

A BILL

FOR

AN ACT TO AMEND THE ARBITRATION AND CONCILIATION ACT CAP A19,
LAWS OF THE FEDERATION OF NIGERIA, 2004

Sponsored by Senator Monsurat J. Summonu

[] Commencement

ENACTED by the National Assembly of the Federal Republic of
Nigeria:

- 1 1. The provisions of the Arbitration and Conciliation Act 1990 (in
2 this Act referred to as "the Principal Act") are altered as set out in this Bill. Alteration of the
Principal Act
- 3 2. Section 32 of the Principal Act is hereby replaced with a
- 4 following section 32:
- 5 Section 32: *Grounds for refusing recognition or enforcement*
- 6 (1) Recognition or enforcement of an arbitral award, irrespective
- 7 of the country in which it was made, may be refused only:
- 8 (a) at the request of the party against whom it is invoked, if that
- 9 party furnishes to the proof that:
- 10 (i) a party to the arbitration agreement referred to in article 7 was
- 11 under some incapacity; or the said agreement is not valid under the law to
- 12 which the parties have subjected it or, failing any indication thereon, under
- 13 the law of the country where the award was made;
- 14 (ii) the party against whom the award is invoked was not given
- 15 proper notice of the appointment of an arbitrator or of the arbitral
- 16 proceedings or was otherwise unable to present his case;
- 17 (iii) the award deals with a dispute not contemplated by or not
- 18 falling within the terms of the submission to arbitration, or it contains
- 19 decisions on matters beyond the scope of the submission to arbitration,
- 20 provided that, if the decisions on matters submitted to arbitration can be
- 21 separated from those not so submitted, that part of the award which contains

1 decisions on matters submitted to arbitration may be recognized and enforced;

2 (iv) the composition of the arbitral tribunal or the arbitral procedure
3 was not in accordance with the agreement of the parties or, failing such
4 agreement, was not in accordance with the law of the country where the
5 arbitration took place; or

6 (v) the award has not yet become binding on the parties or has been set
7 aside or suspended by a court of the country in which, or under the law of
8 which, that award was made; or

9 (b) if the court finds that:

10 (i) the subject-matter of the dispute is not capable of settlement by
11 arbitration under the law of this State; or

12 (ii) the recognition or enforcement of the award would be contrary to
13 the public policy of this State.

14 (2) If an application for setting aside or suspension of an award has
15 been made to a court referred to in paragraph (1)(a)(v) of this article, the court
16 where recognition or enforcement is sought may, if it considers it proper,
17 adjourn its decision and may also, on the application of the party claiming
18 recognition or enforcement of the award, order the other party to provide
19 appropriate security.

20 3. Section 13 of the Principal Act is substituted with the following
21 section "13"-

22 13A: *Power of arbitral tribunal to order interim measures*

23 (1) Unless otherwise agreed by the parties, the arbitral tribunal may, at
24 the request of a party, grant interim measures.

25 (2) An interim measure is any temporary measure, whether in the
26 form of an award or in another form, by which, at any time prior to the issuance
27 of the award by which the dispute is finally decided, the arbitral tribunal orders
28 a party to:

29 (a) Maintain or restore the status quo pending determination of the
30 dispute;

1 (b) Take action that would prevent, or refrain from taking action
2 that is likely to cause, current or imminent harm or prejudice to the arbitral
3 process itself;

4 (c) Provide a means of preserving assets out of which a subsequent
5 award may be satisfied; or

6 (d) Preserve evidence that may be relevant and material to the
7 resolution of the dispute.

8 *Section 13B: Conditions for granting interim measures*

9 (1) The party requesting an interim measure under section
10 13(2)(a), (b) and (c) shall satisfy the arbitral tribunal that:

11 (a) Harm not adequately reparable by an award of damages is likely
12 to result if the measure is not ordered, and such harm substantially
13 outweighs the harm that is likely to result to the party against whom the
14 measure is directed if the measure is granted; and

15 (b) There is a reasonable possibility that the requesting party will
16 succeed on the merits of the claim. The determination on this possibility
17 shall not affect the discretion of the arbitral tribunal in making any
18 subsequent determination.

19 (2) With regard to a request for an interim measure under section
20 13A(2)(d), the requirements in paragraphs (1)(a) and (b) of this section shall
21 apply only to the extent the arbitral tribunal considers appropriate.

22 *Section 13C: Applications for preliminary orders and conditions*
23 *for granting preliminary orders*

24 (1) Unless otherwise agreed by the parties, a party may, without
25 notice to any other party, make a request for an interim measure together
26 with an application for a preliminary order directing a party not to frustrate
27 the purpose of the interim measure requested.

28 (2) The arbitral tribunal may grant a preliminary order provided it
29 considers that prior disclosure of the request for the interim measure to the

1 party against whom it is directed risks frustrating the purpose of the measure.

2 (3) The conditions defined under section 13A apply to any
3 preliminary order, provided that the harm to be assessed under section
4 13A(1)(a), is the harm likely to result from the order being granted or not.

5 Section 13D: *Specific regime for preliminary orders*

6 (1) Immediately after the arbitral tribunal has made a determination in
7 respect of an application for a preliminary order, the arbitral tribunal shall give
8 notice to all parties of the request for the interim measure, the application for
9 the preliminary order, the preliminary order, if any, and all other
10 communications, including by indicating the content of any oral
11 communication, between any party and the arbitral tribunal in relation thereto.

12 (2) At the same time, the arbitral tribunal shall give an opportunity to
13 any party against whom a preliminary order is directed to present its case at the
14 earliest practicable time.

15 (3) The arbitral tribunal shall decide promptly on any objection to the
16 preliminary order.

17 (4) A preliminary order shall expire after twenty days from the date
18 on which it was issued by the arbitral tribunal. However, the arbitral tribunal
19 may issue an interim measure adopting or modifying the preliminary order,
20 after the party against whom the preliminary order is directed has been given
21 notice and an opportunity to present its case.

22 (5) A preliminary order shall be binding on the parties but shall not be
23 subject to enforcement by a court. Such a preliminary order does not constitute
24 an award.

25 Section 13E: *Modification, suspension, termination*

26 The arbitral tribunal may modify, suspend or terminate an interim measure or a
27 preliminary order it has granted, upon application of any party or, in
28 exceptional circumstances and upon prior notice to the parties, on the arbitral
29 tribunal's own initiative.

1 Section 13F: *Provision of security*

2 (1) The arbitral tribunal may require the party requesting an interim
3 measure to provide appropriate security in connection with the measure.

4 (2) The arbitral tribunal shall require the party applying for a
5 preliminary order to provide security in connection with the order unless the
6 arbitral tribunal considers it inappropriate or unnecessary to do so.

7 Section 13G: *Disclosure*

8 (1) The arbitral tribunal may require any party promptly to disclose
9 any material change in the circumstances on the basis of which the measure
10 was requested or granted.

11 (2) The party applying for a preliminary order shall disclose to the
12 arbitral tribunal all circumstances that are likely to be relevant to the arbitral
13 tribunal's determination whether to grant or maintain the order, and such
14 obligation shall continue until the party against whom the order has been
15 requested has had an opportunity to present its case. Thereafter, paragraph
16 (1) of this section shall apply.

17 Section 13H: *Costs and damages*

18 The party requesting an interim measure or applying for a preliminary order
19 shall be liable for any costs and damages caused by the measure or the order
20 to any party if the arbitral tribunal later determines that, in the
21 circumstances, the measure or the order should not have been granted. The
22 arbitral tribunal may award such costs and damages at any point during the
23 proceedings.

24 Section 13I: *Recognition and enforcement*

25 (1) An interim measure issued by an arbitral tribunal shall be
26 recognized as binding and, unless otherwise provided by the arbitral
27 tribunal, enforced upon application to the competent court, irrespective of
28 the country in which it was issued, subject to the provisions of section 13I.

29 (2) The party who is seeking or has obtained recognition or
30 enforcement of an interim measure shall promptly inform the court of any

1 termination, suspension or modification of that interim measure.

2 (3) The court of the State where recognition or enforcement is sought
3 may, if it considers it proper, order the requesting party to provide appropriate
4 security if the arbitral tribunal has not already made a determination with
5 respect to security or where such a decision is necessary to protect the rights of
6 third parties.

7 Section 13J: *Grounds for refusing recognition or enforcement*

8 (1) Recognition or enforcement of an interim measure may be refused
9 only:

10 (a) At the request of the party against whom it is invoked if the court is
11 satisfied that:

12 1. (i) Such refusal is warranted on the grounds set forth in article 32(1)

13 (a) (i), (ii), (iii) or (iv);

14 2. (ii) The arbitral tribunal's decision with respect to the provision of
15 security in connection with the interim measure issued by the arbitral tribunal
16 has not been complied with; or

17 3. (iii) The interim measure has been terminated or suspended by the
18 arbitral tribunal or, where so empowered, by the court of the State in which the
19 arbitration takes place or under the law of which that interim measure was
20 granted; or

21 (b) If the court finds that:

22 1. (i) The interim measure is incompatible with the powers conferred
23 upon the court unless the court decides to reformulate the interim measure to
24 the extent necessary to adapt it to its own powers and procedures for the
25 purposes of enforcing that interim measure and without modifying its
26 substance; or

27 2. (ii) Any of the grounds set forth in section 32(1)(b)(i) or (ii), apply
28 to the recognition and enforcement of the interim measure.

29 (2) Any determination made by the court on any ground in paragraph
30 (1) of this section shall be effective only for the purposes of the application to

1 recognize and enforce the interim measure. The court where recognition or
2 enforcement is sought shall not, in making that determination, undertake a
3 review of the substance of the interim measure.

4 Section 13K: *Court-ordered interim measures*

5 A court shall have the same power of issuing an interim measure in relation
6 to arbitration proceedings, irrespective of whether their place is in the
7 territory of this State, as it has in relation to proceedings in courts. The court
8 shall exercise such power in accordance with its own procedures in
9 consideration of the specific features of international arbitration.

10 4. This Bill may be cited as the Arbitration and Conciliation Citation
11 (Amendment) Bill, 2017.

EXPLANATORY MEMORANDUM

This Bill seeks to Amend the Arbitration and Conciliation Act CAP, Laws of
the Federation of Nigeria, 2004.

