# ALTERNATIVE DISPUTE RESOLUTION IN NIGERIA: BREAKING NEW BOUNDARIES

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## ABSTRACT

The field of Alternative Dispute Resolution is familiar. This may be due to the invariably recurring decimal of conflicts in society's various human and commercial interactions. This paper examines the legislative framework of Nigeria's Arbitration and Mediation Act and the fundamental guiding principles from which arbitration laws are derived. Arbitration has moved from the stage of rejection to suspicion and acceptance. It is still budding in the Nigerian legal system but creating workable avenues and mechanisms to solve conflicts remains indispensable. Litigation, being the structured court system based on adversarial conversations and determination of the disputes, which is determined by a judgment produced in a win-lose situation, may therefore be defined as the opposite of Alternative Dispute Resolution, which is purely non-adversarial and utilises the expertise and assistance of a skilled, impartial and neutral third party. Since the 2005 Bank Consolidation Era and the 2008 Financial Crisis, there have been calls for the arbitration of banking disputes. However, these calls are yet to be embraced, given the reactionary response of banks toward referring conflicts to litigation forums. This leaves so much to be desired. As a result, this paper highlights the recent incorporation of Alternative Dispute Resolution into conflict resolution rules and discusses the necessity for appropriately specified procedural frameworks.

***Keywords***: Alternative Dispute Resolution, Alternative Dispute Resolution Mechanisms, Litigation, Banking, E-Payments.

## INTRODUCTION

An alternative dispute resolution method is a collection of steps that are not part of the standard legal system or a rigorous determination of rights. It can also be viewed as a collection of procedures for settling conflicts other than through judicial action, typically including the intervention and support of an impartial and neutral third party.

Alternative Dispute Resolution (ADR) is a theory introduced previously in the Nigerian dispute resolution system. The received standard law system introduced and entrenched the court system as the avenue for the administration of justice. However, considering the downsides to litigation and the mono-tool of justice in the received system, the Nigerian legal system notes that the strictly legal justice system needs to be fixed, considering other avenues to achieve the same objective.

The Nigerian legal system has been operating at its lowest level of performance lately, further worsened with the "EndSars" protest, where protesters caused mayhem in the courts and burnt courts in many parts of the federation, especially Lagos State, which recorded the most significant damages to courts. The COVID-19 pandemic also left matters unattended for almost two years, with the existing overloaded diaries of the courts. This was compounded by the strike actions of several judiciary officers over one demand or another from the Federal Government. The slow pace of justice underlines the need for pursuing different approaches to seeking justice and resolving disputes as fast as possible.

ADR techniques for reducing overcrowding of courts are increasingly popular due to these and many other considerations. As legal fees and unnecessary court delays rise, so do support for alternative dispute resolution (ADR) as an alternative to the court system. Alternative dispute resolution[i] was embraced in Nigeria, constituted by a group of related techniques used with, or in place of, the legal system. Due to the expenses and delays in some nations' judicial systems, international businesses tried to put pressure on governments to establish and develop alternative dispute resolution (ADR).

Commercial transactions are significant indices capable of dictating the pace of industrial growth in economies. Countries with commercial robustness invariably witness observable

development beneficial to the public and private sectors. Therefore, the banking sector plays a vital role in the economy of any nation. [ii] Banks, and financial institutions, are the catalyst in achieving desirable growth because they occupy a strategic position whereby financial transactions–which stimulates commerce—are executed. This is perhaps why the sector is one of the most regulated industries in Nigeria. Because of the role played by the banks, they are exposed to circumstances which inexorably give rise to disputes between bankers and other stakeholders. [iii] Stakeholders comprise customers, financiers, employees, government, regulatory authorities, and host communities. However, this paper focuses on the interplay of dispute resolution dimensions between a bank and its customers using the arbitration framework.

Considering the sensitive nature of legal obligations between the banks and customers, the general attitude of the parties has been to refer disputes to the Courts for their judgments. The courts' judgments, coercive and binding in nature, have the effect of disposing of with finality every question brought to it for determination. However, civil justice administration in Nigerian courts is constrained by militating factors, which is the prolonged disposal of cases. This could hamper the smooth operation of the banking sector, which fundamentally runs on efficiency and speed. Hence, the argument for developing a legal framework that would adopt arbitration to resolve banker-customer disputes in Nigeria is also in order.

The arrival of ADR has similarly been labelled as a legal transplant. This is because "the ADR movement that has recently developed in modern societies has been described as a return to a simple model of dispute settlement used in the past and modern non-Western societies."[iv] In Nigeria today, Arbitration and Mediation have established statutory support at the Federal level[v], however, as a technique of settling conflicts, different forms of ADR are increasingly becoming popular. Although this primarily occurs at the State level, the laws or court rules governing alternative dispute resolution mechanisms are still largely ambiguous and make little or no contribution to their practical implementation.

## DEFINITION OF ALTERNATIVE DISPUTE RESOLUTION (ADR)

Arbitration is when a neutral third party conducts an informal hearing and decides to trust the information presented at the hearing. The arbitrator is a knowledgeable and mutually acceptable person. The Arbitration may be administered privately or publicly, voluntary or compulsory, and may be binding or non-binding.

Webster's dictionary explains Arbitration as depending on individual discretion (as of a judge) and not fixed by law, or an act based on or determined by personal preference or convenience rather than by necessity or the intrinsic nature. Black's Law Dictionary defines Arbitration as a method of dispute resolution involving one or more neutral third parties usually agreed to by the disputing parties and whose decision is binding[vi].

As provided in Section 91 of the Arbitration and Mediation Act 2023, Arbitration means commercial Arbitration, whether administered by permanent arbitral institutions. Those commercial means imply a relationship of a commercial nature, including any trade transaction for the supply or exchange of goods or services, distribution agreements, commercial representation or agency, factoring, leasing construction of work, consulting engineering licensing investment, financing banking insurance, exploration, contract or concession, joint ventures, and other forms of industrial or business cooperation[vii]. Alternative dispute resolution involves neutral persons as facilitators of the settlement of disputes outside states controlled adjudicatory mechanisms, which comprises the regular courts and administrative tribunals framework, operating on principles of voluntary mutual consents, with the aim of accord and satisfaction to all parties.

## CONCEPTUAL CLARIFICATION OF ALTERNATIVE DISPUTE RESOLUTION (ADR)

The term "alternative dispute resolution," or ADR, refers to several dispute settlement methods that, despite being beyond the traditional bounds of state law, have gained favour with the general public and the legal community. The processes were initially referred to as "alternative" by legal typologists of the twentieth century because they were considered extra-legal

complements to state-sponsored conflict settlement. Many judges now view alternative dispute resolution as a viable method of reducing the caseload in traditional courts while resolving conflicts properly and equitably. However, not everyone would agree with all alternatives. While some would not agree that all alternative methods are always fair and equitable, such methods are much less expensive than a traditional lawsuit, [viii] thereby making ADR very attractive to persons.

Despite the advantages of ADR, there have been vigorous debates about whether it is correct to define ADR as an alternative dispute resolution. According to some alternative movement researchers, the letter "A" in the acronym stands for "Appropriate" rather than "Alternative," According to one school of thought, the word "Alternative" in the acronym refers to "one of many" choices, including litigation. As a result, it was recommended that Alternative Ways of Dispute Resolution might be a better and perhaps more acceptable description of Alternative Dispute Resolution.[ix] Meanwhile, as suggested by Ladan, "ADR" is a helpful abbreviation if it is understood to refer to a system of multi-option justice in which parties to the public judicial system have access to a variety of conflict settlement options.

ADR is a group of flexible approaches to resolving disputes more quickly and at a lower cost without a formal trial. It is a term which has become associated with a variety of specific dispute resolution options such as Negotiation, Mediation, Conciliation, Mini-trial, Case Evaluation, and many other hybrid mechanisms. [x] It is a procedure through which legal problems and disputes are settled informally and without resorting to courtroom litigation. In contrast to the official court procedures, this technique comprises a third party presiding over a hearing between the parties. Most Alternative Dispute Resolution procedures are carried out outside the courtroom (voluntarily, as a contract requirement, or as directed by a court of law). They involve two or more parties working with impartial professionals to find a compromise, a legally binding agreement, or another way to resolve a conflict.

## HISTORY OF ARBITRATION

There are many advantages to comprehending the history of ADR. We can more freely consider the steps required to settle a particular issue if we understand how arbitration originated outside

the legal system. By learning that arbitration historically primarily belongs in the category of dispute settlement rather than dispute adjudication, many concerns regarding the "arbitrability" of various types of disputes and supposed incursions upon court jurisdiction are put to rest. Questions about applicable standards of judicial review are also placed in a clearer light. [xi]

Long before laws were made, courts were organised, or judges formulated principles of law, men had resorted to arbitration to resolve discord, adjust differences, and settle disputes. [xii] One of the earliest arbitrators was Solomon. [xiii] In a book by Elkouri and Elkouri, titled 'How Arbitration Works,' the authors not only stated that the biblical Solomon was an arbitrator but also noted that the procedure he used was in many respects similar to that used by arbitrators today.[xiv]

Definitional questions about whether a particular dispute settlement procedure indeed arbitration was, as it is understood today, can arise when examining arbitration in its earliest historical incarnations. The focus now is on arbitration as a type of dispute resolution by a tribunal decided by the parties. As we will see, the origins of arbitration were historically more intimately tied to ideas of conciliation and were frequently carried out by people selected by the social or corporate community in which the conflict arose rather than by the direct parties to the issue. Nevertheless, the essential ideas of arbitration pre-date the notion of litigation before national courts and, indeed, pre-date the existence of national courts themselves.[xv]
In the Fifth Century BC, Demosthenes described Athenian arbitration law in these terms:

> If any parties are in a dispute concerning private contracts and wish to choose any arbitrator, it shall be lawful for them to choose whomsoever they wish. But when they have chosen by mutual agreement, they shall abide by his decisions and shall not transfer the exact charges from him to another court, but the judgements of the arbitrator shall be final. [xvi]

In addition to providing the parties with privacy and procedural flexibility, arbitration offers an alternative to the court system. Even so, the fundamental nature of the situation remains the

same because the arbitrator must make a decision. The function of the judge and the arbitrator is not to decide how the problem resulting in the dispute can most readily be resolved so much as to
apportion responsibility for that problem. [xvii]

***Arbitration Bodies in Nigeria***

Before colonists in Nigeria, there were operation systems of law in various autonomous territories that made up Nigeria. [xviii]

ADR in Nigeria Arbitration and Mediation Act (Chapter 18, Laws of the Federation of Nigeria 2004) (the "AMA") incorporates the 1985 UNCITRAL Model Law on International Commercial Arbitration ("UNCITRAL Model Law")[xix] Through the Arbitration and Conciliation Decree No. 11 of March 14, 1988, Nigeria, the African nation with the greatest nominal GDP, became the first African State to adopt the UNCITRAL Model Law. Prior to the 1988 Decree, arbitration was governed by the 1914 Arbitration Act, which was modeled after the 1889 English Arbitration Act. Although the AMA is the primary source of arbitration legislation in Nigeria, Nigeria is a federation of 36 States and 1 Federal Capital Territory. [xx] The 2009 Lagos State Arbitration Law applies to all Arbitration within the federal State of Lagos, except where parties expressly agreed otherwise.[xxi]

The following institutions are some of the many arbitration bodies in Nigeria that contribute to advancing arbitration culture and practice:

I. **The Nigerian Institute of Chartered Arbitrators (NICArb):**

Since its founding in 1979, the organisation has been Nigeria's leading arbitration institute. Membership is divided into the following categories: Fellows, Young Arbitrators Network, Associates, Members, and Qualified Mediators.

II. **Lagos Court of Arbitration (LCA):**

The Lagos Court of Arbitration (LCA) is an autonomous, privately driven international centre for arbitrating business disputes and using other non-conventional dispute resolution procedures. (ADR). The LCA is a productive and top-tier arbitration institution that is housed

within the International Center for Arbitration and ADR (ICAA), Lagos, Nigeria. It uses internationally renowned modern facilities and cutting-edge technology.

III. **The Chartered Institute of Arbitrators, United Kingdom (Nigeria Branch):**

The organisation is a branch of the United Kingdom's Chartered Institute of Arbitrators (CIArb). The Nigerian Chapter met the criteria for a Branch status and received approval from the Institute in 1999. The membership of the Branch included people from a variety of fields, including law, shipping, engineering, insurance, banking, accounting, oil, and gas. The CIArb is a reputable professional organisation that offers training to those aspiring to become arbitrators, mediators, and ADR practitioners.

IV. **The Nigerian Maritime Arbitrators Association:**

The organisation, which was founded in 2005, primarily seeks to inform the general public and interested parties on the basics of arbitration and other forms of alternative dispute resolution. Admiralty practitioners, shipping agents, maritime insurers, and other experts make up the majority of the membership.

V. **The Society of Construction Industry Arbitrators (SCIARB):**

The SCIARB, formerly known as the Institute of Construction Industry Arbitrators, is an organisation dedicated to arbitration and alternative dispute resolution in the construction sector. In Nigeria's building sector, the Society is a notable institution of arbitration. The multidisciplinary society was established on October 15, 1993, and its members come from a variety of occupations associated with the building sector. The Society is the Specialised Alternative Dispute Resolution body in the construction industry.[xxii]

VI. **Nigeria Co-Operative Societies Act Cap N98 LFN 200:**

Section 49 of the Settlement of Disputes Act applies to disputes involving a registered society's business. This Act covers the registration and management of cooperative societies, the obligations and privileges of registered communities, and the rights and obligations of members. It also addresses the resolution of disputes between cooperative organizations and other institutions or their members, as well as the division and fusion of cooperative societies.

VII. **Evidence Act 2011:**

Section 256 (1) b(a) of the Act provides that any judicial proceeding in or before a court formed in the Federal Republic of Nigeria, as well as cases before an arbitrator, are subject to this Act.

VIII. **Minerals and Mining Act:**

The Minerals and Mining Act Cap M12 LFN 2004, Section 255, stipulates that the Arbitration and Conciliation Act (now Arbitration and Mediation Act) applies to all arbitration matters. Under the UNCITRAL Arbitration Rules, investment disputes between a mineral titleholder and the government may be arbitrated. Act on Mining and Minerals in Nigeria. In the event of a dispute after the subject has been resolved by arbitration, application of Cap. 1'34. LFN 2004 may be used.

IX. **National Health Insurance Scheme:**

The National Health Insurance Scheme Act Cap N24 LFN 2004, Section 26, governs the establishment and responsibilities of the State and Federal Capital Territory Arbitration Board, to be constituted for each State of the Federation and the Federal Capital Territory of Abuja. It also provides for a State Health Insurance Arbitration Board and a Federal Capital Territory Health Insurance Arbitration Board, where necessary. The members of the Arbitration Board are appointed by the Governor of the State or the Minister of the Federal Capital Territory, Abuja, on terms and conditions as may be specified in their letters of appointment[xxiii].

X. **Nigerian Communications Commission Act:**

Nigerian Communications Commission Act[xxiv] Section 26 regulates Disputes Settlement Procedures.

XI. **Nigerian Investment Promotion Commission Act**[xxv]

XII. **Petroleum Act**[xxvi]

XIII. **Public Enterprises (Privatisation and Commercialisation Act**[xxvii]

XIV. **Regional Centre for International Commercial Arbitration Act**[xxviii]

XV. **Trade Disputes Act**[xxix]

XVI. **Industrial Inspectorate Act**[xxx]

### *Types of Alternative Dispute Resolution (ADR)*

#### *a. Mediation and Conciliation*

It should be noted that the Arbitration and Mediation Act 2023 gives mediation and conciliation one and the same meaning, in other words, they can be use interchangeably. The traditional method of amicably settling disagreements in Nigeria's rural, agrarian society is mediation, an alternative dispute resolution (ADR) procedure. According to Section 91 of the Arbitration and Mediation Act 2023, Mediation and Conciliation can be used interchangeably as it defines Mediation to mean

> a process, whether referred to by the expression mediation, conciliation or an expression of similar import, where parties request a third person ("the mediator") to assist them in their attempt to reach an amicable settlement of their dispute arising out of or relating to a contractual or other legal relationship but the mediator does not have the authority to impose upon the parties a solution to the dispute

The mediator's authority then depended on his reputation and the respect people had for him. In Nigeria today, Mediation tends to take the form of private Mediation or court-annexed Mediation[xxxi]. In private mediation, the parties enlist the aid of an impartial third party who charges a fee for their services, such as the Lagos Court of Arbitration. Court-annexed Mediation involves cases that have already been filed in court, but the court has instructed the parties to resolve their differences through mediation. In these situations, the court directs the parties to attend mediation, and whatever settlement agreement the parties reach during mediation is recorded as the ruling of the court.

Section 24 of the High Court Laws of Lagos State provides that the courts may promote reconciliation among the parties and encourage and facilitate the amicable settlement in any action in the High Court.

In a mediation procedure, a neutral third party, mutually accepted by the parties assists the disputing parties in developing a resolution. The mediator uses mechanisms to promote

conversation and offers advice or recommendations to help the parties reach an understanding. However, the mediator defers to the disputants' decision-making process. The mediation process is a voluntary one.

By using extrajudicial procedures, this procedure entails modifying or resolving issues in a cordial manner. Bringing two conflicting parties together in a friendly environment so they may unwind and maintain their friendship is referred to as conciliation. Another non-judicial dispute settlement method is conciliation. Conciliation is a confidential, flexible, and interest-based process, similar to mediation. The parties seek to reach an amicable dispute settlement with the assistance of a neutral third party[xxxii], who acts as an impartial third party.

Conciliation and Mediation proceedings aim to reach an amicable, swift, and cost-efficient dispute settlement.[xxxiii]

The rules application to Mediation as stated in the AMA 2023 also applies to Conciliation as AMA 2023 defines Mediation to mean Conciliation or expression of similar import.

### *b. Negotiation*

Negotiation is a strategic discussion that resolves an issue in a way that both parties find acceptable[xxxiv]. Each party tries to persuade the other to agree with their point of view during a negotiation. All parties concerned attempt to prevent conflict through negotiation while agreeing on a compromise. In Nigeria, distributive and contingency bargaining is the main method of negotiation.

Negotiation refers to communications or discussions between contending groups to resolve the issues in dispute or come to an agreement[xxxv].

### *c. Mini-Trial*

Mini trials are confidential, voluntary meetings that representatives from both sides who have the power to settle attend. During the procedure or advocacy, neutral third parties may also serve as judges or jurors. A mini-trial (also known as an administrative tribunal) is a form of alternative dispute resolution in which each party, often through legal advisers, makes a presentation of its case to a mini-trial is statutorily defined and is an agreed-upon process by the parties:[xxxvi] A mini-trials procedure means that there is an agreement between the parties.[xxxvii] To clarify the concerns and lay the groundwork for realistic settlement

negotiations, each party and its legal counsel present their respective positions, either in front of specially chosen representatives for each side or in front of a neutral third party. The objective third party may provide a recommendation on the case's merits. Unless the parties agree that it is essential and sign a written settlement agreement, the advisory opinion is not legally binding.

In corporate or government litigation, the mini-trial procedure is designed to allow decision-makers to resolve legal concerns while protecting potential business or relationship interests. Since there are often fewer moving components in personal injury litigation, this ADR is less frequently used in this area of law. Opposing counsel makes their most potent argument in front of the parties (represented by key decision-makers with the power to settle) and a third-party impartial party during a mini-trial. The decision-makers then meet with or without the impartial advisor and negotiate. The focus is primarily on reaching business solutions rather than settling specific legal issues[xxxviii].

Alternative Dispute Resolution in the form of a mini trial is confidential, voluntary, and informal. Businesses and the federal government use the mini-trial alternative dispute resolution (ADR) approach to settle legal disputes without the cost and delay associated with court litigation. The mini-trial is a way for the parties to resolve a structured settlement process; it does not lead to formal adjudication. The parties need or want to keep a cordial relationship when complicated issues are at stake.

Mini trials can be scheduled per terms agreed to by the parties, but they typically follow the guidelines set forth by ADR facilitators. Each party selects a management representative to serve on the panel, and the parties sign an agreement approving a mini trial. The power to negotiate a settlement rests with these representatives. A "neutral adviser" is also chosen by the parties to serve on the board. The adviser will preside over the mini trial. Thus, they must be objective and independent. The ADR facilitating agency may choose a neutral counsel if the parties cannot reach an agreement. The costs of the mini-trial and the adviser's fees are split equally between the parties.

The parties choose the neutral adviser and give them background information before the mini trial. The parties also provide the adviser with legal briefs and exhibits containing the data they

plan to present during the so-called "information exchange." The mini-trial is, in fact, this interaction. The length of the briefs and the dates by which documents are required must be agreed upon by the parties. Each party presents throughout the information exchange, and each party is allowed to respond. The parties must agree on the lengths of their presentations and rebuttals, just like in all other proceedings, or the impartial adviser must impose time constraints. The objective consultant works as a moderator rather than a judge throughout this information exchange. Presentations from factual and expert witnesses are both permitted. Finally, the panelists can interrogate the presenters. Each management representative may come with advisers and attorneys representing the parties.

The management representatives meet alone to settle the disagreement after the information exchange. The exchange of information ought to have highlighted the advantages and disadvantages of each side's argument and encouraged the representatives to resolve it. They may ask the impartial adviser to meet with them alone or together and give an oral opinion on the issues and the anticipated result at the trial of each case if they cannot resolve the conflict on their own. The neutral adviser may also be asked to write a statement, mediate the settlement terms and provide written reports on behalf of the representatives.

The representatives execute a written agreement outlining the terms of the deal. The contract legally binds the parties. If the parties cannot settle, the proceedings will terminate 30 days after the date of the information exchange. [xxxix]

The fact that the rules of evidence do not apply during the mini-trial, except those controlling privileged communications and attorney work product, is a crucial distinction between a court trial and a mini-trial. Mini-trials differ further in that no transcript is available because they are not recorded. Finally, the proceedings are confidential, and any offers or statements made in the process are inadmissible at a court trial. [xl]

### *d. Neutral Evaluation*

This occurs when the parties or their counsel present their cases to a neutral third party (usually an experienced and respected lawyer with expertise in the substantive area of the dispute) who renders a non-binding reasoned evaluation of the case's merit. [xli]

Since the turn of the century, support for alternative forms of dispute resolution to be incorporated into the Civil Justice System in England and Wales has increased. In 2004, the collaborative approach was added to the then-known Alternate Dispute Resolution (ADR) options alongside conciliation and mediation. Early Neutral Evaluation (N.E.) is less known and has become increasingly popular in recent years[xlii].

A neutral evaluator is tasked with hearing both parties' contending perspectives. It is applicable for financial claims (also known to as Private FDRs), property disputes, and situations involving children. An early neutral evaluation of the likely outcome was matters litigated in Court is then shared. Like FDRs[xliii], the indication is indicative and non-binding. It allows both parties to share their respective positions fully and then presents an early neutral solution. In conjunction with Arbitration, Neutral Evaluation can help Mediation and the collaborative process, breaking the deadlock and preventing the selected dispute resolution process from failing. For instance, an evaluator may attend a five-way or round-table meeting. Neutral evaluation provides a solid platform for competing perspectives to be presented in an open, client-focused manner within the confines of the law. The process complements and supports existing dispute resolution processes or can be used as a standalone process to avoid litigation.[xliv]

### *e. Med-Arb*

Mediation-Arbitration, popularly referred to as "Med-Arb", is a. form of dispute resolution which combines the mechanisms of Arbitration and Mediation in. the resolution of a dispute a hybrid approach to dispute resolution that begins with Mediation and, if that does not result in a settlement, sees the mediator assume the role of arbitrator and move to a binding decision [xlv] It has been predominantly utilised in family law issues, although its usage has increased during the past few years.

Med-arb has features of both Mediation and Arbitration. The parties first try to resolve their disputes through Mediation[xlvi]. If this does not resolve the dispute, the process next shifts to binding arbitration.[xlvii] In arb-med, the procedure begins with an arbitration proceeding, followed by the issuance of a non-binding arbitration award. The parties then collaborate with a mediator to attempt to resolve their dispute.

### *e. Adjudication*

In this process, parties in conflict present their evidence and arguments to a neutral third party. The adjudicator, who is typically a judge, has the authority to issue a binding ruling. Such decisions are frequently guided by a set of prior criteria. A judge resolves disputes between two parties through the process of adjudication. Arbitration and adjudication hearings are similar in nature. Generally, adjudication hearings involve money or nonviolent infractions that result in a distribution of rights and obligations for all parties involved.[xlviii]

### *f. Moderated Settlement Conferences*

Alternative Dispute Resolution (ADR) techniques allow for the avoidance or significant reduction of the costly and time-consuming litigation procedure. ADR proponents are part of a trend among attorneys that aims to reduce the expense, duration, and stress of the litigation process. Often, a Moderated Settlement Conference is the best method to obtain realistic expectations for your case. A Moderated Settlement Conference is statutorily defined: "A moderated settlement conference is a forum for case evaluation and actual negotiations.[xlix] It gives parties with a private, nonbinding evaluation of their case by a panel of experienced, impartial attorneys. When counsel and clients can benefit from a neutral case evaluation, this procedure is useful. The format of the moderated settlement conference is rather straightforward.

First, each side's counsel presents the case to the panel. Typically, this presentation lasts no longer than thirty minutes, and the content is presented in summary form. After the initial presentations, the panel poses questions to the attorneys and parties. The attorneys make extremely brief closing arguments to finish the session. After parties have presented their cases, the board confers in secret and then delivers an evaluation of the case's strengths and shortcomings. This evaluation serves as the basis for further settlement discussions between the parties. You can see how important this ADR tool is for accurately evaluating a claim you may have. This is a non-binding process, yet it can frequently open litigants' eyes.

### *g. Multi-Door Courthouse Programmes*

The Lagos Multi-Door Courthouse (LMDC) is a court-affiliated Alternative Dispute Resolution (ADR) Centre that provides a variety of ADR options. The LMDC's mission is to augment litigation as a resource for justice by providing increased, timely, cost-effective, and user-friendly access to justice. The Multi-Door refers to the various options available at the LMDC, including Mediation, Arbitration, Early Neutral Evaluation, and Hybrid Processes[l].

Alternative Dispute Resolution (ADR) encourages simpler Access to Justice in line with global trends in ADR; the concept of a Multi-Door Courthouse (an institutional repository of ADR mechanisms) was originally proposed in 1998. Kehinde Aina, Executive Director of the Negotiation and Conflict Management Group (NCMG), pioneered the effort to introduce the Multi-Door Courthouse concept into Africa, prompted by the Multi-Door Courthouse concept proposed by Harvard Professor Frank Sanders at the 1976 Dean Roscoe Pound Conference. On June 11, 2002, the Lagos Multi-Door Courthouse became the first court-connected ADR Centre in Africa, thanks to the efforts of the Lagos State Judiciary and the Ministry of Justice.[li].

The Lagos Multi-Door Courthouse Programme was aimed to address the causes of public discontent with the legal system, such as court congestion, delays in the dispensation of justice, and high litigation costs. The Multi-Door Courthouse concept was developed to address some of these problems by providing an alternative to litigation through cost-effective, prompt, and user-friendly access to justice. The construction of the Lagos Multi-Door Courthouse as the continent's first court-connected ADR Centre signified the introduction of a novel concept into the Nigerian Justice System.

The Multi-Door Courthouse illustrates a range of Dispute Resolution methods available to disputants, including Mediation, Arbitration, Early Neutral Evaluation, and other ADR hybrid processes. Consequently, a dispute will be settled utilising the most effective technique best suited for the specific problem, with the benefits of timeliness, cost-effectiveness, restoration of relationships, secrecy, flexibility, and other advantages associated with ADR.

The Lagos Multi-Door Courthouse is also an indispensable resource for the Lagos State Judiciary due to its proximity to other courts. The extent and intensity of the interaction between the LMDC and the Lagos State Judiciary has grown. Initially, a Practice Direction made it possible for the courts to submit cases to ADR for resolution. Then, when the Lagos Multi-Door Courthouse Law of 2007 was enacted, Judges were mandated to encourage parties to use ADR and send issues to ADR if at least one party was willing to use the ADR procedure. In 2012, the new High Court of Lagos State (Civil Procedure) Rule 2012 institutionalised ADR into Civil Justice Administration and completed the interface. This collaboration between The Lagos Multi-Door Courthouse and the Lagos State Judiciary will definitely strengthen the justice system, boost citizen happiness, and foster economic growth and foreign direct investment in Lagos State.[lii]

### *h. Summary Jury Trials*

Typically, the summary jury trial involves a condensed presentation of a civil case to an advisory jury in order to demonstrate to the parties how a jury reacts to the facts. The procedure is voluntary. However, summary jury trials typically encourage dispute resolution. The summary jury trial is the only ADR method providing a case presented before a jury[liii]. Even if the process is restricted in time, the parties are pleased that their case will be heard by their peers. The objective of the summary jury trial is to give plaintiffs with a jury verdict that facilitates settlement. Although a summary jury trial may be commenced voluntarily, it is typically initiated by a motion filed by one or more parties or the court. In a court setting, the parties choose six jurors from a pool of 10 to twelve. After a brief voir dire by the Court or the attorneys, the jurors are empanelled [liv]. Typically, the case presentation, including rebuttal, is limited to one hour; however, this time limit may be extended if the case is extremely complicated. The evidentiary and procedural procedures are somewhat loosened, and the Court will settle any disputes.

The jury is not briefed on the advisory character of their verdict. They listen to and evaluate the evidence and dosing arguments, then retire with a condensed charge and juror forms. After the verdict has been rendered, the jury is informed that it is advisory and will be utilised to facilitate settlement. The summary jury trial can significantly reduce trial duration and serve as an impetus for settlement. It also gives a method for obtaining feedback on the case's reception

at trial. The downsides of this method include preparation time, case strategy disclosure, and prospective costs. In essence, the patient must be prepared for adequate practice. Moreover, all motions must be resolved, and recovery must be full. Consequently, by the time of the summary jury trial, litigants may have made large investments in the case, restricting their settlement possibilities. Additionally, trial strategies may be inappropriately revealed, and expense and delay will be added if the subsequent negotiations do not result in a settlement. [lv]

***Community Mediation Centres and Guiding Principles***

Community Mediation Centers (or Neighborhood Justice Centers) are private or non-profit centres for conflict resolution that resolve community problems, such as Mediation of community, neighbor, or family conflicts. Consequently, ADR processes, initiatives, and education should be adopted in communities where these centres provide conflict resolution and mediation skills training and educational seminars.

ADR is highly applicable to communities. Community mediation centres and private mediators can provide an alternative to the court system with numerous advantages for individuals, including time savings, cost savings, and confidentiality. Moreover, situations that are most likely best handled outside of court (such as landlord-tenant disputes, family conflicts, and victim-offender reconciliation) may be handled most successfully within the community. Citizens now have a variety of community-based ADR processes from which to choose when resolving disputes. Notably are the Lagos state Citizen Mediation Centres in several parts of Lagos[lvi].

Peer mediation is one form of alternative dispute resolution that is beginning to be utilised in schools (mainly in the United States). Children are trained in Mediation and conflict-resolution skills and then act as "conflict managers" to assist their peers in resolving playground disputes. Creating programmes that give mediation possibilities between students and school authorities on disciplinary and other concerns is an exciting trend in several school systems. A potential effect – and the desire of ADR advocates – of teaching ADR skills to youth is the emergence of a whole generation of individuals with the ability to manage personal conflicts.

A third community use of ADR is Mediation to resolve disputes between disputing parties and government authorities. For instance, a framework can be developed that consists of representatives from various groups with distinct stakes in the outcome of an issue (called stakeholders), who, with the assistance of a mediator, would work towards obtaining a consensus-based conclusion... If these public processes are well-structured and enabled, citizens will have a unique opportunity to participate directly as partners in government and policy decisions.

Community/Communal Mediation is a form of Mediation that provides constructive processes for resolving disagreements and conflicts between individuals, groups, and organisations.[lvii] Similar to Mediation, participants in Community Mediation control the process and, with the assistance of Community Mediators, generate possibilities for resolving the disagreement. Community Mediation is a technique for resolving communal conflicts or disagreements because it allows members to express their issues and demands. In addition, it strengthens relationships, creates connections between individuals and groups, and enables communities to function for everyone.

## THE PRACTICE OF ALTERNATIVE DISPUTE RESOLUTION IN NIGERIA

In 1914, Nigeria made its first attempt to consolidate arbitration by enacting the Arbitration Ordinance of 1914,[lviii] This pertained to all Nigerian states. Nonetheless, the Nigeria Arbitration Ordinance was built after the English Arbitration Act of 1896. In the same year, the Ordinance was replaced by the Arbitration Ordinance Act 191 and 1954, which was applicable to all fifty states. Also, it is worth noting that this Act applied to domestic and international arbitration. Currently, the principal legislation that governs arbitration law in Nigeria is Arbitration and Mediation Act 2023 (hereinafter 'the AMA').which repealed the Arbitration and Conciliation Act 1990 [lix] This act was promulgated to provide a unified legal framework for the fair and efficient settlement of commercial disputes by arbitration, mediation, conciliation or other expression of similar import. The AMA 2023 just like the

repealed Arbitration and Conciliation Act ratifies and incorporates the New York Convention, which was adopted in 1970 with both reciprocity and commercial reservations.[lx]

In addition, the AMA is based on the UNCITRAL Model Law and applies to all Nigeria-based arbitrations with the exception of the ICSID. The AMA includes the UNCITRAL arbitration rules as well. Despite the fact that the AMA, which governs both domestic and international arbitration, is largely based on the UNCITRAL Model Law, there are some deviations. The Model Law focuses solely on arbitration, but the AMA covers both arbitration mediation and conciliation.[lxi]. The distinction between Articles 8(1) and 13(3) of the UNCITRAL Model Law and Section 5 of the AMA is another illustration. These clauses address the identical subheading, "arbitration agreement and substantive claim before the courts and the provision of the court's power to stay proceedings."

Consequently, while the UNCITRAL Model Law does not specifically grant the court the authority to suspend proceedings initiated in violation of an arbitration agreement, the AMA does. Article 8 (1) of the UNCITRAL Model Law states that a court before which an action is taken in a matter subject to an arbitration agreement shall "refer the parties to arbitration" unless it determines that the agreement is void, ineffective, or incapable of being fulfilled. Despite the identical headline, however, Section 5 of the AMA specifies that the court shall "order a stay of proceeding and refer the party to arbitration." The AMA has more comprehensive regulations regarding the stay of legal processes.

It is essential to understand that the AMA is a federal statute, and that several states also have their own arbitration statutes. Unless the parties have specifically agreed otherwise, the Lagos State Arbitration Law 2009 (LSAL)[lxii] applies to all arbitrations that have their seat in Lagos State. The LSAL is also based on the UNCITRAL Model Law and contains recently suggested revisions to Model Law Lagos Court of Arbitration Law 2009 (LCAL); the establishment of an arbitration court in Lagos State is one of the law's distinctive features. Other independent arbitration facilities in Lagos include the Lagos Regional Centre for international commercial arbitration, which has its own arbitration rules, and was established in 1989.

Over the years, the practice and operations of ADR in Nigeria have gained traction across the commercial spectrum. It is uncommon for an agreement or standard contract to lack an arbitration clause in the dispute resolution section. As a result of these improvements, certain ADR training facilities in Nigeria equip aspiring ADR specialists with exceptional professional training. Although the availability of training in this area is impressive, more training organisations are still required.

Nigeria has a solid authorised plan for organising arbitration and conciliation to resolve disputes. The rule regarding arbitration is as outlined in Section 2(3) of The Arbitration and Mediation Act thus:

> An arbitration agreement shall be in writing where its content is recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct, or by any other means.

The absence of arbitration clauses in agreements is the principal reason banker-customer disputes are not arbitrated. Most loan facility agreements, which constitute the bulk of banker-customer disputes, omit arbitration clauses in such agreements. Regarding the fact that the banks almost invariably draw up loan facility agreements, 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 under loan facility agreements. A conceivable alternative reason for such behaviours of banks is that litigation often results in desirable outcomes for the lender, which is usually the party with the dominant bargaining power in loan agreements.

However, the provision of Section 2(4) of The Arbitration and Mediation Act seems to state that with an arbitration agreement between the parties through the exchange of written correspondences, by an electronic communication and the information contained in it is accessible so as to be useable for subsequent reference and there is an agreement to arbitrate such dispute. The requirement for this subsection to apply is for a party to allege the existence of an arbitration agreement and for the other to deny such existence.

Arbitration agreements are irrevocable until the parties agree differently or a judge rule otherwise. Possibly, the subsection intends to indicate that an arbitration agreement need not be included in the agreement between the parties at the time the contract is drafted so that, regardless of any provisions contained in existing agreements between the parties, they may enter into a written agreement to arbitrate their disputes.

According to the 2013 Queen Mary's International Arbitration survey, litigation ranked as the first choice (82%) for the financial service industry regarding dispute resolution mechanisms. [lxiii] In an industry that heavily relies on market standard provisions, the International Swaps and Derivatives Association's (ISDA) publication of its "2013 Arbitration Guide" can be viewed as a significant step towards providing market participants with a dispute resolution option other than litigation.

Similarly, any reference in a written contract to a document containing an arbitration clause becomes an arbitration agreement if the deal is in writing and the reference is sufficient to incorporate the clause into the contract. [lxiv] Accordingly, in the case of Continental Sales Limited v. R. Shipping Inc,[lxv] the Court of Appeal clarified how arbitration should be commenced in the following terms:

Where the arbitrator or arbitrators are bound to be appointed by the parties, arbitral proceedings are commenced in respect of a matter when one party serves on the other party or parties notice in writing requiring him or them to appoint an arbitrator or to agree to the appointment of an arbitrator in respect of that matter.[lxvi]

Therefore, both case law and regulation make it clear that arbitration has a very clear legal norm for its initiation, hearing, and interpretation of an award. In consideration of mediation, Section 70 of the Arbitration and Mediation Act provides:

> Where the initiation of a mediation procedure is prescribed by a special statute as a Commencement mediation condition for the conduct of judicial or other proceedings, or where the parties have proceedings agreed when concluding the agreement to try to resolve the dispute through mediation before resorting to judicial or other

> proceedings, the party concerned shall propose to the other party, in writing, the conclusion of a meditation agreement.

The Arbitration and Mediation Act stipulated additional elaborate provisions on mediation .

## DRAWBACKS TO THE ADOPTION OF ARBITRATION IN RESOLVING BANKING DISPUTES

Most banker-customer conflicts in Nigeria involve loan facility defaults by consumers or improper administration of loan facilities by banks. After negotiation, litigation is typically the default conflict resolution option. The options open to banks are often debt recovery actions, liquidation or receivership, whilst the customer's options include counterclaims in bank loan recovery actions or pre-emptive actions against banks. The parties seldom consider the option of arbitration as a possible mechanism for the resolution of their disputes.[lxvii] Another probable explanation for this practice is because litigation frequently leads in favourable outcomes for the lender, who typically has the upper hand in loan arrangements.[lxviii] This section focuses on analysing the issues that have historically prevented parties from considering arbitration as a means of settling banking disputes. They include .

1. ***Absence of Arbitration Clauses in Agreements:***

This is why conflicts between banks and their clients are not arbitrated. Most loan facility agreements, which account for most banker-customer disputes, do not contain arbitration clauses. Given that credit facility agreements are nearly always drafted by banks, the banks know well why arbitration clauses are excluded from such contracts. In this regard, it is possible that banks do not view arbitration as an effective means of resolving disputes that may occur under credit facility agreements. Another possible reason for this behaviour of banks is that litigation often results in desirable outcomes for the lender, which is usually the party with the dominant bargaining power in loan agreements. [lxix]

Notwithstanding this practice, Section 2(4) (a) (b)of the Arbitration and Mediation Act[lxx] provides, inter alia, that

> The requirement for arbitration agreement to be in writing is met, where it is; by an electronic communication, as

> defined in section 91, and the information contained in it is accessible so as to be useable for subsequent reference; and it us is contained in an exchange of points of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other.

This paragraph purports to say that if the existence of an arbitration agreement is contested in written correspondence between the parties, there is an agreement to arbitrate the dispute. For this paragraph to apply, one party must assert the existence of an arbitration agreement, while the other must dispute its existence. In addition, arbitration agreements are irrevocable until both parties agree otherwise, or the court decides so.

Possibly, the intent of the subsection is to imply that an arbitration agreement need not be included in the agreement between the parties at the time the contract is drafted, so that, regardless of any provisions contained in existing agreements between the parties, they may thereafter enter into a written agreement to arbitrate their disputes.

2. ***Certainty of Judicial Precedents***[lxxi]

Unlike other industries that mainly rely on arbitration, disputes in the financial sector have been resolved by recourse to the national courts of key financial centres. The choice for court-based dispute resolution is primarily determined by the need for legal certainty in a rapidly changing market, which is provided by a body of binding precedents. Moreover, when it comes to highly regulated financial markets, public policy requires a court's involvement in resolving conflicts. Lastly, the absence of binding precedents in arbitration raises substantial issues for banks and institutional investors, who may be required to arbitrate the same issue many times against different counterparties without ever resolving the matter.

3. ***Coercive Remedies Obtainable from Litigation:***

There are benefits to litigation for the banks. For example, litigation allows banks to acquire summary or default judgements from the courts. [lxxii] Under these conditions, banks can obtain a judgement very quickly, which is advantageous to their commercial activities. [lxxiii] Disputes between a bank and a customer frequently include high-value topics. As a result of their capacity to wield the court's coercive powers, banks embrace litigation, mainly when restraining orders are necessary. [lxxiv] It is believed that the possibility of interim relief is an

argument in favour of litigation and against arbitration. [lxxv] However, it must be noted that interlocutory or interim reliefs frequently do not determine the rigor of a party seeking legally enforceable remedies. For the sake of commercial efficiency, the parties must resolve their disagreements in one manner or another.

The aforementioned problems may not apply to contracts with institutions or wealthy persons who provide investment advice services, asset/wealth management agreements, interbank agreements, or contracts with state-controlled parties. Therefore, it is customary commercial practice to submit disputes originating from these contracts to arbitration.[lxxvi]

### *4. Absence of a Specific Arbitration Framework for the Banking Industry*

In Nigeria, the Arbitration and Mediation Act of 2023which was repealed by the Arbitration and Conciliation Act 2004 governs commercial arbitration. The Act establishes a single legal framework for the equitable and efficient resolution of commercial disputes through arbitration and conciliation. Under Section 91 (1) of the Act, "Commercial" includes "relationships of a commercial nature, such as any...investment, financing, banking, or insurance...agreement" This appears to imply that bank-customer issues are amenable to resolution under the Act.

The Act contains provisions for the enforcement of arbitral awards where a dispute has an international component or when an award obtained outside of Nigeria is sought to be executed within the country. Section 57 specifies that an arbitral award, regardless of the nation in which it is rendered, must be accepted as binding and, subject to Section 58, must be enforced by the court upon written application. Section 60 of the AMA 2023 stipulates that 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 a reciprocal legislation agreement with Nigeria, if recognition and enforcement of any award arising from international commercial arbitration are sought.

Regarding the subject matter under consideration, these provisions contain flaws. The first significant difficulty is that the Act does not handle conflicts that impact the banking industry particularly. It may have supplied a basic statement on arbitrable subjects, but the Act should include the processes that would effectively manage banker-customer conflicts. Banking transactions are distinctive and strongly reliant on expediency in resolving disputes between parties. The second issue of reciprocal arbitral awards is that such clauses only become

applicable once a tribunal has rendered an award. This presume that a dispute has arisen, undergone an arbitration procedure, and the Tribunal has rendered a ruling; the only remaining step is the enforcement of the Award. To all intents and purposes, this study focuses on developing a method for efficient conflict resolution through arbitration.

In 2013, the Central Bank of Nigeria (CBN) presented a framework for introducing an Arbitration process for resolving banking disputes in Nigeria.[lxxvii] The emphasis of the Draft Framework was on E-Payment dispute arbitration. This framework will be analysed in the paper's conclusion. The framework does not yet have the force of legislation or a regulatory directive.

It is interesting that banks are introducing internal dispute resolution methods to resolve client complaints in accordance with their enhanced customer service capabilities. Access Bank Plc has established an Ombudsman as a point of reference for resolving service complaints between the Bank and its clients.[lxxviii] In addition to its primary purpose, which is Arbitration and other ADR processes such as Conciliation and Mediation, the Ombudsman's duties have been expanded to encompass the prompt settlement of client complaints. The Bank aspires to handle all client complaints within a day, regardless of the source of the complaint or the person in charge of resolution.

## DEVELOPING A FRAMEWORK FOR UTILISING ARBITRATION IN RESOLVING BANKER-CUSTOMER DISPUTES

The banking sector in Nigeria has not yet reached the anticipated level of integration of alternative dispute resolution. However, this mentality will not persist forever, since Stakeholders are proactively proposing systems through which disagreements can be addressed outside of court. With the passage of the Banks and Other Financial Institutions Act of 2020, the hope of integrating dispute resolution processes within the sector was regrettably crushed. The Act is silent on any ADR mechanism capable of resolving banking issues outside of the adversarial spectrum. For instance, Section 102 of the Act establishes the Special Tribunal for the Enforcement and Recovery of Eligible Loans with the authority to enforce the recovery of overdue loans from banks in the context of debt collection, presumably against customers.[lxxix] With such authority, it can be argued that the Tribunal functions as a court, with no opportunity

for party autonomy or discussion. Even though this may be advantageous for the banks, such a process ultimately stresses the connection between the parties.

The tendency towards arbitration in banking and finance has been influenced by some of the following factors:

1. **International Dimension of Banking and Finance Transactions:**

Banking and finance transactions are more transnational than ever before in today's globalised environment. Numerous financial transactions are conducted with market participants from emerging economies. Here, arbitration may be the only effective means of resolving disputes. For market participants from capital-exporting nations, resolving disputes in state courts where the counterparty holds assets is typically not a viable alternative. This has to do with the risk of legal uncertainty in these countries. Pursuant to statistics of Transparency International, corruption is still widespread in large parts of the world, undermining the basic tenets of justice.[lxxx]

2. **Increased Complexity:**

Disputes in the banking and financial industry have increased in complexity and difficulty. Typically, structured financial products, such as synthesised collateralised loan obligations, involve many legal connections governed by several individual contracts and framework agreements. Assessing the interaction of these several contracts might be difficult. New financial instruments are created almost daily, which further complicates the situation. Moreover, these issues frequently present complex factual questions. Project finance is an excellent illustration. This method of financing comprises highly structured loans repaid from the cash flows generated by the project. Evaluating these cash flows often involves a comprehensive understanding of economic concepts and market expectations. Because parties can choose their arbitrators, arbitration might be a particularly suitable means of settling such issues. The notion of party autonomy permits parties to ensure that their disputes will be resolved by arbitrators with relevant experience.

### 3. Inconsistent Court Decisions:

Banks have become more receptive to arbitration is because of inconsistent court judgements. In the aftermath of Lehman Brothers' (henceforth "Lehman") bankruptcy, for instance, courts in London and New York reached differing decisions regarding the enforceability of Section 2(a) (iii) of the ISDA Master Agreement. Specific responsibilities under Section 2(a) (iii) of the ISDA Master Agreement is subject to the condition precedent that no event of default or potential event of default concerning the other party has occurred and is continuing. When Lehman fell insolvent, Lehman's counterparties utilised Section 2(a) (iii) of the ISDA Master Agreement to suspend payment obligations under interest swap arrangements in two substantially comparable instances. In both cases, Lehman's administrators contested this suspension because Section 2(a) (iii) of the ISDA Master Agreement is invalid. Despite these commonalities, the two courts rendered contradictory verdicts.

In Lomas v. Firth Rixson, the UK Court of Appeal upheld the enforceability of Section 2(a) (iii) of the ISDA Master Agreement, but in Metavante, the New York Bankruptcy Court of the Southern District of New York ruled against its enforceability.

Not only were there disparities in the applicable insolvency laws but also in the interpretation of Section 2(a) (iii) of the ISDA Master Agreement, which resulted in these divergent outcomes. Does arbitration provide a remedy for such conflicting judicial decisions? Clearly, one might exaggerate the benefits of arbitration if they argued thus. Nonetheless, it appears that arbitration has comparative advantages when interpreting international agreements such as the ISDA Master Agreement. There is a much-reduced likelihood that national particularities will influence the decision of an arbitral tribunal composed of three qualified experts from different jurisdictions.

### 4. Demand for More Flexibility and Party Autonomy:

Further contributing to the growth of arbitration is the fact that it provides parties with greater flexibility and autonomy. Arbitration permits the parties to design the processes in advance in line with their requirements for the expertise, speed, and efficiency of the arbitrators. In some areas of banking and finance, this factor has proved essential in bolstering the function of

arbitration. Islamic banking is a noteworthy example. Parties are frequently interested in selecting an arbitrator from a particular faith community.

5. **Privacy and Confidentiality:**

Lastly, the ability to protect information from the public sphere was also a role in the rise of arbitration in the banking and finance industries. During times of crisis, when financial institutions are already struggling to maintain their reputation, privacy and confidentiality are of utmost importance. Due to the two related but independent principles of privacy and confidentiality, information can be shielded from the public domain in arbitration proceedings. The need for discretion also requires that hearings are closed to the public. Thus, individuals who are not arbitrators, parties, counsel for parties, or witnesses can be barred from the hearing. Unless parties agree otherwise, the confidentiality of proceedings is the default rule under many institutional regulations.

Confidentiality, on the other hand, refers to the obligation of the participants not to divulge information about the proceeding to third parties. This obligation is not limited to the hearing but may also exist in the phases preceding and following the arbitration. Even though confidentiality responsibilities are stipulated in some institutional arbitration procedures, these provisions are less widespread than privacy-related provisions. If the parties desire confidentiality, they must include individual confidentiality agreements.[lxxxi]

## CBN E-PAYMENT DISPUTE ARBITRATION FRAMEWORK

The Central Bank of Nigeria (CBN) framework draft framework is most beneficial for resolving electronic payment disputes, which are fundamental components of financial transactions in today's business environment. Adopting this approach will be essential to developing a litigious atmosphere.

The CBN proposes a structure by which conflicts between parties regarding electronic payment transactions (e-payments) may be handled through arbitration. The framework proposal has not received legal effect but a few essential aspects are pertinent.

The Sub-Committee[lxxxii] on the e-payment dispute arbitration framework was inaugurated by the CBN with the following terms of reference:

i. To determine the scope and objectives of the arbitration structure.
ii. To identify the categories of e-payment disputes that should be brought before an arbitration panel.
iii. To develop a comprehensive plan for enforcing the electronic payment dispute arbitration structure.
iv. To develop a comprehensive strategy for the implementation of liability shifting.
v. To identify the recommended technique for handling or resolving each type of dispute.
vi. To Identify the documentation necessary to facilitate arbitration for each defined type of dispute.
vii. To Determine the various models (structure/composition) and funding options for the arbitration panel.
viii. Any other pertinent problem that would aid the e-payment dispute arbitration procedure in resolving the e-payment dispute and restoring user confidence.

The objectives of the arbitration framework include the following:

i. To enable a prompt resolution to e-payment dispute complaints without court intervention.

ii. To specify admission standards for complaints.

iii. To simplify the identification of the at-fault party.

iv. To shift liability to the erring party.

v. To give means of implementing the arbitration panel's ruling.

The E-Payment framework covers two aspects of complaints as follows:

A. Untreated Complaints: This is a complaint involving a payment card[lxxxiii] that a cardholder[lxxxiv] has reported to the issuer[lxxxv] and which the issuer has not treated after 14 days from the date of receipt of the complaint.

B. Unsatisfied Responses: This refers to any fraud or dispense(s) error involving a payment card that a cardholder has reported to the issuer and is not satisfied with the issuer's response.

The criteria for admitting complaints by the e-payment dispute arbitration panel include the following:

i. The Cardholder should make a complaint to the issuer within 45 days from the fraud date.

ii. Evidence of reporting the complaint to the issuing institution must be provided.

Email is acceptable evidence. The CBN will mandate the banks to provide acknowledgement to the customer.

iii. The cardholder must have reported to the issuer, and his/her complaints remain untreated or unresolved after 14 days of making the report.

iv. The case is not being handled by any other judicial process.

E-payment disputes eligible for submission to the arbitration panel include any disputed "card present" and "card not present" transactions as listed below:

a. Payment card used contrary to the mandate of the cardholder.

b. The cardholder never requested a payment card.

c. The card is counterfeit.

d. Not received as issued

e. Unresolved dispense error.

f. The transaction occurs on a domestic terminal with a domestic card.

g. Any other card-related dispute

Complaints could be forwarded to the arbitration panel by email or downloaded form with a written letter.

***E-Payment Dispute Liability Shifts***

Defining the conditions under which legal obligation attaches to parties is a further key component of the framework. This is crucial because the standard and burden of proof required to establish or refute assertions are clearly stated; thus, parties can assert their positions appropriately.

The framework provides the guide for determining liability as follows:

1. Where a Cardholder uses a non-EMV[lxxxvi] Payment Card on a non-EMV Terminal, and fraud occurs, liability is on the issuer.

2. Where a cardholder uses a non-EMV payment card on an EMV terminal and fraud occurs, liability is on the payment card issuer.

3. Where a cardholder uses an EMV payment card on a non-EMV terminal[lxxxvii], and fraud occurs, liability is on the Acquirer.[lxxxviii]

4. Where a Cardholder uses an EMV payment card on an EMV terminal and fraud occurs, liability is on the cardholder. However, it is the responsibility of the issuer to prove to the arbitration panel that the payment card issued was the payment card used and that the payment card was not reported stolen.[lxxxix]

5. Where a cardholder uses a hybrid payment card on a non-EMV terminal and fraud occurs, liability is on the acquirer.

6. Where a cardholder uses a hybrid payment card on an EMV terminal and the payment card is treated as a magnetic stripe for authorisation and fraud occurs, liability is on the payment card issuer.

7. Where a cardholder uses a hybrid payment card on an EMV terminal and the payment card is treated as EMV for authorisation and fraud occurs, liability is on the cardholder. However, it is the responsibility of the issuer to prove to the arbitration

panel that the card issued was the card used and that the issuer did not receive a lost or stolen report for the payment card.

8. In a situation where it is determined by the arbitration panel that there is negligence of the switch[xc] through a breach, contravention/non-compliance of industry guidelines, policies and circulars which directly cause or contribute to the fraud, the liability will be on the switch.

***Documents Required For E-Payment Dispute Arbitration***

Regarding the documentary evidence required from parties when submitting their cases to the arbitration panel, Paragraph 6 of the framework is very specific. The purpose appears to be to facilitate the panel's evaluation of transaction documentation when assessing the parties' legal rights and responsibilities.

Regardless of the channel, the following documents are required from parties in arbitration disputes before the panel.

A. Documents Required to Be Provided by The Cardholder:

i. Signed letter, email backed with the response from the issuer and downloaded forms from the cardholder.

ii. Where the bank has yet to respond to the cardholder, a signed letter from the cardholder or email back with the acknowledgement of the complaint will suffice.

iii. Completed Arbitration form indicating that the issue is not handled by a court or law enforcement.

iv. Account statement indicating the contested transactions (if available).

B. Documents Required to Be Provided by The Issuer:

i. Issuing a register or form showing where and when the customer collected the card and PIN.[xci]

ii. Report showing the first PIN change where applicable.

The Cardholder is expected to provide ATM receipts of the transaction where available, while the Issuer is to provide a Report to validate whether it was the actual card issued that was used or otherwise.

C. The Acquirer is to provide the following documents:

i. Report showing the contested transactions as valid transactions.

ii. Image capture for the transaction

D. Either the Acquirer or the Switch is required to provide a Report showing the EMV compliance level of the ATM at the time of the fraud.

In disputes involving Point of Sale (POS) transactions, the parties are to provide the following:

A. The Acquirer is to provide:

i. Due diligence report on the POS Merchant and terms of the agreement setting up the merchant.

ii. Agreed value limits set with POS Merchant.

B. The Issuer is to provide a Report to validate whether it was the initial card issued that was used or otherwise.

C. Either the Merchant or the Acquirer is to provide:

i. Receipt showing the goods purchased.

ii. Evidence of goods purchased/services rendered must be considered with the average value of goods/services rendered in the normal course of business.

iii. Photo identity where the agreed limit is exceeded.

D. The Acquirer/Switch/PTSA[xcii] is to provide a report showing the EMV compliance level of the POS.

For disputed transactions on web payments, the following parties will be required to produce respective documents as follows:

A. The cardholder will provide a receipt of the purchase.

B. Either the Switch/Acquirer is to provide the following:

i. Due diligence report on the WEB Merchant and terms of the agreement setting up the Merchant.

ii. Document showing integrity checks carried out on the site.

iii. Agreement on set limits and line of business of the Merchant if not covered under the due diligence.

C. The Issuer/Switch shall provide:

i. Report to validate whether it was the initial card issued that was used or otherwise.

ii. Report showing the compliance level of the site.

With respect to disputes relating to transactions on mobile payments, the following parties will provide the respective documents:

A. The Mobile Payment Operator will produce a Report showing that transactions occurred with the registered phone.

B. The Mobile Operator or the Bank is to produce an Account Mandate card showing the phone number used in line with the account mandate.

C. The Switch/Mobile Payment Operator is to provide a document showing integrity checks carried out on the platform.

D. The Switch/Mobile Payment Operator/Issuer shall provide agreement with various stakeholders as it relates to the provision and subscription to services in connection with mobile payments.

Where the circumstances involve Cardless ATM transactions, the following rules apply:

A. The Switch shall provide a report showing that the code used is tied to the initiating card.

B. The Issuer shall provide a report to validate whether it was the initial card issued that was used or otherwise to initiate the code.

C. The Acquirer shall provide:

i. Journal report showing that cash was collected.

ii. Image capture for the transaction

D. The Switch/Acquirer/Issuer shall provide:

i. Document showing integrity checks carried out on the platform.

ii. Report showing the EMV compliance level of the Platform.

***Administration of the Arbitration Panel***

Paragraph 7 of the framework describes the administration of the panel. The Panel's Secretariat must be housed at the Consumer Protection Council Office in Lagos, according to paragraph 7(a). This should be amended since referring arbitration issues from all 36 states of the Federation to the panel in Lagos is impracticable. Rather, it should be mandated that the panel be housed under the Consumer Protection Office in all 36 states. Alternately, the panel may be constituted in a capital city in each of the country's geopolitical zones.

Depending on the number of instances reported, the Panel shall convene at least once every month.[xciii] In the event that documentary proof requested by the Panel is not supplied within five days, it will be deemed that the party was unable to provide the document. By 37 Paragraph 7 (b) of the proposed framework for the awarding of judgment, a party's failure to deliver a required document may count against it.[xciv] The panel must decide on the stated issues within 45 days of receiving the complaint.[xcv]

Parties shall not be represented at Panel meetings unless specifically invited by the Panel. The E-Payment dispute arbitration framework should apply to E-Payment disputes that arise after the publishing date.

The proposal outlined how the Panel will be paid to effectively carry out its duties. The CBN will provide funding for the launch of the Panel. In addition, Deposit Money Banks that signed

the framework, Companies functioning as switches, Payment Terminal Service Providers, and Card Schemes are expected to pay the Panel. [xcvi]

- Structure of the Arbitration Panel

Paragraph 9 provides that the membership of the Arbitration Panel should not be more than nine (9) persons, which will include the following:

1. A lawyer engaged in private practice with at least 10 years post NYSC experience with proof of specialisation in e-banking.

2. A banker with at least 10 years of banking experience and must have worked in a Card and E-banking Department either as an operator or Controller. He may or may not be in the service of any Bank at the time of appointment. A Chartered Banker is preferable.

3. A representative of the Economic and Financial Crimes Commission and Nigerian Financial Intelligence Unit with knowledge of E-banking investigation.

4. Two (2) representatives of the Customer related agencies like the CPC and Public Complaints Commission. (Lawyers may be preferred here).

5. A representative of the Risk Department of the Deposit Money Banks is involved in monitoring card and E-payment operation or investigation, provided that the member's bank is not involved in the case under consideration.

6. A representative of the Card Operation Department of the Deposit Money Banks provided that the member's bank is not involved in the case under consideration.

7. A representative of each of the Switching Companies who are involved in the following operations:

   a. Risk Management

   b. Operations

8. A representative of the Central Bank of Nigeria.

In addition to the above members, there should be a Registrar to the Panel who must be a staff of the CBN. The CBN shall appoint the Chairperson of the Panel from among the Panel

members, while the Panel Members should appoint the Vice Chairperson. Members should serve in this committee for up to two years (renewable for the second term), after which the CBN will replace them unless where they change their job, or the body or bodies they represent decide to withdraw their services.

Any five (5) of the above members, including the Registrar, should form the quorum to start the business of the panel. At any sitting, there must be a member with vast knowledge of card operations. The members of the Panel should be on a non-permanent basis and hence should not earn a salary in the interim but may be entitled to only sitting allowances as may be approved by the CBN.

- Submission of Parties to The Panel

Paragraph 10 stipulates certain conditions to secure parties' submission to the arbitration process. For the cardholder:

a) He must sign an application form for card issuance, which should contain a clause which states that in the event of any disagreement between the cardholder and the bank or the issuer, the matter will be referred to the CBN E-payment dispute arbitration panel

b) Existing cardholders should be given a timeline within which to obtain the application form with the new clause and sign to update their records

c) The CBN should issue a circular to banks to comply with the above points.

In relation to Banks, Switches, ad Acquirers, the CBN should issue a circular notifying them that the framework and panel exist and that all unresolved E-payment disputes must be referred to the panel based on the criteria set in the framework.

- Sanctions and Enforcement

By paragraph 11 (a), every decision given by the arbitration panel should be final in all cases of card-related fraud till a court of competent jurisdiction rules otherwise. The Registrar should pass decisions taken by the panel to the CBN for implementation within three working days. [xcvii] The Panel should refer consistently erring parties to the CBN for administrative sanction.

***Arbitrating International Banking Disputes and the Role of Nigerian Multi-Door Courthouses***

This paper has examined detailed aspects of banker-customer relationships, the situations under which conflicts may emerge, the difficulties in implementing arbitration mechanisms to resolve such disputes and the suggested E-payment arbitration framework. One may note that these topics were examined via the prism of tactics for domestic dispute resolution. Indeed, Nigerian banks have clients of foreign nationalities, some of whom reside outside Nigeria. If consumers are supranational corporations or sovereigns, the position may get even more complicated. What happens to the parties in the event of a disagreement under these conditions? What if the issue is between a foreign bank and a Nigerian organisation or government? Is Arbitration ruled out?

Disputes between private parties are resolved by national courts or arbitration panels.[xcviii] Such disagreements are classified as business disputes, regardless of whether any of the parties involved are of a foreign country. Mixed disputes involving state parties and private parties (including banks) are classified as economic or investment disputes due to their economic nature.[xcix] There are a variety of forums for resolving economic issues. It is essential to explore the use of arbitration systems in resolving international conflicts, especially if a Nigerian business is involved.

In the absence of a formal agreement, investment disputes between states and private parties would typically be resolved by national courts, most likely those of the host state. The International Convention on the Settlement of International Disputes (ICSID) does not preclude access to national courts; but parties' consent to ICSID arbitration precludes any alternative remedy, including national courts.[c] In circumstances where the State has accepted to arbitration on the condition that local remedies have been exhausted, a narrow exception may apply. Arbitration under the auspices of the International Centre for Settlement of Investment conflicts (ICSID) has become an important and effective means of resolving international investment conflicts. The Convention creates the Centre with its own international legal identity.[ci] However, it is not the Centre itself that arbitrates; rather, it provides facilities for investment dispute arbitration. This is achieved through:

a. Keeping lists (“panels”) of possible arbitrators.

b. Screening and registering arbitration requests.

c. Assisting in the constitution of arbitral tribunals and the conduct of proceedings.

d. Adopting rules and regulations

e. Drafting model clauses for investment agreements.[cii]

Once permission is granted, the Convention prohibits its unilateral withdrawal. Article 41 Paragraph 1 gives arbitral tribunals the exclusive authority to decide on their jurisdiction.[ciii] Awards are binding and enforceable and may not be ignored or disputed because of nullity unless in accordance with the Convention's own procedure for annulment.[civ]

Article 25 of the Convention restricts the Centre's subject matter jurisdiction to legal issues originating directly from an investment. It has personal jurisdiction over contracting states (or any constituent subdivision or agency of a contracting state designated to the centre by that state) and contracting state nationals.

The advantages ICSID arbitration offers the investor include:

a. It provides investors with direct access to a form of international dispute settlement.

b. Investors are not restricted to national courts in the host state.

c. Investors do not depend upon the willingness of their home states to exercise diplomatic protection on their behalf.

d. The enforcement provisions of the ICSID Convention make it highly probable that a final ICSID award will be effectively enforceable.[cv]

Host states, too, may benefit from the availability of ICSID arbitration in the following ways:

a. Provides assurance of legal security for investors, and this attracts investment.

b. Consent to ICSID arbitration excludes the “harassment” potential of diplomatic protection exercised by the home state of investors against host states.[cvi]

Financial firms and banks should utilise the international investment arbitration system. Due to the lack of a concrete definition of 'investment,' the term may be interpreted broadly enough

to encompass financial or debt instruments. In Fedax v. Venezuela, it was determined that loans qualify as investments under the jurisdiction of the ICSID. In the case of Deutsche Bank AG v. Sri Lanka, the court determined that a derivative instrument was also an investment. Therefore, financial institutions have the right to file an investment claim against a nation for the unlawful expropriation of its financial instruments. [cvii]

Nigeria's legislative bodies do not currently emphasise creating a comprehensive Arbitration structure to address financial issues. Therefore, Multi-Door Courthouses (MDCHs) are strategically positioned to alter this narrative. By partnering with expert bodies such as the Chartered Institutes of Bankers of Nigeria (CIBN), the Central Bank of Nigeria (CBN), and customer representatives, MDCHs can build an internal framework for resolving banking issues.

This is pertinent because MDCHs are established to resolve conflicts through ADR. Thus, integrating a bank-specific system into the current structures of the MDCH will be beneficial. It would also foster cooperation between the relevant parties.

***Advantages of Arbitration in Resolving Banking Disputes***

The point has been established that arbitration is the time to receive greater recognition in banking circles. Arbitration and litigation can coexist and complement one another in financial sectors, depending on the party's needs. However, this must take an innovative and pragmatic approach. To adequately respond to the topic of what favourable impact arbitration has on settling banker-customer disputes, we must examine the benefits of arbitration. They include

1. **Avoiding Class Action Suits**[cviii]:

With a well-crafted arbitration clause, banks can minimise class action lawsuits. Arbitration enables a bank to resolve disputes with a single customer outside of court. Both parties can profit from the fact that arbitrations are normally confidential, designed to go more quickly than court proceedings, and are less expensive. Typically, if a bank and its customer are willing to arbitrate their conflicts, they stipulate as much in a contract signed at the outset of their relationship. A bank may include an arbitration clause in a loan agreement or a client deposit agreement, for instance. This clause would oblige the bank and the client to arbitrate certain problems, even if one of the parties desired to litigate.

Class actions are costly, frequently time-consuming lawsuits brought by a person or small group on behalf of a big group. One client could, for instance, attempt to initiate a class action on behalf of all bank customers. When dragged into a class action, the banks, who are typically the defendants in class action lawsuits, lose the significant benefits of arbitration. They can employ appropriately structured arbitration clauses to prevent class actions. Additionally, the arbitration clauses should be unambiguous, leaving no doubt that the bank compels all customers to arbitrate and does not permit class action lawsuits.

2. **Benefit of Expert Arbitrators**

Banking disputes are highly specialist. Consequently, the opinions of professional arbitrators, who are frequently constituted in panels, are very helpful in resolving conflicts successfully. Unlike traditional courts, financial arbitrators possess the requisite technical capabilities to objectively evaluate contentious issues and can provide authoritative opinions. Parties have the option of choosing their arbitrators, who are typically subject matter experts. In the same way, arbitrators in an institutional arbitration system are clothed in financial market experience. Because the members of the E-payment arbitration panel are banking sector specialists, this claim is supported by the CBN framework draught examined above.

3. **Procedural Flexibility**

Similar to regular commercial arbitration, banking arbitration benefits from procedural flexibility. Regarding timing, the arbitration procedure relies on the prompt resolution of disputes. In addition, the discovery of documents is facilitated by the parties' incentives to generate evidence favourable to their positions. This is maybe another key contribution of the E-payment framework, which provides the evidence required for claims and defences in great detail. This procedure will allow the panel to quickly determine which party is liable.

Typically, when an arbitration panel is formed pursuant to an agreement, the time limits for discovery, the production of witnesses, and the conclusion of proceedings are spelled out with the parties' and arbitrators' concurrence. Civil procedure is governed by statutes and rules that are regarded immutable. Therefore, this flexible structure cannot be accomplished in the courts. Since parties cannot stray from statutory provisions, there is minimal room for manoeuvre.

4. **Enhances Financial Services**

Arbitration provides a chance for banks to improve their services, even if this was not previously believed possible. Unsatisfactory operational services or goods supplied by banks are frequently the cause of banking disputes. During proceedings, the customer(s) is/are given the opportunity to voice issues regarding the bank's services. In order to prevent future issues, the bank will be given a second opportunity to address the problematic areas. In fact, this has the effect of assuaging the discontent of customers, as they are able to notice slight improvements in the areas of banking operations that touch them the most.

5. **Preserving Relationships Between Parties**

The objective of arbitration is to find amicable resolutions to conflicts. The strategy of banking arbitration creates an investor-friendly climate in which rights and responsibilities are determined within acceptable legal frameworks. In contrast to litigation, arbitration favours a win-win settlement in which both parties obtain advantageous outcomes to the greatest extent possible. Eventually, instead of damaging an existing banker-customer relationship, arbitration provides the parties with the option to resolve conflicting issues through compromises and compromise.

Also, banks have the opportunity to anticipate possible conflict zones and neutralise them. This might be accomplished by utilising internal Ombudsman committees within the banks.

6. **Non-Disclosure**

Confidentiality is a significant advantage of arbitration and a major justification for its use. Confidentiality prevents the disclosure of sensitive information to the general audience. For instance, in the context of private wealth management or IT services (which should have some level of intellectual property protection), both parties would prefer to settle disputes in private courts rather than in open court. Another key consideration is that the banks are spared poor public relations perceptions if they choose for arbitration as opposed to litigation, where the public has access to the court documents.

In Nigeria, jurisdiction is a significant challenge as far as the issue of arbitration is concerned. The courts have yet to accept the liberty of parties to determine where they want their matters dispensed with. [cix] In CONFIDENCE INSURANCE LTD V. TRUSTEES OF ONDO STATE

COLLEGE OF EDUCATION, Achike JCA held that: "… the inclusion in an agreement to submit a dispute to arbitration does not generate the heat of ouster of jurisdiction of the court."

With the utmost respect, I respectfully disagree with my Lord's logic and conclusion in this case. Similarly, there are issues associated with ex-parte injunctions, which some parties utilise in violation of arbitration agreements and without full disclosure of the existence of an arbitration agreement. In addition, there is a problem with delays, which paradoxically negates one of the primary benefits of selecting ADR in the first place. Even while the procedure leading to the issuance of an award may be quick relative to the time it takes to resolve a dispute in the trial court, it may take longer to assure the enforcement or set aside processing.

In addition, there is the difficulty posed by applications to set aside awards, which can be compared to reopening a previously resolved subject. This is contrary to the actual authority of the court. Numerous court cases illuminate the court's role in arbitration.

## CONCLUSION

Arbitration will continue to play a significant role in the resolution of disputes in industries with a high level of specialisation. The time is right for Nigerian stakeholders and regulators to embrace this reality and develop a strategic framework to utilise the potential of arbitration. It is worthy of note that, the innovation of the AMA 2023 is a step in the right directions as the innovations encourages the use of ADR by making it more expeditious and binding. The E-payment draft framework is an inkling of the possibility of integrating arbitration in resolving disputes. However, the CBN needs to develop complementary frameworks to address other variants of banking disputes asides from electronic payment transactions. More banks are embracing the idea of arbitration and other dispute resolution strategies in forestalling conflicts and preserving customer relationships. This attitude is good for the economy and can only improve over time. The shortcomings of litigation have been unsavoury, hence the inevitable deduction is that arbitration provides a better and more viable option for resolving disputes.

## RECOMMENDATIONS

ADR has become an essential mechanism in administering the justice system in Nigeria. We have explored the various options available under the ADR system and some of the system's challenges. To move forward, the following are recommended:

1. Strengthening of ADR institutions

ADR institutions need to be strengthened to handle some of the complex and sundry issues arising today. As provided in ACJA, we should develop our legal system to the point that persons accused of corruption and embezzlement may elect, upon arrest, to a plea bargain in a matter that the matter does not even appear in court in the first instance. Similarly, the ADR system should be strengthened such that its operations are not constrained by delay and frivolous applications intended to occasion a miscarriage of justice.

2. Studying ADR should be made compulsory at the University.

Perhaps the best time to lay a proper foundation on ADR in prospective lawyers should be right from the University. A solid background in ADR should be established right from university days. Considering its importance, the status of ADR as a course should also be compulsory for students, just like other courses such as 'legal methods', 'Nigerian Legal System', 'Constitutional Law' etc. Only recently, my office partnered with only of the ADR training institutes in Nigeria to train some of the undergraduate students of Ajayi Crowther University. We must catch them young and make the students see the potential and opportunities in specializing in ADR.

3. University Professional Training

Academic institutions, just like the case of Harvard University and other universities in the United States with suitable capacities, can mount up professional training platforms on ADR.

4. As provided under the Administration of Criminal Justice Act provisions, there is a need to fully implement the possibility of having the full-scale application of plea bargaining, especially on corruption charges in Nigeria. In the future, Nigeria, with the appropriate legal framework, could develop a robust ADR framework where the entire procedure could be handled under an ADR arrangement.

5. Continuous professional training of our judicial officers on ADR issues Our judges and justices, through this platform and others, need to be trained on ADR-related matters. This will illuminate issues about the implementation of the provisions of the law as far as ADR options are concerned.

## ENDNOTES

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[lxxxiii] Is Defined as any card that a cardholder can use and a merchant will accept for payment of purchase or in charge of some obligation.
[lxxxiv] This refers to a customer who owns a card.
[lxxxv] A bank who issues cards to customers
[lxxxvi] EMV is not defined in the draft framework, but it is a payment method based upon a technical standard for smart payment cards and for payment terminals and automated teller machines which can accept them. EMV stands for "Europay, Mastercard and Visa", the three companies which created the standard.
[lxxxvii] Terminal is defined as any device that allows cards as a means of transacting.
[lxxxviii] Acquirer is defined in the framework as a bank that owns terminal placed in a merchant location.
[lxxxix] According to the framework, a payment card is deemed to be reported stolen if cardholder has called in with the bank contact center, written a letter or sent an email to that effect.
[xc] Switch is defined as an organization that switches and routes transactions involving multiple issuers, acquirers, transaction types and card types.
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