

Demystifying the Nigerian Arbitration and Conciliation Bill 2017

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Introduction

In March 2017, Senator Emmanuel Andy Uba introduced the Arbitration and Conciliation Act (Repeal and Re-enactment) Bill (the Bill). While the first reading of the Bill was done at the Nigerian Senate Chambers in March 2017, the second reading of the Bill was not done till April 2017 and only thereafter was it referred to the Senate Committee on Judiciary, Human Rights and Legal Matters. Meanwhile, the third reading of the Bill was not done till February 2018 and only thereafter was the Bill passed by the Senate of the Federal Republic of Nigeria.

The Bill, which is currently pending before the House of Representatives, the second legislative chambers of the National Assembly (the legislative arm of the Federal Republic of Nigeria), is expected to be passed and concurred to by the House of Representatives, before the Bill is ultimately submitted to the Nigerian President for assent, in order to take the force of law.

This article succinctly considers certain key provisions of the Bill and proceeds to make relevant recommendations on areas the Bill can be improved on by the members of the House of Representatives before the Bill is assented to by the President and takes full effect.

Key Provisions of the Bill

The Bill, laden with very innovative provisions that accord with international best practices in arbitration, seeks in the main to repeal the Arbitration and Conciliation Act Cap. A18, Laws of the Federation of Nigeria, 2004 (the ACA).

A cursory read of the Bill will reveal that the Bill, inter alia, seeks to:

- expand the requirement that an arbitration agreement must be in writing to include electronic communication;
- tacitly allow for third-party funding in Arbitration and defines third-party funding to mean an arrangement between a specialist funding company, an individual, a corporation, a bank, an insurance company or an institution (the funder) and a party involved in the arbitration, whereby the funder will agree to finance some or all of the party's legal fees in exchange for a share of the recovered damages;

- allow a substitute Arbitrator to be appointed where the mandate of an arbitrator is either terminated as a result of a challenge from one of the parties to the arbitration agreement or where the arbitrator is unable to perform his or her functions or withdraw as arbitrator;
- guarantee the immunity of Arbitrators, Appointing Authority and Arbitral Institution from liability for anything done or omitted in the discharge or purported discharge of their 'official' functions;
- provide for the time within which an application to stay legal proceedings on the same substantive claim can be made;
- imbue the arbitral tribunal with the power to make interim or supplementary orders as may be deemed necessary, for the purpose of the preservation of the rights of parties, whenever an order for stay of proceedings is made;
- allow for the appointment of an Emergency Arbitrator to attend to any urgent relief any party to an arbitration agreement may have;
- guarantee the power of the arbitral tribunal to grant interim measures of protection, for the purpose of arbitration proceedings whose seat is the Federal Republic of Nigeria and equally provides for the conditions that must be satisfied for the grant of such interim measures; and
- imbue the Arbitral tribunal with the power to request that the party seeking an interim measure provide appropriate security in connection with the measure as well as make such party liable for any costs and damages caused by grant of such measure, amongst others.

Conclusion and Recommendations

Upon a careful reading of the Bill, it may not be out of place for one to assert that the Bill will go a long way in not only providing a more enabling cum friendly business climate for investors, but also further boost the reputation of Nigeria, aid the ease of doing business in Nigeria and consequently, help boost the Nigerian Economy, given how quintessential the need for certainty of disputes resolution is, when making any commercial agreement and/or arbitration agreement.

The foregoing notwithstanding, it is imperative for the provision of third-party funding to be given more elaboration in the body of the Bill as opposed to only appearing for the very first time in the 'Definition Section of the Bill. The recognition of third-party funding in the Bill is a major innovation of the Bill and it is imperative this new development be properly given a befitting place in the Bill, whilst ensuring that all seemingly existing potential obstacles to the realisation of the third-party funding in the Bill are swiftly and neatly dealt with. Additionally, the House of Representatives will equally be expected to do well to address the other shortcomings, which for want of space, the present writer is unable to fully address here but have been reasonably dealt with elsewhere by leading experts in Arbitration.

The Bill, when passed, is expected to positively influence the choice of Nigeria as the seat of arbitration in arbitration agreements by parties. It is certainly not out of place for one to remain positive that the Bill will encourage investors to consider Nigeria more as an investor-friendly country, as nothing could be discouraging to a potential investor than to have uncertainties permeating the legal climate of the country of proposed investment, worse still, where the dispute resolution of such a country is shrouded in mystery and secrecy.

The Bill, which is hoped will be warmly received and passed anon, upon necessary review by the House of Representatives (having addressed concerns made by all relevant stakeholders), is capable of attracting more Foreign Direct Investment in Nigeria as investors will be encouraged and gravitate

more towards making investment in a country where there is an efficient and effective alternative dispute resolution mechanisms, backed up by legislation. The Bill becomes even more relevant when one realizes that litigation, given its sundry challenges, is finally giving way to ADR, as seen in recent times, not only here but also in other business climate. It will equally encourage parties to be more inclined to choose Nigeria as the seat of arbitration.

In all, the Bill is a very commendable one. It will, most certainly, go a very long way in enriching our jurisprudence. Hence, one cannot help but commend all who worked tirelessly, in ensuring that this becomes a reality.

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