

NIGERIAN BAR ASSOCIATION - YOUNG LAWYERS FORUM

2020 ARBITRATION CHALLENGE

THE RULES

INTRODUCTION

I. The NBA YLF Arbitration Challenge

1. The Nigerian Bar Association Young Lawyers Forum (**NBA - YLF**) is pleased to introduce the maiden edition of the Nigerian Bar Association Young Lawyers Forum Arbitration Challenge (the **Arbitration Challenge**). The Arbitration Challenge is a competition of teams comprising of young lawyers drawn from the branches of the Nigerian Bar Association (**NBA**) across the Federal Republic of Nigeria. The participating teams and their memoranda will be judged by lawyers and arbitrators from around the world.

Objectives of the Arbitration Challenge.

2. The efficiency of the dispute resolution mechanism of any Nation breeds foreign investments and is intrinsic to the growth of every economy. There is no doubt that Arbitration has become the most desirable mode of settling disputes in commercial circles.
3. The Arbitration Challenge is therefore intended to stimulate the practice of international commercial dispute resolution mechanisms especially the roles of legal practitioners in foreign investments in Nigeria, and to deepen the interest and skill set of young lawyers in arbitration as a mechanism for investment and commercial dispute resolution. This exercise shall require young lawyers to learn, and apply key principles in international commercial arbitration, interpret the various texts of international commercial law found in various foreign investment agreements, and consequently, hone written and oral advocacy skills. The diversity of the participants, who are legal practitioners from the various geo-political zones in the country, is also geared towards the promotion of social relationships amongst the legal profession in the country beyond varied cultural and ethnic lines and to provide a platform for the exposure of young legal practitioners to the field of International Arbitration.
4. The Challenge is designed to be an edifying program to encourage young lawyers in Nigeria to pursue a career in international commercial arbitration. The rules and procedures of the Arbitration Challenge should be interpreted in light of this objective.

II. Organization of the Arbitration Challenge

Organizer, Co-sponsors, Supporters.

5. The Arbitration Challenge is organized by the “National Executive Committee of the Young Lawyers Forum” of the Nigerian Bar Association (the **Committee**). The Association has delegated the conduct of the Arbitration Challenge to a Steering Committee. The Membership of the Steering Committee is specified below:
 - a) Adetola Adebesein
 - b) Temiloluwa Dosumu
 - c) Abisola Akinyemi
 - d) Lolade Tijani

- e) Jonathan Ezeumeh
 - f) Pentho Elizabeth Whesu
 - g) Tobi Adebawale (Ex-Officio Member)
6. The Arbitration Challenge is co-sponsored by Lagos Chamber of Commerce International Arbitration Centre (LACIAC), London Court of International Arbitration (LCIA) and Hogan Lovells LLP.
 7. The Arbitration Challenge consists of the preparation of a memorandum for the claimant, a memorandum for respondent, and oral hearings. Teams are expected to participate in all parts of the Challenge.

Venue

8. The oral hearings will be held at the LACIAC Arbitration Centre, at 1a Remi Olowude Street, 2nd Roundabout, Lagos, Expressway, Lekki Phase I, Lekki, Lagos Nigeria. The regional rounds will take place virtually on an Online Dispute Resolution (ODR) platform on the 3rd and 4th of March 2021. The final oral rounds will take place in April 2021.

Language

9. The official language of the Arbitration Challenge shall be English Language.
10. These Rules are the rules for the 1st NBA-YLF Arbitration Challenge. These rules of the Arbitral Challenge will be reviewed for every edition of the Challenge and is subject to change from time to time.

Eligibility Criteria

11. Each branch of the NBA interested in the Arbitration Challenge shall be entitled to register a single team consisting of no more than 4 individuals no later than on 24 August 2020 on the portal provided for registrations.
12. Each individual member of any team shall neither be; (x) above seven (7) years at the bar; nor (y) above 35 years of age.

III. The Dispute

Subject Matter

13. The Dispute in the maiden edition of the Arbitration Challenge involves a controversy arising out of an international sale of goods subject to the United Nations Convention on Contracts for the International Sale of Goods (CISG) and issues caused by a force majeure event, an international pandemic, specifically COVID -19.

The Arbitration

14. The Dispute is before an arbitral tribunal pursuant to the LACIAC Arbitration Rules. The parties have agreed that the arbitration will be held in Lagos, Nigeria. The Law governing the arbitration is the Arbitration and Conciliation Act of Nigeria, and the substantive law governing the contract is English law.
15. By the time the Arbitration Challenge begins, the claimant has filed its request for arbitration, the respondent has filed its statement of defense as well as an additional request and the arbitral tribunal has been appointed. The Problem will consist of the statements of claim and defense and the additional request with their exhibits, any procedural orders of the arbitral tribunal issued prior to the date on which the Problem is distributed, and the clarifications described below. This shall involve written memoranda and oral argument in support of the positions of the claimant and respondent.

The Facts

16. The facts in the dispute that is the subject matter of the Challenge are given in the Problem. Facts alleged in the statement of claim and statement of defense including the exhibits to those statements, as well as in the clarifications, are taken to be correct unless there is a contradiction between them. No additional facts may be introduced into the Dispute unless they are a logical and necessary extension of the given facts or are publicly available facts.
17. Requests for clarification of the Problem must be submitted by the team's email account prior to midnight on 22nd December 2020. Requests for clarification should be limited to matters that would appear to have legal significance in the context of the Dispute. A request for clarification must include a short explanation of the expected significance of the clarification. Any request that does not contain such an explanation may be ignored.
18. Only the Steering Committee would be allowed to address any clarifications, and as such, any participating team should only submit clarifications to the Steering Committee.
19. Clarifications issued by the Steering Committee in the form of a Procedural Order from the Arbitral Tribunal will be distributed to all registered teams within a week to ten days and will be posted on the social media handles. Teams are responsible for making sure that they have received the clarifications even if they were not registered yet. Clarifications issued in the name of the Arbitral Tribunal become part of the Dispute.

IV. Teams

Composition

20. Each participating team would represent a branch of the NBA shall comprise of not more than 5 (five) young lawyers. Each participating NBA Branch may only enter one team. The teams will choose representatives for the oral rounds.

List of team members.

21. The list of team members must be finalised at the time of registration. The names are to be submitted as directed in the team accounts. Members of the team may be dropped but not added without special permission. **Any changes in the composition of the team must be specifically communicated to the Steering Committee latest by 22nd December 2020.**

Certificates of participation

22. Certificates for participating team members will be prepared from the team lists submitted. The certificates of participation will show the names of the team members exactly as they have been submitted. It is therefore incumbent on teams to ensure that names are spelt and presented correctly. In case of necessary amendments, only a PDF version of the certificate will be issued.

Participation

23. All members of the team may participate in the preparation of the memoranda for the claimant and respondent.
24. In each of the oral hearings, two members of the team will present the argument for each team. Other members of the team may not aid them during the argument in any way. Different members of the team may participate in the different hearings. Therefore, between two and five members may participate in the virtual hearing and the final oral rounds. However, to be eligible for the best individual oralist, a participant must have argued at least once for the claimant and once for the respondent. The average score per argument will be calculated and the award will be determined on that basis.

WRITTEN SUBMISSIONS

V. Memoranda

25. Each team must submit a memorandum in support of both the **claimant and respondent's** position to the Steering Committee no later than midnight on 25th January 2021. The memorandum is submitted through the website for the Challenge. Please be aware that submissions made after the deadline are not eligible for inclusion in the memoranda competition. Each claimant memorandum will be made available to one of the other teams through the website as soon as possible after the submission date.
26. In exceptional cases, it may be necessary for the memoranda submission dropbox to be reopened. This should not be understood as an extension to the submission deadline. Memoranda are timestamped upon submission, and those submissions received after the deadline will not be eligible for participation in the claimant memoranda competition.
27. In exceptional cases, it may be necessary for the Memoranda Submission dropbox to be reopened. This should not be understood as an extension to the submission deadline.

VI. Format of Memoranda

28. The formatting provisions listed in the paragraphs below are required to be followed strictly. No memorandum that violates these provisions will be considered for an award or honourable mention.
29. Paragraphs must be numbered and references to statements in the Dispute Problem must be to the paragraph number.
30. The memoranda are intended to be of practical use to the arbitrators in deciding the dispute. They are not intended to be scholarly dissertations on the relevant law. Therefore, citations in the memorandum should be limited to those that advance the argument being made.
31. Citations must be in the text of the memorandum and not in footnotes or endnotes. citations in the text should be in a shortened form. The full citation should be given in a List of Authorities.
32. The List of Authorities should be in a form that is intelligible to all who will read the memorandum. That includes the members of the other teams, the arbitrators in the oral hearings, and the members of the jury who will judge the written phase of the Arbitration Challenge.
33. Care should be taken in the use of legal doctrines and terminology (including Latin maxims) common in some legal systems that are not found in the CISG, Arbitration and Conciliation Act, English Law, LACIAC Rules or any other legal rules and that may not be known to teams or arbitrators. Similarly, care should be taken to write in a formal English style that would be appropriate for submission to a court or arbitral tribunal. In particular, slang or contractions (aren't, didn't) should not be used.
34. Memoranda may be no longer than thirty-five (35) 8½ x 11 inch or A4 typed pages, including any statement of facts, argument or discussion, and any conclusion. Cover pages, tables of contents, indices, lists of authorities, or other material that does not consist of facts, argument, discussion, or conclusions may be in addition.
35. No type style smaller than 12 point may be used, including in quotations or other nonargument parts of the memorandum. The memorandum should be typed at 1½ line spacing. All margins must be at least one inch or 2.5 cm.
36. The special code assigned to every team and whether the memorandum is for the claimant or the respondent must appear prominently on the outside cover page so that it can easily be read without opening the memorandum. **The name of the branch of the name shall NOT appear.**

VII. Submission of Memoranda

37. The memorandum must be submitted in searchable PDF as a single computer file so that the memorandum can be printed complete with cover page. Care should be taken that the

PDF file does not exceed one megabyte, as these may not be accepted by the upload facility in the team account. This is not an excuse for late submission.

38. In addition, at the same time, the memorandum for the claimant is sent, the names of the members of the team with e-mail addresses must be finalised in the Team account.

39. Place for Submission of Memoranda. The memoranda are to be submitted to the following email addresses:

nbaylf@nigerianbar.org.ng

tobiadebowale@nigerianbar.ng

aadebesin@olaniwunajayi.net

mr.jonathanezeumeh@gmail.com

40. The dates on which memoranda are due are as follows:

a. Memorandum for claimant: 25th January 2021

b. Memorandum for respondent: 25th January 2021

41. Successful submission of the memoranda will be acknowledged by the Steering Committee.

Memorandum Revision

42. The uploaded memorandum can be resubmitted as many times as a Team likes before the submission deadline. However, the version submitted at the time of the submission deadline will be the version officially submitted. The officially submitted version may not be revised, including for missing pages, typographical or grammatical errors, or problems caused by faulty computer software. Sufficient time should be left before the submission deadline to verify the text to be submitted.

43. By submitting the Memoranda, Team members grant the NBA-YLF a non-exclusive licence of the copyright in the Memoranda. The authors acknowledge and consent to the NBA-YLF using the memoranda for, amongst other purposes, research issues relating to the substance and activities of the Arbitration Challenge. Where this is done, the NBA-YLF confirms the memoranda will be used in an anonymised fashion unless prior approval is obtained.

VIII. Scoring of Memoranda

44. A panel will score the memoranda based on the quality of the analysis, persuasiveness of argument, thoroughness of research, clarity of the writing, and adherence to the elements of style set out above. The jury will consider whether arguments are based on facts not found in the Problem or clarifications that are not logical and necessary extensions of the

given facts. When judging the memorandum for respondent, account will be taken whether it is responsive to the arguments raised by the claimant.

45. The memoranda for the claimant and respondent will each be judged in two rounds. In the first round, the members of the panel will each receive four memoranda. They will be asked to rank them in order of merit. In the second round, the memoranda for the claimant and respondent will be re-judged by separate individuals on the panel. The best 2 teams from each geo-political zone shall proceed to the regional virtual rounds.

Plagiarism

46. Any memorandum that includes text from any source, whether the source was in hard copy or on the web, must set out that text in quotation marks and give the citation to the source. Failure to give a proper citation constitutes plagiarism. Plagiarism is a serious matter. Any memorandum that violates this rule will automatically not be considered for any award.

ORAL HEARINGS

IX. Virtual Hearing

47. The first oral rounds of the competition will be held virtually and 6 (six) of the participating teams chosen from the 3 (three) NBA geo-political zones in the country will have a chance to submit its argument on behalf of the claimant and respondent to a panel of arbitrators using the ODR platform.
48. Each participating team is to be dressed appropriately for the virtual hearing rounds and to ensure that it uses a high-speed internet service provider to facilitate the process.
49. Each team will argue two times in the Virtual rounds, once as claimant and once as respondent.
50. The rounds will be scheduled so that, in principle, each team will argue once per day for the two-day hearing. If it is not possible to schedule in this manner, a team may be scheduled to argue twice on the same day.
51. The best 4 (four) winning teams from the Virtual regional rounds will proceed to the oral final rounds.

X. Physical Oral Rounds

Venue

The oral hearings will be held primarily at LACIAC Arbitration Centre, at 1a Remi Olowude Street, 2nd Roundabout, Lagos, Expressway, Lekki Phase I, Lekki, Lagos Nigeria.

Duration of Oral Presentation

52. The oral presentation of each team is, in principle, thirty (30) minutes. The team should allocate equitably the time available to the two individual advocates. However, the arbitral tribunal may exceed the time limits stated so long as neither team is allowed more than forty- five (45) minutes to present its argument, including the time necessary to answer the questions of the tribunal. It will be the responsibility of the tribunal to ensure that the teams are treated fairly.

Arguments

53. Teams are not restricted to the arguments in their written memoranda. Claimants and respondents in their first hearing should expect to rely on the arguments given in their written memoranda or to be prepared to justify why that position has been abandoned. In subsequent hearings, arbitrators may be less demanding on this issue as it is expected that teams will improve their arguments during the Arbitration Challenge.

Questions by Arbitrators

54. The arbitrators are requested to act during the oral hearings the way they would in a real arbitration taking into account that this is an edifying exercise. There are significant differences in style dependent both on individual personalities and on perceptions of the role of an arbitrator (or judge) in oral argument. Some arbitrators, or arbitral tribunals, may interrupt a presentation with persistent or even aggressive questioning. Other arbitrators, or arbitral tribunals, may listen to an entire argument without asking any questions. Therefore, teams should be prepared for both styles of oral presentation.

Order of presentation

55. Some panels of arbitrators will ask one team to present its argument on all the issues before the other team is permitted to present its argument. Other panels of arbitrators will ask both teams to argue one issue first before they both argue in respect of a second issue. Normally the party who has raised the issue will argue first. Therefore, normally the claimant would argue first if it is to present its arguments on all the issues before the respondent is permitted to argue. However, if the respondent has raised an objection to the jurisdiction of the Arbitral Tribunal or other such defense, the panel would normally ask it to present its arguments on that issue before the claimant responds to it.
56. The arbitrators will decide whether rebuttal arguments will be permitted. Whether or not rebuttal will be allowed can be expected to change from one argument to the next.

Exhibits

57. No exhibits may be used during the oral arguments that do not come directly from the Problem. Exhibits that are designed to clarify time sequences or other such matters may be used, but only if the arbitrators and the opposing team agree. Where a team believes the opposing team is using an exhibit not complying with the previous sentence, it must raise an objection with the tribunal. The tribunal is empowered to determine whether the exhibit

complies with the requirements of this paragraph, Objections must be raised during the course of the actual hearing, thereafter a team cannot raise any such objections.

Scoring

58. Each arbitrator will score each of the orators on a scale of 50 to 100. The scores of the two orators will be added to constitute the team score for that argument. Therefore, each team could score a maximum of 200 points per arbitrator per argument.
59. The individual score given to an orator by an arbitrator is entirely within the discretion of that arbitrator. There is no requirement that the arbitral panel agree scores. However, the arbitral panels may, and are strongly encouraged to, discuss scoring at the end of a hearing and before submitting the scores to the Steering Committee.
60. Criteria to be regarded in the evaluation of the oralists are:
 - a. **Organization and Preparation:** Does counsel introduce himself or herself and co-counsel, state whom he or she is representing, introduce the issues and relevant facts clearly, have a strong opening, present the arguments in an effective sequence, and present a persuasive and generalized conclusion? Is counsel clearly prepared and familiar with the authorities on which his or her arguments rely? If rebuttal is used, is it used effectively?
 - b. **Knowledge of the facts and the law:** Does counsel know the facts and the relevant law thoroughly? Is counsel able to relate the facts to the law to make a strong case for his or her client? Does counsel present arguments which are legally tenable?
 - c. **Presentation:** Is counsel's presentation appropriately paced, free of mannerisms, and loud enough? Does counsel use inflection to avoid monotone delivery, make eye contact with the arbitrators, and balance due deference with a forceful and professional argument? Is counsel poised and tactful under pressure? Most importantly, is counsel's presentation convincing and persuasive, regardless of the merits of the case?
 - d. **Handling Questions:** Does counsel answer questions directly and use the opportunity to turn the question to his or her client's advantage?
61. *First Elimination Round.* After the regional virtual rounds, the scores of each team for its oral presentation in the four arguments will be totalled. The four teams that have obtained the highest composite scores will meet in the physical oral rounds.
62. *Semi-Final Round.* The four winners of the Virtual Rounds will meet in the Semi-Final Round at the Venue for the Physical Oral Rounds.
63. *Final Round.* The two winners of the Semi-final Round will meet in the Final Round.

64. Determination as to which team is the claimant and which is respondent. If the two teams in any of the elimination rounds, including the final round, argued against one another in the general rounds, they will argue for the opposite party in the elimination round. If they did not argue against one another in the general rounds, in the first elimination round the determination as to which team will be claimant and which will be respondent will be determined by lot. In the following rounds, when one of the two teams in the preceding round was claimant and the other was respondent, they will argue for the opposite party for which they argued in that preceding round. If both teams argued for the claimant or both argued for the respondent in the preceding round, the decision as to which team will be claimant and which will be respondent will be determined by lot.
65. Winning Team. The winning team of the oral phase of the Challenge is the team that wins the final round and is the recipient of the Arbitration Challenge Award.

XI. THE AWARD

66. The awards given in the Challenge are:

- ✓ Award for Best Written Memorandum for Claimant.
- ✓ Award for Best Written Memorandum for Respondent.
- ✓ Award for Best Individual Oralist.

This award for the general rounds will be won by the individual advocate with the highest average score during these rounds. To be eligible for this award a participant must have argued at least once for the claimant and once for the respondent.

- ✓ Award for Best Team Orals.

This award will be made to the winning team in the final round of the oral hearings.

67. Certificates will be prepared for all members of teams that win an award or honorable mention as well as for those who receive an award or honorable mention for best individual oralist. The certificates of participation will show the names of the team members exactly as they have been submitted. It is therefore incumbent on teams to ensure that names are spelt and presented correctly.

XII. CONTACT DETAILS

68. All communications regarding the Challenge should be sent by email to the following email addresses:

nbaylf@nigerianbar.org.ng
tobiadebowale@nigerianbar.ng
aadebesin@olaniwunajayi.net
mr.jonathanezeumeh@gmail.com