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**Nigeria**



**Arbitration and Conciliation Bill 2022**

Chapter A18 Laws of the Federation of, 2004

**ARBITRATION AND CONCILIATION BILL 2022**

**Part I – ARBITRATION**

1. (1) The provisions of this Part are founded on the following principles, and shall be construed accordingly -

- a. the object of arbitration is to obtain the fair resolution of disputes by an impartial tribunal without unnecessary delay or expense;
- b. the parties should be free to agree on how their disputes are resolved, subject only to such safeguards as are necessary in the public interest;
- c. an arbitration agreement between parties for the settlement of their dispute shall be binding upon and enforceable against each of the parties to the exclusion of any other dispute resolution method unless the parties otherwise provide or the agreement is null and void;
- d. the parties, arbitrators, arbitral institutions, appointing authorities and the Court shall do all things necessary for the proper and expeditious conduct of the arbitral proceedings.

(2) Save for the provisions mentioned in subsection (3) of this Section, the provisions of this Part apply only if the seat of the arbitration is in the territory of the Federal Republic of Nigeria.

(3) The following powers of the Court shall apply even if the seat of the arbitration is outside the Federal Republic of Nigeria or no seat has been designated or determined:

- a. Section 5 (power to stay court proceedings);
- b. Section 19 (power of Court to grant interim measures of protection);
- c. Section 28 (recognition and enforcement of interim measures);
- d. Section 29 (refusing recognition and enforcement of interim measures);
- e. Section 43 (securing the attendance of witnesses);
- f. Section 57 (recognition and enforcement of awards); and
- g. Section 58 (refusing recognition and enforcement of awards).

15. (1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute.

(2) Any designation of the law or legal system of a given jurisdiction or territory shall be construed, unless otherwise expressed, as directly referring to the substantive law of that jurisdiction or territory and not to its conflict of law rules.

(3) Where parties fail to choose or designate any law or legal system of a given jurisdiction or territory as required in subsection (1) of this section, the arbitral tribunal shall apply the law determined by the conflict of law rules which it considers applicable.

(4) The arbitral tribunal shall not decide *ex aequo et bono* or as *amiable compositeur*, unless the parties have expressly authorised it to do so.

(5) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall, where established by credible evidence, take account of the usages of the trade applicable to the transaction.

28. (1) An interim measure issued by an arbitral tribunal shall be binding and, unless otherwise provided by the arbitral tribunal, shall be enforced upon application to the Court, irrespective of the country in which it was issued, subject to Section 29 of this Act.

(2) The party who is seeking or has obtained recognition or enforcement of an interim measure shall promptly inform the Court of any termination, suspension or modification of that interim measure.

(3) The Court to which a request for recognition and enforcement of an interim measure is presented may, if it considers it proper, order the requesting party to provide appropriate security if the arbitral tribunal has not already made a determination with respect to security or where such a decision is necessary to protect the rights of third parties.

29. (1) Recognition or enforcement of an interim measure may be refused only -

(a) at the request of the party against whom it is invoked if the Court is satisfied that -

(i) such refusal is warranted on the grounds set forth in Section 58(2)(a) (i), (ii), (iii), (iv), (v), (vi) or (vii) of this Act, or;

(ii) the arbitral tribunal's decision with respect to the provision of security in connection with the interim measure issued by the arbitral tribunal has not been complied with; or

(iii) the interim measure has been terminated or suspended by the arbitral tribunal or, where so empowered, by a competent authority in the Country in which the arbitration takes place or under the law of which that interim measure was granted; or

(b) if the Court finds that -

(i) the interim measure is incompatible with the powers conferred upon the Court, unless the Court decides to reformulate the interim measure to the extent necessary to adapt it to its own powers and procedures for the purposes of enforcing that interim measure and without modifying its substance; or

(ii) any of the grounds set forth in Section 58(2)(b) apply to the recognition and enforcement of the interim measure.

(2) Any determination made by the Court on any ground in subsection (1) of this Section of this Act shall be effective only for the purposes of the application to recognize and enforce the interim measure.

(3) The Court where recognition or enforcement is sought shall not, in making that determination,

31. (1) Subject to the provisions of this Act, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings. Failing such agreement, the arbitral proceedings shall be in accordance with the procedure contained in the Arbitration Rules set out in the First Schedule to this Act.

(2) Where the agreed procedure or Rules referred to in subsection (1) of this Section contain no provision in respect of any matter related to or connected with the arbitral proceedings, the arbitral tribunal shall conduct the arbitral proceedings in such a manner as to be consistent with Section 30 of this Act.

(3) The power conferred on the arbitral tribunal shall include the power to determine the admissibility, relevance, materiality and weight of any evidence.

32. (1) The seat of the arbitration shall be designated –

(a) by the parties to the arbitration agreement or, failing such agreement;

(b) by any arbitral or other institution or person authorised by the parties with powers in that regard or, failing such authorisation;

(c) subject to subsection (2) of this Section, by the arbitral tribunal.

(2) Where the parties have not designated the seat of the arbitration and they have not authorised any arbitral or other institution to designate the seat of the arbitration, then the seat of the arbitration shall be any place in Nigeria as the arbitral tribunal may determine, unless the arbitral tribunal decides that a place in another Country should be the seat of the arbitration having regard to all the relevant circumstances, including, but not limited to –

(a) the Country with which the parties and the transaction have the closest connection;

(b) the law that the parties have selected to govern their substantive rights under the contract, and

(c) any law that the parties may have chosen to govern the arbitration.

(3) Notwithstanding the provisions of subsections (1) and (2) of this Section, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

(4) In this section the expression “seat of arbitration” means the juridical seat of the arbitration for purposes of determination of the law that will govern the arbitration proceedings (the curial law).

#### **Recognition and Enforcement of Awards**

57. (1) An arbitral award shall, irrespective of the Country or State in which it is made, be

recognized as binding, and upon application in writing to the Court, be enforced by the Court subject to the provisions of this Section and Section 58 of this Act.

- (2) The party relying on an award or applying for its enforcement shall supply -
- (a) the original award or a certified copy thereof;
  - (b) the original arbitration agreement or a certified copy thereof; and
  - (c) where the award or arbitration agreement is not made in the English language, a certified translation thereof into the English language.
- (3) An award may, by leave of the Court, be enforced in the same manner as a judgment or order to the same effect.

58. (1) Any of the parties to an arbitration agreement may request the Court to refuse recognition or enforcement of the award.

(2) Irrespective of the country in which the award was made, the Court may only refuse recognition or enforcement of an award -

(a) at the request of the party against whom it is invoked, if that party furnishes the Court with proof that:

(i) a party to the arbitration agreement was under some incapacity; or

(ii) the arbitration agreement is not valid under the law to which the parties have indicated should be applied, or, failing such indication, that the arbitration agreement is not valid under the law of the country where the award was made; or

(iii) the party against whom the award was invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise not able to present his case; or

(iv) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration; or

(v) the award contains decisions on matters which are beyond the scope of the submission to arbitration, so however that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters submitted to arbitration may be recognised and enforced; or

(vi) the composition of the arbitral tribunal, or the arbitral procedure, was not in accordance with the agreement of the parties; or

(vii) where there is no agreement between the parties under sub-paragraph (vi) of this paragraph, that the composition of the arbitral tribunal, or the arbitral procedure, was not in accordance with the law of the country where the arbitration took place; or

(viii) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, the award was made; or

(b) if the Court finds –

(i) the subject matter of the dispute is otherwise not capable of settlement by arbitration under the laws of Nigeria; or

(ii) that the award is against public policy of Nigeria.

(3) Where an application to set aside or suspend an award has been made to a court referred to in subsection (2)(a)(viii) of this Section, the Court before where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.

60. Without prejudice to Sections 57 and 58 of this Act, where the recognition and enforcement of any award made in an arbitration in a Country other than Nigeria is sought, the New York Convention on the Recognition and Enforcement of Foreign Awards set out in the Second Schedule to this Act shall apply to any award, provided that:

(a) the Country is a party to the New York Convention; and

(b) that the differences arise out of a legal relationship, whether contractual or not, considered commercial under the laws of Nigeria.

#### **General principles**

86. (1) A settlement agreement shall be enforced in accordance with the rules of procedure of this State, and under the conditions laid down in this Part.

(2) If a dispute arises concerning a matter that a party claims was already resolved by a settlement agreement, the party may invoke the settlement agreement in accordance with the rules of procedure of this State, and under the conditions laid down under these provisions, in order to prove that the matter has already been resolved.

87. Without prejudice to Sections 81 and 83 of this Act, where the enforcement of any international settlement agreement made in a State other than the Federal Republic of Nigeria is sought, the Convention on International Settlement Agreements Resulting Mediation set out in the Fourth Schedule to this Act ('the Singapore Convention') shall apply to any such international settlement agreement, provided that:

(a) the State is a party to the Singapore Convention; and

(b) that the differences arises out of a legal relationship, whether contractual or not, considered commercial under the laws of Nigeria.