

# **AN X-RAY OF NIGERIA ARBITRATION AND MEDIATION ACT 2023: A PRACTITIONER'S GUIDE BY PROF. YUSUF ALI SAN, FCIArb<sup>1</sup> AND RAHEEMAT ISSA, LL.B, B.L<sup>2</sup>**

## **INTRODUCTION**

Over time, litigation has been the focal point of dispute resolution between parties in Nigeria. Due to this, the Nigerian court dockets have been so congested with cases lingering for years without final resolution. This led to the adoption of the ADR process mechanism in resolving disputes and commercial disputes to decongest our court system. The importance of ADR is now pivotal to the Nigerian legal system. Section 19(d) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) provides for the settlement of disputes by arbitration, mediation, conciliation, negotiation and adjudication. More so, Rule 15(3) (d) of the Rules of Professional Conduct for Legal Practitioners, 2023 mandates lawyers to attempt Alternative Dispute Resolution before bringing any matter before the Courts.

Before May 2023, the applicable arbitral legislation in Nigeria was the Arbitration and Conciliation Act 2004. However, the ACA neither provided or reflected the global best practices in Arbitration in the 21<sup>st</sup> century, hence in a bid to meet up with evolving best global practice in arbitration and mediation ecosystem, the then President of Nigeria on the **26<sup>th</sup> day of May, 2023** assented to the Arbitration and Mediation Act 2023 to repeal the 35 year old Arbitration and Conciliation Act 2004, which was first enacted in 1988.

This new legislation repeals and replaces the previous Arbitration and Conciliation Act <sup>3</sup>("ACA") and serves as the principal legal framework governing arbitration, arbitral tribunals, arbitral awards, and mediation in Nigeria. The Act, while embracing global best practices in Arbitration, took precedence over the repealed legislation, its oversight shortcomings and inadequacies which birthed a well-improved set of provisions and further provided a unified legal framework for effective and efficient settlement of commercial disputes via the Arbitration and

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Mediation channels in Nigeria.<sup>4</sup> The Arbitration and Mediation Act 2023 aims to provide a comprehensive framework for Alternative Dispute Resolution in Nigeria. The Act addresses the deficiencies of the Arbitration and Conciliation Act and goes a step further in introducing some innovative provisions.

## **DEFINITION OF TERMS**

For better understanding of the subject matter, it is pertinent to define the key concepts which are “Arbitration” and “Mediation.”

### **WHAT IS ARBITRATION?**

According to *Black’s Law Dictionary*,<sup>5</sup> Arbitration means a dispute resolution process in which the disputing parties choose one or more neutral third parties to make a final and binding decision resolving their dispute. Arbitration is the fair resolution of a dispute between two or more parties by a person or persons other than by a court of law.<sup>6</sup> Statutorily, Section 91 of the Act defines Arbitration to mean commercial arbitration, whether or not administered by a permanent arbitral institution. From the foregoing, it can be rightly said that Arbitration is a form of dispute resolution mechanism where parties, by way of agreement, submit their existing or future dispute for binding resolution by an appointed arbitrator or arbitrators.

### **WHAT IS MEDIATION?**

Mediation can be defined as a method of non-binding dispute resolution involving a third party who tries to help disputing parties reach a mutually agreeable solution. The enactment of the Arbitration and Mediation Act, 2023 has made mediation one of the ADR mechanisms more effective in amicable resolution of disputes between parties and the outcome is binding. its decision is binding. A mediator tries to bring the parties together so that they themselves may work out a compromise solution to the dispute. Mediation is a form of non-adversarial

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<sup>4</sup> Asamah Kadiri, A Review of Arbitration and concepts Mediation Act 2023 Available at <https://jee.africa/insights/a-review-of-the-arbitration-and-mediation-act-2023> Accessed on 26th September, 2025.

<sup>5</sup> B.A Garner, *Black’s Law Dictionary* ( 10<sup>th</sup> Edition, West Publishing Company, 2015)

<sup>6</sup> Ajogwu F., *Commercial Arbitration in Nigeria: Law and Practice* (2<sup>nd</sup> Edition, Center for Commercial Development, 2013) 5

Alternative Dispute Resolution<sup>7</sup>. It is a negotiation facilitated by a neutral third party. It is a structured, interactive process where an impartial third party, the mediator, assists disputing parties in resolving conflict through the use of specialized communication and negotiation techniques.

## **AN OVERVIEW OF THE ARBITRATION AND MEDIATION ACT 2023**

The Arbitration and Mediation Act 2023 repealed the existing Arbitration and Conciliation Act 2004 to address the deficiencies witnessed in its application. Its goal is to modernize Nigeria's arbitration and mediation legal framework, align more closely with international best practices, reduce delay and expense, and make Nigeria more attractive as a seat for dispute resolution.

The Arbitration and Mediation Act 2023 is divided into three (3) parts with a total of 92 sections, and it has three (3) Schedules as follows:

Part I- pertains to Arbitration (it applies to both international and domestic arbitral award proceedings. See sections 1-67 of the AMA 2023.

Part II- deals with Mediation (practice of commercial mediation in domestic and international dispute settlement in Nigeria). See sections 68-87 of the Arbitration and Mediation Act 2023.

Part III- covers the Miscellaneous provisions (See sections 88-92).

The three (3) Schedules to the Arbitration Mediation Act 2023 are:

First schedule – Arbitration Rules

Second schedule – Convention on the Recognition and Enforcement of Foreign Arbitral Awards

Third Schedule – Arbitration Proceeding Rules.

## **KEY INNOVATIONS AND PROVISION OF THE ACT**

The Act introduces several novel provisions, which remarkably modified the existing legislative arbitration framework and have the potential to transform the

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<sup>7</sup> Bone, S., *Osborn's Concise Law Dictionary*,( 9th Ed., London, Sweet & Maxwell, 2001 ) 249.

landscape of arbitration and mediation in Nigeria. Some of these elaborate provisions are aimed at improving ADR in Nigeria, through the mechanisms of arbitration and mediation. These innovations are as follows;

1. Continuity of Proceeding: The Arbitrations and Mediation Act, 2023 provides that arbitral proceeding shall not be invalidated by reason of the death of any of the parties nor shall the authority of the Arbitrator to act in the arbitration be revoked by the death or bankruptcy of the person appointing the Arbitrator.<sup>8</sup> This particular provision encourages continuity of proceedings since it is only on the death of the Arbitrator that the authority is revoked, unlike under the repealed Act, where it is the death of the parties appointing the Arbitrator that revokes the authority of the Arbitrator. Hence, it affirms the independence of the Arbitrator.
2. Electronic communication as a form of arbitration agreement: The Act expressly provides that electronic communication would satisfy the requirement for an arbitration agreement to be in writing, provided the information contained therein is accessible to be usable for subsequent reference.<sup>9</sup>The Act goes further to define “electronic communication” as “any communication that the parties make by means of data messages, that is, any information generated, sent, received or stored by electronic...means”.<sup>10</sup> Unlike the Arbitration and Conciliation Act 2004, the Act expressly recognizes email correspondence and other similar medium of communication that refers to the parties’ agreement to submit their disputes to arbitration.
3. Number of Arbitrators: The Act<sup>11</sup> provides that where the number of Arbitrators is unspecified, the default is a sole arbitrator, rather than three as it was under the ACA. This gives parties the opportunity to appoint the number of Arbitrators they want to decide their dispute. In the case of mediation, the Act requires one Mediator to be appointed except in the

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<sup>8</sup> Section 4 of the Arbitration and Mediation Act 2023.

<sup>9</sup> Ibid, Section 2(1).

<sup>10</sup> Ibid, Section 91.

<sup>11</sup> Ibid, Section 6(1)(2).

circumstances where parties to the mediation agree to engage the service of more than one Mediator.<sup>12</sup>

4. Emergency Arbitration: The Arbitration and Mediation Act, 2023, also introduced the innovative concept of emergency arbitration. This mechanism allows a party to an arbitration agreement to apply for an urgent interim relief pending the constitution of an arbitral tribunal in line with the arbitration agreement<sup>13</sup>. An emergency Arbitrator can make orders for interim measures or conservatory relief only for a fixed period. Under the Act, a party that needs urgent relief to protect its interest, pending the final determination of the dispute, can now apply for the appointment of an emergency Arbitrator. This provision can eliminate the difficulty of a party approaching Nigerian courts for such interim reliefs.<sup>14</sup>
5. Stay of court proceeding pending reference to Arbitration: The court is mandated to stay a judicial action commenced in breach of an arbitration agreement when requested by the parties, unless the court finds the agreement void, inoperative or incapable of being performed<sup>15</sup>. The Court of Appeal in the case of *UBA v Trident Consulting Limited*<sup>16</sup> held that the party applying for a stay of proceedings pending arbitration must demonstrate unequivocally by documentary evidence that it is willing to arbitrate. The decision was affirmed by the Supreme Court in July 2023,<sup>17</sup> when it held that the party applying for a stay of proceedings pending arbitration must demonstrate unequivocally by documentary evidence that it is willing to arbitrate. This means that, but for the intervention of the Act, the position under Nigerian law would have been that, to succeed in an application for a stay of proceedings, the party applying must demonstrate unequivocally by documentary evidence that it is willing to arbitrate.

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<sup>12</sup>Ibid, Section 72.

<sup>13</sup> Ibid, Section 16.

<sup>14</sup>Adewale Atake, Godwin Omoaka, Igonikan Adekunle, Templars Thought Lab|Nigerian Arbitration and Mediation Act 2023: Key Innovation Available at <https://www.templars-law.com/app/uploads/2023/07/Nigerian-Arbitration-and-Mediation-Act-202338.pdf> Accessed on 27th September, 2025.

<sup>15</sup> Supra n7, Section 5 of the Arbitration And Mediation Act 2023

<sup>16</sup> [2013] 4 CLRN 119

<sup>17</sup> UBA v Trident Consulting Limited [2023] 14 NWLR[1903] 95

6. Application of Statute of Limitation: The Arbitration and Mediation Act, 2023 makes it clear that the time between the commencement of an arbitration and the final arbitral award is not reckoned in determining whether the cause of action which is the subject of the arbitration has become statute-barred.<sup>18</sup> The Act also provides that the running of the limitation period regarding the claim that is the subject matter of mediation is suspended until the mediation proceedings have terminated without a settlement agreement; the limitation begins to run again.<sup>19</sup> This makes arbitration and mediation more appealing, and parties can take sufficient time to settle their dispute by arbitration and mediation, without any danger of their cause of action being affected by limitation period in the statute. This is a laudable provision but may be abused if proper checks are not applied to it. Some parties may take advantage of it to delay justice and deprive others. In order to forestall this, the drafter of the agreement must stipulate a time frame for the completion of either the arbitration or mediation proceeding.
7. Enforceability of the mediation agreement: Just like arbitration, settlement agreements emanating from mediation proceedings have binding force on the disputing parties and are enforceable in a court of law just as a binding contractual agreement.<sup>20</sup>
8. Joinder of Parties: The Arbitration and Conciliation Act, 2004, did not contain provisions in relation to the joinder of an additional party to arbitral proceedings. Under the Arbitration and Mediation Act 2023, however, a party can now apply to the arbitral tribunal to join an additional party to the arbitration proceedings, provided that the additional party is bound by the arbitration agreement giving rise to the arbitration proceedings.<sup>21</sup> This provision enhances procedural efficiency by ensuring that the arbitral tribunal has the power to allow all necessary parties to the arbitration

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<sup>18</sup> Supra n7, Section 34

<sup>19</sup> Ibid, Section 71.

<sup>20</sup> Ibid, Section 82.

<sup>21</sup> Ibid, Section 40

agreement to be joined in arbitration for the just determination of the issues in the arbitration.

9. Recognition of Mediation: This is one of the remarkable innovations in the new Act, because before the enactment of the AMA, mediation was not regulated by legislation in Nigeria. However, part II of the AMA provides for mediation, the AMA provides for settlement of both domestic and international disputes through mediation, subject to Nigerian law.<sup>22</sup>
10. Granting Immunity to both Arbitrators and Mediators: The new law gives immunity to Arbitrators and Mediators, as well as the appointing authorities and arbitral institutions.<sup>23</sup> This immunity is only in respect of the execution of responsibilities by the Arbitrator, Mediator, Appointing Authority, or Arbitral Institution, unless it can be demonstrated that they acted in bad faith. It should be noted, however, that this exemption does not relieve Arbitrators and Mediators from any liability stemming from their withdrawal. This ensures that Arbitrators, like litigators, are now protected by law while carrying out their duties, removing worries about potential liability.<sup>24</sup>

Other key innovations are:

- Introduction of Third-party funding in Arbitration- S.62 of the Arbitration and Mediation Act 2023
- Arbitral /Award Review Tribunal - Section 56 of the Arbitration and Mediation Act 2023
- Consolidation- S.39 of the Arbitration and Mediation Act 2023
- Power to grant interim measure – Section 19 of the Arbitration and Mediation Act, 2023

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<sup>22</sup>Ibid, Part II Section 68-87 of the Arbitration and Mediation Act , 2023

<sup>23</sup> Ibid, See section on 13 and 81 of the AMA 2023

<sup>24</sup> Berkeley Legal Insights – Key Highlights of the Arbitration and Mediation Act 2023 available at <https://berkeleylp.com/insights/key-highlights-of-the-arbitration-and-mediation-act-2023/> accessed on 28<sup>th</sup> September, 2025.

## PRACTICAL IMPLICATION FOR LEGAL PRACTITIONERS

The Arbitration and Mediation Act, 2023 (AMA 2023), represents a landmark reform of Nigeria's dispute resolution framework. Replacing the Arbitration and Conciliation Act of 1988, the new law modernises the arbitration process, strengthens mediation, and aligns Nigeria's practice with international standards such as the UNCITRAL Model Law and the New York Convention. For legal practitioners, AMA 2023 presents both opportunities and challenges that will reshape professional practice.

1. Drafting and Advisory Responsibilities: One of the most immediate implications for legal practitioners lies in contract drafting. Arbitration clauses must now be drafted with greater precision, as Nigerian courts are compelled to stay proceedings once a valid arbitration agreement exists. Lawyers must ensure that such agreements are not void, inoperative, or incapable of being performed.<sup>25</sup> Issues such as the number of arbitrators, choice of seat, governing law, emergency relief provisions, and the option of an Award Review Tribunal (ART) must be expressly covered. Poorly drafted clauses may result in unenforceable agreements and prejudice to clients.

2. Shift from Litigation to ADR: The AMA 2023 limits the discretionary intervention of courts, thereby reinforcing arbitration and mediation as the primary mechanisms for dispute resolution. For practitioners, this translates to a reduced reliance on litigation strategies and a heightened need to cultivate advocacy skills before arbitral tribunals and mediation panels. Effective representation in these fora will become a core competence for Nigerian lawyers.

3. Expansion of Mediation Practice: The Act introduces a robust legal framework for mediation. Settlement agreements reached through mediation are now legally enforceable, a development that expands the role of mediation in commercial practice<sup>26</sup>. Lawyers must familiarize themselves with mediation procedures, confidentiality rules, and enforceability standards. Additionally, the Act creates opportunities for practitioners to qualify as mediators, thereby diversifying

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<sup>25</sup> (n.14)

<sup>26</sup> (n.21)

professional offerings. Lawyers can act as mediators or represent clients in mediation, opening new practice areas and income streams.

4. Emergency and Interim Measures: With the recognition of emergency Arbitrators and interim measures, lawyers now have an alternative to urgent applications in court. Practitioners must be conversant with the procedure for seeking interim protection of assets, injunctions, or other urgent remedies from arbitral tribunals. This enhances a lawyer's ability to protect client interests but requires mastery of specialized procedural knowledge.

5. Need for specialization: The complexity of the provision of the AMA may lead to a need for lawyers to specialize in Arbitration and Mediation, hence requiring additional training and expertise.<sup>27</sup>

## **CHALLENGES AND CRITICISM OF THE ACT**

Despite the laudable provisions of the Act, the Act is bedeviled with several factors that may clog or water down the effectiveness of its implementation. Some of the challenges are:

1. The Act is silent on the role of a legal practitioner in the mediation process.<sup>28</sup> The Act ought to have specifically provided the right of parties to either represent themselves or to have legal representatives in a mediation proceeding to accord with a fundamental right to fair hearing as guaranteed by the Constitution.<sup>29</sup>
2. The Act fails to provide sufficient guidance on the arbitrability of tax and tax-related disputes.<sup>30</sup>

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<sup>27</sup>Martins Uzoamaka Onyirioha , ' An evaluation of the Arbitration and Mediation Act ,2023 of Nigeria; An analysis of its impact on dispute resolution in Nigeria' *Orient Law Journal* (2025) (6) 153-162.

<sup>28</sup> Babayemi Olaniyan, Ebunoluwa Yolooye ' Overview and Analysis of Part II of the Arbitration and Mediation Act 2023' available at <https://lawpavilion.com/blog/overview-and-analysis-of-part-ii-of-the-arbitration-and-mediation-act-2023/> accessed on 29<sup>th</sup> September 2025.

<sup>29</sup> Section 36 of the 1999 Constitution of the Federal Republic of Nigeria ( as amended)

<sup>30</sup> Obosa Akpata, Joy K. Augustine 'Overview of the Arbitration and Mediation Act ,2023' available at <https://www.patrelipartners.com/overview-of-the-arbitration-and-mediation-act-2023/> accessed on 29<sup>th</sup> September 2025.

3. The Act does not specify any other mode of enforcement of an award arising from the arbitral tribunal, other than resort to the same court that was intended to be avoided when resort was first made to ADR.
4. Statute of Limitation Concern: The Act improves on prior ambiguities over when limitation periods run in arbitration proceedings. However, in mediation, the suspension of limitation periods while mediation is ongoing may give room for misuse. Some parties may take advantage of it and deprive others of justice. Also, the Act does not address “negotiation” as a transitory stage before mediation or arbitration, so it’s unclear whether time spent in negotiation counts for or against limitation periods.<sup>31</sup>
5. Lack of Express Guidance in Certain Areas: Some have argued that while the AMA 2023 introduces many innovations, it does not provide enough detail or direction in respect of certain important areas, such as: the criteria for what constitutes “bad faith” in removal of arbitrator immunity<sup>32</sup>; the process and logistics for emergency arbitrators (though included) and how well they will function in practice.

## **THE WAY FORWARD: PRACTITIONER RECOMMENDATION**

Having identified the challenges faced in the implementation of the New Act, to achieve the desired legal framework for ADR in Nigeria, it is recommended as follows:

1. Legislative Amendment: A clear-cut provision should be made confirming that parties may be represented by Counsel in mediation, subject to the mediator's discretion.
2. Judicial clarification/pronouncement: Nigerian courts should by case by case establish precedent on what qualifies as “tax-related”. The Court of Appeal in the cases of *Esso Exploration and Production Nigeria Limited & Anor v*

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<sup>31</sup>Alaba Ibrinke Kekere-, Godrey Mathew ‘A Critique on the Concept of Limitation Period under Arbitration and Mediation Act 2023’ *Redeemer’s University Law Journal* Vol.(7)(1) 2024 1-19

<sup>32</sup>Adegoke Adedoyin, RoseCarmel Odeh, Sharon Omoregie. ‘The Review of the Arbitration and Mediation Act 2023: Charting a New Course in Nigeria : Arbitration and Dispute Resolution in Nigeria’ available at <https://www.mondaq.com/nigeria/arbitration-dispute-resolution/1638794/a-review-of-the-arbitration-and-mediation-act-2023-charting-a-new-course-in-nigeria> accessed on 29th September, 2025.

*Federal Inland Revenue Service (FIRS) & Anor (2021) 8 NWLR (Pt 1777)*;<sup>33</sup> *Shell Nigerian Exploration and Production & ors v FIRS & Anor* (Unreported judgement in Appeal No CA/A/208/2012 delivered on 31/8/2016 had made its stance known that Arbitration cannot be used in resolving tax matters.

However, the court clarified the situation on this issue by making it clear that contractual disputes arising from any subject matter which ordinarily, by the provision of Section 251 of the CFRN, confers jurisdiction on the FHC are arbitrable – provided there is an arbitration clause in a valid contract binding the parties.

3. The Act should specify other means of enforcement of arbitral awards other than resort to the Courts. Having to go back to the Courts to enforce the decisions of arbitral tribunals defeats the very aim of ADR, which is to avoid long and time-consuming litigation.
4. Since the suspension of the limitation period during mediation may be abused, it is suggested that there should be a time frame to limit the suspension to a fixed period unless it is expressly agreed by parties. The court can also checkmate this by refusing suspension if done mala fide (bad faith).
5. The interpretation section needs to be instructive enough to cover and define acts or omissions that will constitute bad faith, e.t.c.

## **CONCLUSION**

The Arbitration and Mediation Act 2023 has been put in place to enhance the transparency, speed, autonomy, and enforceability of arbitral awards and mediation settlement agreements. These elements are crucial for an effective arbitration system that caters to the needs of businesses and individuals, ensuring fair dispute resolution by impartial tribunals without unnecessary delays or costs. The Act reflects Nigeria's dedication to improving its reputation, fostering arbitration nationally, and aligning its procedures with global standards in international arbitration. Despite its positive aspects, the Act

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<sup>33</sup> (2021) 8NWLR (Pt.1777) 43

may still face challenges, that need to be addressed for smoother implementation and functioning.