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Dispute Resolution Landscape: Changes in Nigeria

The Arbitration and Mediation Bill received presidential assent on 26 May 2023. The Arbitration and Mediation Act 2023 ("AMA" or the "Act") which repeals the Arbitration and Conciliation Act 2004 (ACA) was passed by the two houses of the National Assembly in 2022 as a tool to upgrade alternate dispute resolution methods in Nigeria to international standard and to meet international best practices. This was in recognition of some of the persisting problems and challenges encountered in the administration of arbitration under the ACA. To accomplish this, the AMA contains provisions that have introduced several changes and advancements on tents of the ACA.

This publication highlights and examines some of the notable changes and improvements introduced by the AMA, indicating the impact of some of these changes in the resolution of disputes.

Part A

Establishment and Expansion of the Powers of Nigerian Courts

Although the provisions of the AMA relating to arbitration are intended to apply only in situations where Nigeria is the seat of arbitration[1], the Act provides that Nigerian courts shall have the power to stay court proceedings, recognise and enforce interim measures, refuse recognition and enforcement of interim measures, order the attendance of witnesses, recognise and enforce awards and refuse recognition and enforcement of awards[2] even in instances where Nigeria is not the seat of arbitration. This provision expands the power of the Nigerian court in respect of arbitration proceedings even when the Nigerian court does not expressly enjoy supervisory jurisdiction over the arbitration/arbitral proceedings.

The AMA in a bid to promote the concept of party autonomy in the arbitration sphere of Nigeria also provides that an arbitration agreement can only be revoked by the agreement of parties thereto[3]. This is a paradigm shift from the provision of the erstwhile law that an arbitration agreement could be revoked with the leave of court. With this new provision, the concept *"Eodem Modo Quo Oritur, Eodem Modo Dissolvitur* (Discharged in the same manner in which it was created)" becomes the new normal for the revocation of arbitration agreements in Nigeria.

Where an action has been instituted on a matter which is the subject of an arbitration agreement and an application is brought by any of the parties to refer the parties to arbitration, the court shall refer the parties to arbitration unless it finds that the arbitration agreement is null and void, inoperative or incapable of being performed.[4]

Where the court is minded to grant the application for a stay of proceedings, it may make such interim or supplementary orders as may be necessary[5] including an injunction to maintain status quo regarding the subject matter of the dispute or stopping any or both of the parties to from taking steps that may make the arbitral award unenforceable or an exercise in nullity. Notably, a court shall not make such orders or intervene in any matter governed by the AMA except where and to the extent provided by the Act[6].

[1] Section 1(6) of the Arbitration and Mediation Act 2023 (AMA)
[2] Section 1(7) of AMA
[3] Section 3 of AMA
[4] Section 5(1) of the AMA which denotes a mandatory duty on the court to make the order staying further proceedings pending arbitration as long as the arbitration agreement is valid. This represents a departure from the ACA which used "may" and a codification of the practice of the Nigerian courts to always grant stay of proceedings in the face of a valid arbitration agreement.
[5] Section 5(3) of the AMA which is a novel provision by the Act geared towards the protection of the subject matter pending arbitration and to guarantee that the Claimant is not left with a pyrrhic victory- just like the traditional interlocutory injunction in litigation. The question now is, "What are the conditions for granting such injunction or is it automatic upon the grant of stay of proceedings?"
[6] Section 64(1) of the AMA which is an ouster jurisdiction clause that stops the court from interfering in arbitration matters.

Definition of Arbitration Agreements

The AMA defines arbitration agreement as an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.[7] Whereas this definition repeats the intent of the ACA, the AMA has expanded the form of arbitration agreements acceptable under the ACA to include an arbitration agreement that is recorded in any form including electronic communication provided that the information is accessible to, and useable by, all the parties for subsequent reference.[8] As such, an agreement to submit disputes to arbitration is binding and enforceable under the AMA even where the agreement was communicated through electronic means such as e-mail and possibly via instant messaging.

Appointment of Arbitrators

The AMA has reduced the number of arbitrators that can be appointed to an arbitral panel where the parties have not agreed on the number of arbitrators from three (3) under the ACA to one (1)[9]. Where a dispute, covered by an arbitration agreement providing that disputes must be determined by a panel of three (3) arbitrators, has been referred to arbitration and the other party fails to nominate its arbitrator, the party commencing the arbitration may request the appointing authority to appoint a sole arbitrator under the procedure prescribed under the Arbitration Rules if such authority determines that based on the circumstances, that would be appropriate.[10] The Act also provides that unless otherwise agreed to by the parties, persons of any nationality may be appointed to an arbitral panel constituted under the AMA.[11]

Where the parties fail to agree on the procedure for and/or the appointment of arbitrators, the AMA provides that such number of arbitrators agreed to by the parties or the sole arbitrator to be appointed under the Act, shall be appointed by the appointing authority designated by the parties or, failing such designation, any arbitral institution in Nigeria or by the court.[12] This allows a broader approach to the appointment of arbitrators and marks a departure from the simple approach encapsulated in the ACA wherein upon failure to agree on appointment, the court may appoint.

The Arbitration Rules prescribes where the parties have failed to agree on the appointing authority in the arbitration agreement and within thirty (30) days from the day a proposal to refer a dispute to arbitration was made, any party may request the director of the Regional Centre for International Commercial Arbitration, Lagos (RCICAL) to designate the appointing authority . Notably, this provision of the Rules applies to arbitration conducted under the Arbitration Rules.

Interestingly, the question now is, "For arbitration under the Arbitration Rules, when can an application be made to the Court or arbitral institutions for the appointment of arbitrators? Is it after the failure of parties to designate an appointing authority[13] or upon the failure of either of the parties to request the Director of RCICAL to designate an appointing authority?" Our opinion is that while the Act seeks to better serve the arbitration space, Article 6 of the Rules may be a clog in the speedy appointment of arbitrators and resolution of conflict should any of the parties choose to exercise the right contained therein.

The AMA also makes a paradigm shift from the provision of the erstwhile ACA on the challenge of an arbitrator. The AMA provides that an arbitrator shall not be challenged by the party appointing him/her or by any person who participated in the appointment of the arbitrator except the said party demonstrates that it became aware of the circumstance of the challenge after the appointment.[14]

Additionally, while the extant AMA retains the provision for the challenge of an arbitrator as encapsulated in Section 9(2) thereof, it states that, except as agreed, the challenge of an arbitrator can only be made within fourteen (14) days of the constitution of the tribunal or of the challenging party becoming aware of the circumstances forming the ground of the challenge.

7 Section 2(1) of the AMA
8 Section 2 of the AMA
9 Section 6(2) of the AMA; Article 7(1) of the Arbitration Rules
10 Article 7(2) of the Arbitration Rules
11 Section 7(2) of the AMA
12 Section 7(3) of the AMA
13 Article 6(2)
14 Section 8(4)

Furthermore, while the ACA provided that only the tribunal shall determine the challenge of an arbitrator, AMA provides that upon an unsuccessful challenge, the parties challenging may, within thirty (30) days of receiving the decision of the tribunal, request the appointing authority, arbitral institution or the court to decide the challenge. However, the further challenge to the aforementioned institutions shall not operate as a stay of the arbitral proceedings.[15] It is also noteworthy that while the relationship between parties and arbitrator is viewed wholly as contractual, the AMA grants immunity to the arbitrator for anything done or left undone in the course of the discharge of his/her duties except when the act is done in bad faith[16]. This provides a shield from liabilities for arbitrators who may otherwise be exposed

Emergency Reliefs/Interim Measures

Parties have the right to seek urgent interim measures/protection from the court for the purposes of and in relation to arbitration proceedings, and the exercise of such measures and protection by the court shall be done within fifteen (15) days of the application in accordance with the provisions of the Act[17]. It would appear that the AMA has donated powers to grant interim protective measures to the Court, either before reference to arbitration under Section 5 or, before the appointment of arbitrators (after reference to arbitration) under Section 19. This is in addition to the power of an arbitral tribunal to, on the satisfaction of certain conditions by the applying party, grant interim measures such as ordering parties to provide a means of preserving assets out of which a subsequent award may be satisfied unless the parties agree that the tribunal may not make such orders.[18]

The AMA allows a party that requires urgent relief to submit an application for the appointment of an emergency arbitrator to any arbitral institution designated by the parties, or failing such designation, to the court[19]. Such application must be made at the time or following a request for a dispute to be referred to arbitration where the tribunal has not been constituted. The court may grant such an application upon review of the documents submitted by the applicant, including the statement of the emergency relief sought and a description of the circumstances giving rise to the application and of the underlying dispute referred to arbitration.[20] The emergency arbitrator may rule on objections to their jurisdiction including on the validity of the arbitration clause or agreement and must make their decision within fourteen (14) days from the day they are briefed on the dispute unless the parties agree otherwise . The power of the emergency arbitrator, however, ceases on the constitution of the arbitral tribunal but the emergency decision may be made even if the file on the dispute has been transmitted to the arbitral tribunal.[22]

[15] Section 9(3)
[16] Section 13(1)
[17] Section 19 of the AMA
[18] Section 20 and 28(1) of the AMA
[19] Section 16(1) of the AMA
[20] Section 16(3)(a) and (c) of the AMA
[21] Article 27(1) and (2) of the Arbitration Rules
[22] Article 27(3) of the Arbitration Rules

The right of a party to seek interim measures shall not be limited by their exercise of the right to appoint an emergency arbitrator.[23] As such, any of the parties may approach the court or the tribunal to order or direct the other party/parties to do or desist from doing a thing which may unduly affect such party's or parties' rights or the award which may be made by the tribunal. In furtherance of the powers of the arbitral tribunal to grant interim measures, the tribunal may grant preliminary order (which is not subject to enforcement nor constitute an award) upon application at the time of request for interim measures to forestall the frustration of the purpose of the interim measures. This preliminary order enjoys a validity period of twenty (20) days from the date of issuance, save where the tribunal incorporates the preliminary order in its interim measure.[24]

This preliminary order is akin to the traditional interim injunction which is granted for a specific period of time subject to extension or grant of interlocutory injunction.

These interim measures are thoughtful introductions that should manage the concerns of many parties who require expediency in restraining the other party from future injury, prescribing status quo or protecting the res in commercial arbitration.

Conduct of Arbitration

Notably, the AMA makes a paradigm shift from the provisions of the old statute in relation to the conduct of arbitral proceedings under the law. While the ACA had provided that conduct of arbitration under the erstwhile ACA shall be in accordance with the Arbitration Rules set out in the First Schedule, the AMA provides that recourse can only be made to the Arbitration Rules in the First Schedule upon failure of the parties to agree on the arbitration rules to guide the conduct of the proceedings.[25] This provision, which is a codification of the practice in Nigeria, accords with international best practices and underscores the arbitration process as a party-centred and party-controlled dispute resolution mechanism. It exudes party-autonomy in its finest form and is a step in the right direction, particularly as arbitration agreement is a contract inter se and parties are at liberty to choose the law applicable to their contracts. This is in line with the decision in **JFS Investment Ltd v. Brawal Line Ltd & Ors**[26] where the Supreme Court held that parties have the autonomy to choose the law that will govern their transaction and guide the court in the determination of the parties' rights.

Distinction between Seat and Venue of Arbitration

The AMA makes a distinction between seat of arbitration and place of arbitration.[27] The 'seat of arbitration' is the juridical seat of the arbitration for the purpose of determining the law that will govern the proceedings[28] and shall be designated by the parties or failing which, by any arbitral or other institution or person authorised by the parties or failing which, by the arbitral tribunal.[29] The place or venue of arbitration, on the other hand, shall be any place the tribunal has agreed to meet for consultation, hearing or inspection.[30] In effect, while the seat of arbitration provides the curial law for the arbitration, the place of arbitration is just a matter of convenience for the arbitrator(s) and has no effect on the law governing the arbitration. This is a codification of the decision of the Supreme Court in **NNPC v. Lutin Inv. Ltd & Anor**[31] **and Zenith Global Merchant Limited v. Zhongfou International Investment (Nig) FZE & 2 Ors.**[32]**.**

In Zenith Global Merchant Limited v. Zhongfou International Investment (Nig) FZE, following termination of its participation in a joint venture project, the 1st respondent had instituted action against the applicant and the other respondents at the Federal High Court, Abuja. Subsequently, the 1st respondent had also commenced arbitration proceedings at the Singapore International Arbitration Centre (SIAC) pursuant to the arbitration clause in the Joint Venture Agreement between the joint venture partners. Aggrieved, the Applicant instituted an action at the High Court of Ogun State to bar the parties (including the 1st Respondent) from continuing with the arbitration proceedings at the SIAC, arguing that the High Court has the jurisdiction (by virtue of Nigeria being the seat of arbitration).

[23] Section 16(9) of the AMA
[24] Sections 22 & 23 of the AMA
[25] Section 31(1) of the AMA.
[26] (2010) LPELR-1610(SC)
[27] Article 18 of the Arbitration Rules
[28] Section 32(4) of the AMA
[29] Section 32(1) of the AMA
[30] Section 32(3) of the AMA
[31] (2006) 2 CLRN 1
[32] (2017) 7 CLRN 70

The 1st Respondent opposed the action, arguing that by choosing to resolve the dispute at SIAC and adopting the UNCITRAL Arbitration Rules in accordance with the SIAC Procedures for the Administration of International Arbitration, the seat of arbitration should be Singapore which meant that the court lacked the jurisdiction to entertain the matter. In reaching the decision that it had the requisite jurisdiction, the court while relying on the case of **NNPC v. Lutin** (supra), held that the place of arbitration is usually different from the seat of arbitration, the former being out of convenience and the latter conferring supervisory on national court. The court held that where the parties have not expressly agreed on the seat of arbitration, the court may adopt the close and intimate connection principle where the seat of an international arbitration is determined to be the place which has the most intimate connecting factors to the subject matter of the dispute. This buttresses the instant provision/codification that the place of arbitration is distinct from the seat and the choice of place does not confer the venue with the status of a seat.

Limitation Period

The AMA provides that in calculating the time prescribed by the Limitation Act for the commencement of judicial, arbitral or other proceedings in respect of a dispute which was the subject matter of an award or the affected part of an award which the court has ordered to be set aside or has declared to be of no effect, the period between the commencement of the arbitration and the date of the order setting aside the award shall not be included.[33] Additionally, in calculating the time for the commencement of proceedings for the enforcement of an arbitral award, the period between the commencement of the arbitration and the date of the award shall be excluded.[34] By this provision, the Supreme Court decisions in **City Engineering Nig Ltd v. FHA**[35] **and Sakamori Construction Nig Ltd. v. Lagos State Water Corporation**[36], with respect to limitation law, is no longer good law as it relates to arbitral proceedings in Nigeria.

By virtue of these decisions and before the enactment of AMA, a party would have been barred from enforcing an award or commencing arbitral proceedings after the expiration of six (6) years from the date the cause of action arose[37]; AMA now rightly does not compute the period spent undertaking arbitral or judicial proceedings for such subject matters/ awards. However, it should be noted that this exclusionary provision does not apply to arbitrations or proceedings commenced under the old ACA.[38]

Consolidation, Joinder and Concurrent Hearing

The AMA allows parties to, upon agreement, consolidate arbitral proceedings[39], join an additional party to an arbitration[40] or hold concurrent hearings of proceedings[41] which will be instrumental for class actions and disputes resulting from large construction projects. Consolidation will allow different parties involved in multiple arbitral proceedings to collapse such proceedings into one and discontinue the other proceedings where there is a connection between the proceedings and such consolidation will contribute to the settlement of the dispute(s). This is another novel provision in our arbitration law which not only entails a holistic resolution of a multi-party dispute but also eliminates the necessity for several decisions/awards on the same subject matter. However, the order for consolidation cannot be made by the tribunal except on the agreement of parties.[42]

A joinder as conceived under AMA will allow the inclusion of parties who were previously not included in the proceedings where the proceedings will impact their rights and/or obligations.

[33] Section 34(2) of the AMA
[34] Section 34(4) of the AMA
[35] (1997) 9 NWLR (Pt. 520) 244
[36] (2022) 5 NWLR (Pt. 1823) 339
[37] Messers U. Maduka Ent. (Nig.) Ltd v. B.P.E (2019) 8 CLRN 103 and Sifax Nigeria Limited v. Migfo Nigeria Limited [2018] 9 NWLR (Pt. 1623) 138
[28] Section 89 of the AMA
[39] Section 39(1) of the AMA
[40] Section 40 of the AMA
[41] Section 39(2) of the AMA
[42] Section 39 of the AMA.

Such joinders seem to be reserved solely for third parties who are parties to the arbitration agreement under which the proceedings had been commenced provided that the panel might decide to not allow for such joinder where it would prejudice any of the parties.[43] One of the existing parties to the proceeding may apply for the joinder[44] or an interested third party may on its volition submit a request to be joined as a party to an ongoing arbitral proceeding provided that such a request is accompanied by the required documents including references to the contracts or other legal instruments in relation to which the request arises.[45]

Challenge of Arbitral Award

As its customary, the courts reserve the right to enforce, refuse enforcement of an award or set aside an arbitral award. However, the grounds for setting aside an award were not limited by the old regime and overtime, error on the face of the award became a ground for setting aside an arbitral award.[46] Instructively, in the new regime, AMA provides that an application for setting aside an arbitral award shall not be made except on the streamlined provision of the Act.[47] Similarly, the AMA also provides that enforcement of arbitral award may only be refused on the grounds provided by the Act.[48] Accordingly, the decision in **Mekwunye v. Imoukhuede**[49] which followed the ratio in **K.S.U.D.B. v. Fanz Const**.[50] Ltd is no longer germane on the issue of setting aside an arbitral award particularly on the ground of error on the face of the award

Also, the Act provides that parties may, by their agreement, designate that an application for the review of the arbitral award on the streamlined grounds provided in the Act may be made to the Award Review Tribunal. The exercise of this right by any party to the arbitration agreement is by delivery of a Notice of Challenge to the other party signifying his challenge to the award, within the timeframe specified in the Act. The provisions of the Act with respect to the appointment, challenge, competence/jurisdiction of the arbitral tribunal, etc shall apply to the Award Review Tribunal and the Award Review Tribunal shall be constituted of even number as the Arbitral Tribunal.[51] The reality of this provision is that it affords the parties the opportunity to challenge the award in a "party-centric" medium and will likely reduce the amount of time spent in court challenging an award.

Third Party Funding

Parties are permitted to enter into agreements with third parties that may fund the arbitration process on their behalf.[52] Such beneficiaries of third-party funding are required to notify the other parties, the arbitral tribunal and the arbitral institution (if any) of the name and address of such third-party funder. In such situations, the third-party funded party may be required to depose to an affidavit confirming whether the funder has agreed to cover the adverse costs order where the respondent has brought an application for security for cost based on the disclosed third-party funding relationship.

The introduction of third-party funding in arbitration in Nigeria will afford parties an additional avenue to solve one of the major concerns they encounter in utilising arbitration as a dispute resolution method – procuring payment of the arbitrator(s)' fees and attendance costs.

Waiver

The guarantee to binding arbitration award enshrined in the AMA is further ensconced by section 63 of the AMA which provides that a party is deemed to waive his right to object to a non-mandatory procedural requirement of the Act or a requirement under the arbitration agreement if the party fails to timeously raise his objection and participates in the arbitration agreement.[53] There are, however, queries on what will amount to participation in the arbitral process for the purpose of this section. Is it delivery of a defence on the merits or conduct of hearing? Also, can the said objection be raised in the defence and heard alongside the substantive matter?

[43] **Article 17(5) of the Arbitration Rules**
[44] **Article 34 of the Arbitration Rules**
[45] **Article 34(2) of the Arbitration Rules**
[46] **K.S.U.D.B. v. Fanz Const. Ltd (1990) 4 NWLR (Pt. 142) 1 or (1990) LPELR-1659(SC).**
[47] **Section 55(2) of the AMA.**
[48] **Section 58(2) of the AMA.**
[49] **(2019) LPELR-48996(SC)**
[50] **Supra**
[51] **Section 56 of the AMA.**
[52] **Section 62(1) of the AMA**
[53] **Section 63 of the AMA.**

Part B - Mediation

Institutionalisation of Mediation as a Dispute Resolution Mechanism

The AMA, while scrapping conciliation as a means of dispute resolution, provided for by an Act of the National Assembly, statutorily recognises mediation as a dispute resolution mechanism. The provisions of this part of the Act applies to international and domestic commercial mediation, domestic civil mediation, domestic and international settlement agreements resulting from mediation, and where parties agree in writing that the Act shall apply to a dispute.[54] However, the Act generally will not apply to disputes relating to rights and obligations settlement which is void under Nigerian law.[55] Additionally, unless the parties agree otherwise, the Act will not apply in the following instances:

a.where a judge or an arbitrator in the course of a proceedings attempts to facilitate a settlement;

b.where the case has been recorded and is enforceable as an arbitral award;

c.where the case has been approved by a court or judicial proceedings thereon has been concluded; and

d.where the case is enforceable as a judgement of a Nigerian court.

Commencement of Mediation

Mediation under the AMA may be commenced by one party or parties making a proposal inviting the other party/parties to resolve a dispute through mediation in a manner prescribed by a pre-existing agreement between the parties or a special statute.[56] In the absence of such pre-existing agreement or special statute, an invitation to mediation may be made at any time before, during or after the initiation of judicial proceedings[57] and mediation may be recommended to the parties in the course of any arbitral, judicial, administrative or other proceedings.[58] For party-initiated mediation, the other party/parties may reject the invitation to mediation in writing or by not responding to the invitation at all[59].

Where the parties have agreed to mediate and have expressly undertaken to not initiate arbitral or judicial proceedings with respect to a dispute during a period or until a specific event has occurred, Nigerian courts and the arbitral tribunal shall, except to the extent necessary for a party to preserve its right, give effect to the undertaking[60]. The commencement of mediation proceedings automatically suspends the limitation period from the date on which the mediation agreement is signed by the parties[61] till the date the mediation ends[62].

Appointment, Duties and Entitlements of Mediators

Unless the parties agree otherwise, disputes may be resolved by only one mediator.[63] The mediator is charged with assisting and guiding the parties toward their own resolution of a dispute and in this manner, differs from arbitration where the arbitrator(s) make a decision on the rights and obligations of the parties to the proceedings.

[54] Section 67(1) of the AMA
[55] Section 67(2)(a) of the AMA
[56] Section 70(1) of the AMA
[57] Section 70(3) of the AMA
[58] Section 70(4) of the AMA
[59] Section 70(2) of the AMA
[60] Section 80 of the AMA
[61] or the date on which the court made its decision referring the parties to mediation
[62] Section 71 of the AMA
[63] Section 72(1) of the AMA

The hallmark of mediation is that while the mediator may make proposals for settlement, they do not have the power to impose a settlement on the parties or make binding decisions with respect to the dispute.[64] It is safe to say that the mediator under the AMA is a facilitator and not an arbiter.

Upon nomination to act as a mediator, such person(s) being approached must disclose any circumstance which is likely to raise justifiable doubts as to their impartiality and independence relating to the mediation proceedings.[65] Under the AMA, mediators also have the duty to not act as an arbitrator in respect of a dispute that has arisen from the same subject matter as the dispute they had mediated on.[66] The mediator(s) also has the duty to uphold the general confidentiality of the mediation proceedings unless the disclosure is required by law; for implementing or enforcing a settlement agreement; necessary in the interests of preventing or revealing the commission of a crime, concealment of a crime or a threat to a party to the mediation proceedings; or under the conditions and in the scope prescribed by law to protect public order[67]. The mediator has the duty to promote communication between the parties and must ensure that parties are integrated in the mediation process[68].

Generally, a mediator is entitled to a fee and reimbursement for expenses incurred in connection with mediation which, unless the parties agree otherwise, shall be paid by the parties equally. However, a mediator may elect to not receive a fee for the mediation in which case, the parties shall bear their own costs.[69]

Conduct of Mediation Proceedings

In the conduct of the mediation proceedings, the mediator may meet or communicate with the parties separately or jointly as they consider necessary. However, where the mediator elects to communicate or meet with the parties separately, they may not disclose the substance of the information they have received from each party to any other party where the information had been disclosed subject to the specific condition that it be kept confidential[70].

Although, the AMA makes elaborate provisions on the commencement and the manner in which mediation is to be conducted, parties are allowed to vary most of these provisions as they see fit[71]. Essentially, parties are free to agree, by reference to a set of rules, on the manner in which mediation is to be conducted. This afford the parties the room to agree on a manner to conduct the proceedings which is best suited to their needs and particular circumstances, and this might include the carrying out of the proceedings via an electronic means such as video conferencing.[72] However, where the parties fail to reach an agreement, the appointed mediator(s) may conduct the mediation proceedings in a manner they consider appropriate considering the circumstances of the case[73].

Termination of Mediation Proceedings and Enforcement of Settlements

Mediation proceedings shall be terminated on the date of :[74]

a.the settlement agreement following resolution of the dispute; or
b.the declaration by the mediator that further efforts at mediation are no longer justifiable; or
c.the declaration of the parties addressed to the mediator that the proceedings have been terminated; or
d.the declaration of the mediation provider administering the mediation that the proceedings has been terminated; or
e.the declaration of a party to the other party/parties (and the mediator) that the proceedings has been terminated.

Where the mediation proceedings are terminated based on the parties reaching a successful settlement, they may enter into a settlement agreement which shall be binding on the parties and shall be enforceable in court as a contract, consent judgment or consent award[75]. Subsequently, a party may apply to the court for the enforcement of the settlement agreement provided that the court may refuse to grant reliefs further to the agreement if the other party proves that they were under some incapacity; the settlement agreement is void, unenforceable, not binding, or subsequently modified; the obligations under the agreement have been performed or are not clear; the reliefs sought are contrary to the terms of the settlement agreement; or the mediator had failed to disclose circumstances that raise justifiable doubts to their independence or impartiality which had material impact or undue influence on a party to enter into the settlement agreement[76].

[64] Section 73(6) of the AMA
[65] Section 72(5) of the AMA
[66] Section 79 of the AMA
[67] Section 76 of the AMA
[68] Section 73(4) of the AMA
[69] Section 73(7) of the AMA
[70] Section 75 of the AMA
[71] Section 69 of the AMA
[72] Section 73(5) of the AMA
[73] Section 73(2) of the AMA
[74] Section 78 of the AMA
[75] Section 82(2) of the AMA
[76] Section 84(1) of the AMA

Additionally, courts may refuse to grant reliefs pursuant to a settlement agreement here such reliefs would be contrary to public policy, or the subject matter is not capable of settlement by mediation under Nigerian law.[77]

A settlement agreement shall be enforced in accordance with the rules of procedure in Nigeria under the conditions laid down under AMA[78] except for an international settlement agreement made in another country which is a party to the Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention)[79].

Conclusion

The Arbitration and Mediation Act 2023 is a welcome development that has heralded the growth and development of arbitration and alternative dispute resolution in Nigeria. Its provisions aim to cure some of the cogent issues that have plagued the practice for decades and has made some introductions that will make arbitration more attractive in Nigeria. The streamlining of the applicable procedure and rules for the conduct of mediation proceedings in Nigeria is poised to nudge parties towards exploring mediation as a viable dispute resolution by providing them with a ready-made template that is easily adaptable for disputes which are determinable between the parties. It is our expectation that the Act will constitute a compelling drive for parties consider litigation as last resort and enable them to resolve disputes through a time efficient and cost-effective process under the guidance of the law.

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[77] Section 84(2) of the AMA
[78] Section 86(1) of the AMA
[79] Section 87 of the AMA