

## **Legal Alert – February 2016 – Litigation, Arbitration, Conciliation and Mediation Compared**

### **Introduction**

Disputes and disagreements between people are sometime inevitable. For any business concern, having in place well documented Agreements, with an efficient and cost-effective dispute resolution mechanism enshrined, is absolutely essential; particularly as not all disputes can be amicably resolved by the parties themselves.

### **Litigation or Arbitration?**

Historically, most business disputes in the past were resolved by litigation. And most of the time, litigation is an expensive, time consuming dispute resolution mechanism. It is typically hostilely adversarial, with rigid court procedures and rules. Also, during litigation, business secrets and confidences will have to be disclosed to avoid liability or secure a favourable judgement.

Businesses over-time recognised the above-mentioned inimical nature of litigation to smooth enterprise. Arbitration therefore came to assuage the problems associated with litigation.

### **Essence of Arbitration**

Arbitration is a more modern, more cost-effective, more private manner of resolving disagreements. Under the Arbitration process, the parties to a dispute voluntarily pre-agree to submit any dispute that may arise from their transaction to an Independent Arbitration Panel, which Panel may consist of a person or persons, or a body, or some other kind of Tribunal, to hear and deliver a final decision regarding the dispute.

Parties to an Arbitration process are also permitted to pre-agree to the set of rules and procedures that will regulate the Arbitration Proceedings.

Like all contracts, an Arbitration Proceeding and the outcome, which is in the form of an Award or judgement, have a limitation period. So too can the parties to an Arbitration Agreement enter into a new Agreement in the future waiving or amending the Arbitration provision, or its rules, venue, qualifications of the Arbitrator, etc.

An Arbitration Award or decision is usually enforced by a Court of Law where any party to it does not willingly comply with the Arbitration Award.

### **Setting Aside an Arbitration Award**

Any party to an Arbitration Proceeding, who is dissatisfied with the decision of an Arbitration Panel, has a right to apply to a High Court for the decision or Award of the Arbitration Panel to be set aside.

Some of the common grounds for setting aside an Arbitration Award include that the Arbitration Agreement is not valid under Nigerian Law; the Arbitration Award is against Public Policy in Nigeria; the Award contains decisions on matters which are beyond the scope of the dispute submitted to the Arbitration Panel; the composition of the Arbitration Panel or the Proceedings themselves are not in accordance with the Agreement of the Parties or the Nigerian Arbitration and Conciliation Act; a Party or Parties to a Arbitration Proceedings was/were not accorded fair hearing; the Arbitrator does not have the Qualifications pre-agreed by the Parties; there are justified doubts of the Arbitrator's impartiality or independence; the Arbitrator misconducted himself by not complying with the terms of the Arbitration Agreement; the Arbitration Award was improperly procured; etc.

### **What is Conciliation?**

Conciliation is another legal form of resolving disputes in a less adversarial or hostile, and private manner. Under this medium, the parties to a dispute agree to resolve their dispute through a neutral independent person known as the Conciliator. Unlike Litigation and Arbitration, the appointed independent and neutral Conciliator examines the statements of the Parties setting out the nature of the dispute, hears the parties, after which he submits to the Parties the Terms of Settlement for the parties to approve by consensus.

If the Parties do not approve the Conciliator's recommended Terms of Settlement, they will be entitled to refer their dispute to Arbitration, where their Agreement provides for Arbitration; or institute a court action for a Court of Law to resolve the dispute.

### **Mediation**

Mediation is a much more informal method of resolving disputes. Unlike Litigation, Arbitration or Conciliation, a Mediator applies unbinding communication techniques, to guide the disputing parties to arrive at a common ground from which an amicable settlement is consummated.

Also, unlike Litigation, Arbitration or Conciliation, a Mediator has no enforcement authority. He instead relies solely on persuading the parties to reach an amicable settlement of their dispute. And where the Mediator cannot amicably settle the dispute, the Parties are entitled to resort to Arbitration or Litigation.

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