



SIGNIFICANT CHANGES OF THE ARBITRATION & MEDIATION BILL 2022

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INTRODUCTION

On 10 May 2022, the Nigerian Senate passed the Arbitration and Mediation Bill, 2022 (the “Bill”) which seeks to repeal the Arbitration and Conciliation Act 1988 (the “ACA”) Cap A18 Laws of the Federal Republic of Nigerian 2004, and enact the Arbitration and Mediation Act to provide a unified legal framework for the fair and efficient settlement of commercial disputes by arbitration and mediation by setting out substantive and procedural provisions. This review is to highlight the novel areas introduced by the bill.

Novel Provisions Introduced By The Bill

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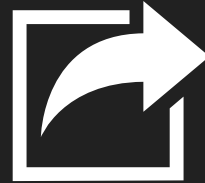
Mediation



ELECTRONIC COMMUNICATION AS A FORM OF ARBITRATION AGREEMENT



The bill provides that the requirement that an arbitration agreement be in writing is met if information is contained in an electronic communication that is accessible and reusable for subsequent reference.



Electronic communication means any communication that parties make by means of data messages (that is, information generated, sent, received or stored by electronic magnetic, optical or similar means, electronic mail, telegram, telex or telecopy. **Section 1(4) of the Bill**

REVOCATION OF AUTHORITY OF AN ARBITRATOR

The Authority of an Arbitrator is not revoked by reason of his death, bankruptcy, insolvency or other change in circumstance of any party by whom the arbitrator was appointed. This provision encourages continuity of proceedings.-Section 4 (2)of the Bill

Number of Arbitrators

The Bill provides that where there is no agreement as to the number of arbitrators, the Tribunal shall constitute of a Sole Arbitrator. Section 6 (2) of the Bill

Challenge Of The Appointment Of An Arbitrator

- ❑ The time limit for challenging the appointment of an arbitrator has been reduced from 15 days to 14 days.
- ❑ The challenge to the appointment must be made after becoming aware of the constitution of the arbitral tribunal or becoming aware of circumstances that create justifiable doubts as to the independence and impartiality or lack of qualification of the arbitrator.
- ❑ The arbitral tribunal is to decide on the challenge of an arbitrator.
- ❑ Where a challenge is not successful, the challenging party may within 30 days of receipt of the decision rejecting the challenge request either the appointing authority or the Court to decide the challenge. While the challenge request is pending, the arbitral tribunal including the challenged arbitrator may continue the arbitral proceeding and make an award.
- ❑ The appointing authority or the Court is mandated to decide on the admissibility and merit of the challenge after affording opportunity to the challenged arbitrator or parties to comment in writing on the challenge. **Section 9 of the Bill**

Withdrawal, Death Or Cessation Of The Office Of An Arbitrator

- ❑ Parties can decide on the consequences of the withdrawal of an arbitrator from his or her office as regards entitlement to fees or any liability incurred by the arbitrator.
- ❑ Where there is no agreement by parties, the arbitrator may apply to the appointing authority or the Court to grant the arbitrator relief from any liability incurred and for it to make orders as it thinks fit regarding the entitlement of the arbitrator or fees or expense's or the refund of the fees or expenses already paid
- ❑ The authority of an arbitrator is personal and ceases upon the death.
- ❑ Where the mandate of an arbitrator terminates by reason of death or resignation, parties may agree as to the extent the previous proceedings should stand and in the event of death, the sum if any to be paid to the estate of the arbitrator for work done and the refund of expenses incurred. Where there is no such agreement by parties, the tribunal where reconstituted can make decisions in respect of it.
- ❑ The cessation of office by an arbitrator is not to affect any appointment made by him alone or jointly of another arbitrator especially a presiding arbitrator. **Section 12 of the Bill**

Immunity Of an arbitrator, Appointing authority, Arbitral institution

- ☐ An arbitrator, an appointing authority or arbitral institution is not liable for anything done or omitted to be done in the discharge of their functions as provided by the Act except such act or omission was done in bad faith.
- ☐ This immunity is extended to the employee of an arbitrator, appointing authority or arbitral institution.
- ☐ This immunity does not affect the liability incurred by an arbitrator by reason of his withdrawal. **Section 13 of the Bill**

Appointment Of An Emergency Arbitrator

- ❑ A party can prior to the constitution of an arbitral tribunal apply for the appointment of an emergency arbitrator to any arbitral institution designated by parties and where there is no such designation to the Court where a party needs urgent relief.
- ❑ The Court or the arbitral institution upon accepting the application is mandated to appoint an emergency arbitrator within 2 business days.- **Section 16 of the Bill**

Power Of Court To Grant Interim Reliefs

- ❑ Under the ACA the tribunal could grant interim reliefs or measures of protection at the request of a party.
- ❑ Under the Bill, the Court has been given the right to grant interim measures of protection for the purpose of and in relation to arbitration proceedings whose seat of arbitration is the Federal Republic of Nigeria.
- ❑ The Court is mandated to grant application for interim reliefs within 15 days of receipt of the Application. **Section 19 of the Bill**

Recognition And Enforcement Of Interim Reliefs

- ❑ An interim relief issued by a tribunal is binding and shall be enforced unless otherwise provided by the tribunal upon an application to the Court.
- ❑ A party who is seeking or has obtained an interim relief from the Court is mandated to inform the Court of any termination, suspension or modification of the interim measure.
- ❑ A court where an application for the recognition and enforcement of an interim measure is made may request for the provision of security where the tribunal did not make such order as to security. **Section 28 of the Bill**

Application Of Status Of Limitation On Arbitral Proceedings

- ☐ Under the Bill the Limitation Act applies to arbitral proceedings the same way it applies to judicial proceedings (that is upon the accrual of the cause of action).
- ☐ The Limitation period for the enforcement of an award now excludes the period between the commencement of the dispute and the date of the order was made **Section 34 of the Bill**

Consolidation And Joinder of Parties

- ❑ Parties are allowed to consolidate arbitral proceedings with other arbitral proceedings including arbitral proceedings involving different parties with the agreement of that party.
- ❑ The decision to consolidate proceedings is not to be made by the arbitral tribunal unless with the agreement of parties.
- ❑ Joinder of additional parties to an arbitral proceedings is allowed where such party is bound by the arbitral agreement that gave rise to the arbitration. **Section 40 of the Bill**

Award Of Interest

- ☐ Parties may agree on the arbitral tribunals power to award interest.
- ☐ The Arbitral tribunal may award simple or compound interest on such dates and rates it considers just on the whole or part of the award money or the amount claimed in arbitration. **Section 46 of the Bill**

Third Party Funding

- ❑ The tort of champerty and maintenance does not apply to third party funding in arbitration.
- ❑ Where a third-party funding agreement is made the party benefiting from it must disclose the name and address of the third-party funder by written notice to other parties and the arbitral tribunal. **Section 62 of the Bill**

Mediation

- ❑ The bill has in place of conciliation made provisions as to mediation.
- ❑ Upon commencement of mediation proceedings, the limitation period regarding the claim that is the subject matter of the mediation is suspended. **Section 67 of the Bill**
- ❑ The limitation period begins to run from the day the mediation proceedings is terminated without a settlement agreement. **Section 71 of the Bill**
- ❑ Parties, mediators or third parties involved in mediation proceedings are prevented from introducing or giving evidence in any arbitral or judicial proceedings regarding participation of parties to mediation proceedings, suggestions made during mediation proceedings, statements or admissions made during mediation proceedings, proposals made by mediators during mediation proceedings, documents prepared solely for mediation- **Section 77 of the Bill.**

Conclusion

The bill is currently awaiting the assent of the president after which it would become a law. This bill is a step in the right direction in providing more elaborate rules that will guide arbitration and alternative dispute resolution as a whole.

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