



**NIGERIAN INSTITUTE OF
ADVANCED LEGAL STUDIES**

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MOTTO

Knowledge that makes the Difference.

OUR VISION

To be a world class institution that is the primary source of information, training and advice at the highest level of policy formulation on legal matters, effectively impacting on local and international institutions in the development of law.

NIALS ENABLING ACT

Commencement Establishment of the Nigerian Institute of Advanced Legal Studies

- (1) There is hereby established an institute to be known as the Nigerian Institute of Advanced Legal Studies (in this Act referred to as “the Institute”) which shall have the functions assigned to it by this Act.
- (2) The Institute shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.

MEMBERSHIP OF THE COUNCIL, etc.

- (1) There shall be established for the management of the affairs of the Institute a body to be known as the Nigerian Institute of Advanced Legal Studies Council (in this Act referred to as “the Council”)
- (2) The Council shall consist of the following members, that is
 - (a) a Chairman to be appointed by the President;
 - (b) a representative of the Federal Ministry of Justice;
 - (c) a representative of the Federal Ministry charged with responsibility for higher education;
 - (d) six Deans or Heads of Faculties, or other formations



of Nigerian Universities offering degree courses in law at not less than post-graduate level, to be appointed by the President; the Director-General of the Nigerian Law School; one member of the Judiciary nominated by the Chief Justice of Nigeria; the President of the Nigerian Bar Association; five persons of whom one shall be a woman to be appointed by the President; and the Director-General of the Institute.

(3) The provisions of the Schedule to this Act shall have effect with respect to the proceedings of the Council and the other matters therein mentioned.

FUNCTIONS OF THE COUNCIL

(i) Council shall be responsible for the determination of the overall policy of the Institute and in particular for the financial and operational programmes of the Institute and for ensuring implementation of such policies and programmes.

(ii) Without prejudice to the generality of subsection of this section, it shall be the duty of the Council to approve the research and training programmes of the Institute, determine the fees to be paid for research, consulting, training and any other services that may be offered by the Institute and promote or undertake any other activity that in the opinion of the Council is calculated to help achieve the purposes of the Institute.

NIALS ANTHEM

Ever questioning,
Ever Probing,
Nigerian Institute of Advanced Legal Studies!
Vision foretold by founding fathers,
Ideas nurtured by patriotic fervor,
Urging us to make the difference,
And be the nucleus of legal studies,
With passion and hope our mandate deliver,
And be the best that we can be,
A truly world class institution,
Nigeria's law abode!



NIALS DG'S LATEST PUBLICATION

1st July, 2023



INTRODUCTION TO AFRICAN ECONOMIC INTEGRATION LAWS ON TRADE, INVESTMENT, COMPETITION, INTELLECTUAL PROPERTY RIGHTS AND DISPUTE SETTLEMENT: IMPLEMENTATION FRAMEWORK IN NIGERIA



By
MUHAMMED TAWFIQ LADAN



Published by the Nigerian Institute of Advanced Legal Studies 2023

ABOUT THE BOOK

INTRODUCTION TO AFRICAN ECONOMIC INTEGRATION LAWS ON TRADE, INVESTMENT, COMPETITION, INTELLECTUAL PROPERTY RIGHTS AND DISPUTE SETTLEMENT: IMPLEMENTATION FRAMEWORK IN NIGERIA

BY
MUHAMMED TAWFIQ LADAN, Ph.D.

PREFACE

This book is intended primarily as an introductory text for students in tertiary institutions, law teachers, legal practitioners, Judges and researchers in law and policy related to regional economic integration in Africa.

A Conscious effort has been made in every chapter to provide an appraisal so as to produce a concise work suitable for the needs of the above-mentioned target group. It is hoped that the general reader, lawmakers, and policy implementers in the Ministries of Justice, foreign affairs, finance, trade and investment will also find it useful especially, the comparative analysis of the most recent legal instruments in Nigeria, with AfCFTA Agreement pointing out how the legislative reform agenda seeks to address some of the factors hindering effective implementation of Nigeria's multilateral treaty obligations relating to trade and investment in particular.

Finally, I hope that the annexes will also serve as a compendium of the most recent legal instruments carefully selected to serve as a handy tool for all researchers and students who might find them difficult to access sometimes due to various reasons. I remain fully responsible for all errors and mistakes or gaps found in this work and hope to find time to update this little Contribution of mine.

This book is structured into the following eighteen chapters and eight annexes:-

- CHAPTER ONE-** THE ROAD TO THE AFRICAN ECONOMIC COMMUNITY - THE LEGAL FRAMEWORK OF THE AFRICAN ECONOMIC COMMUNITY.
- CHAPTER TWO-** LEGAL ASPECTS OF ECONOMIC INTEGRATION IN WEST AFRICA.
- CHAPTER THREE-** OVERVIEW OF THE AFRICAN LEGAL FRAMEWORK ON ECONOMIC INTEGRATION, TRADE AND INVESTMENT.
- CHAPTER FOUR-** AFCTA PROTOCOL ON INVESTMENT, 2023
- CHAPTER FIVE-** AFCTA PROTOCOL ON COMPETITION POLICY, 2023
- CHAPTER SIX-** AFCTA PROTOCOL ON INTELLECTUAL PROPERTY RIGHTS, 2023
- CHAPTER SEVEN-** ECOWAS INTEGRATION MODEL - FROM INTERGOVERNMENTALISM TO SUPRANATIONALISM
- CHAPTER EIGHT-** APPRAISAL OF THE HUMAN RIGHTS MANDATE OF THE ECOWAS COURT OF JUSTICE.
- CHAPTER NINE-** AN APPRAISAL OF THE JUDGEMENT ENFORCEMENT MECHANISM OF THE ECOWAS COURT OF JUSTICE.
- PART TWO:- LEGISLATIVE REFORM INITIATIVES AND NATIONAL AFCTA IMPLEMENTATION FRAMEWORK IN NIGERIA**
- CHAPTER TEN-** COMPATIBILITY OF NIGERIA'S BUSINESS FACILITATION ACT 2023 WITH THE AFCTA AGREEMENT
- CHAPTER ELEVEN-** NIGERIA'S COPYRIGHT ACT, 2023 AND THE AFCTA PROTOCOL ON INTELLECTUAL PROPERTY RIGHTS, 2023
- CHAPTER TWELVE-** NIGERIA'S CUSTOMS SERVICE ACT, 2023 AND THE AFCTA AGREEMENT.
- CHAPTER THIRTEEN-** OVERVIEW OF NIGERIA'S AFCTA IMPLEMENTATION STRATEGY.
- CHAPTER FOURTEEN-** OVERVIEW OF NIGERIA'S TRADE POLICY, 2023
- CHAPTER FIFTEEN-** APPRAISAL OF NIGERIAN LAWS AND POLICIES RELEVANT TO TRADE, INVESTMENT AND COMPETITION
- CHAPTER SIXTEEN-** NATIONAL PRACTICE ON DOMESTICATION OF TREATIES IN NIGERIA.
- CHAPTER SEVENTEEN-** REVIEW OF TWO PROPOSED BILLS ON DOMESTICATION OF AFCTA AGREEMENT AND ESTABLISHMENT OF NIGERIA INTERNATIONAL TRADE COMMISSION, 2022/23
- CHAPTER EIGHTEEN-** REVIEW OF NIGERIA'S FINANCE ACT, 2023

- ANNEXES:-**
1. AFCTA AGREEMENT AND ITS SIX (PHASES 1 AND 2) PROTOCOLS.
 2. AFRICAN ECONOMIC COMMUNITY TREATY
 3. ECOWAS LEGAL FRAMEWORK ON TRADE, INVESTMENT AND COMPETITION.
 4. NIGERIAN CUSTOMS SERVICE ACT, 2023
 5. BUSINESS FACILITATION ACT, 2023
 6. COPYRIGHT ACT, 2023.
 7. FINANCE ACT, 2023
 8. ARBITRATION AND MEDIATION ACT, 2023

Professor Muhammed Tawfiq Ladan, 10 June 2023.

ABOUT THE AUTHOR

The author, Prof. M. T. Ladan, Ph. D in law (1997), is a professor of law with 36 years working experience at the Faculty of Law, Ahmadu Bello University, Zaria; National Human Rights Commission Abuja (1997 - 1999); National Institute for Legislative and Democratic Studies, Abuja(2017 - 2019); Currently Director-General of the Nigerian Institute of Advanced Legal Studies (2019 - 2024). With Specialization in comparative regional economic integration law, policy and practice; public international law relating to natural resources, energy, environment, climate change, human rights, gender, Security, humanitarian and Sustainable development law, policy and practice in Africa. With 25 years experience as an independent expert and a lead technical expert in representing Nigeria at Governmental Experts meetings and Diplomatic Conferences at the UNEP Nairobi, UNICRI Turin, Italy, UNESCO Paris, France, and Ljubljana, Slovenia, as well as in the defence of Nigeria's Country human rights reports at the UN HQ in New York and Geneva; and in Banjul, Gambia at the African Human Rights Commission. And 21 years experience in consultancy services at the national, regional and global levels for Nigerian federal and state ministries and agencies, and for the ECOWAS Commission, UNICEF, ILO, UNHCR, UNDP and UNEP HQ in Nairobi.

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NIALS UPDATED LISTS OF RECENT PUBLICATIONS 2023: JANUARY TO JULY

1st July, 2023



NIALS/FIRS TRAINING

Nigerian Institute of Advanced Legal Studies (NIALS) in conjunction with Federal Inland Revenue Services (FIRS) held a Batch 3 Training workshop for Legal Officers from FIRS on Advanced Course in Practice and Procedure from July 3th-5th, 2023. The training held at National Judiciary Council Committee Room, Abuja.



THE CONVERGENCE 5.0

The Director General of Nigerian Institute of Advanced Legal Studies, Professor. Muhammed Tawfiq Ladan, PhD on Thursday, 4th July, 2023 participated at the Convergence Forum for Young Lawmakers in Nigeria which held at Abuja Continental Hotel. The Director General in his opening remarks underscored the need for the young Legislators to learn humbly and fast track their four (4) critical roles as;

- i. Policy agenda setters for policy debates on matters relating to legislating for good governance, socio-economic security and welfare of all people;
- ii. As law and policy reformers to abolish corrupt practices and abuse of power and legislate for sustainable development, national integration and prosperity of all;
- iii. As monitors and evaluators of level of implementation of Budget Appropriation and exercise of delegated power to the Executive for subsidiary legislations, etc and
- iv. Initiatives for reducing wastages and inefficiency in governance including lawmaking.

Professor Ladan opined that Section 14(2) (b) of the 1999 Constitution provides for the primary purpose of Government: to provide the security and welfare of all people in Nigeria.

The event which was Nigeria's largest gathering of young elected legislators was jointly organized by Yiaga Africa, Young Parliamentarians of the National Assembly and funded by European Union.



NAPTIP RETREAT FOR PROSECUTORS AND JUDGES

The Director General Nigerian Institute of Advanced Legal Studies Professor Muhammed Tawfiq Ladan PhD, attend the “National Agency for the Prohibition of Trafficking in Persons (NAPTIP) Retreat For Prosecutors and Judges on Curbing Sexual and Gender Based Violence in Nigeria: which was held on 6th July, 2023 at Johnwood Hotel, Abuja.



GLOBAL ACKNOWLEDGEMENT

The United Nations Department of Economics and Social Affairs (UNDESA), New York, USA and International Science Council (ISC) Paris, France, Coordinators of 2023 Global Sustainable Development Report officially acknowledged with gratitude the contributions of Professor Muhammed Tawfiq Ladan, PhD, the Director General of Nigerian Institute of Advanced Legal Studies (NIALS) as a member of Global Expert Reviewers of the initial Draft Report (August, 2022 to June, 2023).

The Advanced, Unedited Version of the Report is dated 14th June, 2023, and will be publicly launched in September, 2023 at the Global SDG Summit.

Congratulations our DG!!!



**PROF. M. T. LADAN'S
CONTRIBUTION ACKNOWLEDGED**

BY

**UNDESA, NEW YORK:
TO THE GLOBAL SUSTAINABLE DEVELOPMENT
REPORT (GSDR) 2023: - ADVANCE, UNEDITED VERSION,**

14 JUNE 2023



The United Nations Department of Economics and Social Affairs (UNDESA) New York, USA, and the International Science Council (ISC) Paris, France, Coordinators of the 2023 Global Sustainable Development Report, have Acknowledged with gratitude the contributions of Professor Muhammed Tawfiq Ladan, THE Director General NIALS, as a member of the **Global Expert Reviewers** of the

initial draft report (August 2022 to June 2023),

NB: - The Advanced, Unedited Version of the report dated 14 June 2023 is available online <https://sdgs.un.org/gedr/gedr2023#> (See Paras 42-49, Annex 3, Paras 5865-5866). The final report will be publicly launched in September 2023 at the **Global SDG Summit**.

Professor Muhammed Tawfiq Ladan has experience in consulting for UN agencies like UNECA, ADDIS ABABA, UNEP NAIROBI, UNHCR, UNDP, UNICEF and ILO, as well as ECOWAS Commission, Abuja. (2002 to date).



THE NEW CUSTOM SERVICE ACT 2023

The Director General of Nigerian Institute of Advanced Legal Studies, Professor Muhammed Tawfiq Ladan, PhD and the Director General Nigerian Copyright Commission, Dr. John Asien with the Acting Comptroller-General of Custom, Bashir Adewole Adeniyi Nigerian Customs officials among other stakeholders participated at a Two (2) Day Sensitization Retreat on the New Custom Service Act 2023. The Retreat held from Monday, 10th July –Tuesday, 11th July, 2023 at Wells Carlton Hotel, Asokoro, Abuja .

The Director General in his opening remarks during the opening session of the Nigerian Customs Service Management Retreat explained the justification for reform of the 63 years old pre-independence outdated legal regime and the consolidation of the scattered pieces of incoherent enactments under one single comprehensive legislation consistent with Nigeria's Treaty obligations under World Trade Organization (WTO), Economic Community of West African States (ECOWAS) and African Continental Free Trade Area (AfCFTA), for an Information Communication Technology (ICT) driven modern customs administration and operational realities for improving service delivery, enhancing trade facilitation, cross-border trade/E-commerce determination and certification of rules of origin of goods and revenue generation among others.



HYBRID JOINT RESEARCH CONFERENCE



Professor Animi Sylvanus-Pepple, Director of Research represented Nigerian Institute of Advanced Legal Studies (NIALS) at the Hybrid Joint NIALS/Canadian York/ Osgoode and Universities of Ghana and Pretoria Carrissa Human Rights Research Conference held at the University of Ghana Legion, Accra from July, 10-12 2023. Nigerian Institute of Advanced Legal Studies Report was presented and Co-authored by the Director General, Professor Muhammed Tawfiq Ladan, PhD, Professor Amini Sylvanus-Pepple, Irekpitan Okukpon assisted by Senior Research Fellow Nnena Uche-Eboh.



2023 NALT CONFERENCE

Nigerian Institute of Advanced Legal Studies and paper presenters, Associate Professor Francisca Nlerum, Senior Research Fellow, Lilian Uche and Senior Research Fellow, Ebele Ogwuda participated at 2023 the Nigerian Association of Law Teachers (NALT) Conference held from July 11th-14th, 2023 at Umuahia, Abia State.



NIALS LIBRARY



The First ever Mini Library at Abuja office created, furnished and stocked by the current administration of the Director General, Professor Muhammed Tawfiq Ladan, PhD on Monday, 17th July, 2023 took delivery of office chairs, tables, printers, kick steps for shelving books, quato book support, UPS, extension box, flash drive, external hard drive and water dispense. These equipment's were from 2023 Capital Projects.

Similarly, new publications from the Institute were delivered on the same day to NIALS Abuja and Lagos Libraries.

The Abuja library equipments etc was unveiled on July 19th, 2023.





NEW BOOKS FOR NIALS LAGOS LIBRARY COLLECTION



Prof. M.T Ladan's book 2023 is out. Contact Director of Marketing Mrs. Regina Macaulay (08074128732) for copies



The Director General of Nigerian Institute of Advanced Legal Studies, Professor. Muhammed Tawfiq Ladan, PhD on 26th July, 2023 approved the payment of 50% staff welfare allowance, and also expressed apologies for delay as a result of inability of government to release the appropriated funds to NIALS as and when due.

Management observed with gratitude the payment of welfare allowance to all staff of NIALS.

STAFF WELFARE

NIALS IN-HOUSE TRAINING 2023

The Director General of Nigerian Institute of Advanced Legal Studies, Professor. Muhammed Tawfiq Ladan, PhD on Friday, 28th July, 2023 notified the Management Team (especially Professor Animi Sylvanus-Pepple, Director of Research, NIALS, Institute Secretary, Ademola Shafadeen Tiamayu, Institute Bursar, John Yawe, and Resource Persons) coordinating NIALS In-House Training Workshop series for both Academic and Non-academics in both Abuja and Lagos that all the Approved Budget sums have been paid to the following Account Officers for access and utilization;

1. Rose Danesi for Lagos Funds (Both Academic and Non-academic)
2. Jacob Gazawa for Abuja funds (both Academic and Non-academic).

Total of three (3) Million Naira only (@ 1.5 million each for Abuja and Lagos Non-Academic starting on 1st August, 2023.

Also, A total of 2.15 Million for both Abuja and Lagos Academic Staff workshop starting on 8th August, 2023.

The Workshop is mandatory for ALL staff and Certificates will be signed by the Director General.



NIGERIAN ACADEMY OF LAW

The Director General of Nigerian Institute of Advanced Legal Studies, Professor Muhammed Tawfiq Ladan, PhD on Monday, 31st July, 2023 congratulated both Nigerian Association of Law Teachers (NALT) and Nigerian Institute of Advanced Legal Studies (NIALS) for their successful Registration of the Academy after Years of pursuit for clearance/Registration.

By this Registration, NIALS can now join the league of Nigerian Academy of Science, Letters, etc.

CONGRATULATIONS TO NIALS FAMILY



DG'S POLICY BRIEF SERIES NO. 1

BRIEF REVIEW OF THE ARBITRATION AND MEDIATION ACT, 2023

1. Introduction

This paper briefly reviews the Arbitration and Mediation Act, 2023. It highlights the rationale, objectives, structure and contents as well as the scope and application of the Act. The paper also provides a tabular compatibility of the Arbitration and Mediation Act, 2023 with the Protocol to the Agreement Establishing the African Continental Free Trade Area (AfCFTA) on Rules and Procedures on the Settlement of Disputes (the Protocol). The Arbitration and Mediation Act, 2023 is sometimes referred to as “the Act” in this review.

2. Overview of the Arbitration and Mediation Act, 2023

2.1 Rationale

Before the enactment of the Arbitration and Mediation Act, 2023, alternative dispute resolution was regulated by the Arbitration and Conciliation Act, Cap. A18, Laws of the Federation of Nigeria, 2004. The former Act laid the foundation for Arbitration in Nigeria, however, developments in society, engagements of persons and institutions both at the domestic and international jurisdictions, agreements and resultant dynamic disputes have become more intricate. The sophistication in business relations and disputes have also led to the need to regulate disputes speedily and with ease in the manner which the previous Act may not have contemplated when it was first enacted and this rendered it inadequate in modern Nigeria. Hence the need for a new Act that will accommodate the dimensions of development in modern life and human contractual relations and address the gaps and shortcomings of the previous Act.¹

Thus, the new Act has introduced innovative provisions that improve on the previous Act, recognize the growing importance of mediation as a means to settle disputes and provides a legal and procedural framework for arbitration and mediation in Nigeria.²

¹ A. Adedoyin, *et al* ‘An Overview of the Newly Enacted Arbitration and Mediation Act, 2023 : Arbitration and Dispute Resolution : Nigeria’ < <https://mondaq.com/nigeria/arbitration-dispute-resolution/1330842/an-overview-of-the-newly-enacted-arbitration-and-mediation-act-2023> > accessed 5 July 2023

² *Ibid*



2.2 Objectives

The objectives of the Act are segmented based on the divisions in the provisions of the Act. Thus, the objective of Part I is to promote fair resolution of disputes by an impartial tribunal without unnecessary delay or expense.³ The Act does not expressly provide objectives for Part II. However, it may be inferred that the objective of Part II is to promote fair resolution of disputes through mediation.

2.3. Structure and contents

The Arbitration and Mediation Act is structured into three Parts, 92 sections and three schedules. The contents are briefly summarized below.

(a)Part I: Arbitration

This Part has 66 sections and covers provisions relating to issues such as the objectives of this Part and application,⁴ the form which an arbitration clause may be drafted⁵ in an agreement, irrevocability of arbitration agreement and the exceptions,⁶ the effect of death or change in circumstances of either party to the arbitration agreement such as bankruptcy, insolvency and how neither of these circumstances can revoke an arbitration agreement or the authority of an arbitrator.⁷ It also covers provisions that relate to the power of the court to stay proceedings in a matter that is subject to arbitration,⁸ the number of arbitrators⁹ and how they are appointed¹⁰ and generally procedural matters that regulate arbitration in Nigeria and generally in the manner prescribed in the Act. Some of the procedural matters that relate to arbitration in Nigeria include the need for a prospective arbitrator to disclose circumstances that may give rise to circumstances that give rise to justifiable doubts about the impartiality or independence of the prospective arbitrator,¹¹ right of parties to agree on a procedure to challenge an arbitrator, circumstances under

³ Arbitration and Mediation Act, 2023 s.1(1)

⁴ *Ibid* s.1

⁵ *Ibid* s.2

⁶ *Ibid* s.3

⁷ *Ibid* s.4

⁸ *Ibid* s.5

⁹ *Ibid* s.6

¹⁰ *Ibid* s.7

¹¹ *Ibid* s.8



which an arbitrator's mandate must terminate,¹² etc. Additional regulatory procedure for arbitration in Nigeria are prescribed in sections 11 to 66.

(b) Part II: Mediation

This Part has 21 sections¹³ and is further subdivided into three divisions. The first division (A) contains general provisions that cover the scope and application of Part II¹⁴ and the prescription to adhere to uniformity in the interpretation of Part II.¹⁵ The second division (B) contains provisions that cover the commencement of mediation proceedings.

Specifically, this Part vests parties with the right to vary mediation proceedings in the manner prescribed in section 69. It also prescribes provisions regarding the manner in which parties to an agreement may commence mediation proceedings,¹⁶ the procedure that governs the suspension of limitation period regarding a claim that is the subject matter of mediation,¹⁷ the number of mediators,¹⁸ as well as the right of parties to agree to the manner in which mediation proceedings may be conducted in good faith.¹⁹

Generally, this division prescribes the procedural framework to regulate mediation proceedings in Nigeria such as the manner of communication between the mediator and the parties,²⁰ the manner in which a mediator may handle information regarding a dispute,²¹ and other procedural issues regarding mediation as prescribed in sections 76 to 87.

The third division (C) covers provisions applicable to international settlement agreements only.

Specifically, it prescribes the manner in which the Convention on International Settlement Agreements may apply to international settlement agreements that are made outside Nigeria subject to the exceptions as prescribed in section 87.

¹² Arbitration and Mediation Act, 2023 s.10

¹³ *Ibid* Ss. 67 to 87

¹⁴ *Ibid* s.67

¹⁵ *Ibid* s.68

¹⁶ *Ibid* s.70

¹⁷ *Ibid* s.71

¹⁸ *Ibid* s.72

¹⁹ *Ibid* s.73

²⁰ *Ibid* s.74

²¹ *Ibid* s.75



(c) Part III: Miscellaneous Provisions

This has five sections and covers provisions that relate to presumption of receipt of written communication,²²savings and transitional provisions that relate to actions taken under the Arbitration and Conciliation Act Cap. A 18, Laws of the Federation of Nigeria, 2004²³and its repeal,²⁴and the interpretation provision of the Act.²⁵

2.4 Scope of coverage and application

The scope of application of the Act is divided into two Parts. Part I of the Act applies to international commercial arbitration subject to the agreement that is binding between Nigeria and any other country or countries.²⁶ It also applies to inter-state commercial arbitration within Nigeria,²⁷ commercial arbitration within Nigeria²⁸ and where the seat of arbitration is in the territory of Nigeria. In addition, the scope of coverage and application of Part I extends to the powers of the court where the seat of arbitration is outside Nigeria²⁹ and in the manner prescribed in section 1(7) of the Act.

Part II of the Act applies to international commercial mediation,³⁰ domestic commercial mediation³¹ and domestic civil mediation.³² It's application also covers domestic and international settlement agreements that result from mediation which parties have concluded in writing to resolve a commercial dispute³³ and circumstances where parties agree in writing that this Part of the Act should apply to a dispute.³⁴

The scope of coverage of Part II does not extend to disputes that arise from the settlement of rights and obligations that would be void under Nigerian law³⁵ or in cases where a judge or an arbiter

²²Arbitration and Mediation Act, 2023 s.88

²³ *Ibid* s.89

²⁴*Ibid* s.90

²⁵ *Ibid* s.91

²⁶ *Ibid* s.1(5)(a)

²⁷*Ibid* s.1(5)(b)

²⁸*Ibid* s.1(5)(c)

²⁹*Ibid* s.1(6)

³⁰*Ibid* s.67(1)(a)

³¹*Ibid* s.67(1)(b)

³²*Ibid* s.67(1)(c)

³³*Ibid* s. 67(1)(d)

³⁴*Ibid* s.67(1)(e)

³⁵*Ibid* s.67(2)(a)



tries to facilitate settlement (in the course of a proceedings) without the express consent of the parties.³⁶ Generally, Part II is limited and does not apply in the manner prescribed in section 67(2).

However, it applies irrespective of the basis upon which the mediation is carried out and generally in the manner prescribed in section 67(3).

Generally, it is important to note that the Act does not apply to arbitration agreements for arbitration that commenced before the Act came into effect.³⁷

2.5 Tabular compatibility of the Arbitration and Mediation Act, 2023 with the Protocol to the AfCFTA on Rules and Procedures on the Settlement of Disputes.

Table 1. Tabular compatibility of the Arbitration and Mediation Act, 2023 and the AfCFTA Protocol on Rules and Procedures on the Settlement of Disputes

S/N	Arbitration and Mediation Act, 2023	AfCFTA Protocol on Rules and Procedures on Settlement of Disputes	Remarks
1.	<p>Rationale</p> <p>Before the enactment of the Arbitration and Mediation Act, 2023, alternative dispute resolution was regulated by the Arbitration and Conciliation Act, Cap. A18, Laws of the Federation of Nigeria, 2004. However, the sophistication in business relations and disputes have also led to the need to regulate disputes speedily and with ease in the manner which the previous Act was</p>	<p>Rationale</p> <p>Article 20 of the Agreement establishing the AfCFTA established a dispute settlement mechanism to regulate and resolve disputes that may arise between State Parties. It further provided that the Dispute Settlement Mechanism will be administered in accordance with the Protocol on the Rules and Procedure for the Settlement of Disputes. This is</p>	<p>Both instruments are premised on arbitration and mediation as mechanisms to resolve disputes in commercial relations. However, the Arbitration and Mediation Act, 2023 is a domestic instrument, while the Protocol is a</p>

³⁶Arbitration and Mediation Act, 2023 s.67(2)(b)

³⁷*Ibid* s.89



	<p>inadequate to regulate. Hence the need for a new Act that will accommodate the dimensions of development in modern life and human contractual relations and address the gaps and shortcomings of the previous Act. In addition, introduce innovative provisions that are consistent with modern development, reform arbitration and establish a legal and procedural framework for mediation.</p>	<p>the rationale for establishing the Protocol as a legal and procedural framework to regulate disputes that may arise in course of administering the AfCFTA to achieve its overall objective.</p>	<p>continental instrument.</p>
2.	<p style="text-align: center;">Objectives</p> <p>The objectives of the Act are segmented based on the divisions in the provisions of the Act. Thus, the objective of Part I is to promote fair resolution of disputes by an impartial tribunal without unnecessary delay or expense.³⁸ The Act does not expressly provide objectives for Part II. However, it may be inferred that the objective of Part II is to promote fair resolution of disputes through mediation.</p>	<p style="text-align: center;">Objective</p> <p>The objective of the Protocol is to provide for the administration of the Dispute Settlement Mechanism established in accordance with Article 20 of the Agreement establishing the AfCFTA (“The Agreement”). It also aims to ensure that the dispute settlement process is transparent, accountable, fair, predictable and consistent with the provisions of the Agreement.³⁹</p>	

³⁸ Arbitration and Mediation Act, 2023 s.1(1)

³⁹ The Protocol, article 2



3.	<p>Scope of application</p> <p>Part I of the Act applies to international commercial arbitration subject to the agreement that is binding between Nigeria and any other country or countries.⁴⁰ It also applies to inter-state commercial arbitration within Nigeria,⁴¹ commercial arbitration within Nigeria⁴² and where the seat of arbitration is in the territory of Nigeria. In addition, the scope of coverage and application of Part I extends to the powers of the court where the seat of arbitration is outside Nigeria⁴³ and in the manner prescribed in section 1(7) of the Act. Part II of the Act applies to international commercial mediation,⁴⁴ domestic commercial mediation⁴⁵ and domestic civil mediation.⁴⁶ It's</p>	<p>Scope of application</p> <p>The Protocol applies to disputes that arise between State Parties concerning their rights and obligations under the provisions of the Agreement. The Protocol also applies subject to special and additional rules and procedures on dispute settlement contained in the Agreement. In addition, if there is a difference between the rules and procedures of the Protocol and the special or additional rules and procedures in the Agreement, the special or additional rules and procedures will prevail.</p> <p>Generally, the scope of application of the Protocol covers matters prescribed in article 3.</p>	

⁴⁰Arbitration and Mediation Act, 2023 s.1(5)(a)

⁴¹ *Ibid* s.1(5)(b)

⁴²*Ibid* s.1(5)(c)

⁴³*Ibid* s.1(6)

⁴⁴*Ibid* s.67(1)(a)

⁴⁵*Ibid* s.67(1)(b)

⁴⁶*Ibid* s.67(1)(c)



	<p>application also covers domestic and international settlement agreements that result from mediation which parties have concluded in writing to resolve a commercial dispute⁴⁷ and circumstances where parties agree in writing that this Part of the Act should apply to a dispute.⁴⁸</p> <p>Generally, it applies in the manner specified in paragraph 2.4 of this Review.</p>		
4.	<p>Subject matter</p> <p>Arbitration and Mediation as a central alternative source of dispute resolution mechanism.</p>	<p>Subject matter</p> <p>Dispute resolution mechanism that may arise between State Parties. The dispute settlement mechanism of the AfCFTA is a central element in providing security and predictability to the regional trading system. The dispute settlement mechanism shall preserve the rights and obligations of State Parties under the Agreement and clarify the existing provisions of the Agreement in accordance with customary</p>	

⁴⁷Arbitration and Mediation Act, 2023 s. 67(1)(d)

⁴⁸*Ibid* s.67(1)(e)



		rules of interpretation of public international law. ⁴⁹	
5.	<p>Structure and content</p> <p>The Act is structured into three Parts and contains 92 sections and three schedules which establish provisions that relate to Arbitral Rules (First Schedule), Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958 (Second Schedule) and Arbitration Proceedings Rule, 2020 (Third Schedule).</p>	<p>Structure and content</p> <p>The Protocol has 31 articles and contains provisions that relate to the establishment of the dispute settlement mechanism of the AfCFTA.⁵⁰ Other provisions relate to the establishment of the Dispute Settlement Body charged with the responsibility administer the Protocol,⁵¹ establishment of the Procedures under the Dispute Settlement Mechanism such as the first action to take when a dispute arises between State Parties in order to achieve amicable resolution of the dispute.⁵² The Protocol also establishes provisions that set out effective consultation procedures which State Parties should employ to encourage amicable resolution of disputes.⁵³ The Protocol also establishes additional dispute</p>	

⁴⁹The Protocol, article 4

⁵⁰ *Ibid*

⁵¹ *Ibid* article 5

⁵² *Ibid* article 6

⁵³ *Ibid* article 7



		<p>resolution mechanisms such as good offices, conciliation and mediation to give State Parties more options to achieve amicable settlement of disputes.⁵⁴ The Protocol also establishes additional dispute resolution mechanisms for State Parties where consultation fails. Thus the Complaining Party is given the opportunity to request the Dispute Settlement Body to establish panels towards resolving the dispute.⁵⁵ Other dispute resolution procedures include the mechanism to compose the panel,⁵⁶ terms of reference of the panel,⁵⁷ its functions,⁵⁸ the regulation of interests of third parties,⁵⁹ and procedures to regulate incidences of multiple complaints.⁶⁰ The Protocol further establishes mechanisms to achieve</p>	
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⁵⁴The Protocol article 8

⁵⁵*Ibid* article 9

⁵⁶*Ibid* article 10

⁵⁷*Ibid* article 11

⁵⁸*Ibid* article 12

⁵⁹*Ibid* article 13

⁶⁰*Ibid* article 14



		amicable resolution of disputes in the manner prescribed in articles 15 to 31.	
6.	<p>Administrative framework</p> <p>Although there is no express administrative institution under the Act. However, the Act establishes a party-driven process where parties, arbitrators, arbitral tribunals, the court, mediators, appointing authorities and all persons and institutions connected with the administration of settlement of commercial disputes through arbitration and mediation constitute the administrative framework of the Act. In addition to persons and institutions charged with the responsibility to apply the Convention on the Recognition and Enforcement of Foreign Arbitral Awards to any award made in Nigeria or in any contracting State which is the result of international commercial arbitration.</p>	<p>Administrative framework</p> <p>Article 5 establishes a Dispute Settlement Body that is charged with the responsibility to administer the Protocol in the manner prescribed.</p>	

Source: Arbitration and Mediation Act, 2023 and the Protocol to the AfCFTA on Rules and Procedures on Settlement of Disputes.



3. Conclusion

This paper briefly examined the Arbitration and Mediation Act, 2023 by highlighting the rationale for its enactment, the objectives of the Act, the structure and contents and scope of coverage and application. The paper also briefly highlighted the compatibility of the Act with the Protocol to the AfCFTA on Rules and Procedures on Settlement of Disputes.





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