



**The Singapore Convention on
Mediation: A New Regime for
Settlement of International
Commercial Disputes in
Nigeria?**

G. ELIAS

Introduction

At its 73rd session held on December 20, 2018, the United Nations General Assembly (the “**UNGA**”) adopted the United Nations Convention on International Settlement Agreements Resulting from Mediation (the “**Singapore Convention**” or “**Convention**”). While the Convention opened for signatures on August 7, 2019, Nigeria ratified it only on November 27, 2023, by depositing the instrument of ratification at the United Nations Secretary-General's office. This made Nigeria the 13th state party to the Convention and bound to its provisions internationally.

The Convention was subsequently incorporated into Nigerian law with the passage of the Arbitration and Mediation Act 2023 (the “**AMA**” or the “**Act**”), giving it the force of law within Nigeria.

This domestication of the Convention ushers a new era for international settlement agreements in Nigeria. This article explores the potential opportunities (as well as constraints) for Nigeria in the resolution of international commercial disputes within the framework of the Act and the Convention.

The Status of the Convention under the Act

The instructive provision of the Act which domesticated the Convention is found in Section 87. By that section, international settlement agreements made outside Nigeria are enforceable in Nigeria if (i) the agreement was made in a State that is a party to the Convention and (ii) it is a legal dispute whether contractual or not, which is considered commercial according to Nigerian laws.¹

Noteworthy Provisions of the Convention

1. Scope of Application

The Convention applies specifically to international settlement agreements resulting from mediation. A settlement agreement is deemed to be international if at the time of its conclusion, at least two parties to the settlement agreement have their places of business in different States or the State in which the parties have their places of business is different from either the State where a substantial part of the obligations under the agreement is performed or the State with which the subject matter of the agreement is most closely connected.²

What constitutes “place of business” is not defined under the Convention, but precedent suggest that in the case of corporate bodies, it would be construed as the place of the company’s central management and control.³

The Convention does not apply to settlement agreements involving personal, family, or household purposes, or those related to family law, inheritance, or employment law⁴ neither does it apply to settlement agreements that have been approved by a court or concluded during court proceedings and are enforceable as a judgment in that jurisdiction, nor does it apply to settlement agreements that have been recorded and are enforceable as an arbitral award.⁵

2. Reliance on Settlement Agreements

Under the Convention, before a party can rely on a settlement agreement, it must meet certain requirements such as supplying to the enforcing court, the settlement agreement signed by the parties and evidence that the agreement resulted from mediation. Where the agreement is in form of an electronic communication, the Convention deems it as signed by the parties or the mediator if:

- (i) a method is used to identify the parties or the mediator and indicate their intention regarding the information in the electronic communication, and

¹ Section 87 of the Act

² Article 1(1) of the Convention

³ *Skye Bank v. Okpara* (2015) 17 NWLR (Pt. 1489) 613

⁴ Article 1(2) of the Convention

⁵ Article 1(3) of the Convention

- (ii) if the method used is either reliable enough for the purpose for which the electronic communication was created or communicated, considering all relevant circumstances and any agreement, or it has been proven to fulfill the identification and intention functions described (i) above, either on its own or with additional evidence.⁶

To prove that a settlement agreement resulted from mediation, the party may adduce evidence of the mediator's signature on the settlement agreement, tender another document signed by the mediator indicating that the mediation was carried out, provide an attestation by the institution that administered the mediation, or adduce any other credible evidence acceptable by the competent authority.^{7 8}

3. Expedited Process

The Convention requires that the court of a Party State act expeditiously when considering the request for relief by a party seeking to rely on a settlement agreement.⁹ Thus, every application for the enforcement of a settlement agreement must be put on the fast-track section of the Member State and concluded by expedited means.

4. Grounds of Refusal

Before the competent court of a Member State can refuse to grant reliefs sought pursuant to a settlement agreement, the party seeking the refusal must furnish evidence that: (i) a party to the settlement agreement was under some incapacity; (ii) the settlement agreement is not binding, null and void, inoperative, or incapable of being performed, is not binding or is not final by its terms, or has been subsequently modified; (iii) the obligations under the agreement have not been performed or are not clear or comprehensible; (iv) there was a serious breach by the mediator of standards applicable to the mediator or the mediation; (v) granting relief would be contrary to the terms of the agreement; or (vi) that the mediator failed to disclose justifiable doubts as to his/her impartiality or independence and such failure had material impact or undue influence on a party.¹⁰

The court of a Member State is also allowed to refuse to grant relief if it finds that granting such relief would be contrary to the public policy of that State or that the subject matter of the dispute is not capable of settlement by mediation under the law of that State.¹¹¹²

5. Parallel Applications or Claims

The Convention allows the court to adjourn its decision for relief if there is a concurrent claim or application relating to the settlement agreement in a court, arbitral tribunal or any other competent authority.¹³ The authority may also, upon request of a party, order the other party to give suitable security.

6. Other laws or treaties

The Convention does not preclude a party seeking relief under a settlement agreement from seeking relief pursuant to any other law or treaty of the Member State where it seeks such relief.

⁶ Article 4(2) of the Convention

⁷ Courts or other authority designated by a state to perform functions under the convention.

⁸ Article 4(1)b of the Convention

⁹ Article 4(5) of the Convention

¹⁰ Article 5(1) of the Convention

¹¹ Article 5(2) of the Convention

¹² These conditions are replicated in Section 84 of the AMA

¹³ Article 6 of the Convention

Significance of the Convention for Nigeria

The domestication of the Convention holds numerous implications for Nigeria. Primarily, it signals the elevation of mediation as a primary avenue for resolving international commercial disputes within the country. In Nigeria, where litigation traditionally dominates as the default method for dispute resolution—a system often marred by inefficiencies that deter foreign entities seeking to enforce their agreements—the incorporation of the Convention in the AMA offers reassurance. Foreign and local investors can leverage on the Convention to enforce settlement agreements.

Further, the domestication stands to enhance legal certainty in dispute resolution. The challenges erstwhile faced in enforcing mediated settlement agreements particularly where the counterparties are located in different jurisdictions are addressed by the Convention. The domestication allows for the provision of a uniform and predictable process for the enforcement of mediated international commercial settlements by establishing clear and consistent legal standards across its signatory countries. By this, businesses in Nigeria can have confidence that their mediated agreements will be recognised and enforced in other signatory countries, and vice versa.¹⁴ For example, the Convention lays down specific grounds upon which a country can refuse to enforce a mediated settlement agreement.¹⁵ Furthermore, since the Convention becomes Nigerian law by its domestication, this allows for the direct enforcement of mediated settlement agreements without the need for re-litigation in the same way foreign arbitral awards are enforced.

With the ease provided by the recognition of internationally mediated agreements, the domestication attracts increased foreign investment as investors can be assured that their commercial interests will be protected, and that Nigeria is committed to the provision of a stable and reliable legal environment for resolution of disputes.

Challenges to the Application of the Convention

Despite the attractive provisions of the Convention, there exist certain limitations to its application in a state like Nigeria.

First, the question arises as to whether the Convention has been properly domesticated by the AMA to give it the force of law. According to Section 12(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), a treaty does not have the force of law unless it has been enacted into law by the National Assembly. This can be achieved in several ways:

- a. By enacting a national legislation that fully adopts the provisions of the treaty, as seen in the African Charter on Human and Peoples Rights, Cap A9 LFN 2004, and the Geneva Conventions Act, Cap G3 LFN 2004;
- b. By enacting a national legislation that suspends or amends all existing national laws incompatible with Nigeria's obligations under the treaty, as with the Child's Rights Act 2003;
- c. By implementing consequential amendments in existing laws to accommodate specific provisions of the treaty, as with the Suppression of Piracy and Other Maritime Offences Act, 2019; or
- d. by making specific or general reference to the treaty in the body, long and short title, preamble, or schedule of a national legislation, such as the AMA's reference to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the "New York Convention") in its long title and Section 60 and the subsequent incorporation of its provision in the schedule of the AMA.

¹⁴ Section 87 of the Convention

¹⁵ Article 5 of the Convention

In this case, while the Act references the Convention, there was no subsequent adoption of its provisions. This omission raises concerns, especially when compared to the New York Convention, which is explicitly referenced in the long title and Section 60 of the Act, with its provisions outlined in the second schedule of the Act, thereby eliminating any doubts about its applicability and the domestication process.

The language of Section 87 of the Act mirrors that of Section 215(h) of the Merchant Shipping Act 2007 which merely referenced several conventions including the Suppression of Unlawful Acts Against the Safety of Maritime Navigation 1988 (the "SUA Convention") thereby raising questions about the domestication of the referenced conventions. However, this issue was addressed with the enactment of the Suppression of Piracy and Other Maritime Offences Act, 2019 which contains provisions adopting those of the SUA Convention.

Thus, the status of the Convention as law in Nigeria may be subject to debates and judicial review. Where it is determined by Nigerian courts that the AMA does not sufficiently domesticate the Convention, Nigeria may not be able to reap the benefits ordinarily posed by the Convention having force of law in Nigeria.

Second, in a State like Nigeria where parties to disputes employ several means to either frustrate the other party or delay the enforcement of legitimate rights, Article 6 of the Convention may be exploited to prevent or delay the enforcement of international settlement agreements. Despite the comfort that the Convention offers in requesting that the other party provides suitable security, it would not be unusual for a malicious party to simply institute a claim or application in order to persuade the court to adjourn its decision.

Conclusion

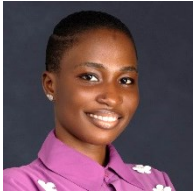
Nigeria's ratification of the Convention represents a progressive step in the realm of international commercial dispute resolution. With this step, Nigeria aligns itself with global best practices, enhancing legal certainty, promoting mediation, and attracting foreign investment. However, to ensure the successful implementation of the Convention in light of the challenges highlighted, Nigeria must embark on comprehensive legislative reforms, capacity building, and public awareness efforts to promote the acceptance of mediation as a preferred dispute resolution mechanism in international commercial dispute resolution. Where Nigeria is able to overcome these challenges, she would experience an efficient and amicable dispute resolution systems while enhancing her economic growth by the increased foreign investments or foreign enforcements.

Authors



Chimezie Onuzulike
Senior Associate
chimezie.onuzulike@gelias.com

Chimezie Onuzulike is a Senior Associate in the firm. He is a Member of the Chartered Institute of Arbitrators (UK) and a key member of the firm's dispute team. Chimezie's practice focuses on disputes, insolvency, employment and maritime.



Shukurat Oladejo
Associate
shukurat.oladejo@gelias.com

Shukurat Oladejo is an Associate in the firm. She is a member of the Nigerian Bar Association and holds an LL.B. from Obafemi Awolowo University. Her practice focuses on dispute resolution, intellectual property and capital markets.



Ifenna Okeke
Associate
okeke.ifenna@gelias.com

Ifenna Okeke is an Associate with the firm. He is a member of the Nigerian Bar Association and holds a Bachelor of Laws degree from Nnamdi Azikiwe University, Awka, where he graduated with First Class Honours. He also graduated with First Class Honours from the Nigerian Law School. He is a member of the Institute of Chartered Mediators and Conciliators.

LOCATIONS

LAGOS OFFICE
6 Broad Street
Lagos, Nigeria

T: +234 (1) 460 7890
E: gelias@gelias.com

ABUJA OFFICE
2nd Floor, Abia House,
Plot 979, First Avenue,
Central Business District
F.C.T, Abuja.

T: +234 (1) 888 8881

Practices • Arbitration • Banking • Capital Markets • Competition • Compliance • Corporate • Data Protection • Derivatives • Employment • Fintech • Foreign Investment • Intellectual Property • Litigation • Mergers and Acquisitions • Tax • "White Collar" Sanctions •

Sectors • Agribusiness • Commercial Banks • Commodities • Construction • Distributors • Development Finance • Electric Power • Entertainment • External Trade • Fintech • Healthcare • Infrastructure • Insurance • Investment Banks • Manufacturing • Media • Mining • Oil and Gas • Pension Managers • Private Equity • Real Estate • Services • Technology • Telecommunications • Transport •

www.gelias.com