THE SIERRA LEONE ARBITRATION ACT OF 2022 (SLAA): KEY PROVISIONS FOR EFFECTIVE ADR SYSTEM

– Abigail Suwu-Kaindoh Esq. 1

Introduction

The Sierra Leone Arbitration Act, 2022 (Act No. 18 of 2022) repeals and replace the Arbitration Act, Cap 25 (Laws of Sierra Leone 1960). The Act provides inter-alia for the incorporation of the Convention on the Recognition and Enforcement of Arbitral Awards (1955), in respect of awards made in Sierra Leone and to provide for fair settlement of disputes by domestic and international arbitration.

This article will discuss the historical track of arbitration, outline key provisions of the 2022 Act, on the jurisdiction of arbitral tribunal, emergency measures and preliminary orders, powers of court in relation to arbitration proceedings and other extensive provisions on emerging issues such as third party funding and video-conferencing. It will also discuss provisions relating to the domestication of the New York Convention on enforcement of Arbitral Awards (1958) and The International Convention on Settlement of Investment Disputes (1966) as the new legal framework for international arbitration seated in Sierra Leone.

HISTORICAL PERSPECTIVE

Prior to the enactment of the 2022 Act, governing law on arbitration in Sierra Leone was the Arbitration Act, Cap 25 (Laws of Sierra Leone 1960).2 The archaic legislation though scanty offered parties the alternative to request for a stay of court proceedings where there is proof of an agreement to arbitrate.3 By virtue of art. 5 of the Cap 25, a party may request a stay of proceedings on evidence of arbitration agreement.

However, the adherence by the Court was much to be desired. The approach of individual judges mostly illustrated reluctance of the court in respective of the existence of an arbitration agreement. For example, in the case of Kabia v. Kamara (1967-68) ALR S.L 45.), the court

1 Senior State Counsel, Office of the Attorney General and Minister of Justice, Senior State Counsel, (LLM International Arbitration (Georgetown University Law Centre ’19). The author wish to express profound appreciation to Chief Justice Babatunde Edwards, Chief Justice of the Republic of Sierra Leone, Justice Eku Roberts, Mohamed Lamin Tarawally Esq., Attorney General and Minister of Justice for taught leadership. Gratitude to Professor Abayomi Okuboyote, Umaru Napoleon Koroma Esq., former Deputy Minister of Justice and Osman I. Kanu (Committee Members) for their contributions the during the Conference on the Arbitration Bill of Sierra Leone (2022) held at Tokeh, Freetown in 2021.


3 See section 5 of Cap. 25 of the Laws of Sierra Leone (1960)
held that the existence of an arbitration agreement does not bar the inherent jurisdiction of the court.\(^4\)

The case was a claim for special damages and general damages for breach of a contract of employment. On a preliminary objection to stay the proceedings pending the implementation of the arbitration clause, the learned trial Judge Lord Judge Beoku-Betts, J in his dictum opined that “The existence of the Arbitration Agreement does not necessary oust the jurisdiction of the court”. On appeal, Dr Marcus Jones, solicitor for the Appellant submitted that it was incumbent on the trial judge to have either stayed the proceedings until the parties have complied with cl. 5 of the agreement. However, the the Court of Appeal upheld the decision of the lower court. Learned Judges, Justice Sir Samuel Bankole Jones JA presiding opined that “I think it has for a long time been the law that a mere agreement to refer matters in difference between two parties to arbitration cannot be pleaded in bar of an action brought in respect thereof”\(^5\) That matter was referred to the Master and Registrar to take such necessary steps and receive such evidence on behalf of the Court.

The jurisprudence in the above case illustrates the approach of the court to arbitration agreement. In the recent case of CEE DEE INVESTMENT LTD V SIERRA RUTILE LTD Cc 10/11/201, the judicial reasoning of the court is that stay of proceedings is not a matter of cause but rather the court has a discretion as whether to grant or stay proceedings (Justice Browne- Mark JSC).\(^6\)

Further, given the lack of institutional support to arbitration, there was a continual decline in the choice of arbitration in commercial relations. Parties rarely saw the need to choose arbitration in light of the unwavering constant “inherent” jurisdiction of the court to hear and determine matters brought before the court.\(^7\)

Shift in the Legal Framework

The legal framework began to change in wake of 2010, with the establishment of the Fast Track Commercial Division of the High Court. The original Rules of the Court provided for an in-built ADR system, which offered the parties an opportunity to seek amicable settlement of their disputes with the support and guidance of the court. However, the system failed to work effectively as it was seen as a waste of time as parties eventually resorted to well-organized power structure of the court in ensuring compliance though not without disadvantages. Predictability and confidentiality are some the disadvantages for parties. In general, the major consideration for ADR community was the dwarf state of ADR as preferred means of dispute resolution in Sierra Leone. This begs the need for a national legal frame in line with modern international ADR systems as envisaged by the United Nations

\(^4\) Kabia v. Kamara (1967-68) ALR S.L 45.,

\(^5\) Scott v. Avery (1856), H.L. Cas. 811; 10 ER 112.

\(^6\) Other landmark cases dealing with the view of the courts on arbitration agreements include: Vita Foam v Leone Construction General Engineering Services (Unreported) Securion v A-G of S.L & Ministry of Fisheries(Unreported) and Mohamed Kamel Wansa v. Republic of Sierra Leone & Anor(Unreported).

\(^7\)
Convention on International Trade Law (UNCITRAL) as stipulated by its model laws. In steady progress, Sierra Leone made progress to improve the legal framework. Example include the enactment of the Investment Promotion Act of 2004 and the adoption of the 2010 UNCITRAL Model law. This also followed the execution of multiple international contracts by the Government which bears arbitration clauses. In recent and more eminent step, Sierra Leone ratified the New York Convention, making it the 198th member.

The Sierra Leone Arbitration Act, 2022 was passed into law by the parliament of Sierra Leone in 2022. The Act entails extensive provisions on the jurisdiction of the arbitral tribunal, appointment of emergency arbitrators and interim measures and modern elements of international arbitration like Third Party Funding.

The Act guarantees party autonomy as a crucial aspect and embraces the echoes the ethos of ADR. For instance, the Act limit the powers of the Court to the barest minimum. Section 55(5) of the Act provides Court shall act only if or to the extent that the arbitral tribunal, and any arbitral or other institution or person vested by the parties with power in that regard, has no power or is unable for the time being to act effectively.

KEY PROVISIONS OF THE 2022 ARBITRATION ACT

The short title of the Sierra Leone Arbitration Act, 2022 provides inter-alia for the incorporation of the Convention on the Recognition and Enforcement of Arbitral Awards (1955), in respect of awards made in Sierra Leone and to provide for fair settlement of disputes by domestic and international arbitration. The purpose of the Act is to give efficacy and power to arbitrators and arbitral proceedings. Some of the key provisions of the Act are highlighted below.

**Jurisdiction of arbitral tribunal**

The jurisdiction of arbitral tribunals is provided for pursuant Part VI of the 2022 Act. The arbitral tribunal have power and competence to rule on its own jurisdiction pursuant to sections 27 of the Act. The power of an arbitral tribunal to rule on its own jurisdiction under the Act includes the power to decide on the validity of arbitration agreement, the constitution of the arbitral and whether matters have been submitted to arbitration in accordance with the arbitration agreement.

The provision embodies the cardinal principle of “competence-competence” in arbitration. The power of the arbitral tribunal to rule on its jurisdiction includes such power to determine the existence of a valid arbitration agreement, the constitution of the tribunal and whether the

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8 UNCITRAL Model Law 1979, 2006 and 2010 respectively.
9 One such Agreements resulted in the landmark LCIA and ICSID arbitration case of SL Mining v. The Government of Sierra Leone available at
10 Section 55(5) of the Act
11 Section 27(1) of the Sierra Leone Arbitration Act 2022
matter is submitted to arbitration as stipulated in sub section 3 of section 27. The doctrine of competence-competence is the hallmark of international arbitration.\textsuperscript{12}

**Emergency Arbitrators, Interim measures and Powers of Court in relation to arbitration proceedings.**\textsuperscript{13}

The Act provides for appointment of emergency arbitrators and the grant of interim measures under Part VII of the Act. A party requiring emergency relief may, file a request for the appointment of emergency arbitrator, concurrent with or following the filing of the request for arbitration pursuant to section 28 of the Act. The request for emergency arbitrator may be made to the arbitral institution, failing which the court shall appoint. The Act contains extensive provisions on the grant of interim measures by an arbitral tribunal conditions for granting interim measures, security for cost and the enforcement of interim measures.\textsuperscript{14}

However, it is worth noting that failing the appointment of emergency arbitrator, and prior to the constitution of the arbitral tribunal, the court shall have power to grant interim protection measures under section 11 of the Act\textsuperscript{15}. In the case of **Cape Lambert Resources Ltd and Craig Dean, Gerald Metals Ltd, Frank Timis, Timis Mining Corporation (SL) Ltd (FTCC 089/17 2017 C No. 4)** the learned Judge, Honorable Justice Ms. Justice Miatta Maria Samba in granting an interlocutory injunction opined that “an Arbitral Tribunal cannot issue interim measures until the tribunal itself has been established. …National Courts deal with urgent matters which an Arbitral Tribunal that is not yet established plainly cannot do”.\textsuperscript{16}

**Arbitration process and role of the court.**

The Act makes detailed provisions on the conduct of arbitral proceedings under Part VIII of the Act. Pursuant to section 42(1)(a), an arbitral tribunal shall “act fairly and impartially as between the parties, giving each party a reasonable opportunity of putting his case”

Sections 43 – 46 provides for procedural and evidential matters and legal representation. Sections 47-52 deals with matters related to arbitration management conference, hearings and written proceedings, confidentiality and appointment of tribunal experts.

The Act makes explicit provision on the role of the court in arbitration under Part IX of the Act. To the extent the parties agree, the powers of the court is to aid and support the arbitral process. For instance, section 53(1) provides that the court may make an order requiring a

\textsuperscript{12} ABYEI Arbitration Proceedings
\textsuperscript{13} Section -27- 41
\textsuperscript{14} Sections 31-41
\textsuperscript{15} section 11
\textsuperscript{16} (FTCC 089/17 2017 C No. 4) Unreported. Contrast with the case of SL Mining v. Government of Sierra Leone (ICC Case No. 24708/TO (EA) where the arbitral tribunal granted emergency orders under Art. 29 of the ICC Rules.\textsuperscript{16}
party to comply with a peremptory order made by the arbitral tribunal. See sections 55 of the Act. The role of the court in challenging arbitral awards is set out Part XI of the Act. Sections 63(2) provides that “an arbitral award maybe set aside by the Court.”. The grounds for setting aside awards is set out in paragraphs (a)(ii-v) and (b) and (ii) respectively. These grounds are in tandem with the provisions of the New York Convention, 1955.

**Third Party Funding**

The Act provides for third party funding of arbitration under Part XV of the Act. Third party funding Agreement is made and the party benefiting from it shall give written notice to the other party(s) and the arbitral tribunal. This provision gives the Sierra Leone Arbitration Act a face lift into the modern sphere of third party funding regulated jurisdictions with Hong Kong, Singapore and recently Nigeria.

Third party is an emerging issue in International Arbitration. Key among the advantages of third party funding is Necessity for funding to prosecute sophisticated international arbitration.

**Recognition and enforcement of foreign awards under New York Convention and ICSID**

Part XII of the Act deals with the recognition and enforcement of awards. Section 65(1) of the Act provides that “an arbitral award shall, irrespective of the country or State in which it is made, be recognised as binding...” However, a party to the arbitration may request the court to refuse recognition or enforcement of an award on the grounds stipulated under sections 66(2)(a-j) of the Act.


The SLAA established the Sierra Leone International Arbitration Centre as an independent corporate entity pursuant to Part XVII of the Act thereof.

**Conclusion**

The Sierra Leone Arbitration Act of 2022 encompasses modern provisions to constitute essential system for both domestic and international arbitration in Sierra Leone.

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17 Section 80(1)
18 The Third Party Funding Debate – we look at the Risks, Sept. 2016 Northon Rose Fulbright
20 sections 65 – 67
21 Sections 68-71
22 section 86
However, the piece of legislation is but the genesis in the strides towards developing an amiable system for arbitration. It requires the political will of the State in providing the institutional support in ensuring a structured system for arbitration and the antecedent opportunity it affords Sierra Leone as a hub for international arbitration.

**References**

*Laws of Sierra Leone 1960 (Cap 25)*

*Kabia v. Kamara (1967-68) ALR S.L 45.*

*The Arbitration Act of Sierra Leone (No. 18 of 2022) 2022*

*UNCITRAL Model Law 1979, 2006 and 2010*

*Cape Lambert Resources Ltd and Craig Dean, Gerald Metals Ltd, Frank Timis, Timis Mining Corporation (SL) Ltd.*

*The Third Party Funding Debate – we look at the Risks, Sept. 2016 Norton Rose Fulbright*