

“A NEW DAWN FOR ARBITRATION AND ADR IN LAGOS 2008”

A report on the far reaching reform of the regime for alternative Dispute Resolution in Lagos State.

A critical step in the development of Lagos State as a hub for commercial and legal activity in the African continent has been taken by the adoption by the State government of a far reaching plan to reform the regime for arbitration and alternative dispute resolution within the territory of state.

The declared commitment of Governor Babatunde Fashola SAN to modernization of social and legal infrastructure caused him to initiate in November 2007 a far reaching expert review of the prevailing Arbitration & Conciliation Act as contained in the Laws of Lagos State; and to propose a new Arbitration Law for Lagos State to be passed into law in the shortest possible time. In the course of this expedited work, the Governor's committee of experts recommended the establishment of a **LAGOS COURT OF ARBITRATION;**

The zeal and commitment of the governor reflects his acute understanding of the leading role of the “Centre of Excellence” in the development and progress of Nigeria. Of course, even prior to the establishment of the Colony and Protectorate of Nigeria in 1914 Lagos had existed as a legal and administrative territory since 1886. Lagos remains today the center of commerce for the

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country, notwithstanding the formal relocation of the seat of the Federal Government to Abuja on 12 December 1991. As the commercial and economic nerve centre of the country, Lagos State accounts for the highest volume of foreign and local commercial transactions in Nigeria. Inevitably, the magnitude of the commercial activities in Lagos has resulted in many arbitration-related activities since business managers generally accept that arbitration will be a fast and efficient means of commercial dispute resolution over which the parties may legitimately exercise greater control. This leading role underscores the critical responsibility of the Government of Lagos State to fostering the economic development of the nation as a whole.

It is acknowledged that confidence in the investment climate across Nigeria will be considerably improved by an efficient and effective option of arbitration and ADR. The World Bank's Report, *"Doing Business in 2005"* classifies Nigeria as the eighth slowest country to enforce contracts (out of one hundred and forty-five countries surveyed). Effective implementation of the proposed reforms will help to reverse this perception.

Up until now, arbitration has often been perceived as the first step to litigation, and the arbitral process often becomes entangled in the extremely protracted

and cumbersome process of Nigerian litigation. The judicial process itself presently lacks the capacity to give efficient support to the arbitral process. The initiative to adopt a modern and efficient legal framework on arbitration in Lagos state is to ensure the security of contracts and to make enforceability of obligations undeniable.¹ Arbitration is necessary machinery for dispute resolution in commercial transactions. If properly applied and with the cooperation of the government and the courts, it will provide speedy resolution of disputes in domestic and international commercial transactions and contribute to the de-congestion of the courts.

The two main strands in the proposed Lagos Arbitration Law (the Law) are the liberalization of arbitration by limiting the role of courts, and the emphasizing of party autonomy by allowing parties the freedom to choose how their disputes should be determined. Furthermore, there is a defined core of mandatory provisions intended to ensure fairness and due process. In addition, the Law contains a framework for the conduct of commercial arbitration so that in the event of the parties being unable to agree on procedure, the arbitration can still be completed. Finally, there is the incorporation of provisions to aid in the enforcement of awards and to clarify certain controversial practical issues.

¹ Lagos State Governor Babatunde Fashola speaking at the 2007 annual membership gala nite and induction ceremony of the Chartered Institute of Arbitrators.
www.businessdayonline.com/National/1269.html

In achieving its given objectives, the Committee made some key decisions which guided its work:

- a. The drafting of a separate and distinct Arbitration Law of Lagos State.
- b. The constitution of an arbitration center which would offer all processes of Alternative Dispute Resolution in resolving disputes arising from commercial and noncommercial transactions.

The drafting of a separate and distinct Arbitration Law for Lagos State immediately raised a fundamental issue to be determined by the Committee. This was the issue of whether or not Lagos State is constitutionally empowered to legislate on arbitration. Arbitration is a form of dispute resolution and dispute resolution is dependent on the practice and procedure of the High Court. The Committee also relied on the legal “doctrine of Pith and Substance” (in operation in several Federal Constitutions worldwide) which regulates the legal capacity of a legislature within a federation and seeks to determine under which head of power a given legislation falls by characterizing it by its most dominant feature and assigning it to an enumerated list. After exhaustive discussion and research, the Committee came to the conclusion that arbitration, as a form of dispute resolution is within the legislative purview of the States.

The vision of the Lagos State Governor to situate Lagos as the arbitration hub of the West African Sub-region and beyond cannot be sustained only by legislation but also requires a world class institution that would provide ADR solutions by a wide selection of financial experts and professionals. This would serve as an incentive to commercial people and investors who would like to do business in the region and would provide an alternative to businessmen and women who invariably have to resort to London or New-York for arbitration on a dispute that arises elsewhere. Shanghai, Dubai and Singapore are countries that have successfully established arbitration centers which have enhanced investment and business activities in their territories in the last two years alone. Singapore established a highly successful centre in 2001 and these developments are providing international alternatives to the leading centers for commercial dispute resolution in London and New York.

The above events are milestones in our own efforts to establish Lagos as a regional and ultimately an international financial center. It is therefore worth repeating the fact that a functional financial legal system will enable Lagos to attract increased international investment, and to bring new expertise and vast global links. The resolution of commercial disputes through a court of arbitration

with a high quality panel of neutrals, with vast array of expertise and specializations, is a common practice worldwide and preferable to litigation. It is also widely accepted that without a transparent and efficient arbitration/ADR mechanisms, investment and financial innovation will invariably be thwarted.

The proposed Lagos Court of Arbitration (“LCA”) is expected, to a large extent, to be modeled on the London Court of International Arbitration. It will therefore operate under a three-tier structure comprising a board of directors, a secretariat and the LCA. It is anticipated that the LCA will be established by a law of the Lagos State House of Assembly.

It is the hope of the government of Lagos State that the Arbitration Bill will be enacted into law and would, in concert with the Lagos Court of Arbitration, form the basis on which arbitration and other ADR mechanisms become not only the first step to litigation but the alternative to litigation in the resolution of commercial and business transactions-based disputes for the benefit of not only Lagos State but the whole country as a whole.