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CASE NOTE

Qualifications for Party Representatives and Arbitrators in Nigerian Arbitration: *Shell v Federal Inland Revenue Service*

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Abstract

Nigeria's Court of Appeal held in *Shell v Federal Inland Revenue Service* (*Shell v FIRS*) that only Nigerian enrolled legal practitioners can sign processes for arbitration proceedings in Nigeria. Foreign qualified legal practitioners (FQLP) not enrolled in Nigeria are excluded. Arguably, this limitation extends to the conduct of the parties' cases and excludes FQLP from appointment as arbitrators where the arbitration agreement specifies that arbitrators be legal practitioners. *Shell v FIRS* however, contrasts with *Stabilini Visinoni v Mallinson*, in which the same Court of Appeal had emphasized the flexibility of the arbitral process (which typifies judicial policy in any arbitration-friendly jurisdiction), particularly recognizing that arbitration practice is open to lawyers and non-lawyers alike. Consequently, this note recommends that Nigeria's Arbitration Act be amended to allow for representation by "persons" of the parties' choice, mirroring the IBA Guidelines on Party Representation in International Arbitration 2013 and article 5 of the UNCITRAL Arbitration Rules 2010.

Keywords

Appointment of arbitrators, arbitral tribunal, party representatives, notice of arbitration, legal practitioner, foreign qualified legal practitioners

INTRODUCTION

Parties to commercial arbitration, particularly in investment disputes, often have foreign origins. They may prefer counsel or arbitrators from their jurisdictions. While it is settled that there are ordinarily no mandatory qualifications for the appointment of arbitrators in Nigeria, the same cannot be said for legal practitioners representing parties in arbitration proceedings in Nigeria. In *Shell Nigeria Exploration and Production Company and Three Others v Federal Inland Revenue Service and Nigerian National Petroleum Corporation* (*Shell*

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v FIRS),[1] Nigeria's Court of Appeal pronounced that it is a requirement under Nigerian law that legal practitioners who sign processes for parties before arbitral tribunals in Nigeria be enrolled to practise law in Nigeria, satisfying the requirements of the Nigerian Legal Practitioners Act (LPA).[2]

The qualification question for party representatives has long been an unsettled point and, even before the issue arose in court, has merited scholarly scrutiny.[3] Upon reflection, it would appear that the *Shell v FIRS* decision has broader implications, not just for parties' representatives, but also in certain instances in respect of arbitrator appointments, as examined in this note. The court ruled that only Nigerian qualified legal practitioners are qualified to sign processes filed on behalf of parties before arbitral tribunals. Of course, the court acknowledged that the parties themselves are not prevented from signing the processes. Foreign qualified legal practitioners (FQLP) are however excluded from signing the processes, as a direct consequence of the right to sign arbitral processes being restricted to Nigerian enrolled legal practitioners. This raises questions as to whether FQLP are also precluded from conducting the parties' cases before arbitral tribunals in Nigeria. Analysing the decision and applicable legal principles, it is argued that there is a need to amend article 4 of Nigeria's Arbitration Rules[4] to align it to the International Bar Association Guidelines on Party Representation in International Arbitration 2013 (IBA Guidelines)[5] and article 5 of the UN Commission on International Trade Law (UNCITRAL) Arbitration Rules 2010. This would clearly allow parties to be represented or assisted by "person(s) of their choice", who could be technically or commercially skilled persons, not just legal practitioners, thus restoring the flexibility and autonomy for which parties prefer arbitration. This would remove arbitration from the purview of the LPA and restore international confidence in Nigerian arbitration.

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1 CA/A/208/2012 (31 August 2016). The judgment is available at: <https://www.dropbox.com/s/li75oiwwzn3rkjd/SHELL%203%20ORS%20v%20FIRS%20%28CA-A-208-2012%29%20JUDGMENT.pdf?dI=0> (last accessed 11 June 2020).

2 Cap L11 Laws of the Federation of Nigeria (LFN) 2004.

3 See for instance, AA Asouzu "Arbitration and judicial powers in Nigeria" (2001) 18/6 *Journal of International Arbitration* 617 at 625, where the issue was examined to the effect that: "In light of the law and the international arbitral obligations of Nigeria [citing International Centre for Settlement of Investment Disputes Convention and the Headquarters Agreement between the Asian African Legal Consultative Committee and Nigeria] with respect to the Lagos Regional Centre for International Commercial Arbitration (LRCICA), any person, Nigerian or non-Nigerian, legal practitioner or non-legal practitioner can act or be instructed to act as a party's representative or assistant before an arbitral tribunal in Nigeria".

4 Arbitration and Conciliation Act, cap A18 LFN 2004, first sched (Arbitration Rules).

5 Available at: <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&cad=rja&uact=8&ved=2ahUKEwi9nIqzwITkAhVMSBUIHeKvCM0QFjADegQIAxAC&url=https%3A%2F%2Fwww.ibanet.org%2FDocument%2FDefault.aspx%3FDocumentUid%3D6F0C57D7-E7A0-43AF-B76E-714D9FE74D7F&usg=AOvVaw1NEoA364TUO4JGahHWk3UR> (last accessed 11 June 2020).

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SHELL V FIRS: RELEVANT FACTS

The appellants were international petroleum companies (Nigerian registered entities) and had entered into a production sharing contract (PSC) with the federal government of Nigeria, represented by the Nigerian National Petroleum Company (NNPC). The appellants' complaint was that the NNPC had lifted more crude than the amount to which the government was entitled under the PSC. Consequently, the appellants commenced arbitration proceedings. The Federal Inland Revenue Service (FIRS), which was party to neither the PSC nor the arbitration, then instituted an action at Nigeria's Federal High Court seeking an antiarbitration injunction to quash the arbitral proceedings, on the basis that the dispute was a tax dispute and was not therefore arbitrable. This argument was upheld by the High Court, thus nullifying the arbitral proceedings.[6] Peeved, the appellants appealed to the Nigerian Court of Appeal. Both FIRS and the NNPC then filed a respondents' notice urging the Court of Appeal to affirm the High Court's decision upon determining the issue of: "[w]hether the Notice of Arbitration and Statement of Claim by which the appellants as claimants commenced the arbitration exercise are competent having been prepared by law firms not recognised or licensed to practice law or sign legal processes as legal practitioners in the Federal Republic of Nigeria".[7]

An international law firm, Clifford Chance LLP, and the Nigerian law firm AELEX had indeed signed the notice of arbitration and statement of claim. The Court of Appeal discounted the appellants' argument that arbitral proceedings are different from judicial proceedings such that the requirements for signing judicial processes cannot be made requirements for arbitral processes[8] and that, as the Arbitration and Conciliation Act (ACA) set out all the requirements of a valid notice of arbitration without making signing a requirement, signing the notice of arbitration is not mandatory.[9] The Court of Appeal rather held, per Yahaya JCA, that:

> "It is correct, that article 3(3) of the 1st Schedule to the Arbitration Act lists what the Notice of Arbitration shall contain. Article 4 of the 1st Schedule thereto, gives the parties the right to be represented or assisted by legal practitioners of their choice and the names and addresses of such legal practitioners must be communicated to the other party. By the provisions of sections 2(1) and 24 of the Legal Practitioner's Act 2004, a legal practitioner is that person entitled to practice as a barrister or as a barrister and solicitor as his name is on the Roll of such practitioners in Nigeria. The appellants decided to be represented

6 For more on the aspect of the judgment relating to the arbitrability of tax disputes, see: C Umeche "Arbitrability of tax disputes in Nigeria" (2017) 33/3 *Arbitration International* 497; and O Obayemi "Jurisdiction and arbitration of tax disputes in Nigeria" (2018) 9/1 *Gravitas Review of Business and Property Law* 120.

7 *Shell v FIRS*, above at note 1 at 17.

8 Citing *AG Australia v R & Boilermakers Society of Australia* [1957] 2 All ER 45 at 49.

9 Citing *SEC v Kasunmu* [2009] 10 NWLR (pt 1150) 509 at 522.

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> by legal practitioners at the Tribunal. It behoves them, not only to communicate the names and addresses of the legal practitioners, but to have them sign the processes, as their representatives since they did not sign same themselves. So, for the Notice of Arbitration and consequently the Claim to be competent, recourse must be made to the Legal Practitioner's Act 2004. Are Clifford Chance LLP and AELEX legal practitioners? The only way to show they are, is by stating or showing they are persons who have been enrolled. That has not been shown. They are therefore not competent to sign the initiating processes before the Tribunal, which no doubt is a legal proceeding.[10] Once the initiating process was invalid, null and void, the Tribunal had no jurisdiction to act on it. All the proceedings before it are a nullity and are hereby struck out."[11]

SCOPE OF "LEGAL REPRESENTATION" OR "REPRESENTATION"

Article 4 of the Arbitration Rules upon which the *Shell v FIRS* decision turned provides for the representation of the parties in arbitration. The meaning of "represent" or "representation" as related to "legal practitioner" is therefore key to determining the basis of the Court of Appeal's decision. In *Fawehinmi v Nigerian Bar Association (No 1)*,[12] Obaseki JSC noted that "[t]he word 'represent' in the context of legal representation means to act or stand for or be an agent for another".[13] In this context, representation of the parties in arbitration necessarily relates to "acting", "standing for" or being an "agent" for a party to the arbitration, all of which, the author contends, amounts to conducting the parties' case before the arbitral tribunal on behalf of the parties or indeed in place of the parties.

LEGAL PRACTITIONERS OF PARTIES' CHOICE

Article 4 of the Arbitration Rules allows parties to arbitration to be represented by legal practitioners of their choice. There is some similarity here to section 36 (6)(c) of the Nigerian Constitution,[14] which guarantees the right to legal practitioners of one's choice.[15] This guarantee is however only applicable to the defence in criminal cases.[16] It is inapplicable to civil cases, which are usually the subject of arbitration, and has been interpreted to be subject to the counsel of choice not just being qualified to practise in Nigeria but entitled to entry onto the Supreme Court Roll of Legal Practitioners in Nigeria (the Roll).[17]

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10 Citing *Oketade v Adewunmi* [2010] 8 NWLR (pt 1195) 63 at 70.
11 *Shell v FIRS*, above at note 1 at 19–20.
12 [1989] 2 NWLR (pt 105) 494.
13 Id at 532.
14 Constitution of the Federal Republic of Nigeria 1999 (as amended).
15 "Every person who is charged with a criminal offence shall be entitled to … (c) defend himself in person or by legal practitioners of his own choice".
16 Ibid.
17 See *Awolowo v The Federal Minister of Internal Affairs* [1966] ANLR 171. See generally, N Tobi "Right to counsel in Nigeria" (1980) 5/iii *International Legal Practitioner* 75.

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The perspective of the Legal Practitioners Act

Under section 24 of the LPA, only persons whose names are on the Roll or have received a warrant from Nigeria's chief justice for the purpose of particular proceedings are entitled to practise as a barrister and solicitor in Nigeria.[18] Any person whose name is not on the Roll is not allowed to "engage in any form of legal practice in Nigeria".[19]

Section 15 of the ACA requires that arbitration proceedings be conducted in accordance with the Arbitration Rules, which in turn prescribe that "parties may be represented or assisted by legal practitioners of their choice".[20] It is therefore quite clear that "legal practitioner" as used in the Arbitration Rules has its reference point in "legal practitioner" as used in the LPA, that is, one whose name is on the Roll. This is because, as the ACA and Arbitration Rules failed to define "legal practitioner", the only acceptable definition is that in the LPA, which regulates legal practitioners in Nigeria. This view is further fortified by section 8(5) of the LPA that specifies the manner in which lawyers have a right of audience and take precedence in arbitral tribunals.[21]

The Court of Appeal weighed in on the issue in *Shell v FIRS*, where the notice of arbitration signed by an international law firm, Clifford Chance LLP, and the Nigerian law firm AELEX was held incompetent for having not been signed by a legal practitioner in accordance with sections 2(1) and 24 of the LPA. Consequently, the entire proceedings before the arbitral tribunal were nullified. The Court of Appeal held that, as the parties had chosen to be represented by legal practitioners in Nigeria, they were obligated "not only to communicate the names and addresses of their legal practitioners, but to have them sign the processes, as their representatives".[22]

The ratio of the Court of Appeal is clearly limited to signing arbitration processes.[23] However, the decision raises questions about the competence of FQLPs to conduct cases before arbitral tribunals in Nigeria. Logically, the same consequence should follow, as the analysis above of "represent" and "legal practitioner" as used in article 4 of the Arbitration Rules and sections 2 and 24 of the LPA demonstrates. If FQLP are prevented from signing arbitration processes at pain of nullifying the entire arbitral process, FQLP will also therefore be precluded from conducting parties' cases.

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18 See *Okafor v Nweke* [2007] 10 NWLR (pt 1043) 521.

19 Id at 531.

20 Arbitration Rules, art 4.

21 LPA, sec 8(5): "Legal practitioners appearing before any court, tribunal or person exercising jurisdiction conferred by law to hear and determine any matter (including an arbitrator) shall take precedence among themselves according to the table of precedence set out in the First Schedule to this Act".

22 The court's decision has been the subject of severe criticism. See O Sashore "Representation of arbitration proceedings: The recent trend in *Shell v FIRS*" (2016) 1/1 *Miyetti Quarterly Law Review* 11.

23 See Oputa JSC in *Adegoke Motors v Adesanya* [1989] 5 SCNJ 80.

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Asouzu[24] and Sashore[25] express legitimate fears that restricting legal representation before arbitral tribunals to lawyers enrolled to practise in Nigeria will hamper Nigeria's development as an arbitration destination; nevertheless, the Court of Appeal's decision is unassailable and representative of the law. Briefly, the parties required or hired legal practitioners to represent them in arbitral proceedings. The question then becomes, which persons are entitled to practise as legal practitioners in Nigeria? The answer can only be found in sections 2(1) and 24 of the LPA, to the effect that only lawyers whose names are entered on the Roll are entitled to act or represent clients as legal practitioners in Nigeria. The overarching argument will always be the protectionist regime of sections 2(1) and 24 of the LPA, interpreted in *Okafor v Nweke* as preventing those whose names are not on the Roll from engaging "in any form of legal practice in Nigeria".[26] Thus, aside from the restriction of representation to legal practitioners under article 4 of the Arbitration Rules, sections 2(1) and 24 of the LPA will always raise the question of whether FQLP assisting or representing parties before arbitral tribunals in Nigeria are engaged "in any form of legal practice in Nigeria".

That said however, commercial arbitration in Nigeria often involves parties from diverse nationalities and jurisdictions. It is only fair that those parties would want to be represented by legal practitioners with whom they are familiar. Nigeria would otherwise become unpopular as an arbitration jurisdiction, meaning that parties would take their disputes elsewhere for settlement. Against this background, there is a need to amend the ACA to align with similar provisions in established and emerging arbitration jurisdictions such as Singapore,[27] Malaysia[28] and Germany,[29] which have amended their laws to allow FQLP to represent parties to arbitration in their jurisdictions.

ARBITRATION IS OPEN TO BOTH LAWYERS AND NON-LAWYERS

In *Stabilini Visinoni Limited v Mallinson and Partners Limited*,[30] the Court of Appeal had earlier opined that, given that arbitration practice is not limited to the legal community, it is not mandatory that the notice of arbitration be signed by a legal practitioner, because arbitration is open to both lawyers and non-lawyers. This implied that the parties to arbitration may be

24 See Asouzu "Arbitration and judicial powers", above at note 3 at 626.
25 See Sashore "Representation of arbitration", above at note 22 at 27–28.
26 Above at note 18 at 531.
27 Singapore Legal Profession Act, cap 161 (2009), sec 35. Contrast with *Builders Federal (Hong Kong) Ltd & Joseph Gartner & Co v Turner (East Asia) Pte Ltd* [1988] 2 MLJ 280, which was decided on similar terms to *Shell v FIRS*, to Singapore's disadvantage, thus necessitating the amendment of Singapore's Legal Profession Act. See further, GB Born *International Commercial Arbitration* (2nd ed, vol III, 2014, Kluwer Law International) at 2838.
28 Malaysia Legal Profession (Amendment) Act 2012, sec 37(a) and (b).
29 German Code of Civil Procedure 2005, sec 1042(2).
30 [2014] 12 NWLR (pt 1420) 134.

represented by any person of their choice, whether a lawyer or non-lawyer or even FQLP. It is important however to situate *Stabilini Visinoni v Mallinson* within its proper context. First, article 4 of the Arbitration Rules specifying that parties may be represented or assisted by legal practitioners had not been considered in that case; in contrast, the court in *Shell v FIRS* considered article 4 of the Arbitration Rules and rightly came to the conclusion that its effect is to restrict the right to provide representation and assistance to parties to legal practitioners. Secondly, it was clear in *Stabilini Visinoni v Mallinson* that the notice of arbitration had been signed for and under the authority of Emeka Ngige SAN, a Nigerian Supreme Court enrolled legal practitioner. Thus, the issue was simply whether the junior counsel who had signed the notice of arbitration for Emeka Ngige SAN should have also indicated his (junior counsel's) name. The Court of Appeal thought that this was a mere technicality associated with litigation and held that such technicalities had no place in less formal arbitral procedures.[31] It is true that Augie JCA had stated "that arbitration is not limited to the legal community; it is open to lawyers and non-lawyers, and it cannot be a requirement that the notice of arbitration initiating same must be signed by a legal practitioner".[32] This statement, however, must be taken within the context examined above and especially in view of the clear interpretation of the Court of Appeal in *Shell v FIRS*.[33]

In addition, it should be pointed out that, had the Arbitration Rules intended that non-legal practitioners or even FQLP be able to represent parties to arbitration, the rules would have expressly stated so. Indeed, despite adapting the Arbitration Rules from the UNCITRAL Arbitration Rules 1976,[34] the drafter replaced "persons of their choice"[35] with "legal practitioners of their choice".[36] When article 4 of the Arbitration Rules (which allows parties "representation" by "legal practitioners of their choice") is contrasted with the IBA Guidelines (which clearly exclude the requirement that party representatives be legal practitioners),[37] the nexus between article 4 of the Arbitration Rules and sections 2 and 24 of the LPA becomes clearer. The

31 See id at 171–72.

32 Id at 172.

33 See *Adegoke Motors*, above at note 23 at 92 for what constitutes the binding aspect of a judgment.

34 Available at: <https://www.uncitral.org/pdf/english/texts/arbitration/arb-rules/arb-rules.pdf> (last accessed 11 June 2020). See A Asouzu "The UN, the UNCITRAL Model Arbitration Law and the Lex Arbitri of Nigeria" (2000) 17/5 *Journal of International Arbitration* 85 at 99–100.

35 UNCITRAL Arbitration Rules 1976, art 4.

36 Arbitration Rules, art 4.

37 Guideline 3 reads: "Party Representative or Representative means any person, including a party's employee, who appears in an arbitration on behalf of a party and makes submissions, arguments, or representations to the Arbitral Tribunal on behalf of such party, other than in the capacity as a Witness or Expert, and whether or not legally qualified or admitted to a Domestic Bar". See above at note 5.

inevitable conclusion is that reference to "legal practitioner" in the Arbitration Rules refers to "legal practitioner" in the LPA.

ARE PARTIES RESTRICTED IN THEIR CHOICE OF LEGAL PRACTITIONERS IN INTERNATIONAL ARBITRATION?

Some commentators believe that restricting FQLP from providing representation or assistance to parties in arbitration proceedings in Nigeria will not apply to international arbitration.[38] This argument is based on article 4 of the Arbitration Rules, construed by the Court of Appeal in *Shell v FIRS* as only applying to domestic arbitration.[39] It is important to note, however, that the scope of arbitration proceedings described as "international" by section 57(2)(a)–(d) of the ACA is very wide, including the parties' prerogative to designate their arbitration as international if they so desire.

Article 4 of the Arbitration Rules is only one side of the coin. Whether Nigerian parties to arbitration where the dispute is clearly related to Nigeria can be represented or assisted by FQLP simply because they have designated their arbitration to be international, or the arbitration itself qualifies as international under the wide scope of section 57(2)(a)–(d) of the ACA, will depend on how the courts interpret sections 2 and 24 of the LPA. In assessing whether the courts will determine that there has been a breach of sections 2 and 24 of the LPA, it will surely be relevant whether Nigerian law is the governing law of the contract or whether Nigeria is the designated seat of the arbitration, for example. Sections 2 and 24 of the LPA are protectionist and restrict FQLP from being engaged "in any form of legal practice in Nigeria".[40]

As the law currently stands, the courts will have to decide whether the representation or assistance FQLPs offer to parties to arbitration in Nigeria amounts to "legal practice in Nigeria". The major challenge to liberalizing party representation in Nigerian arbitration thus depends on interpreting sections 2 and 24 of the LPA amid uncertainties as to whether FQLP providing representation or assistance in arbitration proceedings in Nigeria could be considered to be practising law or otherwise. This uncertainty will continue, in the absence of a direct provision in the ACA allowing FQLP to provide representation or assistance to parties to arbitration in view of sections 2 and 24 of the LPA. Nonetheless, whenever Nigeria's appellate courts have the opportunity to reconsider the issue, the author hopes the courts will adopt the approach adopted by Augie JCA in *Stabilini Visinoni v Mallinson*,[41] recognizing that arbitration is not exclusive to lawyers, particularly

38 See for instance, Sashore "Representation of arbitration", above at note 22.

39 *Shell v FIRS*, above at note 1 at 19. See ACA, secs 15, 43 and 53. Under ACA, sec 53, parties to international arbitration may refer their dispute to arbitration in accordance with the Arbitration Rules. In this case, only Nigerian enrolled legal practitioners can represent them.

40 *Okafor v Nweke*, above at note 18 at 521.

41 Above at note 30.

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specialized or international arbitration. Thus, if the parties can hire other professionals as arbitrators, such as architects or surveyors, why should they be prevented from hiring other professionals from representing them? Indeed, FQLP appearing before arbitral tribunals[42] should simply be considered as professional arbitrators practising arbitration, not legal practitioners of any sort.

IMPLICATIONS FOR FOREIGN QUALIFIED LEGAL PRACTITIONER ARBITRATOR APPOINTMENTS

Notably, there is no requirement in Nigerian law that the arbitrator be a legal practitioner.[43] However, learned commentators opine that, where a sole arbitrator is to be appointed, that arbitrator should be a legal practitioner since the arbitrator is likely to deal with difficult problems of procedure and the substantive law of the dispute. Furthermore, a legal practitioner is better placed to understand these legal issues than a layman.[44] Where there is a three-man arbitral panel, recommended practice is that at least one member of the panel, preferably the presiding arbitrator, be a legal practitioner or have extensive training and / or experience in arbitration.[45] The other two arbitrators could then be persons technically or commercially sound in the area of the dispute.[46] Redfern and Hunter advise as a matter of strategy that a party to arbitration should be wary of appointing a lawyer as a party-appointed arbitrator when the presiding arbitrator is also a lawyer, leaving the other party's appointed arbitrator as the only person skilled in the technical or commercial

42 At least in international arbitration, considering that art 4 of the Arbitration Rules expressly allows only Nigerian, enrolled legal practitioners to provide representation in domestic arbitration proceedings.

43 Indeed, in *Mutual Life & General Insurance Ltd v Iheme* [2014] 1 NWLR (pt 1389) 670, Augie JCA had stated (at 677): "The truth of the matter is that there is no distinction in the eyes of the law between an Arbitrator, who is a legal practitioner, and one, who is a layman". See E Onyema "Selection of arbitrators in international arbitration" (2005) 8/2 *International Arbitration Law Review* 45 for the qualities required of arbitrators, applicable to both lawyers and non-lawyers.

44 See A Redfern and M Hunter *Law and Practice of International Commercial Arbitration* (3rd ed, 1999, Sweet & Maxwell), para 4–39. In *Sacheri v Robotto* [1991] 16 YBCA 156 at 156–57, the arbitrators were all technically skilled but lacked legal or arbitration training. They relied on a lawyer to draft the award for them. The Italian Corte de Cassation set aside the award on 7 June 1989 for this reason. See also *P v Q* [2017] EWHC 148 (comm), [2017] EWHC 194 (comm). See further: *Hulley Enterprises Limited (Cyprus) v The Russian Federation* (PCA case no AA 226), *Yukos Universal Limited (Isle of Man) v The Russian Federation* (PCA case no AA 227) and *Veteran Petroleum Limited (Cyprus) v The Russian Federation* (PCA case no AA 228), awards of 18 July 2014. See also, E Onyema *International Commercial Arbitration and the Arbitrator's Contract* (2010, Routledge) at 66.

45 Redfern and Hunter *Law and Practice*, above at note 44, para 4–40. See further, M Klug and S Dutson "The role of the legal profession in arbitration" (1999) 8/3 *Arbitration and Dispute Resolution Law Journal* 208.

46 Ibid.

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area of the dispute.[47] This is sound tactical advice, although the requirements that arbitrators be impartial and neutral would seem to guard against the risk. In any case, a prudent option would be an agreement by the parties to appoint arbitrators who are commercially or technically sound in the area of dispute, who will then appoint a legal practitioner as the presiding arbitrator.

The application of the LPA's definition of legal practitioner to representation in arbitration also has implications for arbitrator appointments. For instance, where the arbitration agreement specifies specific qualifications for the arbitrators, the appointed arbitrators must have those qualifications, otherwise the arbitral tribunal's decision will be set aside on this fundamental ground.[48] It follows that, if the parties stated in their agreement that the arbitrator shall be a legal practitioner, applying the LPA definition of legal practitioner, only legal practitioners whose names are on the Roll would be entitled to be appointed as arbitrators. FQLP would not be entitled to be appointed as arbitrators in such instances as, by specifying "legal practitioner", the parties would be deemed to have indicated a legal practitioner recognized by Nigerian law.

CONCLUSION

Arbitration is a commercial dispute resolution mechanism of choice for businesses, many of which are foreign investment related. In such cases, the foreign investor parties often opt for their home country legal practitioners,[49] with whom they are familiar, and it is only reasonable that they seek to have them represent them during arbitration proceedings. The LPA, arguably, does not however currently permit such representation. After all, legal proceedings were said in *Ezenwa v Bestway Electronics Limited* to include "all proceedings authorised or sanctioned by law and brought or instituted in a court or legal tribunal for the acquiring of a right or the enforcement of a remedy".[50] This points to the inclusion of arbitration proceedings, which are themselves sanctioned by the ACA as legal proceedings.[51] It necessarily follows that only lawyers whose names are on the Roll are allowed by law to represent parties in these legal arbitration proceedings.

Extrapolating the logic of *Shell v FIRS* and applying the definition of legal practitioner to representation in arbitration proceedings, it would seem that: FQLP cannot conduct the parties' cases in arbitration proceedings in

47 Ibid.

48 *Rahcassi Shipping Company SA v Blue Star Line Ltd* [1967] 3 ALL ER 301; *Pando Compania Naviera SA v Filmore SAS* [1975] 1 QB 742.

49 See ME Usoro "Current developments in international trade in legal services" (paper presented at the seventh annual business law conference of the Nigerian Bar Association Section on Business Law, Lagos 17–19 June 2013) at 7, describing this as the "follow your client approach".

50 [1999] 8 NWLR (pt 613) 61 at 78.

51 *Shell v FIRS*, above at note 1 at 20.

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Nigeria;[52] and where the parties have specified that the arbitrator should be a legal practitioner, only legal practitioners within the meaning of the LPA are envisaged, with the result that FQLP are also disqualified. This is not a desirable result as it detracts from the flexibility of process and procedure in arbitration lauded by the same Court of Appeal in *Stabilini Visinoni v Mallinson*.[53] It is hoped that, whenever the opportunity arises to amend the ACA, these restrictions will be removed by amending the ACA to align with the IBA Guidelines and article 5 of the UNCITRAL Arbitration Rules 2010. This would clearly allow parties to be represented by "person(s) of their choice", not just legal practitioners, and restore the flexibility and autonomy attributes for which parties prefer arbitration. In this regard, FQLP would be treated not as legal practitioners but as persons of the parties' choice to represent them in arbitration proceedings.

CONFLICTS OF INTEREST

None

52 This is clearly the case with domestic arbitration.
53 See above at note 30.

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