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NIGERIA'S ARBITRATION AND MEDIATION ACT 2023: EARLY LESSONS AND IMPLICATIONS FOR NATURAL RESOURCES DISPUTES

INTRODUCTION

The enactment of the Arbitration and Mediation Act 2023 (AMA 2023) represents one of the most consequential reforms to Nigeria's dispute resolution landscape in decades. By repealing the Arbitration and Conciliation Act (ACA), which had governed arbitration practice since 1988, the Nigerian legislature signalled a clear intention to modernise arbitral practice, reduce judicial interference, and align Nigeria more closely with international arbitration standards. This reform is particularly significant for natural resources disputes, which typically involve high-value investments, long-term contractual relationships, state participation, regulatory complexity, and foreign elements.

Natural resources disputes whether arising from oil and gas concessions, mining leases, production sharing contracts, or joint venture arrangements are inherently complex and frequently cross-border. They therefore demand a dispute resolution framework that is predictable, neutral, and enforceable beyond national boundaries. The AMA 2023 seeks to respond to these demands, and early lessons from its provisions and judicial reception offer important insights into its likely impact on the sector.

EARLY LESSONS AND KEY INNOVATIONS

1. Mandatory Stay of Proceedings:

The Act strengthens the principle of judicial non-interference and respect for party autonomy by expressly mandating courts to stay proceedings once an action brought before them is the subject of a valid arbitration agreement. Where a party to such an agreement commences litigation in court, the opposing party may apply not later than the time of entering appearance for an order staying the proceedings and referring the dispute to arbitration. Upon such application, the court is required to grant the stay and refer the parties to arbitration unless it finds that the arbitration agreement is null and void, inoperative, or incapable of being performed¹. This provision significantly limits the discretion previously exercised by courts and

¹ Section 5(1) of AMA 2023

reduces dilatory tactics often employed to frustrate arbitral proceedings through parallel litigation. By ensuring that courts promptly enforce arbitration clauses, Section 5 promotes procedural efficiency, contractual certainty, and investor confidence—particularly in capital-intensive sectors such as natural resources, where parties typically rely on arbitration as the preferred dispute resolution mechanism due to its neutrality and enforceability of awards across jurisdictions.

2. Introduction of Award Review Tribunal (ART):

The Act further introduces the Award Review Tribunal (ART) as an optional, party-driven mechanism designed to enhance the efficiency and finality of arbitral proceedings. Under this provision, parties may, by agreement, elect that any arbitral award rendered in their dispute be subjected to review by an ART before recourse is made to the courts. The ART functions as a specialized appellate-type arbitral body with authority to review the award within a strictly limited timeframe, within 60 days, thereby providing a fast-track and technically informed reconsideration of the tribunal's decision. The tribunal may confirm, vary, or set aside the award in accordance with the grounds stipulated under the Act. Importantly, where parties have opted for ART review, court intervention is deferred until the review process is concluded, thereby reducing premature judicial challenges, minimizing delays associated with court proceedings, and reinforcing party autonomy. This mechanism is particularly valuable in complex, high-value sectors such as natural resources disputes, where technical expertise, speed, and confidentiality are essential to maintaining commercial certainty.

3. Third-Party Funding (TPF):

The Arbitration and Mediation Act (AMA) 2023 expressly recognizes and regulates third-party funding (TPF), thereby removing the traditional common-law prohibitions of maintenance and champerty that previously created uncertainty around funded arbitration. The Act formally permits third-party funding arrangements in arbitration proceedings seated in Nigeria², and also imposes a disclosure obligation requiring a funded party to notify the tribunal and other parties of the existence of the funding arrangement and the identity of the funder, ensuring procedural transparency and enabling tribunals to properly address potential conflicts of interest³. In addition, Section 50 empowers arbitral tribunals to grant interim measures, including security for costs, which becomes particularly significant in funded proceedings where the opposing party may seek protective orders relating to potential adverse costs exposure⁴. Furthermore, Section 90 reinforces the enforceability of arbitral awards and the binding nature of arbitral proceedings, thereby assuring third-party funders that awards arising from funded claims remain legally recognizable and enforceable within Nigeria's arbitration framework⁵. Collectively, these provisions institutionalize third-party funding in Nigeria, expand access to justice for claimants pursuing capital-intensive natural resource disputes, and strengthen Nigeria's attractiveness as an arbitration-friendly jurisdiction.

² Section 61 of AMA 2023

³ Section 62 of AMA 2023

⁴ Section 50 of AMA 2023

⁵ Section 90 of AMA 2023

4. Emergency Arbitration:

The Act introduces the mechanism of emergency interim measures, enabling parties to obtain urgent protective relief even before the arbitral tribunal is formally constituted. Under this provision, a party that requires immediate preservation of assets, evidence, or the status quo may apply for the appointment of an emergency arbitrator who is empowered to consider and grant interim relief where the circumstances justify urgency. This framework ensures that the effectiveness of the arbitration agreement is not undermined by the time lag that typically exists between the commencement of arbitration and the constitution of the tribunal.

Furthermore, the Act strengthens the practical utility of emergency relief by providing that orders or awards issued by the emergency arbitrator are binding and enforceable through the courts, which are required to recognise and enforce such measures expeditiously, often within a very short statutory timeline such as two business days, subject to applicable procedural requirements. By creating a swift and enforceable interim relief system, Section 16 enhances the attractiveness of Nigeria as an arbitration-friendly jurisdiction, particularly in high-value commercial and natural resources transactions where the rapid dissipation of assets or alteration of contractual positions can significantly prejudice the rights of parties before the tribunal is in place.

Natural resources disputes frequently involve perishable rights, operational continuity, or the preservation of assets such as mining equipment, oil facilities, or revenue streams.

The ability of tribunals to grant interim relief and for such relief to be recognised by courts provides parties with an effective mechanism to prevent irreparable harm pending the final resolution of disputes. This is particularly relevant in disputes arising from licence revocations, suspension of operations, or unilateral regulatory actions that could otherwise cripple a project before arbitration is concluded.

5. Formalization of Mediation:

The Arbitration and Mediation Act 2023 replaces Nigeria's former conciliation regime with a comprehensive statutory mediation framework that provides clear rules on the conduct of mediation, appointment of mediators, confidentiality, and the enforceability of mediated settlement agreements. Significantly, the Act also domesticates the Singapore Convention on Mediation, thereby allowing international commercial settlement agreements resulting from mediation to be recognised and enforced by Nigerian courts, subject only to limited defences. This reform strengthens mediation as a credible and enforceable dispute-resolution mechanism and aligns Nigeria with modern global ADR standards. This development is especially significant in natural resources disputes, which often involve long-term relationships between investors and host states or local partners.

Mediation offers a less adversarial avenue for resolving disputes arising from regulatory changes, community relations, or revenue-sharing arrangements, while preserving commercial relationships and minimising political fallout. The Act's encouragement of amicable settlement reflects a pragmatic recognition that not all disputes in the extractive sector are best resolved through adversarial arbitration alone.

6. Reinforcement of the Primacy of the Arbitral Seat

One of the most significant clarifications introduced by the Act is its firm endorsement of the territorial principle of arbitration, particularly the primacy of the arbitral seat. The Act makes it clear that the power to set aside or annul an arbitral award lies exclusively with the courts of the seat of arbitration, while courts of other jurisdictions, including Nigeria, are limited to recognition and enforcement proceedings.

This clarification is critical in natural resources disputes, where parties especially foreign investors often insist on seats outside Nigeria to ensure neutrality and insulation from domestic political or regulatory pressures. Under the previous regime, uncertainty existed as to whether Nigerian courts could entertain setting-aside applications in respect of foreign-seated awards. The AMA 2023, read together with Nigeria's obligations under the New York Convention 1958, decisively closes that door.

The implication is two fold. First, it curtails forum shopping and parallel proceedings. Second, it reassures investors in extractive industries that their choice of seat will be respected, and that Nigerian courts will not assume supervisory jurisdiction over arbitral proceedings governed by foreign procedural law.

7. Limitation of Judicial Intervention and boost of Investor Confidence

Judicial intervention has historically been one of the most sensitive concerns in arbitration involving natural resources, particularly where state-owned entities or regulatory agencies are parties. The AMA 2023 adopts a **non-interventionist** philosophy, limiting court involvement to clearly defined circumstances such as the appointment of arbitrators, interim measures in support of arbitration, and enforcement of awards.

This shift is especially important in disputes involving mining licenses, oil blocks, or infrastructure tied to natural resources, where regulatory actions can quickly escalate into arbitration claims. The Act's emphasis on minimal court interference reduces the risk of arbitration being undermined by interlocutory litigation, which has previously been a source of frustration for investors.

Early judicial attitudes suggest an increasing willingness by Nigerian courts to respect these statutory boundaries, a development that enhances Nigeria's credibility as an arbitration-friendly jurisdiction and improves its attractiveness as an investment destination in the natural resources sector.

STRENGTHENING ENFORCEMENT OF ARBITRAL AWARDS

The enforceability of arbitral awards is often the decisive factor in the choice of dispute resolution mechanism in natural resources contracts. The AMA 2023 reinforces Nigeria's commitment to the **New York Convention regime**, ensuring that foreign arbitral awards are enforceable in Nigeria subject only to narrowly defined defences.

For natural resources disputes where assets, bank accounts, or operational infrastructure are often located in Nigeria this is of particular importance. The Act reduces uncertainty surrounding enforcement and discourages dilatory tactics aimed at resisting compliance with

arbitral awards. This enhanced enforcement framework is likely to influence contract drafting in the extractive sector, with arbitration clauses becoming even more robust and enforcement-focused.

IMPLICATIONS FOR STATE ENTITIES AND REGULATORY AGENCIES

For Nigerian state entities and regulators involved in natural resources governance, the AMA 2023 imposes a discipline of contractual and procedural accountability. Arbitration clauses freely negotiated in concession agreements or joint venture contracts are now more likely to be enforced strictly, with reduced scope for jurisdictional manoeuvring in domestic courts.

This has implications for how state entities approach contract negotiation, and regulatory decision-making. It underscores the need for greater institutional capacity and foresight in managing arbitration risk in the extractive industries.

CONCLUSION

The early lessons from the Arbitration and Mediation Act 2023 point to a deliberate and welcome shift toward certainty, neutrality, and international coherence in Nigeria's arbitration framework. For the natural resources sector where disputes are high-stakes, cross-border, and politically sensitive, the Act provides a more reliable and investor-friendly dispute resolution regime.

If consistently applied by Nigerian courts, the AMA 2023 has the potential to significantly de-risk dispute resolution in mining, oil and gas, and other extractive industries. By reinforcing the sanctity of the arbitral seat, limiting judicial interference, strengthening enforcement, and promoting mediation, the Act positions Nigeria as a more credible participant in the global arbitration ecosystem and enhances confidence in its natural resources investment climate.

Please note that the foregoing does not in any way constitute legal advice. Please kindly contact the underlisted persons for any legal advice on the subject matter: