

AELEX ARBITRATION MONTH

MARCH 2021

Theme

Construction and Engineering Arbitration:
Efficiently Resolving
International Construction Disputes

Speakers



OLUWASEUN PHILIP-IDIOK
SENIOR ASSOCIATE, AELEX



UGOCHI NNADIKA
HEAD OF LEGAL SERVICES,
JULIUS BERGER
NIGERIA PLC



SARAH HANNAFORD, QC
BARRISTER,
KEATING CHAMBERS



STELLA HU
SENIOR CONSULTANT,
HERBERT SMITH FREEHILLS
LLP



DR. KATHERINE SIMPSON, FCIARB,
SIMPSON DISPUTE RESOLUTION
INC.



11th March 2021 | 11 am (WAT)

TO REGISTER: www.aelex.com/annual-arbitration-month-2021/

aelex.com

Powered By **AELEX**

How can we efficiently resolve international construction disputes?



The School of International Arbitration at Queen Mary University of London in 2019 published the report of a survey on international construction arbitration. Some of the findings of the survey are as follows:

- 73% of respondents regard technical complexity as a defining feature of international construction arbitration. They cited the large amounts of evidence required, multiple claims or parties, as some of the difficulties in construction arbitration.
- A vast majority of respondents also highlighted the lack of case and counsel management as another cause of delay in construction disputes.
- The majority of respondents (67%) showed support for mandatory compliance with pre-arbitration proceedings as a pre-condition to arbitration. They also acknowledged that technical automation has a role to play in increasing the efficient management of large volumes of documents and/or evidence.

<http://www.arbitration.qmul.ac.uk/research/2019/#d.en.690506>

Measures to consider

- Automation of proceedings- virtual hearings, electronic exchange and storage of pleadings, simultaneous submissions, etc.
- Interim reliefs
- Counsel and case management- factual and expert witnesses, time-capped oral submissions, procedural orders, page-capped pleadings, etc
- Pre-arbitration condition precedents
- Pre-arbitration ADR- mediation, conciliation
- Consolidation of multiple proceedings/joinder of third parties

Pre-Arbitration ADR

What are the advantages?

- Assists the tribunal and parties to narrow down the outstanding issues for determination, by the tribunal.
- It also frees up time the tribunal would have spent poring through pleadings
- May reduce counsel and arbitrator's fees
- Saves time

Under Article 26.9 of the LCIA rules, where parties reach a partial settlement of the dispute before the tribunal, they may ask the tribunal to enter the terms of the settlement as consent award while the tribunal will proceed to hear the remaining issues for determination.

Interim Reliefs-

- Nigeria, Section 13 of the Arbitration and Conciliation Act and Article 26 of the second schedule of the Act
- Article 44 of the Arbitration Act 1996 of the United Kingdom
- Article 25 of the LCIA rules which came into effect on 1 October 2020, has similar provisions.
- Article 26 of the International Arbitration Rules of the Swiss Chamber of Commerce for Arbitration and Mediation (Swiss Rules)
- Article 28 of the Lagos Court of Arbitration (Arbitration Rules)

Consolidation of multiple arbitration proceedings/Joinder of Non-Parties

Construction projects often involve interconnected contracts between numerous parties ,including employees, contractors, subcontractors, and engineers. As a result, when disputes arise, they often give rise to costly parallel or successive proceedings under different contracts and between different parties addressing some of the same factual and legal issues.

Concurrent multiple arbitration proceedings can be consolidated to prevent different tribunals will delivering conflicting awards in respect of the same subject matter.

- Joinder- Article 7, ICC Arbitration Rules 2021
- Joinder- 22(1)(x)- LCIA Arbitration Rules 2020
- Consolidation - Article 10 ICC Arbitration Rules
- Consolidation- Article 22A LCIA Arbitration Rules
- Consolidation- Article 4(1) Swiss Arbitration Rules.

QUESTIONS?

THANK YOU FOR LISTENING

For enquiries, please send an email to : tag@aelex.com