

Kluwer Arbitration Blog

Nigeria's New Arbitration Act: What You Need to Know

Laura Alakija · Sunday, June 25th, 2023

Nigeria's 35-year-old Arbitration and Conciliation Act 1988 (the "Old Act") was finally repealed and replaced by [the Arbitration and Mediation Act 2023](#) (the "New Act") following presidential assent on 26 May 2023. The New Act, which is based on the revised UNCITRAL Model Law adopted in 2006 and the result of years of reform effort, significantly improves the legislative framework for domestic and international arbitration in Nigeria, strengthening its position as a leading arbitration destination in Africa. This post introduces the New Act and overviews salient features of the New Act, including its structure and its major changes and innovations.

Structure

Sections: The New Act has 92 sections divided into three parts. Part I deals with Arbitration, Part II deals with Mediation, effectively repealing the rules on Conciliation in the Old Act, and Part III contains miscellaneous provisions the most significant of which is that the New Act does not apply to proceedings commenced before it came into effect (Section 89(1)). Parties may however, and nothing therein precludes them from doing so, elect the New Act as applicable to their pre-existing dispute.

Schedules: The New Act has three Schedules. The First contains the Arbitration Rules which are to govern disputes submitted to arbitration pursuant to the New Act, the Second contains the domestication of the Convention on the Recognition and Enforcement of Arbitral Awards (the New York Convention) in Nigeria, and the Third contains the Arbitration Proceedings Rules.

Legitimation of Third-Party Funding

Third-party funding has been a tendentious issue in Nigeria given that it was prohibited by the common law torts of maintenance and champerty that remained applicable in Nigeria as part of received English law (a prior post discussing this issue is available [here](#)). Disputants unable to pursue claims before arbitral tribunals due to funding issues worried that awards rendered in respect of third party funded claims could be set aside on that basis. The New Act solves the problem by abolishing the tort of champerty in relation to arbitration proceedings and arbitration-related court proceedings in Nigeria (Section 61). The benefitting party is required to disclose the name and address of the funder as soon as the funding arrangement is made (Section 62).

Default Number of Arbitrators

The New Act changes the default number of arbitrators from three to one (Section 6(2)). This is significant for domestic arbitrations as the cost of paying three arbitrators has proved to be an obstacle to users. The New Act brings the Nigerian framework in line with global practice as reflected in the UNCITRAL Model Law. Where the parties are unable to agree on a sole arbitrator the non-defaulting party can approach the court or, impressively, any arbitral institution in Nigeria to make the appointment (Section 7(3)).

Statutory Emergency Arbitrator

The New Act introduces a statutory framework for emergency arbitrators (Section 16). Before the constitution of the arbitral tribunal, parties may apply to the court or a designated arbitral institution for the appointment of an emergency arbitrator. Where the application is successful, the court or arbitral institution will make the appointment within two working days of the application and notify the appointed arbitrator within one working day.

Recognition and Enforcement of Interim Measures

The recognition and enforcement of interim measures remains a controversial issue globally. Under the New Act, Nigeria takes a pro-enforcement stance as it allows a party to seek the recognition and enforcement of an interim measure in the same manner as it would an award (Section 28). It precludes the Court from embarking on a substantive review of the measure, and only allows its refusal on limited grounds like those that exist to refuse the recognition and enforcement of an arbitral award.

Award Review Tribunal

Dubbed an ‘unusual concept’, the New Act introduces the possibility for parties to have their award reviewed by an Award Review Tribunal (Section 56). This is an opt-in mechanism within the parties’ competence and provides opportunity for a second tribunal to consider an application to set aside an arbitral award on the same grounds as a court would. The Award Review Tribunal, like the court, may set aside the award in whole or part, or uphold the award in its entirety. It is expected to render a decision within 60 days of its constitution. The court has the power to reinstate an award set aside by the Award Review Tribunal if it finds its decision unsupportable. However, a court may only set aside an award upheld by the Award Review Tribunal on grounds of non-arbitrability and public policy.

Costs

The New Act makes an important intervention in relation to the costs of arbitration proceedings in

Nigeria (Section 50). It is mandatory for the Tribunal's fees to be "reasonable in amount" and for the arbitral tribunal to fix the costs of arbitral proceedings in its award. The tribunal is specifically required to take into consideration its own fees and expenses, cost of expert/other assistance required, cost of legal representation for the successful party, administrative costs, and cost of obtaining third-party funding *inter alia*. This is crucial given that one of the key objectives of the New Act is fair resolution of disputes without unnecessary expense (Section 1).

Arbitration Proceedings Rules 2020

Another crucial intervention is the introduction of arbitration proceedings rules in the Third Schedule of the New Act (Section 64(2)). These rules govern arbitration-related court proceedings. The rules contain several interesting provisions, most notably provisions which seek to streamline and expedite arbitration-related court proceedings. For example, the Rules dispense with the requirement for compilation of records from the lower court in respect of arbitration appeals (Rule 10). Records are instead to be prepared and filed by the appellant as prescribed by the Rules (Rule 11). In Rule 12, on appeal from a first instance court, the court is required to list the appeal for hearing not later than six months after the filing of a party-produced record of appeal.

Additionally, Rule 13 provides that, unless a party specifically requests an oral hearing, the court may decide the entire appeal or particular issues arising from it on the papers filed. This is expected to be an extremely significant intervention given the inordinate delays experienced by arbitration appeals at appellate courts in Nigeria.

There is however the possibility of a challenge to this rule applying to arbitration related proceedings at the State High Courts given that it is ultra vires for the National Assembly to purport to legislate procedure at the State High Courts (*Fasakin Foods Nig Ltd v Shosanya (S.C. 312/2001)[2006] NGSC 118 (28 April 2006)*).

Provisions on Mediation

A major innovation of the New Act is the introduction of provisions on Mediation (Sections 67 – 87) — unlike its predecessor which contained directional provisions on conciliation. The New Act contains detailed provisions on the conduct of mediation and specifically provides for its confidentiality and the inadmissibility of statements made during these proceedings. Importantly, it provides for the enforcement of a settlement agreement as a contract, consent judgment or consent award and sets out limited grounds for the refusal to enforce a settlement agreement. In relation to international settlement agreements, it incorporates and mandates the application of the provisions of the Singapore Convention i.e., the Convention on the International Settlement Agreements Resulting from Mediation. The settlement agreement must, however, have been made in a country party to the convention, and must be in respect of a commercial relationship.

Concluding Remarks

The Arbitration and Mediation Act 2023 represents a giant stride towards the development of

arbitration in Nigeria, and in cementing Nigeria's place as a leading arbitration seat on the continent. Innovations such as the statutory emergency arbitrator and the recognition and enforcement of interim measures are particularly interesting for arbitration practitioners, academics, and users alike. Other provisions such as the Award Review Tribunal have drawn some initial criticism but given the unpredictable relationship between the courts and arbitration, it is hoped that it will bring with it some benefits. It is worth mentioning, albeit in passing, other changes such as the introduction of provisions on arbitrator and arbitral institution immunity (Section 13), joinder and consolidation (Sections 39 & 40), the treatment of arbitral proceedings as court proceedings for the purpose of computing limitation periods (Section 34), suspension of the computation of time during mediation proceedings (Section 71).

There are also such changes as set aside provisions which dispense with such grounds as 'misconduct' and properly align the New Act with the New York Convention (Section 55) and the application of the New Act to international arbitrations (between Nigeria and other countries), inter-state arbitrations and commercial arbitrations within Nigeria (Section 1 (5)). This provision, arguably, settles the controversy around the legislative competence of states to enact their arbitration laws in view of federal law as the New Act (a federal legislation) leaving room for the state legislations to govern arbitrations within their own territories.

All the highlighted innovations make for a robust new legal framework for arbitration in Nigeria and can only bring hope and positivity for the market in the coming years.

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