

MAINSTREAMING THE PRACTICE SKILLS OF ARBITRATION IN DEALING WITH PPP CONTRACTS

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Introduction



- ◆ **Meaning and use of Arbitration**
 - ▶ Belongs to ADR family of Business Enablers.
 - ▶ Used as a Business Tool
 - ▶ Serves as Nut and Bolt of Successful Business Transaction

Arbitration in PPP Contracts



- ▶ Forms of PPP Arbitration
 - ✓ Domestic/Commercial
 - ✓ Commercial/International/
Investment
 - ✓ Governing Law (Arbitration and
Mediation Act, 2023. Bilateral
Investment Treaty, ICSID Convention)

Arbitration in PPP Contracts Contn'd

- Why Is Arbitration used in PPP contracts?
- ✓ PPP is Long Duration
- ✓ May be an Investment Contract
- ✓ Gestation Period
- ✓ Contract Segmentated and Integrated

Arbitration in PPP Contracts Contn'd



Why Is Arbitration used in PPP contracts?

- ✓ Huge Capital Outlay
- ✓ Risk of Failure High and Ripple Effect on Commercial and Economic Activities
- ✓ Gurantee's Success

Harnessing the Prospects of Arbitration in PPP



- Knowledge of Arbitration vs Use of Arbitration
- Arbitration Clause in PPP Contract must Make Adequate Provisions:
 - ✓ Certain
 - ✓ Specific
 - ✓ Unambiguous
 - ✓ Arbitrability (Tax, Fraud etc)

Harnessing the Prospects of Arbitration in PPP Contn'd

- ✓ Dispute must Arise
- ✓ Fulfill Any Condition Precedent
(Exhaust mandatory remedy)
- ✓ Transaction Adviser must possess use
of arbitration skills

Conclusion

- ✓ Dispute in PPP to be resolved by arbitration
- ✓ Arbitration is a PPP business Enabler
- ✓ Transaction Adviser to have arbitration skills

Resume of Emmanuel Dike Esq

Fellow Institute of Constuction Industry Arbitrators

Fellow Chartered Institute of Arbitrators, London

Fellow Nigerian Institute of Chartered Arbitrators

Emmanuel Dike is a lawyer (Master of Laws, University of Lagos) and practices law as a Senior Partner in the law firm of Jasmine Advocates, a full service law firm based in Nigeria with significant international exposure and affiliations. Jasmine Advocates has a collaboration arrangement with Howard Kennedy, a top brand construction law firm in the UK.

Mr. Dike is involved in both commercial litigation and arbitration. He is a well rounded arbitrator and construction adjudicator; and he was a winner of the international Who's Who Legal award as a national leader in arbitration and construction matters in 2021. He has acted as an arbitrator in significant domestic and international arbitration cases; including high volume construction arbitration cases. He frequently acts as a construction adjudicator.

He was the former General Counsel at the Regional Centre for International Commercial Arbitration Lagos for over 15 years; where he was exposed to large volumes of arbitration cases, both domestic and international arbitration.

A long standing member of the Infrastructure Policy Commission of the Nigerian Economic Summit Group. The work of the Infrastructure Policy Commission brought about the establishment of the Infrastructure Concession and Regulatory Commission.

Mr. Dike is one of the few persons with a legal background that provide services in the PPP space in Nigeria. He attended and passed the PPP course organised by the Association of Project Managers Group (APMG) International (UK). The APMG PPP course Guide used in the PPP course is a product of the World Bank Group (WBG), part-funded by the Public Private Infrastructure Advisory Facility (PPIAF) (UK), the European Bank for Reconstruction and Development (EBRD), the Inter-American Development Bank (IDB), Asian Development Bank (ADB) and the Islamic Development Bank (IDB).

He was part of the legal team that represented the Association of Airlines Operators of Nigeria (AON) and 6 other airlines that successfully litigated and won the botched concession of Nigeria Air Ltd to Ethiopian Airlines as a PPP arrangement in the Federal High Court of Nigeria.

Other PPP arrangements he was involved include, the resolution of the PPP concession dispute for the building of houses owned by a co-operative society owned by the staff of an agency of the Federal Government of Nigeria, the concession to building developers by the Federal Capital Development Authority Abuja, and many legal advice rendered to PPP contractors (Private Party).

He is currently a pioneer member of the Public Private Partnership Practitioners Association of Nigeria (P3PAN), and currently its Chairman on Legal and Regulatory Committee.

He belongs to the prestigious Institute of World Business Law of the International Chamber of Commerce, Paris- a global think-tank for providing research, training and information concerned with the development of international business law.

He serves as an international delegate to the International Chamber of Commerce (ICC), Paris Arbitration Commission and also a member of the ICC National Arbitration Commission for Nigeria.

He is also the Chairman of Society of Construction Law Nigeria as well as the Secretary-General of the Institute of Construction Industry Arbitrators.

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Thank You!

