I am delighted to deliver this goodwill message at this gathering of lawyers and to share with you some of my thoughts on a very important topic namely -“Ethics and Professionalism in Arbitration”. There is no doubt that disputes would always arise in the course of human relations. The traditional method for resolving such disputes is litigation as administered by the courts. However, over the last few decades, there has been considerable expansion in global trade and investments which has resulted in a significant increase in the volume of cases processed through the courts each year. This has made the process of litigation increasingly technical, laborious, expensive and unduly protracted, meaning that business men and women are constantly seeking more practicable methods for dispute resolution, such as arbitration.

2. Arbitration is simply a procedure for the settlement of disputes where parties agree to be bound by the decision of a neutral third party whose decision is generally, final and legally binding on the parties. The neutral third party in this context is referred to as the arbitrator or arbitral tribunal. The role of the arbitrator in an arbitration is somewhat similar to that of a judge in litigation in the sense that they are both empowered to make decisions which are final, binding and enforceable. However, some differences abound in that while judges are appointed or elected into office, arbitrators derive their authority from the agreement of the parties to arbitrate. Moreover, unlike the judiciary, which has a specific governing body and is bound by a set of ethical rules, the regime for the ethical obligations of arbitrators is not as organised and may or may not bind a given arbitrator.

3. The existence of an effective system for the resolution of commercial disputes is crucial for investment drive and economic growth in any economy. As the mill of traditional justice in Nigeria continues to grind slowly, emphasis is increasingly placed on arbitration as a viable dispute resolution mechanism. In most jurisdictions across the world, arbitration is employed in the resolution of commercial disputes, particularly in the realm of international trade where it is the preferred dispute resolution mechanism. This is not unconnected with the fact that the arbitral process offers speed, flexibility, privacy and confidentiality, which is more than can be said for litigation.
4. In Nigeria, arbitration is a recognized means of resolving domestic and international commercial disputes. From the enactment of the first arbitration legislation in Nigeria, that is, the Arbitration Ordinance 1914, to its subsequent repeal by the current Arbitration and Conciliation Act (ACA) 1988 (Cap A18, Laws of the Federation of Nigeria 2004) to the recent agitations to bring the current legislation in line with international best practices, Nigeria’s arbitration jurisprudence can be said to have grown considerably. The practice of arbitration in Nigeria is championed by organisations such as the Chartered Institute of Arbitrators, United Kingdom (Nigeria Branch), Nigerian Institute of Arbitrators, Lagos Court of Arbitration, the various multi-door court houses as well as international arbitral institutions such as the United Nations Commission -on International Trade Law (UNCITRAL), whose 1985 Model Law on International Commercial Arbitration has largely influenced arbitration practice in Nigeria today. Although, arbitration practice as it were does not require certification, it is best practice to acquire some form of training upon which expertise may be built. Some of these organisations provide training for prospective arbitrators and arbitration practitioners and so, can be said to have contributed to the emergence of some reputable Nigerian arbitrators who are making their marks, in the area of domestic as well as international arbitration.

5. As the issues that are submitted to arbitration are usually as intricate as those brought to judicial resolution, the ethical decisions that arbitrators are confronted with are often as complex as the ethical issues that the courts are faced with. For this reason, the need to police ethics and professionalism in arbitration remains a live issue particularly as arbitration can only thrive where prospective disputants are confident that there is an effective mechanism that ensures that the arbital process will culminate in a fair, impartially and independently rendered The issue of ethics and professionalism in arbitration will now be discussed with specific reference to Nigeria.

6. As with judges, and indeed other professionals, who are bound by ethical and professional standards, arbitrators are expected to perform their obligations under the arbitration agreement while maintaining the highest levels of professionalism in the general conduct of the reference. However, it is not as straight forward as it seems because unlike judges who are governed and supervised by specific bodies who establish minimum standards of behaviour which must be complied with, the
regulation regime for arbitrators is not as organised and may sometimes depend on the type of arbitration the arbitrator is involved in.

7. In this regard it should be noted that an arbitration may be ad hoc or institutional. Parties may choose either. An institutional arbitration is one conducted under the auspices of an arbitral institution which promotes and administers the arbitral process. Some prominent examples of such institutions in Nigeria include the Abuja Multi-door Court House, Lagos Multi-door Court House, Lagos Court of Arbitration. On the international level there is the International Chamber of Commerce (ICC), London Court of Arbitration, the Permanent Court of Arbitration in The Hague and the International Centre for the Settlement of Disputes between States and nationals of other States (ICSID), amongst others. All of these institutions have rules which would normally apply to arbitrations administered by them.

8. Some of these rules specify minimum standards of conduct for arbitrators. For instance, the International Chamber of Commerce (ICC) Rules of Arbitration 2012, which may apply to a Nigerian seated in international arbitration, provides in article 7 that, ‘every arbitrator must be and remain independent of the parties involved in the arbitration.’ Similarly, article 9 of the UNCITRAL Arbitration Rules 1976 which is incorporated in the 2nd Schedule to the ACA requires arbitrators to make disclosure of circumstances that may give rise to justifiable doubts as to their independence and impartiality. An arbitrator involved in the conduct of arbitration administered by any of these institutions would be bound by the standards of conduct specified in their rules.

9. An ad hoc arbitration on the other hand is self-executing in the sense that it is conducted within the framework of the arbitration agreement and the applicable laws, without any reference to any of the rules above. The parties may even write their own rules and incorporate them into the arbitration agreement. If their rules provide for ethical standards, then the arbitrators have to adhere to them. Otherwise, the arbitrator would have to look to the applicable national arbitration law for their ethical obligations in the conduct of the arbitration. For instance, section 30(2) of the ACA provides that, ‘an arbitrator who has misconducted himself may on the application of any party be removed by the court’. While this provision is not an express or direct statement of the obligation of an arbitrator, it is implied that an arbitrator must not engage in any form of misconduct in the conduct of the arbitration. The ACA does not define the word “misconduct”, however, in Taylor Woodrow. (Nig.) Ltd v. S. EGMBH, (1993) 4 NWLR 286, 127, failure to decide all matters referred; failure to
act fairly towards both parties; acquisition of an interest in the subject matter of the reference; acceptance of hospitality of one of the parties, where such hospitality is offered with the intention of influencing the decision; irregularity in the conduct of the arbitral proceedings; accepting a bribe from one of the parties failure to act without undue delay were all cited by the court as instances of misconduct which could result in the removal of the arbitrator.

10. Additionally, the failure to decide all matters referred to the arbitration or deciding matters not included in the reference or denying a party the opportunity to present their case are ethical issues which could lead to a set-aside of the award or a refusal to enforce the award under sections 30(1), 48 (2) and 52 (2) of the ACA. It must however be stated that as with institutional arbitrations, parties to an ad hoc arbitration are free to adopt the procedural rules of arbitral institutions as discussed above, in which case the arbitrators will be bound by any ethical rules stipulated therein.

Aside the institutional arbitral rules and national arbitration laws, ethical obligations of arbitrators may be found in ethical codes incorporated by arbitral institutions into their rules. For example, the Chartered Institute of Arbitrators has the Code of Professional and Ethical Conduct for Members 2009 that applies to arbitrators who are certified by them. It may also apply to an arbitrator where the parties contractually incorporate in their arbitration agreement, the rules of institutions adopting the code. An arbitrator’s ethical obligations may also be found in international conventions such as the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958. While the Convention does not expressly address arbitrator’s obligations, it permits courts in article V to refuse to enforce an award where the unsuccessful party shows that an arbitrator’s alleged partiality prevented it from presenting its case, amongst other things. Also, a significant number of arbitrators would normally be legal practitioners who are bound in one way or the other by the applicable rules of professional conduct of their profession. Thus, these rules provide for them, some form of guidance in the performance of their roles as arbitrators. A good example is the Rules of Professional Conduct for Legal Practitioners 2007 which stipulates the acceptable conduct for legal practitioners in Nigeria.

11. Evidently, there are a range of sources that combine together to determine the ethical obligations of arbitrators in Nigeria. The multiplicity of sources notwithstanding, one thing that stands out is that arbitrators, like other professionals
are subject to certain ethical rules which impose duties and obligations which they must perform. Some of these obligations entail: handling the reference with the highest levels of professionalism; being independent and impartial and the disclosure of any circumstances that may give rise to justifiable doubts as the existence of these attributes; a full and absolute commitment to the reference, fair and even treatment of the parties, amongst other things.

12. One of the ethical obligations of the Arbitrator is that of professionalism. This means the arbitrator must exhibit professionalism in the conduct of the arbitration. He has a duty at all stages of the arbitral process to treat the parties equally and with fairness. He must prosecute the proceedings with promptness and diligence and treat with courtesy, not only the parties, but also counsels, witnesses and the co-arbitrators. Where a party does not attend proceedings despite being given proper notice, the arbitrator is enjoined to seek assurance that notice was indeed provided. If the party was given notice, the arbitration may proceed without the absent party, if authorized by the parties or by the applicable law. Under the section 21(b) of the ACA, arbitrators are empowered to so proceed where a respondent without cause and despite being given several notices fails to appear to defend their case. In any event, the arbitrator must ensure that each party is given an opportunity to state and answer their case. Failure to do so may render the ensuing award a nullity. Such an award may be set-aside under section 48 of the ACA. Where parties make moves to settle, the arbitrator may encourage them to do so. However, he must be careful not to cross the boundaries an impartial decision maker must not overstep in encouraging such a move so that he is able to resume his role as an independent neutral where the parties are unable to settle.

13. Independence and Impartiality are also fundamental obligations of an arbitrator in the general conduct of the arbitration and in fact in all the dealings with the arbitration. Indeed, the obligation of arbitrators to be impartial or independent is clear as well as imperative considering that arbitrators are in the position of judges who must remain neutral in performing their adjudicatory functions. Independence relates to the relationship between an arbitrator and a party, usually the party appointing him. This relationship may be financial, professional or personal and may also exist with regards to the party’s counsel. Partiality, on the other hand may be concerned with the bias an arbitrator has in favour of one of the parties or in relation to the issue in The issue of independence is often decided by an objective standard. In contrast, the question of impartiality is quite subjective as it is an attitude or state of mind. It
may be an uphill task proving a lack of impartiality. Generally, independence and impartiality are required of arbitrators under institutional arbitral rules such as the UNICTRAL Arbitral Rules 1976 as referred to above. London Court of International Arbitration (LCIA) Rules also provide in article 5.3 that, ‘all arbitrators shall be and remain at all times impartial and independent of the parties’. Section 8 of the ACA also encourages the independence and impartiality of the arbitrator.

14. The duty of Disclosure is closely connected to that of independence and impartiality in the sense that an arbitrator is mandated to disclose any circumstance that may cast justifiable doubts on his independence. In other words, an arbitrator is required to make full disclosure of any personal interests or relationships with the parties or witnesses. Such disclosure would include any past interests or relationships involving family members, employers, spouses or partners or business partners. The duty to disclose is one that lasts for the duration of the proceedings. Where the arbitrator discloses a relationship which has the potential to cause a conflict of interest, this may disqualify the arbitrator depending on the extent of involvement. The International Bar Association (IBA) Guidelines on Conflicts of Interest in International Arbitration 2014 guides arbitrators in the sense that specifies what categories of relationship and degrees of involvement that may or may not disqualify an arbitrator. There is also the International Bar Association (IBA) Rules of Ethics for International Arbitrators 1987 which mandates arbitrators to make disclosures in certain circumstances, amongst other things. Where the arbitrator makes a disclosure and both parties ask him to withdraw, then he should step down. However, the procedures for challenging an arbitrator where provided for in the arbitration agreement or the applicable law may be invoked to remove an arbitrator, in certain cases.

15. There is a duty on an arbitrator not to take up an appointment which is not within their area of competence. Further, he must ensure in accepting to act as arbitrator that he would be able to devote adequate time and resources into the conduct of the arbitration. Accepting an appointment beyond his competence or knowing that he would not fully commit to the reference would amount to breach of the duty of care.

16. In addition to the above, the arbitrator must not be involved in ex parte communications with one party, except the parties agree otherwise. So any written communication to or from a party must be communicated to the other party in order to ensure transparency in the conduct of the proceedings. Also, an arbitrator is obligated to painstakingly consider the issues submitted to the reference
and render an independent judgment without any external consideration. Even where the parties settle, the arbitrator is under no obligation to enter a consent award except he is satisfied with the terms of settlement.

17. The foregoing is indicative of some of the obligations that an arbitrator is required by the ethics of his profession to perform. For the most part, failure to meet requirements or perform the obligations expected of an arbitrator is met with sanctions such as removal of the arbitrator using the procedures stipulated under the applicable law or Section 9 of the ACA, for instance, provides for the procedure for the challenge and subsequent removal of an arbitrator where there are justifiable doubts as to their independence and impartiality. In more severe cases, where proceedings are concluded and an award has been rendered, there may be a set-aside of the award by the courts if absence of fair hearing or other misconduct is proved. Such set-aside means that parties may have to adjudicate the matter afresh.

Recommendations and Conclusion

18. Let me now sum up my prescriptions for the growth and sustenance of arbitral practice in Nigeria. With the expansion in global trade and investments, and the associated growth of commercial arbitration, there is an increasing interest by national systems of law in establishing rules of ethics for commercial arbitrators. In the United States, for instance, some states have officially adopted ethical rules for arbitrators. For instance, North Carolina promulgated the *North Carolina Canons of Ethics for Arbitrators* in 1998. Also Massachusetts, Virginia, and Florida have formal government offices or bureaucracies that manage as well as oversee the conduct of alternative dispute resolution processes. Nigeria has already taken a cue in this regard with the introduction of the Lagos Multi-door Court House system in 2002. There are similar systems set up in Abuja, Kaduna, Uyo, Asaba, Calabar, amongst others. Furthermore, a good number of states in the United States now provide that legal practitioners acting as arbitrators are governed by the codes of professional conduct applicable to lawyers.

19. It may therefore be a good idea to expressly extend the ethics provisions of the *Rules of Professional Conduct for Legal Practitioners 2007* and even the *Legal Practitioners Act 2007* to lawyers acting as third party neutrals in Nigeria. This would ensure full coverage for all arbitrators, whatever be the terms on which the arbitration is conducted. Be that as it may, arbitration will only thrive where prospective disputants know that the profession is made up of persons of integrity who will not by their conduct, render questionable awards. Therefore, an arbitrator, whether in an *ad*
hoc or institutional setting, whether or not they are expressly covered by any rules or laws must always strive for the highest levels of professionalism. He must always strive to comply with natural principles of impartiality, fairness and equal treatment. More importantly, he must bear in mind that an arbitrator who is known to render awards that are almost-always set-aside by the courts, would not go far in the
20. Thank you for listening

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