



RESEARCH ARTICLE

Significance of Arbitration Agreement and Composition of Arbitral Tribunal in Arbitration Proceedings

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ABSTRACT

Arbitration has become one of the most preferred mechanisms for resolving construction and commercial disputes because of its flexibility, confidentiality, neutrality, and enforceability. The effectiveness of arbitration proceedings depends largely on two fundamental components: a valid arbitration agreement and the proper constitution of the arbitral tribunal. This study examines the legal significance of arbitration agreements and the composition of arbitral tribunals in ensuring efficient dispute resolution within the construction industry. A doctrinal research methodology was adopted through the review of statutes, international conventions, institutional arbitration rules, judicial authorities, and scholarly literature. The study analyses the essential elements of enforceable arbitration agreements, party autonomy, arbitral jurisdiction, appointment procedures, independence and impartiality of arbitrators, and the influence of tribunal composition on the validity and enforcement of arbitral awards. Particular attention is given to the provisions of the UNCITRAL Model Law, the New York Convention, institutional arbitration rules, and the Nigerian Arbitration and Mediation Act, 2023. The findings reveal that carefully drafted arbitration agreements, transparent appointment procedures, and the selection of qualified and independent arbitrators significantly improve procedural efficiency, reduce jurisdictional disputes, and enhance the enforceability of arbitral awards. The study recommends that construction professionals, quantity surveyors, legal practitioners, and project owners adopt comprehensive arbitration clauses and comply with internationally accepted arbitration standards to promote effective dispute resolution in Nigeria and other developing economies.

Keywords: *Arbitration Agreement; Arbitral Tribunal; Construction Disputes; Arbitration; Nigeria; Dispute Resolution*

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1. INTRODUCTION

Disputes are inevitable in construction projects owing to their technical complexity, contractual relationships, financial commitments, and the involvement of multiple stakeholders. Issues relating to contract interpretation, payment disputes, delays, variations, defective works, and project termination frequently result in disagreements between contracting parties. Traditionally, litigation served as the principal means of resolving such disputes. However, litigation is often criticized for being expensive, time-consuming, and adversarial, making it unsuitable for many commercial construction disputes (Born, 2021).

Arbitration has therefore emerged as one of the most widely accepted alternative dispute resolution (ADR) mechanisms in both domestic and international construction practice. Unlike litigation, arbitration provides parties with greater flexibility in selecting decision-makers possessing technical expertise, maintaining confidentiality, determining procedural rules, and ensuring the enforceability of awards across jurisdictions under the 1958 New York Convention (Redfern & Hunter, 2023). These advantages have contributed significantly to the growing adoption of arbitration in construction contracts worldwide. The effectiveness of arbitration depends principally on two interconnected legal foundations: the arbitration agreement and the composition of the arbitral tribunal. The arbitration agreement establishes the legal basis for arbitration by defining the parties' consent, the scope of disputes to be referred, and the procedural framework governing the proceedings. Without a valid arbitration agreement, an arbitral tribunal lacks jurisdiction to determine disputes between the parties. Likewise, the constitution of an impartial, independent, and professionally competent arbitral tribunal determines the credibility, fairness, and enforceability of the arbitral process (Lew, Mistelis, & Kroll, 2003).

Recent reforms introduced through the Nigerian Arbitration and Mediation Act, 2023 have modernized Nigeria's arbitration framework by incorporating internationally recognized principles contained in the UNCITRAL Model Law. These reforms strengthen party autonomy, introduce emergency arbitration, provide mechanisms for consolidation of proceedings, and improve judicial support for arbitration, thereby enhancing Nigeria's attractiveness as an arbitration-friendly jurisdiction.

Despite these developments, many construction contracts continue to contain poorly drafted arbitration clauses, while disputes relating to arbitrator appointment, conflicts of interest, and tribunal composition remain common causes of procedural delay and post-award challenges. Such deficiencies frequently undermine the efficiency and enforceability of arbitration proceedings.

Accordingly, this paper examines the legal significance of arbitration agreements and the composition of arbitral tribunals in construction dispute resolution. It reviews the applicable legal principles, statutory provisions, institutional rules, and international best practices while highlighting their implications for quantity surveyors, construction professionals, project managers, and legal practitioners involved in dispute resolution.

2. LITERATURE REVIEW

Arbitration has developed into one of the most important mechanisms for resolving commercial and construction disputes worldwide. Its popularity stems from the increasing complexity of commercial transactions, globalization of trade, and the need for dispute resolution processes that are faster, more flexible, confidential, and enforceable than traditional litigation. Within the construction industry, where projects often involve multiple parties, technical issues, substantial financial investments, and long contractual relationships, arbitration has become the preferred method of dispute settlement because

it enables parties to appoint decision-makers possessing the technical knowledge necessary for resolving specialized disputes (Redfern & Hunter, 2023).

The legal foundation of every arbitration proceeding is the arbitration agreement. An arbitration agreement is a contractual undertaking through which parties agree to submit present or future disputes to arbitration rather than litigation before national courts. Born (2021) describes the arbitration agreement as the jurisdictional source of arbitral authority because arbitrators derive their powers solely from the consent of the parties. Unlike judicial proceedings where jurisdiction is established by statute, arbitration exists only because contracting parties voluntarily agree to remove disputes from the jurisdiction of ordinary courts. Consequently, the validity and enforceability of every arbitral proceeding depend fundamentally upon the existence of a legally enforceable arbitration agreement.

Modern arbitration law recognizes several forms of arbitration agreements. The most common is the arbitration clause incorporated into a commercial contract before disputes arise. Alternatively, parties may execute a submission agreement after a dispute has arisen, specifically referring that dispute to arbitration. Construction projects involving multiple contracts frequently utilize multi-party arbitration agreements designed to accommodate the complex contractual relationships among employers, contractors, subcontractors, consultants, and suppliers. Regardless of form, international arbitration practice requires that arbitration agreements clearly identify the parties, define the disputes subject to arbitration, specify the applicable arbitration rules, identify the seat of arbitration, and establish procedures for appointing arbitrators (Moses, 2017). A defining characteristic of arbitration is the doctrine of party autonomy. Party autonomy recognizes the freedom of contracting parties to determine virtually every procedural aspect of arbitration, including the governing law, procedural rules, language, venue, number of arbitrators, and appointment procedures. This principle distinguishes arbitration from litigation and explains much of its attractiveness to commercial organizations operating across different jurisdictions. According to Lew, Mistelis, and Kroll (2003), party autonomy represents the cornerstone of international commercial arbitration because it enables disputing parties to design procedures suitable to their commercial relationships while minimizing unnecessary judicial intervention. Nevertheless, party autonomy is not absolute, as mandatory statutory provisions and public policy considerations continue to regulate issues such as arbitrability, due process, fraud, and enforcement of arbitral awards.

Closely associated with party autonomy are the doctrines of separability and competence-competence. The doctrine of separability provides that an arbitration clause constitutes an independent agreement separate from the principal contract in which it is contained. Consequently, allegations that the underlying contract is void, frustrated, or terminated do not automatically invalidate the arbitration clause. This principle prevents parties from circumventing arbitration simply by challenging the validity of the substantive contract. Similarly, the doctrine of competence-competence empowers arbitral tribunals to determine their own jurisdiction, including questions relating to the existence, validity, and scope of arbitration agreements before national courts intervene. Both doctrines have been incorporated into the UNCITRAL Model Law and have become universally recognized principles of modern arbitration practice (UNCITRAL, 2006).

Equally important to successful arbitration is the proper constitution of the arbitral tribunal. The legitimacy of arbitral proceedings depends largely upon the independence, impartiality, competence, and integrity of arbitrators. Unlike judges who are appointed by the state, arbitrators derive their authority from party agreement and therefore must satisfy both legal and ethical standards that promote confidence in the arbitration process. The International Bar Association (IBA) Guidelines on Conflicts of Interest in International Arbitration provide internationally accepted standards requiring arbitrators to disclose any relationship or circumstance capable of creating doubts regarding their impartiality or independence. Failure to

comply with these disclosure obligations frequently forms the basis for challenges to arbitrators and subsequent applications to set aside arbitral awards (IBA, 2014).

The number and qualifications of arbitrators vary according to the complexity and value of disputes. Lower-value disputes are commonly determined by a sole arbitrator because of reduced costs and greater procedural efficiency. Conversely, high-value commercial and construction disputes frequently require three-member tribunals comprising two party-appointed arbitrators and an independent presiding arbitrator. This arrangement balances party participation with neutrality while providing broader professional expertise during deliberations. Construction disputes often require arbitrators possessing qualifications in engineering, quantity surveying, architecture, project management, or construction law because many disputes involve highly technical issues beyond ordinary legal analysis (Redfern & Hunter, 2023).

Institutional arbitration has further strengthened the effectiveness of tribunal constitution through detailed appointment procedures and administrative oversight. Major arbitration institutions such as the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA), the Singapore International Arbitration Centre (SIAC), and the International Centre for Settlement of Investment Disputes (ICSID) maintain comprehensive procedural rules governing arbitrator appointment, challenge, replacement, emergency arbitration, consolidation, confidentiality, and award scrutiny. These institutional mechanisms significantly reduce procedural uncertainty and minimize delays associated with ad hoc arbitration proceedings (Born, 2021).

International arbitration has also benefited from the harmonization of legal standards through multilateral instruments. The 1958 New York Convention remains the most successful international treaty governing the recognition and enforcement of foreign arbitral awards, requiring contracting states to recognize valid arbitration agreements and enforce arbitral awards except under limited circumstances. Similarly, the UNCITRAL Model Law on International Commercial Arbitration has been adopted, wholly or substantially, by numerous jurisdictions, providing uniform principles governing arbitration agreements, tribunal constitution, jurisdiction, judicial intervention, interim measures, and award enforcement (UNCITRAL, 2006). These international instruments have significantly enhanced predictability and confidence in cross-border commercial arbitration.

Nigeria has undertaken significant legislative reforms through the enactment of the Arbitration and Mediation Act, 2023, which repealed the Arbitration and Conciliation Act of 1988. The new legislation aligns Nigerian arbitration practice more closely with international standards by incorporating provisions relating to emergency arbitrators, third-party funding, consolidation of arbitral proceedings, interim measures, electronic communications, and enhanced judicial support. The Act further reinforces the principles of party autonomy and minimal court intervention while strengthening the enforceability of arbitral awards within Nigeria. These reforms have positioned Nigeria among emerging arbitration-friendly jurisdictions in Africa and provide construction professionals with a modern legal framework for dispute resolution.

Despite these legal developments, several challenges continue to undermine the effectiveness of arbitration in construction practice. Poorly drafted arbitration clauses frequently generate jurisdictional disputes and delays during tribunal constitution. Conflicts of interest, inadequate disclosure by arbitrators, appointment deadlocks, and inconsistent arbitration clauses across multiple construction contracts often result in fragmented proceedings and increased costs. Furthermore, empirical studies indicate that many construction professionals continue to possess a limited understanding of modern arbitration procedures, thereby reducing the effectiveness of dispute prevention and management strategies.

Existing scholarship demonstrates broad agreement regarding the importance of arbitration agreements and tribunal composition in determining the legitimacy and enforceability of arbitral proceedings. However, relatively few studies specifically examine these issues from the perspective of quantity surveying and construction management practice within the Nigerian legal environment following the enactment of the Arbitration and Mediation Act, 2023. This study seeks to bridge that gap by integrating international arbitration principles with contemporary Nigerian statutory developments and highlighting their practical implications for construction professionals involved in contract administration and dispute resolution.

Excellent. The next major revision is to restructure your original Methodology section into the format required by the IJESDS template. Since this is a doctrinal legal study rather than an experimental study, the methodology should still follow the journal's "Materials and Methods" heading while clearly explaining the research design.

3. MATERIALS AND METHODS

Research Design

This study adopted a doctrinal legal research design, which involves the systematic examination and analysis of legal principles governing arbitration agreements and the composition of arbitral tribunals. Doctrinal research is particularly appropriate for legal scholarship because it enables the researcher to critically evaluate statutes, judicial decisions, international conventions, institutional arbitration rules, and scholarly publications without generating primary empirical data. The approach facilitates the interpretation and synthesis of existing legal authorities to explain the significance of arbitration agreements and tribunal composition in construction dispute resolution.

Sources of Data

The study relied exclusively on secondary data obtained from both primary and secondary legal sources. Primary legal materials comprised the Nigerian Arbitration and Mediation Act, 2023, the UNCITRAL Model Law on International Commercial Arbitration, the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, and the arbitration rules of leading institutions including the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA), and the Singapore International Arbitration Centre (SIAC). Secondary materials consisted of peer-reviewed journal articles, textbooks, judicial commentaries, conference papers, and other scholarly publications on international commercial arbitration, construction dispute resolution, and arbitral procedure.

Data Collection

Relevant legal materials were identified through extensive searches of legal databases, academic journals, textbooks, official publications of arbitration institutions, and government legislative documents. Preference was given to contemporary literature published within the last decade while retaining seminal authorities that continue to influence international arbitration jurisprudence. Particular attention was paid to materials relating to construction arbitration and quantity surveying practice in Nigeria.

Data Analysis

The collected materials were analysed using qualitative doctrinal and comparative legal analysis. The doctrinal analysis involved examining statutory provisions, legal principles, and judicial interpretations relating to arbitration agreements and arbitral tribunals. Comparative analysis was employed to compare the Nigerian Arbitration and Mediation Act, 2023 with internationally recognised arbitration instruments such as the UNCITRAL Model Law and institutional arbitration rules.

This comparative approach enabled the identification of similarities, differences, and best practices applicable to construction dispute resolution within the Nigerian context.

4. RESULTS AND DISCUSSION

Unlike empirical research, doctrinal legal studies present findings through thematic analysis. However, the reviewer's comment that "most of the results were not presented in tables" can be addressed by summarising key legal findings in concise tables before discussing them in prose.

Table 1. Essential Elements of a Valid Arbitration Agreement

Element	Purpose	Legal authority
Written agreement	Establishes parties' consent	New York Convention, Article II
Capacity of parties	Ensures legal competence	UNCITRAL Model Law
Arbitrable subject matter	Determines jurisdiction	Nigerian Arbitration and Mediation Act, 2023
Clear scope of disputes	Prevents jurisdictional disputes	Born (2021)
Seat of arbitration	Determines procedural law	Redfern & Hunter (2023)
Appointment procedure	Facilitates tribunal constitution	UNCITRAL Model Law

The results indicate that the validity of an arbitration agreement depends upon the satisfaction of several fundamental legal requirements. International arbitration practice consistently recognizes written consent, legal capacity of the parties, arbitrability of the dispute, and certainty of contractual terms as prerequisites for enforceability. Failure to satisfy these requirements frequently results in jurisdictional objections, unnecessary litigation, and difficulties in enforcing arbitral awards. The findings further demonstrate that arbitration agreements extending beyond a simple commitment to arbitrate by clearly identifying the applicable law, arbitral seat, institutional rules, appointment procedures, and language of proceedings significantly reduce procedural uncertainty and promote efficient dispute resolution. These findings are consistent with the observations of Born (2021) and Redfern and Hunter (2023), who emphasize that carefully drafted arbitration clauses are fundamental to successful arbitration proceedings.

Table 2. Comparative Characteristics of Tribunal Composition

Attribute	Sole Arbitrator	Three-Member Tribunal
Cost	Lower	Higher
Speed	Faster	Slower
Technical expertise	Limited to one individual	Broader expertise
Suitable disputes	Low-value disputes	High-value and complex disputes
Risk of bias	Greater perception	Reduced through collective decision-making

The comparative assessment demonstrates that tribunal composition directly influences the efficiency, fairness, and credibility of arbitration proceedings. Sole arbitrators provide an economical and efficient mechanism for resolving relatively straightforward disputes, whereas three-member tribunals are generally more suitable for technically complex construction disputes involving substantial financial claims. The diversity of professional expertise available within multi-member tribunals contributes to more balanced decision-making and enhances confidence in arbitral outcomes.

Furthermore, the analysis highlights that the independence and impartiality of arbitrators remain indispensable to the legitimacy of arbitration. Institutional arbitration rules universally require disclosure of circumstances that may give rise to conflicts of interest. Failure to disclose such circumstances may result in arbitrator challenges, annulment proceedings, or refusal of enforcement of arbitral awards.

Table 3. Major Arbitration Frameworks and Their Significance

Instrument	Major Contribution
UNCITRAL Model Law	Harmonizes international arbitration procedures
New York Convention (1958)	Enforcement of foreign arbitral awards
ICC Arbitration Rules	Institutional administration of arbitration
LCIA Rules	Appointment and challenge procedures
SIAC Rules	Expedited arbitration and emergency relief
Nigerian Arbitration and Mediation Act (2023)	Modern framework for domestic and international arbitration in Nigeria

The analysis indicates that international arbitration has achieved considerable procedural consistency through the adoption of harmonized legal instruments. The UNCITRAL Model Law provides the legislative foundation for many national arbitration laws, while the New York Convention remains the principal mechanism for international recognition and enforcement of arbitral awards. Nigeria's Arbitration and Mediation Act, 2023 substantially aligns domestic arbitration practice with these international standards by introducing modern provisions relating to emergency arbitration, third-party funding, consolidation of proceedings, and judicial assistance.

Collectively, these developments strengthen Nigeria's capacity to serve as an arbitration-friendly jurisdiction and provide construction professionals with greater confidence in arbitration as an effective dispute resolution mechanism.

5. CONCLUSION

This study examined the significance of arbitration agreements and the composition of arbitral tribunals as two indispensable pillars of effective arbitration in construction dispute resolution. The analysis demonstrates that a valid arbitration agreement provides the legal foundation upon which arbitral jurisdiction is established, while the proper constitution of an independent, impartial, and professionally competent arbitral tribunal determines the legitimacy, efficiency, and enforceability of arbitral proceedings.

The review further revealed that internationally recognized legal instruments, including the UNCITRAL Model Law, the 1958 New York Convention, and the arbitration rules of leading institutions such as the ICC, LCIA, and SIAC, have significantly harmonized arbitration practice across jurisdictions. Nigeria's Arbitration and Mediation Act, 2023 represents a major advancement in domestic arbitration law by incorporating these international best practices and providing a more robust legal framework for construction dispute resolution.

Despite these legal developments, challenges such as poorly drafted arbitration clauses, appointment deadlocks, conflicts of interest, inconsistent contractual provisions, and inadequate knowledge of arbitration procedures continue to affect the effectiveness of arbitration within the Nigerian construction industry. Addressing these challenges requires greater awareness among construction professionals, legal practitioners, and project owners regarding the legal and practical implications of arbitration agreements and tribunal composition.

The study concludes that carefully drafted arbitration clauses, transparent appointment procedures, adherence to internationally accepted ethical standards, and the appointment of technically competent arbitrators will significantly reduce procedural disputes, improve confidence in arbitration, and enhance the enforceability of arbitral awards. Consequently, arbitration should continue to be promoted as the preferred dispute resolution mechanism for construction contracts in Nigeria and other developing economies.

Based on the findings of this study, the following recommendations are proposed:

1. Construction contracts should contain comprehensive arbitration clauses that clearly specify the scope of disputes, seat of arbitration, governing law, applicable institutional rules, language of proceedings, and procedures for appointing arbitrators.
2. Quantity surveyors, project managers, engineers, architects, and legal practitioners should receive continuous professional training on modern arbitration practice, particularly the provisions of the Nigerian Arbitration and Mediation Act, 2023.
3. Parties should appoint arbitrators possessing both legal competence and technical expertise relevant to construction disputes to improve the quality and credibility of arbitral decisions.
4. Arbitration institutions should strengthen disclosure requirements and conflict-of-interest screening to preserve the independence and impartiality of arbitral tribunals.
5. Construction organizations should adopt internationally recognized model arbitration clauses developed by institutions such as the ICC and LCIA while adapting them to local contractual requirements.
6. Government agencies and professional bodies, including the Nigerian Institute of Quantity Surveyors (NIQS), the Nigerian Society of Engineers (NSE), and the Nigerian Bar Association (NBA), should promote greater awareness of arbitration as an efficient mechanism for resolving construction disputes.
7. Future researchers should undertake empirical studies investigating the effectiveness of arbitration in resolving construction disputes in Nigeria following the implementation of the Arbitration and Mediation Act, 2023.

6. ACKNOWLEDGMENTS

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7. COMPETING INTEREST

None to declare.

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