**LEGAL FRAMEWORK OF ALTERNATIVE DISPUTE RESOLUTION**

**ARBITRATION LEGISLATION: INTRODUCTION**

The Federal law on arbitration is the Arbitration & Conciliation Act, Cap A18 Laws of the Federation of Nigeria (LFN) 2004 (the Act). The Act is based on the UNCITRAL Model Law and incorporates the UNCITRAL arbitration rules. Also, the Act ratifies and incorporates the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (NYC).

Furthermore, apart from the Act, which is a federal law, some constituent states have their respective arbitration laws. The main ones being:

a. The Lagos State Arbitration Law No.10 of 2009 (LSAL) which applies to all arbitrations within the state except where the parties have expressly agreed that another law should apply.

b. The Lagos Court of Arbitration Law No.8 of 2009 (LCAL) which establishes a court of arbitration in Lagos State

**ARBITRATION INSTITUTIONS:**

The following arbitration institutions are active in Nigeria:

a. The Chartered Institute of Arbitrators UK (Nigerian Branch)

b. The Chartered Institute of Arbitrators Nigeria

c. The Lagos Regional Center for International Commercial Arbitration

d. The International Chamber of Commerce (Nigerian National Committee)

e. The Lagos Court of Arbitration

The main statute regulating the ADR process in Nigeria is the Arbitration and Conciliation Act, Cap.A18 Laws of the Federation of Nigeria.2004. The law is an adoption of the UNCITRAL Model Law on International Commercial Arbitration 1985 Section 37 of the Act provides as follows: -

“Notwithstanding the other provisions of this Decree, the parties to any agreement may seek amicable settlement of any dispute in relation to the agreement by conciliation under the provisions of (Part II) of this Decree.”

The third schedule of the Act contains the UNCITRAL Conciliation Rules. s1 Various sector specific statutes specify ADR as the mechanism for resolving dispute.

The Nigerian Communications Commission (Commission) the regulatory body for the telecommunications sector is a pioneer in this respect. The Nigerian Communications Act 2003 (The Act) provides that the “Commission may resolve disputes in such manner including but not limited to alternative dispute resolution processes and upon such terms and conditions as it may deem fit” “The Act provides that the Commission, in carrying out its functions under subsection (1) of this section, shall always be guided by the objective of establishing a sustained dispute resolution process that is fair, just, economical and effective and not be bound by technicalities, legal form or rules of evidence and at all times act according to the ethics of justice and the merits of each”

case.”

The Commission has formulated rules for the mediation of industry specific disputes.

**CURRENT DEVELOPMENTS:**

**THE NATIONAL COMMITTEE**

In 2005 the former Attorney-General and Minister of Justice of the Federal Republic of Nigeria Chief Bayo Ojo SAN instituted a National Committee on the Reform and Harmonisation of Arbitration and ADR Laws in Nigeria. The task before the National Committee was principally to review Nigeria’s Laws on Arbitration and other ADR mechanisms with a view to proposing necessary reforms in line with modern trends. The work of the National Committee resulted in a draft Federal Act and Uniform State Arbitration and Conciliation Laws. There is a bill before the National Assembly to pass the federal draft into law whilst a recommendation was made by the Committee that the respective Attorney Generals of the States constituting the Federal Republic of Nigeria consider and enact the draft Uniform State Arbitration and Conciliation Law.

The work of the National Committee was largely influenced by the UNCITRAL Model Law 2002 (MLICC) Part II of the bill contains provisions on conciliation.

The draft bill retained some of the conciliation provisions of the 2004 Act. The retained provisions are: -

i. Section 38 - Request to conciliate

ii. Section 39 - Commencement of Conciliation proceedings

iii. Section 40 - Appointment of Conciliators

iv. Section 41 - Action by the Conciliation body

v. Section 42 - Terms of Settlement

The National Committee in line with the MLICC 2002 recommended the following new provisions:-

i. Definition of Conciliation:

 Section 62(2) of the draft bill incorporates the definition of conciliation in the Model Law Thus 62(2) of the draft bill defines conciliation “to include mediation, as well as other processes (by whatever named called) by which parties request a third person or persons to assist them in their attempt to reach an amicable settlement of their dispute arising out of or relating to a contractual or other relationship, such third person or persons not having the authority to impose a solution on the disputing parties”.

ii. Impartiality of the conciliator

Clause 68 of the draft bill adopted Article 5(5) of the MLICC 2002 and makes specific provisions in relation to the duty of impartiality of the conciliator. An obligation is imposed on the conciliator to withdraw from the conciliation where his / her impartiality and neutrality is in doubt.

iii. Disclosure of information

Clause 69 of the bill adopted Article 8 of the MLICC and provides that a conciliator may disclose the substance of information received from a party during the proceedings to any other party to the proceedings unless the information was provided subject to a specific condition of confidentiality.

Iv Enforcement of Settlement Agreements

Clause 74 of the draft bill provides that if the parties conclude an agreement settling a dispute that settlement is binding and enforceable on the parties as if same were an arbitral award. Thus a settlement agreement was elevated to the status of an arbitration award. This is in line with MLICC Article 14 which left it the enacting states to insert a description of the method of enforcing settlement agreements or refer to provisions governing such enforcement. Confidentiality of Information and Proceedings Clause 70 of the draft bill adopted Arbitral 9 of the MLICC and provides that unless otherwise agreed by the parties all information relating to conciliation proceedings shall be kept confidential except where disclosure is required under the law or for the purposes of implementation or enforcement of a settlement agreement.

Vi Conciliator Acting as Arbitrator

Clause 73 of the draft bill adopted Article 12 of MLICC and provides that a conciliator shall not act as arbitrator in respect of a dispute that was or is the subject of conciliation proceedings or in respect of another dispute that has arisen from the same contract or legal relationship, or any related contract or legal relationship. The parties may by agreement exclude the operation of this provision

Vii Admissibility of Evidence in Other proceedings

Clause 71 of the draft bill adopted Article 10 of the MLICC. The Article prevents the use in other arbitral, judicial or other proceedings of certain types of information relating to the conciliation process. The Article prohibits introducing as evidence, or giving testimony or evidence regarding the following: -

(i) An invitation by a party to engage in conciliation proceedings or the fact that a party was willing to participate in conciliation proceedings;

(ii) Views expressed or suggestions made by a party in the conciliation in respect of a possible settlement of the dispute;

(iii) Proposals made by the conciliator,

(iv) The fact that a party had indicated its willingness to accept a proposal for settlement made by the conciliator

(v) A document prepared solely for purposes of the conciliation proceedings Arbitral tribunals, courts and other competent governmental authorities are precluded from ordering disclosure of such information, except to the extent required by law or for the purposes of implementing or enforcing a settlement agreement.

Viii Application of Statute of Limitation to Conciliation

MLICC Article 4 footnote 3 has a suggested text for states that might wish to adopt a provision on the suspension of the limitation period in respect of the claim giving use to the proceedings during conciliation proceedings. Article 72 of the draft bill contains provisions suspending time from running between the commencement of the conciliation and the date of the conciliation agreement.

This is a welcome development as the effect of limitation laws may discourage parties from considering conciliation. Assurance that the limitation period is suspended may therefore encourage conciliation.

Civil Immunity

The MLICC does not contain provisions conferring immunity on conciliators. Clause 76 of the concerns bill provides that conciliators and conciliation institutions shall be immune from civil liability for or resulting from, any act or omission done or made while engaged in efforts to conduct, assist or facilitate a conciliation, unless the act or omission was done in bad faith, with malicious intent or in a manner exhibiting a willful, wanton disregard of the rights, safety or property of another.