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INVESTMENT IN COMMERCIAL VENTURE AND MULTI-TIER DISPUTE RESOLUTION PROTOCOL: THE NIGERIAN EXPERIENCE

F. C. AMADI, PhD.[1]

ABSTRACT

Investment in businesses or their creation is the basis and precursor of wealth creation of nations and individuals. Investment via local or foreign capital is the engine room and substratum of economic growth and socio-economic development. Investors consciously engage in business with the aim of making profit, that is, return on their investment. However the business environment, although regulated by law and policies, is not a bed of roses. Business itself is generally torrid, complex, competitive and sometimes unpredictable. Success or failure of businesses are dependent on several factors including managerial competence or incompetence, inflations, legal system and even unforeseen circumstances. Disputes of varying nature can arise in course of, or on account of failed or hampered expectation of the investor. These challenges, amongst others, make investment itself nightmarish. The need to deal with possible investment disputes is therefore a serious private and public responsibility. In Nigeria, the Arbitration and Mediation Act, 2023 specifically provide for arbitration and mediation as means of settling commercial disputes, investment issues inclusive. By and large, aside from litigation guaranteed under s.6(b) and (c) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), individuals can by private arrangement choose the method(s) of settling their disputes. The methods outside litigation are ordinarily inured with the credit of speed, confidentiality, party autonomy and inexpensive. The aim of this work is to examine the intricacies, desirability and efficacy of the deployment of a multi-tier dispute resolution process vis-à-vis achievement of ultimate resolution of investment dispute. The normative juridical approach was deployed in this work. It was found that there is already multiple economic crisis bedevilling investments and global economic growth. Besides, unattended disputes or delay in their handling is fatal to economic growth and prosperity. Furthermore, resort to multi-tier dispute resolution strategy assists in truncating dispute escalation mid-trajectory. It was recommended that disputants and dispute resolvers should timely zero on the most relevant ADR method of dispute settlement than sampling all the listed methods which may be counterproductive.

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Keywords: Investment Law, ADR, Commercial Disputes, Nigeria.

INTRODUCTION

[1] Reader, Department of Private and Property Law, Rivers State University, Port Harcourt, Nigeria.

In order for there to be economic growth, survival and socio-economic development, the economic substratum of economic wealth must not deplete or dissipate. The sustenance of economic growth and well-being must be a going concern by vibrant commercial activities. The word 'commercial' includes:

> Matters arising from all relationships of a commercial nature whether contractual or not, such as any trade transaction for the supply or exchange of goods or services, distribution agreement, commercial representation or agency, factoring, leasing, construction works, consulting, engineering, licensing, investment, financing, banking, insurance, exploitation agreement or concession, joint venture and other forms of industrial or business co-operation, carriage of goods or passengers by air, sea rail or road.[2]

Economic growth thrives on the existence of flourishing business which themselves are made possible o invigorated by investment either for their creation or sustenance. Investment in a business can be by individuals, companies, a government within or outside a country, in which case, transnational. The business of dispute settlement in a society is not treated with levity. To this end, it is a collective responsibility aided by law and requiring strategies to achieve the goal. Alternative Dispute Resolution (ADR) is a multi-track approach of dispute settlement as against litigation. The court system of dispute settlement is a mono door. ADR as a multi-track mechanism of dispute settlement encompasses any dispute resolution that is not litigation. According to Idigbe,[3] ADR "includes arbitration, mediation, conciliation, settlement negotiation, early neutral evaluation, facilitation, mini-trials and summary jury trial."

It is increasingly common in the United States, Canada and elsewhere for commercial parties to include multi-tiered dispute resolution clauses in international contracts. Multi-tiered clauses, sometimes referred to as "step clauses" or "issue escalation clauses", might include some or all of the following "tiers":

- Discussion, consultation or negotiation by representatives of the parties;
- mediation or conciliation;
- expert determination or valuation;
- arbitration.

Multi-tiered clauses encourage parties to seek a consensual, conciliatory solution to contractual disputes while providing a backstop in the form of a binding dispute resolution process such as arbitration if the earlier explored consensual approach fails.
Arbitration is one form of ADR which is now frequently used in commercial dispute resolution in Nigeria. In the words of Moffitt and Bordone[4]

[2] See Arbitration and Mediation Act 2023, s. 91(1)
[3] A. Idigbe, arbitration Practice in Nigeria, (Lagos: Distinct universal limited, 2010), p.3
[4] M. L. Moffitt and R. C. Bordone, Perspectives on Dispute Resolution, An Introduction, in M.L Moffitt and R.C. Roberts (eds.). The Handbook on Dispute Resolution, (San Francisco, U.S.A: Jossey-Bass A Wiley Imprint, 2005), p.1

> That disputes arise is not remarkable. What is remarkable is the extra-ordinary variety of ways in which people choose to deal with their differences when they arise. It is this diversity of experiences and approaches that makes the study of dispute resolution so rich.

In other words, parties may decide to negotiate directly or through a third party behind the scene or use third party neutrals in mediation conciliation or arbitration or any of the hybrids. Granted that perhaps the most remarkable thing about dispute is not its occurrence but the variety of ways[5] people choose to deal with it, this choice is therefore cardinal for a successful dispute resolution. Moreso the use of multi-tierism as a strategy of dispute resolution to enhance efficient resolution of investment disputes. This brings promotion of inclusive sustainable economic growth[6]. The dynamics of modern business and effect of globalization seem to make it somewhat difficult to simply identify what dispute that can particularly described as really, truly and exactly called private or public. Given that we live in a fractious world, with global and national crisis and economic challenges, business carried out by gregarious beings and corporate entities almost certainly face challenges and disputes of necessity do occur and abound. Modern businesses are caught by this descriptional and existential quagmire. According to Schneider.[7]

> Many disputes are neither wholly public nor wholly private. As companies invest in foreign countries at an increasing rate, there are now direct disputes between these companies and the governments of the countries. Nongovernmental organisations (NGOs), such as Amnesty International or the World Wildlife Foundation, have entered the fray of international disputes and often negotiate directly with governments for policy changes. Finally, within intergovernmental organisations such as the European Union (EU) and the World Trade Organisation (WTO), individuals, countries, and the organization itself can all be involved in a dispute.

In view of the fact that disputes in generally common place and almost unavoidance, the business of dispute. The objective of the paper is to examine the workability of the multi-tier ADR Protocol found in agreements and their effects in the achievement of speedy settlements of commercial matters. The paper will specifically consider and appraise the variants of ADR, pontificate on what aids the determination of the option that will offer great value or benefit in a given dispute situation. The need to achieve fast settlement of a dispute is key to disputants who like sick persons need cure. To this end, parties in their agreement can agree to the use of the various processes of negotiation, mediation, conciliation and often lastly arbitration.

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[5] Indeed according to K. Mackie et al, The ADR Practice Guide, Commercial Dispute Resolution, (3rd edn; West Sussez: Tottel Publishing Ltd; 2007), pp 51 – 52 "The range of available dispute resolution processes continues to grow as both society and the commercial world evolve together with re-thinking of the field of dispute resolution which ADR is a creative part".

[6] Sustenable Development Goals, Rule 8. This rule provides for decent work and Economic Growth Goal

[7] A. N. Schneider, Public and Private International Dispute Resolution in M.L Moffitt and R.C. Roberts (eds.). The Handbook on Dispute Resolution, (San Francisco, U.S.A: Jossey-Bass A Wiley Imprint, 2005), p.438 - 439

This paper is divided into 5 sections. Section 1 is the introductory part, section 2 sheds light on key ADR mechanisms, Section 3 canvasses the rationale or purpose of the multi-tier ADR Protocol, Section 4 discusses some reflections on the comingling of ADR mechanism in ADR agreement and Section 5 concludes the paper with recommendations.

PURPOSE OF THE MULTI-TIER ADR PROTOCOL

The consensual nature of Alternative Dispute Resolution enables parties make far-reaching decisions concerning the settlement of potential dispute arising from their relationship/agreement. Practically, the exact or nature of dispute is not obvious from the beginning. For instance, is the dispute, failure to perform part or the whole of a party's obligation or issues relating to negligence in carrying out one's obligation?

Apparently the nature of a dispute may warrant the use of one or more of the prescribed methods that may best suit the settlement of a case. In this regard, Sander and Rozdeiezer[8] have opined that the question of selection presents the most challenging problems in the field of Alternative Dispute Resolution. The multi-tier provision helps to narrow down the choice range in alternative dispute resolution yet does not seem to solve the problem of selection completely.

It is indubitable that a multi-tier dispute resolution protocol supplies the much needed kit-box from where choice could be made without the necessity for another agreement.

Care must be taken to avoid the process from breeding delay on account of an attempt to exhaust the use of all the mentioned methods from beginning to the end. It is the extent of the utility of the multi-tier protocol; that is the vexed question that needs to be addressed. This is because the time used for unfruitful exhaustion of negotiation, mediation and conciliation before arbitration, which is a distinct and comprehensive process, may nevertheless not be reasonable, and this is contrary to the expectation of speedy resolution.

TYPES OF ALTERNATIVE DISPUTE RESOLUTION MECHANISM

It has been shown above that there are variants of ADR from which disputants can resort to, this work will focus on the four most prominent. They are negotiation, mediation, conciliation and arbitration.

Negotiation

Etymologically, the word 'negotiation' originated in the early 15th century from the old French word, *negociacion* and the latin word *negotiatio*; neg meaning 'no' and optium meaning 'leisure'[9]. It is a contemporary form of dispute resolution which involves mutual understanding and an eventual agreement between parties but is not inclusive of a third party. Negotiation is an interaction and process between entities who aspire to agree on matters of mutual interest while still optimizing their individual utilities[10]. In the International scene, state parties in conflict frequently employ this mechanism by virtue of its proven simplicity,

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[8] F.E.A. Sander and L. Rozdeiezer, Selecting an Appropriate Dispute Resolution Procedure in the Handbook of Dispute Resolution P. 386

[9] Negotiation, Origin and Meaning of Negotiation, online Etymology dictionary available at <https//www.etymoline.come> accessed on 26th July 2021.

[10] H.M. Adnan, M.F. Hassan, I. Azis, I.V. Paputungan (August 2016). Protocols or agent-based autonomous negotiations: A review. 2016 3rd International Conference on Computer and Information Sciences (ICCOINS) Kuala Lumpur, Malaysia: IEEE: 622-626

yet effectiveness[11]. In fact, statistics have shown that people negotiate daily even without considering it negotiation[12].

Between 1990 and 1994, constitutional negotiations took place in South Africa for the purpose of establishing a new norm. This may be as a result of the variety of ways negotiation may take. However, negotiation theorists have divided these mechanism into two broad types[13] which are distributive (win-lose) negotiation (involving strict terms in the negotiation usually leading to one party having to cede more privileges at their own expense) and integrative (win-win) negotiation (which is the diametric opposite of the distributive branch). Several disputes are capable of being resolved through negotiation. It is therefore not surprising that negotiation has been characterized as the preeminent mode of dispute resolution[14] given it presence in virtually all aspects of everyday life, whether at the individual, institutional, national or global levels. As already established, negotiation is the first point of call in the resolution of international disputes. Furthermore, juristic persons often resort to negotiation where there is an issue between them and high stakes on both ends are involved. In international dispute resolution, this is undoubtedly the simplest way for states to resolve disputes and by far the most often resorted to[15]. It is a universal truth that even when ultimately, parties to a dispute may resort to other means to settle their dispute, they will usually first try to resolve their dispute by direct negotiations[16]. Negotiation involves mutual understanding and agreement between parties which is not inclusive of a third party. It is a contemporary form of dispute resolution.

Mediation

Mediation is a private dispute resolution process where a neutral third party, called a mediator helps the parties discuss and try to resolve their dispute[17]. The mediator who is approved by both parties takes part in the negotiations and suggests the terms of settlement in an attempt to bring about a compromise between the two opposing views[18]. It is a procedure in which the parties discuss their disputes with the assistance of a trained impartial third person(s) who assists them in reaching a settlement. Any settlement arrived at thereafter, is recorded in an enforceable contract. It must be noted that unlike a judge in litigation or an arbitrator in an arbitration, a mediator is not a decision maker. The mediator is saddled with the responsibility of assisting the parties to reach a settlement of the dispute. Just like other alternative dispute resolution processes, mediation also sports the advantage of confidentiality. Under the World intellectual property organization (WIPO) Mediation rules, information concerning mediation processes cannot be provided to anyone outside the context of mediation[19]. This further buttresses the confidentiality of this process. In Nigeria, mediation is gradually becoming a viable option in resolving commercial, civil and family disputes within the shortest possible time frame. It could either take the form of private mediation where the parties independently seek the help of a third party or court annexed mediation where matters

[11] S.C. McCaffrey, 'Understanding international Law', Lexis, 2005, p. 189
[12] De Felice, fortune Barthelemy (1976)
[13] W. Richard, M. Robert, 'A Behavioural theory of Labour Negotiations' [McGraw-Hill 1965]
[14] S.G. Goldberg; E.A. Frank; N. H. Rogers; Dispute Resolution: Negotiation, Mediation and other processes, (2nd edn)
[15] S. C. Mccaffrey, Understanding International Law, Lexis, 2005, p. 189
[16] F. C. Amadi, N. A Duson, 'The United Nations and the Principle of Peaceful Settlement of Disputes between State: Some reflection on the mechanism of arbitration as a means' Cranbrook Law Review Vol. 10(1) 2020 pp.45-46
[17] American Bar Association, Dispute Resolution Processes
[18] F. C. Amadi, N. A. Duson, Supra
[19] Article 15 – 18 WIPO Mediation Rules, 2021

which have already been filed by the court are referred to mediation by the court[20]. In such instances, whatever agreement is reached by the parties is entered as judgment of the court and is binding on all concerned parties.

Disputes which are best suited to be addressed by mediation include but are limited to disputes in commercial transactions, personal injury, construction, workers' compensation, labour or community relations, divorce, domestic relations, employment or any other matters which do not involve complex procedural or evidentiary issues.

Conciliation

This is a quasi-judicial procedure[21] wherein a third party referred to as a conciliator (who may or may not be totally neutral to the interests of the parties) is used by the parties to help build positive relationships. Conciliation has been known over the years as a method of settling disputes by consensus rather than by adjudication. It involves reconciling, appeasing, uniting and winning over the other party in a friendly manner[22]. Just like other ADR processes, the concept of conciliation is steadily gaining momentum due to its edge over the traditional method of settling disputes, litigation.

In Nigeria, the principal statute governing conciliation is the Arbitration and Conciliation Act[23]. Under the Act, the term conciliation is not defined. The Act in Article 37 does however provide that parties to any agreement may seek amicable settlement of any dispute in relation to the agreement by conciliation.

It is trite law that a conciliator does not give a decision, but his main function is to persuade the parties themselves to come to a settlement. Seeing that the concepts of conciliation and mediation could appear conflicting to individuals, it is crucial to establish a distinction between them. In conciliation, all the conciliator does is to explore the opportunity for settlement. He is not necessarily a reconciliator and therefore lacks powers to bind the parties. Section 6 of the Trade Dispute Act[24] provides for the appointment of a conciliator where a mediator fails. Conciliation may be resorted to in relation to disputes arising out of or relating to a contractual or other legal relationship.

Arbitration

Modern Arbitration dates back to the Treaty of Amity, commerce and navigation between Britain and USA (Jay Treaty) of 1974 under which three mixed commissions were appointed in equal numbers by both parties with the power to refer to an umpire in the event of disagreement[25]. Arbitration involves the presentation of a dispute to an impartial or neutral individual or panel for issuance of a binding (in case of binding arbitration) or advisory or non-binding decision (in case of non-binding arbitration).

The individual(s) are referred to as arbitrators who are expected to give a formal hearing to the parties and is vested with the power of final decision. The arbitration process is similar

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[20] Section 28 High Court of Rivers State Cap 62 Laws of Rivers State 1999
[21] A. Kaczorowaska, Public International Law, old bailey press, London 2002 (n 20) p. 347
[22] Longman's Dictionary of English language, 2nd edition, page 331
[23] Cap 18, Laws of the Federation 2004 (ACA)
[24] Cap 432 Laws of the Federation 1990
[25] F.C. Amadi, and N.A. Duson 'The United Nations and the Principles of Peaceful Settlement of Disputes between States: Some reflection on the Mechanism of Arbitration as a Means', Cranbrook Law-review vol. 10(1)2020 pp 45-46

to a trial in that the parties make opening statements and present evidence to the arbitrator(s). However, it is less formal and less time-consuming than litigation. After the hearing, the arbitrator issues an award which is to adhere to certain requirements. The concept of arbitration is consensual and can only take place when both parties have agreed to it. For further disputes arising under a contract, the parties insert an arbitration clause in the relevant contract. An already existing dispute may also be referred to arbitration by means of submission agreement between the parties. Unlike other alternative dispute resolution processes, it is impossible for a party to unilaterally withdraw from arbitration.

In Nigeria, the process of arbitration is regulated by rules contained in the Arbitration and Conciliation Act[26]. Just like negotiation, arbitration has been widely featured in the international spectrum. It played a major role in the popular Alabama claims case of 1872 whereby major tensions regarding British support for the confederacy during the American Civil war were resolved. The Hague Peace Conference of 1899 witnessed the major world powers agreeing to a system of arbitration thereby creating the permanent Court of Arbitration. A plethora of relevant international instruments have been formed owing to arbitration. A salient instrument is the 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral awards.[27] Virtually every significant commercial country is a signatory including Nigeria. Disputes arising from trade and commercial contracts and transaction are often referred to arbitration for resolution. Given these variants of ADR, individuals are accorded the right to make a choice on how to settle their disputes for as rightfully stated by Karibi-Whyte JSC (as then was) in the decided case of *Egesimba v. Onuzirike*.[28]

> If parties have agreed to refer disputes to a body or institution for determination under agreed rules and guidelines and this is done accordingly, then the decision is as binding as one from a court and indeed acts as estoppel.

Contracting parties have the autonomy of choosing ways they desire their disputes to be settled. Parties may choose to use either one of the mechanisms, a hybrid of the mechanisms, that is two mechanisms combined together such as mediation and arbitration referred to as "med-arb" or they may include a multi-tier clause in their contract involving the opportunity to explore different methods. However, cases arise where several mechanisms are proposed as routes which may be explored in the event of a dispute. This is what is referred to as the multi-tier approach to dispute resolution. This is known as multi-step approach. This connotes a hybrid form of dispute resolution that combines an adjudication approach such as arbitration with a non-adjudicative approach such as negotiation, mediation or conciliation[29]. It is a process that consists of various stages with different personnel involved and utilizing different tools to (hopefully) bring about a settlement and failing that, to end up with the arbitration (or adjudication) of the dispute[30].

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[26] Ibid at 12

[27] Also referred to as the New York Convention

[28] 15 NWLR (Part 971)466

[29] Weixia Gu, "multi-tier Approaches and Global Dispute Resolution Japanese Yearbook of International Law" vol 63, pp. 147-166.

[30] Dupery, Pierre Practical Consideration in the drafting and use of a Multi-tier Dispute Resolution Clause, paper presented at the IBA-Conference Durban 2002: Committee D session on Multi-tiered Dispute Resolution

One of the distinctive characteristics of multi-tiered dispute resolution as defined by Duprey[31] is that it represents a departure from "one size fits all" arbitration clauses, giving the parties the opportunity to tailor the dispute resolution regime that they wish to use to their particular needs, type of contract and in particular the types of dispute that might arise in connection with the contract[32].

HISTORY OF ARBITRATION IN NIGERIA

The concept of arbitration is not new in Nigeria. Arbitration and other alternative dispute resolution methods were used to resolve conflicts. Extra-judicial settlement of dispute has always been a feature of our indigenous customary law. Such settlements are accepted and enforced by the courts, provided they satisfy certain requirements.[33] Every community in what has become the Federal Republic of Nigeria evolved their own extra judicial method of dispute resolution, with similarity in formula and process.

According to Akpata, JSC (as he then was), he posits: "It is not hazarding a guess, but being factual to say that the Anglo-Saxons, the Romans and indeed every community that lived 'under the sun' in ancient times used arbitration or mediation or conciliation, in one form or another to resolve disputes".[34] The Arbitration Ordinance of 1914 was the first Arbitration statute that applied to the whole of the territory now known as Nigeria. Based on the English Arbitration Act of 1889, the 1914 ordinance was passed on the 31st of December, 1914 after the amalgamation of the northern and southern parts of Nigeria. The 1914 ordinance was subsequently re-enacted as the Arbitration Ordinance of 1958.[35] Each of the regions formally adopted the Arbitration Ordinance of 1958 into their own laws. For instance, it was enacted by the Western Region as the Arbitration Law, Chapter 18, Laws of the Western Region of Nigeria 1959, and subsequently by Lagos State as the Arbitration law chapter 10, Laws of Lagos state 1973. The above legal framework for arbitration continued in force until the 14th of March, 1988 when the Arbitration and Conciliation Decree No. 11 of 1988 ("ACD") was enacted by the then Federal Military Government. Three significant features of the new regime introduced by the ACD are:

i) It applied as a Federal enactment throughout the territory of the Federal Republic of Nigeria, and superseded all state arbitration legislations, this was possible because of the "unitary" legislative arrangements under the military regime, accordingly to which the federal military government was competent to legislate on any subject for the entire federation including the states:

(ii) secondly, it included for the first time in the history of arbitration legislation in Nigeria, provisions on international commercial arbitration; indeed, the overall framework of the ACD consisted of a mix of provisions which existed for domestic arbitration under the previous arbitration legislation and provisions which were applicable to international commercial arbitration, inspired by the UNCITRAL Model Law on International Commercial Arbitration and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958.

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[31] Ibid

[32] W. Eriank 'Enforcement of Multi-tiered Dispute Resolution Clause' SSRN Electronic Journal, September 2022

[33] G. Ezejiofor, The Law of Arbitration in Nigeria (Lagos: Longman Nigeria Plc.. 1997) 3

[34] (n. 12)

[35] Amended Report of the National Committee on the Reform and Harmonization of Arbitration and ADR Laws in Nigeria, September 2005. Available at https://www.amendmentreport.gov.ng. assessed 16 June, 2018.

iii) Thirdly, the new legislation contained provisions on conciliation, a form of Alternative Dispute Resolution (ADR) for which there had hitherto been no legislative framework.[36]

On the 29th of May 1999 a new constitutional and democratic regime emerged in Nigeria founded upon the constitution of the Federal Republic of Nigeria.[37] An important aspect of the new constitutional arrangement is the distribution of legislative powers among the Federal and State Legislatures. While the Federal Government had exclusive competence to make laws on matters itemized in the exclusive legislative list, the state governments had concurrent legislative competence in respect of matters in the concurrent list, and exclusive legislative competence in respect of matters that were not in the Exclusive or Concurrent lists, section 315 (1) CFRN 1999 (as amended) preserves the validity of the ACD as existing law, and provides that the ACD remains valid as a law enacted by the Federal and State legislature to the extent of their respective legislative competence. Nigerian's Arbitration legislation, the Arbitration and Conciliation Act (ACA) was passed into law on the 4th of March, 1988. It is apparent from the provisions of the legislation that one of the purposes of its enactment was to implement Nigeria's treaty obligations under the Convention on the Recognition and Enforcement of Arbitral Awards made in New York on the 10th of June, 1958 ("The New York Convention"). Also, since the legislation was to apply to international commercial arbitrations, there was a clear intention to incorporate the basic concepts of the UNCITRAL model law on International Commercial Arbitration of 1985.

Thirty years after the ACA was passed, it is clear that the legislation has not achieved the objectives that inspired its enactment. In a number of significant respects the standards for recognition and enforcement of international arbitration agreements and arbitral awards fall short of the standard prescribed by the UNCITRAL Model Law. Inelegantly drafted provisions have created confusion and generated conflicting or retrogressive judicial decisions. Outmoded concepts and definitions have prevented the arbitral process from keeping pace with contemporary trends in international trade and commerce. Above all, experience shows that the ACA has failed to achieve one of the underlying philosophies of the UNCITRAL model law and of most national arbitration legislations, *viz*, to minimise judicial intervention in the arbitral process. In Nigeria, arbitration is often perceived as the first step to litigation, and the arbitral process often becomes entangled in the extremely protracted and cumbersome process of Nigerian Litigation as the judicial process itself presently lack the capacity to give efficient support to the arbitral process.

THE PURPOSES OF THE MULTI-TIER ADR PROTOCOL

As said earlier parties are at liberty to choose the method in which they wish to resolve their disputes. Owing to this privilege, parties may decide to include a multi-tier clause in their contract. The multi-tier protocol connotes a process which consists of various stages with different personnel and utilizing different tools to bring about a settlement[38]. In this concept, several mechanisms are proposed as routes which may be explored in the event of a dispute in comparison with the usual singular mechanism as a choice. One of the distinctive characteristics of multi-tiered dispute resolution as defined by Duprey[39] is that it represents

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[36] Ibid

[37] Ibid

[38] Dupery, Pierre Practical Consideration in the drafting and use of a Multi-tier Dispute Resolution Clause, paper presented at the IBA-Conference Durban 2002: Committee D session on Multi-tiered Dispute Resolution

[39] Ibid

a departure from “one size fits all” arbitration clauses, giving the parties an opportunity to tailor the dispute resolution regime that they wish to use to their particular needs, type of contract and in particular, the types of dispute that might arise in connection with the contract[40].

A major aim of these clauses is to arrive at a solution through processes that are not harmful to the commercial relationship and considerably save the parties time and money. Furthermore, this protocol serves to enable parties choose the dispute resolution mechanism that accords with the specific needs of their relationship. Through the implementation of multi-tier dispute resolution protocol, parties have the opportunity they have built according to their wishes. This is intended to help resolve the disputes in a less adversarial manner.

SOME REFLECTIONS ON THE COMINGLING OF ADR MECHANISMS

The existence of a multi-tier dispute resolution protocol has become a welcomed development. Nowadays, most commercial agreements contain more than one mechanism of ADR for the settlement of a potential dispute. The judges have embraced ADR to the extent that they take it upon themselves to either direct or encourage parties to embrace ADR in the resolution of disputes[41]. As positioned earlier on, parties may choose to deviate from the traditional method of picking only one ADR mechanism and instead throw open other mechanisms for resolution of disputes. Where there is this combination and intertwining of mechanism in a contract, the quagmire has remained the correct method of executing such a clause.

Does it then translate into meaning that in the event of a dispute parties must go through all the mechanisms before it can be said that they have properly adhered to and executed the clause? It is suggested that both the disputants and the dispute resolvers should study the nature of the disputes at hand and the relationship existing between the parties to zero in on the most relevant and effective method. Surely, a religious, methodological exploration and unrestricted exhaustion of all the tiers indicated or methods is bound to be stressful and time consuming. In the event that the dispute finally has fallen into arbitration, due to the already wasted time, it should be fast-tracked to achieve the core aim of ADR.

In the High Court case of *Udobueze A. Obulor (suing for himself and as representing Egi Clan in Ogba/Egbema/Ndoni Local Government Area of Rivers State vs. Total E&P Nigeria Ltd & Ors*[42], in respect of a Preliminary Objection to the institution of the case is classical, the court interpreted a multi-tier dispute resolution clause in paragraph 12 (b) and (c) of the development agreement before it. The development provide thus:

> b. In the event of dispute arising from this Agreement the parties shall attempt to mutually resolve same by amicable settlement through Negotiation, Conciliation or Mediation within twenty-one (21) days from the date either party serves the other with a notice of dispute.

[40] W. Eriank ‘Enforcement of Multi-tiered Dispute Resolution Clause’ SSRN Electronic Journal, September 2022

[41] A. Goodman, mediation advocacy Nigeria edition (UK XPL Publishing 99 Hatfield Road St. Alban Ali 4JL) p. 27

[42] PHC/287/2018 (Unreported) Port Harcourt High Court Ruling of Justice S. C. Amadi delivered on 1st August, 2018.

c. in the event that the parties are unable to amicably resolve any dispute in accordance with N (a) above either party may serve on the other a demand for arbitration in accordance with the provisions of the Arbitration and Conciliation Act, Cap. 19, Laws of the Federation of Nigeria 1990 (sic). There shall be three (3) arbitrators and the two arbitrators shall then appoint a presiding arbitrator. The award handed down by the arbitrators shall be final and binding on the parties and may be enforced by any court of competence jurisdiction.

The Honourable Court applied the literal rule of interpretation of clause 12 (b) and (c) and held thus:

> Clause 12 (b) and (c) of the Agreement means that any dispute arising from the Agreement must be settled through negotiation, conciliation or mediation but before then, the party calling for resolution of the dispute must first serve the other party a notice of the dispute. Where the parties fail to resolve the dispute through either negotiation, conciliation or mediation, either party can serve a demand notice for arbitration. It is only after an award has been handed down by the arbitrators that the court can be called upon to enforce the award.

It is instructive to state little background fact of the Udobueze case. In that case, the Defendants filed a Preliminary Objection and challenged, among others, the institution of the matter in the High Court by the Claimant on the ground that arbitration which was provided for in the Multi-tier dispute resolution clause was not explored before the matter was instituted. The court ruled that it is only after an award was made that the court could not approached for enforcement and accordingly struck out the case. This ruling with all due respect did not see, to take into cognizance the clearing permissive clause which said either party may give notice of dispute within a given period of twenty (21) days. Besides, service of arbitration when negotiation, conciliation or arbitration fails was also made permissive.

Finally, the only striking out the case cannot be aiding arbitration. It is submitted that a ruling ordering arbitration and staying proceedings or adjourning *sine dine* in the circumstance would have been opposite. This would have saved time

In addition, where the dispute is resolved and a settlement agreement is reached, the court is usually prone to the adoption of the terms of such agreement as judgment of the court in appropriate cases. The judgment is then binding on all the parties and acts as estoppel regarding the matters decided therein. The matter in question cannot then be further litigated. In the case of Attorney-General Rivers State vs. Attorney-General Akwa Ibom State & Anor[43] where a number of issues where brought for determination before the Supreme Court, the court held that the Defendants cannot resile from terms of the amicable settlement agreement with the Plaintiffs and further pursuing the matter in litigation.

SETTLEMENT AGREEMENT IN COMMERCIAL MATTERS

A Settlement between the disputing parties is a much needed resort in commercial matters in contemporary times. A Settlement ensures that the disputes between the parties end in

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[43] (2011)3 SC (Pt 1)1 at p.9

amicable terms, leaving each party satisfied. A settlement agreement is an agreement drawn out when it is seen that there is a possibility of amicable compromise between the parties. It is basically a type of legal contract that helps to resolve disputes among parties by coming to a mutual agreement on the terms.

Investment disputes are varied and rife in the commercial life of individuals, entities and government concerns. The issue of payment of tax claimed to be due the Nigerian Maritime Administration and Safety Agency (NIMASA) from Nigerian Liquified Natural Gas Limited (NLNG) sometime in 2013 led to the blocking of NLNG vessels by NIMASA and the huge financial cost although the dispute was the subject matter of *Nigeria LNG Ltd v. Attorney General of the Federation & Anor*[44]. By means of ADR, a consent order was made and part settlement of the amount made and that ended the blockage and the negative consequences to business image of Nigeria. This part-payment made possible via ADR also ended the face-off between the two major corporate entities with great impact on the investment life and health of the investors and the economic progress of Nigeria. This was without prejudice to the litigation on judicial interpretation of some sections of the NLNG and NIMASA Acts.

Giving Effect to Settlement Agreement

As earlier established, a settlement agreement is usually drawn out on the terms of the disputing parties. However, this settlement agreement is subject to a final say by the judge. After parties accept and agree on the terms of settlement, it is reported to the court. The agreed terms are put in writing, both parties sign and it is sealed before being filed in court. The court then pronounces the judgment based on the agreement of parties contained in the terms of settlement. Such judgment is referred to as consent judgment.

In the case of *Dana Impex Ltd. v. Awukam (2006)*[45], a consent judgment was defined as a judgment, the provision and terms of which are settled and agreed to by the parties in action. It is a judgment in accordance with the dictates of the parties and not by the court on the merits of the case, after adjudication. The consent must be consequent to volition that is, there must be a consensus *ad idem* free of any form of compulsion. Thus, consent is the fulcrum of this kind of judgment, without which there will be no consent judgment.

A settlement agreement is therefore made enforceable by a consent judgment which is a final judgment as it determines the final rights of the parties and binds them. By extension, a settlement agreement is thus:

- Binding only on the parties and does not bind a stranger
- Acts as estoppel regarding the matters decided therein.

Estoppel created by Settlement Agreement

Estoppel may be defined as a disability whereby a party is precluded from alleging or proving in legal proceedings, that a fact is otherwise than it has been made to appear by the matter giving rise to that disability[46]. In simple parlance, the doctrine of estoppel prevents a person from making assertions or from going back on his or her word. Such a person is said to be 'estopped'.

[44] Unreported Suit No FHC/L/CS/847/2013
[45] 3 NWLR (pt. 968) 544 at 556
[46] Halsbury (4th Ed.) Vol. 16, para 1501, page 1008

In relation to settlement agreements, due to the consensual and binding nature of such an agreement, the parties are estopped from going back on their resolutions imputed in the written agreement. Once these settlement agreements are formed and the parties are signatory to it, it is impossible to derogate from terms reached in such an agreement. This was part of the decisions reached in the case of *Oseni v. Dawodu,*[47]

Larger Perspective on Arbitration as an ADR Mechanism

As earlier posited, arbitration is an ADR mechanism which involves entrusting an impartial authority known as an arbitrator with finding a legally based solution to arising disputes.

Similar to all other academic sectors, dispute resolution is not left out in the play of arguments, criticisms and eventual schools of thoughts. Some scholars, jurists and the likes have opined that arbitration should be captured under the spectrum of an ADR mechanism due to its adjudicatory nature. There are salient arguments to this effect that just like litigation, arbitration involves a review of evidence and argumentation including legal reasoning set forth by opposing parties to come to a decision which determines rights and obligations between the parties involved.

However, it must also not go unnoticed that arbitration spots features which are peculiar to other alternative dispute resolution mechanisms. The arbitration process has been found to a large extent, be flexible. Parties possess autonomy to decide how the proceedings should go, the venue of the arbitration (seat of arbitration) and other matters fundamental to the dispute in arbitration. This feature coupled with the feature of confidentiality and time management, place arbitration on a different pedestal from litigation. Due to these sharp distinctions, it is impossible if not ridiculous to place arbitration in the same category as litigation. It remains an alternative to litigation.

ARBITRATION IN A MULTI-TIER DISPUTE RESOLUTION PROTOCOL

In a multi-tier dispute resolution protocol, parties agree to explore different branches of ADR in stages or phases. In most case, arbitration is the last step or stage that can be explored by parties. In this situation, the right approach to take would undoubtedly be the wish of the parties. Where dispute arises by virtue of their agreement, parties are expected to resort to other means of dispute resolution which have been stated prior to arbitration, this is due to the fact that as a traditional act in contract, parties are to adhere strictly to terms of their contract.

In the decided case of *Udobueze A. Obulor vs. Total E&P Nigeria Ltd. & Ors*,[48] a clause in an agreement pertaining to multi-tier dispute resolution was in dispute. The Applicants raised a Preliminary Objection on the grounds that article 12(a), (b), (d), (e), (f) and (g) of the agreement provided for dispute resolution by arbitration. In his judgment, Hon. Justice S.C. Amadi put the spotlight on paragraph 12(b) and (c) which stated:

> b. In the event of dispute arising from this agreement, the parties shall attempt to mutually resolve same by amicable settlement through negotiation, conciliation or mediation within twenty-one (21) days from the date either party serves the other with a notice of dispute.

[47] [2004] 4 SCNJ (Pt. 2) 197 at 221

[48] PHC/287/2018, unreported ruling delivered on 1 August 2018

c. In the event that the parties are unable to amicably resolve any dispute in accordance with N(a) above, either party may serve on the other a demand for arbitration in accordance with provisions of the Arbitration Conciliation Act.[49]

Undoubtedly in the interpretation of terms or statutes, lexicon must be put into consideration hence the debate of the use of 'may' and 'shall' in these clauses. Does the use of the word 'shall' connote that it is mandatory to explore these listed methods of dispute resolution? It is in this wise that it is instructive to state that court must strive to lean on interpretation that bring out the intention of the parties and essence of ADR and this is the main reason investors prefer to resort to ADR.

ENFORCEABILITY OF MULTI-TIERED DISPUTE RESOLUTION CLAUSES

When one of the parties fails to comply with the dispute settlement mechanism addressed in a multi-tiered clause, national courts may intervene to enforce the dispute settlement agreement. National courts have adopted different approaches regarding enforceability of multi-tiered dispute resolution clauses.[50] Some jurisdictions consider that only the second tier (the arbitration agreement) but not the first tier (the agreement to negotiate) can be enforced, while others consider the entire dispute resolution clause enforceable.[51] In general, enforceability of the first tier will depend on whether the dispute resolution clause provides a clear obligation of the parties to follow the pre-arbitral ADR procedure.

The issues that arise in the context of enforceability are whether an agreement to negotiate or mediate is enforceable; and whether the existence of multiple ADR procedures combined with arbitration impair the application of enforcement conventions,[52] such as the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (hereinafter, the NY Convention). The NY Convention does not specifically state whether a DRB clause or an arbitration clauses precede by an ADR clause is a bar to litigation before the domestic courts. The traditional common law position has been that the uncertainty of agreements to negotiate makes them unenforceable as they do not create binding obligations.[53] The Court of Canada and the United Kingdom have maintained this position while the emerging position in the U.S. seems to be that "…agreements to negotiate are enforceable if the terms are sufficiently definite."[54] The modern U.S. position is that "…agreements to negotiate in good faith, unlike mere 'agreements to agree,' are not enforceable as a matter of law….".[55] However, the non-binding provisions contained in multi-tiered dispute resolution clauses are increasingly enforced upon the application of the Federal Arbitration Act ("FAA") and the use of contract law principles.[56]

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[49] Cap 18 Laws of the Federation 2004 (ACA)

[50] Robert H. Smith and Audley Sheppard, "Enforcement of Multi-Tiered Dispute Resolution Clause - Introduction," Arbitration and ADR Newsletter of the IBA, Vol. 6, No. 2 - October 2001

[51] *Ibid*

[52] Michael Pryles, "Multi-Tiered Dispute Resolution Clauses," 18 Journal of International Arbitration, vol. 18, issue 2, April 2001, pp. 159-176.

[53] Pierre Bienvenu, "The Enforcement of Multi-Tiered Dispute Resolution Clauses in Canada and the United States," Annual Convention, International Bar Association (2002).

[54] *Ibid*

[55] Howtek, Inc. v. Relisys, et al., 958 F. Supp. 46, 48 (1997) citing Channel Home Ctrs. v. Grossman, 79 F.2d 291, 299 (3rd Cir.1986).

[56] Kathleen Scanlon, "Enforcement of Multi-Tiered Dispute Resolution Clause - United States, "Arbitration and ADR Newsletter of the IBA, Vol. 6, No. 2 - October 2001, p. 24.

Several U.S. Courts have relied on the FAA and applied it to mediation on the grounds that the latter falls within the scope of arbitration, since the concept of arbitration embraces all contractual dispute resolution mechanisms, in accordance with the U.S. Congress' intention to enhance alternative methods of dispute resolution.[57] In particular, some States have enacted legislation concerning enforcement of mediation clauses as a pre-condition to litigation; but these statutes are only applicable to arbitration by analogy.[58]

In addition, U.S. contract law principles have been used to enforce multi-tiered dispute resolution clauses under the general rule that "…when a party contracts to use mediation prior to the commencement of arbitration (or litigation), the contractual agreement cannot be bypassed without a valid defense, eg. waiver or estoppel…."[59] British Courts have also recognized the principle that courts or arbitrators should stay proceedings on a claim brought in breach of a multi-tiered dispute resolution clause, requiring the parties to enter into a given ADR procedure before initiating arbitration or regular court proceedings, when there is a clear intention of the parties to be bound by a previous mandatory ADR procedure. This principle is particularly true when there is sufficient certainty of engagement – i.e., when the parties have gone in the contract beyond a mere intention to negotiate in good faith.

In the Channel Tunnel case,[60] the dispute arose out of a construction contract including a multi-tiered dispute resolution clause. The first tier required the parties, as a condition precedent, to submit the dispute to a panel of experts. If either party wished to have the experts' decision reviewed, that party could then submit the dispute to arbitration. The issue before the Court was whether the dispute that arose under the construction contract could be brought to arbitration when the first tier of the dispute resolution clause had not been respected. The appellant without complying with the contract's process of dispute resolution filed a writ of summons at the High Court requesting an injunction from the Court to restrain the respondent from suspending construction works. The respondent applied for a stay of proceedings based on the existence of contractual mandatory preliminary stages for dispute resolution. The House of Lords held:

> [T]hose who make agreements for the resolution of disputes must show good reasons for departing from them. But also with the interest of orderly regulation of commerce that having promised to take their complaints to the experts and if necessary to the arbitrators, that is where the appellants should go.

The Holding of the House of Lords in Channel Tunnel was subsequently incorporated in Section 9 (2) of the English Arbitration Act of 1996,[61] which provides as follows: "An application [to stay court proceedings] may be made notwithstanding that the matter is to be referred to arbitration only after the exhaustion of other dispute resolution procedures."

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57 *Ibid*

58 *Ibid*

59 *Ibid*

60 Channel Túnel Group Ltd (UK) and France Manche S.A. (Fr.) v. Balfour Beatty Construction Ltd. (UK) et. al, [1992] Q.B. 656 (C.A.)

61 Cristopher R. Seppala, "The Arbitration Clause in the New (1999) FIDIC Contracts" (2003), available at http://www1.fidic.org/resources/contracts/seppala.asp (last visited September 10, 2004).

In *Cable & Wireless Plc. v. IBM United Kingdom Ltd*.,[62] before the British Commercial Court, the dispute referred to an agreement by IBM to supply information technology services to Cable & Wireless. The contract between the parties included a multi-tiered clause drafted in the following terms:

> If the matter is not resolved through negotiation, the Parties shall attempt in good faith to resolve the dispute or claim through an Alternative Dispute Resolution (ADR) procedure as recommended to the Parties by the Centre for Dispute Resolution. However, an ADR procedure which is being followed shall not prevent any Party or Local Party from issuing proceedings.

When Cable & Wireless commenced proceedings, IBM sought to enforce the dispute resolution clause to trigger the ADR process addressed in that clause. The main issue before the Court was whether the multi-tiered dispute resolution clause required the parties to engage in an ADR procedure as a condition precedent to litigation. In Cable & Wireless, the Court considered that the escalating clause contained an enforceable obligation to participate in ADR procedures, "…a sufficiently defined mutual obligation upon the parties both to go through the process of initiating a mediation, selecting a mediator and at least presenting that mediator with its case...." The Court further reasoned:

> [T]he reference to ADR is analogous to an agreement to arbitrate. As such it represents a free-standing agreement ancillary to the main contract and capable of being enforced by a stay of the proceedings or by injunction absent any pending proceedings.

The solution adopted in Cable & Wireless v. IBM was subsequently shared by a French Court in *Poiré v. Tripier* (2003). Both cases referred to the question of non-compliance with a contractual clause ordering ADR prior to initiation of legal proceedings. In civil law countries "…the trend is for courts to enforce clauses that provide for an ADR procedure to be observed before arbitration or litigation…."[63] In Tripier¸ the dispute related to a contract in which the dispute resolution clause required the parties to resort to mediators prior to commencing legal proceedings. In particular, the contract provided that any dispute between the parties should be submitted to mediators designated by the parties; and that the mediators would endeavor to resolve the dispute within a period of two months from their designation. When a dispute arose between the parties Mr. Poiré commenced legal proceedings without respecting the dispute resolution clause in the contract. The Court of First Instance rendered a decision on the merits without entering into the issue of the breach of the mediation clause.

The Court of Appeal of Paris upheld the appeal and dismissed Mr. Poiré's claim.[64] The French Cour de Cassation upheld the lower court reasoning that "…a contractual clause

[62] [2002] All E.R. (D) 277, reprinted in Arbitration International, vol. 19, No. 3 (2003) pp. 352 – 362. For a commentary on the decision see Karl Mackie, "The Future for ADR Clauses After Cable & Wireless v. IBM, International, vol. 19, No. 3 (2003) pp. 345 – 351.

[63] Seppala (n 58)

[64] Charles Jarrosson, "Observations on Poiré v. Tripier," 19 Arbitration International, No. 3 at 36

establishing a mandatory mediation procedure prior to legal proceedings … constitutes an obligatory bar to proceedings if invoked by the parties….”[65]
The decision of the French Court in *Poiré v. Tripier* is consistent with Article 13 of the UNCITRAL Model Law which provides as follows:

> Where the parties have agreed to conciliate and have expressly undertaken not to initiate during a specific period of time or until a specified event has occurred arbitral or judicial proceedings with respect to an existing or future dispute, such an undertaking shall be given effect by the arbitral tribunal or the court until the terms of the undertaking have been complied with, except to the extent necessary for a party, in its opinion, to preserve the rights. Initiation of such proceedings is not of itself as a waiver of the agreement to conciliate or as a termination of the conciliation proceedings.

Also, in accordance with French contract law, under Article 1134 of the French Civil Code, Agreements lawfully entered into take the place of the law for those who have made them. They may be revoked only by mutual consent, or for causes authorized by law. They must be performed in good faith. Therefore, under French law, ADR agreements create legally binding obligations: first, to enter into negotiations with the other disputing party; and second, to act in good faith with the aim to settle the dispute. In *Peyrin v. Société Polyclinique des Fleurs¸*[66] the French Court of Cassation held that non-compliance with a conciliation agreement in a multi-tiered clause prevented receiving an action on the merits until the parties attempted to resolve the dispute through conciliation.[67]

Other civil law countries recognize the enforceability of multi-tiered dispute resolution clauses before courts. In Spain, multi-tiered dispute resolution clauses are enforceable if a definitive obligation is made a precondition to arbitration. A clause providing that arbitration cannot be initiated until a fixed period of time has elapsed will not be enforceable until that period has expired.[68] Similarly, an obligation to appoint a representative for the purpose of negotiating, or an obligation to refer the matter to a designated mediator as a precondition to arbitration, will have the consequence that the obligation to arbitrate does not arise until the pre-arbitral phase has been exhausted. However, a broad obligation simply to negotiate in good faith or to mediate prior to commencing arbitration proceedings will most likely be unenforceable, notwithstanding the express contract law duty of good faith.[69]

MULTI - TIER PRACTICE IN NIGERIA

The whole essence of ADR multi-tier mechanism is to fast-track dispute resolution or settlement of dispute between parties without resort to litigation which is usually time consuming and costly in terms of resources expended. However in practice, the trend seems to be that resort to arbitration as an ADR mechanism is very expensive or more costly than resort to litigation such that at most times, except for corporate citizens, the average Nigerian

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[65] *Ibid*
[66] Peyrin et autres c/ Société Polyclinique des Fleurs, Court of Cassation, Commercial Chamber, July 6, 2000.
[67] Jason Fry, “Enforcement of Multi-Tiered Dispute Resolution Clause - France,” Arbitration and ADR Newsletter of the IBA, Vol. 6, No. 2 - October 2001, p. 14.
[68] Articles 1125 and 1127 of the Spanish Civil Code.
[69] Articles 7 and 1258 of the Spanish Civil Code.

citizen cannot afford the services of Arbitrators. There is need for the ACA to be amended to regulate fees charged by a Mediator or an Arbitrator in other to give effect to the objectives of the ACA. Order 24 Rule 4 of the Akwa Ibom State Multi-Door Court House Procedure Rules, 2009 provides that payment of fees shall be made to the Multi-Door Court House in accordance with its fees schedule prescribed in Schedule 'A'. In the Schedule 'A' contained at page 293 of the aforesaid Rules, a party who claims damages of N2.5 to N10 Million Naira will be required to pay an Arbitrator 21 to 22 percent to a Mediator if he/she is court appointed while if the Mediator is a walk-in Mediator he/she will pay 31 to 32 percent. Many Nigerians cannot afford to pay this amount for mediation in addition to filing fees.

Although, the fees for Arbitrators are fairly reasonable under the said Schedule, in practice, fees charged by Arbitrators are usually a disincentive towards adoption of Arbitration as an ADR dispute resolution mechanism. The ACR has to be amended to make it party friendly.

CONCLUSION

Multi-tiered dispute resolution clauses allow the parties to identify potential conflicts and to settle them before their position becomes too divergent to be settled outside the scope of arbitration or litigation. Early recognition of conflicts and their reference to a Board or panel of experts allow the parties to settle conflicts while the contract or project is ongoing.

Dispute Resolution Boards represent a cost-effective method of resolving conflicts between the parties, but escalating dispute resolution clauses should be carefully drafted to avoid potential problems of enforceability. In particular, it is important that a multi-tiered clause perfectly clearly states the parties' intention to resolve future disputes by arbitration if the previous ADR procedure addressed in the clause fails. It is impossible to compel the parties to negotiate in good faith or to reach a settlement if a dispute arises, but a careful design of a dispute resolution clause can guide the parties into a structured process, involving professional experts and a timetable before arbitration proceedings are triggered, ultimately enhancing the parties' opportunity of early settlement.

RECOMMENDATIONS

Based on the above discussions in the paper, it is recommended as follows:

- Parties to a multi-tier dispute resolution process should strive to select the most relevant method(s) and use clear terms to express their intention given that investment and expected investments are goal oriented and time-based.

- Avoid the sampling method of long list of methods to be religiously followed as this can be counterproductive.

- Where arbitration is provided for, s.16 of the Arbitration and Mediation Act, 2023 which provides for the appointment of emergency arbitrator should be utilized especially in investment dispute cases.

- The courts should when called upon to decide on multi-tier clauses or agreement interpret same with the bird's eye view on enhancing rather than prolonging or frustrating dispute settlement.