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An Examination of the Effectiveness of Banking Arbitration in Nigeria

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ABSTRACT
Banking is crucial sector in any economy and Nigeria is no exception. In Nigeria, the banking industry is regulated by the Central Bank of Nigeria (CBN), and disputes between banks and their customers are often settled through arbitration. This paper examines banking arbitration effectiveness in Nigeria. The paper provides an overview of the Nigerian banking industry and arbitration's role in resolving disputes. It then examines the effectiveness of banking arbitration in Nigeria by analyzing the procedures and processes involved in the arbitration process. It also analyzes the level of compliance by banks with arbitration decisions, and the perception of the public towards banking arbitration. The findings of the paper suggest that while banking arbitration in Nigeria has resolved disputes between banks and their customers, there are still some challenges to be addressed. Which includes the slow pace of arbitration proceedings, inadequate training and accreditation of arbitrators, and lack of transparency in the arbitration process. Overall, the paper concludes that banking arbitration in Nigeria is an effective means of resolving disputes between banks and their customers. However, there is room for improvement. Stakeholders in the banking industry need to work together to address the challenges and ensure the arbitration process is fair, transparent, and efficient.
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1.0 INTRODUCTION

Banking arbitration is an alternative dispute resolution (ADR) commonly used in the banking sector to resolve disputes between banks and their customers[1]. In Nigeria, banking arbitration effectiveness has been a topic of much discussion, with many stakeholders debating the benefits and drawbacks of this approach.[2]

This examination evaluates the effectiveness of banking arbitration in Nigeria. This examination will consider a range of factors, including the legal framework for banking arbitration.[3] It will also consider the processes and procedures involved in arbitration,[4] and the outcomes of arbitration cases. One of the primary goals of this study is to determine whether banking arbitration is an effective means of resolving disputes in Nigeria[5]. This examination will also consider the pros and cons of arbitration, such as its speed and efficiency.[6] It

[1] Akintunde, J. O. (2018). Alternative Dispute Resolution in the Nigerian Banking Industry: Banking Arbitration as a Viable Option. Journal of Law, Policy and Globalization, 77, 96-105.
[2] Ogbonda, M., & Eze, S. (2019). Assessing the Effectiveness of Arbitration as a Dispute Resolution Mechanism in the Nigerian Banking Industry. International Journal of Social Sciences and Humanities Reviews, 9(1), 74-83.
[3] Ibid
[4] Sani, U. B., & Badmus, I. O. (2017). The Role of Arbitration in the Resolution of Banking Disputes in Nigeria. Journal of Law, Policy and Globalization, 65, 1-10.
[5] Ogbonda, M., & Eze, S. (2019). Assessing the Effectiveness of Arbitration as a Dispute Resolution Mechanism in the Nigerian Banking Industry. International Journal of Social Sciences and Humanities Reviews, 9(1), 74-83.rrr
[6] Akintunde, J. O. (2018). Alternative Dispute Resolution in the Nigerian Banking Industry: Banking Arbitration as a Viable Option. Journal

will also consider its potential drawbacks, such as the lack of transparency and accountability in some cases.[1] Another key consideration in this examination is the impact of banking arbitration on the Nigerian banking sector as a whole,[2] This includes an analysis of the impact of arbitration on the relationships between banks and their customers. It also includes an analysis of the broader regulatory environment in which the banking sector operates. Ultimately, this examination provides a comprehensive assessment of the effectiveness of banking arbitration in Nigeria and to identify areas where improvements can be made to enhance its effectiveness and promote greater confidence in the use of arbitration as a means of resolving disputes in the Nigerian banking sector.

2.0 NATURE OF BANKER-CUSTOMER RELATIONSHIP

With a clearer understanding the nature of the banker-customer relationship, it becomes easier to discovering where disputes are likely to occur, and how they can be resolved.

Generally, the type of services rendered or products sold by a bank to its customers determines what relationship exists between the parties at any point in time.[3]

It is significant to note that the rights and duties of parties to a banking transaction are mostly rooted in Common Law rules, regulatory or statutory guidelines and judicial authorities.

The relationship dimensions are as follows:

a) Debtor-Creditor Relationship:

Where a banker accepts money deposits from the customer, he becomes a debtor to the customer. The debtor is liable to pay the debt on demand in writing to the customer. There must be sufficient credit balance in the customer's account for him to be entitled to payment. When a customer demands for payment and the bank fails to meet the demand, then a cause of action for the recovery of the amount will arise.[4]

The bank is obliged not to pay out moneys in the account of the customer except on the customer's order, or by his instructions.[5] Exception to this rule is apparent in cases where charges and commissions are deducted. The authorization to do this is implied either in usage; or as a term of the contract implied in normal practice[6]; or regulatory assent by the Central Bank of Nigeria (CBN).

The position is reversed where the customer receives credit facility from the bank and, thereby, becomes a debtor. Consequently, the bank can enforce the debt against the customer using securitized assets.

(b)Principal-Agent Relationship:

In the ordinary course of business, a customer may specifically instruct his his banker to perform certain actions. For instance, in discounting bills of exchange, a banker is regarded as an agent of the customer in whose name the bill of exchange is endorsed.

Bankers also pay premiums, bills, taxes, collect interests on investments, dividends on shares, and accept cheques on behalf its customers. Under the circumstances where the bank is held to be an agent of the customer, the bank has a duty not to act to the detriment of the principal.[7]

(c) Bailor-Bailee Relationship:

This specie of relationship arises where the customer leaves with the banker valuables for safe custody in the bank's vaults or lockers. The bank is said to perform the role of bailee. The possession of the items lies with the banks, whereas the ownership remains in the customer.[8]

(d)Donor-Attorney Relationship:

The customer may grant powers to his bank to transact certain business on his behalf. Thus, the bank will be authorized by a duly executed instrument in that regard.

From the foregoing, we have seen that the bank and its customer bear legal obligations under appropriate circumstances. However, the degree of relationship and volume of liabilities will vary remarkably. Therefore the possibility of litigious matters arising from banker-customer dealings in loan transactions, for example, may be slightly higher than when there is merely a banker-depositor relationship.

It is worth noting that the nature of the banker-customer relationship can vary depending on the type of banking services and the jurisdiction in which it operates.[9] For example, the relationship between a commercial bank and a corporate customer may involve more complex financial arrangements and additional legal

of Law, Policy and Globalization, 77, 96-105.

[1]Ibid

[2]Ibid

[3] K. G. Muhammad 'An Appraisal of the Relationship between Banker and Customer in Nigeria' European Journal of Business Management Vol.7 No 4, 2015 p.234

[4] Yesufu v Cooperative Bank Nig Ltd (1994) 7 NWLR (pt 359) 676

[5]F.B.N Ltd v African Petroleum Limited (1996) 6 Nigerian Banking Law Report (NBLR) (part 1) (CA)

[6]Ibid

[7]https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3832770

[8]Ibid

[9]https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3832770

considerations compared to a retail banking relationship.

Ultimately, a successful banker-customer relationship is built on trust, transparency, and mutual respect. Both parties have rights and responsibilities, and maintaining open lines of communication, adhering to legal and regulatory requirements, and acting in good faith are essential for a positive and long-lasting relationship.[1]

3.0 HINDRANCES TO THE ADOPTION OF ARBITRATION IN RESOLVING BANKING DISPUTES

It has been observed that, a high percentage of banker-customer disputes in Nigeria revolve around loan facility defaults by customers or inappropriate loan facility management by the banks. In most cases, the default dispute resolution mechanism, after negotiation, is litigation.[2]

For the banks, available options generally include debt recovery actions, winding up or receivership proceedings, while for the customers options include counterclaims in bank loan recovery actions or pre-emptive actions against the banks.

The parties hardly consider the option of arbitration as a possible mechanism for the resolution of their disputes.[3]

Here, we want to critically review those factors that have hindered parties from considering arbitration in the resolution of their banking disputes.

3.1 ABSENCE OF ARBITRATION CLAUSES IN AGREEMENTS

This is the principal reason banker-customer disputes are not arbitrated. Most loan facility agreements, which constitute the bulk of banker-customers disputes, omit arbitration clauses in such agreements. Having regards to the fact that loan facility agreements are almost invariably drawn up by the banks, the reason for the exclusion of arbitration clauses from such agreements is best known by the banks. In this respect, there is a distinct possibility that the banks do not believe arbitration is an effective mechanism for settling disputes that may arise pursuant to loan facility agreements. Another possible reason for this behaviour of banks is that litigation very often results desirable outcomes for the lender, which is usually the party with the dominant bargaining power in loan agreements.[4]

Notwithstanding this practice, Section 1(1) (c) of the Arbitration and Conciliation Act[5] provides, inter alia, that every arbitration agreement

> ***"shall be in writing contained in an exchange of points of claims and of defence in which the existence of an arbitration agreement is alleged by one party and denied by the other".***

This provision appears to state that when the existence of an arbitration agreement has been put in issue between the parties through the exchange of written correspondences, then there is an agreement to arbitrate such dispute.

The requirement for this subsection to apply is for a party to allege the existence of arbitration agreement, and for the other to deny such existence.

The practicality of this provision is yet unclear in view of the fact that the parties at the outset must have agreed to submit to arbitration in the event of dispute, and a party generally cannot be compelled to submit to arbitration.[6]

Nevertheless, unless parties agree to the contrary or the court orders otherwise, arbitration agreements are irrevocable.

Perhaps, the intention of the subsection is to the effect that an arbitration agreement need not be included in the agreement between the parties at the time of drawing up the contract, so, regardless of any provisions contained in existing agreements between the parties, they could thereafter enter into a written agreement to arbitrate their disputes.

3.2 CERTAINTY OF JUDICIAL PRECEDENT

Disputes in the world of finance have been severally settled through recourse to national courts of major financial centres. The preference for court based dispute resolution is chiefly dictated by the requirement for legal certainty in a fast evolving market which is provided by a body of binding precedents. With respect to highly regulated financial markets, public policy dictates a court's involvement in the settlement of disputes, while, lack of binding precedents in arbitration is a major concern for banks and institutional investors that could

1Ibid
2Ibid
3 Mofesomo Tayo-Oyetibo, 'Banker-Customer Disputes Resolution in Nigeria-Is Arbiration the way forward?' 2018 https://www.mondaq.com/nigeria/arbitration-dispute-resolution/757912/banker-customer-disputes-resolution-innigeria-is-arbitration-the-way-forward
4Supra
5Cap A19 LFN 2004. The Act is currently undergoing amendment in the National Assembly.
6 Section 1(1) (a) Arbitration and Conciliation Act 2004.

be faced with arbitrating the same issue multiple times against different counterparties without the point at issue ever being resolved.

3.3 COERCIVE REMEDIES OBTAINABLE FROM LITIGATION

Litigation does have benefits for the banks. For instance litigation offers the banks possibility of obtaining summary or default judgments from the courts.[1] Under such circumstances, banks are able to obtain judgment in a relatively speedy manner which is beneficial to the commercial nature of their operations.[2]

Banker-Customer disputes are often related to high value subject matter, hence banks tend to prefer litigation due to their ability to leverage the coercive powers of the court, especially where preservative orders are required.[3] The availability of interim relief is perceived as argument in favour of litigation and against arbitration.[4]

The point must, however, be made that interlocutory or interim reliefs often do not decide the substantive issues between the parties, but seeks to preserve the rest of a dispute which may be lost before the court may pronounce a judgment at the close of the case.[5]

Despite the foregoing, the present reality is that the likelihood of a speedy resolution of banker-customer disputes through litigation is rapidly declining as the courts' dockets are continuously inundated with case loads. It is not uncommon for banker-customer disputes to remain pending in the courts and remain unresolved for as much as ten years.[6]

3.4 SELECTIVENESS OF BANKER-CUSTOMER CASES REFERRABLE TO ARBITRATION

With retail customers, arbitration seems not to be a suitable choice for disputes resolution. The amount of such disputes will be disproportionate to the costs of the proceedings. Moreover, there could be difficulties with satisfying the form of requirements for an arbitration agreement. For example, including an arbitration clause in the general terms and conditions or pro forma contracts may raise issues of formal and substantive validity of the arbitration agreement.[7]

Nevertheless, the ratio of retail customers interface with their bankers is surprisingly high, and in the course of transactions, disputes may inevitably arise which will give right to a party resorting to legally enforceable remedies. The parties must one way or the other resolve their disputes for commercial efficiency.

The above concerns may not apply to contracts with institutional or high net worth individuals which provide for investment advisory services or asset/wealth management agreement; interbank agreement and contract with state-controlled parties. Accordingly, to submit disputes arising out of these contracts to arbitration is usually standard commercial practice.[8]

3.5 ABSENCE OF SPECIFIC ARBITRATION FRAMEWORK FOR THE BANKING INDUSTRY

The Arbitration and Conciliation Act 2004, is the Act governing commercial arbitration in Nigeria. The Act provides a unified legal framework for the fair and efficient settlement of commercial disputes by arbitration and conciliation. It applies solely to commercial disputes and under Section 57 (1) of the Act, "Commercial" means, inter alia.

> ***"relationships of a commercial nature including any… investment, financing, banking, insurance… agreement".***[9]

This automatically means that Banker-Customer disputes can be resolved under the Act. Where a dispute is of international dimension, or where an arbitral award obtained outside Nigeria, is sought to be enforced within the Country, the Act has made provisions for enforcement of such Award.

Section 51 states that an arbitral award shall, irrespective of the country in which it is made, be recognized as binding and subject to Section 32, shall upon application in writing to the court, be enforced by the court.[10]

Section 54 (1)(a) of the Act provides that where recognition and enforcement of any award arising out of

1 Orders 12, 13, 22 of the Lagos High Court (Civil Procedure) Rules 2019 and Orders 10, 11, 21, 13,35 of the High Court of the F.C.T (Civil Procedure) Rules 2018
2Mofesomo Tayo-Oyetibo, 'Banker-Customer Disputes Resolution in Nigeria-Is Arbitration the way forward?' 2018 https://www.mondaq.com/nigeria/arbitration-dispute-resolution/757912/banker-customer-disputes-resolution-innigeria-is-arbitration-the-way-forward
3Ibid
4LEXOLOGY: Arbitration Banking and Finance DisputesWhat are the benefits? https://www.lexology.com/library/detail.aspx?g=09cb1405-c618-422c-8a61-d25754ba69b0
5Uwajeh v Uwajeh (2009) All FWLR (pt. 458) 287; Anton Piller KG v Manufacturing Process Ltd (1976) 1 All ER 779
6Supra
7LEXOLOGY: Arbitration Banking and Finance DisputesWhat are the benefits? https://www.lexology.com/library/detail.aspx?g=09cb1405-c618-422c-8a61-d25754ba69b0
8Supra
9The Arbitration and Conciliation Act 2004 S. 57(1)
10The Arbitration and Conciliation Act, 2004, S. 51

international commercial arbitration are sought, the Convention on the Recognition and Enforcement of Foreign Awards shall apply to any award made in Nigeria or in any contracting state provided that such contracting state has reciprocal legislation agreement with Nigeria.[1]

However, within the context of our discussion, these provisions have their shortcomings. . The first notable challenge is that the Act does not address disputes that specifically affect the banking industry. It may have provided a general pronouncement for arbitrable matters, but the procedures that will effectively address banker-customer disputes are not covered under the Act. Banking transactions are of a unique nature and depend heavily on expediency in addressing frictions between the stakeholders.

The second shortcoming with respect to reciprocal arbitral awards is that such provisions become relevant only when an Award has been given by a Tribunal. This presupposes that a dispute must have arisen, gone through arbitration process, a decision been given by the Tribunal and what is left is enforcement of the Award. For all intents and purposes, the focus of this work is seeking an efficient arbitration mechanism that will resolve disputes when they do arise.

The existing framework in Nigeria that sought to introduce an Arbitration mechanism in resolving banking disputes was proposed by the Central bank of Nigeria (CBN) in 2013[2]. The Draft Framework focused on E-Payments dispute arbitration. It must be noted that the framework does not yet have the force of law or regulatory directive.

Meanwhile, Banks are adopting internal dispute resolution mechanisms to address customers' complaints in line with upgraded customer service functions. Access Bank Plc, as a reference point has established an Ombudsman for resolving service issues between the Bank and its customers.[3]

The functions of the Ombudsman have been reviewed to include immediate resolution of customer's complaints alongside the primary function which are Arbitration and other Alternative Dispute Resolution mechanisms such as Conciliation and Mediation.

The Bank hopes that all customers' issues can be resolved expeditiously within a day irrespective of where the complaint is issued from or the officer responsible for resolution.

4.0 AN OVERVIEW OF THE NIGERIAN BANKING INDUSTRY AND ARBITRATION'S ROLE IN RESOLVING DISPUTES

The Nigerian banking industry plays a crucial role in the country's economy, serving as a key driver of financial intermediation and economic development.[4] It consists of various types of banks, including commercial banks, merchant banks, and microfinance banks[5]. The industry is regulated and supervised by the Central Bank of Nigeria (CBN), which sets guidelines and policies to ensure stability and efficiency.[6]

The Nigerian banking industry has experienced significant growth and transformation over the years. It has witnessed increased competition, technological advancements, and regulatory reforms aimed at enhancing financial inclusion, customer protection, and risk management.[7] Nigerian banks offer a wide range of financial products and services, including deposit-taking, lending, payment systems, foreign exchange transactions, and investment services[8].

However, as with any complex industry, disputes can arise between banks and their customers, counterparties, or other stakeholders. In Nigeria, arbitration is one of the key methods used to resolve banking disputes. Arbitration is a form of alternative dispute resolution (ADR) where parties agree to submit their disputes to a neutral third party, the arbitrator, who issues a binding decision called an arbitral award[9].

4.1 ADVANTAGES OF ARBITRATION AS A MEANS OF RESOLVING BANKING DISPUTES

Arbitration provides several advantages in resolving banking disputes in Nigeria:

i. Confidentiality: Arbitration proceedings are generally confidential, ensuring that sensitive banking information remains protected[10].

ii. Expertise: Arbitrators can be selected based on their expertise and experience in banking and finance,

1Ibid. S. 54

2This was in a correspondence 'BPS/DIR/GEN/CIR/01/018' dated January 2013, addressed to all Deposit Money Banks, Mobile Money Operators, and Payments Service Providers.

3https://www.accessbankplc.com/pages/Media/access-news/Access-Bank-Upgrades-Ombudsman-to-boost-DisputeRe.aspx

4 World Bank (2014). Nigeria Economic Report No. 1: Building Institutions for Sound and Inclusive Growth.

5Central Bank of Nigeria. Banking Supervision Department.

6 Central Bank of Nigeria Act, 2007.

7 Ojeka, S. A. (2019). The Evolution and Future of the Nigerian Banking Industry. Journal of Applied Economics and Business Research, 9(4), 213-226.

8Central Bank of Nigeria. Banking Services.

9 Nigerian Arbitration and Conciliation Act, 2004.

10Lagos Court of Arbitration. Frequently Asked Questions.

ensuring that disputes are resolved by professionals familiar with the industry[1].
iii. Speed and efficiency: Arbitration can be faster than traditional litigation, allowing parties to resolve their disputes in a more timely manner[2]. The Nigerian Arbitration and Conciliation Act provides specific time limits for the completion of arbitration proceedings[3].
iv. Flexibility: Arbitration allows parties to tailor the dispute resolution process to their specific needs, including selecting the applicable law, determining the number of arbitrators, and choosing the location of the arbitration.[4]
v. Enforceability: Nigeria is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. This means that arbitral awards rendered in Nigeria are generally enforceable in other member countries, and vice versa[5].

To promote arbitration as a preferred method of dispute resolution, Nigeria has established various institutions, such as the Lagos Court of Arbitration (LCA) and the Nigerian Institute of Chartered Arbitrators (NICArb). These institutions provide arbitration rules, facilities, and training to support the effective resolution of banking and other commercial disputes[6].

The Nigerian banking industry is a vital sector of the country's economy. Arbitration plays a significant role in resolving disputes within this industry, offering confidentiality, expertise, speed, flexibility, and enforceability[7]. As Nigeria continues to develop its banking sector, arbitration is expected to remain an essential mechanism for resolving disputes and maintaining the stability and growth of the industry.

5.0 Evaluating The Effectiveness Of Banking Arbitration in Nigeria Viz- a -viz Analysis of The Procedures and Processes Involved in The Arbitration Process

i. Selection of Arbitrators:
Arbitration involves the appointment of an impartial third party or a panel of arbitrators to preside over the dispute. In Nigeria, the selection of arbitrators is typically conducted through an agreed-upon procedure between the parties or by referring to a designated arbitration institution. The chosen arbitrators should possess relevant expertise and experience in banking and finance matters[8]. The transparency and fairness in the selection process contribute to the effectiveness of the arbitration proceedings.
ii. Arbitration Agreement:
Prior to a dispute arising, banks and their customers enter into arbitration agreements, which outline the terms and conditions for resolving any disputes through arbitration. The agreement may specify the choice of arbitration rules, the language of the proceedings, the seat of arbitration, and the governing law. A well-drafted arbitration agreement helps streamline the arbitration process and reduces the likelihood of procedural challenges[9].
iii. Procedural Flexibility:
Arbitration in Nigeria offers procedural flexibility, allowing the parties to tailor the proceedings to their specific needs. This flexibility allows for a more efficient resolution of banking disputes, as the parties can agree on the applicable rules, procedural timelines, and the extent of documentary and oral evidence[10]. Such flexibility ensures that the arbitration process aligns with the complexities and peculiarities of banking disputes.
iv. Confidentiality:
Confidentiality is an essential aspect of banking arbitration in Nigeria. Confidentiality provisions protect sensitive information disclosed during the arbitration proceedings from being made public[11]. This helps to maintain the reputation and integrity of the parties involved, as well as encourages open and frank discussions during the arbitration process.
v. Enforcement of Awards:
The enforceability of arbitration awards is crucial for the effectiveness of the arbitration process. In Nigeria, arbitration awards are enforceable under the Arbitration and Conciliation Act, which provides a mechanism for

1Nigerian Institute of Chartered Arbitrators
[2] Nigerian Arbitration and Conciliation Act, 2004.
[3]Ibid
[4]Ibid
[5]United Nations Commission on International Trade Law. New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.
[6]Lagos Court of Arbitration. About Us.
[7]Ojeka, S. A. (2019). The Evolution and Future of the Nigerian Banking Industry. Journal of Applied Economics and Business Research, 9(4), 213-226.
[8] Arbitration and Conciliation Act, Cap A18, Laws of the Federation of Nigeria, 2004.
[9] I.O. Owasanoye, "International Commercial Arbitration in Nigeria: An Overview," Journal of African Law, vol. 48, no. 2, pp. 163-190, 2004.
[10] Nigerian Institute of Chartered Arbitrators (NICArb), "Nigeria's Leading Dispute Resolution Institution," [Online]. Available: https://nicarb.org/.
[11] A. Adebanwi and F. A. Nwabueze, "Banking Arbitration in Nigeria: A Review of the Legal Framework," Journal of Law, Policy and Globalization, vol. 27, pp. 7-15, 2014

the recognition and enforcement of domestic and foreign arbitration awards. The Nigerian courts generally adopt a pro-enforcement approach, which enhances the effectiveness of arbitration as a dispute resolution mechanism[1]

vi. Timely Resolution:

One of the key advantages of banking arbitration in Nigeria is the potential for timely resolution of disputes. Arbitration proceedings can be conducted more expeditiously compared to traditional litigation processes, which are often burdened with court backlogs and delays. The parties have greater control over the timing of the proceedings, allowing for a quicker resolution and minimizing the impact on business operations. [2]

vii. Expertise in Banking Matters:

Banking arbitration in Nigeria benefits from the availability of arbitrators with specialized knowledge and expertise in banking and finance matters. This expertise enables the arbitrators to understand the complexities of banking disputes, including issues related to financial regulations, transactions, and industry practices. Having arbitrators with relevant expertise enhances the effectiveness of the arbitration process and ensures a fair and informed decision-making process[3].

viii. Cost-effectiveness:

Compared to litigation, banking arbitration in Nigeria can be a more cost-effective method of dispute resolution. The parties have more control over the costs associated with the arbitration proceedings, such as the selection of arbitrators, venue, and duration of the proceedings. Additionally, the streamlined procedures and expedited timelines contribute to cost savings for the parties involved[4].

ix. Finality and Binding Nature of Awards:

One of the fundamental principles of arbitration is the finality and binding nature of arbitral awards. In Nigeria, once an arbitration award is rendered, it is generally considered final and binding on the parties, subject to limited grounds for setting aside or challenging the award under the Arbitration and Conciliation Act[5]. This finality provides certainty and closure to the dispute, allowing the parties to move forward without the need for further litigation.

x. Limited Judicial Intervention:

The arbitration process in Nigeria is designed to minimize judicial intervention and allow for the resolution of disputes through private and consensual means. The courts generally adopt a hands-off approach and respect the autonomy of the arbitration process. This limited judicial intervention contributes to the effectiveness of banking arbitration by ensuring that the parties' chosen dispute resolution mechanism is given due deference[6].

xi. Recognition of International Standards:

Banking arbitration in Nigeria aligns with international standards and best practices in arbitration. Nigeria is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which facilitates the recognition and enforcement of foreign arbitration awards in Nigeria. This recognition of international standards enhances the effectiveness of banking arbitration in Nigeria by promoting cross-border dispute resolution and facilitating the enforcement of awards across jurisdictions[7].

It is important to note that the effectiveness of banking arbitration in Nigeria may also depend on various factors such as the willingness of parties to engage in the process, the quality and expertise of arbitrators, and the level of compliance with arbitration agreements and awards by the parties involved.

6.0 CHALLENGES FOUND IN THE BANKING ARBITRATION

Challenges to be addressed in banking arbitration can arise from various aspects of the banking industry and the arbitration process itself. Some common challenges include jurisdictional issues, confidentiality concerns, procedural fairness, and the expertise of arbitrators.

i. Jurisdictional Challenges:

Banking arbitration often involves parties from different jurisdictions, which can raise challenges related to the selection of the appropriate arbitral forum[8]. Disputes may arise regarding the validity and enforceability of arbitration agreements, determining the applicable law, or resolving conflicts between national laws and

[1] O. Adesina, "Arbitration in Nigeria: An Overview," Journal of International Arbitration, vol. 22, no. 6, pp. 747-765, 2005.
[2] O. Okumagba, "The Role of Arbitration in Resolving Banking and Financial Disputes in Nigeria," Nigerian Journal of Commercial and Taxation Law, vol. 1, no. 1, pp. 90-104, 2013.
[3] P. Onyekwena and O. Amobi, "Banking Dispute Resolution in Nigeria: A Case for Arbitration," Journal of Business and Management, vol. 19, no. 5, pp. 80-87, 2017.
[4] A. Osuagwu, "The Efficacy of Arbitration as a Mechanism for Resolving Disputes in the Nigerian Banking Sector," International Journal of Economics, Commerce and Management, vol. 6, no. 8, pp. 221-230, 2018.
[5] Arbitration and Conciliation Act, Cap A18, Laws of the Federation of Nigeria, 2004.
[6] O. Adesina, "Arbitration in Nigeria: An Overview," Journal of International Arbitration, vol. 22, no. 6, pp. 747-765, 2005.
[7] New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, United Nations, 1958.
[8] Stipanowich, T. (2016). International Commercial Arbitration and the Conduct of the Arbitration: 2015 Survey of Leading Jurisdictions. American Review of International Arbitration, 27(3), 219-254.

international conventions[1].

ii. Confidentiality Concerns:

Confidentiality is a significant aspect of banking arbitration, as parties involved often prefer to keep the details of their disputes confidential. However, ensuring confidentiality in an increasingly interconnected world can be challenging[2]. Issues may arise due to the involvement of multiple stakeholders, such as regulatory bodies or shareholders, who may have access to the arbitration proceedings or may be entitled to receive certain information[3].

iii. Procedural Fairness:

Maintaining procedural fairness is crucial in banking arbitration to ensure that both parties have a fair and equal opportunity to present their case[4]. Challenges may arise when one party has significantly greater financial resources, access to legal expertise, or a strategic advantage. It is essential for arbitral tribunals to carefully manage the proceedings to ensure fairness and equal treatment of the parties[5].

iv. Expertise of Arbitrators:

The banking industry is complex and highly specialized, requiring arbitrators with relevant expertise to understand the intricacies of financial transactions, banking regulations, and industry practices. Selecting arbitrators with the necessary qualifications and experience can be challenging, especially when dealing with emerging areas such as fintech or cryptocurrency disputes^7. The expertise of arbitrators directly impacts the quality of their decision-making and the credibility of the arbitration process^8.

v. Enforcement of Awards:

After a banking arbitration concludes, enforcing the arbitral award can present challenges, particularly when parties are based in different jurisdictions^9. Difficulties may arise due to differences in national laws, restrictions on the recognition and enforcement of foreign awards, or conflicts with public policy considerations. It is essential to consider the enforceability of awards when choosing the arbitral forum and crafting the arbitration agreement^10.

These challenges in banking arbitration highlight the need for a well-defined and carefully managed arbitration process that addresses jurisdictional issues, safeguards confidentiality, ensures procedural fairness, selects competent arbitrators, and considers the enforceability of awards.

7.0 CONCLUSION

In conclusion, while banking arbitration has the potential to be an effective means of resolving disputes in Nigeria, there are notable challenges that hinder its effectiveness. These challenges include the need for a stronger legal framework, enhanced transparency and accountability, capacity building for arbitrators, and increased awareness and accessibility. Addressing these issues will require collaborative efforts from various stakeholders, including the Nigerian government, arbitral institutions, banks, and legal professionals. By implementing the recommended measures, the effectiveness of banking arbitration can be significantly improved, leading to a more efficient and reliable mechanism for resolving banking disputes in Nigeria. This, in turn, will contribute to a more robust and trustworthy banking sector, fostering confidence among customers and promoting economic growth in the country.

8.0 RECOMMENDATIONS

Based on the examination of the effectiveness of banking arbitration in Nigeria, it is evident that while the concept of arbitration holds promise as an alternative dispute resolution mechanism, there are several areas that require improvement to enhance its effectiveness. In light of this, the following recommendations are proposed:

i. Strengthening the legal framework: The Nigerian government should review and update the existing laws and regulations governing banking arbitration. This should include clarifying the scope of arbitrable disputes, providing clear guidelines for arbitrators' delection, and establishing a robust enforcement mechanism for arbitral awards.

ii. Enhanced transparency and accountability: There is a need for greater transparency and accountability in the arbitration process. Arbitral institutions should develop and enforce ethical guidelines for arbitrators, ensuring impartiality and integrity. Additionally, arbitration parties should be provided with clear and comprehensive

[1]Mistelis, L. A., & Brekoulakis, S. L. (Eds.). (2015). The Evolution and Future of International Arbitration. Wolters Kluwer.
[2]Carbonneau, T. E. (2014). Confidentiality in Arbitration. In Encyclopedia of Law and Economics (pp. 1-10). Springer.
[3]Borzu, R. (2016). Confidentiality in International Arbitration: Is There a Broader Duty? Transnational Dispute Management, 13(2), 1-15.
[4]Van den Berg, A. J. (2011). Procedural Fairness in International Commercial Arbitration. International Council for Commercial Arbitration Congress Series, 337, 157-178.
[5]Reimer, D., & Baker, M. (2017). Reflections on Procedural Fairness in International Arbitration. International Business Law Journal, 2017(6), 623-

information regarding the process, costs, and potential outcomes.

iii. Capacity building and training: To improve the arbitrators' quality and expertise, it is crucial to invest in capacity building and training programs. These programs should focus on developing specialized knowledge in banking and financial matters, as well as enhancing skills in dispute resolution techniques. This will help ensure that arbitrators possess the necessary expertise to handle complex banking disputes effectively.

iv. Promote awareness and accessibility: Efforts should be made to increase awareness and accessibility of banking arbitration among stakeholders, including banks, customers, and legal professionals. This can be achieved through targeted education and outreach programs, seminars, and publications. Emphasizing the advantages of arbitration, such as its cost-effectiveness and quicker resolution timelines, can encourage more parties to consider this method of dispute resolution.