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TEMPLARS ThoughtLab

Mediation as a Strategic Advantage: *Turning Nigeria's Legal Framework into Commercial Value*

Introduction

Commercial disputes are an inevitable feature of business. In energy, banking, construction, infrastructure and telecommunications, a single dispute can tie up capital, disrupt operations, absorb management time and jeopardise valuable relationships. Even a business that ultimately succeeds in litigation or arbitration may pay heavily for that victory.

For boards, investors and general counsel, the question is therefore not simply how to win a dispute, but how to resolve it in a way that protects commercial value. Mediation, in which an independent neutral helps the parties negotiate a workable solution while they retain control of the outcome, offers an increasingly compelling answer, and the Arbitration and Mediation Act, 2023 (the “**AMA**”) has strengthened its legal foundation.

The Business Case: Beyond Saving Legal Costs

Litigation and arbitration determine legal rights and remedies. Mediation allows parties to address the commercial interests behind the dispute and to agree outcomes that a court or tribunal may be unable to order. An energy dispute over pricing or payment may be resolved through revised pricing, phased payments or adjusted supply commitments. A construction dispute may settle through a revised completion programme, agreed variations or restructured payments. A joint venture dispute may end in governance changes, a buy-out or an orderly separation. The central advantage is **the ability to produce commercially valuable outcomes that adjudication alone may not deliver.**

The Centre for Effective Dispute Resolution's *Eleventh Mediation Audit* (2025) reported an overall settlement rate of 87% for the mediations covered by its United Kingdom research, with 70% settling on the day.¹ These figures cannot be assumed to reflect Nigerian outcomes, but they show what well-prepared mediation can achieve.

¹CEDR, *The Eleventh Mediation Audit* (2025), covering the year ended 30 September 2024, available at <https://learn.cedr.com/hubfs/CEDR%20Mediation%20Audit%202025.pdf>, accessed on 16 October 2026.

Mediation in Significant Commercial Disputes

Mediation is not confined to modest claims. After the collapse of Lehman Brothers in 2008, the US Bankruptcy Court for the Southern District of New York approved court-ordered alternative dispute resolution procedures in September 2009, initially for the estate's derivatives claims. According to a 2016 update by former Bankruptcy Judge James M Peck, the programme as a whole had produced settlements with 564 counterparties and recoveries of approximately US\$3.1 billion. Separately, 98% of the Tier One matters that had been through mediation had been resolved without judicial intervention.² The second figure relates only to those mediated matters. Although these figures are specific to the Lehman Brothers programme and should not be generalised, they demonstrate how structured mediation can facilitate the resolution of complex, high-value financial disputes.

Judicial attitudes are also changing. In *Churchill v Merthyr Tydfil County Borough Council* [2023] EWCA Civ 1416 at [58] and [74], the Court of Appeal of England and Wales confirmed that courts may, in appropriate circumstances, stay proceedings for, or order, parties to engage in non-court-based dispute resolution, and amendments to the Civil Procedure Rules from 1 October 2024 have reinforced those powers.³ These developments do not govern Nigerian proceedings, but they reflect mediation's growing place in a leading commercial jurisdiction.

A Stronger Legal Framework for Settlements

Mediation was not legally ineffective before 2023. Mediated settlements were enforceable as contracts, and court-connected schemes such as the Lagos Multi-Door Courthouse allowed settlements endorsed by an ADR Judge to take effect as judgments of the court.⁴ What the former Arbitration and Conciliation Act lacked was a comparable national framework for mediation, and the AMA fills that gap.

Subject to section 87, a mediated settlement agreement is binding on the parties and enforceable in court as a contract, consent judgment or consent award. These routes are not interchangeable: the appropriate route, and the documents required under section 83, must be established in each case. A court may also refuse relief on specified grounds, including incapacity of a party; an agreement that is void, not final or unclear; a mediator's undisclosed circumstances affecting impartiality that had a material impact on the party; public policy; and subject matter not capable of settlement by mediation.⁵

The AMA also protects the process. The limitation period for the claim that is the subject of the mediation is suspended while it is under way, although businesses should continue to monitor other contractual and statutory deadlines. Mediation information is confidential and specified mediation communications cannot be relied upon in later proceedings, subject to exceptions such as disclosure required by law or needed to enforce a settlement; evidence that is otherwise admissible does not become inadmissible merely because it was used in mediation.⁶

Cross-Border Enforceability: Nigeria's Strategic Opportunity

Nigeria ratified the United Nations Convention on International Settlement Agreements Resulting from Mediation (the "**Singapore Convention**") on 27 November 2023, and it entered into force for Nigeria on 27 May 2024.⁷

The Convention provides a framework for relief on qualifying international commercial settlement agreements in States where it is in force, subject to its requirements and limited refusal grounds, and section 87 of the AMA governs its application to such settlements concluded outside Nigeria. Relief is not automatic: before settling, parties should confirm that the agreement qualifies, that the State where enforcement may be needed is a party, and what local procedure applies.

²James M Peck, *Lehman Brothers Holdings Inc., et al. Plan Administration Update* (16 August 2016), slide 7, available at <https://www.acc.primefinancedisputes.org/files/2017-02/peck-lbhi-plan-administration-update.pdf>, accessed on 16 October 2026.

³Civil Procedure (Amendment No. 3) Rules 2024 (SI 2024/839).

⁴Lagos Multi-Door Courthouse Law, 2007.

⁵Sections 82(2), 83 and 84 of the AMA.

⁶Sections 71, 76 and 77 of the AMA.

⁷UNCITRAL, *Status: United Nations Convention on International Settlement Agreements Resulting from Mediation*, available at https://uncitral.un.org/en/texts/mediation/conventions/international_settlement_agreements/status, accessed on 16 October 2026.

What Businesses Should Do Differently

1. **Consider mediation when drafting the dispute resolution clause.** A tiered clause providing for negotiation and mediation before arbitration or litigation can suit long-term or relationship-driven contracts, but it is not right for every transaction. Any such clause should set clear time limits, preserve access to urgent interim relief and avoid procedural obstacles to commencing arbitration or litigation.
2. **Time it to the information.** Mediate once the key facts and quantum are clear enough for each side to value its risk, and before costs and positions become entrenched.
3. **Send decision-makers, not just lawyers.** Attend with settlement authority, reliable financial data and a realistic view of legal exposure and the alternatives to settlement.
4. **Draft the settlement like a transaction.** Define payment and performance milestones, security, releases, default consequences and the enforcement route, with an eye on where assets are located.
5. **Keep protective options open.** Mediation should run alongside, not instead of, interim relief, asset preservation or adjudication where settlement is inappropriate or fails.

Conclusion

The AMA and the Singapore Convention have strengthened mediation's place in Nigerian and cross-border commercial dispute resolution. The strategic advantage lies not in treating mediation as a universal alternative to litigation or arbitration, but in recognising when a negotiated outcome will deliver greater commercial value than a contested victory. **The most successful dispute strategy is not necessarily the one that wins the case, but the one that best protects the business.**

For advice on dispute resolution clauses, commercial disputes, mediation or the enforcement of settlement agreements, please contact Templars' Dispute Resolution team.

If you require any further information, do not hesitate to contact us.