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**"Work of ART" or  
"Tool for the ARTful Dodger"?  
The Award Review Tribunal mechanism in the  
Arbitration & Mediation Act 2023**

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## **“Work of ART” or “Tool for the ARTful Dodger”?**

The Award Review Tribunal mechanism in the Arbitration & Mediation Act 2023

In the coming months much will be said about the Arbitration & Mediation Act 2023 (“the AMA 2023”). Nigeria’s new federal arbitration law modernises arbitration practice in Nigeria with the purpose of making it more efficient and effective.<sup>1</sup> It reverses certain judicial principles which are perceived to be anti-arbitration,<sup>2</sup> updates arbitration practice to incorporate recent reviews of the UNCITRAL Model Law and the UNCITRAL Arbitration Rules and includes special procedural rules to fast-track arbitration related litigation.

One of the important innovations in the AMA 2023 which will generate a lot of discussion is the provision for arbitral review of arbitration awards, described in the 2023 Act as the Award Review Tribunal (ART). In this short article, I answer some of the FAQs that I have gathered from discussions before and after the AMA 2023 was passed.

### **FAQ 1 - Is the ART an “appeal” to another arbitral tribunal?**

No, it is not. Unlike the joint optional AAA-ICDR arbitral appeal scheme which allows parties to challenge an award for “error of law that is material and prejudicial” and “determinations of fact that are clearly erroneous”, the ART under the AMA 2023 only allows a review on the narrow grounds set out in section 55. These are the same grounds set out in Article V of the New York Convention, which may be described broadly as jurisdictional, due process and public policy grounds. In effect, an ART challenge does not involve a review of the factual or legal merits of the award.

### **FAQ 2 – Does the ART involve more delay in enforcing an award?**

No. On the contrary, the ART facilitates speedy enforcement of arbitral awards. The award review process is expected to be a summary process that will not last longer than sixty (60) days. Once an award has been reviewed and upheld by an ART, a court can only set aside the award if the subject matter is not arbitrable or the award violates the public policy of the forum. With such a narrow scope for judicial review, a court is expected to conclude that review within two to three months as contemplated by the Arbitration Proceedings Rules in the Third Schedule of the AMA 2023.<sup>3</sup>

And it gets even better. The beneficiary of an award can commence enforcement immediately the award is issued, notwithstanding that their opponent has started an ART review. While the ART review is in progress, the enforcement court may decide to stay the enforcement action or to allow the enforcement action to continue notwithstanding that the ART is in progress. We expect that when considering whether to stay the enforcement action or allow enforcement to continue, the enforcement court will adopt the “sliding scale” approach articulated in cases like *Soleh Boneh v*

<sup>1</sup>For a snapshot of the innovative provisions in the AMA 2023, see Duncan Bagshaw, <https://disputeresolution.howardkennedy.com/post/102igrx/nigeria-breaks-new-ground-with-its-arbitration-and-mediation-act-2023>

<sup>2</sup>For example, the Supreme Court’s decision in *City Engineering Nigeria Limited v. Federal Housing Authority* [1997] 9 NWLR (Part 520) 224 had held that the limitation period to enforce an arbitral award begins to run from the date the underlying cause of action arose and includes the time used up by the arbitral proceedings. This has now been statutorily reversed as time is tolled by the commencement of the arbitration (AMA section 34(4)). <sup>3</sup>See rule 8(5) and (6) of the Arbitration Proceedings Rules.

Uganda Government<sup>4</sup> , Dardana v Yukos<sup>5</sup> and IPCO (Nigeria) Ltd v Nigerian National Petroleum Corporation<sup>6</sup>. In effect, it will allow enforcement to proceed if, on a preliminary view of the grounds of challenge at the ART, it considers that the challenge has little prospect of success. It may also stay the enforcement action on the condition that the award-debtor provides appropriate security for the award sum. The ART is no tool for the “artful dodger”.

### **FAQ 3 – Does the ART involve more expense?**

Additional expenses are unavoidable. Fees have to be paid to the arbitrator or arbitrators performing the award review. However it should be noted that the award review is a summary process. Under award review rules that will soon be published by the Lagos Chamber of Commerce International Arbitration Centre (LACIAC), the award review process should ordinarily take place as a “documents-only” review without an oral hearing (unless exceptional circumstances require an oral hearing). This means that costs will be much lower than those incurred in the first arbitration. LACIAC will soon publish a scale of fees for award review arbitrators that will provide clarity as to exactly what an award review may cost.



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<sup>4</sup>[1993] 2 Lloyd's Rep 208

<sup>5</sup>[2003] 2 Lloyd's Rep 326

<sup>6</sup>[2005] EWHC 726 (Comm)