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ARBITRATOR INDEPENDENCE AND IMPARTIALITY UNDER THE ARBITRATION AND MEDIATION ACT, 2023: A CRITICAL EVALUATION OF ARBITRAL LEGITIMACY, ETHICAL CHALLENGES AND REFORM PROSPECTS

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Abstract

The legitimacy of arbitration depends fundamentally on the independence and impartiality of arbitrators, which constitute the ethical and legal foundations upon which confidence in the arbitral process, procedural fairness and the enforceability of arbitral awards are built. The enactment of Nigeria's Arbitration and Mediation Act 2023 represents a comprehensive reform of the country's arbitration regime and reflects a deliberate legislative effort to align domestic arbitration practice with internationally recognised standards. While the Act introduces significant innovations designed to enhance arbitral integrity, questions remain as to whether legislative reform alone is capable of addressing the increasingly complex ethical and structural challenges confronting contemporary arbitration. This article evaluates the adequacy of the Arbitration and Mediation Act 2023 in safeguarding arbitrator independence and impartiality as essential determinants of arbitral legitimacy in Nigeria. Adopting a doctrinal and comparative research methodology, it analyses the Act alongside the UNCITRAL Model Law, the International Bar Association (IBA) Guidelines on Conflicts of Interest in International Arbitration, contemporary international jurisprudence and selected Nigerian judicial decisions, among others. The article argues that although the Arbitration and Mediation

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Act 2023 substantially modernises Nigeria's legal framework governing arbitrator independence and impartiality, its effectiveness is constrained by ethical and institutional deficiencies that statutory regulation alone cannot remedy. The article concludes that strengthening these complementary safeguards is essential not only to preserving confidence in arbitral justice but also to consolidating Nigeria's position as a credible and competitive seat of arbitration in Africa.

Keywords: arbitrator independence; impartiality; disclosure; bias; Arbitration and Mediation Act 2023; arbitral legitimacy; IBA Guidelines; Nigeria.

1. INTRODUCTION

According to Fagbemi, arbitration works because parties trust it.[1] When two parties agree to arbitrate, they give up their right to have their dispute decided by a public court and place it instead in the hands of a private tribunal that they have helped to choose.[2] They accept that the tribunal's decision will be final and binding, with only narrow rights of recourse.[3] The whole arrangement depends on one assumption: that the arbitrator will be neutral. If that assumption fails, the bargain fails with it. An award produced by a biased arbitrator is not a fair resolution of the dispute, and a legal system that allows such to stand would soon find that no one is willing to arbitrate.

For this reason, the independence and impartiality of the arbitrator is not one rule among many in the law of arbitration. It is the foundation on which the legitimacy of the entire process rests. Every modern arbitration statute and every set of institutional rules treat it as a basic

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[1] Sunday A. Fagbemi, 'The Doctrine of Party Autonomy in International Commercial Arbitration: Myth or Reality?' *Journal of Sustainable Development Law and Policy* (2015) 6(1) 202–246 <https://jsdlp.ogeesinstitute.edu.ng/jsdlp/article/view/59> Accessed 26 June 2026.

[2] *Ibid,* P. 204.

[3] *Ibid,* P. 205.

requirement, and the major international instruments make a biased tribunal a ground for refusing to enforce an award.[4] Nigeria's new arbitration statute, the Arbitration and Mediation Act 2023, was enacted against this background. Signed into law on 26 May 2023, it repealed the Arbitration and Conciliation Act, which had governed the field for thirty-five years, and adopted the framework of the UNCITRAL Model Law, including the 2006 amendments.[5] The Act is widely regarded as a modernization of Nigerian arbitration law, and part of its purpose is to strengthen Nigeria's position as a seat of arbitration in Africa.

This article asks a focused question: how well does the Arbitration and Mediation Act 2023 protect the independence and impartiality of the arbitrator, and what remains to be done? The question matters for two reasons. First, as a matter of justice, parties are entitled to a neutral tribunal, and the rules that secure neutrality must be clear and effective. Secondly, as a matter of policy, Nigeria cannot become a credible arbitration hub if its courts and its law are seen as unreliable on the very point that defines a fair process. Recent Nigerian litigation, in particular the much-discussed decision in *Global Gas v Shell*, has shown that the standard for dealing with arbitrator conflicts is still

[4] Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted 10 June 1958, entered into force 7 June 1959) 330 UNTS 38 ('New York Convention') art V(1)(b) and (2)(b), under which an award may be refused recognition where a party was unable to present its case or where enforcement would be contrary to the public policy of the enforcing State.

[5] Arbitration and Mediation Act 2023, which came into force on 26 May 2023 and by s 92 repealed the Arbitration and Conciliation Act, Cap A18, Laws of the Federation of Nigeria 2004 (originally enacted as the Arbitration and Conciliation Decree No 11 of 1988). On its adoption of the UNCITRAL Model Law on International Commercial Arbitration (1985, as amended in 2006), see the Explanatory Memorandum to the Act.

unsettled in practice, and the new Act does not resolve every difficulty.[6]

The next part explains the concepts of independence and impartiality and reveals why they are the foundation of arbitral legitimacy. Section three presents the statutory standard under the Act and compares it with the law it replaced. The next section gives attention to the test that governs a challenge, namely whether circumstances give rise to "justifiable doubts", and measures it against the UNCITRAL Model Law, the leading English cases, and the IBA Guidelines on Conflicts of Interest. Part 5 reviews the Nigerian case law. On arbitration, independence, impartiality and allied matters. The part that follows identifies the ethical pressures that test arbitrator neutrality in practice. Part seven and eight serves as the proposal for reforms and conclusion of the article. The argument presented in this work is that the Act is a real improvement on the old law but that it leaves the governing standard underdeveloped, and this gap should be closed by clearer rules and particularly by a national code of arbitrator ethics.

2. INDEPENDENCE, IMPARTIALITY AND THE LEGITIMACY OF ARBITRATION

2.1 Distinguishing Independence from Impartiality

Independence and impartiality are often mentioned together, and the Act treats them as a pair,[7] but they are not the same thing, and it helps to keep them apart. Independence is concerned with relationships, and it asks whether there are connections between the arbitrator and a party, or the dispute, that a neutral observer would regard as

[6] *Global Gas and Refinery Ltd v Shell Petroleum Development Company*, Suit No LD/1910GCM/2017 (High Court of Lagos State, ruling of 25 February 2020, Oyekan-Abdullahi J) (unreported).

[7] Arbitration and Mediation Act 2023, s 7(5)(b), which provides that an arbitrator shall be independent and impartial; and s 8(3), which permits a challenge where circumstances give rise to justifiable doubts as to the arbitrator's impartiality or independence.

compromising.[8] In the words of van den Berg, this can be a financial interest, a family tie, or a professional or business link.[9] Independence is therefore an objective matter; it can be measured by looking at the facts of the relationship, regardless of the arbitrator's actual state of mind.

Impartiality is concerned with the arbitrator's state of mind. It asks whether the arbitrator approaches the dispute without favoring one side, and without a predisposition towards a particular outcome. Impartiality is therefore a subjective quality, although, as explained below, the law tests it by an objective standard because the actual state of an arbitrator's mind cannot be examined directly.[10] The two ideas overlap in practice, because a compromising relationship (a lack of independence) is usually the main evidence from which a real risk of partiality is inferred. A person may, in theory, be connected to a party yet remain fair, and may be wholly unconnected yet harbor a prejudice; but in the ordinary case the existence of a close relationship is the strongest available sign that the tribunal may not be neutral, which is why the law concentrates on relationships and on their disclosure. As Hascher observes, independence, being an objective matter, can usually be ascertained by the parties at the outset of the proceedings in the light of the circumstances the arbitrator discloses, whereas a want of impartiality is more likely to surface only as the reference unfolds; and although the parties may, knowingly, waive an arbitrator's want of independence, impartiality is the crucial requirement and cannot be waived in advance.[11]

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[8] Albert Jan van den Berg, 'Justifiable Doubts as to the Arbitrator's Impartiality or Independence' *Leiden Journal of International Law* (1997) 10(3) 509–519 <https://doi.org/10.1017/S092215659700037X> Accessed 26 June 2026.
[9] *Ibid,* P. 510.
[10] Nigel Blackaby, Constantine Part asides and Alan Redfern, *Redfern and Hunter on International Arbitration* (7th edn, Oxford University Press, 2023).
[11] Dominique Hascher, 'Independence and Impartiality of Arbitrators: 3 Issues' *American University International Law Review* (2012) 27(4) 789.

2.2 Why Neutrality is the Foundation of Arbitral Legitimacy

The reason neutrality matters so much in arbitration is due to its structure. In litigation, the judge is appointed by the State, is bound by detailed rules of procedure, and is subject to appeal.[12] In arbitration, the tribunal is chosen by the parties, often with each side nominating one arbitrator,[13] the procedure is flexible, and there is no appeal on the merits. The safeguards that surround a judge are absent. What takes their place is the requirement that the arbitrator be, and be seen to be, independent and impartial. Neutrality is, in this sense, the price that arbitration pays for its freedom from the controls that govern the courts.[14]

Neutrality is also the practical condition of an enforceable award. An award is valuable only if it can be enforced, and the grounds on which enforcement may be refused, both under the New York Convention and under the Act, include the denial of a fair hearing and conflict with public policy.[15] A tribunal that is not impartial offends both. The legitimacy of arbitration is therefore tied directly to the usefulness of the award the parties are paying for. As Born puts it, the duty of independence and impartiality is the bedrock obligation of every

[12] Munta Ladipo Abimbola and Omoniyi Bukola Akinola, 'Judicial Interference in Arbitration Matters in Nigeria: Avoidable or Inevitable?' *International Journal of Law, Politics and Humanities Research* (2026) 10(6) 1-14 <https://doi.org/10.70382/caijlphr.v10i6.075> Accessed 26 June 2026.

[13] Arbitration and Mediation Act (AMA) 2023, s. 7 (2).

[14] Yu Hong-Lin and Laurence Shore, 'Independence, Impartiality, and Immunity of Arbitrators—US and English Perspectives' *International and Comparative Law Quarterly* (2003) 52(4) 935–967 <https://doi.org/10.1093/iclq/52.4.935> Accessed 28 June 2026.

[15] New York Convention (adopted 10 June 1958, entered into force 7 June 1959) 330 UNTS 38, art V(1)(b) and (2)(b); Arbitration and Mediation Act 2023, s 55(3), discussed in Part 3.5 below.

arbitrator, and the rules on disclosure and challenge exist to give that obligation effect.[16]

2.3 Actual Bias, Apparent Bias and the Objective Test

The law distinguishes between actual bias and apparent bias. Actual bias, a real prejudice in the mind of the arbitrator, is rarely capable of direct proof, because it requires evidence of what the arbitrator actually thought.[17] Accordingly, the law focuses on apparent bias: the appearance of partiality, judged from the standpoint of a reasonable and informed outside observer. The guiding idea, drawn from the law on judicial bias and applied equally to arbitrators, is that justice must not only be done but must be seen to be done.[18]

This is why the legal tests for disqualification are objective. They do not ask whether the arbitrator was in fact biased, after all, this is a question that usually cannot be answered. However, the question asked is whether a reasonable observer, knowing the relevant facts, would conclude that there was a real risk of bias. The Act adopts this approach by allowing a challenge where there are "justifiable doubts" as to the arbitrator's impartiality or independence,[19] an objective formula that mirrors the UNCITRAL Model Law. The objective test protects the parties without requiring them to prove the impossible,

[16] Gary Born, *International Commercial Arbitration* (3rd edn, Kluwer Law International, 2021), describing the impartiality and independence of arbitrators as a fundamental requirement of the arbitral process.

[17] Chuks Okpaluba and Laurence Juma, 'The Problems of Proving Actual or Apparent Bias: An Analysis of Contemporary Developments in South Africa' *Potchefstroom Electronic Law Journal* (2011) 14(7) 14.

[18] The maxim originates in *R v Sussex Justices, ex parte McCarthy* [1924] 1 KB 256, 259 (Lord Hewart CJ), and is applied to arbitrators as well as judges: *Halliburton Company v Chubb Bermuda Insurance Ltd* [2020] UKSC 48, [2021] AC 1083 [49] (Lord Hodge). For the proposition that the same standard of apparent bias applies to judges and arbitrators alike, see *AT&T Corp v Saudi Cable Co* [2000] 2 Lloyd's Rep 127 (CA).

[19] .

and it protects honest arbitrators from being condemned on the basis of unprovable accusations of bad faith.

2.4 The International Foundations of the Duty

Needful to quickly note that the Nigerian position does not stand alone. The duty of independence and impartiality is a feature of every serious arbitration regime, and the Act's formulation is part of a broad international consensus. The UNCITRAL Model Law, on which the Act is based, makes "justifiable doubts as to impartiality or independence" the test for both disclosure and challenge.[20] The leading institutional rules say the same. The ICC Rules require every arbitrator to be and to remain impartial and independent and to disclose anything that might call this into question,[21] and the English Arbitration Act imposes on the tribunal a general duty to act fairly and impartially and allows the removal of an arbitrator where there are justifiable doubts as to his impartiality.[22] In investment arbitration, the ICSID Convention requires arbitrators to be persons who may be relied upon to exercise independent judgment and allows their disqualification for a manifest lack of that quality.[23] The shared vocabulary across these instruments means that, in protecting arbitrator neutrality, Nigeria is applying a standard that is recognized the world over, and it confirms that international jurisprudence on that standard is a proper source of guidance for Nigerian courts.

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[20] UNCITRAL Model Law on International Commercial Arbitration (1985, as amended in 2006) art 12.

[21] ICC Arbitration Rules (2021) art 11, requiring every arbitrator to be and remain impartial and independent of the parties and to disclose facts or circumstances which might call independence or impartiality into question.

[22] Arbitration Act 1996 (England and Wales), s 33 (general duty to act fairly and impartially) and s 24(1)(a) (removal of an arbitrator where circumstances give rise to justifiable doubts as to impartiality).

[23] Convention on the Settlement of Investment Disputes between States and Nationals of Other States (adopted 18 March 1965, entered into force 14 October 1966) 575 UNTS 159 ('ICSID Convention') arts 14(1) and 57.

3. THE STATUTORY STANDARD UNDER THE ARBITRATION AND MEDIATION ACT 2023

3.1 From the Arbitration and Conciliation Act to the Act of 2023

To assess what the Act of 2023 does, it is necessary to recall what it replaced. The Arbitration and Conciliation Act, first enacted in 1988 and later consolidated as Chapter A18 of the 2004 Laws of the Federation, was itself modelled on the 1985 version of the UNCITRAL Model Law.[24] It contained provisions on disclosure and challenge similar to those now found in the new Act. Its most important weakness, for present purposes, lay elsewhere: in the way it allowed awards to be set aside. The old Act permitted a court to set aside an award where the arbitrator had "misconducted himself" or where the proceedings or award had been "improperly procured", but it did not define misconduct.[25] The courts filled the gap by borrowing the common law meaning of misconduct, drawn largely from the English authorities and the text of Halsbury's Laws of England.[26]

This open-ended ground became a problem. Because misconduct was undefined, it could be stretched to cover almost any complaint about an arbitrator, including allegations of bias and even alleged errors of law, and it became a favorite tool of parties seeking to escape unfavorable awards.[27] The Act of 2023 responds to this history in two ways. It restates the arbitrator's positive duty of independence and

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[24] Arbitration and Conciliation Act, Cap A18, Laws of the Federation of Nigeria 2004 (originally the Arbitration and Conciliation Decree No 11 of 1988), modelled on the UNCITRAL Model Law on International Commercial Arbitration (1985).

[25] Arbitration and Conciliation Act, Cap A18, Laws of the Federation of Nigeria 2004, s 30(1), which provided that the court could set aside an award where the arbitrator had misconducted himself or where the arbitral proceedings or award had been improperly procured.

[26] Halsbury's Laws (5th edn, 2010) vol 57, para 53.

[27] Paul Obo Idornigie, *Commercial Arbitration Law and Practice in Nigeria* (LawLords Publications, 2015).

impartiality, and it tightens the grounds on which an award may be set aside, removing the misconduct ground altogether. The remainder of this Part shall trace these provisions.

3.2 The Express Duty of Independence and Impartiality

The Act states the basic obligation at the outset. Its objective, set out in section 1, is to promote the fair resolution of disputes by an impartial tribunal without unnecessary delay or expense.[28] This objective clause, which had no equivalent in the old Act, places impartiality at the Centre of the law and provides a lens through which the rest of the Act is to be read. The duty is then made specific in the provisions on appointment, which require that an arbitrator be independent and impartial.[29] The duty is a continuing one. It is not satisfied merely by being neutral at the moment of appointment; it must be maintained throughout the proceedings, until the award is made.

3.3 The Duty of Disclosure

The main mechanism by which the Act protects neutrality is disclosure. The logic of disclosure is very simple, yet powerful. Instead of leaving the parties to discover conflicts for themselves, the law places the burden on the arbitrator to reveal anything that might cast doubt on his neutrality, so that the parties can decide for themselves whether to object. Section 8 imposes the duty in two stages. First, a person who is approached about a possible appointment must disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence.[30] Secondly, once appointed, the

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[28] Arbitration and Mediation Act 2023, s 1. The provision echoes s 1(a) of the English Arbitration Act 1996.
[29] Arbitration and Mediation Act 2023, s 7(5)(b).
[30] Arbitration and Mediation Act 2023, s 8(1).

arbitrator must, throughout the proceedings, disclose to the parties any relevant circumstances that are not already within their knowledge.[31]

Two points about the disclosure duty deserve emphasis. The first is that disclosure and disqualification are different things. The fact that a circumstance must be disclosed does not mean that it disqualifies the arbitrator; disclosure simply puts the parties on notice and allows them to object if they wish. A matter may be disclosable yet harmless. Another point is that the standard for what must be disclosed is generous. An arbitrator who is in doubt about whether a matter should be disclosed should disclose it, because the cost of unnecessary disclosure is small while the cost of a concealed conflict is high. This is the approach taken by the leading international guidance and by the most authoritative recent case law.

3.4 Grounds and Procedure for Challenge

Where disclosure, or the absence of it, reveals a problem, the Act provides a mechanism for challenge. An arbitrator may be challenged only where circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or where he does not possess the qualifications agreed by the parties.[32] A party may challenge an arbitrator whom it appointed, or in whose appointment it took part, only for reasons of which it became aware after the appointment was made; a party cannot nominate an arbitrator and then complain of a conflict it knew about all along.[33] This rule prevents a party from reserving a known objection for tactical use later in the proceedings.

The procedure is designed to keep challenges within the arbitration in the first instance, rather than allowing them to be used to interrupt the

[31] Arbitration and Mediation Act 2023, s 8(2). Read together, s 8(1) and (2) impose both an initial and a continuing duty of disclosure.
[32] Arbitration and Mediation Act 2023, s 8(3).
[33] Arbitration and Mediation Act 2023, s 8(4).

process through the courts. Unless the parties have agreed otherwise, a party who intends to challenge an arbitrator must, within fourteen days of becoming aware of the constitution of the tribunal or of the circumstances giving rise to the challenge, send the tribunal a written statement of the reasons for the challenge.[34] Separately, the parties may terminate the mandate of an arbitrator who becomes unable to perform his functions or who fails to act without undue delay, and where they cannot agree, the matter may be referred to the court.[35] The structure reflects a deliberate policy that challenges are to be resolved promptly and, so far as possible, within the arbitral process, so that they cannot easily be used to derail it.

3.5 Setting Aside and the Disappearance of "Misconduct"

The most significant change made by the Act, for the law on impartiality, is the setting aside of awards. The Act lists the grounds on which an award may be set aside, and the list closely follows Article 34 of the UNCITRAL Model Law. An award may be set aside where a party was under a legal incapacity, where the arbitration agreement was invalid, where the party was not given proper notice of the appointment or of the proceedings or was otherwise unable to present its case, where the award goes beyond the scope of the submission, or where the composition of the tribunal or the procedure was not in accordance with the parties' agreement; and the court may set aside an award where the subject matter was not arbitrable or where the award conflicts with public policy.[36] Notably, the Act also provides that an application to set aside may not be made on the

[34] Arbitration and Mediation Act 2023, s 9(2).
[35] Arbitration and Mediation Act 2023, s 10.
[36] Arbitration and Mediation Act 2023, s 55(3), which sets out the grounds for setting aside and mirrors art 34(2) of the UNCITRAL Model Law (1985, as amended in 2006); the grounds also correspond to the grounds for refusing enforcement under art V of the New York Convention.

ground of an error of law on the face of the award, closing off another route that had been abused under the old law.[37]

What is absent from this list is as important as what is present. The ground of "misconduct", which had been the gateway for bias challenges under the old Act, no longer appears. The consequence is central to this article. Under the new Act, a complaint about an arbitrator's impartiality can no longer be brought as a free-standing allegation of misconduct after the award. It must instead be pursued in one of two ways: during the arbitration, through the disclosure and challenge provisions of sections 8 and 9; or, after the award, only in so far as the impartiality problem can be fitted within one of the narrow setting-aside grounds, such as the inability of a party to present its case, the improper composition of the tribunal, or conflict with public policy.[38] This narrowing is a deliberate development, because it discourages the tactical use of bias allegations to attack awards. But it also raises the stakes for disclosure and challenge during the proceedings, because that is now the main stage at which impartiality must be protected. If the in-arbitration safeguards are weak or uncertain, the narrowing of the post-award remedy will leave genuine victims of bias without a clear route to relief.

3.6 Arbitrator Immunity and Accountability

One further provision of the Act bears on neutrality in an indirect but important way. For the first time, the Act grants arbitrator's immunity from liability for anything done or omitted in the discharge of their functions, unless the act or omission is shown to have been in bad faith.[39] The purpose of immunity is to protect arbitrators from being harassed by suits brought by disappointed parties, and so allows them to decide without fear. But immunity also creates a concern for

[37] Arbitration and Mediation Act 2023, s 55(2).
[38] Arbitration and Mediation Act 2023, ss 8, 9 and 55(3).
[39] Arbitration and Mediation Act 2023, s 13.

accountability. If an arbitrator who has concealed a conflict or acted with bias cannot be sued, then the parties' protection against bias must come from elsewhere, namely from disclosure, challenge and the setting aside of the award. The immunity provision therefore reinforces the central argument of this article: because the Act limits both post-award challenge and personal liability, the in-arbitration safeguards of disclosure and challenge carry almost the entire weight of protecting neutrality, and they must be correspondingly robust. The "bad faith" exception preserves a remedy for the most serious cases, but bad faith is hard to prove, and it does not reach the more common problem of honest but undisclosed conflicts.

4. THE STANDARD OF REVIEW: "JUSTIFIABLE DOUBTS" AND THE COMPARATIVE TESTS

4.1 The "Justifiable Doubts" Standard and the Model Law

The Act's test for both disclosure and challenge are whether circumstances give rise to "justifiable doubts" as to the arbitrator's impartiality or independence. This phrase is taken directly from the UNCITRAL Model Law, on which the Act is based.[40] The word "justifiable" signals that the test is objective. The question is not whether a party subjectively distrusts the arbitrator, which any disappointed party may claim, but whether the doubt is one that a reasonable person, in possession of the relevant facts, would regard as warranted. The standard thus filters out tactical objections while seizing genuine ones. Because the Act and the Model Law share this formula, the substantial body of international jurisprudence interpreting it is directly relevant to the Nigerian standard, and Nigerian courts may legitimately draw on it.

[40] UNCITRAL Model Law on International Commercial Arbitration (1985, as amended in 2006) art 12 and art 13 on the challenge procedure.

4.2 The English Approach: *Porter v Magill* and *Halliburton v Chubb*

English law, which Nigerian courts treat as persuasive, has worked out the objective test with particular care, and its formulation is useful for understanding what "justifiable doubts" means in practice. The settled English test for apparent bias asks whether a fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility of bias.[41] This formula has two notable features:

i. the observer is fair-minded, and so does not jump to conclusions; and
ii. the observer is informed, and so knows the realities of the practice in question, including the customs of the arbitration world.

The leading authority on arbitrator impartiality is the decision of the United Kingdom Supreme Court in *Halliburton v Chubb*, which arose out of insurance claims following the Deepwater Horizon disaster.[42] The case concerned an arbitrator who had accepted appointments in several related arbitrations arising from the same incident, with only one party common to them, and who had not disclosed the later appointments to the other party. The Supreme Court made three points of lasting importance. It confirmed that an arbitrator is under a legal duty to disclose matters that might reasonably give rise to justifiable doubts as to his impartiality, and that the objective test of the fair-minded and informed observer applies. Also, the court held that accepting multiple appointments in overlapping references with a common party may give rise to an appearance of bias, and that a failure to disclose such appointments is itself a factor the observer will weigh. Whereas, it held that the question of disclosure and the question of apparent bias are assessed at different times, that is,

[41] *Porter v Magill* [2001] UKHL 67, [2002] 2 AC 357, in which the House of Lords settled the modern English test for apparent bias as whether a fair-minded and informed observer would conclude that there was a real possibility of bias.
[42] *Halliburton Company v Chubb Bermuda Insurance Ltd* [2020] UKSC 48, [2021] AC 1083.

whether disclosure should have been made is judged when the duty arose, while whether there was a real possibility of bias is judged at the date of the hearing of the challenge.

Two features of the reasoning repay attention. The duty of disclosure, as Yu explains, is best understood as an implied term that bridges the arbitrator's statutory obligation of fairness and impartiality and the power to remove him, so that disclosure is not merely good practice but a legal duty corollary to impartiality.[43] The Supreme Court's clarity on this point also dispelled the confusion left by the Court of Appeal, which had suggested that non-disclosure required "something more" of substance before it could found a challenge without explaining what that addition was.[44] On the facts, the arbitrator had breached his duty of disclosure, but the challenge nonetheless failed, because by the time of the hearing the observer would not have found a real possibility of bias. The case is valuable for Nigerian law not for its result but for its method. It treats disclosure as the central safeguard, it applies an objective test, and it recognizes that a non-disclosure does not automatically prove bias but is one circumstance to be weighed with the rest.

[43] Hong-Lin Yu, 'Arbitrator's Implied Duty of Disclosure and its Interaction with the Duty of Impartiality and the Duty of Confidentiality' Contemporary Asia Arbitration Journal (2021) 14 (1) 1-38, explaining that the implied duty of disclosure links s 24(1)(a) and s 33 of the English Arbitration Act 1996 and is a duty corollary to the statutory obligation of impartiality.

[44] Ruth Keating and Samar Abbas Kazmi, 'The Axiom of Impartiality: *Halliburton v Chubb*' (Arbitration Committee, International Bar Association, 10 March 2021) <https://www.ibanet.org/article/c93fc2f7-d71f-490e-ac6e-a295e0a706b1> Accessed 29 June 2026; See also George Eddings, '*Halliburton v Chubb* – Unconscious Bias, Impartiality, Disclosure and Confidentiality in London Arbitration' (Maritime and Transport Law Committee, International Bar Association, 19 April 2021) <https://www.ibanet.org/article/f8eff85c-f5e0-4596-bf57-0fbf6c650779> Accessed 29 June 2026.

4.3 The IBA Guidelines and the Traffic-Light System

Alongside the statutory and judicial tests, the international arbitration community has developed a soft-law instrument that gives practical content to the duties of independence, impartiality and disclosure. This is the IBA Guidelines on Conflicts of Interest in International Arbitration. First adopted in 2004, revised in 2014, and revised again in 2024, the Guidelines are the single most influential soft-law instrument in this area and are widely used by arbitrators, parties, institutions and courts.[45] They are not binding law, but they are persuasive and are frequently incorporated by the parties or applied by tribunals as a benchmark.

The Guidelines have two parts. Part I sets out General Standards on impartiality, independence and disclosure. It confirms that the test for disqualification is objective, asking whether a reasonable third person, with knowledge of the relevant facts, would find a conflict, a standard consistent with the Model Law and with *Halliburton*; and it provides that the arbitrator's duty to disclose is to be judged from the point of view of the parties.[46] Part II then applies these standards to common situations through a "traffic-light" system of lists. The Non-Waivable Red List sets out situations in which a serious conflict exists and cannot be cured even by the parties' consent; the Waivable Red List sets out serious conflicts that the parties may nonetheless waive; the Orange List sets out situations that must be disclosed, because they may, in the eyes of the parties, raise doubts, but that do not by themselves disqualify; and the Green List sets out situations that raise

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[45] IBA Guidelines on Conflicts of Interest in International Arbitration (International Bar Association, 2024), first adopted in 2004 and revised in 2014 and 2024; they build on the earlier IBA Rules of Ethics for International Arbitrators (1987).

[46] IBA Guidelines on Conflicts of Interest in International Arbitration (2024), General Standard 2 (objective test for disqualification) and General Standard 3 (the arbitrator's duty of disclosure).

no conflict and need not be disclosed.[47] The value of this scheme is that it converts an abstract standard into recognizable categories, and so produces predictability across cases and jurisdictions. The influence of the Guidelines is not merely aspirational. Schere found that most international arbitrators consult them when exercising their judgment on disclosure,[48] and that courts and institutions increasingly refer to them when deciding challenges.[49]

4.4 The Place of Soft Law in Nigerian Arbitration

What is notable is that the Act does not refer to the IBA Guidelines, and they are not binding in Nigeria. This raises a question that has already caused difficulty in the Nigerian courts: what weight, if any, should a Nigerian court give to the Guidelines and to international jurisprudence when deciding whether an arbitrator should be disqualified? The better view is that, although the Guidelines are not law, they are strong persuasive authority and a reliable statement of international best practice, and that a Nigerian court interpreting the "justifiable doubts" standard should treat them, and decisions such as *Halliburton*, as valuable guidance. The alternative, in which Nigerian courts develop the standard in isolation from international practice, would undermine the consistency that makes Nigeria attractive as a seat.

4.5 A Comparative Note: "Evident Partiality" in the United States

A brief comparison with United States law reveals how widely shared the duty of disclosure is. Under section 10(a)(2) of the Federal Arbitration Act, an award may be vacated where there was "evident

[47] IBA Guidelines on Conflicts of Interest in International Arbitration (2024), Part II.
[48] Maxi Scherer, 'The IBA Guidelines on Conflicts of Interest in International Arbitration: The First Five Years 2004–2009' *Dispute Resolution International* (2010) 4(1) 5.
[49] Rom K L Chung, 'Conceptual Framework of Arbitrators' Impartiality and Independence' *Arbitration* (2014) 80(1) 6.

partiality" in the arbitrators, and in the leading case the Supreme Court set aside an award because a neutral arbitrator had failed to disclose a business relationship with one of the parties.[50] The Court held that arbitrators must disclose to the parties any dealings that might create an impression of possible bias.[51] Although the American "evident partiality" standard is expressed differently from the "justifiable doubts" test, the underlying principle is the same as that in the Model Law, in English law and in the Act, that is, the integrity of arbitration depends on full disclosure, and a concealed relationship between an arbitrator and a party is the paradigm threat to neutrality. The convergence of these systems on the centrality of disclosure is itself a reason for Nigerian courts to align their approach with the international mainstream rather than to chart a separate course. Hascher likewise notes that what matters in the large majority of cases is not the existence of business or personal relations but their disclosure; it is secrecy that is the problem.[52]

5. NIGERIAN JURISPRUDENCE ON ARBITRATOR BIAS AND NON-DISCLOSURE

5.1 The "Misconduct" Era

Most of the Nigerian case law on arbitrator neutrality was decided under the old Act, and it approached the subject through the lens of misconduct. The foundational decisions are those of the Supreme Court in *Kano State Urban Development Board v Fanz Construction Co Ltd* and *Taylor Woodrow (Nig) Ltd v Suddeutsche Etna-Werk GmbH*.[53] Because the old Act did not define misconduct, the courts in

[50] *Commonwealth Coatings Corp v Continental Casualty Co*, 393 US 145 (1968).
[51] *Ibid.*
[52] Dominique Hascher, 'Independence and Impartiality of Arbitrators: 3 Issues' *American University International Law Review* (2012) 27(4) 789.
[53] *Kano State Urban Development Board v Fanz Construction Co Ltd* (1990) 4 NWLR (Pt 142) 1; *Taylor Woodrow (Nig) Ltd v Suddeutsche Etna-Werk GmbH* (1993) 4 NWLR (Pt 286) 127.

these cases adopted the meaning given in the common law and in Halsbury's Laws of England, treating misconduct as a wide concept that covered not only dishonesty but also procedural irregularity and breaches of natural justice, of which bias is one. A breach of the rule against bias, expressed in the maxim that no one may be a judge in his own cause, was thus understood to be a form of misconduct that could justify setting aside an award.[54]

At the same time, the Supreme Court consistently stressed that the courts should be slow to interfere with arbitral awards, and that an award should not be disturbed merely because the court might have decided the matter differently.[55] There was, therefore, a tension at the heart of the old law: misconduct was defined broadly enough to capture bias, which was right, but it was also defined broadly enough to be abused by parties recasting ordinary disagreements as misconduct, which was not. The removal of the misconduct ground by the Act of 2023 is best understood as a resolution of this tension in favor of finality.

The breadth of the misconduct concept can be seen in the way the courts applied it. In *Arbico (Nig) Ltd v Nigeria Machine Tools Ltd*, the Court of Appeal reviewed allegations of misconduct and of error of law on the face of the award, restated the principles drawn from *Taylor Woodrow*, and stressed that, despite its wide powers, the court would be slow to interfere with the arbitrator as the sole judge of law and fact.[56] The decisions of this period thus combined an expansive definition of the ground with a restrictive attitude to its exercise, an

[54] On the adoption of the Halsbury's definition of misconduct, see *Taylor Woodrow (Nig) Ltd v Suddeutsche Etna-Werk GmbH* (1993) 4 NWLR (Pt 286) 127; and *Araka v Ejeagwu* (2000) 15 NWLR (Pt 692) 684.
[55] *Ras Pal Gazi Construction Co Ltd v Federal Capital Development Authority* (2001) 10 NWLR (Pt 722) 559; *Araka v Ejeagwu* (2000) 15 NWLR (Pt 692) 684.
[56] *Arbico (Nig) Ltd v Nigeria Machine Tools Ltd* (2002) 15 NWLR (Pt 789) 1.

unstable compromise that the Act of 2023 has now replaced with a narrower list of grounds.

5.2 The Orthodox Line on Allegations of Bias

Where the courts were faced with direct allegations of arbitrator bias, the orthodox Nigerian position was cautious, requiring real evidence rather than suspicion. In *Lagos State Development and Property Corporation v Adold/Stamm International (Nig) Ltd*, a party sought to set aside an award on the ground that the sole arbitrator was biased against it, pointing to unrelated disputes between the arbitrator and the State; the allegation was rejected.[57] The orthodox line treated bias as a serious charge that had to be proved on the facts, and it declined to set aside awards based on speculation about an arbitrator's state of mind. This approach is consistent with the objective test discussed earlier: a party must show circumstances from which a reasonable observer would find a real risk of bias, not merely assert its own distrust.

5.3 The Global Gas Controversy: "Resign if Challenged"

Against this settled background, the decision of the High Court of Lagos State in *Global Gas and Refinery Ltd v Shell Petroleum Development Company*[58] was a striking departure. The dispute arose under a gas agreement and had been arbitrated under the rules of the International Chamber of Commerce. Global Gas alleged that members of the tribunal had failed to disclose that they sat, together with the lead counsel for Shell, on the board of an arbitration institution that had been formed while the arbitration was pending. Global Gas had challenged the arbitrators before the ICC Court, which dismissed the challenge, and then resisted the award in the Nigerian

[57] *Lagos State Development and Property Corporation v Adold/Stamm International (Nig) Ltd* (1994) 7 NWLR (Pt 358) 545.

[58] Suit No LD/1910GCM/2017 (High Court of Lagos State, ruling of 25 February 2020, Oyekan-Abdullahi J) (unreported).

courts on the ground that the non-disclosure amounted to misconduct.[59]

The High Court set the award aside. More controversially, it went on to hold that an arbitrator whose appointment is challenged on the ground of bias ought to resign from the tribunal and not to resist the challenge, to preserve the integrity of the process, and that this was so whether or not the matter complained of in fact amounted to a conflict of interest. The court also declined to be guided by the IBA Guidelines, treating them as non-binding soft law of no application in a domestic Nigerian arbitration.[60]

The "resign if challenged" rule was widely and rightly criticized. It has no basis in the statute or in earlier authority; it contradicts the objective test by making the mere fact of a challenge decisive, and it would hand any party an easy means of removing an arbitrator it disliked, simply by raising an objection, however baseless.[61] It also sat uneasily with the considered international approach in *Halliburton*, which treats non-disclosure as one factor to be weighed rather than as automatic proof of disqualifying bias. Its deeper flaw is that automatic recusal on challenge offends the very principle of fair hearing the court invoked, for it denies both the arbitrator and the non-challenging party any opportunity to answer the objection,[62] the opportunity that the challenge procedures of the Act, the ICC Rules and other institutional

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[59] *Ibid.*

[60] Funke Adekoya, 'Global Gas and Refinery Limited and Shell Petroleum Development Company: Is Nigeria Pro or Anti-Arbitration? The Lagos High Court Says That When Challenged, an Arbitrator Should Just Resign' (Kluwer Arbitration Blog, 16 May 2020) <https://legalblogs.wolterskluwer.com/arbitration-blog/> accessed 25 June 2026.

[61] *Ibid.*

[62] Omonigho Oyoma Brown, 'Arbitrator's Duty to Disclose Conflict of Interest: Revisiting *Global Gas and Refinery Limited v Shell Petroleum Development Company*' (SSRN Electronic Journal, 18 June 2021) <https://doi.org/10.2139/ssrn.4718317> Accessed 27 June 2026.

rules deliberately preserve.[63] The decision was subsequently overturned by the Court of Appeal, which set aside the High Court's ruling on the ground that the manner in which the proceedings had been conducted denied a fair hearing, and a further appeal is understood to be pending before the Supreme Court.[64] For present purposes the importance of *Global Gas* is twofold. It shows that the standard for handling arbitrator conflicts was unsettled in practice on the eve of the new Act, and it shows the cost of deciding such questions without regard to international best practice.

5.4 The Trend Towards Judicial Restraint

The more recent direction of the Nigerian courts is towards restraint and respect for the finality of awards, which is the correct setting for the new Act. In *Nigerian National Petroleum Corporation v Fung Tai Engineering Co Ltd*, decided by the Supreme Court in 2023, the Court reaffirmed the limited scope of judicial review of arbitral awards and warned parties against using the challenge process to reopen the merits of a dispute.[65] This trend is consistent with the policy of the Act, and it builds on earlier Supreme Court authority emphasizing that an application to set aside an award is not an appeal and that the courts will not review the merits of the arbitrator's decision.[66] It suggests that *Global Gas* is unlikely to be followed. The combination of a restrained judiciary and a tighter statutory scheme is a promising one, but it places even greater weight on the in-arbitration safeguards of

[63] *Halliburton Company v Chubb Bermuda Insurance Ltd* [2020] UKSC 48, [2021] AC 1083.
[64] The Court of Appeal overturned the High Court's ruling on fair-hearing grounds; a further appeal in the matter is understood to be pending before the Supreme Court. The 'resign if challenged' proposition therefore does not represent settled Nigerian law and should be treated as an outlier.
[65] *Nigerian National Petroleum Corporation v Fung Tai Engineering Co Ltd* (2023) 15 NWLR (Pt 1906) 117
[66] *Mekwunye v Imoukhuede* (2019) 13 NWLR (Pt 1690) 439.

disclosure and challenge, because those are now the principal protection against bias.

6. ETHICAL CHALLENGES TO ARBITRATOR INDEPENDENCE AND IMPARTIALITY

The statutory rules describe an ideal of neutrality, but in practice several recurring features of arbitration place that ideal under strain. These ethical challenges are not peculiar to Nigeria, but several of them are sharpened by the particular conditions of the Nigerian arbitration market, and the Act addresses them only partly.

6.1 The Party-Appointed Arbitrator

A basic tension in arbitration ethics arises from the practice of party appointment. In a three-member tribunal, each party usually nominates one arbitrator, and the two nominees, or an institution, select the chair.[67] The system has obvious advantages: it gives the parties confidence in the tribunal and ensures that the panel includes members familiar with each side's perspective.[68] But it also creates an obvious risk. A party-appointed arbitrator may feel, consciously or unconsciously, a sense of obligation to the party that chose and pays him, and may be tempted to act as an advocate rather than a judge. The Act answers this risk by insisting that every arbitrator, including a party-appointed one, must be independent and impartial; the duty is the same for all members of the tribunal, and a party-appointed arbitrator is not the representative of the party that nominated him. The candor of practitioners about this tension is well known: Martin Hunter once remarked that what he really looked for in a party-nominated arbitrator was someone with the maximum predisposition

[67] Travers and Smith, 'Choice of Arbitrators: Mastering the Nomination Process' (Travers and Smith, 12 April 2022) <https://www.traverssmith.com/knowledge/knowledge-container/choice-of-arbitrators-mastering-the-nomination-process/> Accessed 19 June 2026.
[68] *Ibid.*

towards his client but the minimum appearance of bias,[69] and El-Kosheri and Youssef observe that parties commonly expect judge-like behavior from their opponent's nominee while quietly hoping for sympathy from their own.[70] The insistence is correct, but it does not dissolve the tension, which the law can manage but not eliminate.

6.2 Repeat Appointments and a Small Arbitration Community

A second pressure comes from repeat appointments. Experienced arbitrators are repeatedly appointed by the same parties, the same law firms or the same institutions, and a pattern of repeat appointments may create, or appear to create, a relationship of dependence. This was the very problem at the Centre of *Halliburton*, and the 2024 revision of the IBA Guidelines expanded its lists partly to address it.[71] The problem is more acute in a relatively small arbitration community, such as Nigeria's, where the pool of experienced arbitrators and senior counsel is limited, and where the same individuals frequently appear before, and alongside, one another in different capacities. In such a market, the line between healthy professional acquaintance and compromising connection is easily blurred, and the facts of *Global Gas*, in which arbitrators and counsel sat together on the board of an arbitral body, illustrate the danger. The answer is not to disqualify every arbitrator who knows the parties' lawyers, which would make arbitration impossible, but to require careful and generous disclosure, so that the parties can judge the connections for themselves.

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69 Martin Hunter, 'Ethics of the International Arbitrator' *Arbitration* (1987) 53 219.

70 Ahmed S El-Kosheri and Karim Y Youssef, 'The Independence of International Arbitrators: An Arbitrator's Perspective' in *Independence of Arbitrators* (ICC, 2007 Special Supplement) 43.

71 IBA Guidelines on Conflicts of Interest in International Arbitration (2024), Part II; *Halliburton Company v Chubb Bermuda Insurance Ltd* [2020] UKSC 48, [2021] AC 1083.

6.3 Issue Conflicts and the Arbitrator-Counsel Overlap

A third pressure is the phenomenon of overlapping roles. In international and increasingly in domestic practice, the same lawyers serve as arbitrators in some cases and as counsel in others, sometimes at the same time.[72] A person who argues a point of law as counsel in one arbitration, and is asked to decide the same point as arbitrator in another, faces what is called an issue conflict: a predisposition towards a legal position rather than towards a party.[73]

Related concerns arise where an arbitrator and counsel for one of the parties are currently serving together as arbitrators in a different matter, or where they are members of the same chambers or firm.[74] The 2024 IBA Guidelines treat several of these situations as matters requiring disclosure.[75] The Act contains no specific guidance on these overlaps; they fall to be assessed under the general "justifiable doubts" standard, which is why detailed soft-law guidance is so useful in giving the standard concrete content.

6.4 Third-Party Funding and New Conflicts

A fourth pressure is new. The Act, for the first time in Nigeria, expressly permits third-party funding of arbitration by abolishing the old common law rules against maintenance and champerty in this context, making Nigeria one of the few jurisdictions to legislate for funding.[76] Funding introduces a new actor with a financial stake in the outcome, and so a new source of potential conflict, being that an arbitrator may have an undisclosed connection with the funder, just as

[72] Pietro Ferrario, 'Challenge to Arbitrators: Where a Counsel and an Arbitrator Share the Same Office—The Italian Perspective' *Journal of International Arbitration* (2010) 27(4) 421–426 <https://doi.org/10.54648/JOIA2010023> Accessed 30 June 2026.
[73] *Ibid,* P. 422.
[74] *Ibid,* P. 424.
[75] IBA Guidelines on Conflicts of Interest in International Arbitration (2024), Orange List.
[76] Arbitration and Mediation Act 2023, s 61.

he may with a party.[77] The Act addresses this by requiring a funded party to disclose the existence of the funding arrangement, and the identity and address of the funder, to the other party, the tribunal and any arbitral institution, at the start of the arbitration or as soon as the funding agreement is made.[78] This is a sensible safeguard, because it gives the arbitrator the information needed to check for, and disclose, any conflict with the funder. But it is only a first step, and as funding becomes common the conflicts it generates will require closer attention than the Act presently provides.

6.5 Disclosure versus Confidentiality

A more subtle tension is between the duty to disclose and the duty of confidentiality. An arbitrator who sits in several related arbitrations may be unable to disclose a relevant connection in one without revealing confidential information about another. *Halliburton* grappled with exactly this difficulty and held that the duty of disclosure must be reconciled with, and may be limited by, duties of privacy and confidentiality, although consent can resolve the conflict. The reconciliation, as Yu explains, turns on the non-absolute character of confidentiality: the duty may be waived expressly, or by consent inferred from the custom and practice of the particular field of arbitration, and the recipient of any disclosure is in turn bound by an equitable obligation to use the information only for the purpose of assessing the arbitrator's impartiality.[79] The Act does not address this interaction, and it is an area in which Nigerian practice will need guidance. The general principle should be that, where disclosure cannot be made without breaching a genuine duty of confidentiality,

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[77] Astha Kothari and Arryan Mohanty, 'Third-Party Funding in International Arbitration' *Journal of Alternate Dispute Resolution* (2024) 3(4) 1–32 <https://doi.org/10.55662/JADR.2024.3401> Accessed 28 June 2026.
[78] Arbitration and Mediation Act 2023, s 62.
[79] Hong-Lin Yu, 'Arbitrator's Implied Duty of Disclosure and its Interaction with the Duty of Impartiality and the Duty of Confidentiality' *Contemporary Asia Arbitration Journal* (2021) 14 (1) 1-38.

and consent cannot be obtained, the arbitrator should decline or relinquish the appointment rather than sit on an undisclosed conflict, which is the solution adopted by the IBA Guidelines.[80]

6.6 Impartiality and the Award Review Tribunal

A final practical issue arises from one of the Act's most novel features. The Act allows parties to agree that an award may be reviewed, on the same grounds that apply to setting aside, by an Award Review Tribunal, a second arbitral tribunal that sits between the original tribunal and the court.[81] The purpose of the Award Review Tribunal is to provide a private layer of review and so to reduce the burden on the courts. But because it is itself an arbitral body, its members are subject to the same duties of independence and impartiality as the members of the original tribunal, and its constitution raises the same questions of disclosure and challenge at a second level. In a small arbitration community, the difficulty is obvious. The persons qualified to review an award may well be connected, professionally or personally, to those who made it, or to the parties' counsel. If the review tribunal is to add legitimacy rather than to multiply the opportunities for conflict, its members must be selected with the same, or greater, care for neutrality, and the disclosure obligations must apply to them with full force. The Award Review Tribunal thus does not escape the central problem of this article; it relocates it to a new stage of the process.

7. REFORM PROSPECTS

[80] IBA Guidelines on Conflicts of Interest in International Arbitration (2024), General Standard 3.

[81] Arbitration and Mediation Act 2023, s 56, which permits the parties to provide in their arbitration agreement for the review of an award by an Award Review Tribunal on the grounds set out in s 55(3); the review tribunal is constituted in the same manner as the original tribunal and is to render its decision within sixty days.

The Act of 2023 is a clear advance on the law it replaced. It states an express duty of neutrality, it keeps a workable disclosure-and-challenge regime, and it removes the abused misconduct ground. But the analysis above shows that it leaves the governing standard underdeveloped at exactly the point where it most needs to be strong. Four recommended reforms would close this gap.

7.1 A National Code of Arbitrator Ethics

The most important reform would be the adoption of a national code of arbitrator ethics, prepared by the leading Nigerian arbitral institutions and professional bodies, that gives detailed content to the duties of independence, impartiality and disclosure. Such a code could expressly endorse the IBA Guidelines, or adapt their traffic-light approach to Nigerian conditions, and so supply the concrete categories that the bare statutory standard lacks. The advantage of a code is that it would guide arbitrators before disputes arise, give parties a shared benchmark, and give the courts a recognized standard against which to measure conduct, thereby reducing the risk of idiosyncratic decisions like *Global Gas*. A code would also signal to international users that Nigerian arbitration is governed by familiar, predictable standards, which is essential to the country's ambitions as a seat.

7.2 Clarifying the Disclosure Standard and Rejecting "Resign if Challenged"

Second, the law should make clear, whether by judicial development or by the code proposed above, that the test for disqualification is objective and that a non-disclosure does not automatically disqualify an arbitrator. The disclosure standard should be generous, encouraging arbitrators to disclose in case of doubt, while the consequences of non-disclosure should be assessed by asking whether, on all the facts, a reasonable observer would find a real risk of bias. The "resign if challenged" approach should be firmly rejected, because it converts a safeguard into a weapon and rewards tactical challenges. The measured framework in *Halliburton*, separating the question of disclosure from the question of bias and weighing non-disclosure as one factor among others, is the model Nigerian courts should follow.

7.3 Rethinking the Party-Appointed Arbitrator

The structural tension created by party appointment deserves continuing attention. While party nomination is too well established, and too valued by users, to be abolished, its risks can be managed. Measures worth considering include strengthening the institutional scrutiny of party nominees, encouraging the appointment of sole arbitrators in suitable cases, which the Act facilitates by making a sole arbitrator the default, and requiring nominees to confirm in writing their independence and impartiality and their understanding that they are not advocates for the nominating party. None of these measures removes the tension, but together they would reduce the risk that party-appointed arbitrators behave as partisans.

7.4 Institutional Capacity, Training and Transparency

Much of the protection of neutrality depends not on the text of the law but on the institutions and individuals who apply it. Continuing reform should therefore include the strengthening of Nigerian arbitral institutions and their challenge procedures, sustained training of arbitrators and of judges who hear arbitration matters, and greater transparency, for example through the reasoned publication of challenge decisions, so that a body of consistent practice can develop. A small and developing arbitration community is particularly dependent on shared standards and a culture of disclosure, and these are built through education and institutional practice as much as through legislation.

8. CONCLUSION

The independence and impartiality of the arbitrator is the foundation of arbitral legitimacy. It is what entitles a private tribunal to decide a dispute that the parties have taken away from the public courts, and it is the practical condition of an award that can be enforced. The Arbitration and Mediation Act 2023 protect this foundation more clearly than the law it replaced. It states an express duty of neutrality, it preserves a disclosure-and-challenge regime built on the objective standard of "justifiable doubts", and it removes the open-ended misconduct ground that had been used to attack awards after the event. Yet the Act's very strengths shift the burden of protecting neutrality onto the stage of disclosure and challenge during the arbitration, and at that stage the governing standard remains underdeveloped. The Act does not spell out what must be disclosed, does not engage with the soft-law guidance that gives the standard concrete content, and leaves the consequences of non-disclosure to be worked out case by case. The Nigerian case law is uneven: a sound, restrained orthodox line, an unfortunate departure in *Global Gas*, and a recent reaffirmation of judicial restraint that points the better way. Set against the careful international approach in *Halliburton* and the detailed IBA Guidelines, the Nigerian standard is workable but incomplete.

The way forward is not further legislation but the development of clear standards: a national code of arbitrator ethics that gives content to the statutory duty; a firm judicial commitment to the objective test and to the rejection of the "resign if challenged" approach; sensible management of the party-appointed arbitrator and of new conflicts arising from third-party funding; and continued investment in institutions, training and transparency. If these steps are taken, the Act of 2023 can deliver what it promises, namely the fair resolution of disputes by an impartial tribunal, and Nigeria can credibly present itself as a seat where the neutrality of the arbitrator and the legitimacy of the award are secure.