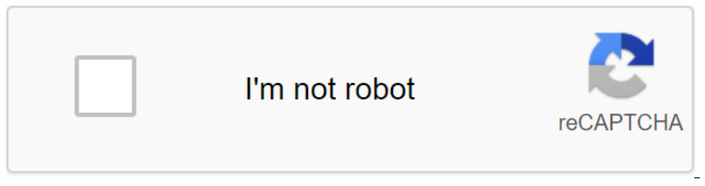
Arbitration law in nigeria pdf



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The past decade witnessed remarkable developments in the law and practice of arbitration in Africa (jurisdictions such as Ghana and South Africa passed new arbitration laws in 2010 and 2017 respectively; courts across the African continent have increasingly shown a willingness to enforce valid arbitration agreements and awards; various arbitration initiatives have sprung up and have been designed to encourage the growth and practice of arbitration on the continent , including the Africa Arbitration Academy, Africa Arbitration and african arbitration association). In light of today's events across the continent, there are already indications that this new decade will be no different, with a number of African countries including Tanzania and Nigeria already in the process of adopting new arbitration laws. (The Tanzanian government delivered the proposed law to the Tanzanian parliament on January 28, 2020. The new bill will replace the existing Arbitration Act, which was passed in 1931. February 1, 2018, the Nigerian Senate passed the 2017 Amendment Bill to the Nigerian Arbitration and Conciliation Act. The existing law, which was based on the UNCITRAL Model Law 1985, was introduced by the Nigerian federal military government in March 1988. The bill is still waiting for the ratification of the Federal House of Representatives and the subsequent endorsement of the president of Nigeria.) The bill amending the Nigerian Arbitration and Conciliation Act (Bill) is particularly welcome and long overdue, especially in light of Nigeria's continued role and enormous potential, both on the continent and in global business. Recent reports and statistics published by leading institutions such as the LCIA and ICC show an increase in the number of international arbitrations involving Nigerian parties. These reports also show that there has been an increase in the number of parties from Africa, with Nigerian parties taking the lead (for example, in the LCIA 2018 Annual Casework Report, not only did Nigeria account for the highest number of African parties, casework data shows statistical increases in the number of parties from Nigeria, from 1.3% in 2017 to 2.8% in 2018). Furthermore, there have been a number of innovations in the international arbitration sphere since the adoption of the existing Nigerian Arbitration and Conciliation Act (law) in March 1988. In light of recent developments around the world and the signing of the African Continental Free Trade Area (Africa Continental Free Trade Area is part of the African Union's initiative for closer economic integration in Africa; the agreement was signed by 44 countries in March 2018 at an African Union summit in Rwanda), it has been estimated that there will be a further increase in investment activities in Africa , which will further contribute to an increase in settlement of disputes by across the continent. The bill therefore could not have come at a better time. Key provisions of the proposed Nigerian arbitration bill Bill are largely based on the UNCITRAL Model Law 2006. Indignantly, this blog will only highlight and discuss important provisions of the proposed law. Limitation period Under the existing statute of limitations in Nigeria, an action to enforce an arbitration order has a six-year limitation period, calculated from the date the reason for the action accrued. While many jurisdictions calculate the statute of appeal from the date of arbitration agreement violation (failure to comply with the resulting price), the Nigerian Supreme Court of City Engineering Nigeria Ltd v The Federal Housing Authority maintained that the statute of appeal is calculated from the date on which the cause of the action was incurred (the date of the event that necessitated the arbitration). The implication of this decision is that with respect to arbitration proceedings conducted under the law, the limitation period passes even during the arbitration proceedings (but the Arbitration Act of Lagos State 2009 provides that for the purpose of calculating the time when an enforcement application must be brought, the limitation period begins to run from the date of the award and not before). The effect of this is that where there are long arbitration proceedings combined with long periods in which the losing party pursues annulment proceedings or seeks to set aside the arbitration prize, a successful party may lose its right to enforce the price in Nigeria. Fortunately, the Bill seeks to clarify the position of city engineering Nigeria Ltd v Federal Housing Authority by providing that in the data processing time for the commencement of negotiations to enforce an arbitration price, the period between the commencement of the arbitration and the date of the award shall be excluded. Award review tribunal The Bill establishes a second-level tribunal, known as the award review tribunal, to handle any application by an offended party to review an arbitration award on some of the new grounds highlighted below. However, this is an opt-in provision. Unless the parties to an arbitration process agree otherwise, the bill proposes that the Award Committee will consist of the same number of arbitrators as the arbitrators who settled the dispute at the first time. The bill allows the parties to agree on the procedure to be followed by the Award Committee, which fails to carry out its proceedings as necessary, and will be expected to make their decision in the form of an award within 60 days from the date it is constituted, thereby creating certainty for the parties. Where the Award Committee has in whole or partially set aside the award, a party has the right to apply to the court to review the decision of the award. Once the Award Committee has confirmed a price in whole or in part, an application to the court to set aside the award of the First Instance Court, or the award board as the case may be, can be made only on the basis of public policy or arbitration, which is somewhat limited basis. By choosing this provision, the parties are isolating their dispute from systemic problems, including congestion and delays in the administration of cases by Nigerian courts. Third-party financing Historically, the terms champerty and maintenance prevented the use of third-party financing (TPF). However, there appears to be a growing global trend towards allowing the use of TPF in arbitration cases. The law does not refer to TPF. As such, it has generally been argued that TPF is not currently allowed in a Nigerian sitting arbitration. Following the trend in other mainstream legislative countries such as Hong Kong and Singapore, the Bill includes a TPF provision that potentially heralds a new dawn in the practice of arbitration in Nigeria. When the bill is eventually passed into law, torts of maintenance and champerty will no longer apply in relation to the TPF of arbitration in Nigeria. While TPF will definitely benefit Nigerian parties, especially small and medium-sized businesses, it potentially gives rise to a number of complex procedural and ethical issues. These include confidentiality, conflicts of interest, legal privilege, disclosure and the lawyer-client relationship, for which proper regulation is required. Emergency Arbitrator Bill introduces an emergency arbitrator, and provides a party that requires urgent easing to submit an application for the appointment of an emergency arbitrator to any arbitration institution designated by the parties, or fails such designation, to the court. This should be done at the time of filing a request for arbitration, or after filing the request for arbitration, but before the Arbitrator's Constitution. If the relevant arbitration institution or court decides that it shall accept the application for the appointment of an emergency arbitrator, it is expected (unless the parties otherwise agree) to appoint an emergency arbitrator within two working days after the date the application has been received. Any decision by the emergency arbitrator is to take the form of an order. It must be done within 14 days from the date on which the file is received by the emergency arbitrator. The bill also allows the parties to conduct emergency negotiations through a meeting in person, via video conference, telephone or similar means of communication. By setting such short timings and allowing teleconference hearings, the bill will improve the availability of practical temporary relief in time-sensitive circumstances. This is especially true in building-related disputes, which are often Delay. Grounds for setting aside a price Under the existing law, a party may apply to set aside a price where there has been inappropriate conduct on the part of the arbitrator, or where the arbitration case, or the price, has been improperly obtained. Unfortunately, the law does not provide guidance on what constitutes inappropriate or inappropriate procurement, thus leaving the courts with broad discretion. The bill replaces the current basis for setting aside prices for clearer reasons in the UNCITRAL Model Law 2006. By virtue of this provision, recourse can only be made to a court against an arbitration award by an application to set aside for any of the following reasons: Legal incapacity. Invalid arbitration agreement. Lack of due process. Exceeds the scope of the submission. Procedural irregularity. Arbitration. Public policy. This change will be a breath of fresh air to arbitrators long frustrated by the endless debate over what constitutes misconduct and inappropriate procurement. Interim measures Unless otherwise agreed by the parties, the Bill allows an arbitrator to grant temporary measures at the request of a party. The exercise of this power is subject to conditions, which the party asks for the temporary measure is expected to satisfy. The bill also allows a party without notice to, without notice to any other party, make a request to the arbitration court for an interim measure, along with an application for a preliminary order asking a party not to frustrate the purpose of the temporary measure requested. The Bill also allows the Arbitrator to amend, suspend or terminate a temporary measure or order that it has issued when it has issued when applying a party or, in exceptional cases and upon notice to the parties, on the arbitration court's own initiative under certain circumstances. This includes how important facts were hidden from the arbitrator, the measure or the order was fraudulently obtained, or the facts come to the knowledge of the arbitration court, which, if known at the material time, would have led to the tribunal refusing to grant the measure or order. Conclusion Overall, apart from the operational changes, many of the changes broadly seek to modernize the law with language and tools that are now prevalent in today's international arbitration negotiations. The bill, if successfully passed and implemented in Nigeria, will bring arbitration law and practice in Nigeria in line with the current global arbitration landscape. In fact, it will contribute to ongoing efforts to make Nigeria a more attractive and viable arbitrator. Thanks to Eniola Asaolu, trainee lawyer of the International Arbitration Team at Hogan Lovells International LLP, London, for his contribution to this blog. Blog.

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