



EVALUATING THE IMPACT OF THIRD-PARTY FUNDING ON EXPANDING ACCESS TO ARBITRATION IN NIGERIA: OPPORTUNITIES, CHALLENGES, AND STRATEGIC RECOMMENDATIONS.

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ABSTRACT

The cost of arbitration proceedings could be challenging for certain parties and is capable of discouraging them from filing their matters for arbitration. Section 62 of the Arbitration and Mediation Act 2023 (AMA) introduced the practice of third-party funding (TPF) as a modern means of managing the cost, thereby increasing the access to arbitral remedies. The financial burden of the affected parties is lifted by the third-party funder, who provides financial support to one of the parties involved in the arbitration process (typically the claimant) in exchange for a portion of any financial award that may be obtained. This is particularly beneficial for parties who may have meritorious claims but lack the financial resources to pursue them.¹ Despite its potential to increase access to justice, TPF faces challenges in Nigeria, including legal uncertainty, enforceability concerns, and cultural barriers. This research evaluates the current arbitration landscape in Nigeria, assessing the viability of TPF as a means to expand access to arbitration. This study identifies key opportunities for TPF to enhance access to arbitration in Nigeria. However, it also reveals significant challenges that must be addressed to ensure the successful adoption of TPF. Based on the findings, strategic recommendations are provided to stakeholders, including policymakers, arbitration institutions, and potential funders, to harness the benefits of TPF and promote greater access to arbitration in Nigeria. By addressing these challenges and leveraging opportunities, TPF can play a vital role in expanding access to arbitration in Nigeria, contributing to a more inclusive and effective dispute resolution landscape.

1.0 INTRODUCTION

Historically, the practice of third-party funding was considered contrary to public policy and therefore deemed illegal. The principle of maintenance and champerty², historically rooted in English common law, refers to the unethical and often illegal practice of financially supporting another party's litigation in exchange for a share of the proceeds. These practices were originally deemed contrary to public policy due to concerns about encouraging frivolous lawsuits, promoting conflict, and undermining the integrity of the legal system. However, attitudes towards maintenance and champerty have evolved over time, and many jurisdictions, including Nigeria, have enacted legislation or developed case law to regulate or even permit third-party funding under certain circumstances.

On the 10th day of May 2022, Nigeria's Senate passed the Arbitration and Mediation Bill 2022 which was assented to by the President on the 26th day of May 2023 thereby replacing the Arbitration and Conciliation Act of 2004.

In context, the new Arbitration and Mediation Act 2023 ("the Act" or "the AMA") introduces a modern framework for arbitration, offering clearer guidelines and regulations on various aspects of arbitration practice including third-party funding. The new Act specifically provides that the torts of maintenance and champerty, do not apply in relation to third-party funding of arbitrations seated in Nigeria and related to proceedings in any court within Nigeria. This article therefore delves into the concept of third-party funding on expanding access to arbitration, its opportunities, challenges, and the strategic recommendations on how it is applied in Nigeria.

The Arbitration and Mediation Act, 2023 contains numerous provisions that guide entities seeking to arbitrate in Nigeria, including provisions on emergency arbitrators, the recognition and enforcement of interim measures, an award review tribunal, and third party funding ("TPF"), which is considered by arbitration practitioners as the most innovative provision.

2.0 THE CONCEPT OF ARBITRATION, THIRD PARTY FUNDER AND THIRD PARTY FUNDING

Arbitration is the reference of a dispute or difference between not less than two parties for determination, after hearing both sides in a judicial manner, by a person or persons other than a court of competent jurisdiction³.

Section 91(1) of the Arbitration and Mediation Act (AMA), 2023 defines Arbitration agreement as an agreement by the parties to

¹ "The Adoption of Third-party funding in the Arbitration and Mediation Act", <https://blog.nicarb.org/index.php/2024/07/09>

² Maintenance involves the improper interference by a third party in a lawsuit by supporting one party without a justifiable reason, while champerty specifically refers to the support of litigation in exchange for a portion of the outcome.

³ B. A. Garner, op, cil., 284.



submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

To Russell, Arbitration is a "written agreement to submit present and future differences to arbitration whether an arbitrator is named therein or not"³. The above definition of Russell actually states that an arbitration agreement must be written. A person to whom reference to arbitration is made is called an arbitrator, while his decision is called an "award". One or more arbitrators may constitute an arbitral tribunal. Arbitration could be statutory or voluntary by agreement of parties⁴.

Incidentally, not all disputes can be referred to arbitration. Disputes that can be referred to arbitration are not only justiciable issues triable as civil matters but disputes that can be compromised by way of accord and satisfaction⁵. These include all matters in dispute about real or personal property, disputes as to whether a contract has been breached, terms of a deed of separation between husband and wife. Specific questions of law, such as construction of documents may also be referred to arbitration⁶. Criminal matters cannot be settled by arbitration. These include dispute arising out of an illegal contract or wagering, divorce matters and an indictment for an offence of a public nature⁷.

The National Industrial Court (NIC) gives parties to a dispute the opportunity to explore arbitration and other alternative dispute resolution mechanisms for amicable resolution of their disputes without need to dissipate time and resources on litigation of disputes, causing strained relationships between the parties during and subsequent to the conclusion of the cases.⁸ Section 20 of the NIC Act lays the foundation for the adoption of Alternative Dispute Resolution (ADR) mechanisms by the NIC in stipulating: "In any proceedings in the court, the court may promote reconciliation among the parties thereto, encourage and facilitate the amicable settlement thereof". In compliance with this mandate, adequate provisions were made in the NIC Rules 2007 for the court to promote, facilitate and supervise alternative dispute resolution between parties in cases where the court is satisfied that the issues in dispute is best dealt with through amicable resolution, either through court- connected arbitration and an official or special referee appointed by the court, or by independent alternative dispute resolution mechanisms adopted by the parties.

Alternative dispute resolution refers to a variety means for dispute resolution employed by parties in reaching amicable resolution of disputes arising between them. It is a range of processes designed to aid parties in resolving their disputes outside the conventional judicial proceedings available at the regular courts and it involves the selection or design of a process that is best suited to a particular dispute and to the parties in dispute.⁹ The most common forms of ADR are: Negotiations, Conciliation, Mediation and Arbitration- (which is my major area of emphasis in this essay).

The aims of Alternative Dispute Resolution include: reducing delays, costs and congestions in court; enhancing adequate participation by parties in the dispute resolution process and facilitation of access to justice by the parties. Some of the advantages of ADR are evident in it's less adversarial nature which promotes continued business and personal relationships between parties; it is also less expensive than litigation in the regular courts; and it is less formal and therefore more sensitive to the parties' concerns and to peculiar situations; it saves time of all parties and the court¹⁰.

There is a progressive shift towards the adoption of ADR by the courts in view of its immense benefits to the parties and the resultant de-congestion of courts. In Lagos State, for instance, there is a facility known as the Lagos State Multi Door Courthouse (LMDC) established at the High Court of Lagos State, which has a court- connected ADR Centre funded through the joint collaboration if the Lagos State Judiciary, the Ministry of Justice and the Negotiation and Conflict Management Group (NMG).

In Abuja, there is also an Abuja Multi- Door Courthouse at the High Court of the FCT for transference of cases to arbitration by the court in deserving cases.¹¹ These projects show the gradual adoption of an integrated justice delivery system wherein ADR is incorporated by the courts and implemented alongside the regular court systems.

In any action before the NIC, the court may at any time order the whole cause or matter, or any question or issue of facts arising

⁴ D.J. Sutton, J. Kendall and J. Gill, *Russell on Arbitration*, (18th Ed.) Sweet & Maxwell, London, 1997

⁵ K. E. Oraegbunam & M. O. Nwogu, "Alternative Dispute Resolution Mechanisms in Nigeria", *Fundamentals of the Nigerian Legal System*, 2022.

⁶ *Kano State Urban Development Board v. Fanz Construction Co. Ltd.* (1986) 5NWLR (pt. 391) 32.

⁷ G. Ezejiolor, *op. Cit.*,3

⁸ O. D. Amucheazi, SAN and P. U. Abba, "Reference of Cases to Alternative Dispute Resolution" *The National Industrial Court of Nigeria: Law, Practice and Procedure* at pg. 197.

⁹ E. Ojukwu, "Introduction of Civil Procedure", pg 295.

¹⁰ O. D. Amucheazi, SAN and P. U. Abba, "Reference of Cases to Alternative Dispute Resolution" *The National Industrial Court of Nigeria: Law, Practice and Procedure* at pg. 197.

¹¹ Abuja Multi-Door Courthouse Rules, 2004.



therein, to be tried before a special referee, officer of the court, or arbitrator, as agreed by the parties. (Section 30(1) of the NIC Act 2006 and Order 18 Rule 1 of the NIC Rules 2007). It is imperative to note that reference of a cause or matter to a special referee or arbitrator by the court is not wholly conditional on the consent of the parties, since Section 31 of the NIC Act 2006 empowers the court to order the whole cause or matter or any question or issue of fact arising therein to be tried before a special referee or arbitrator if:

- a) All the parties interested, who are not under disability consent; or
- b) The cause or matter requires any prolonged examination of documents or any scientific or local investigation which cannot, in the opinion of the court, conveniently be conducted by the court through its ordinary officers; or
- c) The matter in dispute consists wholly, or in part, of accounts.

The above provision is disjunctive in nature, and the court may order the case to be referred to a special referee or arbitrator under any of the above grounds. Thus, consent of the parties is merely one of the grounds upon which such order can be made.

Nevertheless, in all cases where the matter is referred to an arbitrator, the person to be appointed as arbitrator must be agreed upon by the parties. In essence, therefore, while the court may refer the matter to arbitration on its own volition, it cannot appoint an arbitrator for the parties without their express consent concerning the person to be appointed as arbitrator.

Section 91(1) of the Arbitration and Mediation Act (AMA), 2023 defines ‘third-party funder’ and ‘third party funding arrangement explicitly thus’: “Third-party funder” means any natural or legal person who is not a party to the dispute but who enters into an agreement either with a disputing party, an affiliate of that party, or a law firm representing that party, to finance part or all of the cost of the proceedings, either individually or as part of a selected range of cases, and such financing is provided either through a donation or grant or in return for reimbursement depends on the outcome of the dispute or in return for a premium payment.

Section 61 of the Arbitration and Mediation Act, 2023 stipulates that a party can fund arbitration costs for another party in the hope of sharing from the gains of the party if the party’s claim succeeds. If a party enters a Third-Party Funding Agreement on, Before or after the commencement of arbitration, the party is mandated to immediately notify the other party, arbitral tribunal and arbitral institution where applicable to avoid conflict of interest (section 62 AMA, 2023)

The term, “Third-party funding arrangement” means a contract between the Third-Party Funder and a disputing party, an affiliate of that party, or a law firm representing that party, to finance part or all of the cost of the proceedings, either individually or as part of a selected range of cases, and such financing is provided either through a donation or grant or in return for reimbursement depends on the outcome of the dispute or in return for a premium payment.

Third-party funding (TPF) – a practice where an external financier steps in to provide financial assistance to either party to a dispute in exchange for share of the potential judgment or settlement sum, has therefore gained popularity as a means of financing legal claims. This can be crucial for ensuring access to justice, particularly in cases where financial resources might otherwise be a barrier.¹²

In other words, Third Party Funding is a non-recourse arrangement where typically an independent commercial fund, with no prior connection to a dispute, provides funding to a party to the proceedings, in return for a share of any potential damages awarded. Its use is well established in many jurisdictions including Australia, England & Wales, and the United States. The TPF industry has been expanding rapidly, with a global funding now worth more than US\$15 billion.¹³ For instance, since its establishment, Burford company has grown into a US\$5 billion company with more than US\$ 3.2 billion in investment portfolio as of 2018¹⁴. Other funders such as Juridical, Fulbrook Capital, Woodsford Litigation Funding, Omni Bridgeway, DS Legal Capital are also recurring players in the TPF industry who have had substantial growth in business. It is argued that there are new variants of disputes, the downturn in the oil and gas industry with potential for breach of contractual agreements, hence effects of globalization of markets, developments consequent upon internet use, online dispute resolution, hence attracting practices that were hitherto unknown including the likes of Third-Party funding to evolve¹⁵.

Third-party funding is sought as a result of a lack of financial resources to pursue claims independently. Increasingly, however, third-party funding is being used as a financing or risk management tool. The non-recourse nature of third-party funding (where the funder will only receive a return for its funding if the claim is successful) is particularly attractive to businesses, allowing them to apply

¹² Ibid. 4

¹³ Lord Justice Jackson, "Review of Civil Litigation Costs: Final Report" (2010) at para 4.

¹⁴ Burford Capital, "The Burford Annual: A report on our business in 2018 and the state of legal finance" (2018), 3.

¹⁵ Aluko & Oyebo Legals Publications (DEC 2019): Emergency Arbitrator and the new Rivers State Arbitration Law 2019. online at <https://www.aluko-oyebode.com/insights/emergency-arbitrator-and-the-new-rivers-state-arbitration-law-2019-law/>

their funds towards their core business while shifting the risk and cost of their claims to the funder¹⁶.

3.0 PROVISIONS OF THIRD-PARTY FUNDING IN THE ARBITRATION AND MEDIATION ACT, 2023.

One interesting aspect of this Act is the introduction and substantive provisions allowing TPF in Nigeria-seated arbitrations and arbitration-related proceedings and the express abolition of the common law torts of maintenance and champerty.

According to Section 52(1), which provides as follows:

‘The arbitral tribunal shall fix costs of arbitration in its award and the term “costs” includes: the costs of obtaining Third-Party Funding.’

In the same vein, Section 61 of the Act provides as follows: ‘The torts of Maintenance and Champerty (including being a common barrator) do not apply in relation to third-party funding of arbitration. This section applies to arbitration seated in Nigeria and to arbitration related proceedings in any court within Nigeria.’

Before now, this issue has been a challenge and that has hindered the application of third party funding in Nigeria. ‘Maintenance’ is the improper support of litigation in which the supporter has no legitimate concern without just cause or excuse. While ‘Champerty’ is an aggravated form of maintenance that occurs when the maintaining party pays some or all of the costs of a party in return for a share of the proceeds of the action or suit. In essence, in jurisdictions where these two torts continue to apply, most funding arrangements may be subject to challenge.

Whilst TPF is accepted in many jurisdictions, the Act makes Nigeria only the third jurisdiction to directly adopt such express legislation, following Singapore and Hong Kong in 2017¹⁷.

Section 62(1) of the Act also provides:

- (1) If a Third-Party Funding agreement is made, the party benefitting from it shall give written notice to the other party or parties, the arbitral tribunal and, where applicable, the arbitral institution, of the name and address of the Third-Party Funder.
- (2) Such written notice shall be made:
 - (a) for a funding agreement made on or before the commencement of the arbitration at the commencement of the arbitration; or
 - (b) for a funding agreement made after the commencement of the arbitration – without delay as soon as the funding agreement is made.
- (3) Where a Respondent has brought an application for security for cost based on the disclosure of Third-Party Funding, the Tribunal may allow the funded party or its counsel to provide the Tribunal with an affidavit stating whether, under the funding arrangement, the Funder has agreed to cover adverse costs order. The affidavit shall be a relevant consideration to the tribunal’s decision on whether to grant security for costs¹⁸.

It is clear from the above provisions that, the Bill imposes a disclosure obligation on the party benefitting from a TPF agreement. Basic information on the existence of the funding agreement, including the name and address of the funder, must be disclosed to the other parties, the arbitral tribunal, and, where applicable, the arbitral institution. This disclosure must be made at the commencement of the arbitration or immediately thereafter (if the funding agreement is signed after the arbitration has commenced).

This is an important provision because it is argued that one of the benefits of imposing an obligation to disclose this information is that it allows the tribunal to proactively manage issues of conflict of interest that may arise in the context of a funded arbitration¹⁹.

Also, in subsection (3) above, on the issue of security for cost applications. The bill provides that where a respondent brings security for costs application based on the disclosure of TPF, the tribunal may allow the funded party or its counsel to provide the tribunal with an affidavit confirming whether the funder has agreed to cover adverse costs orders. The affidavit is intended to form part of the information that the tribunal will consider in its decision on the security for cost application. For the respondent, such confirmation may be of some assistance given that the security for costs application is likely to have been made because of concerns that the funded party would be unable to pay the respondent’s costs if ordered to do so.

However, the reality is that much will hinge on the terms of cover set out in the funding agreement²⁰. While arbitrators and other users

¹⁶ International Arbitration update, 2017, February 13

¹⁷ S. Gilbert: Third-party funding of Arbitration in Nigeria; Prospects, Challenges and Lessons from Singapore and Hong Kong.

¹⁸ Omoaka, Godwin; Nweke-Eze, Stanley and Odunsi, Olusola (2021). Third-party funding in Nigeria- seated arbitration proceedings. Online at <https://www.ibanet.org/third-party-funding-Nigeria-arb-proceedings>

¹⁹ Ibid p5

²⁰ <https://www.jdsupra.com/legalnews/recent-arbitration-reforms-in-nigeria-2184817/>



are optimistic about the Bill and see it as a positive initiative that is introduced in the Bill, however, it remains to be seen how the funding market will react to the Bill and whether third-party funders may be more willing to fund Nigeria-seated arbitrations²¹.

4.0 CHALLENGES TO THIRD-PARTY FUNDING IN NIGERIA

1. Existence of the common Law of doctrines of Champerty and maintenance within the Nigerian Legal system: Although the common law doctrines of champerty and maintenance have been abolished by the Arbitration and Mediation Act 2023, it is still being perpetuated by some dubious third party funders.

Interestingly, these doctrines have been affirmed by Nigerian Courts in plethora of cases, inclusive of the case *Egbor & Anor v. Ogbebor and Oloko v. Ube*²².

In *Oloko v. Ube*, the Court of Appeal Per Edozie JCA held that champerty is a form of maintenance and occurs when the person maintaining another stipulates for a share of the proceeds of the action or suit or other contentious proceedings where the property is in dispute²³.

In *Egbor v. Ogbebor*, the Court of Appeal Per Ugochukwu Anthony Ogagwu, JCA held that, “It is no doubt settled law that a situation where a person elects to maintain and bear the costs of an action for another to share the proceeds of the action or suit is champertous”.

The Court went further to express the view that in the determination of whether a relationship is champertous or contrary to public policy, the facts must show that the party being accused of champerty offered to maintain the action by bearing the costs of the litigation to be given a share of the proceeds²⁴.

From the Court’s decision in this case, it appears that for a contingency fee arrangement to be champertous, there has to be some element of maintenance. This implies that third-party funding of litigation might not be champertous, if the third party merely ‘bears the cost of action for another, without any intention of benefiting from the suit by way of sharing the proceeds of the action’²⁵. However, the odds of this occurring in an arbitration context are very slim, as third-party funding is premised on sharing the proceeds of the action.

When a party wins a case, third-party funders typically reclaim their initial investment along with a substantial share of the damages awarded. This arrangement can greatly reduce the compensation that the claimant ultimately receives. Additionally, if the arbitration outcome is unfavorable, the party may face further financial liabilities.

2. Challenges regarding confidentiality and disclosure as well as conflicts of interest: According to Omoaka et al²⁶, third-party funding arrangements may give rise to concerns relating to confidentiality and disclosure (particularly about the exchange of information between the claimant and the funder) as well as conflicts of interest (for example, reconciling the interests of the funder with the interest of the claimant during the arbitration proceedings). The laws governing confidentiality and privilege vary widely, making it complex to share information with funders. It is essential for parties to negotiate confidentiality or non-disclosure agreements with funders to protect sensitive information. Even though sharing information is necessary to obtain funding, parties must carefully consider which details are crucial to disclose to minimize risks.

3. Potential Conflicts of Interest: Third-party funding agreements can lead to conflicts of interest that may not always be apparent. As funders focus on maximizing their returns, they might influence decisions in ways that do not align with the parties' best interests, raising questions about the fairness and impartiality of the arbitration process.

4. Challenges Regarding Confidentiality and Privilege: The laws governing confidentiality and privilege vary widely, making it complex to share information with funders. It is essential for parties to negotiate confidentiality or non-disclosure agreements with funders to protect sensitive information. Even though sharing information is necessary to obtain funding, parties must carefully consider which details are crucial to disclose to minimize risks.

5. Issue of non-regulation of third-party funding in Nigeria-seated arbitration proceedings: While the Arbitration and Mediation Act will pave the way for third-party funding in Nigerian jurisdictions, the issue of unregulated proceedings can be a barrier. It would have been necessary to have more detailed provisions in the Act that will regulate the entire spectrum of third-party funding arrangements in Nigerian arbitration proceedings, particularly regarding questions of confidentiality and conflict of interest.

²¹ White & case, 2022

²² *Oloko v. Ube* [2001] 1 NWLR (pt 729) 161.

²³ Omoaka et al 2021

²⁴ Ajibade & Co Publications 2021

²⁵ *Ibid* p6

²⁶ Omoaka, Godwin; Nweke-Eze, Stanley and Odunsi, Olusola (2021). Third-party funding in Nigeria- seated arbitration proceedings. Online at <https://www.ibanet.org/third-party-funding-Nigeria-arb- proceedings>



6. Issue of enforceability of third party funding (TPF) agreement: Nigeria's regulatory environment poses challenges for TPF, including restrictions on foreign investment and currency control issues. Nigeria lacks a clear legal framework for TPF, leading to uncertainty and potential regulatory risks. The enforceability of TPF agreements in Nigerian courts is uncertain, making it challenging for funders to recoup their investments. The fact that Nigeria's arbitration laws do not provide adequate security for funders' investments made the issue more complex.

7. Cultural factors and exorbitant arbitrator's fees: Third party funding is still a relatively new concept in Nigeria, and cultural factors may influence parties' willingness to adopt it particularly among indigenous communities. Also, high arbitrator's fees in Nigeria can deter parties from seeking arbitration which makes it challenging for funders to recoup their investments. TPF may not be accessible to all parties in Nigeria, particularly small and medium-sized enterprises or individuals with limited financial resources²⁷.

8. Dispute resolution: Nigeria's arbitration landscape is still developing, which can lead to inconsistent decisions and make it challenging for funders to assess risks.

9. Limited expertise and inadequate infrastructure: Nigeria has a limited pool of experienced arbitration practitioners and experts, which can impact the quality of arbitration services and the enforceability of TPF agreements. Also, Nigeria's infrastructure for arbitration, such as hearing facilities and technology are inadequate, which can impact the efficiency and effectiveness of the arbitration process.

10. Corruption: Corruption remains a significant challenge in Nigeria, which can affect the integrity of the arbitration process and the enforceability of TPF agreements. Limited transparency in Nigeria's arbitration process can make it challenging for funders to assess risks and make informed investment decisions.

11. Currency fluctuations: Nigeria's currency, the naira, has experienced significant fluctuations in value, which can affect the value of TPF investments.

12. Language barriers: Language barriers may exist in Nigeria, particularly in rural areas, which can impact the accessibility and effectiveness of arbitration services.

Addressing these challenges will be crucial to developing a robust TPF market for arbitration in Nigeria and ensuring that TPF is accessible, effective, and enforceable.

5.0 OPPORTUNITIES FOR THIRD PARTY FUNDING IN EXPANDING ACCESS TO ARBITRATION IN NIGERIA

The new Arbitration and Mediation Act 2023 in Nigeria has opened up opportunities for third-party funding, making arbitration more accessible and affordable by covering the costs of arbitration thereby reducing financial burdens and making it easier for individuals and marginalized groups to access arbitration and resolve disputes through arbitration without financial barriers.

Also, Third-party funding can help Small and Medium-sized Enterprises (SMEs), which are the backbone of the Nigerian economy, to access arbitration and resolve disputes without financial constraints.

Third party funding helps to increase access to justice by providing financial support, allowing those who may not have been able to afford arbitration to now have access to this dispute resolution mechanism.

The recognition of third-party funding can help promote arbitration as a viable dispute resolution option in Nigeria, making it more attractive to individuals and businesses. The growth of third-party funding in arbitration can contribute to the development of the arbitration landscape in Nigeria, making it more robust and effective.

Again, the use of third-party funding in arbitration can also encourage foreign investment in Nigeria, as it provides an additional layer of security for investors.

Nigeria's recognition of third-party funding can attract international arbitration cases, positioning the country as a hub for international dispute resolution.

Furthermore, with third-party funding, arbitral awards can be enforced more effectively, providing an added layer of security for parties.

Finally, the growth of third-party funding can lead to increased specialization in arbitration, with more lawyers and experts focusing on this area thereby leading to the expansion of arbitration, creating more job opportunities which contributes to the economic growth of the nation.

²⁷ D.J. Sutton, J. Kendall and J. Gill, *Russell on Arbitration*, (18th Ed.) Sweet & Maxwell, London, 1997



By recognizing third-party funding, Nigeria has taken a significant step in making arbitration more accessible, affordable, and attractive to individuals and businesses. This development has the potential to transform the dispute resolution landscape in Nigeria and promote economic growth²⁸.

6.0 CONCLUSION/ RECOMMENDATIONS

The Arbitration and Mediation Act 2023 explicitly endorses third-party funding in Nigeria, which has addressed previous uncertainties regarding its applicability in arbitration settings.

Funders should conduct thorough due diligence on the dispute's merits before committing resources. This is especially pertinent for foreign financiers who may benefit from the insights of a local legal expert while parties seeking funding should vet potential financiers carefully to understand their track record and reputation. Since the Act allows parties to freely negotiate third party funding (TPF) agreements, engaging a legal expert to review the terms proposed by the financier is crucial. The Act champions transparency by mandating the disclosure of funding arrangements not only to the opposing party but also to the arbitral tribunal and, where relevant, the arbitration institution in order to manage potential conflicts of interest. Parties should establish clear guidelines for funder withdrawal and ensure that funders do not exert undue influence on arbitration proceedings. Parties must also negotiate confidentiality or non-disclosure agreements with funders to protect sensitive information, as laws governing confidentiality and privilege vary widely.

The government has a huge role to play in enhancing the credibility of third party funding in arbitration by encouraging the development of arbitration-friendly policies and procedures to support the growth of arbitration and third-party funding. Develop a clear regulatory framework for third-party funding in arbitration to ensure transparency, accountability, and consistency and develop clear tax guidelines for third-party funding in arbitration to ensure clarity and consistency.

The government should also strengthen enforcement mechanisms for arbitral awards to increase confidence in the arbitration process and attract more third-party funders, develop clear guidelines and procedures for managing conflicts of interest that may arise when third-party funders are involved in arbitration and ensure that third-party funding agreements respect party autonomy and do not compromise the integrity of the arbitration process.

Furthermore, the government should also take proactive measures in educating legal professionals, businesses, and individuals on the benefits and risks of third-party funding in arbitration to increase adoption and effective use and encourage collaboration between legal professionals, arbitration institutions, and third-party funders to develop best practices and standards for third-party funding in arbitration, making it more accessible, affordable, and effective for individuals and businesses.

Also, the government should encourage innovation in third-party funding products and services to meet the diverse needs of parties in arbitration, address ethical concerns related to third-party funding in arbitration, such as conflicts of interest and confidentiality and continuously monitor and evaluate the impact of third-party funding on arbitration in Nigeria and make adjustments as needed.

Finally, the government should establish specialized arbitration institutions or centres focused on specific areas of arbitration, such as construction or intellectual property and invest in technological infrastructure to support online arbitration and third-party funding platforms.

By implementing these recommendations, Nigeria can foster a more conducive environment for arbitration, making it an attractive destination for international arbitration and promoting access to justice for all individuals and businesses.

²⁸ Omoaka, Godwin; Nweke-Eze, Stanley and Odunsi, Olusola (2021). Third-party funding in Nigeria- seated arbitration proceedings. Online at <https://www.ibanet.org/third-party-funding-Nigeria-arb- proceedings>