

**GAR KNOW HOW CHALLENGING AND ENFORCING ARBITRATION AWARDS**

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# Nigeria

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## Applicable requirements as to the form of arbitral awards

### 1 Must an award take any particular form?

Pursuant to the Arbitration and Conciliation Act 1988 (AC Act), an award must be in writing and signed by the arbitrator. If the tribunal consists of more than one arbitrator, the signatures of a majority of the members suffices, provided the reason for the minority not signing is stated. Unless the parties have agreed that no reasons are to be given, or the award is a consent award (section 25), the award shall state the reasons on which its conclusions are based. The award shall state the date on which it was made and the place of arbitration. A copy of the award shall be delivered to the parties (section 26). Finally, the award can be made public only with the consent of all the parties (Arbitration Rules, article 32).

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## Applicable procedural law for recourse against an award (other than applications for setting aside)

### 2 Are there provisions governing modification, clarification or correction of an award? Are there provisions governing retraction or revision of an award? Under what circumstances may an award be retracted or revised (for fraud or other reasons)? What are the time limits?

A party may, within 30 days of receipt of an award and with notice to the other party, request the tribunal to (1) correct in the award any errors in computation, any clerical or typographical errors or any errors of a similar nature, and (2) give an interpretation of a specific point or part of the award. The tribunal shall revert within 30 days of the receipt of the request. The tribunal may also on its own volition, within 30 days of the date of the award, correct any error. A party can also request the tribunal to make an additional award as to the claims presented in the arbitration but omitted from the award. An additional award shall be made within 60 days of the request (AC Act, section 28). There are no provisions on the retraction of an award.

### 3 May an award be appealed to or set aside by the courts? What are the differences between appeals and applications to set aside awards?

An award is final and is not subject to an appeal. An award can be set aside if (1) there is misconduct by the arbitrators, (2) in the award, the arbitrators exceeded their jurisdiction, (3) the award was improperly procured or obtained by fraud, or (4) there is an error on the face of the award (AC Act, sections 29 and 30).

Although an appeal may attack the merits and complain about errors in the content of the award, a setting-aside application is essentially a complaint only about the process followed in making the award or to the effect that the content of the award is not just erroneous but actually perverse.

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## Applicable procedural law for setting aside of arbitral awards

### 4 Is there a time limit for applying for the setting aside of an arbitral award?

A party who is aggrieved by an award may request the court to set aside the award, provided this is done within three months of the date either of the award or of the request for an additional award being disposed of by the arbitral tribunal (AC Act, section 29).

## **5 What kind of arbitral decision can be set aside in your jurisdiction? Can courts set aside partial or interim awards?**

All kinds of award can be set aside (AC Act, sections 29 and 30).

## **6 Which court has jurisdiction over an application for the setting aside of an arbitral award? Is there a specific court or chamber in place with specific sets of rules applicable to international arbitral awards?**

The Federal High Court (FHC), the National Industrial Court, the High Court of the Federal Capital Territory, and the high courts of the states (AC Act, sections 29, 30 and 57; Constitution of the Federal Republic of Nigeria 1999(as amended), section 254C (1)(j)(ii-iii), (3) and (4)). The Supreme Court of Nigeria has original jurisdiction to entertain enforcement proceedings for an ICSID award.

## **7 What documentation is required when applying for the setting aside of an arbitral award?**

An originating motion supported by an affidavit (exhibiting a certified copy of the award) and a written submission are needed (FHC Rules, 2019, Order 52, Rule 15). An applicant must furnish to the court as 'many copies of the process as there are defendants to be served' (FHC Rules, Order 3, Rule 12).

## **8 If the required documentation is drafted in a language other than the official language of your jurisdiction, is it necessary to submit a translation with the application for the setting aside of an arbitral award? If yes, in what form must the translation be?**

The language of the court is English. Any document not written in English must be accompanied by a translation into English (Gundiri v. Nyako (2014) 2 NWLR (Pt 1391) 211; Ogidi v. State (2005) 5 NWLR (Pt. 918) 286).

## **9 What are the other practical requirements relating to the setting aside of an arbitral award? Are there any limitations on the language and length of the submissions and of the documentation filed by the parties?**

An applicant must pay the applicable filing fee to be assessed by the registrar of the court. The language of the court is English. Depending on the court involved, written submissions may not exceed 20 pages (eg, Order 35, Rule 3 of Lagos State High Court Rules, 2019). In principle, there are 38 court systems: the high court of each of the 36 states, the High Court of the Federal Capital Territory, and the Federal High Court system, which has divisions nationwide.

## **10 What are the different steps of the proceedings?**

An applicant is required to file an originating motion supported by an affidavit (exhibiting a certified copy of the award) and a written address. The respondent is required to file a counter-affidavit and written address if he or she intends to oppose the application. At the hearing of the application, the court will rely on affidavit evidence and written submissions already filed by the parties.

**11 May an arbitral award be recognised or enforced pending the setting-aside proceedings in your jurisdiction? Do setting aside proceedings have suspensive effect? If not, which court has jurisdiction over an application to stay the enforcement of the award pending the setting aside proceedings, and what are the different steps of the proceedings?**

An application for the refusal to recognise an award has a suspensive effect on the application for the recognition and enforcement of the award until the recognition and enforcement application is determined (Shell Trustees (Nig.) Ltd. v. Imani Sons Ltd. (2000) 6 NWLR (Pt. 662) 639).

**12 What are the grounds on which an arbitral award may be set aside?**

An award can be set aside if (1) there is misconduct by the arbitrators, (2) in the award, the arbitrators exceeded their jurisdiction, (3) the award was improperly procured or obtained by fraud, or (4) there is an error on the face of the award (AC Act, sections 29 and 30).

**13 What is the effect of the decision on the setting-aside application in your jurisdiction? What challenges are available?**

When an award is set aside, the judgment creditor loses the right to enforce the award. An appeal can lie against the setting-aside decision.

**14 Will courts take into consideration decisions rendered in relation to the same arbitral award in other jurisdictions or give effect to them (eg, in recognition or enforcement proceedings)?**

Yes.

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## **Applicable procedural law for recognition and enforcement of arbitral awards**

**15 What is the applicable procedural law for recognition and enforcement of an arbitral award in your jurisdiction? Is your jurisdiction party to treaties facilitating recognition and enforcement of arbitral awards?**

The AC Act is the applicable procedural statute for the recognition and enforcement of an award. The Lagos State Arbitration Law 2009 (Lagos Law) will apply to arbitrations that it governs (AC Act, section 51; Lagos Law, section 56). Foreign awards may be enforced under the Foreign Judgments (Reciprocal Enforcement) Act 1961 and the Reciprocal Enforcement of Judgments Act 1922.

Nigeria is a signatory to, and has ratified, the Convention on the Recognition and Enforcement of Foreign Awards of 1958 (the New York Convention (NYC)) (AC Act, section 54, Second Schedule). An award made by the International Centre for Settlement of Investment Disputes (ICSID) is enforceable in Nigeria under the ICSID (Enforcement of Awards) Act 1967.

**16 Is the state a party to the 1958 New York Convention? If yes, what is the date of entry into force of the Convention? Was there any reservation made under article I(3) of the Convention?**

Nigeria is a signatory to, and has ratified, the NYC. Nigeria acceded to the NYC on 17 March 1970. Nigeria ratified NYC by virtue of section 54 and the Second Schedule to the AC Act.

Nigeria made a reservation under article I(3) of the NYC to the effect that the NYC would apply to an award made in Nigeria or in any contracting state provided that (1) the contracting state has reciprocal legislation recognising the enforcement of arbitral awards made in Nigeria in accordance with the provisions of the NYC, and (2) the NYC shall apply only to differences arising out of a legal relationship that is contractual (AC Act, section 54).

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## Recognition proceedings

### **17 Is there a time limit for applying for the recognition and enforcement of an arbitral award?**

An action to enforce an arbitration award cannot be brought after six years of accrual of the cause of action (Limitation Act 1966 (LA), Section 7(a)). If an arbitration agreement is under seal, an action to enforce the award cannot be brought after 12 years of the accrual of the cause of action (LA, Section 11(b)). The cause of action for enforcement accrues from the date when the claimant either acquired a right of action or a right to require that an arbitration takes place on the dispute concerned (*Murmansk State Steamship Line v. Kano Oil Millers Ltd.* (1974) 12 SC 1; *City Eng. (Nig.) Ltd. v. NAA* (1999) 11 NWLR (Pt. 625) 76).

### **18 Which court has jurisdiction over an application for recognition and enforcement of an arbitral award? Is there a specific court or chamber in place with specific sets of rules applicable to international arbitral awards?**

The FHC, National Industrial Court of Nigeria, High Court of the Federal Capital Territory and the high courts of the states (AC Act, sections 29, 30 and 57; Constitution of the Federal Republic of Nigeria 1999(as amended), section 254C(1)(j)(ii-iii), (3) and (4)). However, in respect of an ICSID award, the Supreme Court of Nigeria has original jurisdiction to entertain enforcement proceedings (ICSID (Enforcement of Awards) Act 1967, section 1).

### **19 What are the requirements for the court to have jurisdiction over an application for recognition and enforcement and for the application to be admissible? Must the applicant identify assets within the jurisdiction of the court that will be the subject of enforcement for the purpose of recognition proceedings?**

For the court to have jurisdiction over an application for recognition and enforcement of an award, it must have jurisdiction over the award debtor by the debtor being in Nigeria or being a Nigerian, or the assets sought to be enforced must be within Nigeria. To exercise jurisdiction, the court must be satisfied that the recognition and enforcement processes have been properly served on the award debtor.

For the purpose of recognition proceedings, there is no requirement that an applicant must identify assets within the jurisdiction of the Nigerian court that will be the subject of enforcement.

### **20 Are the recognition proceedings in your jurisdiction adversarial or ex parte? What are the different steps of the proceedings?**

Recognition proceedings in respect of an arbitral award are usually adversarial, as most of the applicable rules of court provide that recognition proceedings shall be 'on notice'. However, in principle, the proceedings may be commenced ex parte under Order 52, Rule 16(1) of the FHC (Civil Procedure) Rules 2019 and the Reciprocal Enforcement of Judgments Ordinance 1922.

**21 What documentation is required to obtain recognition?**

An originating motion supported by an affidavit and written submission are needed to obtain recognition. The affidavit must contain (1) the duly authenticated original award or a duly certified copy thereof, (2) the original arbitration agreement or a duly certified copy thereof, and (3) if an award or arbitration agreement is not made in English, a duly certified translation thereof into English (AC Act, section 52).

**22 If the required documentation is drafted in a language other than the official language of your jurisdiction, is it necessary to submit a translation with an application to obtain recognition? If yes, in what form must the translation be?**

Yes. It is necessary to submit a duly certified full translation of the required documentation (AC Act, section 51(2)(c)).

**23 What are the other practical requirements relating to recognition and enforcement? Are there any limitations on the language and length of the submissions and of the documentation filed by the parties?**

An applicant must pay the applicable filing fee, which is assessed by the registrar of the court. The language of the court is English. Depending on the court involved, written submissions may not exceed 20 pages (eg, Lagos State High Court Rules 2019, Order 35, Rule 3).

**24 Do courts recognise and enforce partial or interim awards?**

Yes. The courts will recognise and enforce a partial award insofar as it is a final determination of the substantive issues and questions in a reference, as distinct from procedural orders and directions. A partial award was enforced in *Celtel Nigeria BV v. Econet Wireless Ltd.* (2014) LPELR – 22430(CA).

**25 What are the grounds on which an arbitral award may be refused recognition? Are the grounds applied by the courts different from those provided under article V of the New York Convention?**

An award can be denied recognition if (1) the party against whom it is sought to be enforced furnishes proof of the presence of vitiating elements or that the award has been set aside by a court at the seat of arbitration, or (2) the court finds that the subject matter of the dispute is not arbitrable under Nigerian law, or that the enforcement of the award would be against public policy (AC Act, section 52(2)).

**26 What is the effect of a decision recognising an arbitral award in your jurisdiction?**

Once the proceedings for recognition and enforcement of an award are properly initiated, and the award is recognised, it is immediately enforceable as if it were a judgment of a court in Nigeria (*Shell Trustees (Nig.) Ltd. v. Imani & Sons (Nig.) Ltd.* [2000] 6 NWLR (Pt 662) 639). An appeal can lie against the decision recognising the award. The court may order a stay of execution of the award pending the resolution of the appeal.

**27 What challenges are available against a decision refusing recognition in your jurisdiction?**

An appeal can lie against the decision refusing to recognize an award. The court may make preservative orders pending the resolution of the appeal. On appeal, the recognition may be granted or refused.

**28 What are the effects of annulment proceedings at the seat of the arbitration on recognition or enforcement proceedings in your jurisdiction?**

One of the grounds for the refusal of recognition and enforcement of an award is that the award has been set aside or suspended by a court in which, or under the law of which, the award was made. It is therefore highly likely that the courts will adjourn recognition or enforcement proceedings pending the outcome of annulment proceedings at the seat of the arbitration.

**29 If the courts adjourn the recognition or enforcement proceedings pending annulment proceedings, will the defendant to the recognition or enforcement proceedings be ordered to post security?**

If an application to set aside an award has been made at the seat, the court before which the recognition or enforcement is sought may postpone its decision and also, on application by the party claiming recognition or enforcement of the award, order the other party to provide appropriate security (AC Act, section 52(3)). There is no Nigerian case law on this point as yet.

**30 Is it possible to obtain the recognition and enforcement of an award that has been fully or partly set aside at the seat of the arbitration? If an arbitral award is set aside after the decision recognising the award has been issued, what challenges are available?**

The court will refuse to recognise and enforce an award if it is demonstrated to the court that the award has been suspended or set aside in the seat of the arbitration (AC Act, section 52(2)(a)(viii)).

If an award is set aside after the decision recognising the award has been issued, the award debtor can apply back to the court to vary the order or appeal against it in view of new evidence. In such a case, the award debtor cannot be without a remedy in law.

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## Service

**31 What is the procedure for service of extrajudicial and judicial documents to a defendant in your jurisdiction? If the extrajudicial and judicial documents are drafted in a language other than the official language of your jurisdiction, is it necessary to serve these documents with a translation?**

The rules of courts require personal service of originating court documents on the defendant. Other court documents can be served on a defendant through its counsel. An application for the enforcement of an award is not an originating process that requires personal service (*Shell Trustees (Nig.) Ltd. v. Imani Sons Ltd.* [2000] 6 NWLR (Pt. 662) 639). The language of the court is English. Any court document not written in English must be accompanied by a translation into English (*Gundiri v. Nyako* [2014] 2 NWLR (Pt. 1391) 211; *Ogidi v. State* [2005] 5 NWLR (Pt 918) 286).

**32 What is the procedure for service of extrajudicial and judicial documents to a defendant outside your jurisdiction? Is it necessary to serve these documents with a translation in the language of this jurisdiction? Is your jurisdiction a party to the 1965 Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Hague Service Convention)? Is your jurisdiction a party to other treaties on the same subject matter?**

The leave of a court is required for the service of the process of the court on any defendant outside the jurisdiction of the court. The arbitral tribunal may order that any documents annexed to the statement

of claim or statement of defence, and any supplementary documents or exhibits submitted in the course of the proceedings, delivered in their original language, shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal [Arbitration Rules, article 17(2)].

Nigeria is not signatory to the Hague Service Convention or any other service convention.

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## Identification of assets

### **33 Are there any databases or publicly available registers allowing the identification of an award debtor's assets within your jurisdiction? Are there any databases or publicly available registers providing information on award debtors' interests in other companies?**

There are no publicly available registers allowing the identification of an award debtor's assets in Nigeria. There are publicly available registers by which the ownership status of known assets may be confirmed or verified; for example, information about land ownership can be found at the land registry in each state.

There are no databases or publicly available registers providing information on awards of debtors' interests in other companies.

### **34 Are there any proceedings allowing for the disclosure of information about an award debtor within your jurisdiction?**

A judgment summons may be used for the disclosure of information about an award debtor within the jurisdiction.

An award creditor may apply to a court for the issuance of a judgment summons compelling the award debtor to appear and be examined on oath in respect of his or her means and assets (Sheriffs and Civil Process Act 1945, section 55).

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## Enforcement proceedings

### **35 What kinds of assets can be attached within your jurisdiction?**

All kinds of assets within the jurisdiction may be attached.

### **36 Are interim measures against assets available in your jurisdiction?**

Interim measures are available in Nigeria. The courts have wide powers (either unconditionally or on relevant terms and conditions, and in accordance with the law) to grant interim and preservative measures in all cases in which it appears to them to be just or convenient so to do.

### **37 What is the procedure to apply interim measures against assets in your jurisdiction?**

An application for interim measures may be commenced by a motion ex parte or on notice. If it is commenced ex parte, the application must be accompanied by a motion on notice, which is to be heard and determined shortly after the interim measures are granted. There are certain conditions that must be satisfied before a court can grant interim relief; for example, the applicant must show that the assets are on the verge of being dissipated.

### **38 What is the procedure for interim measures against immovable property within your jurisdiction?**

An application for interim measures against immovable property may be commenced by a motion ex parte or on notice. If it is commenced ex parte, the application must be accompanied by a motion on notice. The applicant must show, among other points, that unless the preservation order is made against the immovable asset, the applicant may have no remedy if, at the time of enforcement, the asset has been dissipated.

### **39 What is the procedure for interim measures against movable property within your jurisdiction?**

An application for interim measures against movable property may be commenced by a motion ex parte or on notice. If it is commenced ex parte, the application must be accompanied by a motion on notice. The applicant must show, among other points, that unless the preservation order is made against the movable asset, the applicant may have no remedy if, at the time of enforcement, the asset has been dissipated.

### **40 What is the procedure for interim measures against intangible property within your jurisdiction?**

An application for interim measures against intangible property may be commenced by a motion ex parte or on notice. If it is commenced ex parte, the application must be accompanied by a motion on notice. The applicant must show, among other points, that unless the preservation order is made against the intangible asset, the applicant will have no remedy if, at the time of enforcement, the asset has been dissipated.

### **41 What is the procedure to attach assets in your jurisdiction?**

It depends on the owner, custodian and kind of the asset. There are different procedures for attachments against movable, immovable, intangible and monetary assets.

There are some statutory limitations in place against attachment or execution against certain state-controlled assets; for example, the consent of the Attorney-General of either the Federation or the state in question must be obtained before attaching any property in the lawful custody and control of a public officer (Sheriffs and Civil Processes Act 1945 (SCPA), section 84).

### **42 What is the procedure for enforcement measures against immovable property within your jurisdiction?**

An award creditor can apply to the court for a writ of execution against the immovable property of the award debtor if no movable property of the award debtor can, with reasonable diligence, be found, or if the movable property is insufficient to satisfy the award and the costs of execution (SCPA, section 44).

### **43 What is the procedure for enforcement measures against movable property within your jurisdiction?**

Attachment against movable property can come in different forms, one being a writ of fieri facias, which empowers the sheriff to seize and sell an adequate quantity of goods belonging to the award debtor until the award debt is satisfied (SCPA, section 25).

Garnishee proceedings may be commenced to order a third party who is indebted to, or in custody of funds belonging to, the award debtor to pay directly to the award creditor the debt due or as much

of the debt as may be sufficient to satisfy the award and the costs of the enforcement proceedings. Garnishee proceedings are commenced by motion ex parte (SCPA, section 83).

Finally, an award creditor may apply to a court for the issuance of a judgment summons compelling the award debtor to appear and be examined on oath as to his or her means and assets (SCPA, section 55). If the court is satisfied that the debtor can pay but chooses not to, he or she may be committed to prison. If, however, it is proven that the debtor has genuine difficulty in paying, the court can make orders, such as for the payment of the debt in instalments.

#### **44 What is the procedure for enforcement measures against intangible property within your jurisdiction?**

Enforcement can lie against intangible property by a writ of fieri facias, which empowers the sheriff to seize and sell an adequate quantity of goods belonging to the award debtor until the judgment debt is satisfied. 'Goods' include bank notes, bills of exchange, promissory notes, bonds, specialities or securities for money belonging to the award debtor (SCPA, section 25).

#### **45 Are there specific rules applicable to the attachment of assets held by banks? Is it possible to attach in your jurisdiction sums deposited in bank accounts opened in a branch or subsidiary of a foreign bank located in your jurisdiction or abroad? Is it possible to attach in your jurisdiction the bank accounts opened in a branch or subsidiary of a domestic bank located abroad?**

Yes. If any bank within the jurisdiction (whether a parent or a subsidiary) is indebted to the award debtor, garnishee proceedings may be commenced to order the bank to pay directly to the award creditor the debt due, or as much of the debt as may be sufficient to satisfy the award and the costs of the enforcement proceedings. Garnishee proceedings are commenced by motion ex parte (SCPA, section 83).

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## **Recognition and enforcement against foreign states**

#### **46 Are there any rules in your jurisdiction that specifically govern recognition and enforcement of arbitral awards against foreign states?**

There are no specific rules.

#### **47 What is the procedure for service of extrajudicial and judicial documents to a foreign state? Is it necessary to serve extrajudicial and judicial documents with a translation in the language of the foreign state?**

Service of court processes on other states is done through diplomatic channels or the judicial authorities of the foreign state. The service documents must be accompanied by a certified translation in the language of the country in which the service is to be effected (Federal High Court Rules 2019, Order 7, Rule 20).

#### **48 May a foreign state invoke sovereign immunity (immunity from jurisdiction) to object to the recognition or enforcement of arbitral awards?**

Nigerian law supports the doctrine of sovereign immunity, which shields the assets of a foreign sovereign against execution, but it further acknowledges that such immunity can be waived. The common law doctrine of sovereign immunity protects the assets of foreign sovereigns from execution in Nigeria, and

without an express waiver cannot be invoked by a foreign state to object to the recognition or enforcement of arbitral awards (John Grisby v. Jubwe et al. 14 WACA 637; African Reinsurance Corporation V. Fantaye (1986) LPELR-214(SC).

#### **49 May award creditors apply interim measures against assets owned by a sovereign state?**

Nigerian courts cannot order interim measures against the assets owned by a sovereign state where the sovereign state has not waived its immunity of execution (African Reinsurance Corporation v. Abate Fantaye (Part 32) (1986) 3 NWLR).

#### **50 Are assets belonging to a foreign state immune from enforcement in your jurisdiction? Are there exceptions to immunity?**

The DIPA protects the official residence and offices of the envoy of a foreign state from attachment or seizure by judicial process in Nigeria. Furthermore, the common law doctrine of sovereign immunity will avail, in the absence of an express waiver, to protect the assets of foreign sovereigns from attachment in Nigeria.

#### **51 Is it possible for a foreign state to waive immunity from enforcement in your jurisdiction? What are the requirements of waiver?**

It is possible for a state to waive sovereign immunity in Nigeria (DIPA, section 2).

#### **52 Is it possible for a creditor of an award rendered against a foreign state to attach the assets held by an alter ego of the foreign state within your jurisdiction?**

No. Envoys and consular officers of foreign sovereign states, including members of their families, domestic staff and members of the families of their domestic staff, enjoy diplomatic immunity from suit and legal process and the inviolability of their residences, offices and official archives (DIPA, section 1).



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Professor Gbolahan Elias SAN is a partner in G Elias & Co. It is a leading Nigerian business law firm that is a member of the Africa Legal Network, the premier alliance of African business law firms. Gbolahan Elias's practice is unusually wide-ranging.

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He has been a member of the Chartered Institute of Arbitrators (United Kingdom) since 2004. He read law at Magdalen and Merton Colleges, Oxford University, graduating with a BA (first-class honours), BCL (first-class honours), MA and DPhil. He is currently the Chancellor of Lagos State University and a part-time professor at Babcock University, Ilishan-Remo.



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# G Elias & Co

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We have advised and represented our clients on several of the most significant recent developments in Nigerian business law practice. We do corporate, financial, disputes, tax, energy, projects, "new economy" and commercial law work.

Our corporate work includes mergers and acquisitions, compliance, private equity and employment practices. Banking, capital markets, derivatives and structured products and insolvency law are central elements in our finance practices. Our disputes practices include litigation, arbitration and administrative hearings.

Our energy sub-sectors are the oil-and-gas and electric power sub-sectors. The real estate, transport and other infrastructure, construction and mining sub-sectors are at the heart of our projects work. We work in both traditional and "new economy" commercial sectors.

Our traditional commercial law work is on intellectual property, agribusiness, food and health-care, trade and industry and transport. The "new economy" sub-sectors are telecommunications and technology, media and entertainment, and "Fintech".

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We have and maintain complementary contacts in Nigerian business and government circles, and with law firms and lawyers' organizations based both in and outside Nigeria. We are a member of the Africa Legal Network (ALN), an association of leading independent law firms founded and based in Africa.

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