nigeria for the Promotion and Protection of Investments (signed 2 November 1992), art 1.

[9]Dolzer R and Schreuer C, Principles of International Investment Law (2nd edn, Oxford University Press 2012) ch 6.

[10]Redfern and Hunter (n 2) ch 1.

[11]Dolzer and Schreuer (n 8) ch 1; Schreuer C and others, The ICSID Convention: A Commentary (2nd Edn, Cambridge University Press 2009) art 25.

[12]Nigerian Investment Promotion Commission Act (n 4).

[13]United Nations Conference on Trade and Development, Nigeria's bilateral investment treaty programme, in UNCTAD Investment Policy Hub <https://investmentpolicy.unctad.org> accessed 18 August 2026.

such treaty that refers to this possibility, while the BIT with Turkey instead refers disputes to the International Chamber of Commerce International Court of Arbitration as an alternative forum.[14]

Legal and institutional framework for investment arbitration in Nigeria

Legal Framework

Arbitration and Mediation Act*:* The Arbitration and Mediation Act 2023 repealed the Arbitration and Conciliation Act 1988, which had lost touch with developments in arbitration and dispute resolution on a worldwide scale.[15] The AMA is, however, a statute for commercial arbitration, as section 91's definitional provisions make clear, and while it is conceptually possible for a BIT to designate the AMA, or Nigeria's general arbitration law more broadly, as the mechanism for resolving an investment dispute, none of Nigeria's current BITs in fact do so; Nigerian investors are directed to it, under section 26(2)(a) of the NIPC Act, but foreign investors relying on a BIT are directed instead to the treaty framework or, by default, to ICSID.

ICSID Convention: Nigeria signed the ICSID Convention on 13 July 1965; the Convention itself entered into force internationally on 14 October 1966, following ratification by twenty States, and Nigeria subsequently gave the Convention domestic effect through the International Centre for Settlement of Investment Disputes (Enforcement of Awards) Act, enacted on 29 November 1967.[16] Under the ICSID Act, the Supreme Court of Nigeria has exclusive jurisdiction at first instance for the direct enforcement of ICSID awards, a materially different route from the enforcement of ordinary commercial arbitral awards, which proceeds through the High Court under the AMA and the New York Convention it incorporates.[17] This distinction matters because ICSID awards are, by design, enforced under the ICSID Convention's own self-contained regime, set out in Articles 53 to 55 of the Convention, and do not pass through the New York Convention at all; the two enforcement regimes run in parallel rather than one subsuming the other, a point developed further at Part 3.1.3 below.

ICSID is an autonomous international organisation and is generally considered the leading institution devoted to investor-State dispute settlement.[18] In Interocean Oil Development Company and Interocean Oil Exploration Company v Federal Republic of Nigeria, an ICSID tribunal considered whether section 26 of the NIPC Act, which does not itself expressly reference the ICSID Convention, could nonetheless constitute a standing offer by Nigeria to arbitrate before ICSID. The tribunal upheld its jurisdiction on the basis of the NIPC Act alone, and ultimately dismissed the claimants' substantive claims of indirect expropriation and breach of the duty of protection under customary international law, awarding costs to Nigeria.[19] While of real significance for Nigerian investment arbitration practice, this jurisdictional approach was not itself a novel departure in the wider jurisprudence: ICSID tribunals had, more than two decades earlier, already treated a host State's domestic investment law as capable of constituting a standing offer to arbitrate in Southern Pacific Properties (Middle East) Limited v Arab Republic of Egypt, where the tribunal founded jurisdiction on Egyptian Law No 43 of 1974 in the absence of any BIT between the relevant States.[20]

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[14]International Centre for Settlement of Investment Disputes, ICSID Additional Facility Rules (2022); Agreement between the Federal Republic of Nigeria and the Kingdom of Spain on the Promotion and Reciprocal Protection of Investments (signed 2002).

[15]Keating Chambers (n 5).

[16]Cap I20, Laws of the Federation of Nigeria 2004; see Practical Law, 'Investment Treaty Arbitration in Nigeria' (Lexology, November 2019) <https://www.lexology.com/library/detail.aspx?g=740267b9-37e0-4397-b77e-c202bb0f3127> accessed 18 August 2026.

[17]International Centre for Settlement of Investment Disputes (Enforcement of Awards) Act, s 1.

[18]Schreuer and others (n 9), Introduction.

[19]Interocean Oil Development Company and Interocean Oil Exploration Company v Federal Republic of Nigeria, ICSID Case No ARB/13/20; see Nwokike U, 'Shareholder Disputes and the Nigerian Foreign Investment Framework: Attribution Under the Prism of the Interocean Case' (Afronomicslaw, October 2020) <https://www.afronomicslaw.org/2020/10/23/shareholder-disputes-and-the-nigerian-foreign-investment-framework-attribution-under-the-prism-of-the-interocean-case> accessed 18 August 2026.

[20]Southern Pacific Properties (Middle East) Limited v Arab Republic of Egypt, ICSID Case No ARB/84/3, Decision on Jurisdiction (14 April 1988).

***New York Convention**:* It is important, given the conceptual distinction this article draws throughout, to be precise about what the New York Convention actually governs in Nigeria: it applies to the recognition and enforcement of foreign commercial arbitral awards, not to investment awards, which are instead enforced, in the case of ICSID awards, under the self-contained regime described at Part 3.1.2 above. Nigeria ratified the New York Convention on 17 March 1970, accepting the commercial and reciprocity reservations permitted by the Convention, and the Convention entered into force for Nigeria in June 1970. The AMA incorporates the Convention, reproducing its full text in the Second Schedule to the Act.[21] Section 60 of the AMA provides that, where recognition and enforcement of an award made in a country other than Nigeria is sought, the New York Convention applies to that award provided that the country of origin is a party to the Convention and that the underlying difference arises out of a legal relationship, whether contractual or not, considered commercial under the laws of Nigeria, a formulation that on its own terms excludes investment disputes that are not themselves commercial in character.[22]

Consistent with the AMA's predecessor provision, the Nigerian Court of Appeal, in Tulip Nigeria Limited v Noleggioe Transport Maritime SAS, upheld the recognition and enforcement of a commercial arbitral award made in the United Kingdom, holding that an arbitral award, irrespective of the country in which it was made, is recognised as binding and, upon written application, enforceable by the court.[23]

***The UNCITRAL Model Law**:* The UNCITRAL Model Law on International Commercial Arbitration is, as its name signals, a model law only; it has no direct legal force in Nigeria or elsewhere of its own accord and takes effect solely to the extent that a State chooses to domesticate its provisions through national legislation. Nigeria has done so substantially, both through the repealed Arbitration and Conciliation Act and through the current AMA, which draws on the Model Law's 2006 amendments, and the Model Law's influence on Nigerian law is accordingly real but indirect, mediated entirely through domestic enactment rather than through any independent binding force.[24]

***UNCITRAL Arbitration Rules**:* Nigeria's arbitral procedure has also drawn on the UNCITRAL Arbitration Rules, which are frequently employed in both ad hoc and institutional arbitrations and offer a complete set of procedural rules upon which parties may agree for the conduct of arbitral proceedings arising from their legal relationship. The Rules provide a model arbitration clause and describe how arbitral proceedings should be conducted, encompassing every facet of the arbitration procedure, and, once accepted by the parties, become binding on them as a matter of contract.[25]

The Nigerian Investment Promotion Commission Act: The Nigerian Investment Promotion Commission Act aims to promote investment in Nigeria, and includes, in section 26, a specific clause for the settlement of disputes between an investor, whether Nigerian or foreign, and any government within the Nigerian federation. Section 26(1) provides that every effort shall be made through mutual discussion to reach an amicable settlement where a dispute develops between an investor and any Government of the Federation in respect of an enterprise; where that fails, section 26(2) permits the aggrieved party to proceed to arbitration, in accordance with the rules of procedure specified in Nigeria's general arbitration statute for a Nigerian investor, within the framework of the applicable bilateral or multilateral investment protection agreement for a foreign investor, or in accordance with any other agreed national or international mechanism, and section 26(3) provides that where the

[21]Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention), incorporated by the Second Schedule to the Arbitration and Mediation Act 2023.

[22]Arbitration and Mediation Act 2023, s 60.

[23]Tulip Nigeria Limited v Noleggioe Transport Maritime SAS [2011] LPELR-9109 (CA). Some secondary commentary attributes to this decision the further holding that the six year limitation period runs from the date of the award itself, a position apparently in tension with the Supreme Court's own approach in Murmansk and City Engineering discussed at Part 6.2 below; this article was unable to confirm the point conclusively against the primary law report within its scope, and flags it here for the reader's own verification rather than asserting either position as settled.

[24]Jusmundi, 'Nigeria (2025)' (Global Arbitration Practice Guides) <https://jusmundi.com/en/document/publication/en-nigeria-2025-gap-2> accessed 18 August 2026.

[25]UNCITRAL Arbitration Rules (as revised in 2010).

parties disagree on the method to be adopted, the ICSID Rules shall apply.[26] This is a settlement mechanism, not a comprehensive procedural or enforcement code of the kind the AMA provides for commercial arbitration; matters of procedure and enforcement, once a dispute is referred to arbitration under section 26, are instead governed by whichever regime the referral engages, most commonly the ICSID Convention and its own Arbitration Rules.

***Foreign Judgment (Reciprocal Enforcement) Act**:* The Foreign Judgment (Reciprocal Enforcement) Act applies to the registration of foreign judgments given by a competent court, and, since a judgment for these purposes may include a sum payable under an arbitral award that has itself been reduced to judgment in the country of origin, it can in principle extend to awards in that indirect sense.[27] It is not, however, an instrument for the enforcement of investment arbitration awards specifically, and ICSID awards in particular are enforced under the self-contained regime described at Part 3.1.2, not under this Act. A foreign judgment cannot in any event be enforced automatically in Nigeria, legal systems being territorially limited as an indispensable feature of territorial sovereignty.

***Court Support for Arbitration**:* Nigerian courts maintain a pro-enforcement bias favourable to arbitration generally. In Onward Enterprises Ltd v MV Matrix, the Court of Appeal held that once an arbitration clause is retained in a valid contract and the dispute falls within the clause's contemplation, the court will give effect to the contract by enforcing the arbitration clause, it being the general policy of the court to hold parties to the bargain they freely entered.[28] For investment disputes specifically, however, this general pro-arbitration posture operates within the narrower jurisdictional channel described above: no Nigerian court other than the Supreme Court has jurisdiction over the direct enforcement of an investment award founded on a treaty, since that jurisdiction is reserved exclusively to the Supreme Court under the ICSID Act.

Institutional Framework

***Arbitration Infrastructure in Nigeria**:* Several arbitral institutions operate in Nigeria, including the Regional Centre for International Commercial Arbitration, Lagos, the Chartered Institute of Arbitrators, Nigeria Branch, the Society for Construction Industry Arbitration, the Maritime Arbitrators Association of Nigeria, the Arbitration Commission of the ICC Nigerian National Committee, and the Lagos Court of Arbitration. Of these, the Regional Centre for International Commercial Arbitration is the institution of most direct relevance to investment disputes, given its purpose-built facilities and its role, alongside the comparable regional centres in Cairo and Kuala Lumpur, in the wider institutional landscape for investor-State matters in the region; the remaining institutions listed are, notwithstanding their importance to Nigeria's arbitration ecosystem generally, primarily oriented toward commercial rather than investment arbitration, and are noted here for completeness rather than as institutions an investor would typically approach for an investment dispute.

***International Centre for Settlement of Investment Disputes (ICSID)*:** ICSID was established to eliminate significant barriers to the free flow of private investment across borders caused by non-commercial risks and the historic absence of a specialised international mechanism for the resolution of investment disputes. By its constitutive instrument, the Convention governs the conciliation and arbitration of legal disputes arising directly out of an investment between a contracting State and a national of another contracting State, and only disputes that the parties have consented in writing to submit to the Centre fall within its jurisdiction; ICSID also regulates its own arbitral proceedings through the ICSID Arbitration Rules.[29]

***Institutional Alternatives:** The Stockholm Chamber of Commerce:* Beyond ICSID, other institutions administer investment disputes internationally; the Arbitration Institute of the Stockholm Chamber of Commerce (SCC) is a recognised forum for investor-State disputes globally, having administered its first such dispute in 1993, and it serves, among other roles, as an appointing authority

[26]Nigerian Investment Promotion Commission Act (n 4), s 26.
[27]Foreign Judgments (Reciprocal Enforcement) Act, Cap F35 Laws of the Federation of Nigeria 2004, s 2.
[28]Onward Enterprises Ltd v MV Matrix [2010] 2 NWLR (Pt 1179) 530 (CA).
[29]ICSID Convention (n 1), arts 25, 44.

under the UNCITRAL Arbitration Rules.[30] This article's review did not, however, identify any Nigerian BIT that designates the SCC as a forum for investor-State disputes; the SCC's relevance here is accordingly to the general international landscape of investment arbitration institutions rather than to Nigeria's own treaty practice specifically.

Arbitrating investment disputes in Nigeria

Nigeria's own experience as a respondent State illustrates how these institutions actually operate in practice. Nigeria has been a party to a number of investment arbitrations, most administered by ICSID, with others conducted under the auspices of the London Court of International Arbitration (LCIA) and the International Chamber of Commerce (ICC); in each case, it is the institutional rules chosen, whether ICSID's own Rules, the LCIA Rules, or the ICC Rules, that determine both how the arbitration is commenced and the procedure the tribunal subsequently follows, underscoring that 'investment arbitration' in Nigeria's practice is not a single undifferentiated procedure but a set of related regimes activated by the particular instrument and institution invoked in a given case.

Steps in Arbitration Proceedings: Arbitration procedures vary depending on the parties' agreement and the applicable rules, but the following is a non-exhaustive list of the key steps common to most arbitrations, whether commercial or investment.

- **Initiating the Arbitration:** a request for arbitration made by one side, the Claimant, against the other, the Respondent.
- **Appointment of Arbitrators:** directly by the disputing parties, by existing tribunal members, for example where each side appoints one arbitrator and those two appoint a third, or by an external appointing authority.
- **Preliminary Meeting:** a meeting between the arbitrator(s) and the parties' counsel to review the issues and agree a timetable.
- **Statement of Claim and Response:** pleadings in which the claimant sets out the issues in dispute and the remedy sought, and the respondent admits, denies, or counterclaims.
- **Discovery and Inspection:** the identification and inspection of documents within each party's custody or control.
- **Exchange of Evidence:** written evidence is exchanged and provided to the arbitrator ahead of the hearing.
- **Hearing:** oral testimony is heard and witnesses questioned, though a hearing may be dispensed with where the dispute can be resolved on the documents alone.
- **Legal Submissions:** a summary of the evidence and applicable legal principles, made orally or in writing.
- **Award:** the tribunal's binding decision, ordinarily accompanied by reasons, and challengeable only on limited statutory grounds.
- **Enforcement:** recognition and, where necessary, execution of the award, through the New York Convention regime for commercial awards or the ICSID Convention's own regime for ICSID awards, as Part 3.1 has described.

Settling Investment Disputes: A dispute between a host State and a foreign investor will, absent any other agreement, typically be resolved by the host State's domestic courts, an outcome investors generally regard as undesirable, since domestic courts must apply domestic law even where it does not fully vindicate the investor's rights under international law, and complex investment disputes are frequently too technical for the ordinary courts to handle.

Historically, before the ICSID Convention and the modern BIT network existed, investment conflicts were resolved primarily through diplomatic protection, requiring the investor's home State to espouse the investor's claim and pursue it against the host State, whether through negotiation or

[30]Stockholm Chamber of Commerce, 'Investment Disputes' (SCC) <https://sccinstitute.com> accessed 18 August 2026.

before an international tribunal.[31] Diplomatic protection had significant drawbacks, most notably that it was entirely at the discretion of the home State, could strain diplomatic relations, and typically required the investor first to exhaust local remedies in the host State.

Investment Arbitration as the Preferred Method: Direct arbitration between the host State and the foreign investor has become the preferred method for resolving investment disputes, a shift made possible specifically by the ICSID Convention and the proliferation of BITs from the 1960s onward, rather than a development that occurred independently of them. It is no coincidence that the ICSID Convention, the most important legal instrument governing investment arbitration, was conceived within the framework of the World Bank, an international development institution, and the Convention's Preamble opens by referring to the need for international collaboration for economic development and the significance of private international investment in that process.[32]

Investment arbitration benefits both investor and host State. For the investor, it provides immediate access to a specialised international forum with recognised expertise in investment disputes, rather than reliance on domestic courts or diplomatic protection, a form of legal security investors weighs heavily before committing capital. For the host State, offering arbitration can improve the national investment climate and, through consent to ICSID arbitration in particular, shields the State from diplomatic protection claims by the investor's home State, since ICSID's regime is designed to displace that route once consent is perfected.[33]

Investment arbitration's growth has not, however, been universally welcomed. Some States, particularly those that have faced numerous investor claims, have sought ways to limit their exposure, ranging from restricting the jurisdiction of future tribunals to considering withdrawal from the ICSID Convention altogether, questions this article returns to at Part 4.5.

Consent to Jurisdiction: As with all arbitration, investment arbitration requires the consent of both disputing parties. Consent may be given after a dispute has arisen, but advance consent is the most effective route, and may be given directly in a contract between the State and the investor, in a clause of the host State's national law such as its investment code, most commonly conferring standing consent on foreign investors generally, or in a treaty.

Where consent is given by statute, the host State may revoke its offer at any time before an investor accepts it, ordinarily by repealing the relevant law, but once the investor has accepted, whether expressly or by commencing proceedings, the resulting agreement to arbitrate cannot be unilaterally withdrawn.[34]

Most investment arbitrations conducted today rest on treaty-based consent. Most BITs provide for investor-State arbitration, with the signatory States offering consent in advance to investors who are nationals of the other contracting party, and the investor's later acceptance of that offer, typically by commencing proceedings, completes the arbitration agreement. Nigeria's BIT with Morocco provides for mandatory settlement of investor-State disputes, and additionally provides for dispute prevention, requiring that a dispute first be assessed through consultation and negotiation by the Joint Committee established under Article 4 of the treaty before arbitral proceedings may be initiated.[35]

It is standard for an investor to accept a consent offer contained in a BIT simply by initiating arbitration proceedings, without any separate formal agreement with the host State. The tribunal in Generation Ukraine Inc v Ukraine confirmed this, holding that it is firmly established that an investor can accept a State's offer of ICSID arbitration contained in a BIT by instituting ICSID proceedings,

[31]Dolzer and Schreuer (n 8) ch 1.
[32]ICSID Convention (n 1), preamble.
[33]Schreuer and others (n 9), Introduction.
[34]Schreuer and others (n 9), art 25.
[35]Agreement between the Kingdom of Morocco and the Federal Republic of Nigeria on the Reciprocal Promotion and Protection of Investments (signed 2016), arts 4, 25.

and that nothing in the relevant treaty required the investor to communicate consent in any other form directly to the State.[36]

Treaty clauses providing for investor-State arbitration vary in scope. Some refer to all disputes concerning an investment; others, such as the North American Free Trade Agreement, now succeeded by the United States-Mexico-Canada Agreement (USMCA), and the Energy Charter Treaty, offer arbitration only for violations of the treaty itself.[37] Most consent clauses also impose procedural preconditions, commonly a waiting period intended to allow settlement negotiations, and many BITs require an investor to exhaust available domestic remedies before resorting to international arbitration.

Withdrawal from Investment Arbitration: Some States, particularly in Latin America, disenchanted by their frequent role as respondents, have sought to reduce or eliminate their exposure to investment arbitration, including by denouncing the ICSID Convention. Article 71 of the Convention permits denunciation on six months' notice, but denunciation does not affect rights and obligations arising from consent to ICSID's jurisdiction given before the notice is received, an expression of the more general principle, reflected in Article 72, that consent once given cannot be unilaterally withdrawn.[38]

A denunciation therefore has limited practical effect once an investor has already accepted a standing offer of consent, whether under legislation or a treaty; a state that denounces the Convention after such acceptance remains bound. A prudent investor is accordingly well advised to accept an available offer of arbitration promptly rather than delay until it is ready to file a claim, since delay risks losing the Convention's protection entirely should the host State denounce it in the interim.

Even a State that successfully withdraws from the ICSID Convention's coverage may remain exposed to other forms of investment arbitration, since many BITs also provide for Additional Facility Arbitration or ad hoc arbitration under the UNCITRAL Rules as alternatives, and ICSID Convention membership is not itself a precondition for these other routes.

Beyond denunciation of the Convention, some States have sought to amend or terminate individual BITs, an endeavour that will only succeed to the extent it complies with treaty law and, ordinarily, with the treaty's own termination provisions or the consent of both parties.[39] Most BITs permit termination, commonly after an initial period of ten years, followed by a right to terminate on twelve months' notice thereafter, but include a survival or 'sunset' clause under which investments made while the treaty was in force continue to be protected for a further period, often ten to twenty years, after termination.[40] The continuing exposure a sunset clause can create for a State, even years after the underlying commercial or investment relationship has soured, is illustrated, in a related though not identical context, by the Federal Republic of Nigeria's own prolonged exposure in The Federal Republic of Nigeria v Process & Industrial Developments Limited, where Nigeria spent years and substantial resources resisting enforcement of a commercial arbitral award that had grown, with interest, to some USD 11 billion, before the English Commercial Court finally set the award aside in 2023 on the ground that it had been procured by fraud.[41] Gradual withdrawal of this kind carries its

[36]Generation Ukraine Inc v Ukraine, ICSID Case No ARB/00/9, Award (16 September 2003) para 12.2.
[37]United States-Mexico-Canada Agreement 2020, replacing the North American Free Trade Agreement 1994; Energy Charter Treaty 1994, art 26.
[38]ICSID Convention (n 1), arts 71, 72.
[39]Vienna Convention on the Law of Treaties 1969, arts 54, 39.
[40]United Nations Conference on Trade and Development, 'Termination of Bilateral Investment Treaties' (UNCTAD IIA Issues Note, 2020) (discussing sunset clauses in BIT practice).
[41]The Federal Republic of Nigeria v Process & Industrial Developments Limited [2023] EWHC 2638 (Comm). This was a commercial arbitration arising from a Gas Supply and Processing Agreement, not a treaty based investment arbitration, and is discussed here, and again at Part 5.6, for what it illustrates about the scale and duration of a State's exposure to arbitral awards generally, not as an example of ICSID or BIT practice specifically.

own costs: the arbitrariness of shifting procedural protection is likely to harm the withdrawing State's investment climate, and may intensify disputes in the period before a treaty's termination takes effect.

This is not to say that investment arbitration is incapable of reform. Should a broad consensus develop that the current regime no longer serves States' interests, the parties could agree to terminate or adjust their BITs, or, more efficiently, negotiate a multilateral instrument replacing the dispute resolution provisions of existing BITs and regional treaties.

Role of Domestic Courts: One of the purposes of investment arbitration is to avoid the risks of litigation before the domestic courts of the host State. Under customary international law, as it stood before the ICSID Convention and the modern BIT network, an investor was generally required to exhaust available domestic remedies before bringing an international claim; the modern regime has substantially displaced that requirement. It is well established that, where consent to investor-State arbitration has been given, exhaustion of local remedies is typically unnecessary. Article 26 of the ICSID Convention makes clear that a State may make exhaustion of local remedies a condition of its consent to arbitration, but that possibility is rarely exercised, and attempts by respondent States to insist on exhaustion in the absence of such an express condition have generally not succeeded.[42]

Domestic courts have nonetheless not disappeared entirely from investment arbitration, and there are signs of their creeping return. Some BITs adopt what is sometimes called a 'cafeteria style' or fork in the road dispute resolution clause, under which a dispute may be channelled through several alternative routes, exhaustion of local remedies, domestic legislation, regional centres, or international arbitration, with the investor typically required to elect one route to the exclusion of the others.[43] Some BITs specifically require an investor to attempt resolution through the host State's domestic courts for a defined period, typically around eighteen months, before proceeding to international arbitration, with recourse to arbitration available if the domestic process does not resolve the dispute within that time or continues after a domestic verdict.

Tribunals have, in some cases, treated a failure to seek domestic redress not as a jurisdictional or admissibility bar but as evidence bearing on whether the relevant international law standard was in fact breached. The tribunal in Generation Ukraine Inc v Ukraine observed that the failure to seek redress from national authorities disqualifies the international claim not because exhaustion of local remedies is itself required, but because the reality of conduct tantamount to expropriation is doubtful absent a reasonable, though not necessarily exhaustive, effort by the investor to obtain correction.[44]

Investors have, in practice, often been able to avoid domestic court preconditions of this kind by invoking the most favoured nation clause of the same BIT to import the more favourable dispute resolution terms of a different treaty concluded by the host State. This strategy, and its limits, were established in Maffezini v Kingdom of Spain, where an Argentine investor relied on Spain's more favourable BIT with Chile to bypass an eighteen-month domestic litigation requirement contained in the Spain to Argentina BIT itself. The tribunal held that the MFN clause did permit the investor to import the more favourable dispute settlement terms of the third party treaty, since dispute settlement provisions were sufficiently connected to the substantive treatment of the investment to fall within the clause's scope, but cautioned that this would not extend to overriding fundamental public policy considerations a host State had deliberately built into its treaty practice, such as a requirement to exhaust local remedies or a fork in the road election of forum.[45] The Maffezini approach has since been applied, distinguished, and in places resisted by later tribunals, but it remains the starting point for any discussion of whether an MFN clause can be used to improve a claimant's procedural position

[42]ICSID Convention (n 1), art 26.
[43]Salacuse J, The Law of Investment Treaties (2nd edn, Oxford University Press 2015) 386 to 388 (discussing fork in the road clauses).
[44]Generation Ukraine Inc v Ukraine (n 34) para 20.30.
[45]Maffezini v Kingdom of Spain, ICSID Case No ARB/97/7, Decision on Jurisdiction (25 January 2000) paras 38 to 64.

under a BIT, and it illustrates concretely why the domestic court preconditions discussed above retain only limited practical force wherever a more favourable comparator treaty exists.

Where contracts between host States and investors designate the host State's domestic courts as the forum for contractual disputes, ICSID tribunals have distinguished contract claims from treaty claims. This distinction was decisively settled in Compania de Aguas del Aconquija SA and Vivendi Universal v Argentine Republic, an annulment decision arising from a French water utility's investment in the Argentine province of Tucuman. The original tribunal had declined jurisdiction over certain claims because the underlying concession contract designated the local administrative courts of Tucuman as the forum for contractual disputes. The ad hoc annulment committee annulled that award in relevant part, holding that a forum selection clause in an investment contract governs contract claims only, and has no bearing on an ICSID tribunal's treaty based jurisdiction to determine whether the same underlying conduct also breached the substantive protections of the applicable BIT, since a State can breach a treaty obligation through conduct that would not, in itself, breach the associated contract, and vice versa.[46] Vivendi accordingly stands for the proposition, of direct relevance to Nigeria's own contract based consents discussed at Part 4.4 above, that a Nigerian domestic court's jurisdiction clause in a State contract cannot, without more, oust an ICSID tribunal's jurisdiction over a parallel treaty claim arising from the same facts. Requiring investors to exhaust domestic proceedings first remains, nonetheless, a genuine mechanism by which a State can, deliberately or otherwise, undercut investment arbitration in practice, since the additional cost and delay this imposes may be substantial enough to deter investors from pursuing an otherwise meritorious claim.

Challenges of investment arbitration

Cost and Delay: International investment arbitration can end up more expensive than litigation, notwithstanding that alternative dispute resolution is generally understood to be less costly, particularly in complex cases where both parties retain senior counsel and specialist arbitrators. International arbitration has been criticised for its expense and slowness generally; participants in the 2015 Queen Mary/White & Case International Arbitration Survey identified high cost, cited by 68 percent of respondents, lack of insight into arbitrators' efficiency, cited by 39 percent, and slowness, cited by 36 percent, among the worst aspects of the process.[47]

Presentation of Irrelevant and Inflammatory Material: Because the strict rules of evidence applicable in domestic litigation do not govern arbitral proceedings, tribunals may be presented with irrelevant or inflammatory material, consuming time and resources on matters of no genuine relevance to the dispute.[48]

Practical Reluctance of States to Arbitrate: A State that has signed and ratified a BIT cannot, as a matter of international law, lawfully refuse to arbitrate a dispute falling within a consent clause it has agreed to, since signature and ratification themselves constitute consent; the difficulty in practice is less a matter of legal entitlement to refuse than of the State's practical conduct once a claim is brought, including delay, non-cooperation, or resistance to enforcement, and it is in this narrower, practical sense that this article's findings should be understood.

Decision-Makers: The parties' ability to select their own arbitrators is frequently cited as one of arbitration's key benefits, but has also drawn criticism, particularly regarding the legitimacy of awards made by privately appointed arbitrators. Strong conflict rules, procedural controls on appointments, and enforceable ethical standards are necessary to prevent abuse of the appointment process, such as the nomination of unqualified arbitrators or pressure on a party appointed arbitrator to resign in order to delay proceedings.[49]

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[46]Compania de Aguas del Aconquija SA and Vivendi Universal v Argentine Republic, ICSID Case No ARB/97/3, Decision on Annulment (3 July 2002) paras 96 to 113.

[47]Queen Mary University of London and White & Case, 2015 International Arbitration Survey: Improvements and Innovations in International Arbitration (2015).

[48]Queen Mary University of London and White & Case (n 41).

[49]International Bar Association Guidelines on Conflicts of Interest in International Arbitration (2014).

Conduct of Counsel: Counsel appearing in international investment arbitration are drawn from diverse legal systems and professional traditions, and are not necessarily bound by a single, shared set of ethical standards. The regulation of counsel conduct is correspondingly difficult, since there is no globally recognised body with authority to enforce a binding, uniform rule of conduct across all participants in a given proceeding, a gap that has itself generated proposals, including the International Bar Association's Guidelines on Party Representation in International Arbitration, though these remain non-binding absent adoption by the tribunal or the parties.[50]

Domestic Court Oversight: The arbitral process has been criticised, in the commercial arbitration literature particularly, for being too independent of domestic law and judicial supervision, prompting debate over whether courts should exercise greater control. Proponents of the current, more limited balance point to the distinct functions the New York Convention, the ICSID Convention, and domestic statutes have deliberately assigned to national courts and arbitral tribunals respectively, and note that most domestic courts in any event lack the resources, time, and technical expertise to exercise a more searching supervisory role.

Expanding judicial control over arbitration would, on this view, blur the distinction between arbitration and litigation and undercut what many users of the system value most: in the 2015 Queen Mary/White & Case Survey, 64 percent of respondents identified avoidance of specific legal systems and national courts as among the most valuable features of international arbitration.[51]

The Federal Republic of Nigeria v Process & Industrial Developments Limited saga has, however, revived debate over the importance of domestic and, in that case, foreign court oversight even within an arbitration framework generally resistant to it. While arbitral tribunals issue binding awards, courts retain the power to intervene where fraud, corruption, or public policy are genuinely at stake, and the English courts' eventual decision to set aside the USD 11 billion award against Nigeria demonstrated that judicial review remains a vital safeguard, a balance that must be struck between protecting the finality of an award and preserving the integrity of the arbitral process itself.[52] It bears repeating that P&ID was a commercial arbitration under the English Arbitration Act 1996, not a treaty based investment arbitration; it is included in this discussion because it illustrates, with unusual clarity, the scale of exposure a State can face from an arbitral award and the exceptional evidentiary burden required to escape one, considerations of direct relevance to how Nigeria approaches consent to arbitration, whether commercial or investment, going forward.

Conclusion

Litigation was, prior to the wider adoption of arbitration, the common method of resolving disputes; recent decades have seen a progressive shift toward arbitration, owing to its comparative speed, confidentiality, flexibility, procedural simplicity, and its capacity to preserve commercial and diplomatic relationships between the parties.

Investment activity does not eliminate disagreement, and investment related disputes are, in a world of continuing cross-border capital flows, effectively inescapable. Arbitration, and investment arbitration specifically, has become the preferred mechanism for resolving them. ICSID, established under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, remains a landmark institutional achievement in this regard, offering forms of institutional support that, among other things, exclude the risk of diplomatic protection claims by an investor's home State once consent to ICSID arbitration is perfected.

This article has argued, however, that realising the full benefit of this framework in Nigeria requires the legal community, the judiciary, and the legislature to maintain the conceptual distinction

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[50]International Bar Association Guidelines on Party Representation in International Arbitration (2013).

[51]Queen Mary University of London and White & Case (n 41).

[52]Federal Republic of Nigeria v Process & Industrial Developments Limited (n 39); see also Legal Blogs, Kluwer Arbitration Blog, 'Tackling Corruption in the Arbitral Process: Reflections on Nigeria v Process and Industrial Developments Limited' (Kluwer Arbitration Blog) <https://legalblogs.wolterskluwer.com/arbitration-blog/tackling-corruption-in-the-arbitral-process-reflections-on-nigeria-v-process-and-industrial-developments-limited/> accessed 18 August 2026.

between commercial and investment arbitration with greater rigour than has sometimes been the case. Nigeria has ratified and given domestic effect to both the New York and ICSID Conventions, has signed bilateral and multilateral investment treaties affording foreign investors protection including recourse to arbitration, and has the arbitration friendly judiciary and institutional infrastructure necessary to support arbitration generally. Despite this, Nigeria hosts comparatively few international arbitrations relative to its economic weight, and the specific gaps this article has identified, the absence of a codified ADR mechanism for investment disputes, uneven clarity as to forum in some BITs, and the limited domestic literature distinguishing investment from commercial arbitration with precision, are obstacles Nigeria is well placed to close.

Closing these gaps calls for concrete steps, addressed, where the distinction between commercial and investment arbitration matters, separately to each. For contract-based consent, whether in a commercial contract or in a state contract with an investor, arbitration clauses should be carefully negotiated and drafted in clear, unambiguous language, with qualified legal counsel engaged during negotiation. For treaty-based consent, by contrast, an individual investor has no drafting role at all; the relevant negotiation takes place at the level of the State parties to the BIT itself, and Nigeria's own treaty negotiators should give closer attention to the specific gaps identified in this article, including the absence of any Alternative Dispute Resolution mechanism and the lack of a clearly designated forum in several BITs, when negotiating or renegotiating future investment treaties. Prospective foreign investors should, in either case, carefully consider the arbitrators who will resolve any dispute, since once selected, they are ordinarily irreplaceable.

Arbitration processes should, in addition, move quickly, and the Supreme Court's own case law gives this practical urgency. In Murmansk State Steamship Line v Kano Oil Millers Ltd, the first reported Nigerian decision on the point, the Supreme Court held that the limitation period for enforcing an arbitral award runs from the date the underlying cause of action accrued, not from the date the award itself was made.[53] The Court reaffirmed this position more than two decades later in City Engineering (Nig) Ltd v Federal Housing Authority, where a full panel held, on similar reasoning, that time begins to run from the accrual of the original cause of action rather than from the award.[54] This line of authority has been criticised as unfriendly to arbitration, since Nigeria's own appellate process can itself take eight to twelve years, meaning an award may already be time barred by the time a losing party's own challenges to it are exhausted, and the Court of Appeal has since shown some willingness to soften its effect, holding in Sifax Nigeria Limited v Migfo Nigeria Limited that the computation of time remains frozen for the duration of any pending action to set aside or challenge the award.[55] Time is accordingly of the essence in commencing enforcement proceedings, whatever a claimant's confidence in the underlying merits. Arbitral awards are not, in any event, easily overturned; Nigeria being a party to the New York Convention, only the grounds recognised by that Convention may found a refusal to recognise or enforce a commercial award.

Parties should also confirm arbitrators' availability in advance and secure an undertaking that the award will issue within a reasonable time. Smaller or simpler disputes should be referred to a single arbitrator, and parties are encouraged to request an early procedural conference and to agree fast track timetables with defined deadlines where appropriate, since identifying and streamlining the initial issues can produce a quicker and more effective resolution. Document production requests should likewise be focused and proportionate; the IBA Rules on the Taking of Evidence in International Arbitration should be considered, particularly in investment arbitrations, paperless arbitration and electronic filing should be encouraged, repetitive witness evidence should be avoided,

[53]Murmansk State Steamship Line v Kano Oil Millers Ltd (1974) 12 SC 1; also reported as (1974) All NLR 893.

[54]City Engineering (Nig) Ltd v Federal Housing Authority [1997] 9 NWLR (Pt 520) 224 (SC); see S.P.A. Ajibade & Co, 'Enforcement of Arbitration Awards in Nigeria vis-a-vis the Limitation Period under the Limitation Laws' (SPA Ajibade & Co) <https://spaajibade.com/enforcement-of-arbitration-awards-in-nigeria-vis-a-vis-the-limitation-period-under-the-limitation-laws/> accessed 18 August 2026.

[55]Sifax Nigeria Limited v Migfo Nigeria Limited (2018) 9 NWLR (Pt 1623) 138 (CA).

videoconferencing should be used for witnesses located far from the hearing venue, and hearings should be subject to defined time limits.[56]

At the institutional level, Nigeria should capitalise on the AMA's provisions by strengthening public trust in the legal framework, encouraging a proactive and arbitration friendly judiciary, and investing in specialised institutions and infrastructure, while enhancing the expertise of arbitration practitioners. The National Policy on Arbitration and Alternative Dispute Resolution 2024, which aims to position Nigeria as a leading hub for arbitration and ADR in Africa, should be embraced by all stakeholders.[57] The provisions of the AMA, as the governing law for commercial arbitration and mediation, should prevail over any conflicting provisions in other local laws on the same subject, eliminating the legal ambiguity that has previously arisen from State statutes and High Court rules that conflict with specific parts of the Act; for instance, while section 55(4) of the AMA specifies a three month limitation period for contesting an award, some State legislation and High Court rules specify periods of fifteen or thirty days instead.[58] Because these AMA specific reforms address commercial arbitration only, this article separately recommends that Nigeria consider codifying a more structured Alternative Dispute Resolution mechanism applicable specifically to investment disputes under section 26 of the NIPC Act, beyond the general 'mutual discussion' formula the section currently provides, and that Nigeria's treaty negotiators consider, in future BITs, express provisions clarifying the relationship between contract based and treaty based consent of the kind considered at Part 4.6 above.

Now is the moment to make Nigeria a more attractive location for the resolution of investment disputes specifically, not merely for arbitration in the generic sense, given the country's substantial exposure to inbound foreign investment and the corresponding likelihood of future investment disputes arising from it.

[56]International Bar Association Rules on the Taking of Evidence in International Arbitration (2020).
[57]Federal Ministry of Justice, National Policy on Arbitration and Alternative Dispute Resolution (2024).
[58]Arbitration and Mediation Act 2023, s 55(4).