# NIGERIA

# NOTE

*General Editor*

The authors of the National Report Nigeria, Olufunke Adekoya SAN, Adedapo Tunde-Olowu SAN, Perenami Momodu and Oluwaseun Philip-Idiok, confirm that the National Report as published in Supplement 131 of March 2024 ***reflects current arbitral practice*** in Nigeria.

The authors also confirm that the status of the legislation attached to the National Report is as follows:

- **Annex I**: Arbitration and Mediation Act, 2023 (published in Supplement 131 of March 2024) ***is in effect***;
- **Annex II**: The Lagos State Arbitration Law of 2009 (published in Supplement 85 of August 2015) ***remains in effect***
- **Annex III**: Lagos Court of Arbitration Law of 2009 (as amended by the Lagos Court of Arbitration [amendment] Law of 2015) (published in Supplement 98 of March 2018) ***remains in effect***;[1]
- **Annex IV:** Delta State Arbitration Law, 2022 (published in Supplement 131 of March 2024) ***is in effect***.

1. The Court's Arbitration Rules 2018 remain in effect.

NIGERIA

# FEDERAL REPUBLIC OF NIGERIA

*Funke Adekoya, SAN*,* *Adedapo Tunde-Olowu, SAN*,** *Perenami Momodu****
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including

ANNEX I: Arbitration and Mediation Act, 2023 [1]
ANNEX II: Lagos State Arbitration Law of 2009[2]
ANNEX III: Lagos Court of Arbitration Law of 2009 (as amended by the Lagos Court of Arbitration [amendment] Law of 2015)[3]
ANNEX IV Delta State Arbitration Law, 2022

## Chapter I. Introduction

### 1. LAW ON ARBITRATION

The Arbitration and Mediation Act, 2023 (the "Act", see **Annex I** hereto) is the federal statute which provides a unified legal framework and applies throughout Nigeria for settlement of commercial disputes by arbitration and mediation. The Act came into force on 26 May 2023 and includes the 2006 amendments to the UNCITRAL Model Law on International Commercial Arbitration (the "UNCITRAL Model Law"), as well as the United Nations Convention on International Settlement Agreements Resulting from Mediation 2018 (the "Singapore Convention on Mediation"),[4] with some minor modifications. Sect. 91(10) of the Act expressly provides that regard must be had to the UNCITRAL Model Law when the Act is interpreted, to foster uniformity of application and observance of good faith.

The Act has separate Parts that govern arbitration and mediation. Although the Act does not expressly define domestic arbitration, it states that the Act shall apply to the following types of arbitration where the seat of the arbitration is in Nigeria: international commercial arbitration, inter-state commercial

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1. Entered into force on 26 May 2023.
2. Entered into force on 18 May 2009.
3. Entered into force on 18 May 2009.
4. Entered into force in September 2020.

arbitration, and commercial arbitration within the Federal Republic of Nigeria. It is cited as the Arbitration and Mediation Act, 2023. Although the Act covers the entire country, some states of the Federation still retain their respective arbitration laws.

In a bid to provide a more enabling environment for arbitration within Lagos State, the state government in 2009 enacted the. Lagos State Arbitration Law 2009 (the "Lagos Law", see **Annex II** hereto) This Law applies to all arbitration proceedings in Lagos State that are not specifically governed by any other law. The Lagos Law enacts as state law, the 1985 UNCITRAL Model Law and incorporates most of its 2006 amendments.

Delta State has similarly enacted the Delta State Arbitration Law, 2022 (see **Annex IV** hereto). Similar to the Lagos Law, it applies to arbitrations where parties have chosen Delta State as the seat of arbitration, and incorporates some of the 2006 amendments to the UNCITRAL Model Law.

This Report will discuss the Federal Act, while making reference to areas where the Lagos State and Delta State Laws have provided some improvement to the statutory framework.

Most of the provisions in the Act and the rules made pursuant to the Act (the "Arbitration Rules", First Schedule, Act) are subject to the parties' agreement and may be varied by the parties. There are however certain provisions of the Act that cannot be varied, as implied by Sect. 63 of the Act.

First, under Sect. 30 of the Act, the arbitral tribunal shall ensure that the parties are accorded equal treatment and that each party is given a full opportunity to present its case. Sect. 31(1) then provides that arbitral proceedings shall be in accordance with the procedure agreed by parties. Where parties do not have an agreement, the arbitral proceedings shall be in accordance with the procedure contained in the Arbitration Rules set out in the First Schedule to the Act.

Art. 5 of the Arbitration Rules in the First Schedule to the Act is the same as Art. 4 of the UNCITRAL Arbitration Rules, which states that "[t]he parties may be represented or assisted by persons of their choice" The new Federal Act substitutes the words "legal practitioners" for the word "persons". The effect is that the previous position where in domestic arbitrations (where the Arbitration Rules are mandatory) only persons qualified under the Nigerian Legal Practitioners Act can provide legal representation in arbitral proceedings is no longer the case.

Under Art. 9(3) of the Arbitration Rules, if the two arbitrators have not agreed on the choice of the presiding arbitrator, the presiding arbitrator shall be appointed by the appointing authority designated by the parties. Where parties do not designate the appointing authority in a domestic arbitration, Sect. 7(2) of the Act provides that it shall be the court or an arbitral institution in Nigeria. Sect. 59 of the Act provides that for an international arbitration, it shall be the Director of the Regional Centre for International Commercial Arbitration Lagos.

Sect. 16 of the Act also introduces a statutory framework for emergency arbitration proceedings, by allowing a party that requires emergency relief to submit an application for the appointment of an emergency arbitrator to any arbitral institution designated by the parties. Where parties have not delegated an arbitral institution, the party seeking the relief may approach the court to appoint an emergency arbitrator.

Emergency relief may be sought prior to or following the commencement of the arbitration, and the application shall include at least the following: a statement of the emergency relief sought; a description and contact details of the parties to the reference; a description of the circumstances that give rise to the application and of the underlying dispute referred to arbitration; reasons why the emergency relief sought cannot await the constitution of an arbitral tribunal; the reasons why the applicant is entitled to the emergency relief; and the arbitration agreement.

## 2. PRACTICE OF ARBITRATION

### *a. General*

The fact of Nigeria being an early signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the "New York Convention"), coupled with congestion in the court system, has resulted in many parties to commercial transactions, both small and large businesses, foreign and domestic, opting for the inclusion of arbitration agreements in their transaction documents as a means of resolving their commercial disputes. Although nominally it would seem that domestic arbitrations far outweigh international arbitration proceedings held in Nigeria, the requirement that all companies doing business in Nigeria must incorporate as local entities means that many "domestic" arbitrations are in effect international in nature, as parties on both sides are locally-incorporated entities of multinationals. The more common format for such arbitration proceedings is *ad hoc* arbitration, under the Arbitration and Mediation Act.

The Lagos Court of Arbitration (the "LCA") was established by the Lagos State government in 2009 as a government-supported private sector initiative to provide institutional arbitration administered under the LCA Rules 2018.[5]

Sects. 1(2), 4, 7 and 12 of the Lagos Court of Arbitration Law of 2009 (as amended by the Lagos Court of Arbitration [amendment] Law of 2015) (the "LCA Law", see **Annex III** hereto) provide that the first appointments to the Board of the LCA are made by the State Governor, on the recommendation of the Attorney-General. Subsequent elections are made by the General Meeting; the State has no power to interfere with the functioning of the Board, while

5. See <www.lca.org.ng/wp-content/uploads/2018/07/AMENDED-LCA-RULES-ilovepdf-compressed.pdf>.

membership of the LCA is "open to any person or body corporate of good standing with bona fide interest in Commercial Arbitration or Alternative Dispute Resolution" (Sect. 2 LCA Law). The Board with the approval of the General Meeting can make regulations for the Court without recourse to the State Government (Sect. 12 LCA Law).

Although the Delta State Arbitration Law, 2022 has not established an arbitration court, it empowers the Multidoor Court House[6] to appoint an arbitrator on the application of a party, where parties fail to agree on the appointment. It also empowers the High Court to appoint an arbitrator on the application of a party, where the Multidoor Court House fails to appoint an arbitrator.

*b. Arbitration institutes*

There are several arbitral institutions in Nigeria. They include:

– The Regional Centre for International Commercial Arbitration ("RCICAL"), located in Lagos. It was established in 1989 by the Federal Republic of Nigeria and the Asian-African Legal Consultative Organization ("AALCO"). The Regional Centre functions actively as a forum for both domestic and international arbitration. Domestic arbitrations are statutorily governed by the Act. In addition to the use of the Act, the Regional Centre has its own rules, which are the Regional Centre for International Commercial Arbitration-Lagos Arbitration Rules (the "RCICAL Rules"). The revised RCICAL Rules became effective on 3 October 2019. The contact details of the Centre are as follows:

> Regional Centre for International Commercial Arbitration – Lagos
> 2A Ozumba Mbadiwe Avenue, Victoria Island
> P.O. Box 50565, Falomo, Ikoyi
> Lagos, Nigeria
> Telephone: +2349023581002; +2349091150853
> Email: info@rcical.org
> Website: <www.rcicalagos.org>

– The Lagos Court of Arbitration ("LCA"), also located in Lagos and established by the LCA Law in 2009. Although established by statute, the LCA is a wholly private sector managed initiative. The LCA does not mandate that the applicable law in arbitral proceedings between parties must be the Lagos Law; parties may choose to have their disputes settled in accordance with the LCA Rules 2018,[7] notwithstanding that they have agreed in writing that

6. The Multidoor Court House is the dispute resolution centre of the court, which offers parties the opportunity to resolve disputes through various Alternative Dispute Resolution (ADR) mechanisms including but not limited to mediation, arbitration and conciliation.
7. See <www.lca.org.ng/wp-content/uploads/2018/07/AMENDED-LCA-RULES-ilovepdf-compressed.pdf>.

disputes between them shall be referred to arbitration under a law other than the Lagos Law. The LCA is located at:

Lagos Court of Arbitration
3rd Floor, International Centre for Arbitration & ADR
Plot 1a, Remi Olowude Street
Off Second Roundabout
Okunde Bluewater Scheme
Lekki Peninsula Phase 1
Lagos
Telephone: +234 (0) 8094804504; 08094804506
Email: info@lca.org.ng
Website: <https://www.lca.org.ng/>

– The Chartered Institute of Arbitrators (Nigeria Branch), which promotes arbitration and ADR as the preferred dispute resolution method and focuses mainly on the training of interested persons in arbitration practice and procedure. It organizes training courses at the Associate, Member and Fellowship levels; and has Chapters based in Ibadan, Abuja and Port Harcourt. Its address is:

CIArb Nigeria Branch
5B Kunle Ogunba Street
Off Jeremiah Ugwu Street
Off Babatunde Anjous Street
Off Admiralty Way
Lekki Phase 1
Lekki, Lagos
Telephone: +234 (1)7739694; (1)4530961; (0)8034644337
(0)8034644338
Email: info@ciarbnigeria.org; ciarbnigeria@gmail.com;
oni@ciarbnigeria.org
Website: <www.ciarbnigeria.org>

– The Lagos Chamber of Commerce International Arbitration Centre (LACIAC) is an independent full service alternative dispute resolution centre that is affiliated with the Lagos Chamber of Commerce and Industry. The LACIAC Arbitration Rules (2016) also provide for resolution of disputes through mediation, fast-track arbitration measures, emergency arbitration proceedings and online dispute resolution. The institute provides hearing and appointment services to users of the institution and organizes trainings and workshops. Its address is:

1 Idowu Taylor Street, Victoria Island, Lagos Nigeria
Email: info@laciac.org; support@laciac.org
Website: www.laciac.org

## 3. BIBLIOGRAPHY

### *a. Books*

Recently published books on arbitration are:

Aderemi, Tolulope
*Arbitration Law & Practice in Nigeria: The Practitioner's Perspective* (2020) 823 pages

*Oil, gas, electricity and commercial arbitration in Nigeria* (Dictus Publishing 2017) 92 pages

Ajogwu, Fabian
*Commercial Arbitration in Nigeria: Law & Practice,* Third Edition (Thomson Reuters 2019) 668 pages, ISBN: 9788491976660

Akpata, Obosa and Adegbonmire, Olusola
*The Nigerian Arbitration Law in Focus*, 2nd ed. (West African Book Publishers 2019), 184 pages, ISBN: 9789781539114

Daniel, Collins Ebi
*Arbitration and Dispute Resolution in Nigeria: Practice and Procedure (*Kraft Books Limited 2022) 1,072 pages

Idornigie, Paul
*Commercial Law and Arbitration Practice in Nigeria (*LawLords Publications 2015) 426 pages, ISBN: 9789789459841

Odigboegwu FCIArb, Chinwe
*Foreign International Commercial Arbitration Awards- Recognition and Enforcement: The Nigerian Situation, Challenges and Proposed Solutions* (Lambert Academic Publishing 2020) 72 pages, ISBN: 9786202683012

Orojo, J.O. and Ajomo, M. A.
*Law and Practice of Arbitration and Conciliation in Nigeria* (Mbeki & Associates, Nigeria 1999) 480 pages, ISBN: 9783498401

Oyekunle, Tinuade and Ojo, Bayo
*Handbook of Arbitration and ADR Practice in Nigeria* (LexisNexis 2018) 521 pages, ISBN: 9780639003559

Rhodes-Vivour, Adedoyin
*Commercial Arbitration Law and Practice in Nigeria Through the Cases* (LexisNexis 2016) 760 pages, ISBN: 9780409126624

*b. Journals*

The LCA Journal of Arbitration and Dispute Resolution (LJADS) was established by the Lagos Court of Arbitration in 2021 and is published half-yearly.

## Chapter II. Arbitration Agreement

### 1. FORM AND CONTENTS OF THE AGREEMENT

Nigerian law requires evidence of the agreement that a dispute between parties would be resolved by arbitration. Sect. 2(4) of the Arbitration and Mediation Act, 2023 (the "Act", see **Annex I** hereto) provides that this requirement is satisfied if the agreement is recorded in any form and the information contained in it is accessible and can be used for subsequent reference

The following model arbitration clause is proposed by the Nigerian Branch of the Chartered Institute of Arbitrators (CIArb), UK:

> "Any dispute, difference or claim arising out of or in connection with this contract shall be determined in accordance with the Arbitration and Conciliation Act, Cap A18, Laws of the Federation of Nigeria, by three arbitrators, one to be appointed by each party and the third to be appointed jointly by the two appointed arbitrators. The arbitration shall be held in Lagos, Nigeria, and the dispute shall be decided in accordance with Nigerian Law."

Although we are not aware that the CIArb, UK (Nigerian Branch) has amended the model arbitration clause in view of the new Act, it is expected that parties will vary the clause in compliance with the new Act.

The Lagos Court of Arbitration (the "LCA") proposes the model arbitration clause below for use by its members:

> "Any dispute arising out of or in connection with the interpretation of the provisions of this Agreement or the performance of same, shall be submitted to the Lagos Court of Arbitration and shall be resolved under the Rules of the Lagos Court of Arbitration.
>
> The dispute shall be resolved by a sole arbitrator, except as otherwise agreed by the parties to be by a tribunal of three arbitrators. The appointment of the Arbitrator(s) shall be in accordance with the said Rules, and the Award/Decision of the arbitrator(s) shall be final and binding on the parties.
>
> The seat of the arbitration shall be Lagos, Nigeria and the language to be used in the arbitral proceedings shall be English."

The Lagos Chamber of Commerce International Arbitration Centre ("LACIAC") proposes the model arbitration clause below:

> "Any dispute, controversy or claim arising out of or in relation to this agreement, including any question regarding its breach, existence, validity or termination or the legal relationships established by this agreement, shall be finally resolved by arbitration under the LACIAC Arbitration Rules, which Rules are deemed to be incorporated by reference into this clause."

## 2. PARTIES TO THE AGREEMENT

There are no restrictions under the Act as to persons, physical or legal, who may resort to arbitration.

The Act provides that the authority of an arbitrator shall not be revoked by virtue of the bankruptcy or insolvency of the party that appointed the arbitrator. Under Sect. 12(1) of the Bankruptcy Act, Cap. B2, Laws of the Federation of Nigeria, 2004, the court may stay any action, execution or other legal process against the property or person of the debtor or allow it to continue on such terms as it may think just. The general attitude of the court is to ensure the security of a bankrupt party to attend bankruptcy proceedings. However, an arbitration agreement is not discharged by the bankruptcy of an individual person. But in the case of a bankrupt corporate body that is wound up or dissolved, the arbitration agreement will be discharged. Arbitration agreements can only be discharged by agreement in writing between the parties or by leave of court.

There are no specific requirements in the Act regarding the capacity of or restrictions on State agencies entering into an arbitration agreement.

The Act recognizes multi-party arbitration. It provides for consolidation and concurrent hearings, as well as joinder of parties. However, the consolidation of different arbitrations and joinder of a third party is subject to the consent of the parties, in accordance with the principle of party autonomy. Furthermore, Art. 17(5) of the Arbitration Rules in the First Schedule to the Act provides that the arbitral tribunal's power to join a party to the arbitration is premised on the additional party being bound by the underlying arbitration agreement before the arbitral tribunal.

The Lagos State Arbitration Law 2009 (the "Lagos Law", see **Annex II** hereto) provides in Sect. 40(3) that a party with the consent of the original parties may apply to be joined to arbitral proceedings. The Lagos Law also has rules regarding the appointment of arbitrators in a multi-party arbitration (Sect. 8(2) Lagos Law).

Sect. 12 of the Delta State Arbitration Law 2022 (see **Annex IV** hereto) also provides for the consolidation of two or more arbitral proceedings, subject to the consent of the parties.

## 3. DOMAIN OF ARBITRATION

The Act does not specifically state the matters which may or may not be referred to arbitration and does not include provisions that give the arbitrators powers to fill gaps in contracts. Generally, disputes that are not borne out of commercial transactions are not arbitrable. Furthermore, where a law expressly vests jurisdiction on a subject matter in the courts alone, such disputes are not arbitrable.

For example, the courts have held that tax disputes are statutory and not contractual and as such, are not arbitrable.[8] Disputes arising out of criminal matters, illegal contracts, and disputes leading to a change of status (e.g., divorce petitions) cannot be resolved by arbitration. The test is whether the dispute can be compromised lawfully by way of accord and satisfaction[9].

## 4. SEPARABILITY OF ARBITRATION CLAUSE

An arbitration agreement that forms part of a contract is treated as an agreement independent of other terms in the contract. A decision of an arbitral tribunal that the main contract is null and void will not affect the validity of the arbitration agreement (Sect. 14(2) Act; Art. 23(1) of the Arbitration Rules, First Schedule, Act).[10]

## 5. EFFECT OF THE AGREEMENT (SEE ALSO CHAPTER V.4 – JURISDICTION)

The courts will stay litigation brought in breach of an arbitration agreement, provided that the stay of proceedings does not prejudice the claimant or permanently deny him or her any redress.[11] Sect. 5(1) of the Act mandates a court before which an action that is the subject of arbitration is brought to order a stay of proceedings and refer the parties to arbitration, once the request is made not later than when submitting its first statement on the substance of the dispute.

Sect. 5(3) of the Act also empowers the court to make interim or supplementary orders alongside the order for stay of proceedings, to preserve the rights of parties.

The Lagos Law also mandates the court to stay proceedings once the request by an applicant is made not later than when submitting its first

8. *Esso Exploration & Production (Nig) Ltd. & Anor v. FIRS & Anor* (2017) LPELR-51618(CA).
9. *United World Ltd Inc. v. MTS* (1998) 10 NWLR (Pt 568)106.
10. See also *Nigerian National Petroleum Corporation v. Clifco Nigeria Limited* (2011) LPELR-2022(SC).
11. *Sonnar (Nig) Ltd v. Partenreedri M.S. Nordwind* (1987) 3 NWLR (Pt 66) 520.

statement on the substance of the dispute. The court may however not order a stay of proceedings or order a referral where the defendant has taken any other steps in the litigation proceedings other than entering appearance (Sect. 6, Lagos Law).[12]

In determining whether to grant an application for stay of proceedings pending arbitration, the court is not required to conduct a full review of the arbitration agreement. It is sufficient if a party shows that there is an arbitration agreement and if the party has not taken any other steps in the litigation. When the court is satisfied that an arbitration agreement subsists, it will stay its proceedings and order parties to commence arbitral proceedings in accordance with the arbitration agreement.

Participation in the appointment of an arbitrator does not preclude a party from challenging the arbitral tribunal's jurisdiction. Sect. 8 of the Act provides that the jurisdiction of an arbitral tribunal may only be challenged where there are circumstances that give rise to justifiable doubt as to the neutrality or qualifications of the tribunal. The circumstances must however have come to the knowledge of the challenging party after the appointment of the tribunal and not before the appointment.

Where parties do not have an agreement on the procedure for the challenge, the challenging party must submit the challenge to the tribunal not later than fourteen days after becoming aware of the constitution of the arbitral tribunal. Unless the challenged tribunal withdraws from the arbitration, the arbitral tribunal shall have the jurisdiction to determine the challenge.

Where parties have agreed to have the arbitration abroad and the arbitration agreement is governed by the Act, the court before which a substantive action is filed in Nigeria may stay proceedings pending arbitration abroad upon the application of the defendant. The court will not however stay litigation proceedings where such an order will prejudice the claimant or permanently deny him of any redress.[13] As with arbitration proceedings within Nigeria, the defendant is required to apply for a stay pending arbitration abroad before taking any other steps in the litigation proceedings (Sect. 5 Act).

## Chapter III. Arbitrators

### 1. QUALIFICATIONS

Unless the parties agree on the qualifications of an arbitrator for their arbitration (Sect. 8(3) of the Arbitration and Mediation Act, 2023 (the "Act", see **Annex I** hereto)), there are no mandatory qualifications required to be an arbitrator in Nigeria. Foreigners are not restricted from being appointed as

12. See also *M.V. Lupex v. NOC & S Ltd* (2003) 15 NWLR (Part 844) 469.
13. *Sonnar (Nig) Ltd v. Partenreedri M.S. Nordwind* (1987) 3 NWLR (Pt 66) 520.

arbitrators in Nigeria. Sect. 7(1) of the Act specifically provides with regard to international arbitration that no person shall be disqualified from being appointed as an arbitrator by reason of his or her nationality. However, serving judges cannot be appointed arbitrators by reason of their judicial appointment, which is governed by the Constitution of the Federal Republic of Nigeria. They may however be appointed arbitrators when they retire.

Persons appointed as arbitrators are under an obligation to disclose facts that may raise doubts about their impartiality and independence when approached in connection with an appointment as arbitrators both before and during the period of their appointment. Where facts that raise justifiable doubts about an arbitrator's impartiality are discovered it may constitute a ground for challenge of the arbitrator's appointment (Sect. 8(1) Act).

## 2. APPOINTMENT OF ARBITRATORS

The parties may specify in the arbitration agreement the procedure to be followed in appointing an arbitrator (Sect. 7(2) Act). Where no procedure is specified, in the case of three arbitrators, each party shall appoint one arbitrator, and the two appointed by the parties shall appoint the third arbitrator. If a party fails to appoint the arbitrator within thirty days of receipt of request to appoint by the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, in a domestic arbitration the appointment shall be made by the authority designated by the parties and in the absence of such designation, by an arbitral institution or the court on the application of any party to the arbitration agreement (Sect. 7(3)(a) Act). The constitution of the tribunal shall not be hindered by any controversy, with respect to the arbitral institution chosen by a party (Sect. 7(6) Act).

The court should, however, ensure that in making its appointment, it gives regard to any qualification required of an arbitrator by the arbitration agreement and such other considerations as are likely to secure the appointment of an independent and impartial arbitrator (Sect. 7(5) Act). The court should also consider appointing an arbitrator with a nationality different from the parties, in the case of a sole arbitrator or presiding arbitrator (Sect. 7(5)(c) Act).

Where the arbitration proceedings are international in nature, the Director of the Regional Centre for International Commercial Arbitration Lagos shall be deemed to be the appointing authority designated by the parties. The appointing authority shall use the list procedure in making the appointment of a sole or presiding arbitrator (Sect. 7(2) Act).

## 3. NUMBER OF ARBITRATORS (SEE ALSO CHAPTER V.2 – MAKING OF THE AWARD)

The parties to an arbitration agreement may specify the number of arbitrators to be appointed under the agreement, but where no such determination is made, the arbitral tribunal shall consist of a sole arbitrator under Sect. 6(2) of the Act. Likewise, Sect. 7(3) of the Lagos State Arbitration Law 2009 (the "Lagos Law", see **Annex II**) and Sect. 14 Part IV of the Delta State Arbitration Law, 2022 (see **Annex IV** hereto) provide for a sole arbitrator where the arbitration agreement does not determine the number of arbitrators. There are no consequences specified where parties agree to an even number of arbitrators under the Act and the Delta State Arbitration Law, whereas the Lagos Law provides that the agreement to appoint an even number of arbitrators is deemed to include the appointment of an additional arbitrator to preside over the arbitration (Sect. 7(2) Lagos Law).

## 4. CHALLENGE TO ARBITRATORS

The grounds for challenging the appointment of an arbitrator are:

(1) Any circumstances likely to give rise to any justifiable doubts as to his impartiality or in dependence (Sect. 8(1) Act); or
(2) If the arbitrator does not possess the qualifications agreed by the parties (Sect. 8(3) Act).

Where a challenge is raised in a domestic arbitration, the arbitral tribunal itself shall decide on the challenge (Sect. 14(1) Act). Where the challenge is not successful, the challenging party may within thirty days after having received notice of the decision rejecting the challenge, request the appointing authority, arbitral institution or the court that appointed the arbitrator to decide the challenge, and while the request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award (Sect. 9(3) Act).

In an international commercial arbitration, the decision on the challenge shall be made by the appointing authority (Sect. 9(4) Act). Where parties do not designate an appointing authority in an international commercial arbitration, the new Act provides that the appointing authority is the Director of the Regional Centre for International Commercial Arbitration, Lagos (Sect. 59 Act).

Where the governing law of the arbitration is the Lagos State Arbitration Law and the parties did not designate an appointing authority, either party may apply to the Lagos Court of Arbitration to appoint an arbitrator in the case of an arbitration with a sole arbitrator, or the presiding arbitrator in the case of an arbitration with three arbitrators (Sect. 8(4) Lagos law).

Where the governing law of the arbitration is the Delta State Arbitration Law and the parties did not designate an appointing authority, either party may apply to the Delta State Multidoor Court House to appoint an arbitrator in the case of an arbitration with a sole arbitrator (Sect. 15(2) Delta State Arbitration Law), or the presiding arbitrator in the case of an arbitration with three arbitrators (Sect. 15(4) Delta State Arbitration Law).

In addition, the Lagos Law provides that an arbitrator may be challenged if reasonable grounds exist as to the arbitrator's physical and/or mental capacity, and that the arbitrator refuses to act with reasonable dispatch, resulting in substantial injustice to the applicant (Sect. 10 Lagos Law).

The parties may determine the procedure to be followed in challenging an arbitrator (Sect. 9 Act). Where there is no agreed procedure, a party who intends to challenge an arbitrator shall within fourteen days of becoming aware of the constitution of the tribunal or becoming aware of any ground for the challenge, send to the arbitral tribunal a written statement of the reason for the challenge (Sect. 9(2) Act). The Lagos Law includes the requirement that the challenge shall also be forwarded to the other parties (Sect. 11 Lagos Law).

Where the challenged arbitrator fails to withdraw from office or where the other party disagrees with the challenge, the arbitral tribunal shall decide on the challenge (Sect. 9(2) Act).

In international arbitration under the Act, the challenge should likewise be in writing and state the reason for the challenge (Sect. 9(2) Act). When an arbitrator has been challenged by one party, the other party may agree to the challenge, and the challenged arbitrator may also withdraw from office; however, the fact that the other party agrees to the challenge or that the arbitrator withdraws does not imply acceptance of the validity of the grounds for the challenge (Art. 13(3), Sect. II of the Arbitration Rules in the First Schedule to the Act).

If the other party does not agree to the challenge and the challenged arbitrator does not withdraw, the decision on the challenge shall be made by the appointing authority (Art. 13(4), Sect. II of the Arbitration Rules in the First Schedule to the Act). The Lagos Law permits a party to an arbitral proceeding upon giving notice to the other parties, to the arbitrator concerned and to any other arbitrator, to apply to the High Court of Lagos State to remove an arbitrator on the same grounds upon which a challenge to his appointment could be made. The Court cannot however exercise its power of removal until the arbitral tribunal or the appointing authority has concluded the challenge procedure (Sect. 12 Lagos Law).

## 5. TERMINATION OF THE ARBITRATOR'S MANDATE

The mandate of an arbitrator shall terminate if he or she withdraws from office; if the parties agree to terminate his or her appointment by reason of inability to

perform his or her functions; or if for any other reason he or she fails to act without undue delay (Sect. 10(1) Act).

Where the mandate of an arbitrator is terminated, a substitute arbitrator shall be appointed in accordance with the same rules and procedure that applied to the appointment of the arbitrator who is being replaced (Sect. 11 Act).

### 6. LIABILITY OF ARBITRATORS

Like judges, who enjoy statutory immunity from suit while acting in a judicial capacity, there is now statutory immunity for arbitrators, the appointing authority and the arbitral institution in the Arbitration and Mediation Act (see Sect. 13 Act). The Lagos Law also provides in Sect. 18(1) that an arbitrator and the appointing authority are immune from liability in respect of actions or inactions in the discharge of their functions, except where the act or omission was in bad faith. We are not aware of any case law on the liability of arbitrators.

## Chapter IV. Arbitral Procedure

### 1. PLACE OF ARBITRATION (SEE ALSO CHAPTER V.3 – FORM OF THE AWARD)

Unless parties have otherwise agreed, the place of arbitration is determined by the tribunal having regard to all the circumstances including the seat of the arbitration and the convenience of the parties (Sect. 32(2) of the Arbitration and Mediation Act, 2023 (the "Act", see **Annex I** hereto).

### 2. ARBITRAL PROCEEDINGS IN GENERAL

Sect. 31(1) of the Act provides that where parties do not have an arbitral agreement, the arbitral proceedings shall be in accordance with the procedure contained in the Arbitration Rules set out in the First Schedule to the Act. Sect. 30 of the Act mandates the arbitral tribunal to ensure that both parties are given equal treatment and a full opportunity of presenting its case).

Where the agreed procedure or the Arbitration Rules in the Act contain no provision in respect of any matter related to or connected with a particular arbitral proceeding, the arbitral tribunal may, subject to the Act, conduct the arbitral proceedings in such manner as it considers appropriate (Sect. 302 Act).

The tribunal cannot overrule an agreement between the parties regarding the rules chosen by the parties.

An exchange of written pleadings should take within the time agreed by parties or determined by the tribunal (Sect. 36 (1) to (4) Act).

Unless the parties have agreed otherwise as to the mode of hearing, the arbitral tribunal will decide how the arbitral hearing will be conducted (including whether an oral hearing is required or the hearing can proceed on the basis of documents or other materials only; or a combination) (Sect. 38 (1) Act).

## 3. EVIDENCE

*a. General*

Arbitrators have full freedom to determine the admissibility, relevance, materiality and weight of the evidence submitted by the parties (Sect. 31(3) Act). The current statute governing rules of evidence in Nigeria is the Evidence Act, 2011 (as amended). It applies to all judicial proceedings in or before any court in Nigeria but excludes proceedings before an arbitrator (Sect. 256(1)(a) Evidence Act, 2011).

*b. Evidence of fact witnesses (for tribunal-appointed expert witnesses, see Chapter IV.4 below)*

Unless the parties agree otherwise, the tribunal shall have the power to administer oaths to or take affirmation of the witnesses (Sect. 38(5) Act).

The arbitrators do not have the powers to compel the appearance of a witness before the arbitrators. However, a party may by application to a court seek the court's order for a *subpoena* to compel the attendance of a witness before the arbitral tribunal (Sect. 43(1) and (2) Act).

The arbitral tribunal may order that documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal (Sect. 35(3) Act). The hearing will be conducted in camera and the tribunal may require the retirement of any witness or witnesses during the testimony of other witnesses. The tribunal will determine the manner in which the witnesses are examined and most often allows cross examination (Art. 29 Arbitration Rules, First Schedule, Act).

*c. Party-appointed expert witnesses*

The provisions of the Act that apply to witnesses of fact (Art. 28, Arbitration Rules) apply also to party-appointed expert witnesses.

*d. Documentary evidence*

Sect. 20 of the Act makes provision for the production of written evidence. Sect. 43(1) of the Act provides that any party may issue out a writ of subpoena for the production of documents, but the tribunal cannot compel any person to produce any documents. However, with the assistance of the court, a person

could be compelled by *subpoena duces tecum* to produce document before any arbitral tribunal).

### 4. TRIBUNAL-APPOINTED EXPERTS (SEE CHAPTER IV.3 FOR PARTY-APPOINTED EXPERT WITNESSES)

The arbitrators may appoint experts to give advice on specific (technical) matters. Unless the parties have expressly agreed otherwise, the arbitrators do not need the consent of the parties to appoint experts. Parties are usually requested to agree on the appointment and where they disagree on the appointment, the arbitral tribunal would not proceed with the appointment (Sect. 42 Act).

With respect to applicable rules, aside from the fact that the expert witness must establish from his or her opinion that he or she is an expert, the same rules which apply to witnesses of fact are applicable to the tribunal-appointed expert witness (Art. 28, Arbitration Rules, First Schedule, Act).

The expert's report may either be in writing or oral (Sect. 38(4) Act). Where the expert's report is in writing, the parties have the right to receive a copy of the written expert opinion before the hearing (Sect. 32(4) Act). They also have the right to examine the arbitrator's expert (Art. 32(4) Arbitration Rules, First Schedule, Act).

### 5. INTERIM MEASURES OF PROTECTION (SEE ALSO CHAPTER I.1 – LAW ON ARBITRATION)

Sect. 19 of the Act gives the arbitral tribunal the power, unless otherwise agreed by the parties, to order interim measures of protection and require any party to provide appropriate security in relation to those measures.

The Arbitration Rules in the First Schedule to the Act state that interim measures include measures for the conservation of goods forming the subject matter in dispute, such as ordering their deposit with a third person or the sale of perishable goods (Art. 56(7)(b) Arbitration Rules, First Schedule, Act).

Under Art. 52(1) of the Arbitration Rules, the arbitral tribunal can require a party to provide security for the cost of such measures. Consequently, the arbitrators can require a party to give a bank guarantee.

The Lagos State Arbitration Law 2009 (the "Lagos Law", see **Annex II**) substantially enacts Chapter IV.A of the UNCITRAL Model Law (2006 amendments) regarding interim measures and preliminary orders as Sects. 21–30 of the Lagos Law. However, where Art. 17A(1)(b) of the Model Law talks of "reasonable possibility that the requesting party will succeed on the merits of the claim", the Lagos Law says "there is a serious issue to be determined on the merits of the claim" (Sect. 22(1)(b) Lagos Law).

Interim measures, where possible, may be ordered in the form of an interim award (Sect. 20(2) Act) and be enforced as such subject to any of the parties' requesting the court to refuse enforcement (Sect. 28 Act).

## 6. REPRESENTATION AND LEGAL ASSISTANCE

The Act gives parties the right to represent themselves or to be represented or assisted by persons of their choice. Parties do not require Powers of Attorney to inform other parties or the arbitral tribunal of their representatives. However, a party that engages a representative or assistant must communicate the name and address of such representative in writing to the other party. Such communication must specify whether the appointment is being made for purposes of representation or assistance (Art. 5 Arbitration Rules, First Schedule, Act).

However, where a party appoints a lawyer as its representative in a domestic arbitration the lawyer has to be one that has been admitted as a legal practitioner to practice law in Nigeria. Sect. 24 of the Legal Practitioners Act ("LPA") defines a Legal Practitioner as a person who is qualified to practice law in Nigeria within the provisions of the LPA.

The issue of legal appearance by non-Nigerian counsel was decided in *Shell Nig. Exploration and Production & 3 Ors. v. Federal Inland Revenue Service & Anor*,[14] where the Court arguably appeared to give judicial support to the proposition that legal representation in arbitration is restricted only to legal practitioners qualified to practice law in Nigeria. There is however no express restriction on foreign lawyers representing parties in international arbitration where the rules chosen by the parties are different from the Arbitration Rules under the Act.

## 7. DEFAULT

Unless otherwise agreed by the parties, if, without showing sufficient cause, any party to an arbitration fails to appear at a hearing the tribunal may continue the proceedings and render a binding award (Sect. 41(c) Act). Where, however, the claimant fails to state his claim as required by Sect. 36(1) of the Act, the arbitral tribunal shall, unless otherwise agreed by the parties, terminate the proceedings (Sect. 41(a) Act);

14. Unreported CA/A/208/2012, delivered on 31 August 2016.

### 8. CONFIDENTIALITY OF THE AWARD AND PROCEEDINGS

*a. Confidentiality of the arbitral award and proceedings*

Although Art. 29(3) of the Arbitration Rules set out in the First Schedule of the Act states that a hearing shall be held *in camera* unless otherwise agreed by the parties, there is no statutory requirement that the proceedings remain confidential thereafter. In the same vein, unless the parties' consent is sought and obtained, the award will not be made public by the arbitrators (Art. 42(5) Arbitration Rules, First Schedule, Act).

Nigeria does not have any specific legislation on privacy aside from the Constitution which provides generally for the privacy of citizens, their homes and their communications. However Arts. 29(3) and 42(5) of the Arbitration Rules establish the privacy of arbitral proceedings.

*b. Confidentiality of arbitration-related court proceedings*

In the course of seeking recognition and enforcement of an arbitral award, the applicant exhibits the duly authenticated original or duly certified copy of the award and the original arbitration agreement or a duly certified copy. Documents that are filed in court form part of public record and as such become public documents (Sect. 102(b) Evidence Act, 2011). Once a document becomes a public document, there can be no steps to be taken to preserve the confidentiality of such a document.

Hearings for recognition and enforcement of an arbitral award are conducted in court which is a public place and consequently the hearings are not confidential. The confidentiality of the recognition or enforcement proceedings can only be obtained by a request that the court take the application for recognition and enforcement in chambers on the grounds that it is in the interest of defence, public safety, public order, public morality or public health (Sects. 37 and 45(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)).

Court judgments are public records and accessible to the public. Consequently, the names of the parties or other confidential information in the judgment or court report would not be removed before publication unless a successful application is made pursuant to Sect. 45 of the Constitution stating reasons why it would be in the public interest for publication not to be made.

## Chapter V. Arbitral Award

### 1. TYPES OF AWARD

Sect. 20(1) of the Arbitration and Mediation Act, 2023 (the "Act", see **Annex I** hereto) and Art. 26(2) of the Arbitration Rules in the First Schedule to the Act

define an interim measure as "a temporary measure, whether in the form of an award or in another form, which, at any time before the award which decides the dispute is issued, the arbitral tribunal orders a party to either maintain status quo, take action, refrain from taking action, preserve an asset or evidence, etc.

Sect. 63(1) of the Lagos State Arbitration Law 2009 (the "Lagos Law", see **Annex II**) defines "award" as "a decision of the Arbitral Tribunal on the substance of the dispute and includes any interim, interlocutory or partial award but excludes any orders, measures or directions made by the Arbitral Tribunal".

While a final award terminates the arbitral proceedings (Sect. 48(1) Act), a reading of Art. 26(2) of the Arbitration Rules in the First Schedule to the Act and Sect. 21(3) of the Lagos Law indicates that an interim award could be made in respect of interim measures.

Neither interlocutory nor partial awards are defined in either the Act or the Lagos Law. However, from the reading of *Nigerian National Petroleum Corporation v. Roven Shipping Limited* (2014) LPELR-22540 (CA) it can be deduced in that a partial award refers to a final determination made by the arbitral tribunal in respect of one or more issues in the arbitration, whilst the remaining issues are considered and determined in the final award.

An interim award can be enforced and/or set aside in court prior to the issue of the final award (Sects. 57 and 58 Act). To enforce an interim award, the party seeking to enforce it can make a written application to a High Court supported by a duly authenticated original award or certified copy thereof and the original arbitration agreement or a duly certified copy thereof (Sect. 57(2)(a) Act). An interim award can be set aside upon proof to the High Court that the arbitrator acted outside his jurisdiction or misconducted himself, or where the arbitral proceedings or the award was improperly procured (Sect. 58(2)(b) Act).

## 2. MAKING OF THE AWARD

### *a. Decision-making*

If the arbitral tribunal consists of three (or more) arbitrators, unless otherwise agreed by the parties, the tribunal shall arrive at its decision by a majority of all the members of the tribunal (Sect. 44(1) Act; Art. 41(1) Arbitration Rules, First Schedule, Act). If no majority can be reached, the presiding arbitrator has the deciding vote subject to revision, if any, by the arbitral tribunal (Art. 41(2) Arbitration Rules).

### *b. Time limits*

There is no statutory time limit in the Act for the making of an award, but the arbitral tribunal is expected to act reasonably in dealing with arbitration matters since speed is supposed to be an essential aspect of such proceedings.

The Lagos Law lists failure or refusal to act with due despatch as one of the reasons for which a party can apply to a court for an arbitrator's removal (Sect. 12(1)(d) Lagos Law).

Under Order 52 Rule 3 of the Federal High Court (Civil Procedure) Rules (2019), the Court has the power to refer parties to arbitration and determine the period within which the arbitrators should deliver an award. It is possible for arbitrators to seek an extension from the Court but, in normal practice, an agreement for the extension of the time limit may be obtained by the consent of the parties to the arbitration.

The tribunal does not have to approach the Court for an extension of time where a time limited for doing an action lapses. The tribunal has the power under Sect. 66 of the Act to extend time specified for the performance of any act under the Act. This is notwithstanding the time limit provisions of the Act.

An award is not liable to be set aside only by reason of its not having been completed within the period agreed, unless proof is provided that the delay in completing the award was such as to amount to misconduct on the part of the arbitrators.

*c. Dissenting opinions*

There is no statutory provision for a dissenting opinion to be annexed to the award and, accordingly, no provision on what procedure should be adopted for indicating a dissenting opinion. Generally, by judicial practice, a dissenting opinion may be given in writing and attached to the award. However, such an opinion would not affect the enforceability or validity of an award. Sect. 47(2) of the Act, however, provides that where the arbitral tribunal comprises more than one arbitrator, the signature of a majority of all the members shall suffice, if the reason for the absence of any signature is stated.

## 3. FORM OF THE AWARD

Sect. 47(1) of the Act provides that the arbitral award must be in writing. Unless the parties have agreed that no reasons should be given in the award, the arbitral tribunal must state the reasons upon which the award is based (Sect. 47(3)(a) Act; Art. 42(3) Arbitration Rules, First Schedule, Act). The award shall be signed by the arbitrators. (Sect. 47(1) Act; Art. 42(4) Arbitration Rules). Where there are three arbitrators and one of them fails to sign, it is sufficient that a majority signed, provided that the award states the reason for the absence of the third signature. In addition to being signed by the arbitrators, the award shall state the date and seat where the award was made (Sect. 47(3)(c) Act; Art. 42(4) Arbitration Rules).

Where an award fails to include the details referred to above, it is unlikely that the arbitral tribunal can correct the errors if such application is made under

Sect. 49 of the Act or Art. 46 of the Arbitration Rules, as they would not be of a clerical or typographical nature.

### 4. JURISDICTION (SEE ALSO CHAPTER II.5 – EFFECT OF THE AGREEMENT)

If a question of the jurisdiction of the arbitral tribunal is raised, the arbitral tribunal is competent to rule on the question of its jurisdiction (Sect. 14(1) Act). If the arbitrators make a ruling on jurisdiction, the ruling will take the form of an award or a preliminary ruling (Sect. 14(7) Act).

A party who is aggrieved by the ruling of the arbitral tribunal on its jurisdiction (whether the tribunal found that it had jurisdiction or not) may within three months from the date of the ruling apply to court to set aside the ruling. (Sect. 54(4). The aggrieved party does not have to wait till the final award before challenging the ruling of the tribunal on its jurisdiction.

Where parties do not have an agreement on the procedure for a challenge on the tribunal's jurisdiction, a party that wishes to challenge the tribunal's jurisdiction may do so within 14 days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance warranting the challenge (Sect. 9(2) Act). The party must send a written statement of the reasons for the challenge to the arbitral tribunal no later than the time of submission of the points of defence. The same is stated in Sect. 24 of the Delta State Arbitration Law (see **Annex IV** hereto).

The fact that a party fails to raise the question of jurisdiction in a timely way does not however preclude the tribunal from determining the question of jurisdiction, where the party explains the reason for the delay in raising the question and the tribunal considers the reason for the delay justifiable (Sect. 14(3) and (4) Act); Art. 23(2) Arbitration Rules, First Schedule, Act).

A party can also object on the ground that the subject matter of the dispute is not capable of settlement by arbitration because it exceeds the scope of the arbitral tribunal's authority (Sect. 14(4) Act).

Where a challenge under any procedure agreed upon by the parties or in the Act is not successful, the challenging party may within thirty days after having received notice of the decision rejecting the challenge, request either the appointing authority, arbitral institution or court to decide the challenge and while the request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award (Sect. 9(3) Act).

In making a determination on the challenge, the appointing authority, arbitral institution or Court shall give the arbitrator concerned, the other party or parties and any other members of the arbitral tribunal the opportunity to comment in writing within a suitable period of time. Sect. 9(4) Act.

In contrast, Sect. 8 of the Delta State Arbitration Law prohibits the court from questioning the proceedings, order or award of an arbitral tribunal.

## 5. APPLICABLE LAW

*a. Domestic arbitration*

Unless the parties have specifically identified another law, the law applicable to the substance of the dispute in a domestic arbitration (i.e., an arbitration with its seat in Nigeria), is Nigerian law. This is as opposed to an international arbitration agreement, where the law applicable to the substance is the law agreed by the parties. Unless the parties have expressly authorized the arbitral tribunal, it shall not decide as *amiable compositeur* (one who decides as they consider fair and just) or *ex aequo et bono* (according to what the tribunal considers equitable and right) (Sect. 15(4) Act; Art. 43(2) Arbitration Rules, First Schedule, Act).

The power exercised by the arbitrators to decide the dispute in accordance with the law governing the transaction differs from the power of arbitrators to determine the law that would govern the proceedings in accordance with what they believe to be fair and just, because the former generally does not involve the application of discretion by the arbitrators.

*b. International commercial arbitration*

In an international arbitration, it is the law of the country agreed by the parties that is applicable to the substance of the dispute. As with domestic arbitration, unless the parties have expressly authorized the arbitral tribunal, it cannot decide as *amiable compositeur* or *ex aequo et bono* (Sect. 15(4) Act; Art. 43(2) Arbitration Rules, First Schedule, Act).

If the parties have not determined the applicable law, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable (Sect. 15(3) Act).

## 6. SETTLEMENT

Sect. 45(1) of the Act provides that the parties may settle the dispute during the arbitral proceedings and request the arbitrators to record the terms of their settlement in the form of an arbitral award. The arbitrators can however refuse the request of the parties to incorporate the terms of their settlement in the award, whereas the arbitrators have no such power to refuse the request under the Lagos Law.

An award on agreed terms is subject to the same formal requirements as a regular award (Sect. 45(2) Act). However, where the award is on agreed terms, the requirement that the reasons upon which the award is based should be stated is dispensed with (Sect. 47(3)(a) Act).

The Act does not empower the arbitral tribunal to assist the parties in settlement negotiations during the arbitration.

An award on agreed terms has the same status and effect as any other award on the merits and can therefore be enforced as a normal award (Sect. 45(2) Act). Consequently, an award on agreed terms can also be set aside on the ground that the award contains decisions which are beyond the scope of the arbitration agreement (Sect. 55(3)(b) Act).

## 7A. CORRECTION AND INTERPRETATION OF THE AWARD

The arbitral tribunal is empowered by Sect. 49(3) of the Act and Art. 46 of the Arbitration Rules in the First Schedule to the Act, to correct, of its own volition, typographical and calculation errors in an award within thirty days of the award. In addition, corrections can also be made by the arbitrators upon the request of any party (with notice to the other party) within thirty days of the award (or such other period as agreed by parties). If the arbitral tribunal considers it necessary, it may extend this time limit (Sect. 49(6) Act).

Arbitrators are to provide an interpretation of any part of their award if requested by any party within thirty days from the date of the award (or such other period as agreed by parties) and on notice to the other party (Sect. 49(1)(b) Act). If the arbitral tribunal considers it necessary, they may extend this time limit (Sect. 49(6) Act).

There is no provision in the Act as to the format of the interpretation or correction, although it is presumed that the interpretation or correction would be annexed to the final award, since Sect. 49(2) states that "such correction or interpretation shall form part of the award".

## 7B. ADDITIONAL AWARD

Sect. 49(4) of the Act empowers an arbitral tribunal to render an additional award where it omitted to decide one of the issues submitted to it for a decision. A party must within thirty days of the receipt of the award request the arbitral tribunal to make an additional award as to the claims presented in the arbitral proceedings but omitted from the award. If the tribunal considered the request justified, it shall within sixty days of the receipt of the request, make the additional award (Sect. 49(4)). The tribunal may extend the time within which the additional award is to be made (Sect. 49(6) Act).

The additional award must be in writing and the arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given. Where there are three arbitrators and one of them fails to sign, the award shall state the reason for the absence of the signature. The award shall be signed by the arbitrators and it shall contain the date and seat of the arbitration as agreed or determined under Sect. 32(1) of the Act, which seat is deemed to be the place where the award was made.

## 8. FEES AND COSTS

*a. General*

Costs under the Act are considered under Sect. 50(1) of the Act which provides that the arbitral tribunal fixes the costs for arbitration in its award and the costs include:

> "(a) the fees of the arbitrators;
> (b) the travel and other expenses incurred by the arbitrators;
> (c) the cost of expert advice and of other assistance required by the arbitral tribunal;
> (d) the travel and other expenses of parties, witnesses and other experts consulted by the parties to the extent that the expenses are approved by the arbitral tribunal having regard to what is reasonable in the circumstances;
> (e) the costs for legal representation and assistance of the successful party where the costs were claimed during the arbitral proceedings, and only to the extent that the arbitral tribunal determines that the amount of such costs is reasonable;
> (f) administrative costs such as cost of the arbitral institution or the appointing authority, cost of venue, sitting and correspondence;
> (g) the costs of obtaining Third-Party Funding; and
> (h) other costs as approved by the arbitral tribunal."

Furthermore, Art. 48(1) and (2) of the Arbitration Rules set out in the First Schedule to the Act provides that costs include *only*:

> "(a) the fees of the arbitral tribunal to be stated separately as to each arbitrator and to be fixed by the tribunal itself in accordance with Article 49;
> (b) the travel and other expenses incurred by the arbitrators;
> (c) the costs of expert advice and of other assistance required by the arbitral tribunal;
> (d) the travel and other expenses of witnesses to the extent that such expenses are approved by the arbitral tribunal;
> (e) the costs for legal representation and assistance of the successful party if such costs were claimed during the arbitral proceedings, and only to the extent that the arbitral tribunal determines that the amount of such costs is reasonable.
> f) fees and expenses of the appointing authority as well as the fees and expenses of the Director of the RCICAL;
> (g) the cost of Third-Party Funding; and
> (h) other costs"

The Lagos Law (Sect. 51(1)(f)) includes administrative costs such as cost of venue, sitting and correspondence as part of the costs.

*b. Deposit*

The arbitrators may request each party to deposit an equal amount as an advance for the fees of the arbitral tribunal, the travel and other expenses of the arbitrators and the costs of expert advice and of other assistance required by the arbitrators (Sect. 51(1) Act; Art. 51(1) Arbitration Rules, First Schedule, Act). During the course of the arbitral proceedings, the arbitral tribunal may request supplementary deposits from the parties

If the required deposits are not paid in full within thirty days after the receipt of the requests, the arbitral tribunal shall so inform the parties, in order that one or another of them may make the required payment.

The Arbitration Rules of the Regional Centre for International Commercial Arbitration – Lagos (the "RCICAL Rules")[15] provides for a deposit. It also provides that the Director of the Centre shall prepare an estimate of the costs of the arbitration and may request each party to deposit an equal amount as an advance for those costs

*c. Fees of arbitrators*

Under the Act, the arbitral tribunal decides on its own fees (Sect. 50(1)(a) and (2) Act). Art. 49(1) of the Arbitration Rules also provides that the fees of the arbitral tribunal shall be "reasonable in amount, taking into account the amount in dispute, the complexity of the subject matter, the time spent by the arbitrators and any other relevant circumstances of the case". Where the arbitral tribunal has been appointed by an appointing authority which has a schedule of fees for arbitrators in international cases which it administers, the arbitral tribunal in fixing its fees is required to take that schedule into account to the extent that it considers it appropriate in the circumstances of the case.

The RCICAL Rules contain provisions for a schedule of fees. The Rules include three Tables: Table I is on Registration Fees and Administrative Charges; Table II: Arbitrator's Schedule of Fees for a Sole Arbitrator; and Table III: Illustration of Schedule of Fees.[16]

The Lagos Court of Arbitration provides that a reference to its Rules includes its Schedule of Registration Fees and Administrative Charges as well as the Schedule of Arbitrators' Fees in effect on the date of commencement of the arbitration (Art. 1(3) LCA Rules).

In Nigeria, most arbitrators fix their fees either by way of a fixed fee, a percentage based on the amount in dispute or reliance on a scale of fees issued by another arbitral body, such as the International Chamber of Commerce's Scale of Arbitrators' fees, or the Costs Calculators for Arbitrators issued by the Nigerian Branch of the Chartered Institute of Arbitrators.[17]

15. See <https://rcical.org/wp-content/uploads/2019/09/RCICAL-Arbitration-Rules.pdf>.
16. See <https://rcical.org/wp-content/uploads/2019/09/RCICAL-Arbitration-Rules.pdf>.
17. The Costs Calculator is available online at <https://ciarbnigeria.org/cost-calculator/>.

*d. Costs of legal assistance to parties*

It is customary for the costs for legal representation and assistance of the successful party to be reimbursed if such costs were claimed during the arbitral proceedings, and only to the extent that the arbitral tribunal determines that the amount of such costs is reasonable (Sect. 50(1)(e) Act; Art. 48(2)(c) and (e) Arbitration Rules, First Schedule, Act).

*e. Allocation of costs*

Generally, the costs of arbitration are borne by the unsuccessful party. In other words, costs follow the event. However, the arbitral tribunal may apportion such costs between the parties if it determines that apportionment is reasonable taking into account the circumstances of the case (Art. 50(1) Arbitration Rules, First Schedule, Act). Although the Act is not specific on the circumstances that could warrant the apportionment of costs, where the parties won on some claims and lost on others, the tribunal may decide to apportion costs.

By virtue of Sects. 48 and 49 of the Arbitration Rules, the arbitral tribunal is free to determine which party shall bear the costs of legal representation and assistance and may apportion such costs between the parties if it determines that apportionment is reasonable, after taking into account the circumstances of the case.

## 9. NOTIFICATION OF THE AWARD AND REGISTRATION

When an award is made it is recognized as binding on the parties irrespective of the country in which it was made (Sect. 57 Act). It need not be deposited with a court.

Sect. 49 of the Lagos Law requires the award to be notified to the parties by service on them of a written notice to that effect. The written notice is to be issued without delay after the award is made.

For enforcement, however, a party relying on the award is required to apply in writing to the High Court (Sect. 57(1) Act). The High Court could be of a State, of the Federal Capital Territory, Abuja or the Federal High Court (Sect. 91(1) Act).

The Lagos Law contains as a schedule the Arbitration Application Rules 2009 which states the procedures to be followed where applications are made to a court under the Law.

The Act does not provide for "registration" of the award, rather it provides for "recognition".[18]

Although the Act makes no provision for a limitation period for the recognition and enforcement of an award, a combination of Sects. 8(1)(d) and 63 of the Limitation Law of Lagos State, Cap. L67, 2003 (also Limitation Act,

18. *Tulip (Nigeria) Limited v. Noleggioe Transport Maritime S.A.S.* (2011) 4 NWLR (Pt. 1237) 254.

Laws of the Federation of Nigeria (LFN) (Abuja) 1990, Cap. 522) provides the time limit for enforcement of arbitral awards.[19] An action to enforce an arbitral award must be filed within six years from the date of the award.[20] Sect. 13(1) of the Limitation Law of Lagos State (2003) however provides that the six-year limitation period shall not apply where the relief sought to be enforced in an award is for specific performance of a contract, an injunction or other equitable relief,[21] and the same is provided in Sect. 12 of the Limitation Act, LFN 2004

Furthermore, Sect. 34 of the Act, Sect. 35 of the Lagos Law and Sect. 13(4) of the Delta State Arbitration Law provide that in computing the time prescribed by the applicable Limitation Laws, the period between the commencement of the arbitration and the date of the award shall be excluded.

The applicant must pay the requisite court fees for filing the application for recognition and enforcement, but aside from this there are no taxes involved with the recognition and enforcement of an arbitral award.

The Act requires a copy of the award, signed by the arbitrators in accordance with the Act, to be delivered to each party. Consequent on this provision, each copy deposited with the party would be separately regarded as an original. Practically, the respective arbitrators and/or the secretariat of the *ad hoc* arbitral tribunal would also retain a copy of the original arbitral award.

There is no requirement for the original of the award to be deposited with any arbitral institution.

## 10. ENFORCEMENT OF DOMESTIC AND INTERNATIONAL AWARDS RENDERED IN NIGERIA (SEE ALSO CHAPTER VI – ENFORCEMENT OF FOREIGN ARBITRAL AWARDS)

### *a. Leave for enforcement*

The award may by leave of court be enforced in the same manner as a judgment or order of court (Sect. 57(1) Act). The applicant does not need a separate application to apply for leave to enforce and the order for enforcement of an arbitral award.[22] What the applicant must do is to supply the court with the duly authenticated original award or a duly certified copy of the award; and the original arbitration agreement or a duly certified copy thereof (Sect. 31(2) Act). In the application, the applicant would be required to seek leave to enforce the arbitral award (Sect. 57(3) Act).

The application for leave to enforce an arbitral award would be made to the High Court of a State, the High Court of the Federal Capital Territory, Abuja or the Federal High Court (Sects. 57(2) Act).

19. See also *City Engineering Nigeria Limited v. Federal Housing Authority* (1997) 9 NWLR (Part 520) 224.
20. *Sakari v. Lagos State Water Corporation* (2021) LPELR-56606.
21. *Sifax (Nig) Ltd & Ors. v. Migfo (Nig) Ltd & Anor*. (2015) LPELR-24655(CA).
22. *Tulip (Nigeria) Limited v. Noleggioe Transport Maritime S.A.S*. (2011) 4 NWLR (Pt. 1237) 254.

Order 28 Rule 4 of the High Court of Lagos State (Civil Procedure) Rules 2019 requires the application for leave to enforce an arbitral award. However, at the Federal High Court, Order 52 Rule 16 of the Federal High Court Civil Procedure Rules 2019 provides that the application for enforcement of an arbitral agreement can be made *ex parte* but the court hearing the application may order it to be made on notice. Since Sect. 58 of the Act provides that any of the parties to an arbitration agreement may request the court to refuse recognition or enforcement of the award, it would seem that the other party must be notified of the application before a decision is made.

Where the other party against whom enforcement is sought establishes valid grounds for setting aside the award, the application for enforcement would be refused by the court.

Any decision reached by the court in relation to the application to enforce can be appealed against.

*b. Enforcement*

The grounds for refusing to enforce an arbitral award are not limited to violation of rules of public policy. Pursuant to Sect. 58(1) and (2) of the Act, which applies to international arbitration, enforcement of an award may be refused if the party against whom it is invoked furnishes the court with proof that:

> "(i) a party to the arbitration agreement was under some incapacity,
> (ii) the arbitration agreement is not valid under the law to which the parties have indicated should be applied, or that the arbitration agreement is not valid under the law of the country where the award was made,
> (iii) the party against whom the award was invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise not able to present his case,
> (iv) the award deals with a dispute not contemplated by or does not fall within the terms of the submission to arbitration,
> (v) the award contains decisions on matters which are beyond the scope of the submission to arbitration, so however that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters submitted to arbitration may be recognised and enforced,
> (vi) the composition of the arbitral tribunal, or the arbitral procedure, was not in accordance with the agreement of the parties,
> (vii) where there is no agreement between the parties under sub-paragraph (vi), that the composition of the arbitral tribunal, or the arbitral procedure, was not in accordance with the law of the country where the arbitration took place, or
> (viii) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, the award was made"

In addition, enforcement will be refused pursuant to Art. V(2) Second Schedule of the Act if the court finds that the subject matter of the dispute is not capable of settlement by arbitration under the laws of Nigeria, or that the recognition or enforcement of the award is against public policy of Nigeria.

The Act states that enforcement of an award may be refused by the court where it is shown that the arbitrator misconducted himself, the arbitral tribunal lacked jurisdiction or the arbitral award was improperly procured (Art. V(1) Second Schedule, Act)

*c. Appeal*

A party aggrieved by the decision of the court on enforcement may appeal to the Court of Appeal (Sect. 241 Constitution of the Federal Republic of Nigeria, 1999).

### 11. PUBLICATION OF THE AWARD

An arbitral award may be published only with the consent of both parties (Art. 42(5) Arbitration Rules, First Schedule, Act). How such consent is to be obtained is not however stated in the Rules.

The Arbitration Rules of the Lagos Court of Arbitration go further however by providing in Art. 36(8):

> "[a]n award may be made public with the consent of all the parties, or where and to the extent that a legal duty to disclose is required of a party in order to protect or pursue a legal right, or in relation to legal proceedings before a court or other competent authority".

Generally, the confidentiality of the award is assumed by the parties. Nigerian law does not provide for the consent of the parties to be presumed if none of them objects to publication.

## Chapter VI. Enforcement of Foreign Arbitral Awards

This Chapter deals with the possibility of enforcement in Nigeria of arbitral awards rendered in a foreign country.

### 1. ENFORCEMENT UNDER CONVENTIONS AND TREATIES

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the "New York Convention") is the international convention that is in force in Nigeria to facilitate the enforcement of foreign arbitral

awards in Nigeria. Nigeria acceded to the New York Convention in 1970 with a reservation that it will only enforce awards applicable to legal commercial relationships made in another contracting state. The Convention, which is incorporated in the Second Schedule of the Arbitration and Mediation Act, 2023 (the "Act", see **Annex I** hereto) has been made expressly applicable to Nigeria by Sect. 66 of that Act.

The party applying for the enforcement of a foreign award shall supply the duly authenticated original award or a duly certified copy thereof; the original arbitration agreement or a duly certified copy; and, where the award or arbitration agreement is not made in the English language, a duly certified translation into English language (Sect. 57(2)(c) Act).

In the enforcement proceedings, the court is not required to review the arbitration agreement or award. This is because, under Sect. 64 of the Act, the courts are required not to intervene in any matter governed by the Act, except as provided by the Act.

A Nigerian court's decision on the enforcement of a foreign award is subject to appeal.

In *Ogbuneke Sons and Company Ltd v. ED & F MAN Nigeria Ltd & Ors* (2010) LPELR-4688 (CA), a decision of the Court of Appeal, the Court reiterated that a foreign arbitral award is binding and can be enforced under the New York Convention.

Sect. 58 of the Act sets out the grounds on which the court may refuse to recognize or enforce an award.

## 2. ENFORCEMENT WHERE NO CONVENTION OR TREATY APPLIES

Even in the absence of a convention or treaty on enforcement, it is still possible to enforce both an interim measure and a foreign award in Nigeria. Pursuant to Sect. 28(1) of the Act, "[a]n interim measure issued by an arbitral tribunal is binding and, unless otherwise provided the arbitral tribunal, shall be enforced upon an application to the Court, irrespective of the country in which it was issued, subject to section 29 of this Act." Sect. 57(1) further states that "[a]n arbitral award shall, irrespective of the country or state in which it is made, be recognised as binding, and on application in writing to the Court, be enforced by the Court subject to the provisions of this section and section 58 of this Act." This Section makes both an interim measure wherever issued and a foreign arbitral award wherever issued enforceable in Nigeria irrespective of whether the country of origin is a signatory to the New York Convention or any other convention or treaty.

Sect. 57 (1) of the Act provides that an application for the enforcement of a foreign arbitral award must be made by application to the court[23] and the award

23. *Emerald Energy Resources Ltd v. Signet Advisors Ltd* (2020) LPELR-51389.

may by leave of the court be enforced in the same manner as a judgment or order to the same effect.[24] Sect. 8(1)(d) Limitation Act provides that a request for enforcement of arbitral awards must be made to the court within six years of the accrual of the cause of action. In computing the time for the enforcement of a foreign arbitral award, the period from the date of the commencement of the arbitration to the date of the award shall be excluded.[25] The applicant does not need to seek leave for enforcement first from the country where the award was made.[26]

The grounds for refusal of recognition and enforcement in Sect. 58(1) of the Act, set out in Chapter VI.1, also apply where no convention or treaty applies.

### 3. RULES OF PUBLIC POLICY

Under the Act, the court where recognition or enforcement of an award is sought or where application for refusal of recognition or enforcement thereof is brought may, irrespective of the country in which the award was made, refuse to recognize or enforce the award if the court finds that the recognition or enforcement of the award is against the public policy of Nigeria (Sect. 55(3)(b)(ii) Act; Art. V(2)(b), Second Schedule, Act). The Act does not define "public policy".

## Chapter VII. Means of Recourse

### 1. APPEAL ON THE MERITS FROM AN ARBITRAL AWARD

*a. Appeal to a second arbitral instance*

The parties may provide in their arbitration agreement that an application to review an arbitral award on any of the grounds set out in Sect. 55(3) of the Arbitration and Mediation Act, 2023 (the "Act", see **Annex I** hereto) shall be made to an Award Review Tribunal (Sect. 56 Act).

Parties may agree on the procedure to be followed by the Award Review Tribunal, otherwise the Award Review Tribunal shall conduct its proceedings in such manner as it considers appropriate, and shall endeavour to render its decision in the form of an award within sixty days from the date on which it is constituted.

Sect. 56(2) and (3) of the Act provides that the aggrieved party who seeks to challenge the award on any of the grounds set out in Sect. 55(3) of the Act shall within three months of the date of the award, notify the other party in

24. Sect. 57(3) Act.
25. Sect. 34 Act, Sect. 35 Lagos Law and Sect. 13(4) Delta State Arbitration Law.
26. *Emerald Energy Resources Ltd v. Signet Advisors Ltd*, supra, at p. 72.

writing of its intent to challenge the award ("the Notice of Challenge") and the Notice of Challenge shall include the original award or a certified copy; the original arbitration agreement or a certified copy; and where the award or arbitration agreement is not made in the English language, a certified translation of it into the English language.

*b. Appeal to a court*

There are no provisions for an appeal against an arbitral award to be made to the court. This is because an arbitral award is final and binding and not subject to appeal. What the court could do where a party makes an application to that effect, is to set aside the award on any of several limited grounds, including that the arbitral tribunal misconducted itself.

## 2. SETTING ASIDE OF THE ARBITRAL AWARD (ACTION FOR ANNULMENT, VACATION OF THE AWARD)

*a. Grounds for setting aside*

Arbitral awards may be set aside by the court on the ground that the award contains decisions which are beyond the scope of the arbitration agreement. If matters submitted to arbitration can be separated from those not submitted to arbitration, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside by court (Sect. 55 Act).

Sect. 55(3) of the Act sets out the grounds on which arbitral awards may be set aside. That Section provides:

> "The Court may set aside an arbitral award, where—
> (a) the party who makes the application furnishes proof that —
> (i) a party to the arbitration agreement was under some legal incapacity,
> (ii) the arbitration agreement is not valid under the law to which the parties have subjected it, or failing such indication, under the laws of Nigeria,
> (iii) the party who makes the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise not able to present its case,
> (iv) the award deals with a dispute not contemplated by or does not fall within the terms of the submission to arbitration,
> (v) the award contains decisions on matters which are beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside,
> (vi) the composition of the arbitral tribunal, or the arbitral procedure, was not in accordance with the agreement of the parties, unless the agreement was in conflict with a provision of this Act from which the parties cannot derogate, or

(vii) where there is no agreement between the parties under subparagraph (vi), that the composition of the arbitral tribunal or the arbitral procedure was not in accordance with this Act; or

(b) the Court finds that the —

(i) subject matter of the dispute is otherwise not capable of settlement by arbitration under the laws of Nigeria, or

(ii) award is against public policy of Nigeria."

In making an order to set aside an arbitral award, the court will not entertain the merits of the dispute. The court may not set aside an award simply because of misinterpretation or violation of rules of law evidenced in the arbitral award unless the error could be viewed as misconduct on the part of the arbitrator.[27] Nigerian courts have held that an award which is based on an error of law or which is not justified by the evidence submitted to the arbitrator will not be set aside.[28]

Violation of the rules of public policy does not always constitute a ground for setting aside an arbitral award. This is because Sect. 55 of the Act gives the court the discretion to determine whether to set the award aside or not.

The Act does not give permission to the parties to exclude any of the grounds for setting aside.

Where an Award Review Tribunal has set aside an award in whole or in part, an aggrieved party may also apply to the court to review the decision of the Award Review Tribunal. Where the court decides that the decision of the Award Review Tribunal is unsupportable, having regard to the ground on which the Award Review Tribunal set aside the award, the court shall reinstate the award, or that part of it that was set aside by the Award Review Tribunal (Sect. 56(8) Act).

*b. Procedure*

The application to set aside an award may not always be brought as an action for setting aside. It could be brought in an action on the merits of the dispute that had already been initiated but was stayed pending the arbitration. In the absence of an existing action, the applicant may institute a fresh action and seek declarations that the award should be set aside (Order 52 Rule 15(h) of the Federal High Court (Civil Procedure) Rules, 2019).

The application to set aside an arbitration award must be made within three months from the date of the award or, if an additional award has been requested, within three months from the date such request for additional award is disposed of by the arbitrators (Sect. 55(4) Act).

27. See the decision of the Supreme Court in *Mekwunye v. Imoukhuede* (2019) LPELR-48996 (SC).
28. See *Revenue Mobilization, Allocation & Fiscal Commission v. Units Environmental Sciences Limited* (2010) LPELR-9205(CA).

There is no special form prescribed by the Act for the action to set aside an arbitral award. However, the Arbitration Applications Rules 2009 made under the Lagos State Arbitration Law 2009 (the "Lagos Law", see **Annex II**) provides that applications seeking recourse against an award shall be made by Originating Motion.

Rather than setting aside an award, the court before which the application to set aside is brought may at the request of a party suspend proceedings for such period as it may determine to afford the arbitral tribunal the opportunity to resume proceedings or take actions to eliminate the grounds for setting aside of the award (Sect. 55(6) Act).

The Act does not provide that where the award is set aside on the ground that the arbitration agreement is invalid, the arbitration agreement will be revived. However, where the award is set aside on grounds other than the fact that the arbitration agreement is invalid, it is presumed that the arbitration agreement could be revived, unless the cause of action has become statute barred. This is because that ground for setting aside the award does not affect the validity of the arbitration agreement.

*c. Waivers*

A party can be barred from invoking one or more grounds where he appeared in the arbitration without raising an objection within the time provided for doing so (Sect. 63 Act).

The bar against invoking a ground for setting aside an award could also be sustained where the application to set aside is on the ground of irregularity in the constitution of the arbitral tribunal. The court may also exercise its discretion to set aside the award where the arbitrators did not comply with their mandate.

Parties cannot by agreement exclude either party from filing an action in court to set aside an award on any of the grounds provided in the Act.

*d. Effect of an award that has been set aside*

When an award or part of it is set aside, the award or the affected part thereof shall be declared a nullity. The arbitrators who published the award would no longer be seised of the reference. Consequently, the whole process will recommence. However, if the reason for the setting aside was that the arbitration agreement is a nullity, the process cannot be recommenced.

## 3. OTHER MEANS OF RECOURSE

Under the Act, there are no other means of recourse to set aside an award.

# Chapter VIII. Mediation

## 1. GENERAL

Parties are generally inclined to pursue a multi-tier dispute resolution procedure for disputes arising from their commercial transactions, with arbitration as the last resort. As such, parties often prefer that disputes are first referred to mediation. Some statutes in Nigeria also provide for some sorts of mediation or conciliation as a first means of dispute resolution. Sect. 67 of the Arbitration and Mediation Act, 2023 (the "Act", see **Annex I** hereto) provides that while the Act applies to international commercial mediation, domestic commercial mediation, domestic civil mediation and domestic and international settlement agreements resulting from mediation, it does not apply to:

> "(a) disputes emerging from rights and obligations settlement, which would be void under Nigerian law;
> (b) cases where a judge or an arbitrator, in the course of judicial or arbitral proceedings, attempts to facilitate a settlement, unless the parties agree otherwise;
> (c) cases that have been recorded and are enforceable as an arbitral award, unless the parties agree otherwise;
> (d) cases that have been approved by a court or concluded in the course of proceedings before a court, unless the parties agree otherwise; or
> (e) cases that are enforceable as a judgment of a court in this Country, unless the parties agree otherwise."

Sect. 70(1) of the Act provides that where the initiation of a mediation procedure is prescribed by law as a condition for the conduct of judicial or other proceedings, or where the parties have agreed when concluding the agreement to try to resolve the dispute through mediation before resorting to judicial or other proceedings, a party shall propose to the other party, in writing, the conclusion of a mediation agreement. Where the other party does not accept or respond to the invitation to mediate, the initiating party may treat the conduct of the opposing party as a rejection of the invitation to mediate (Sect. 70(2) Act).

The running of the limitation period regarding the claim that is the subject matter of the mediation is suspended from the commencement of the mediation process and resumes from the time or day the mediation ends without a settlement agreement (Sect. 71(2) Act.)

Unless the parties agree to have two or more mediators, there shall be one mediator, and where parties do not agree on the appointment of a mediator, either party may seek the assistance of a mediation provider, and the appointment made by the institution that is approached is final and binding on the parties (Sect. 72(1), (2) and (3) Act).

Any person approached in connection with possible appointment as mediator shall disclose the circumstances likely to give rise to justifiable doubts as to impartiality or independence and where the circumstances exist, the mediator shall be permitted to act as a mediator only where the parties agree to it (Sect. 72(5) and (6) Act).

Unless otherwise agreed to by the parties, all information relating to the mediation proceedings shall be kept confidential, except where disclosure is required by law, to enforce the settlement agreement, necessary to protect public order (Sect. 76(d) Act)

Sect. 78 of the Act provides that mediation proceedings terminate upon:

> "(a) the conclusion of a settlement agreement by the parties, on the date of the agreement;
> (b) a declaration of the mediator, to the effect that further efforts at mediation are no longer justified, on the date of the declaration;
> (c) a declaration of the parties addressed to the mediator to the effect that the mediation proceedings are terminated, on the date of the declaration;
> (d) a declaration of the mediation provider administering the mediation, if any, on the date of the declaration; or
> (e) a declaration of a party to the other party or parties and the mediator, if appointed, to the effect that the mediation proceedings are terminated, on the date of the declaration."

Mediators and mediation providers are not liable for any act done or omitted in the discharge or purported discharge of their functions under this Part, unless their action or omission is shown to have been in bad faith (Sect. 81 Act).

The Act further provides that where parties conclude an agreement settling a dispute, the mediator shall participate in the preparation and drafting of the settlement agreement, where the parties agree, and the settlement agreement resulting from the mediation is binding on the parties and enforceable in Court as a contract, consent judgment or consent award (Sect. 82 Act).

To enforce the settlement agreement, the party relying on a settlement agreement shall supply to the court and the application shall include the following:

> "(a) the settlement agreement signed by the parties; and
> (b) evidence that the settlement agreement resulted from mediation, such as —
> (i) the mediator's signature on the settlement agreement,
> (ii) a document signed by the mediator indicating that the mediation was carried out,
> (iii) an attestation by the mediation provider that administered the mediation, or
> (iv) in the absence of (i), (ii) or (iii), any other evidence acceptable to the Court." (Sect. 83(1) Act)

Sect. 84(1) of the Act provides that the court may refuse to enforce a settlement agreement at the request of the party against whom the relief is sought, only if that party furnishes to the court proof that —

> "(a) a party to the settlement agreement was under some incapacity; or
> (b) the settlement agreement sought to be relied upon —
> (i) is void, inoperative or incapable of being performed under the law to which the parties have validly subjected it or, under the law deemed applicable by the Court,
> (ii) is not binding, or is not final, according to its terms, or
> (iii) has been subsequently modified;
> (c) the obligations in the settlement agreement —
> (i) have been performed, or
> (ii) are not clear or comprehensible;
> (d) granting relief would be contrary to the terms of the settlement agreement; or
> (e) there was a failure by the mediator to disclose to the parties' circumstances that raise justifiable doubts as to the mediator's impartiality or independence and the failure to disclose had a material impact or undue influence on a party without which failure that party would not have entered into the settlement agreement." (Sect. 84(1))

The court may also refuse to grant relief if it finds that:

> "(a) granting relief would be contrary to the public policy of this State; or
> (b) the subject matter of the dispute is not capable of settlement by mediation under the law of this State." (Sect. 84(2))

The Nigerian Trade Dispute Act, Chapter T8, Laws of the Federation of Nigeria, 2004 provides that trade disputes between employers and workers should first be determined through amicable settlement failing which a mediator may be appointed. Where parties are unable to settle through mediation, the dispute is to be reported to the Minister of Labour who may direct that: (1) a conciliator should be appointed; or (2) that the trade dispute should be referred to the Industrial Arbitration Panel; or (3) that the dispute should be referred to a board of inquiry.

Many High Court Civil Procedure Rules now have provisions for mediation and amicable resolution of parties' disputes. The High Court of Lagos State (Civil Procedure) Rules 2019 provide that all suits filed must be screened to determine their suitability for alternative dispute resolution (Order 5 Rule 8). Furthermore, it mandates parties to attempt an amicable settlement of a dispute before litigation and show the court that an amicable resolution was unsuccessful (Order 5 Rule 1(2)(e)). Also at the appellate level, Order 16 Rules 1 and 2 of the Court of Appeal Rules, 2021 provide that at any time before an appeal is set down for hearing, the Court of Appeal may in appropriate

circumstances, upon request of any of the parties, refer the appeal to the Court of Appeal Alternative Dispute Resolution Programme.

Where any of the alternative dispute resolution mechanisms adopted is successful, the court shall adopt the agreement reached by the parties as the judgment of the court. However, where the dispute resolution mechanism fails, the appeal shall be set down for hearing or the court shall make such orders as it deems fit.

There are organizations and institutes in Nigeria that offer mediation services. These include:

Lagos Multi-Door Courthouse (LMDC)
High Court of Lagos State
Igbosere Road
Lagos State
Email: info@lagosmultidoor.org.ng
Website: <www.lagosmultidoor.org.ng>

Abuja Multi-Door Court (AMDC)
ADR Centre
Plot 426, Tigris Crescent
Aguiyi Ironsi St
FCT, Abuja
Telephone: +234 (9) 2737084, +234 (0) 708-433-6622
Email: info@fcthighcourt.gov.ng
Website: <www.fcthighcourt.gov.ng

Citizens Mediation Centre
Lagos State Ministry of Justice
Alausa
Ikeja
Lagos State

Lagos Court of Arbitration
3rd Floor, International Centre for Arbitration & ADR
Plot 1a, Remi Olowude Street
Off Second Roundabout
Lekki Phase 1
Lagos
Telephone: +234-80749-62236
E-mail: info@lca.org.ng
Website: <www.lca.org.ng>

The other means of ADR (besides mediation and/or conciliation) that exist in Nigeria are:

(1) Negotiation;
(2) Expert determination: the resolution of disputes is based on the decision of an expert who is an independent third party;
(3) Early neutral evaluation: a neutral evaluator is engaged to determine each party's claims in order to evaluate the potential chances of success, should parties proceed to litigation or arbitration. This works as an ADR mechanism because parties at this stage can identify the weaknesses in their cases and opt for immediate settlement of their disputes;
(4) Court-annexed ADR: State courts within Nigeria have amended their Civil Procedure Rules to endorse ADR techniques by allowing judges to stay matters before them in favour of mediation. Some courts now have ADR Centres wherein the disputes transferred by the judges are attempted to be settled by means of mediation. Where parties are able to resolve such a dispute by mediation, the terms of settlement will be endorsed by the court as the judgment of the court.

## 2. LEGAL PROVISIONS

Part II (Sects. 67-87) of the Arbitration and Mediation Act, 2023 (the "Act", see **Annex I** hereto) provides for mediation. This Part sets out the law as it relates to parties' right to settle disputes by mediation, parties' request for mediation, commencement of mediation proceedings, appointment of mediators, action by the mediation body and terms of settlement emanating from the mediation proceedings.

The Act defines "mediation" as a process, whether referred to by the expression mediation, conciliation or an expression of similar import, where parties request a third person ("the mediator") to assist them in their attempt to reach an amicable settlement of their dispute arising out of or relating to a contractual or other legal relationship but the mediator does not have the authority to impose upon the parties a solution to the dispute (Sect. 91 Act).

Some State High Courts' Rules now require the filing of a certificate confirming that counsel representing a litigant has discussed with and advised the client as to ADR resolution opportunities before a writ is filed. Some State Courts' Rules also require the filing of a statement of compliance along with the writ. By the statement of compliance, a claimant states that there have been attempts to have the matter settled out of court and that such attempts at settlement were unsuccessful. Evidence of such settlement is also required to be attached to the form (Order 5 Rule 3(d)); Para. 2 of the Preamble to the High Court of Lagos State (Civil Procedure) Rules, 2019).

# Chapter IX. Investment Treaty Arbitration

## 1. CONVENTIONS AND TREATIES

Nigeria is a signatory to the Convention on Settlement of Investment Disputes ("ICSID"). Nigeria has also entered into bilateral investment treaties ("BITs") with China, Finland, France, Germany, Italy, Republic of Korea, the Netherlands, Romania, Serbia, South Africa, Spain, Sweden, Switzerland, Taiwan Province of China, and the United Kingdom. The following BITs have been signed but are not yet in force: Algeria, Austria, Bulgaria, Canada, Egypt, Ethiopia, Jamaica, Kuwait, Morocco, Russian Federation, Serbia, Singapore, Turkey, Uganda, United Arab Emirates.[29]

Furthermore, Nigeria has entered into Investment Promotion and Protection Agreements ("IPPAs") with France, the United Kingdom, the Netherlands, Romania, Switzerland, Spain and South Africa. The purpose of these IPPAs is to provide for the protection of investments as well as the settlement of investment disputes through arbitration.[30]

Nigeria does not have a Model BIT. However, some of the innovations in the Morocco–Nigeria BIT (which has not yet entered into force) provide a guide as to what obligations may be placed on the investor where Nigeria enters into BITs in the future. Some of the clauses in the Morocco–Nigeria BIT require investors to uphold human rights and international labour standards and ensure that their investments remain socially responsible.

Nigeria has ratified the Agreement establishing the African Continental Free Trade Area (AfCFTA). The purpose of the agreement is to encourage intra-African trade through the elimination of tariffs and non-tariff barriers to trade in goods and liberalization of trade and services.

The agreement provides for a state-to-state dispute settlement system and establishes a Dispute Settlement Body ("DSB"), to administer the provisions of the Protocol on Rules and Procedures on the Settlement of Disputes between member states. Disputing state parties may also decide to have the dispute resolved by arbitration and shall agree on the procedures to be used in the arbitration proceedings.[31]

29. The BITs to which Nigeria is a party are published on <http://investmentpolicyhub.unctad.org/IIA/CountryBits/153>.
30. See <http://investmentpolicyhub.unctad.org/IIA/CountryBits/153> and <http://nipc.gov.ng/index.php/invest-in-nigeria/investment-incentives.html>.
31. <https://au.int/en/treaties/agreement-establishing-african-continental-free-trade-area>.

## 2. INVESTMENT ARBITRATION

Nigeria has been a party to the following investment arbitrations:

- *Guadalupe Gas Products Corporation v. Nigeria* (ICSID Case No. ARB/78/1) – settlement agreed by parties in form of an award and rendered on 22 July 1980;[32]
- *Shell Nigeria Ultra Deep Limited v. Federal Republic of Nigeria* (ICSID Case No. ARB/07/18) – discontinued on 1 August 2011;
- *Zhongshan Fucheng Industrial Investment Co. Ltd. v. Federal Republic of Nigeria* – initiated in 2018 and concluded 2021;
- *Interocean Oil Development Company and Interocean Oil Exploration Company v. Federal Republic of Nigeria* (ICSID Case No. ARB/13/20) – concluded on 8 October 2020;[33]
- *Eni International B.V., Eni Oil Holdings B.V. and Nigerian Agip Exploration Limited v. Federal Republic of Nigeria* (ICSID Case No. ARB/20/41) – initiated in 2020 and pending;[34]
- *Shell Petroleum N.V. and The Shell Petroleum Development Company of Nigeria Limited v. Federal Republic of Nigeria* (ICSID Case No. ARB/21/7) – initiated in 2021 and concluded;[35]
  *Korea National Oil Corporation, KNOC Nigerian West Oil Company Limited, and KNOC Nigerian East Oil Company Limited v. Federal Republic of Nigeria* (ICSID Case No. ARB/23/19) – initiated in 2023 and pending.[36]

## 3. NATIONAL INVESTMENT LEGISLATION

The Nigerian Investment Promotion Commission Act, Chapter N117 Laws of the Federation of Nigeria 2004 ("NIPC Act") provides in Sect. 26 that the Federal Government and foreign investors may refer investment disputes in respect of any enterprise to arbitration after amicable settlement through mutual discussions has failed. The NIPC Act allows parties to settle their investment disputes in accordance with any other national or international machinery for the settlement of investment disputes agreed by the parties (Sect. 26(2)(c)).

However, the NIPC Act further provides that where there is disagreement between the investor and the Federal Government as to the method of dispute settlement to be adopted, the International Centre for Settlement of Investment

32. <https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/78/1>.
33. <https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/13/20>.
34. <https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/20/41>.
35. <https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/21/7>.
36. <https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/23/19>.

Disputes Rules shall apply (Sect. 26(3) Act). Under Art. 28(1) of the ICSID Convention, any contracting party wishing to institute proceedings at ICSID shall address a request to that effect to the Secretary-General who shall send a copy to the other party.

The International Centre for Settlement of Investment Disputes (Enforcement of Awards) Act, Cap. I20 LFN 2004 (the "ICSID Act") provides for the enforcement in Nigeria of ICSID awards. By the ICSID Act, where for any reason it is necessary or expedient to enforce an ICSID award in Nigeria, a copy of the award duly certified by the Secretary-General of the Centre, if filed in the Supreme Court by the party seeking its recognition or enforcement in Nigeria, shall for all purposes have effect as it were an award contained in a final judgment of the Supreme Court, and the award shall be enforceable accordingly (Sect. 1 ICSID Act).

Awards are enforced against a state or a state entity where there has been a waiver of diplomatic immunity under Sects. 2, 5(2), 7, 8, 10 and 16 of the Diplomatic Immunity and Privileges Act, Chapter D9, Laws of the Federation of Nigeria, 2004. It should be noted however that by the provisions of case law, awards may be enforced where the state engages in commercial transactions which are the subject of arbitration. In these situations, the state's entry into an arbitration agreement is treated as a waiver of immunity.

It is, however, pertinent to note that enforcement measures cannot be made against assets being used for diplomatic and public purposes. Furthermore, assets held by persons connected to the state for the performance of sovereign or public services are protected from enforcement measures.

# ANNEX I

## ARBITRATION AND MEDIATION ACT, 2023*

EXPLANATORY MEMORANDUM

This Act repeals the Arbitration and Conciliation Act, Cap A18, Laws of the Federation of Nigeria, 2004 and enacts the Arbitration and Mediation Act, 2023 to provide a unified legal framework for the fair and efficient settlement of commercial disputes by arbitration and mediation, and make applicable, the convention on the recognition and enforcement of foreign arbitral awards (New York Convention) to any award made in Nigeria or in any contracting state arising out of international commercial arbitration.

Arrangement of Sections



* In effect from 26 May 2023.

FEDERAL REPUBLIC OF NIGERIA

# ARBITRATION AND MEDIATION ACT, 2023

A Bill

For

An Act to repeal the Arbitration and Conciliation Act, Cap. A18, Laws of the Federation of Nigeria, 2004 and enact the Arbitration and Mediation Act, 2023 to provide a unified legal framework for the fair and efficient settlement of commercial disputes through arbitration and mediation, make applicable the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) to any award made in Nigeria or in any contracting state arising out of international commercial arbitration.

[*Commencement*]

ENACTED by the National Assembly of the Federal Republic of Nigeria as follows—

## PART I – ARBITRATION

### *1. Objectives and application*

1.1 Objectives

(a) The objective of this Part is to promote fair resolution of disputes by an impartial tribunal without unnecessary delay or expense.

(b) Parties to a dispute are at liberty to decide the means by which their disputes may be resolved, provided they adhere to measures that are necessary to promote peaceful existence and protect public interest.

(c) An arbitration agreement between parties for settlement of dispute shall be binding on parties and enforceable against each of the parties to the exclusion of any other dispute resolution method unless the parties otherwise provide or the agreement is void;

(d) Parties, arbitrators, arbitral institutions, appointing authorities and the court shall do all things necessary for the proper and expeditious conduct of the arbitral proceedings.

1.2 Application

This Part shall apply to –

(a) international commercial arbitration, subject to any agreement in force between Federal Republic of Nigeria and any other country or countries;

(b) inter-state commercial arbitration within the Federal Republic of Nigeria; and

(c) commercial arbitration within the Federal Republic of Nigeria.

1.3 The provisions of this Part shall apply, where the seat of the arbitration is in the territory of the Federal Republic of Nigeria.

1.4 The powers of the Court under this subsection shall apply even where the seat of the arbitration is outside the Federal Republic of Nigeria or the parties have not designated the seat or no seat has been determined —

(a) section 5 (power to stay court proceedings);
(b) section 19 (power of Court to grant interim measures of protection);
(c) section 28 (recognition and enforcement of interim measures);
(d) section 29 (refusing recognition and enforcement of interim measures);
(e) section 43 (securing the attendance of witnesses);
(f) section 57 (recognition and enforcement of awards); and
(g) section 58 (refusing recognition and enforcement of awards).

*2. Form of arbitration agreement*

(1) Arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate complete agreement.

(2) The arbitration agreement shall be in writing.

(3) An arbitration agreement shall be in writing where its content is recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct, or by any other means.

(4) The requirement for arbitration agreement to be in writing is met, where it is —

(a) by an electronic communication, as defined in section 91, and the information contained in it is accessible so as to be useable for subsequent reference; and
(b) it is contained in an exchange of points of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other.

(5) Reference in a contract or a separate arbitration agreement to a document containing an arbitration clause constitutes an arbitration agreement in writing, provided that the reference is in a manner that makes it part of the contract or the arbitration agreement.

*3. Arbitration agreement irrevocable except by agreement or leave of court*

Subject to section 5(1) of this Act, and unless the parties agree otherwise, an arbitration agreement is irrevocable.

*4. Death or change in status of party*

(1) An arbitration agreement shall not be invalid by reason of the death of any of the parties to the agreement.

(2) The authority of an arbitrator shall not be revoked by the death, bankruptcy, insolvency or other change in circumstance of any party by whom the arbitrator was appointed.

(3) Nothing in this section shall be construed to affect the operation of any law by virtue of which any right of action is extinguished by the death of a person.

(4) For the purposes of this section, "death" includes the meaning ascribed to it in section 91(1) of this Act.

*5. Power to stay court proceedings on the same substantive claim*

(1) Notwithstanding the provisions of any other law, a court before which an action is brought in a matter, which is the subject of an arbitration agreement shall, if any of the parties request, not later than when submitting their first statement on the substance of

the dispute, refer the parties to arbitration unless it finds that the agreement is void, inoperative or incapable of being performed.

(2) Where an action referred to in subsection (1) of this section has been brought before a court, arbitral proceedings may be commenced or continued, and an award may be made by the arbitral tribunal while the matter is pending before the court.

(3) Where a court makes an order for stay of proceedings under subsection (1) of this section, the court may, for the purpose of preserving the rights of parties, make an interim or supplementary order as may be necessary.

*6. Number of arbitrators*

(1) Parties to an arbitration agreement may agree on the number of arbitrators to constitute an arbitral tribunal.

(2) Where there is no agreement as to the number of arbitrators, the arbitral tribunal shall consist of a sole arbitrator.

*7. Appointment of arbitrators*

(1) A person shall not be precluded, by reason of the person's nationality, from acting as an arbitrator, unless it is agreed to by the parties.

(2) Parties may agree on a procedure of appointing an arbitrator, subject to the provisions of subsections (4) and (5).

(3) Subject to section 59 of this Act, where the parties fail to agree on the procedure for appointing an arbitrator under subsection (2) of this section, in an arbitration —

(a) with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators appointed shall appoint the third arbitrator. Where a party fails to appoint the arbitrator within 30 days of receipt of a request to do so from the other party, or where the two arbitrators appointed by the parties fail to agree on the third arbitrator within 30 days of their appointment, the appointment shall be made, upon request of a party, by the appointing authority designated by the parties or, failing such designation, by an arbitral institution in Nigeria or by the Court;

(b) with a sole arbitrator, where the parties are unable to agree on the arbitrator within 30 days after the receipt of a written communication containing a request for the dispute to be referred to arbitration by the other party or parties, the arbitrator shall be appointed, upon request of a party, by the appointing authority designated by the parties or, failing such designation, by any arbitral institution in Nigeria or by the Court;

(c) where the parties to a dispute are more than two, and the arbitration agreement entitles each party to nominate an arbitrator, if within 30 days of the receipt of a written communication containing a request for the dispute to be referred to arbitration, the parties have not agreed in writing that the disputing parties represent two separate sides for the formation of the arbitral tribunal as claimant and respondent respectively, then the appointing authority designated by the parties or, failing such designation, any arbitral institution in Nigeria or the Court shall, upon request of a party, have the power to appoint the arbitral tribunal without regard to any party's nomination;

(d) where the designated appointing authority or, failing such designation, any arbitral institution in Nigeria or the Court is requested to appoint an arbitrator under the provisions of this section, the party which makes the request shall send to the appointing authority, arbitral institution or Court, a copy of the request for

a dispute to be referred to arbitration, a copy of the contract out of or in relation to which the dispute has arisen and a copy of the arbitration agreement if it is not contained in the contract. The appointing authority, arbitral institution or Court may require from either party such other information as it deems necessary to fulfil its functions under this Act; and

(e) where a party proposes the names of one or more persons for appointment as arbitrators, their full names, addresses and nationalities shall be indicated, together with a description of their qualifications.

(4) Save as otherwise specifically provided under this Act, where, under an appointment procedure agreed upon by the parties —

(a) a party fails to act as required under the procedure; or

(b) the parties, or the two arbitrators appointed by the parties, are unable to appoint the third and presiding arbitrator; , or

(c) the appointing authority, a third party, including an arbitral institution fails to perform any function entrusted to it under such appointment procedure,

any party may request the Court to take the necessary action, or perform the necessary function, unless the appointment procedure agreed by the parties provides other means for securing the appointment.

(5) The appointing authority, arbitral institution or the Court exercising its power of appointment under this section shall —

(a) appoint within 30 days of the request;

(b) have due regard to the qualification required of an arbitrator in the arbitration agreement and to the considerations as are likely to secure the appointment of an independent and impartial arbitrator; and

(c) in the case of a sole or third arbitrator, take into account the advisability of appointing an arbitrator of a nationality other than those of the parties.

(6) The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the arbitral institution chosen by a party.

*8. Grounds for challenge*

(1) Where a person is approached in connection with possible appointment as an arbitrator, the person shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence.

(2) An arbitrator shall from the time appointed and throughout the arbitral proceedings, disclose to the parties any relevant circumstances not within the knowledge of the parties.

(3) An arbitrator may only be challenged where circumstances exist that give rise to justifiable doubts as to his or her impartiality or independence, or if he or she does not possess qualifications agreed to by the parties.

(4) A party may only challenge an arbitrator it appointed, or in whose appointment it has participated for reasons of which it becomes aware after the appointment has been made.

*9. Challenge procedure*

(1) The parties may agree on a procedure for challenging an arbitrator, subject to the provisions of subsection (3) of this section.

(2) Where agreement is not reached between the parties under subsection (1), a party who intends to challenge an arbitrator shall, within 14 days after becoming aware

of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in section 8 (3) and (4) of this Act, send a written statement of the reasons for the challenge to the arbitral tribunal and unless the challenged arbitrator withdraws or the other party or parties agree to the challenge, the arbitral tribunal shall decide on the challenge.

(3) Where a challenge under any procedure agreed upon by the parties or under subsection (2) is not successful, the challenging party may, within 30 days after having received notice of the decision rejecting the challenge, request either —

(a) the appointing authority, arbitral institution or the Court that appointed the arbitrator; or

(b) where the party that appointed the arbitrator, the Court,

as may be appropriate to decide the challenge and while the request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

(4) The appointing authority, arbitral institution or Court shall decide on the admissibility and, at the same time, if necessary, on the merits of the challenge after affording an opportunity for the arbitrator concerned, the other party or parties and any other members of the arbitral tribunal to comment in writing within a suitable period of time.

(5) The submitting party shall communicate the comments to the other party or parties and to the arbitrators.

*10. Failure or impossibility to act*

(1) Where, by reasons of law or fact an arbitrator is unable to perform his or her functions or fails to act without undue delay, the arbitrator's mandate shall terminate upon his or her withdrawal or by the agreement of the parties on the termination.

(2) Where dispute remains between the parties as to the grounds upon which the arbitrator's mandate is sought to be determined, any party may request the Court to decide on the termination of the mandate.

(3) Where, under this section or section 9(2), an arbitrator withdraws from office or a party agrees to the termination of the mandate of an arbitrator, this shall not imply acceptance of the validity of any ground referred to in this section or section 8(3) and (4).

*11. Appointment of substitute arbitrator*

Where the mandate of an arbitrator terminates under sections 9 or 10 of this Act or because of withdrawal from office for any other reason or because of the revocation of mandate by agreement of the parties or, in any other case of termination of mandate, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

*12. Withdrawal, death and cessation of office of an arbitrator*

(1) The parties may agree with an arbitrator as to the consequences of the arbitrator's withdrawal from office as regards —

(a) the arbitrator's entitlement, if any, to fees or expenses; and

(b) any liability incurred by the arbitrator.

(2) Where there is no agreement referred to in subsection (1) —

(a) an arbitrator who withdraws from appointment may, upon notice to the parties, apply to the appointing authority designated by the parties or, failing such designation, apply to the Court to —

(i) grant the arbitrator relief from any liability incurred by the arbitrator, and

(ii) make any order as it deems fit with respect to the arbitrator's entitlement, if any, fees, expenses or the refund of any fees or expense already paid; and

(b) where the appointing authority or, where applicable, the Court is satisfied that it was reasonable for the arbitrator to withdraw, the Court may grant any relief under paragraph (a) on such terms as it deems fit.

(3) Subject to subsection (6), the authority of an arbitrator is personal and ceases upon the death of the arbitrator.

(4) Where the mandate of an arbitrator terminates under section 10 of this Act, or by resignation or death, the parties may agree —

(a) whether and to what extent the previous proceedings should stand; and

(b) in the event of the death of the arbitrator, the sum, if any to be paid to the estate of the arbitrator for work done and the refund of expenses incurred.

(5) Where and to the extent that there is no such agreement, the tribunal when reconstituted shall determine —

(a) whether and to what extent the previous proceedings shall stand; and

(b) the sum, if any, payable to the estate of the deceased arbitrator.

(6) The arbitrator's ceasing to hold office does not affect any appointment made alone or jointly with another arbitrator, in particular, any appointment of a presiding arbitrator.

*13. Immunity of an arbitrator, appointing authority and arbitral institution*

(1) An arbitrator, appointing authority or an arbitral institution is not liable for anything done or omitted in the discharge or purported discharge of their functions as provided in this Act, unless their action or omission is shown to have been in bad faith.

(2) Subsection (1) applies to an employee of an arbitrator, appointing authority or an arbitral institution as it applies to the arbitrator, the appointing authority or the arbitral institution in question.

(3) This section shall not affect any liability incurred by an arbitrator by reason of the arbitrator's withdrawal under section 12 of this Act.

*14. Competence of arbitral tribunal to rule on its jurisdiction*

(1) The arbitral tribunal shall rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement.

(2) For the purpose of subsection (1), an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract and a decision by the arbitral tribunal that the contract is void does not entail *ipso jure* the invalidity of the arbitration clause.

(3) In any arbitral proceeding, a plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the points of defence and a party is not precluded from raising such a plea by the fact that it has appointed or participated in the appointment of an arbitrator.

(4) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings and the arbitral tribunal may, in a case falling either under subsection (3), admit a later plea where it considers the delay justified.

(5) The arbitral tribunal may rule on any plea referred to it under subsections (3) and (4), either as a preliminary question or in an award on the merits and the ruling is final and binding.

(6) Where the tribunal rules as a preliminary question that it has jurisdiction, a party may request, within 30 days after having received notice of the ruling, the Court to decide the matter.

(7) Where the arbitral tribunal rules on its jurisdiction as a preliminary question, it may continue with the proceedings and make an award notwithstanding that a party has recourse to a Court in respect of such ruling.

*15. Rules applicable to substance of dispute*

(1) The arbitral tribunal shall decide the disputes in accordance with the rules of law that is chosen by the parties as applicable to the substance of the dispute.

(2) Any designation of the law or legal system of a given jurisdiction or territory shall be construed, unless otherwise expressed, as directly referring to the substantive law of that jurisdiction or territory and not to its conflict of law rules.

(3) Where parties fail to choose or designate any law or legal system of a given jurisdiction or territory as required in subsection (1), the arbitral tribunal shall apply the law determined by the conflict of law rules which it considers applicable.

(4) The arbitral tribunal shall not decide *ex aequo et bono* or as *amiable compositeur*, unless the parties have expressly authorised it to do so.

(5) In all cases, the arbitral tribunal shall —

(a) decide in accordance with the terms of the contract; and

(b) where established by credible evidence, take account of the usages of the trade applicable to the transaction.

*16. Appointment of an emergency arbitrator*

(1) A party that requires emergency relief may, concurrent with or following the filing of a request for a dispute to be referred to arbitration but before the constitution of the arbitral tribunal, submit an application for the appointment of an emergency arbitrator to any arbitral institution designated by the parties, or, failing such designation, to the Court, as defined in section 91.

(2) The party who requires the appointment of an emergency arbitrator shall provide sufficient copies of the application to the arbitral institution or the Court to make one copy available for the emergency arbitrator and one copy for each party, who shall be notified of the proceedings in accordance with subsection (6).

(3) Unless the parties agree otherwise, the application shall include the following information about —

(a) a statement of the emergency relief sought;

(b) the name in full, description, address and other contact details of each party;

(c) a description of the circumstances that give rise to the application and of the underlying dispute referred to arbitration;

(d) the reason why the applicant needs the emergency relief on an urgent basis that cannot await the constitution of an arbitral tribunal;

(e) the reasons why the applicant is entitled to the emergency relief; and

(f) any relevant agreement and, in particular, the arbitration agreement.

(4) The application may contain any other document or information as the applicant considers appropriate or that may contribute to the efficient examination of the application.

(5) Where the arbitral institution or Court determines that it should accept the application, it shall, unless the parties otherwise agree, appoint an emergency arbitrator within two business days after the date the application is received.

(6) Once the emergency arbitrator has been appointed, the arbitral institution or Court shall, at the expense of the party making the application, immediately notify the emergency arbitrator and other party or parties named in the application, not later than the close of business on the business day following the date the application is granted, or any other time, not exceeding two business days, as the arbitral institution or Court considers to be appropriate in the circumstances, and written communications from the parties shall subsequently be submitted directly to the emergency arbitrator with a copy to the other party or parties.

(7) Every emergency arbitrator shall be and remain impartial and independent of the parties involved in the dispute.

(8) A prospective emergency arbitrator shall sign and deliver to the parties a statement of acceptance, availability, impartiality and independence.

(9) The emergency relief proceedings shall be in accordance with the provisions of Article 27 of the First Schedule to this Act.

(10) This section and Article 27 of the First Schedule to this Act shall not prevent any party from seeking urgent interim measures from a Court under section 19 of this Act, at any time before making an application for the measures, and in appropriate circumstances thereafter.

(11) Any application for urgent interim measures from a competent Court is not deemed to be an infringement or waiver of the arbitration agreement.

*17. Challenge of an emergency arbitrator*

(1) Unless the parties agree otherwise —

(a) a challenge against the appointment of the emergency arbitrator shall be made within three days from the day the party that makes the challenge receives the notification of the appointment or from the date when that party was informed of the facts and circumstances on which the challenge is based, where such date is after the receipt of such notification; and

(b) the provisions of this Act relating to the grounds for challenge of an arbitrator under section 8 of this Act shall also apply to the grounds for challenge of an emergency arbitrator.

(2) The arbitral institution or Court that appoints the emergency arbitrator will decide the challenge after a reasonable opportunity has been afforded to the emergency arbitrator and the parties to provide submissions in writing, but no later than three business days after the date of the challenge.

(3) Where an emergency arbitrator —

(a) dies,

(b) has been successfully challenged,

(c) has been removed, or

(d) has withdrawn,

the arbitral institution or Court shall appoint a substitute emergency arbitrator within two business days.

(4) Where the emergency arbitrator is replaced, the emergency relief proceedings shall resume at the stage where the emergency arbitrator was replaced or ceased to perform assigned functions, unless the substitute emergency arbitrator decides otherwise.

*18. Seat of the emergency relief proceedings*

(1) Where the parties have agreed on the seat of arbitration, that seat shall be the seat of the emergency relief proceedings.

(2) Where the parties have not agreed on the seat of the arbitration, the arbitral institution or Court that appointed the emergency arbitrator shall fix the seat of the emergency relief proceedings, without prejudice to the determination of the seat of arbitration by the arbitral tribunal under section 32 of this Act.

(3) Any meeting with the emergency arbitrator may be conducted through a meeting in person at a location which the emergency arbitrator considers appropriate or by video conference, telephone or similar means of communication.

*19. Power of a Court to grant interim measures of protection*

Without prejudice to section 16 of this Act, a Court has the power to issue interim measures of protection for the purposes of, and in relation to arbitration proceedings whose seat is in the Federal Republic of Nigeria or is in another country as it has for the purpose of, and in relation to proceedings in the Courts, and shall exercise that power within 15 days of any application, in accordance with the rules set out in the Third Schedule to this Act.

*20. Power of arbitral tribunal to grant interim measures*

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

(2) An interim measure is a temporary measure, whether in the form of an award or in another form, which, at any time before the award which decides the dispute is issued, the arbitral tribunal orders a party to —

(a) maintain or restore the status quo pending determination of the dispute;

(b) take action that may prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral process itself;

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

(d) preserve evidence that may be relevant and material to the resolution of the dispute or preserve the subject matter of the arbitration itself.

*21. Conditions for grant of interim measures*

(1) The party requesting an interim measure under section 20(2)(a), (b) and (c) shall satisfy the arbitral tribunal that —

(a) harm not adequately reparable by an award of damages is likely to result where the measure is not ordered, and the harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed where the measure is granted; and

(b) there is a reasonable possibility that the requesting party may succeed on the merits of the claim, provided that any determination on this possibility does not

affect the discretion of the arbitral tribunal to make any subsequent determination.

(2) With regard to a request for an interim measure under section 20 (2) (d), the requirements under subsection (1)(a) and (b) shall apply only to the extent the arbitral tribunal considers appropriate.

*22. Applications for preliminary orders*

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

(2) The arbitral tribunal may grant a preliminary order, provided it considers that prior disclosure of the request for the interim measure to the party against whom it is directed may frustrate the purpose of the measure.

(4) The conditions defined under section 21(1) of this Act apply to any preliminary order, provided that the harm to be assessed under section 21(1) (a) is the harm likely to result from the order being granted or not.

*23. Specific regime for preliminary orders*

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

(2) The arbitral tribunal shall give opportunity to any party against whom a preliminary order is directed to present its case at the earliest possible time.

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

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

(5) A preliminary order is binding on the parties but is not subject to enforcement by a Court and the preliminary order does not constitute an award.

*24. Modification, suspension and termination of interim measures and preliminary orders*

The arbitral tribunal may modify, suspend or terminate an interim measure or a preliminary order it has granted on application of a party or, in exceptional circumstances and upon prior notice to the parties, on the initiative of the arbitral tribunal including where —

(a) important facts were concealed from the arbitral tribunal;

(b) the interim measures or preliminary order was fraudulently obtained;

(c) facts have come to the knowledge of the arbitral tribunal, which, if the arbitral tribunal had known at the material time, it would not have granted the order; and

(d) it is just and equitable in the circumstance to modify, suspend or terminate the order.

*25. Order by the arbitral tribunal for provision of security*

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

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

*26. Disclosure of material change in circumstances*

(1) The party requesting an interim measure shall promptly disclose any material change in the circumstances upon which the measure was requested or granted.

(2) The party applying for a preliminary order shall disclose to the arbitral tribunal all circumstances that are likely to be relevant to the determination by the arbitral tribunal whether to grant or maintain the order, and that obligation continues until the party against whom the order has been requested has had an opportunity to present its case.

(3) The applying party shall have the same obligation to disclosure with respect to the preliminary order that a requesting party has with respect to an interim measure under subsection (1).

*27. Costs and damages*

(1) The party requesting an interim measure or applying for a preliminary order is liable for costs and damages caused by the measure or the order to the party against whom it is directed if the arbitral tribunal later determines that, in the circumstances, the measure or the order should not have been granted.

(2) The arbitral tribunal may award such costs and damages at any point during the proceedings.

*28. Recognition and enforcement of interim measures*

(1) An interim measure issued by an arbitral tribunal is binding and, unless otherwise provided by the arbitral tribunal, shall be enforced upon an application to the Court, irrespective of the country in which it was issued, subject to section 29 of this Act.

(2) The party who is seeking or has obtained recognition or enforcement of an interim measure shall promptly inform the Court of any termination, suspension or modification of that interim measure.

(3) The Court to which a request for recognition and enforcement of an interim measure is presented may, where it considers it proper, order the requesting party to provide appropriate security if the arbitral tribunal has not already made a determination with respect to security or where the decision is necessary to protect the rights of third parties.

*29. Grounds for refusing recognition or enforcement of interim measures*

(1) Recognition or enforcement of an interim measure may be refused only —

(a) at the request of the party against whom it is invoked, where the Court is satisfied that the —

(i) refusal is warranted on the grounds set forth in section 58(2)(a) (i), (ii), (iii), (iv), (v), (vi) or (vii) of this Act,

(ii) decision of the arbitral tribunal with respect to the provision of security in connection with the interim measure issued by the arbitral tribunal has not been complied with, or

(iii) interim measure has been terminated or suspended by the arbitral tribunal or, where so empowered, by a competent authority in the Country in which the arbitration takes place or under the law of which that interim measure was granted; or

(b) where the Court finds that —

(i) the interim measure is incompatible with the powers conferred upon the Court, unless the Court decides to reformulate the interim measure to the extent necessary to adapt it to its own powers and procedures for the purposes of enforcing that interim measure and without modifying its substance, or

(ii) any of the grounds set forth in section 58(2)(b) apply to the recognition and enforcement of the interim measure.

(2) Any determination made by the Court on any ground in subsection (1) is effective only for the purposes of the application to recognise and enforce the interim measure.

(3) The Court where recognition or enforcement is sought shall not, in making determination, undertake a review of the substance of the interim measure.

*30. Equal treatment of parties*

In any arbitral proceedings, the arbitral tribunal shall ensure that the parties are —

(a) treated equally and that each party is given reasonable opportunity of presenting its case; and

(b) accorded a fair resolution of the dispute without unnecessary delay or expense.

*31. Arbitral proceedings and determination of rules of procedure*

(1) Subject to the provisions of this Act, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings, provided that where parties do not have arbitral agreement, the arbitral proceedings shall be in accordance with the procedure contained in the Arbitration Rules set out in the First Schedule to this Act.

(2) Where the agreed procedure or rules referred to in subsection (1) contain no provision in respect of any matter related to the arbitral proceedings, the arbitral tribunal shall conduct the arbitral proceedings in such a manner that is consistent with section 30 of this Act.

(3) The power conferred on the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

*32. The seat and place of the arbitration*

(1) The seat of the arbitration shall be designated —

(a) by the parties to the arbitration agreement;

(b) by an arbitral or other institution or person authorised by the parties with powers in that regard; or

(c) subject to subsection (2), by the arbitral tribunal.

(2) Where the parties have not designated the seat of the arbitration and they have not authorised any arbitral or other institution to designate the seat of the arbitration, the seat of the arbitration shall be any place in Nigeria as the arbitral tribunal may determine, unless the arbitral tribunal decides that a place in another Country should be the seat of the arbitration having regard to all the relevant circumstances, including —

(a) the Country with which the parties and the transaction have the closest connection;

(b) the law that the parties have selected to govern their substantive rights under the contract, and

(c) any law that the parties may have chosen to govern the arbitration.

(3) Notwithstanding the provisions of subsections (1) and (2), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate to consult among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

(4) In this section the expression "seat of arbitration" means the juridical seat of the arbitration for purposes of determination of the law that will govern the arbitration proceedings (the curial law).

*33. Commencement of arbitral proceedings*

Unless otherwise agreed by the parties, arbitral proceedings in respect of a particular dispute shall commence on the date on which a written communication containing a request for the dispute to be referred to arbitration is received by the respondent.

*34. Application of statutes of limitation to arbitral proceedings*

(1) Applicable statutes of limitation shall apply to arbitral proceedings as they apply to judicial proceedings.

(2) In computing the time prescribed by a statute of limitation for the commencement of judicial, arbitral or other proceedings in respect of a dispute which was the subject matter of —

(a) an award which the court orders to be set aside or declares to be of no effect, or

(b) the affected part of an award which the court orders to be set aside in part, or declares to be part of no effect,

the period between the commencement of the arbitration and the date of the order referred to in paragraph (a) or (b) shall be excluded.

(3) In determining for the purposes of a statute of limitation when a cause of action accrued, any provision that an award is a condition precedent to bring legal proceedings in respect of a matter to which an arbitration agreement applies shall be disregarded.

(4) In computing the time for the commencement of proceedings to enforce an arbitral award, the period between the commencement of the arbitration and the date of the award shall be excluded.

*35. Language to be used in arbitral proceedings*

(1) The parties are free to agree on the language or languages to be used in the arbitral proceedings and where there is no agreement, the language to be used is English.

(2) Any language or languages agreed upon by the parties or determined by the arbitral tribunal under subsection (1) shall, unless the parties or the arbitral tribunal state otherwise, be the language or languages to be used in any written statements by

the parties, in any hearing, award decision or any other communication in the course of the arbitration.

(3) The arbitral tribunal may order that documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

*36. Points of claim and defence*

(1) Within the time agreed by the parties or determined by the arbitral tribunal, the claimant shall, in its points of claim, state the facts supporting the claim, the points at issue and the relief or remedy sought, and the respondent shall state, in its points of defence, the response in respect of those particulars, unless the parties have otherwise agreed on the required elements of the points of claim and of defence.

(2) The parties may submit further statements as they may agree or as the arbitral tribunal may direct.

(3) The parties may submit with their statements under subsections (1) and (2), documents they consider to be relevant or they may add a reference to the documents, or other evidence they intend to submit during the course of the arbitral proceedings.

(4) Unless otherwise agreed to by the parties, a party may amend or supplement its claim or defence during the course of the arbitral proceedings unless the tribunal considers it inappropriate to allow any amendment or supplement having regard to the delay in making it.

*37. Power of the arbitral tribunal as to remedies*

(1) The parties may agree on the powers exercisable by the arbitral tribunal as regards remedies.

(2) Unless otherwise agreed to by the parties, the arbitral tribunal has powers —

(a) to make a declaration as to any matter to be determined in the proceedings;

(b) to order the payment of a sum of money, in any currency claimed by a party; and

(c) as the Court, to order —

(i) a party to do or refrain from doing anything,

(ii) specific performance of a contract (other than a contract relating to land), and

(iii) the rectification, setting aside or cancellation of a deed or other document.

*38. Hearing and written proceedings*

(1) Subject to a contrary agreement by the parties, the arbitral tribunal shall decide whether the arbitral proceedings shall be conducted —

(a) by holding oral hearings for the presentation of evidence or for oral arguments;

(b) on the basis of documents and other materials; or

(c) by a combination of the methods described in paragraphs (a) and (b), and, unless the parties have agreed that no hearing be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings if so requested by any party.

(2) The arbitral tribunal shall give the parties sufficient advance notice of any hearing and meeting of the arbitral tribunal, held for the purposes of inspection of documents, goods, or other property.

(3) Except on the application for a preliminary order under section 22 of this Act, every statement, document or other information supplied to the arbitral tribunal or other authority by one party shall be communicated to the other party.

(4) Any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

(5) Unless otherwise agreed by the parties, the arbitral tribunal may, for the purposes of the arbitral proceedings concerned —

(a) direct that a party to an arbitration agreement or a witness who gives evidence in proceedings before the arbitral tribunal be examined on oath or on affirmation; and

(b) administer oaths or affirmations for the purposes of the examination.

*39. Consolidation and concurrent hearing*

(1) Parties may agree —

(a) that the arbitral proceedings shall be consolidated with other arbitral proceedings, including arbitral proceedings involving a different party or parties with the agreement of that party or parties, or

(b) concurrent hearings shall be held,

on such terms as may be agreed.

(2) The arbitral tribunal shall not order the consolidation of proceedings or concurrent hearings unless the parties agree to the making of such an order.

*40. Joinder of parties*

(1) The arbitral tribunal shall have the power to allow an additional party to be joined to the arbitration, provided that, prima facie, the additional party is bound by the arbitration agreement giving rise to the arbitration.

(2) The arbitral tribunal's decision under subsection (1) is without prejudice to its power to subsequently decide any question as to its jurisdiction arising from such decision.

*41. Default of a party*

(1) Unless otherwise agreed to by the parties, if, without showing sufficient cause —

(a) the claimant fails to state the claim as required under section 36(1) of this Act, the arbitral tribunal shall terminate the proceedings provided that where a respondent has a counterclaim and has evinced an intention to file same, the proceedings shall not be terminated;

(b) the respondent fails to state the defence as required under section 36(1) of this Act, the arbitral tribunal shall continue the proceedings without treating the failure in itself as an admission of the claimant's allegation; or

(c) any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make an award on the evidence before it.

(2) Parties may agree on any additional powers of the arbitral tribunal for the proper and expeditious conduct of the arbitration in case of a party's default.

(3) Unless otherwise agreed by the parties, if, after stating the claim as required under section 36(1) of this Act, the arbitral tribunal is satisfied that there has been inordinate and inexcusable delay on the part of the claimant in pursuing the claim and that the delay —

(a) gives rise, or is likely to give rise, to a substantial risk that a fair resolution of the issues in that claim may not be possible, or

(b) has caused, or is likely to cause serious prejudice to the respondent,

the arbitral tribunal may make an award dismissing the claim.

(4) Unless otherwise agreed by the parties, if without showing cause, a party fails to comply with an order or directions of the arbitral tribunal, the arbitral tribunal may make a peremptory order to the same effect, prescribing such time for compliance with it as the tribunal considers appropriate.

(5) Unless otherwise agreed by the parties, where a claimant fails to comply with a peremptory order of the arbitral tribunal to provide security for costs, the arbitral tribunal may make an award dismissing its claim.

(6) Unless otherwise agreed by the parties, where a party fails to comply with any other kind of peremptory order, the arbitral tribunal may —

(a) direct that the party in default is not entitled to rely upon any allegation or material which was the subject matter of the order;

(b) draw any adverse inference from the act of non-compliance as the circumstances justify;

(c) proceed to make an award on the basis of the materials as have been properly provided to it; or

(d) make any order as it deems fit about the payment of costs of the arbitration incurred in consequence of the non-compliance.

*42. Power of arbitral tribunal to appoint expert*

(1) Unless otherwise agreed by the parties, the arbitral tribunal may —

(a) appoint one or more experts to report to it on a specific issue to be determined by the arbitral tribunal; and

(b) subject to any legal privilege that a party may assert, require a party to give to the expert any relevant information or to produce or provide access to documents, goods or other property for inspection.

(2) Unless otherwise agreed by the parties, where a party so requests or where the arbitral tribunal considers it necessary, an expert appointed under subsection (1) shall, after delivering the expert's written or oral report, participate in a hearing where the parties have the opportunity to put questions to the expert and present other expert witnesses to testify on their behalf on the points at issue.

*43. Power of court to order attendance of witness*

(1) At the request of a party to the arbitral proceedings, a Court or a judge in chambers may order that a writ of *subpoena ad testificandum* or of *subpoena duces tecum* shall be issued to compel the attendance before an arbitral tribunal of a witness wherever they may be within Nigeria.

(2) The Court or a judge in chambers may also order that a writ of *habeas corpus ad testificandum* shall be issued to bring up a prisoner for examination before any arbitral tribunal.

(3) The provisions of any written law relating to the service or execution outside a state of the Federation of such subpoena or order for the production of a prisoner, issued or made in civil proceedings by the Court or a judge in chambers, shall apply in relation to a subpoena or order issued or made under this section.

*44. Decision making by arbitral tribunal*

(1) In an arbitral tribunal with more than one arbitrator, any decision of the tribunal shall, unless otherwise agreed by the parties, be made by a majority of all its members.

(2) Subject to the provisions of this Act, in any arbitral tribunal, the presiding arbitrator may, where it is authorised by the parties or all the members of the arbitral tribunal, decide questions relating to the procedure to be followed at the arbitral proceedings.

*45. Settlement*

(1) Where, during the arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the arbitral proceedings, and may where requested by the parties and agreed to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

(2) An award on agreed terms recorded under subsection (1) shall —

(a) be in accordance with the provisions of section 47 of this Act and state that it is such an award; and

(b) have the same status and effect as any other award on the merits of the case.

*46. Award of interest*

(1) The parties may agree on the arbitral tribunal's powers to award interest.

(2) Unless otherwise agreed to by the parties, the following provisions shall apply —

(a) the arbitral tribunal may award simple or compound interest from such dates, at such rates and with such interests as it considers just on the whole or part of any amount—

(i) awarded by the arbitral tribunal, in respect of any period up to the date of the award, or

(ii) claimed in the arbitration and outstanding at the commencement of the arbitral proceedings but paid before the award was made, in respect of any period up to the date of payment;

(b) the arbitral tribunal may award simple or compound interest from the date of the award (or a later date) until payment, at the rates and with such interests as it considers just in the case, on the outstanding amount of any award, including any award of interest under this subsection and any award as to costs; and

(c) references in this section to an amount awarded by the arbitral tribunal include an amount payable in consequence of a declaratory award by the arbitral tribunal.

*47. Form and contents of award*

(1) The award shall be in writing and signed by the arbitrator or arbitrators.

(2) In an arbitral proceeding with more than one arbitrator, the signatures of a majority of all the members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.

(3) The award shall state the —

(a) reasons upon which it is based, unless the parties have agreed that no reason should be given or the award is an award on agreed terms under section 45 of this Act;

(b) date it was made; and

(c) seat of the arbitration as agreed or determined under section 32(1) of this Act, which seat is deemed to be the place where the award was made.

(4) Subject to the provisions of section 54 of this Act, after the award is made, a copy signed by the arbitrators in accordance with subsections (1) and (2) shall be delivered to each party.

*48. Termination of proceedings*

(1) The arbitral proceedings shall terminate when the final award is made or when an order of the arbitral tribunal is issued under subsection (2).

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where the —

(a) claimant withdraws the claim, unless the respondent objects to it and the arbitral tribunal recognises a legitimate interest on its part to obtain a final settlement of the dispute;

(b) parties agree to the termination of the arbitral proceedings; or

(c) arbitral tribunal finds that continuation of the arbitral proceedings has become unnecessary or impossible.

(3) Subject to the provisions of sections 49 and 55 (5) and (6) of this Act, the mandate of the arbitral tribunal shall cease on termination of the arbitral proceedings.

*49. Correction and interpretation of award and additional award*

(1) Unless another period has been agreed upon by the parties, a party may, within 30 days of the receipt of an award and with notice to the other party, request the arbitral tribunal —

(a) to correct in the award any error in computation, clerical or typographical errors or errors of a similar nature; or

(b) where it is agreed by the parties, to give an interpretation of a specific point or part of the award.

(2) Where the arbitral tribunal considers a request made under subsection (1) to be justified, it shall, within 30 days of receipt of the request, make the correction or give the interpretation, and such correction or interpretation shall form part of the award.

(3) The arbitral tribunal may, on its own volition and within 30 days from the date of the award, correct an error of the type referred to in subsection (1) (a).

(4) Unless otherwise agreed to by the parties, a party may within 30 days of receipt of the award, request the arbitral tribunal to make an additional award as to the claims presented in the arbitral proceedings but omitted from the award.

(5) Where the arbitral tribunal considers a request made under subsection (4) to be justified, it shall, within 60 days of the receipt of the request, make the additional award.

(6) The arbitral tribunal may, if it considers it necessary, extend the time limit within which it shall make a correction, give an interpretation or make an additional award under subsection (2) or (5).

(7) The provisions of section 47 of this Act applies to any correction or interpretation or to an additional award made under this section.

*50. Costs of the arbitration*

(1) The arbitral tribunal shall fix costs of arbitration in its award and the term "costs" includes —

(a) the fees of the arbitrators;

(b) the travel and other expenses incurred by the arbitrators;

(c) the cost of expert advice and of other assistance required by the arbitral tribunal;

(d) the travel and other expenses of parties, witnesses and other experts consulted by the parties to the extent that the expenses are approved by the arbitral tribunal having regard to what is reasonable in the circumstances;

(e) the costs for legal representation and assistance of the successful party where the costs were claimed during the arbitral proceedings, and only to the extent that the arbitral tribunal determines that the amount of such costs is reasonable;

(f) administrative costs such as cost of the arbitral institution or the appointing authority, cost of venue, sitting and correspondence;

(g) the costs of obtaining Third-Party Funding; and

(h) other costs as approved by the arbitral tribunal.

(2) The fees of the arbitral tribunal shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject-matter, the time spent by the arbitrators and any other relevant circumstances of the case.

*51. Deposit of costs*

(1) The arbitral tribunal may, on its establishment, request each party to deposit an equal amount as an advance for the costs referred to in section 50 (1) (a), (b) and (c) of this Act.

(2) During the course of the arbitral proceedings, the arbitral tribunal may request supplementary deposits from the parties.

(3) Where the required deposits are not paid in full within 30 days after the receipt of the request, the arbitral tribunal shall inform the parties in order that one or more of them may make the required payment and where the payment is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.

*52. Security for costs*

(1) The arbitral tribunal shall have the power, upon the application of a party, to order any claiming or counterclaiming party to provide security for the legal or other costs of any other party by way of deposit or bank guarantee or in any other manner and upon the terms as the arbitral tribunal considers appropriate.

(2) The terms under subsection (1) may include the provision by that other party of a cross-indemnity, itself secured in a manner as the arbitral tribunal considers appropriate, for costs and losses incurred by the claimant or counterclaimant in providing security.

(3) The amount of any costs and losses payable under a cross-indemnity under subsection (1) may be determined by the arbitral tribunal in one or more awards.

(4) In the event that a claiming or counterclaiming party does not comply with any order to provide security under this section, the arbitral tribunal may stay that party's claims or counterclaims or dismiss them in an award.

*53. Joint and several liability of the parties for arbitrator's fees and expenses*
(1) The parties are jointly and severally liable to pay the arbitrator such reasonable fees and expenses as are appropriate in the circumstances.

(2) In this section, references to arbitrators include an arbitrator who has ceased to act, an arbitral institution and an appointing authority.

Joint and several liability of the parties for arbitrator's fees and expenses

*54. Lien on the award*
(1) The arbitral tribunal or arbitration institution may refuse to deliver an award to the parties except on full payment of the fees and expenses of the arbitrators or the arbitral institution.

(2) Where the fees and expenses of the arbitrators or the arbitral institution have not been agreed, and the arbitral tribunal or arbitral institution refuses on that ground to deliver an award, a party to the arbitral proceedings may, upon notice to the other parties, the tribunal and, where applicable, the arbitral institution, apply to the Court, which may order that —

(a) the arbitral tribunal or arbitral institution shall deliver the award where the applicant pays the fees and expenses demanded into Court, or pays such lesser amount as the Court may specify;

(b) the amount of the fees and expenses properly payable shall be determined by the means and upon the terms as the Court may direct; and

(c) out of the money paid into Court there shall be paid out the fees and expenses as may be found to be properly payable and the balance of the money (if any) shall be paid out to the applicant.

(3) For this purpose, the amount of fees and expenses properly payable is the amount the applicant is liable to pay under section 53 of this Act or any agreement relating to the payment of the arbitrators.

(4) No application to the Court may be made unless every available arbitral process for appeal or review of the amount of the fees or expenses demanded has been exhausted.

(5) References in this section to arbitrators include an arbitrator who has ceased to act.

(6) The leave of the Court is required for any appeal from a decision of the Court under this section.

(7) Nothing in this section shall be construed as excluding an application under section 55 of this Act, where payment has been made to the arbitrators in order to obtain the award.

*55. Application for setting aside an arbitral award*
(1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with subsections (3) and (4).

(2) An application for setting aside an arbitral award shall not be made on the ground of an error on the face of the award, or any other ground except those expressly stated in subsection (3).

(3) The Court may set aside an arbitral award, where—

(a) the party who makes the application furnishes proof that —

(i) a party to the arbitration agreement was under some legal incapacity,

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it, or failing such indication, under the laws of Nigeria,
(iii) the party who makes the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise not able to present its case,
(iv) the award deals with a dispute not contemplated by or does not fall within the terms of the submission to arbitration,
(v) the award contains decisions on matters which are beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside,
(vi) the composition of the arbitral tribunal, or the arbitral procedure, was not in accordance with the agreement of the parties, unless the agreement was in conflict with a provision of this Act from which the parties cannot derogate, or
(vii) where there is no agreement between the parties under subparagraph (vi), that the composition of the arbitral tribunal or the arbitral procedure was not in accordance with this Act; or

(b) the Court finds that the —
(i) subject matter of the dispute is otherwise not capable of settlement by arbitration under the laws of Nigeria, or
(ii) award is against public policy of Nigeria.

(4) An application for setting aside shall not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under section 49 of this Act, from the date on which that request had been disposed of by the arbitral tribunal.

(5) Where the Court is satisfied that one or more of the grounds set out in subsection (3) has been proved and that it has caused or will cause substantial injustice to the applicant, the court may —
(a) remit the award to the tribunal, in whole or in part, for reconsideration; or
(b) set the award aside in whole or in part.

(6) The Court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take any other action which in the opinion of the arbitral tribunal will eliminate the grounds for setting aside.

*56. Award Review Tribunal*

(1) Notwithstanding section 55(1) of this Act, the parties may provide in their arbitration agreement that an application to review an arbitral award on any of the grounds set out in section 55(3) of this Act shall be made to an Award Review Tribunal.

(2) Where the parties have agreed that an award shall be reviewed by an Award Review Tribunal, a party who is aggrieved by an arbitral award and who seeks to challenge the award on any of the grounds set out in section 55(3) of this Act shall, within the same time frame specified in section 55(4) of this Act, send the other party a written communication which indicates its intent to challenge the award (in this Act referred to as "the Notice of Challenge").

(3) The Notice of Challenge shall include the documents referred to in section 57(2) of this Act.

(4) Unless the parties otherwise agree, the Award Review Tribunal shall —

(a) consist of the same number of arbitrators in the arbitral tribunal that first determined the dispute (in this Act referred to as "the First Instance Tribunal"); and

(b) be constituted when, in the case of a sole arbitrator, the arbitrator accepts the appointment or, where there is more than one arbitrator, when every arbitrators accept their respective appointments.

(5) The provisions of this Act applies mutatis mutandis to the Award Review Tribunal —

(a) section 7 (appointment of arbitrators);

(b) section 8 (grounds for challenge);

(c) section 9 (challenge procedure);

(d) section 10 (failure or impossibility to act);

(e) section 11 (appointment of substitute arbitrator);

(f) section 12 (withdrawal, death and cessation of office of an arbitrator);

(g) section 13 (immunity of an arbitrator appointing authority and arbitral institution);

(h) section 14 (competence of arbitral tribunal to rule on its on jurisdiction);

(i) section 30 (equal treatment of parties);

(j) section 41 (default of a party);

(k) section 44 (decision making by arbitral tribunal);

(l) section 47 (form and contents of award);

(m) section 50 (costs of the arbitration) and Article 49 of the First Schedule (fees and expenses of arbitrators);

(n) section 53 (joint and several liability of the parties for arbitrator's fees and expenses); and

(o) section 54 (lien on the award).

(6) Parties may agree on the procedure to be followed by the Award Review Tribunal, otherwise the Award Review Tribunal shall conduct its proceedings in a manner as it considers appropriate and shall endeavour to render its decision in the form of an award within 60 days from the date on which it is constituted.

(7) An application for enforcement of an award under section 57 of this Act may be made to the Court notwithstanding that a party has given a Notice of Challenge to the other party under subsection 2, unless —

(a) proceedings upon the application for enforcement is stayed until after the decision of the Award Review Tribunal has been rendered, and

(b) notwithstanding subparagraph (a), the Court makes such orders as to the interim preservation of the subject of the dispute, or as to giving security for the award as may be just in the circumstances of the case.

(8) Where the Award Review Tribunal has set aside the award in whole or in part, a party may apply to the Court to review the decision of the Award Review Tribunal and where the Court decides that the decision of the Award Review Tribunal is unsupportable having regard to the ground on which the Award Review Tribunal set aside the award, the Court shall reinstate the award, or the part of it that was set aside by the Award Review Tribunal.

(9) Where the Award Review Tribunal has affirmed the award in whole or in part, an application to the Court to set aside the award of the First Instance Tribunal or the award of the Award Review Tribunal, the application may only be made on the grounds set out in section 55(3)(b)(i) or section 55(3)(b)(ii) of this Act.

*57. Recognition and enforcement of awards*

(1) An arbitral award shall, irrespective of the country or state in which it is made, be recognised as binding, and on application in writing to the Court, be enforced by the Court subject to the provisions of this section and section 58 of this Act.

(2) The party relying on an award or applying for its enforcement shall supply —

(a) the original award or a certified copy of it;

(b) the original arbitration agreement or a certified copy of it; and

(c) where the award or arbitration agreement is not made in the English language, a certified translation of it into the English Language.

(3) An award may, by leave of the Court, be enforced in the same manner as a judgment or order to the same effect.

*58. Refusal of recognition or enforcement of awards*

(1) A party to an arbitration agreement may request the Court to refuse recognition or enforcement of the award.

(2) Irrespective of the country in which the award was made, the Court may only refuse recognition or enforcement of an award —

(a) at the request of the party against whom it is invoked, if that party furnishes the Court with proof that —

(i) a party to the arbitration agreement was under some incapacity,

(ii) the arbitration agreement is not valid under the law to which the parties have indicated should be applied, or that the arbitration agreement is not valid under the law of the country where the award was made,

(iii) the party against whom the award was invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise not able to present his case,

(iv) the award deals with a dispute not contemplated by or does not fall within the terms of the submission to arbitration,

(v) the award contains decisions on matters which are beyond the scope of the submission to arbitration, so however that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters submitted to arbitration may be recognised and enforced,

(vi) the composition of the arbitral tribunal, or the arbitral procedure, was not in accordance with the agreement of the parties,

(vii) where there is no agreement between the parties under sub-paragraph (vi), that the composition of the arbitral tribunal, or the arbitral procedure, was not in accordance with the law of the country where the arbitration took place, or

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

(b) where the Court finds —

(i) the subject matter of the dispute is otherwise not capable of settlement by arbitration under the laws of Nigeria, or

(ii) that the award is against public policy of Nigeria.

(3) Where an application to set aside or suspend an award has been made to a court referred to in subsection (2)(a)(viii), the Court before where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.

*59. Appointment in default*

Where under an agreement for an international arbitration no —

(a) procedure is agreed for the appointment of an arbitrator, and

(b) appointing authority is designated or agreed to be designated by the parties,

the Director of the Regional Centre for International Commercial Arbitration Lagos shall be deemed to be the appointing authority designated by the parties, and the provisions of section 7(2) of this Act shall apply.

*60. Application of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards*

Without prejudice to sections 57 and 58 of this Act, where the recognition and enforcement of any award made in an arbitration in a Country other than Nigeria is sought, the New York Convention on the Recognition and Enforcement of Foreign Awards set out in the Second Schedule[1] to this Act applies to an award, provided that the —

(a) country is a party to the New York Convention; and

(b) differences arise out of a legal relationship, whether contractual or not, considered commercial under the laws of Nigeria.

*61. Abolition of torts of maintenance and champerty*

The torts of maintenance and champerty, including being a common barrator, do not apply in relation to Third-Party Funding of arbitration and this section applies to arbitrations seated in Nigeria and to arbitration related proceedings in any court within Nigeria.

*62. Disclosure of Third-Party Funding*

(1) Where 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) The written notice shall be made for a funding agreement made —

(a) on or before the commencement of the arbitration, at the commencement of the arbitration, or

(b) 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 arbitral tribunal may allow the funded party or its counsel to provide the arbitral tribunal with an affidavit stating whether under the

1. *Editor's Note:* The Second Schedule is not reproduced in this Annex. The text of the 1958 New York Convention has been reproduced in this *Handbook* under New York Convention.

funding arrangement, the Funder has agreed to cover adverse costs order and the affidavit shall be a relevant consideration to the decision of the arbitral tribunal on whether to grant security for costs.

*63. Waiver of right to object*

A party who knows that a provision of this Act from which the parties may derogate or a requirement under the arbitration agreement has not been complied with and proceeds with the arbitration without stating his objection to that non-compliance without undue delay or, where a time-limit is provided for it, within the time, shall be deemed to have waived his right to object.

*64. Extent of court intervention*

(1) A Court shall not intervene in any matter governed by this Act, except where it is provided in this Act.

(2) Applications to Court in respect of any matter governed by this Act shall be in accordance with the Rules set out in the Third Schedule to this Act.

Extent of court intervention

*65. Extent of application of this Act to arbitration*

This Act does not affect any other law by virtue of which certain disputes may—

(a) not be submitted to arbitration; or

(b) be submitted to arbitration only in accordance with the provisions of that or another law.

*66. Extension of time*

Notwithstanding the provisions of this Act, the arbitral tribunal may, where it considers it necessary, extend the time specified for the performance of any act under this Act.

PART II — MEDIATION

*67. Scope of application of this Part*

(1) This Part applies to —

(a) international commercial mediation;

(b) domestic commercial mediation;

(c) domestic civil mediation;

(d) domestic and international settlement agreements resulting from mediation, and concluded in writing by parties to resolve a commercial dispute; and

(e) where the parties agree in writing that this Part should apply to the dispute.

(2) This Part shall not apply to —

(a) disputes emerging from rights and obligations settlement, which would be void under Nigerian law;

(b) cases where a judge or an arbitrator, in the course of judicial or arbitral proceedings, attempts to facilitate a settlement, unless the parties agree otherwise;

(c) cases that have been recorded and are enforceable as an arbitral award, unless the parties agree otherwise;

(d) cases that have been approved by a court or concluded in the course of proceedings before a court, unless the parties agree otherwise; or

(e) cases that are enforceable as a judgment of a court in this Country, unless the parties agree otherwise.

(3) This Part applies irrespective of the basis upon which the mediation is carried out, including agreement between the parties whether reached before or after a dispute has arisen, an obligation established by law, or a direction or suggestion of a court, arbitral tribunal or competent governmental entity.

*68. Uniformity of interpretation*

(1) In the interpretation of this Part, regard is to be had to the need to promote uniformity in its application and the observance of good faith.

(2) Questions concerning matters governed by this Part which are not expressly settled in it are to be settled in conformity with the general principles on which this Part is based.

*69. Variation by agreement*

Except for the provisions of section 73 (3) of this Act, the parties may agree to exclude or vary any of the provisions of Part II (B).

*70. Commencement of mediation proceedings*

(1) Where the initiation of a mediation procedure is prescribed by a special statute as a condition for the conduct of judicial or other proceedings, or where the parties have agreed when concluding the agreement to try to resolve the dispute through mediation before resorting to judicial or other proceedings, the party concerned shall propose to the other party, in writing, the conclusion of a mediation agreement.

(2) Where a party that invited another party to mediate does not receive an acceptance of the invitation within 30 days from the day on which the invitation was sent, or within any other time as specified in the invitation, the party may elect to treat this as a rejection of the invitation to mediate.

(3) A party can propose to the other party, a recourse to mediation process, regardless of all the other judicial or arbitral proceedings, before, during or after the initiation of the judicial proceedings.

(4) During any arbitral, judicial, administrative or other proceedings, the body conducting the proceedings may, recommend to the parties to resolve their dispute in mediation proceedings in accordance with the provisions of this Part where it assesses that there exists the possibility of resolving the dispute by mediation.

(5) The date of commencement of the mediation process shall be the date that the agreement to mediate was signed, where this is drawn up in writing after a dispute has arisen, or, in case of reference to mediation by a court, the date the court made its decision or, in any other case, on the date when the mediator took the first step to start the mediation process.

*71. Suspension of limitation period*

(1) When the mediation proceedings commence, the running of the limitation period regarding the claim that is the subject matter of the mediation is suspended.

(2) Where the mediation proceedings have terminated without a settlement agreement, the limitation period resumes running from the time or day the mediation ended without a settlement agreement.

*72. Number and appointment of mediators*

(1) There shall be one mediator, unless the parties agree to have two or more mediators.

(2) The parties shall endeavor to reach agreement on a mediator or mediators, unless a different procedure for their appointment has been agreed upon.

(3) A party may seek the assistance of a mediation provider that he keeps a list of qualified mediators in connection with the appointment of mediators and in particular a party may request —

(a) the mediation provider to recommend suitable persons to act as mediator; or

(b) that the appointment of one or more mediators be made directly by the mediation provider, and the appointment made by the institution that is approached is final and binding on the parties.

(4) In recommending or appointing individuals to act as mediator, the mediation provider shall have regard to the consideration as are likely to secure the appointment of an independent and impartial mediator and, where appropriate, shall take into account the advisability of appointing a mediator of a nationality other than the nationalities of the parties.

(5) When a person is approached in connection with possible appointment as mediator, the person shall disclose the circumstances likely to give rise to justifiable doubts as to impartiality or independence.

(6) A mediator, from the time of appointment and throughout the mediation proceedings, shall without delay disclose any circumstance under subsection (5) to the parties unless they have already been informed of them and where the circumstances exist, the mediator shall be permitted to act as a mediator only where the parties agree to it.

*73. Conduct of mediation, fees and expenses*

(1) Parties are free to agree, by reference to a set of rules or otherwise, on the manner in which the mediation is to be conducted, and the parties shall attend and participate in the mediation in good faith.

(2) Where no agreement on the manner in which the mediation is to be conducted, the mediator may conduct the mediation proceedings in a manner as the mediator considers appropriate, taking into account the circumstances of the case, any wish that the parties may jointly express and the need for a speedy settlement of the dispute.

(3) In any case, in conducting the proceedings, the mediator shall seek to maintain fair treatment of the parties and, in so doing, shall take into account the circumstances of the case and the mediator's obligations shall be equal with regards to all parties.

(4) The mediator shall —

(a) promote communication between the parties; and

(b) ensure that the parties are integrated into the mediation process in an appropriate and fair manner.

(5) The parties and the mediator may agree that all or any of the mediation sessions are to be carried out by electronic means, by video conference or other similar means of transmission of the voice or image, provided that the identity of the parties concerned are ensured and comply with the principles of mediation laid down in this Part.

(6) The mediator may, with the agreement of the parties, at any stage of the mediation proceedings, make proposals for a settlement of the dispute but does not have the right to impose a settlement on the parties and the proposal may be based on what the mediator deems appropriate in view of what the parties have brought forward in the mediation.

(7) A mediator is entitled to a fee and reimbursement of expenses incurred in connection with mediation unless the mediator agreed to mediate without a fee and the parties bear their own costs, and unless the parties agree otherwise, the fee and expenses of the mediator as well as the fees of the mediation provider shall be borne by the parties in equal shares.

*74. Communication between mediator and parties*

A mediator may meet or communicate with the parties together or with each of them separately as the mediator considers necessary.

*75. Disclosure of information*

Where the mediator receives information concerning the dispute from a party, the mediator may disclose the substance of that information to any other party to the mediation, but when a party gives any information to the mediator, subject to a specific condition that it be kept confidential, that information may not be disclosed to any other party to the mediation.

*76. Confidentiality*

Unless otherwise agreed to by the parties, all information relating to the mediation proceedings shall be kept confidential, except where disclosure is required —

(a) under the law;

(b) for the purposes of implementation or enforcement of a settlement agreement;

(c) necessary in the interests of preventing or revealing —

(i) the commission of a crime (including an attempt or conspiracy to commit a crime),

(ii) concealment of a crime, or

(iii) a threat to a party; or

(d) necessary to protect public order, but only under the conditions and in the scope prescribed by law.

*77. Admissibility of evidence in other proceedings*

(1) A party to the mediation proceedings, the mediator and any third-party, including those involved in the administration of the mediation proceedings, shall not in arbitral, judicial or similar proceedings rely on, introduce as evidence or give testimony or evidence regarding —

(a) an invitation by a party to engage in mediation proceedings or the fact that a party was willing to participate in mediation proceedings;

(b) views expressed or suggestions made by a party in the mediation in respect of a possible settlement of the dispute;

(c) statements or admissions made by a party in the course of the mediation proceedings;

(d) proposals made by the mediator;

(e) the fact that a party had indicated its willingness to accept a proposal for settlement made by the mediator; and

(f) a document prepared solely for purposes of the mediation proceedings.

(2) Subsection (1) applies irrespective of the form of the information or evidence referred to therein.

(3) Subject to the provisions of section 76 of this Act, the disclosure of the information referred to in subsection (1) shall not be ordered by an arbitral tribunal, court or other competent governmental authority and, where the information is offered as evidence in contravention of subsection (1), that evidence shall be treated as inadmissible.

(4) The provisions of subsections (1), (2) and (3) apply whether or not the arbitral, judicial or similar proceedings relate to the dispute that is or was the subject matter of the mediation proceedings.

(5) Subject to the limitations of subsection (1), evidence that is otherwise admissible in arbitral or judicial or similar proceedings does not become inadmissible as a consequence of having been used in mediation.

*78. Termination of mediation proceedings*

The mediation proceedings are terminated by —

(a) the conclusion of a settlement agreement by the parties, on the date of the agreement;

(b) a declaration of the mediator, to the effect that further efforts at mediation are no longer justified, on the date of the declaration;

(c) a declaration of the parties addressed to the mediator to the effect that the mediation proceedings are terminated, on the date of the declaration;

(d) a declaration of the mediation provider administering the mediation, if any, on the date of the declaration; or

(e) a declaration of a party to the other party or parties and the mediator, if appointed, to the effect that the mediation proceedings are terminated, on the date of the declaration.

*79. Mediator acting as arbitrator*

Unless otherwise agreed by the parties, a mediator shall not act as an arbitrator in respect of a dispute that was or is the subject of the mediation proceedings or in respect of another dispute that has arisen from the same contract or legal relationship or any related contract or legal relationship.

*80. Resort to arbitral or judicial proceedings*

Where parties have agreed to mediate and have expressly undertaken not to initiate arbitral or judicial proceedings with respect to an existing or future dispute during a specified time or until a specified event has occurred, such an undertaking shall be given effect by the arbitral tribunal or the Court until the terms of the undertaking have been complied with, except to the extent necessary for a party, to preserve its rights but initiation of such proceedings is not of itself to be regarded as a waiver of the agreement to mediate or as a termination of the mediation proceedings.

*81. Immunity for mediators and mediation providers*
Mediators and mediation providers are not liable for any act done or omitted in the discharge or purported discharge of their functions under this Part, unless their action or omission is shown to have been in bad faith.

*82. Binding and enforceable nature of settlement agreements*
(1) Where parties conclude an agreement settling a dispute, the mediator shall participate in the preparation and drafting of the settlement agreement, where the parties agree.

(2) Subject to section 87 of this Act, the settlement agreement resulting from the mediation is binding on the parties and enforceable in Court as a contract, consent judgment or consent award.

*83. Requirements for reliance on settlement agreements*
(1) Subject to section 87 of this Act party relying on a settlement agreement shall supply to the Court —

(a) the settlement agreement signed by the parties; and

(b) evidence that the settlement agreement resulted from mediation, such as —

(i) the mediator's signature on the settlement agreement,

(ii) a document signed by the mediator indicating that the mediation was carried out,

(iii) an attestation by the mediation provider that administered the mediation, or

(iv) in the absence of (i), (ii) or (iii), any other evidence acceptable to the Court.

(2) The requirement that a settlement agreement shall be signed by the parties or, where applicable, the mediator, is met in relation to an electronic communication if —

(a) a method is used to identify the parties or the mediator and to indicate the parties' or mediator's intention in respect of the information contained in the electronic communication; and

(b) the method used is either —

(i) as reliable and as appropriate for the purpose for which the electronic communication was generated or communicated, in the light of all the circumstances, including any relevant agreement, or

(ii) proven in fact to have fulfilled the functions described in subparagraph (a), by itself or together with further evidence.

(3) Where settlement agreement is not in an official language of this State, the Court may request a translation from it into the official language.

(4) The Court may require any necessary document in order to verify that the requirements of this section have been complied with.

(5) When considering the request for relief, the Court shall act expeditiously.

*84. Grounds for refusing to grant relief*
(1) Subject to section 87 of this Act the Court may refuse to grant reliefs at the request of the party against whom the relief is sought only if that party furnishes to the Court proof that —

(a) a party to the settlement agreement was under some incapacity; or

(b) the settlement agreement sought to be relied upon —

(i) is void, inoperative or incapable of being performed under the law to which the parties have validly subjected it or, under the law deemed applicable by the Court,
(ii) is not binding, or is not final, according to its terms, or
(iii) has been subsequently modified;
(c) the obligations in the settlement agreement —
(i) have been performed, or
(ii) are not clear or comprehensible;
(d) granting relief would be contrary to the terms of the settlement agreement; or
(e) there was a failure by the mediator to disclose to the parties' circumstances that raise justifiable doubts as to the mediator's impartiality or independence and the failure to disclose had a material impact or undue influence on a party without which failure that party would not have entered into the settlement agreement.

(2) The Court of this State may also refuse to grant reliefs if it finds that —
(a) granting relief would be contrary to the public policy of this State; or
(b) the subject matter of the dispute is not capable of settlement by mediation under the law of this State.

*85. Parallel applications or claims*

Where an application or a claim relating to a settlement agreement has been made to a Court, an arbitral tribunal or any other competent authority which may affect the relief being sought under section 83, the Court of this State where the relief is sought may, if it considers it proper, adjourn the decision and may also, on the request of a party, order the other party to give suitable security.

*86. General principles*

Unless otherwise provided in this Part —

(1) A settlement agreement shall be enforced in accordance with the rules of procedure of this State, and under the conditions laid down in this Part.

(2) Where a dispute arises concerning a matter that a party claims was already resolved by a settlement agreement, the party may invoke the settlement agreement in accordance with the rules of procedure of this State, and under the conditions laid down under these provisions, to prove that the matter has already been resolved.

PART II (C) — *Provisions applicable to international settlement agreements only*

*87. Application of the convention on international settlement agreements resulting from mediation*

Without prejudice to sections 81 and 83 of this Act, where the enforcement of an international settlement agreement made in a State other than the Federal Republic of Nigeria is sought, the Convention on International Settlement Agreements Resulting Mediation ('the Singapore Convention applies to that international settlement agreement, provided that the —

(a) State is a party to the Singapore Convention; and
(b) difference arises out of a legal relationship, whether contractual or, it is not, considered commercial under the laws of Nigeria.

PART III — MISCELLANEOUS PROVISIONS

*88. Receipt of written communication*

(1) Unless otherwise agreed by the parties, any communication sent under this Act is deemed to have been received —

(a) where it is delivered to the addressee personally or when it is delivered to the place of business, habitual residence or mailing address; or

(b) where a communication cannot be delivered in accordance with paragraph (a), when it is sent to the addressee's last known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it.

(2) A communication is deemed to have been received on the day it is delivered under subsection (1).

(3) The provisions of this section shall not apply to communications in court proceedings.

*89. Saving and transitional provisions*

(1) This Act shall not apply to an arbitration agreement concerning an arbitration, which has commenced before the coming into effect of this Act, but applies to an arbitration commenced on or after the coming into effect of this Act.

(2) Subject to subsection (1), the repeal of the Arbitration and Conciliation Act, shall not prejudice or affect any proceedings, whether or not pending at the time of the repeal, in respect of any right, privilege, obligation or liability and any proceedings taken under that Act in respect of any such right, privilege, obligation or liability acquired, accrued or incurred under the Act may be instituted, continued or enforced as if that Act had not been repealed.

*90. Repeal*

The Arbitration and Conciliation Act, Cap A18, Laws of the Federation of Nigeria, 2004 is repealed.

*91. Interpretation*

(1) In this Act —

"arbitrator" means a person to whom a reference is made for determination and includes substitute or emergency arbitrator;

"arbitral tribunal" means a sole arbitrator or a panel of arbitrators;

"arbitration" means a commercial arbitration whether or not administered by a permanent arbitral institution;

"arbitration agreement" is an agreement by the parties to 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;

"commercial" includes matters arising from all relationships of a commercial nature whether contractual or not, such as any trade transaction for the supply or exchange of goods or services, distribution agreement, commercial representation or agency, factoring, leasing, construction works, consulting, engineering, licensing, investment, financing, banking, insurance, exploitation agreement or concession, joint venture and other forms of industrial or business co-operation, carriage of goods or passengers by air, sea, rail or road;

"Court" means the High Court of a State, the High Court of the Federal Capital Territory, Abuja or the Federal High Court, unless the parties otherwise agree and except for the purpose of appointment of an arbitrator (including an emergency arbitrator) "Court" means the Chief Judge of any of the Courts referred to in this provision, sitting as a Judge in Chambers;

"death" includes, in the case of a non-natural person, dissolution or other extinction by process of law;

"electronic communication" means any communication that the parties make by means of data messages, that is, any information generated, sent, received or stored by electronic, magnetic, optical or similar means, including electronic data interchange (EDI), electronic mail, telegram, telex or telecopy;

"judge" means a judge of the High Court of a State, the High Court of the Federal Capital Territory, Abuja or the Federal High Court;

"mediator" means a third-party neutral and includes a sole mediator or two or more mediators;

"mediation" means a process, whether referred to by the expression mediation, conciliation or an expression of similar import, where parties request a third person ("the mediator") to assist them in their attempt to reach an amicable settlement of their dispute arising out of or relating to a contractual or other legal relationship but the mediator does not have the authority to impose upon the parties a solution to the dispute;

"mediation provider" means any public or private entity (including court-related mediation schemes) which manages or administers a mediation process conducted by a mediator;

"party" means a party to the arbitration agreement or to mediation or any person claiming through or under him and "parties" shall be construed accordingly;

"preliminary order" means an order or a direction of the arbitral tribunal that accompanies or precedes a requested interim measure to ensure that the grant of that measure is not rendered nugatory by any act of the party;

"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, in order to finance part or all of the cost of the proceedings, either individually or as part of a selected range of cases, and the financing is provided either through a donation or grant or in return for reimbursement dependent on the outcome of the dispute or in return for a premium payment; and

"Third-Party Funding Agreement" means a contract between the Third-Party Funder and a disputing party, an affiliate of that party, or a law firm representing that party, in order to finance part or all of the cost of the proceedings, either individually or as part of a selected range of cases, and the financing is provided either through a donation or grant or in return for reimbursement dependent on the outcome of the dispute or in return for a premium payment.

(2) Where a provision of this Act, other than sections 13 and 81, leaves the parties free to determine a certain issue, the freedom includes the right of the parties to authorise a third party, including an institution, to make that determination.

(3) Where a provision of this Act —

(a) refers to the fact that parties have agreed or that they may agree, or

(b) in any other way refers to an agreement of the parties,

that agreement includes any arbitration rules referred to in the agreement.

(4) Where a provision of this Act, other than sections 41(1) (a) or 48 (2) (a) refers to a claim, the claim includes a counterclaim, and where it refers to a defence, the defence includes a defence to the counterclaim.

(5) An arbitration is international if —

(a) the parties to an arbitration agreement have their places of business in different Countries at the time of the conclusion of that agreement;

(b) the seat of the arbitration, if determined under the arbitration agreement or any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject matter of the dispute is most closely connected is situated outside the State in which the parties have their places of business; or

(c) the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one State.

(6) An arbitration is interstate if the —

(a) parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different Federating States within the Federal Republic of Nigeria;

(b) Federating State in which the seat of arbitration is situated is different from the Federating State or States in which the parties have their places of business;

(c) place where a substantial part of the obligations of the commercial relationship is to be performed or the place where the subject matter of the dispute is most closely connected is situated in a Federating State, which is different from the Federating State or States in which the parties have their places of business; or

(d) the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one Federating State within the Federal Republic of Nigeria.

(7) For the purposes of subsections (5) and (6) —

(a) if a party has more than one place of business, the place of business shall be that which has the closest relationship to the arbitration agreement; and

(b) if a party does not have a place of business, reference shall be made to his or her habitual residence.

(8) A mediation is "international" if the —

(a) parties to an agreement to mediate have, at the time of the conclusion of that agreement, their places of business in different Countries; or

(b) State in which the parties have their places of business is different from either the State in which —

(i) a substantial part of the obligations of the commercial relationship is to be performed, or

(ii) the subject matter of the dispute is most closely connected.

(9) For the purposes of subsection (8) if —

(a) a party has more than one place of business, the place of business is that which has the closest relationship to the agreement to mediate;

(b) a party does not have a place of business, reference is to be made to the party's habitual residence; or

(c) the parties agree that the mediation is international.

(10) In the interpretation of this Act, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good

faith and the Court may also have recourse to the *travaux preparatoires* of the UNCITRAL Model Law on International Commercial Arbitration and Model Law on International Commercial Mediation.

(11) Questions concerning matters governed by this Act which are not expressly settled in it are to be settled in conformity with the general principles on which this Act is based.

*92. Citation*

This Act may be cited as the Arbitration and Mediation Act, 2023.

# SCHEDULES

## First Schedule

(Sections 16(9), 31(1) and 56(1)(m))

## Arbitration Rules

### SECTION I: INTRODUCTORY RULES

*Scope of Application*

*Article 1*

1. Where parties have agreed that disputes between them in respect of a defined legal relationship, whether contractual or not, shall be referred to arbitration under the Arbitration and Mediation Act, then such disputes shall be settled in accordance with these Rules subject to such modification as the parties may agree.

2. These Rules shall govern the arbitration, except that where any of these Rules is in conflict with a provision of this Act, the provisions of this Act shall prevail.

*Notice, Calculation of Periods of Time*

*Article 2*

1. A notice, including a notification, communication or proposal, may be transmitted by any means of communication that provides or allows for a record of its transmission.

2. Where an address has been designated by a party specifically for this purpose or authorised by the arbitral tribunal, any notice shall be delivered to that party at that address, and if so delivered shall be deemed to have been received. Delivery by electronic means such as facsimile or e-mail may only be made to an address so designated or authorised.

3. In the absence of such designation or authorisation, a notice is —

(a) received where it is physically delivered to the addressee; or

(b) deemed to have been received where it is delivered at the place of business, habitual residence or mailing address of the addressee.

4. Where, after reasonable efforts, delivery cannot be effected in accordance with paragraphs 2 or 3, a notice is deemed to have been received where it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means that provides a record of delivery or of attempted delivery.

5. A notice shall be deemed to have been received on the day it is delivered in accordance with paragraphs 2, 3 or 4, or attempted to be delivered in accordance with paragraph 4 and a notice transmitted by electronic means is deemed to have been received on the day it is sent, except that a request for arbitration so transmitted is only deemed to have been received on the day when it reaches the addressee's electronic address.

6. For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice, notification,

communication or proposal is received and where the last day of such period is an official holiday or non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows, and official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

*Written communication requesting arbitration*

*Article 3*

1. The party initiating recourse to arbitration (hereinafter called the "claimant") shall give to the other party (hereinafter called the "respondent") a written communication containing a request for the dispute to be referred to arbitration (the "written communication" or the "request").

2. Arbitral proceedings shall be deemed to commence on the date on which the written communication is received by the respondent.

3. The written communication shall include the following —

(a) a demand that the dispute be referred to arbitration;

(b) the names and contact details of the parties;

(c) identification of the arbitration clause or the separate arbitration agreement that is invoked;

(d) identification of any contract or other legal instrument out of or in relation to which the dispute arises or, in the absence of such contract or instrument, a brief description of the relevant relationship;

(e) a brief description of the claim and an indication of the amount involved, if any;

(f) the relief or remedy sought; and

(g) a proposal as to the number of arbitrators (i.e. one or three), language and seat of arbitration if the parties have not previously agreed thereon.

4. The written communication may also include —

(a) a proposal for the designation of an appointing authority referred to in Article 6, paragraph 1;

(b) a proposal for the appointment of a sole arbitrator referred to in Article 8, paragraph 1;

(c) notification of the appointment of an arbitrator referred to in Article 9 or 10; and

(d) the points of claim referred to in Article 20.

5. The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the sufficiency of the written communication containing a request for the dispute to be referred to arbitration, which shall be finally resolved by the arbitral tribunal.

*Response to the written communication requesting arbitration*

*Article 4*

1. Within 30 days of the receipt of the written communication containing a request for the dispute to be referred to arbitration, the respondent shall convey to the claimant a response to the said written communication, which shall include —

(a) the name and contact details of each respondent; and

(b) a response to the information set forth in the notice of arbitration under Article 3, paragraphs 3 (c)-(g).

2. The response to the written communication requesting arbitration may also include —

(a) any plea that an arbitral tribunal to be constituted under these Rules lacks jurisdiction;

(b) a proposal for the designation of an appointing authority referred to in Article 6, paragraph 1;

(c) a proposal for the appointment of a sole arbitrator referred to in Article 8, paragraph 1;

(d) notification of the appointment of an arbitrator referred to in Article 9 or 10;

(e) a brief description of counterclaims or claims for the purpose of a set-off, if any, including where relevant, an indication of the amounts involved, and the relief or remedy sought;

(f) a written communication containing a request for the dispute to be referred to arbitration in accordance with Article 3 in case the respondent formulates a claim against a party to the arbitration agreement other than the claimant; and

(g) the points of defence and counterclaim (if any) referred to in Article 21.

3. The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the respondent's failure to communicate a response to the written communication requesting arbitration, or an incomplete or late response to the said written communication, which shall be finally resolved by the arbitral tribunal.

*Representation and Assistance*

*Article 5*

Each party may be represented or assisted by persons chosen by it. The names and addresses of such persons must be communicated in writing to all parties and to the arbitral tribunal. Such communication must specify whether the appointment is being made for purposes of representation or assistance.

*Designated and Appointing Authorities*

*Article 6*

1. Unless the parties have already agreed on the choice of an appointing authority, a party may at any time propose the name or names of one or more institutions or persons, and may include the Director of the Regional Centre for International Commercial Arbitration – Lagos (hereinafter called the "RCICAL), one of whom would serve as appointing authority.

2. Where parties have not agreed on the choice of an appointing authority within 30 days after a proposal made in accordance with paragraph 1 has been received by all other parties, any party may request the Director of the RCICAL to designate the appointing authority.

3. Where these Rules provide for a period of time within which a party must refer a matter to an appointing authority and no appointing authority has been agreed on or designated, the period is suspended from the date on which a party initiates the procedure for agreeing on or designating an appointing authority until the date of such agreement or designation.

4. Except as referred to in Article 49, paragraph 4, where the appointing authority refuses to act, or where it fails to appoint an arbitrator within 30 days after it receives a party's request to do so, fails to act within any other period provided by these Rules, or fails to decide on a challenge to an arbitrator within a reasonable time after receiving a party's request to do so, any party may request the Director of the RCICAL to designate a substitute appointing authority.

5. In exercising their functions under these Rules, the appointing authority or the Director of the RCICAL may require from any party and the arbitrators the information they deem necessary and they shall give the parties and, where appropriate, the arbitrators, an opportunity to present their views in any manner they consider appropriate. All such communications to and from the appointing authority and the Director of the RCICAL shall also be provided by the sender to all other parties.

6. When the appointing authority is requested to appoint an arbitrator under Articles 8, 9, 10 or 14, the party making the request shall send to the appointing authority copies of the written communication containing a request for the dispute to be referred to arbitration and, if it exists, any response to the said written communication.

7. The appointing authority shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and shall take into account the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties.

## SECTION II. COMPOSITION OF THE ARBITRAL TRIBUNAL

### *Number of Arbitrators*

*Article 7*

1. Where parties have not previously agreed on the number of arbitrators, and if within 30 days after the receipt by the respondent of the written communication containing a request for the dispute to be referred to arbitration the parties have not agreed that there shall be only one arbitrator, one arbitrator shall be appointed.

2. Notwithstanding paragraph 1, where no other parties responded to a party's proposal to appoint a sole arbitrator within the time limit provided for in paragraph 1 and the party or parties concerned have failed to appoint a second arbitrator in accordance with Article 9 or 10, the appointing authority may, at the request of a party, appoint a sole arbitrator under the procedure provided for in Article 8, paragraph 2, if it determines that, in view of the circumstances of the case, this is more appropriate.

### *Appointment of Arbitrators (Articles 8 to 10)*

*Article 8*

1. Where parties have agreed that a sole arbitrator is to be appointed and if within 30 days after receipt by all other parties of a proposal for the appointment of a sole arbitrator the parties have not reached agreement thereon, a sole arbitrator shall, at the request of a party, be appointed by the appointing authority.

2. The appointing authority shall appoint the sole arbitrator as promptly as possible. In making the appointment, the appointing authority shall use the following list-procedure, unless the parties agree that the list-procedure should not be used or unless

the appointing authority determines in its discretion that the use of the list-procedure is not appropriate for the case —

(a) the appointing authority shall communicate to each of the parties an identical list containing at least three names;

(b) within 15 days after the receipt of this list, each party may return the list to the appointing authority after having deleted the name or names to which it objects and numbered the remaining names on the list in the order of its preference;

(c) after the expiration of the above period of time the appointing authority shall appoint the sole arbitrator from among the names approved on the lists returned to it and in accordance with the order of preference indicated by the parties; and

(d) where for any reason the appointment cannot be made according to this procedure, the appointing authority may exercise its discretion in appointing the sole arbitrator.

*Article 9*

1. Where three arbitrators are to be appointed, each party shall appoint one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the arbitral tribunal.

2. Where within 30 days after the receipt of a party's notification of the appointment of an arbitrator the other party has not notified the first party of the arbitrator it has appointed, the first party may request the appointing authority to appoint the second arbitrator.

3. where within 30 days after the appointment of the second arbitrator the two arbitrators have not agreed on the choice of the presiding arbitrator, the presiding arbitrator shall be appointed by the appointing authority in the same way as a sole arbitrator would be appointed under Article 8.

*Article 10*

1. For the purposes of Article 9, paragraph 1, where three arbitrators are to be appointed and there are multiple parties as claimant or as respondent, unless the parties have agreed to another method of appointment of arbitrators, the multiple parties jointly, whether as claimant or as respondent, shall appoint an arbitrator.

2. Where parties have agreed that the arbitral tribunal is to be composed of a number of arbitrators other than one or three, the arbitrators shall be appointed according to the method agreed upon by the parties.

3. In the event of any failure to constitute the arbitral tribunal under these Rules, the appointing authority shall, at the request of any party, constitute the arbitral tribunal and, in doing so, may revoke any appointment already made and appoint or reappoint each of the arbitrators and designate one of them as the presiding arbitrator.

*Disclosures by and challenge of arbitrators (Articles 11 to 13)*

*Article 11*

Where a person is approached in connection with possible appointment as an arbitrator, the person shall confirm their availability and disclose any circumstances likely to give rise to justifiable doubts as to the person's impartiality or independence. An arbitrator, from the time of appointment and throughout the arbitral proceedings, shall without

delay disclose any such circumstances to the parties and the other arbitrators unless they have already been informed by him or her of these circumstances.

*Article 12*

1. An arbitrator may be challenged where circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.

2. A party may challenge the arbitrator appointed by it only for reasons of which it becomes aware after the appointment has been made.

3. In the event that an arbitrator fails to act or in the event of the *de jure* or *de facto* impossibility of performing the functions, the procedure in respect of the challenge of an arbitrator as provided in Article 13 shall apply.

*Article 13*

1. A party that intends to challenge an arbitrator shall send notice of its challenge within 15 days after it has been notified of the appointment of the challenged arbitrator, or within 15 days after the circumstances mentioned in Articles 11 and 12 became known to that party.

2. The notice of challenge shall be communicated to all other parties, to the arbitrator who is challenged and to the other arbitrators. The notice of challenge shall state the reasons for the challenge.

3. When an arbitrator has been challenged by a party, all parties may agree to the challenge, and the arbitrator may also, after the challenge, withdraw from his or her office. In neither case does this imply acceptance of the validity of the grounds for the challenge.

4. If, within 15 days from the date of the notice of challenge, all parties do not agree to the challenge or the challenged arbitrator does not withdraw, the party making the challenge may elect to pursue it further and, in that case, within 30 days from the date of the notice of challenge, it shall seek a decision on the challenge by —

(a) the appointing authority, arbitral institution or the Court, as the case may be, that appointed the arbitrator; or

(b) where a party appointed the arbitrator, the Court.

*Replacement of an Arbitrator*

*Article 14*

1. Subject to paragraph 2, in any event where an arbitrator has to be replaced during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen under the procedure provided for in Articles 8 to 11 that was applicable to the appointment or choice of the arbitrator being replaced. This procedure shall apply even if during the process of appointing the arbitrator to be replaced, a party had failed to exercise its right to appoint or to participate in the appointment.

2. If, at the request of a party, the appointing authority determines that, in view of the exceptional circumstances of the case, it would be justified for a party to be deprived of its right to appoint a substitute arbitrator, the appointing authority may, after giving an opportunity to the parties and the remaining arbitrators to express their views: (a) appoint the substitute arbitrator; or (b) after the closure of the hearings, authorise the other arbitrators to proceed with the arbitration and make any decision or award.

*Repetition of hearings in the event of the replacement of an Arbitrator*

*Article 15*
Where an arbitrator is replaced, the proceedings shall resume at the stage where the arbitrator who was replaced ceased to perform his or her functions, unless the parties decides otherwise.

*Exclusion of liability*

*Article 16*
Save for intentional wrongdoing, the parties waive, to the fullest extent permitted under the applicable law, any claim against the arbitrators, the emergency arbitrator, the appointing authority and any person appointed by the arbitral tribunal based on any act or omission in connection with the arbitration.

SECTION III: ARBITRAL PROCEEDINGS

*General Provisions*

*Article 17*
1. Subject to the Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that, the parties are treated with equality and that at any stage of the proceedings each party is given a full opportunity of presenting his case. The arbitral tribunal, in exercising its discretion, shall conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the parties' dispute.

2. As soon as practicable after its constitution and after inviting the parties to express their views, the arbitral tribunal shall establish the provisional timetable of the arbitration. The arbitral tribunal may, at any time, after inviting the parties to express their views, extend or abridge any period of time prescribed under these Rules or agreed by the parties.

3. If at an appropriate stage of the proceedings any party so requests, the arbitral tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the arbitral tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.

4. All communications to the arbitral tribunal by one party shall be communicated by that party to all other parties. Such communications shall be made at the same time, except as otherwise permitted by the arbitral tribunal if it may do so under applicable law.

5. The arbitral tribunal may, at the request of any party, allow one or more third persons to be joined in the arbitration as a party in accordance with section 40 of the Act, provided such person is a party to the arbitration agreement, unless the arbitral tribunal finds, after giving all parties, including the person or persons to be joined, the opportunity to be heard, that joinder should not be permitted because of prejudice to any of those parties. The arbitral tribunal may make a single award or several awards in respect of all parties so involved in the arbitration.

*Seat and Venue of Arbitration*

*Article 18*

1. Where parties have not previously agreed on the seat of the arbitration, the seat of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the arbitration. The Award shall be deemed to have been made at the seat of arbitration.

2. The arbitral tribunal may meet at any location (venue) it considers appropriate for deliberations. Unless otherwise agreed by the parties, the arbitral tribunal may also meet at any location it considers appropriate for any other purpose, including hearings.

*Language*

*Article 19*

1. Subject to an agreement by the parties, the arbitral tribunal shall promptly after its appointment, determine the language or languages to be used in the proceedings. This determination shall apply to the points of claim, the points of defence, and any further written statements and, if oral hearings take place, to the language or languages to be used at such hearings.

2. The arbitral tribunal may order that any documents annexed to the points of claim or points of defence, and any supplementary documents or exhibits submitted in the course of the proceedings, delivered in their original language, shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

*Points of Claim*

*Article 20*

1. Unless the points of claim was contained in the written communication containing a request for the dispute to be referred to arbitration, the claimant shall, within a period of time to be determined by the arbitral tribunal, communicate its points of claim in writing to the respondent and to each of the arbitrators.

2. The points of claim shall include the following particulars —

(a) the names and addresses of the parties;

(b) a statement of the facts supporting the claim;

(c) the point at issue;

(d) the relief or remedy sought; and

(e) the legal grounds or arguments supporting the claim.

3. A copy of any contract or other legal instrument out of which or in relation to which the dispute arises and of the arbitration agreement, if not contained in the contract or other legal instrument, shall be annexed to the points of claim.

4. The points of claim should, as far as possible, be accompanied by all documents and other evidence relied upon by the claimant, or contains references to them.

*Points of Defence*

*Article 21*

1. Unless the points of defence was contained in response to the written communication containing a request for the dispute to be referred to arbitration, the respondent shall, within a period of time to be determined by the arbitral tribunal, communicate its points of claim in writing to the respondent and to each of the arbitrators.

2. The points of defence shall reply to the particulars (b), (c), (d) and (e) of the points of claim (Article 20, paragraph 2). The statement of defence should, as far as possible, be accompanied by all documents and other evidence relied upon by the respondent, or contain references to them.

3. In its points of defence, or at a later stage in the arbitral proceedings, if the arbitral tribunal decides that the delay was justified under the circumstances, the respondent may make a counterclaim or rely on a claim for the purpose of a set-off provided that the arbitral tribunal has jurisdiction over it.

4. The provisions of Article 20, paragraphs 2 to 4, shall apply to a counterclaim, a claim under Article 4, paragraph 2(f), and a claim relied on for the purpose of set-off.

*Amendments to the claim or defence*

*Article 22*

During the course of the arbitral proceedings, either party may amend or supplement its claim or defence, including a counterclaim or a claim for the purpose of a set-off, unless the arbitral tribunal considers it inappropriate to allow such amendment or supplement having regard to the delay in making it or prejudice to the other parties or any other circumstances. However, a claim or defence, including a counterclaim or a claim for the purpose of a set-off, may not be amended or supplemented in such a manner that the amended or supplemented claim or defence falls outside the jurisdiction of the arbitral tribunal.

*Pleas as to the jurisdiction of the Arbitral Tribunal*

*Article 23*

1. The arbitral tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration clause or of the separate arbitration agreement. For that purpose, an arbitration clause that forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null shall not entail automatically the invalidity of the arbitration clause.

2. A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than in the points of defence, or with respect to a counterclaim or a claim for the purpose of a set-off, in the reply to the counterclaim or to the claim for the purpose of a set-off. A party is not precluded from raising such a plea by the fact that it has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

3. The arbitral tribunal may rule on a plea referred to in paragraph 2 either as a preliminary question or in an award on the merits. The arbitral tribunal may continue the arbitral proceedings and make an award, notwithstanding any pending challenge to its jurisdiction before a court.

*Further written statements*

*Article 24*
The arbitral tribunal shall decide which further written statements, in addition to the points of claim and the points of defence, shall be required from the parties or may be presented by them and shall fix the periods of time for communicating such statements.
Periods of time

*Article 25*
The periods of time fixed by the arbitral tribunal for the communication of written statements (including the points of claim and points of defence) should not exceed 45 days. However, the arbitral tribunal may extend the time limits if it concludes that an extension is justified.

*Interim measures*

*Article 26*
1. The arbitral tribunal may, at the request of a party, grant interim measures.

2. An interim measure is any temporary measure by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party, for example and without limitation, to —

(a) maintain or restore the status quo pending determination of the dispute;

(b) take action that would prevent, or refrain from taking action that is likely to cause —

(i) current or imminent harm, or

(ii) prejudice to the arbitral process itself;

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

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

3. The party requesting an interim measure under paragraphs 2 (a) to (c) shall satisfy the arbitral tribunal that —

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

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

4. With regard to a request for an interim measure under paragraph 2 (d), the requirements in paragraphs 3 (a) and (b) shall apply only to the extent the arbitral tribunal considers appropriate.

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

6. The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.

7. The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the interim measure was requested or granted.

8. The party requesting an interim measure may be liable for any costs and damages caused by the measure to any party if the arbitral tribunal later determines that, in the circumstances then prevailing, the measure should not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings.

9. A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

*Emergency arbitrator proceedings*

*Article 27*

*Conduct of Emergency Relief Proceedings*

1. Taking into account the urgency inherent in the Emergency Relief proceedings and ensuring that each party has a reasonable opportunity to be heard on the application, the emergency arbitrator may conduct such proceedings in such a manner as the emergency arbitrator considers appropriate. The emergency arbitrator shall have the power to rule on objections that the emergency arbitrator has no jurisdiction, including any objections with respect to the existence, validity or scope of the arbitration clause(s) or of the separate arbitration agreement(s), and shall resolve any disputes over the applicability of this Article and of section 16 of the Act.

*Decisions of the emergency arbitrator*

2. Any decision of the emergency arbitrator shall take the form of an order (the "Emergency Decision") shall be made within 14 days from the date on which the file is received by the emergency arbitrator. This period of time may be extended by agreement of the parties.

3. The Emergency Decision may be made even if in the meantime the file has been transmitted to the arbitral tribunal.

4. Any Emergency Decision shall —

(a) be made in writing;

(b) state the date when it was made and summary reasons upon which the Emergency Decision is based (including a determination on whether the application is admissible under section 16 of the Act and whether the emergency arbitrator has jurisdiction to grant the Emergency Relief); and

(c) be signed by the emergency arbitrator.

5. Any Emergency Decision shall fix the costs of the Emergency Relief proceedings and decide which of the parties shall bear them or in what proportion they shall be borne by the parties, subject always to the power of the arbitral tribunal to determine finally the apportionment of such costs in accordance with section 50 of this Act. The

costs of the Emergency Relief proceedings include the emergency arbitrator's fees and expenses and the reasonable and other legal costs incurred by the parties for the Emergency Relief proceedings.

6. Any Emergency Decision shall be recognised and enforced in the same manner as an interim measure under to section 28 of this Act and shall be binding on the parties when rendered. By agreeing to arbitration under these Rules, the parties undertake to comply with any Emergency Decision without delay.

7. The emergency arbitrator shall be entitled to order the provision of appropriate security by the party seeking Emergency Relief.

8. Any Emergency Decision may, upon a reasoned request by a party, be modified, suspended or terminated by the emergency arbitrator or the arbitral tribunal (once constituted).

9. Any Emergency Decision ceases to be binding —

(a) if the emergency arbitrator or the arbitral tribunal so decides;

(b) upon the arbitral tribunal rendering a final award, unless the arbitral tribunal expressly decides otherwise;

(c) upon the withdrawal of all claims or the termination of the arbitration before the rendering of a final award; or

(d) if the arbitral tribunal is not constituted within 90 days from the date of the Emergency Decision. This period of time may be extended by agreement of the parties.

10. The emergency arbitrator’s decision shall not bind the arbitral tribunal with respect to any question, issue or dispute determined in the Emergency Decision. The arbitral tribunal may modify, terminate or annul the Emergency Decision or any modification thereto made by the emergency arbitrator.

11. The arbitral tribunal shall decide upon any party’s requests or claims related to the Emergency Relief proceedings, including the reallocation of the costs of such proceedings and any claims arising out of or in connection with the compliance or non-compliance with the order.

*General provisions*

12. Subject to subparagraph 15 of this Article, the emergency arbitrator shall have no further power to act once the arbitral tribunal is constituted.

13. The emergency arbitrator procedures set out in this Article are not intended to prevent any party from seeking urgent interim or conservatory measures from a competent Court at any time.

14. In all matters not expressly provided for in this Article, the emergency arbitrator shall act in the spirit of the Act and these Rules.

15. The emergency arbitrator shall make every reasonable effort to ensure that an Emergency Decision is valid.

*Evidence*

*Article 28*

1. Each party shall have the burden of proving the facts relied on to support his claim or defence.

2. Witnesses, including expert witnesses, who are presented by the parties to testify to the arbitral tribunal on any issue of fact or expertise may be any individual,

notwithstanding that the individual is a party to the arbitration or in any way related to a party. Unless otherwise directed by the arbitral tribunal, statements by witnesses, including expert witnesses, may be presented in writing and signed by them.

3. The arbitral tribunal may, if it considers it appropriate, require a party to deliver to the tribunal and to the other party within such a period of time as the arbitral tribunal shall decide, a summary of the documents and other evidence which that party intends to present in support of the facts in issue set out in his points of claim or points of defence.

4. At any time during the arbitral proceedings, the arbitral tribunal may require the parties to produce documents, exhibits or other evidence within such a period of time as the arbitral tribunal shall determine.

5. The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

*Hearings*

*Article 29*

1. In the event of an oral hearing, the arbitral tribunal shall give the parties adequate advance notice of the date, time and place thereof.

2. Witnesses, including expert witnesses, may be heard under the conditions and examined in the manner set by the arbitral tribunal.

3. Hearings shall be held in camera unless the parties agree otherwise. The arbitral tribunal may require the retirement of any witness or witnesses, including expert witnesses, during the testimony of such other witnesses, except that a witness, including an expert witness, who is a party to the arbitration shall not, in principle, be asked to retire.

4. The arbitral tribunal may direct that witnesses, including expert witnesses, be examined through means of telecommunication that do not require their physical presence at the hearing (such as videoconference).

*Experts appointed by the Arbitral Tribunal*

*Article 30*

1. After consultation with the parties, the arbitral tribunal may appoint one or more independent experts to report to it in writing, on specific issues to be determined by the arbitral tribunal. A copy of the expert's terms of reference, established by the arbitral tribunal, shall be communicated to the parties.

2. The expert shall, in principle before accepting appointment, submit to the arbitral tribunal and to the parties a description of his or her qualifications and a statement of his or her impartiality and independence. Within the time ordered by the arbitral tribunal, the parties shall inform the arbitral tribunal whether they have any objections as to the expert's qualifications, impartiality or independence. The arbitral tribunal shall decide promptly whether to accept any such objections. After an expert's appointment, a party may object to the expert's qualifications, impartiality or independence only if the objection is for reasons of which the party becomes aware after the appointment has been made. The arbitral tribunal shall decide promptly what, if any, action to take.

3. The parties shall give the expert any relevant information or produce for his or her inspection any relevant documents or goods that he or she may require of them.

Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.

4. Upon receipt of the expert's report, the arbitral tribunal shall communicate a copy of the report to the parties, who shall be given the opportunity to express, in writing, their opinion on the report. A party shall be entitled to examine any document on which the expert has relied in his or her report.

5. At the request of either party, the expert, after delivery of the report, may be heard at a hearing where the parties shall have the opportunity to be present and to interrogate the expert. At this hearing, either party may present expert witnesses in order to testify on the points at issue. The provisions of Article 29 shall be applicable to such proceedings.

*Default*

*Article 31*

1. If, within the period of time fixed by these Rules or the arbitral tribunal, without showing sufficient cause —

(a) the claimant has failed to communicate its point of claim, the arbitral tribunal shall issue an order for the termination of the arbitral proceedings, unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so; or

(b) the respondent has failed to communicate its response to the written communication containing a request for the dispute to be referred to arbitration or its points of defence, the arbitral tribunal shall order that the proceedings continue, without treating such failure in itself as an admission of the claimant's allegations; the provisions of this subparagraph also apply to a claimant's failure to submit a defence to a counterclaim or to a claim for the purpose of a set-off.

2. Where a party, duly notified under these Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration.

3. Where a party, duly invited by the arbitral tribunal to produce documents, exhibits or other evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the arbitral tribunal may make the award on the evidence before it.

*Consolidation*

*Article 32*

1. In deciding whether to consolidate proceedings or to hold concurrent hearings, the arbitral tribunal shall take into account the circumstances of the case, which may include, but are not limited to where —

(a) one or more arbitrators have been nominated or confirmed in more than one of the arbitrations, and if so, whether the same or different arbitrators have been confirmed;

(b) all of the claims in the arbitrations are made under the same arbitration agreement; or

(c) the claims are under more than one arbitration agreement, a common question of law or fact arises in both or all of the arbitrations, the rights to relief

claimed are in respect of, or arise out of the same transaction or series of transactions, and the tribunal finds the arbitrations to be compatible.

2. A Request for Consolidation shall include —

(a) the names and addresses, telephone numbers, and email addresses of each of the parties to the arbitrations, their counsel and any arbitrator who have been appointed or confirmed in the arbitrations;

(b) a request that the arbitrations be consolidated;

(c) a copy of the arbitration agreements giving rise to the arbitrations;

(d) a reference to the contracts or other legal instruments out of or in relation to which the Request arises;

(e) a description of the general nature of the claim and an indication of the amount involved, if any, in each of the arbitrations;

(f) a statement of the facts supporting the Request (including, where applicable, evidence of all parties' written consent to consolidate the arbitrations);

(g) the points at issue;

(h) the legal arguments supporting the Request;

(i) the relief or remedy sought;

(j) comments on the appointment of the arbitral tribunal if the Request is granted, including whether to preserve the appointment of any already appointed or confirmed arbitrators; and

(k) confirmation that copies of the Request and any exhibits included therewith have been or are being served simultaneously on all other relevant parties and any appointed or confirmed arbitrator.

3. The Request for Consolidation shall not be rendered incompetent by any controversy with respect to the sufficiency of its contents as set out in Article 32(2). Any such controversy shall be finally resolved by the arbitral tribunal.

*Effect of Consolidation*

*Article 33*

1. Where the arbitral tribunal decides to consolidate two or more arbitral proceedings, the arbitral proceedings shall be consolidated into the arbitral proceedings that commenced first, unless all parties agree or the arbitral tribunal decides otherwise taking into account the circumstances of the case.

2. The consolidation of two or more arbitral proceedings is without prejudice to the validity of any act done or order made by a Court in support of the relevant arbitral proceedings before it was consolidated.

3. Where the arbitral tribunal decides to consolidate two or more arbitrations, the parties to all such arbitrations shall be deemed to have waived their right to designate an arbitrator. In these circumstances, the Director of the Regional Centre for International Commercial Arbitration, Lagos shall appoint the arbitral tribunal in respect of the consolidated proceedings.

4. Where any arbitrator ceases to act under this Article, it shall be without prejudice to —

(a) the validity of any act done or order made by that arbitrator before his or her appointment ceased;

(b) the arbitrator's entitlement to fees and expenses subject to section 50(2) of this Act; and

(c) the date when any claim or defence was raised for the purpose of applying any Statute of Limitation or any similar rule or provision.

5. The parties shall not object to the validity and enforcement of any award made by the arbitral tribunal in the consolidated proceedings on the basis of the arbitral proceedings under section 39 of the Act.

*Request to Join a Third Party*

*Article 34*

1. An existing party to the arbitral proceedings wishing to join an additional party to the arbitration shall submit a Request for Joinder to the arbitral tribunal. The arbitral tribunal may fix a time limit for the submission of a Request for Joinder.

2. The Request for Joinder shall include the following —

(a) the names and addresses, telephone numbers, and email addresses of each of the parties in the existing arbitration, and the additional party;

(b) a request that the additional party be joined to the arbitration;

(c) a reference to the contracts or other legal instruments out of or in relation to which the request arises;

(d) a statement of the facts supporting the request;

(e) the points at issue;

(f) the legal arguments supporting the request;

(g) the relief or remedy sought; and

(h) confirmation that copies of the Request for Joinder and any exhibits included therewith have been or are being served simultaneously on all other parties and the tribunal.

3. The Request for Joinder shall not be rendered incompetent by any controversy with respect to the sufficiency of its contents as set out in Article 33(2). Any such controversy shall be finally resolved by the arbitral tribunal.

*Answer to Request for Joinder by a Third Party*

*Article 35*

1. The additional party, to whom a Request for Joinder is addressed, shall submit to the tribunal an Answer to the Request for Joinder within fifteen (15) days of the receipt of the Request for Joinder.

2. The Answer to the Request for Joinder shall include the following —

(a) the name, address, telephone numbers, and email address of the additional party and its counsel if different from the description contained in the Request for Joinder;

(b) any plea that the arbitral tribunal has been improperly constituted or lacks jurisdiction over the additional party;

(c) the additional party's comments on the particulars set forth in the Request for Joinder;

(d) the additional party's answer to the relief or remedy sought in the Request for Joinder;

(e) details of any claims by the additional party against any other party to the arbitration; and

(f) confirmation that copies of the Answer to the Request for Joinder and any exhibits included therewith have been or are being served simultaneously on all other parties and the arbitral tribunal.

*Request by a Third Party to Join the arbitration*

*Article 36*
A third party wishing to be joined as an additional party to the arbitration shall submit a Request for Joinder to the arbitral tribunal. The provisions of Article 34 shall apply to such Request for Joinder.

*Comments on the Request for Joinder by existing parties to the arbitration*

*Article 37*
The other parties to the arbitration shall submit their comments on the Request for Joinder to the arbitral tribunal within 15 days of receiving a Request for Joinder under Article 34 or 36 and such comments may include but are not limited to the following particulars —

(a) any plea that the arbitral tribunal lacks jurisdiction over the additional party;
(b) comments on the particulars set forth in the Request for Joinder;
(c) answer to the relief or remedy sought in the Request for Joinder;
(d) details of any claims against the additional party; and
(e) confirmation that copies of the comments have been or are being served simultaneously on all other parties and the tribunal.

*General provisions on Joinder*

*Article 38*
1. Where an additional party is joined to the arbitration, the date on which the Request for Joinder is received by the arbitral tribunal shall be deemed to be the date on which the arbitration in respect of the additional party commences.

2. The parties waive any objection, on basis of any decision to join an additional party to the arbitration, to the validity and enforcement of any award made by the arbitral tribunal in the arbitration.

Closure of hearings

*Article 39*
1. The arbitral tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the hearings closed.

2. The arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own initiative or upon application of a party, to reopen the hearings at any time before the award is made.

*Waiver of right to object*

*Article 40*
A failure by any party to object promptly to any non-compliance with these Rules or with any requirement of the arbitration agreement shall be deemed to be a waiver of the right of such party to make such an objection, unless such party can show that, under the circumstances, its failure to object was justified.

SECTION IV: THE AWARD

*Decisions*

*Article 41*
1. When there are three arbitrators, any award or other decision of the arbitral tribunal shall be made by a majority of the arbitral tribunal.

2. In the case of questions of procedure, when there is no majority or when the arbitral tribunal so authorises, the presiding arbitrator may decide alone, subject to revision, if any, by the arbitral tribunal.

*Form and effect of the Award*

*Article 42*
1. The arbitral tribunal may make separate awards on different issues at different times.

2. All awards shall be made in writing and shall be final and binding on the parties. The parties undertake to carry out the award without delay.

3. The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.

4. An award shall be signed by the arbitrators and it shall contain the date on which the award was made and indicate the seat of arbitration. Where there is more than one arbitrator and any of them fails to sign, the award shall state the reason for the absence of the signature.

5. The award may be made public only with the consent of all parties or where and to the extent disclosure is required of a party by legal duty, to protect or pursue a legal right or in relation to legal proceedings before a Court or other competent authority.

6. Copies of the award signed by the arbitrators shall be communicated to the parties by the arbitral tribunal.

*Applicable Law, Amiable Compositeur*

*Article 43*
1. The arbitral tribunal shall apply the rules of law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall apply the law which it determines to be appropriate.

2. The arbitral tribunal shall decide as *amiable compositeur* or *ex aequo et bono* only if the parties have expressly authorised the arbitral tribunal to do so.

3. In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract, if any, and shall take into account any usage of trade applicable to the transaction.

*Settlement or other grounds for termination*

*Article 44*

1. If, before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by both parties and accepted by the tribunal, record the settlement in the form of an arbitral award on agreed terms. The arbitral tribunal is not obliged to give reasons for such an award.

2. If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reasons not mentioned in paragraph 1, the arbitral tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The arbitral tribunal shall have the power to issue such an order unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so.

3. Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated by the arbitral tribunal to the parties. Where an arbitral award on agreed terms is made, the provisions of Article 42, paragraphs 2, 4 and 6, shall apply.

*Interpretation of the award*

*Article 45*

1. Within thirty days after the receipt of the award, a party, with notice to the other parties, may request that the arbitral tribunal give an interpretation of the award.

2. The interpretation shall be given in writing within forty-five days after the receipt of the request. The interpretation shall form part of the award and the provisions of Article 42, paragraphs 2 to 6, shall apply.

*Correction of the award*

*Article 46*

1. Within thirty days after the receipt of the award, a party, with notice to other parties, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical error, or any error of similar nature. If the arbitral tribunal considers that the request is justified, it shall make the correction within forty-five days of receipt of the request.

2. The arbitral tribunal may within thirty days after the communication of the award make such corrections on its own initiative.

3. Such corrections shall be in writing and shall form part of the award. The provisions of Article 42, paragraphs 2-6, shall apply.

*Additional award*

*Article 47*

1. Within thirty days after the receipt of the termination order of the award, a party, with notice to the other parties, may request the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but not decided by the arbitral tribunal.

2. Where arbitral tribunal considers the request for an award or additional award to be justified, it shall render or complete its awards within 60 days after the receipt of the request. The arbitral tribunal may extend, if necessary, the period of time within which it shall make the award.

3. When an award or additional award is made, the provisions of Article 42, paragraphs 2—6, shall apply.

*Definition of costs*

*Article 48*

1. The arbitral tribunal shall fix the costs of arbitration in the final award and, if it deems appropriate, in another decision.

2. The term "costs" includes only —

(a) the fees of the arbitral tribunal to be stated separately as to each arbitrator and to be fixed by the tribunal itself in accordance with Article 49;

(b) the reasonable travel and other expenses incurred by the arbitrators;

(c) the reasonable costs of expert advice and of other assistance required by the arbitral tribunal;

(d) the reasonable travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;

(e) the legal and other costs incurred by the parties in relation to the arbitration to the extent that the arbitral tribunal determines that the amount of such costs is reasonable;

(f) any fees and expenses of the appointing authority as well as the fees and expenses of the Director of the RCICAL;

(g) the cost of Third-Party Funding; and

(h) other costs.

3. In relation to interpretation, correction or completion of any award under Articles 45 to 47, the arbitral tribunal may charge the costs referred to in paragraphs 2 (b)-(f), but no additional fees.

*Fees and expenses of Arbitrators*

*Article 49*

1. The fees and expenses of the arbitrators shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject matter, the time spent by the arbitrators and any other relevant circumstances of the case.

2. If there is an appointing authority and it applies or has stated that it will apply a schedule or particular method for determining the fees for arbitrators in international cases, the arbitral tribunal in fixing its fees shall take that schedule or method into account to the extent that it considers appropriate in the circumstances of the case.

3. Promptly after its constitution, the arbitral tribunal shall inform the parties as to how it proposes to determine its fees and expenses, including any rates it intends to apply. Within 15 days of receiving that proposal, any party may refer the proposal to the appointing authority for review. If, within 45 days of receipt of such a referral, the appointing authority finds that the proposal of the arbitral tribunal is inconsistent with paragraph 1, it shall make any necessary adjustments thereto, which shall be binding upon the arbitral tribunal —

(a) when informing parties of the arbitrators' fees and expenses that have been fixed under Article 48, paragraphs 2 (a) and (b), the arbitral tribunal shall also explain the manner in which the corresponding amounts have been calculated;

(b) within 15 days of receiving the arbitral tribunal's determination of fees and expenses, any party may refer for review such determination to the appointing authority. If no appointing authority has been agreed upon or designated, or if the appointing authority fails to act within the time specified in these Rules, then the review shall be made by the Director of the RCICAL;

(c) if the appointing authority or the Director of the RCICAL finds that the arbitral tribunal's determination is inconsistent with the arbitral tribunal's proposal (and any adjustment thereto) under paragraph 3 or is otherwise manifestly excessive, it shall, within 45 days of receiving such a referral, make any adjustments to the arbitral tribunal's determination that are necessary to satisfy the criteria in paragraph 1. Any such adjustments shall be binding upon the arbitral tribunal;

(d) any such adjustments shall either be included by the arbitral tribunal in its award or, if the award has already been issued, be implemented in a correction to the award, to which the procedure of Article 46, paragraph 3, shall apply.

4. Throughout the procedure under paragraphs 3 and 4, the arbitral tribunal shall proceed with the arbitration, in accordance with Article 17, paragraph 1.

5. A referral under paragraph 4 shall not affect any determination in the award other than the arbitral tribunal's fees and expenses, nor shall it delay the recognition and enforcement of all parts of the award other than those relating to the determination of the arbitral tribunal's fees and expenses.

*Allocation of costs*

*Article 50*

1. The costs of the arbitration shall in principle be borne by the unsuccessful party or parties. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.

2. The arbitral tribunal shall in the final award or, if it deems appropriate, in any other award, determine any amount that a party may have to pay to another party as a result of the decision on allocation of costs.

*Deposit of costs*

*Article 51*

1. The arbitral tribunal, on its establishment, may request the parties to deposit an equal amount as an advance for the costs referred to in Article 48, paragraphs 2 (a)-(c).

2. During the course of the arbitral proceedings, the arbitral tribunal may request supplementary deposits from the parties.

3. If an appointing authority has been agreed upon or designated, and when a party so requests and the appointing authority consents to perform the function, the arbitral tribunal shall fix the amounts of any deposits or supplementary deposits only after consultation with the appointing authority, which may make any comments to the arbitral tribunal that it deems appropriate concerning the amount of such deposits and supplementary deposits.

4. If the required deposits are not paid in full within thirty days after the receipt of the requests, the arbitral tribunal shall so inform the parties, in order that one or more of them may make the required payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.

5. After the award has been made, the arbitral tribunal shall render an account to the parties of the deposits received and return any unexpended balance to the parties.

## Annex

*Model arbitration clause for contracts*

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the Arbitration and Mediation Act in force in the Federal Republic of Nigeria.

Note, for arbitration, parties should consider adding —

(a) the appointing authority shall be ... (name of institution or person);

(b) the number of arbitrators shall be ... (one or three);

(c) the seat of arbitration shall be ... (town and country);

(d) the language to be used in the arbitral proceedings shall be and

(e) model statements of independence under Article 11 of the Rules

*No circumstances to disclose*

I am impartial and independent of each of the parties and intend to remain so. To the best of my knowledge, there are no circumstances, past or present, likely to give rise to justifiable doubts as to my impartiality or independence. I shall promptly notify the parties and the other arbitrators of any such circumstances that may subsequently come to my attention during this arbitration.

I confirm, on the basis of the information presently available to me, that I can devote the time necessary to conduct this arbitration diligently, efficiently and in accordance with the time limits in the Rules.

*Circumstances to disclose*

I am impartial and independent of each of the parties and intend to remain so. Attached is a statement made under Article 11 of the Arbitration Rules in the First Schedule to the Arbitration and Mediation Act of (a) my past and present professional, business and other relationships with the parties and (b) any other relevant circumstances. [Include statement.] I confirm that those circumstances do not affect my independence and

impartiality. I shall promptly notify the parties and the other arbitrators of any such further relationships or circumstances that may subsequently come to my attention during this arbitration.

I confirm, on the basis of the information presently available to me, that I can devote the time necessary to conduct this arbitration diligently, efficiently and in accordance with the time limits in the Rules.

## Second Schedule[2]

(Section 60)

## Third Schedule

(Sections 19 and 64(2))

## Arbitration Proceedings Rules 2020

*Interpretation*

1. In these Rules —

"arbitration claim" means an application to a High Court under the Arbitration and Mediation Act, 2023 to —

(a) revoke an arbitration agreement under section 3;
(b) stay proceedings under section 5;
(c) determine the challenge of an arbitrator under section 9;
(d) appoint, remove or substitute an emergency arbitrator under sections 16 and 17;
(e) grant interim measures of protection under section 19;
(f) recognise or enforce an interim measure of protection under section 28;
(g) refuse recognition or enforcement of an interim measure of protection under section 29;
(h) subpoena a witness to attend under section 43;
(i) fees of an arbitrator under section 54;
(j) set aside an award under section 55 or review the decision of an Award Review Tribunal under section 56;
(k) recognise and enforce an award under section 57; and
(l) refuse recognition and enforcement of an award under section 58.

*Starting the claim*

2. (1) Except where subrules 2 and 3 applies, an arbitration claim shall be started by the issue of an Originating Motion.

2. The Second Schedule containing the New York Convention is not reproduced here.

(2) An application under section 5 of the Act to stay legal proceedings shall be made by notice of motion to the court seized of those proceedings.

(3) An application under sections 16 or 17 of the Act for the appointment, challenge or replacement of an emergency arbitrator; or under 18 of the Act to fix the seat of the Emergency Relief Proceedings, shall be contained in a written communication addressed to the appropriate Court as defined under section 91(1) of this Act.

*Originating Motion*

3. (1) An Originating Motion commencing an arbitration claim shall —

(a) include a concise statement of —

(i) the remedy claimed,

(ii) any question on which the claimant seeks the decision of the Court;

(b) give details of any arbitration award challenged by the claimant, identifying which part or parts of the award are challenged and specifying the grounds for the challenge;

(c) show that any statutory requirement have been met;

(d) specify under which section of the Act the claim is made;

(e) identify against which (if any) of the defendants, a cost order is sought; and

(f) specify the person on whom the Originating Motion is to be served, stating their role in the arbitration and whether they are defendants.

(2) Unless the court orders otherwise an Originating Motion shall be served on the defendant within one month from the date of issue.

*Service out of the jurisdiction*

4. (1) The court may give permission to serve an Originating Motion out of the jurisdiction if —

(a) the claimant seeks to set aside an arbitration award made within the jurisdiction; and

(b) the claimant —

(i) seeks some other remedy or requires a question to be decided by the court affecting an arbitration (whether started or not), an arbitration agreement or an arbitration award, and

(ii) the seat of the arbitration is or will be within the jurisdiction.

(2) An application for permission under subrule 1 shall be supported by an affidavit —

(a) stating the grounds on which the application is made; and

(b) showing in what place or country the person to be served is, or probably may be found.

(3) An order giving permission to serve an Originating Motion out of the jurisdiction shall specify the period within which the defendant may enter appearance to the claim.

*Notice*

5. (1) Where an arbitration claim is made under section 8 of the Act, each arbitrator shall be a defendant.

(2) Where notice shall be given to an arbitrator or any other person it may be given by sending him a copy of —

(a) the Originating Notice of Motion; and

(b) any affidavit in support.

(3) Where the Act requires an application to the court to be made on notice to any other party to the arbitration, such notice shall be given by making that party a defendant.

*Hearings*

6. The court may order that an arbitration claim be heard either in public or in private.

*Enforcement of arbitration awards and interim measures of protection*

7. (1) An application to enforce an award or an interim measure of protection in the same manner as a judgment or order shall be made by Originating Notice of Motion.

(2) The supporting affidavit shall —

(a) exhibit the arbitration agreement and the original award or decision containing the interim measure of protection, or in either case certified copies of each;

(b) state the name and the usual or last known place of abode or business of the applicant and the person against whom it is sought to enforce the award or interim measure of protection; and

(c) state, as the case may require, either that the award or interim measure of protection has not been complied with or the extent to which it has not been complied with at the date of the application.

*Case Management*

8. (1) Except the court orders otherwise, the following rules apply.

(2) A defendant who does not contest any or all of the remedies claimed may file a notice stating the fact, and a court or judge in chambers may grant such uncontested remedy or remedies without an oral hearing.

(3) A defendant who contests any or all of the remedies claimed and wishes to rely on evidence before the court shall file and serve the counter-affidavit —

(a) within 21 days after the date the defendant was required to enter appearance; or

(b) where a defendant is not required to enter appearance, within 21 days after the service of the Originating Notice of Motion.

(4) Where a claimant wishes to rely on evidence in reply to a counter-affidavit filed under rule 7(2), shall file and serve such reply affidavit within seven days after the service of the defendant's counter-affidavit.

(5) Except in the case provided for in subrule (5), an arbitration claim shall be entered on the court's list such that its first hearing is not later than 30 days after service of the originating motion on the defendant, or in the case of multiple defendants, on the defendant last served.

(6) Where a defendant is served outside the jurisdiction under permission given under rule 3 of these rules, an arbitration claim shall be entered on the court's list such that its first hearing is not later than 40 days after service of the originating motion on

the defendant served outside the jurisdiction, or in the case of multiple defendants, on the defendant last served.

(7) Not later than two days before the hearing date, the claimant shall file and serve a written brief of arguments which lists succinctly the —

(a) issues which arise for decision;
(b) grounds of relief (or opposing relief) to be relied upon;
(c) submissions of fact to be made with the references to the evidence; and
(d) submissions of law with references to the relevant authorities.

(8) A day before the hearing date, the defendant shall file and serve a skeleton argument which lists succinctly the —

(a) issues which arise for decision;
(b) grounds of relief, or opposing relief to be relied upon;
(c) submissions of fact to be made with the references to the evidence; and
(d) submissions of law with references to the relevant authorities.

(9) Except a party specifically requests an oral hearing, the court may decide the entire arbitration claim or particular issues arising in it without an oral hearing.

*Appeals*

9. Rules 10-13 of these Rules shall apply to appeals from a High Court to the Court of Appeal and from the Court of Appeal to the Supreme Court in all arbitration claims as defined in rule 1, in these Rules referred to as "arbitration appeals".

10. The Registrar of a High Court or the Registrar of the Court of Appeal shall not be required to prepare a record in respect of an arbitration appeal, and accordingly the record for the purpose of such appeal shall be prepared in the manner set forth in rule 11 of these Rules.

11. (1) An appellant shall, either simultaneously with filing a notice of appeal or within 14 days thereafter, prepare for the use of the Justices a record comprising —

(a) the index;
(b) certified true copies of documents and proceedings which the appellant considers relevant to the appeal; and
(c) a certified true copy of the notice of appeal.

(2) Where the respondent considers that the documents and proceedings filed by the appellant are inaccurate or are not sufficient for the purposes of the appeal, the respondent shall, within seven days after service of the record filed by the appellant, file any further or other documents as may be necessary to the appeal.

(3) In arbitration appeals, the provisions of the Court of Appeal Rules and the Supreme Court Rules for the time being in force in relation to the filing of briefs of arguments in civil matters shall apply mutatis mutandis upon the filing of the record of appeal under rule 11.

*Case Management on Appeals*

12. An arbitration appeal shall be entered on the court's list such that its first hearing is not later than six months after the filing of the record of appeal under rule 11.

13. Unless a party specifically requests an oral hearing, the court may decide the entire arbitration appeal or particular issues arising in it without an oral hearing.

*Effect of Default*

14. Where, in an arbitration claim or an arbitration appeal, a claimant or appellant seeks to set aside an arbitral award, or seeks refusal of recognition or enforcement of an interim measure of protection, and such claimant or appellant fails to comply with —

(a) any of the time limits set out in rules 3(2), 8(6) and 11(1) of these rules, or

(b) the time limits for the filing of briefs of arguments as set out in the rules of the Court of Appeal and the Supreme Court for the time being in force in relation to civil appeals,

the arbitral award or interim measure of protection shall immediately become enforceable, unless the court otherwise orders.

*Costs*

15. The rules of the High Courts, Court of Appeal and the Supreme Court for the time being in force shall apply in relation to costs in all arbitration claims and arbitrating appeals, so however that the term "costs" shall include —

(a) all expenses actually incurred by the successful party, including his travel expenses and the travel and other expenses of his witnesses;

(b) the costs for legal representation of the successful party, to the extent that the court or a taxing officer considers that such costs are reasonable.

*Application*

16. These rules shall apply to all arbitration claims and arbitration appeals instituted on or after the date of commencement of the Arbitration and Mediation Act, 2023.

17. The rules of procedure in civil matters for the time in force in the High Courts, Courts of Appeal and the Supreme Court shall apply to arbitration claims and arbitration appeals only in respect of such matters and to such extent as provision has not been expressly made in these rules.

# ANNEX II

## A LAW TO PROVIDE FOR THE RESOLUTION OF DISPUTES BY ARBITRATION IN LAGOS STATE AND FOR CONNECTED PURPOSES – LAW NO. 18
## [Ed.: Lagos State Arbitration Law of 2009][*]

[18 May 2009]

The Lagos State House of Assembly enacts as follows:

*1. General principles*
The provisions of this Law are based on the following principles, and shall be construed accordingly –

(*a*) The object of arbitration is to obtain the fair resolution of disputes by an impartial Tribunal without unnecessary delay or expense;

(*b*) Parties should be free to agree on how their disputes are resolved, subject only to such safeguards as are necessary in the public interest;

(*c*) An Arbitration Agreement between parties for the settlement of any dispute shall be binding upon and enforceable against each of the parties unless the parties expressly agree otherwise at any time or the agreement is invalid, non-existent, ineffective or otherwise unenforceable; and

(*d*) Parties, Arbitral Tribunals, Arbitral Institutions, Appointing Authorities and the Court shall do all things necessary for the proper and expeditious conduct of the arbitral proceedings.

*2. Application*
From the commencement of this Law, all arbitration within the State shall be governed by the provisions of this Law except where the parties have expressly agreed that another Arbitration Law shall apply.

*3. Arbitration Agreement*
(1) Parties to a dispute shall enter into an Arbitration Agreement to define their legal relationship whether contractual or not, to determine issues that may arise between them.

(2) An Arbitration Agreement may be in the form of arbitration provisions in a contract or in the form of a separate agreement.

(3) An Arbitration Agreement shall be in writing.

(4) "Writing" includes, data that provides a record of the Arbitration Agreement or is otherwise accessible so as to be useable for subsequent reference.

(5) "Data" includes information generated, sent, received or stored by electronic, optical or similar means, such as but not limited to Electronic Data Interchange (EDI), electronic mail, telegram, telex or telecopy.

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* In effect from 18 May 2009.

(6) An Arbitration Agreement is in writing if it is contained in an exchange of written statements in the course of arbitration or legal proceedings in which the existence of an agreement is alleged by one party and not denied by the other party.

(7) For the avoidance of doubt, the reference in a contract or to a document containing an arbitration clause constitutes an Arbitration Agreement in writing, provided that the reference is such that makes the arbitration clause part of the contract or the Arbitration Agreement.

(8) Where subsection (7) of this Section applies, the document containing the arbitration clause constitutes the Arbitration Agreement for the purposes of this Law.

*4. Arbitration Agreement irrevocable except by agreement*

Unless a contrary intention is expressed, an Arbitration Agreement shall be irrevocable except by the express or written agreement of the parties.

*5. Death of a party*

(1) An Arbitration Agreement shall not be invalid by reason of the death of any party to the agreement.

(2) The authority of an arbitrator shall not be revoked by the death of any party by whom he was appointed.

(3) Nothing in this Section shall be taken to affect the operation of any law by virtue of which any right of action is extinguished by the death of a person.

(4) For the purposes of this Section, 'death' shall include the meaning ascribed to it in Section 63(1).

*6. Power to stay proceedings and make preservatory order*

(1) A Court before which an action is brought in a matter subject to an Arbitration Agreement shall, if a party so requests, not later than when submitting the first statement on the substance of the dispute stay proceedings so long as they concern that matter.

(2) Where an action referred to in subsection (1) of this Section has been brought before a Court, arbitral proceedings may nevertheless be commenced or continued, and an award may be made by the Arbitral Tribunal while the matter is pending before the Court.

(3) Where a Court makes an order of stay of proceedings under subsection (1) of this Section, the Court may, for the purpose of preserving the rights of parties, make such interim or supplementary orders as may be necessary.

(4) For the purpose of this Section, a reference to a party includes reference to any person claiming through or under such party.

*7. Number of arbitrators*

(1) The parties are free to agree on the number of arbitrators to constitute the Arbitral Tribunal and whether there is to be a presiding arbitrator or umpire.

(2) Unless otherwise agreed by the parties, an agreement that the number of arbitrators shall be two or any other even number shall be deemed to require the appointment of an additional arbitrator to preside over the arbitration.

(3) If there is no agreement as to the number of arbitrators, the Arbitral Tribunal shall consist of a sole arbitrator.

*8. Appointment of arbitrators*

(1) Subject to subsections (2) and (3) of this Section, the parties may specify in the Arbitration Agreement the procedure to be followed in appointing an arbitrator or they may designate or agree to designate an appointing authority.

(2) When the Arbitration Agreement entitles each party to nominate an arbitrator; and where the parties to the dispute number more than two and such parties have not all agreed in writing within 30 days that the disputing parties represent two separate sides for the formation of the Arbitral Tribunal as Claimant and Respondent respectively, then the appointing authority shall have the power to appoint the Arbitral Tribunal without regard to any party's nomination.

(3) Where the parties have not specified a procedure but they have designated an appointing authority, the provisions of paragraphs (*a*) to (*i*) of this subsection shall apply, that is if –

(*a*) a sole arbitrator is to be appointed, the parties may propose to each other, one or more persons, to serve as the sole arbitrator;

(*b*) within thirty (30) days after the first proposal is delivered in accordance with paragraph (*a*) of this subsection, the parties have not reached an agreement on the choice of a sole arbitrator, the sole arbitrator shall be appointed by the designated appointing authority;

(*c*) in the case of an arbitration with three arbitrators, each party shall appoint one arbitrator and the two so appointed shall appoint the third who shall act as the presiding arbitrator of the Arbitral Tribunal;

(*d*) within thirty (30) days after the receipt of notification of the appointment by a party of an arbitrator and the other party has not given the first party notification of the arbitrator he has appointed, the first party may request the appointing authority previously designated by the parties to appoint the second arbitrator;

(*e*) within thirty (30) days after the appointment of the second arbitrator and the two arbitrators have not agreed on the choice of the third and presiding arbitrator, the third and presiding arbitrator shall be appointed by the appointing authority on the request of either or both parties;

(*f*) the Arbitration Agreement entitles each party to the Arbitration Agreement to nominate an arbitrator; and where the parties to the dispute number more than two, and such parties have not all agreed in writing within 30 days that the disputing parties represent two separate sides for the formation of the Arbitral Tribunal as Claimant and Respondent respectively, then the appointing authority shall have power to appoint the Arbitral Tribunal without regard to any party's nomination;

(*g*) when the appointing authority is requested to appoint an arbitrator pursuant to the provisions of this Section, the person making the request shall send to the appointing authority a copy of the notice of arbitration, a copy of the contract out of or in relation to which the dispute has arisen and a copy of the Arbitration Agreement if the term is not contained in the contract, and the appointing authority may require from the requesting person, such information as it deems necessary to fulfil its functions;

(*h*) when the names of one or more persons are proposed for appointment as arbitrators, their full names, addresses and nationalities shall be indicated, together with details of their qualifications;

(*i*) except as otherwise agreed by the parties, no person shall be disqualified from being appointed as an arbitrator by reason only of nationality; and

(*j*) in making the appointment, the appointing authority shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator knowledgeable in the field of the subject matter of the dispute and shall take into account as well, the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties.

(4) Where no procedure is specified under subsection (1) of this Section and no appointing authority is designated or agreed to be designated by the parties –

(*a*) in the case of an arbitration with three arbitrators, each party shall appoint one arbitrator and the two so appointed shall appoint the third. However, if –

(i) a party fails to appoint the arbitrator within thirty (30) days of receipt of a request to do so by the other party, that other party, having duly appointed its arbitrator, may give notice in writing to the party in default proposing the appointment of its arbitrator to act as sole arbitrator;

(ii) the party in default does not within seven (7) clear days of that notice being given, make the required appointment and notify the other party of the name of its arbitrator, the other party may appoint its arbitrator as sole arbitrator whose award shall be binding on the parties as if the sole arbitrator had been so appointed by agreement; and

(iii) the two arbitrators fail to agree on the third and presiding arbitrator within thirty (30) days of their appointments, the appointment shall be made by the Lagos Court of Arbitration on the application of any party to the Arbitration Agreement.

(*b*) in the case of an arbitration with one arbitrator, where the parties fail to agree on the arbitrator, the appointment shall be made by the Lagos Court of Arbitration on the application of any party to the Arbitration Agreement made within thirty (30) days of such disagreement.

(*c*) except as otherwise specifically provided under this Law, where under an appointment procedure agreed upon by the parties –

(i) a party fails to act as required under the procedure;

(ii) the parties or two arbitrators are unable to reach an agreement as required under the procedure; or

(iii) a third party, including an institution, fails to perform any duty imposed on it under the procedure, and

(iv) then any party or arbitrator may request the Lagos Court of Arbitration to take the necessary measure, unless the appointment procedure agreed upon by the parties provides other means for securing the appointment.

(5) No appointment made pursuant to subsection (4) of this Section shall be challenged except in accordance with the provisions of this Law.

(6) The Lagos Court of Arbitration in exercising the power of appointment under subsections (3) and (4) of this Section shall have due regard to any qualification required of the arbitrator by the Arbitration Agreement and such other consideration as are likely to secure the appointment of an independent, impartial and competent arbitrator.

(7) Under the provisions of this Law, all references to "third and presiding" arbitrator shall be construed as including an "additional" arbitrator appointed under Section 7(2) of this Law.

*9. Umpire*

(1) Where the parties have agreed that there is to be an umpire, they are free to agree on the functions of the umpire and in particular –

(*a*) whether the umpire is to attend the proceedings, and

(*b*) when the umpire is to replace the other arbitrators as the Arbitral Tribunal with power to make decisions, orders and awards.

(2) If, there is no such agreement, the following provisions will apply –

(*a*) The umpire shall attend the proceedings and be supplied with the same documents and other materials as are supplied to the other arbitrators;

(*b*) Decisions, orders and awards shall be made by the other arbitrators unless they cannot agree on a matter relating to the arbitration. In that event, they shall immediately give notice in writing to the parties and the umpire, whereupon the umpire shall replace them as the Arbitral Tribunal with power to make decisions, orders and awards as if the umpire was the sole arbitrator;

(*c*) If the arbitrators cannot agree but fail to give notice of that fact, or if any of them fails to join in the giving of notice, any party to the arbitral proceedings may (upon notice to the other parties and to the Arbitral Tribunal) apply to the Lagos Court of Arbitration which shall give the required notice in writing to the parties and the umpire that the umpire shall replace the other arbitrators as the Arbitral Tribunal. He shall have the power to make decisions, orders and awards as if the umpire was the sole arbitrator; and

(*d*) The provisions of this Law in relation to the appointment, challenge and removal of a third and presiding arbitrator shall also apply to the appointment, challenge and removal of an umpire.

*10. Grounds for challenge*

(1) Any person who knows of any circumstances likely to give rise to any justifiable doubts as to impartiality or independence shall, when approached in connection with an appointment as arbitrator, disclose such circumstances to the parties.

(2) The duty to disclose imposed under subsection (1) of this Section shall continue after a person has been appointed as an arbitrator and subsist throughout the arbitral proceedings, unless the arbitrator had previously disclosed the circumstances to the parties.

(3) An arbitrator may be challenged if –

(*a*) circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence;

(*b*) the arbitrator does not possess the qualifications agreed by the parties;

(*c*) the arbitrator is physically or mentally incapable of conducting the proceedings or there are justifiable doubts as to the arbitrator's capacity to do so; or

(*d*) the arbitrator has refused or failed to use all reasonable despatch in conducting the proceedings or making an award, and that substantial injustice has been or will be caused to the applicant.

*11. Challenge of arbitration procedure*

(1) The parties are free to agree on the procedure to be followed in challenging an arbitrator in ad-hoc arbitration or may designate or agree to designate an appointing authority of their choice for the purpose of challenging an arbitrator.

(2) Where no procedure is agreed, a party who intends to challenge an arbitrator shall, within fifteen (15) days of becoming aware of the constitution of the Arbitral Tribunal or becoming aware of any circumstances referred to in Section 10 of this Law, send to the Arbitral Tribunal and other parties, a written statement of the reasons for the challenge.

(3) When an arbitrator has been challenged by one party, if the other party agrees to the challenge or the challenged arbitrator, after the challenge withdraws from office, then the appointment of the arbitrator shall cease.

(4) Where the other party agrees to the challenge or the challenged arbitrator withdraws, the procedure provided in Section 8 of this Law shall be used in full for the appointment of the substituted arbitrator, even if during the process of appointing the challenged arbitrator, a party had failed to exercise his right to appoint or to participate in the appointment.

(5) Unless the arbitrator who has been challenged withdraws from office or the other party agrees to the challenge, the Arbitral Tribunal or where the parties have designated an arbitral institution as the appointing authority, or where such an authority is determined in accordance with the provisions of this Law, the appointing authority shall decide on the challenge.

*12. Removal of an arbitrator*

(1) A party to an arbitral proceeding may (upon notice to the other parties, to the arbitrator concerned and to any other arbitrator) apply to the Court to remove an arbitrator on the grounds that –

(*a*) circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence;

(*b*) the arbitrator does not possess the qualifications required by the Arbitration Agreement;

(*c*) the arbitrator is physically or mentally incapable of conducting the proceedings or there are justifiable doubts as to the arbitrator's capacity to do so; and

(*d*) the arbitrator has refused or failed to use all reasonable despatch in conducting the proceedings or making an award, and that substantial injustice has been or will be caused to the applicant.

(2) If there is an arbitral or other institution or person vested by the parties with power to remove an arbitrator, the Court shall not exercise its power of removal unless satisfied that the applicant has first exhausted any available recourse to that institution or person.

(3) The Arbitral Tribunal may continue the arbitral proceedings and make an award while an application to the Court under this Section is pending.

(4) The arbitrator concerned is entitled to appear before and be heard by the Court with or without legal representation before it makes any order under this Section.

(5) Where the Court removes an arbitrator, it may make such order as it thinks fit with respect to the arbitrator's entitlement (if any) to fees and expenses including indemnity for legal expenses, or the refund of any fees or expenses already paid.

*13. Termination of mandate*

The mandate of an arbitrator shall terminate if –

(*a*) the parties agree to terminate the arbitrator's appointment; or

(*b*) the arbitrator is removed by an arbitral or other person(s) vested by the parties with powers in that regard.

*14. Resignation*

(1) The parties are free to agree with an arbitrator as to the consequences of the arbitrator's resignation as regards –

(*a*) the arbitrator's entitlement (if any) to fees or expenses, and

(*b*) any liability incurred by the arbitrator.

(2) Where there is no such agreement the following provisions shall apply –

(*a*) an arbitrator who resigns may (upon notice to the parties) apply to the Court;

(i) to grant the arbitrator relief from any liability incurred and

(ii) to make such order as it thinks fit with respect to the arbitrator's entitlement (if any) to fees or expenses or the repayment of any fees or expense already paid.

(*b*) If the Court is satisfied that in all the circumstances it was reasonable for the arbitrator to resign, it may grant such relief as mentioned in subsection (2)(*a*) above on such terms as it thinks fit.

*15. Death of an arbitrator*

(1) The authority of an arbitrator is personal and ceases upon the death of such arbitrator.

(2) The authority of an arbitrator shall not be revoked by the death of any party by whom the arbitrator was appointed.

*16. Cessation of office of an arbitrator*

(1) Where an arbitrator ceases to hold office by challenge, termination, resignation or death, the parties are free to agree on the effect (if any), that such cessation of office may have on any appointment made by the arbitrator (alone or jointly).

(2) Where there is no such agreement –

(*a*) the Arbitral Tribunal (when reconstituted) shall determine to what extent the previous proceedings shall stand; and

(*b*) the arbitrator's ceasing to hold office shall not affect any appointment made by the arbitrator (alone or jointly) of another arbitrator, and in particular, any appointment of a presiding arbitrator or umpire.

*17. Appointment of substitute arbitrator*

(1) Unless otherwise agreed by the parties, where the mandate of an arbitrator ceases, a substitute arbitrator shall be appointed in accordance with the same rules and procedure that applied to the appointment of the arbitrator who is being replaced.

*18. Immunity*

(1) An arbitrator is not liable for anything done or omitted in the discharge or purported discharge of the arbitrator's functions as arbitrator unless the act or omission is determined to have been in bad faith.

(2) Subsection (1) above applies to an employee or agent of an arbitrator as it applies to the arbitrator.

(3) The provisions of this Section does not affect any liability incurred by an arbitrator by reason of resignation.

*19. Jurisdiction*

(1) An Arbitral Tribunal shall be competent on questions pertaining to its own jurisdiction and on any objections with respect to the existence or validity of an Arbitration Agreement.

(2) For the purposes of subsection (1) of this Section, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract and a decision by the Arbitral Tribunal that the contract is invalid, non-existent or ineffective shall not invalidate the arbitration clause.

(3) In any arbitral proceedings, a plea that the Arbitral Tribunal –

(*a*) does not have jurisdiction may be raised not later than the time of submission of the points of dispute and a party is not precluded from raising such plea by reason that the party has appointed or participated in the appointment of an arbitrator; and

(*b*) is exceeding the scope of its authority, may be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the proceeding; and the Arbitral Tribunal may, in either case admit a later plea if it considers that the delay as justified.

(4) The Arbitral Tribunal may rule on any plea referred to it under subsection (3) of this Section, either as a preliminary question or in an award on the merits and such ruling shall be final and binding.

*20. Substance of dispute*

(1) The Arbitral Tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties and applicable to the substance of the dispute.

(2) Any designation of the law or legal system of a given jurisdiction or territory shall be construed, unless otherwise expressed, as directly referring to the substantive law of that jurisdiction or territory and not to its conflict of law rules.

(3) Failing any designation by the parties, the Arbitral Tribunal shall apply the law determined by the conflict of law rules which it considers applicable.

(4) The Arbitral Tribunal shall decide justly and in good faith.

(5) In all cases, the Arbitral Tribunal shall decide in accordance with the terms of the contract and shall take account of the usages of the trade applicable to the transaction.

*21. Power to issue interim measures*

(1) The Court shall have the power to issue interim measures for the purposes of and in relation to arbitration proceedings as it has for the purpose of and in relation to proceedings in the Courts and shall exercise that power in accordance with the rules set out in the Schedule to this Law.

(2) Unless otherwise agreed by the parties, the Arbitral Tribunal may, at the request of a party, grant interim measures.

(3) An interim measure is any temporary measure, whether in the form of an award or in another form, prior to the issuance of the award by which the dispute is finally decided, the Arbitral Tribunal may order a party to –

(*a*) maintain or restore the status quo pending the determination of the dispute;

(*b*) take action that would prevent, or refrain from taking action that is likely to cause current or imminent harm or prejudice to the subject matter of the dispute or the arbitral process itself;

(*c*) provide a means of preserving assets out of which a subsequent award may be satisfied; or

(*d*) preserve evidence that may be relevant and material to the resolution of the dispute.

*22. Conditions for grant of interim measures*

(1) Without prejudice to any Law in force in Nigeria guiding the grant of interim measures the party requesting for an interim measure under Section 21(3)(*a*), (*b*) and (*c*) shall satisfy the Arbitral Tribunal that: –

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

(*b*) there is a serious issue to be determined on the merits of the claim, provided that any determination shall not affect the discretion of the Arbitral Tribunal in making any subsequent determination.

*23. Application for Preliminary Orders*

(1) Without prejudice to any Law in force in Nigeria guiding the grant of interim measures the parties may stipulate in their Arbitration Agreement that a party may, without notice to any other party, apply to the Arbitral Tribunal for a Preliminary Order directing a party not to frustrate the purpose of the interim measure requested at the same time as it makes a request for the interim measure.

(2) If the parties had previously stipulated as stated in subsection (1) of this Section, the Arbitral Tribunal may grant a Preliminary Order provided it considers that prior disclosure of the request for the interim measure to the party against whom it is directed risks frustrating the purpose of the measure.

(3) The conditions prescribed in Section 22(1) of this Law shall apply in the consideration of an application requested by a party pursuant to this Section.

*24. Specific procedure for Preliminary Orders*

(1) Immediately after the Arbitral Tribunal has made a determination in respect of an application for a Preliminary Order, the Arbitral Tribunal shall give notice to all parties of the application for and decision upon the Preliminary Order, the request for the interim measure, and all other communication, written and oral, between any party and the Arbitral Tribunal in relation to it.

(2) At the same time, the Arbitral Tribunal shall give an opportunity to any party against whom a Preliminary Order is directed to present its case at the earliest practicable time.

(3) The Arbitral Tribunal shall decide promptly on any objection to the Preliminary Order.

(4) A Preliminary Order shall expire after (20) twenty days from the date on which it is issued by the Arbitral Tribunal.

(5) The party against whom the Preliminary Order is directed must be given notice and an opportunity to present its case prior to the grant of an interim measure adopting or modifying the Preliminary Order.

*25. Interim measures and Preliminary Orders by the Arbitral Tribunal*
The Arbitral Tribunal may extend, modify, suspend or terminate an interim measure or a Preliminary Order it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the Arbitral Tribunal's own initiative the Arbitral where –

(*a*) important facts were concealed from the Tribunal;

(*b*) the interim measures or Preliminary Order was obtained by fraudulent representation;

(*c*) facts come to the knowledge of the Tribunal, which if the Tribunal had known, it would not have granted the Order; and

(*d*) it is just and equitable in the circumstance to extend, modify or suspend the Order.

*26. Provision of security for Preliminary Order*
(1) The Arbitral Tribunal shall require the party applying for a Preliminary Order to provide security in connection with the order unless the Arbitral Tribunal considers it inappropriate or unnecessary to do so where:

(*a*) important facts were [concealed] from the Tribunal;

(*b*) the interim measures or Preliminary Order was obtained by fraudulent misrepresentation;

(*c*) facts come to the knowledge of the Tribunal which if the Tribunal had known, it would not have granted the order; and

(*d*) it is just and equitable in the circumstances to extend, modify or suspend the order.

(2) The Arbitral Tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.

*27. Disclosure of material change in circumstances*
(1) The party applying for a Preliminary Order shall disclose to the Arbitral Tribunal, all circumstances that are likely to be relevant to the Arbitral Tribunal's determination whether to grant the order, and such obligation shall continue until the Arbitral Tribunal has made a determination on the request for an interim measure.

(2) The party who desires to maintain a Preliminary Order shall disclose all circumstances that are likely to be relevant to the Arbitral Tribunal's determination whether to maintain the order, and such obligation shall continue until the Arbitral Tribunal has made a determination on the request for an interim measure.

(3) The party applying for an interim measure shall promptly disclose any material change in the circumstance on the basis of which the measure was requested or granted.

*28. Costs and interim damages*
The party applying for a Preliminary Order or requesting any measure shall be liable for costs and damages caused by the measure or the order to the party against whom it is directed if the Arbitral Tribunal later determines that, in the circumstances, the measure or the order should not have been granted. The Arbitral Tribunal may award such costs and damages at any point during the proceedings.

*29. Recognition and enforcement of interim measures by the Court*

(1) An interim measure issued by an Arbitral Tribunal shall be binding, unless otherwise provided by the Arbitral Tribunal and may be recognized and enforced upon application to the Court irrespective of the jurisdiction or territory in which it was issued subject to the provisions of subsections (2) and (3) of this Section.

(2) The party who is seeking or has obtained recognition or enforcement of an interim measure shall promptly inform the Court of any termination, suspension or modification of that interim measure.

(3) The Court to which a request for recognition and enforcement of an interim measure is presented may, if it considers it proper, order the requesting party to provide appropriate security if the Arbitral Tribunal has not already made a determination with respect to security or where such a decision is necessary to protect the rights of third parties.

*30. Grounds for refusing recognition or enforcement*

(1) Recognition or enforcement of an interim measure may be refused only –

(*a*) at the request of the party against whom it is invoked if the Court is satisfied that –

(i) such refusal is warranted on the grounds provided for in Section 57(2)(*a*)(i), (ii), (iii), (iv), (v), (vi) or (vii) of this Law;

(ii) the Arbitral Tribunal's decision with respect to the provision of security in connection with the interim measure issued by the Arbitral Tribunal has not been complied with; or

(iii) the interim measure has been terminated or suspended by the Arbitral Tribunal or where so empowered, by the Court of the jurisdiction or territory in which the Arbitration takes place or under the Law of which that interim measure was granted.

(*b*) if the Court finds that –

(i) the interim measure is incompatible with the powers of the Court, unless the Court decides to reformulate the interim measure to adapt it to its own powers and procedures for the purpose of enforcing and without modifying its substance; or

(ii) any of the grounds provided for in Section 56 subsection (2)(*a*) and (*b*) apply to the recognition and enforcement of the interim measure.

(2) Any determination made by the Court on any ground in this Section shall be effective only for the application to recognize and enforce the interim measure, the Court where recognition or enforcement is sought shall not, undertake a review of the substance of the interim measure.

*31. Arbitral procedure*

(1) Except as otherwise agreed by the parties, the arbitral proceedings shall be conducted in accordance with the procedure contained in the Arbitration Rules of the Lagos Court of Arbitration in force from time to time.

(2) Where the rules referred to in subsection (1) of this Section, contain no provision in respect of any matter related to or connected with a particular arbitral proceedings, the Arbitral Tribunal may, subject to the provisions of this Law, conduct the arbitral proceedings in such a manner as it considers appropriate so as to ensure fair hearing.

(3) The power conferred on the Arbitral Tribunal under subsection (2) of this Section shall include the power to determine the admissibility, relevance, materiality and weight of any evidence placed before it.

*32. Commencement of arbitral proceedings*

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute shall commence on the date the request to refer the dispute to arbitration is delivered to the other party.

*33. Place and time of arbitration*

(1) Unless otherwise agreed by the parties, the place, date and time of the arbitral proceedings shall be determined by the Arbitral Tribunal having regard to the circumstances of the case.

(2) Notwithstanding the provisions of Subsection (1) of this Section and unless otherwise agreed by the parties, the Arbitral Tribunal may meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties or for the inspection of documents, goods or other property.

*34. Equal treatment of parties*

In any arbitral proceedings, the Arbitral Tribunal shall ensure –

(*a*) that the parties are accorded equal treatment and that the parties are given fair opportunity of presenting their case; and

(*b*) a fair resolution of the dispute without unnecessary delay or expense.

*35. Application of Limitation Laws to arbitral proceedings*

(1) Limitation Laws shall apply to arbitral proceedings as they apply to judicial proceedings.

(2) In computing the time prescribed by the applicable Limitation Laws for the commencement of judicial, arbitral and other proceedings in respect of a dispute which was the subject matter of –

(*a*) an award which the Court orders to be set aside or declares to be of no effect, or

(*b*) the affected part of an award which the Court orders to be set aside in part, or declares to be in part of no effect, the period between the commencement of the arbitration and the date of the order referred to in paragraph (*a*) above shall be excluded.

(3) Notwithstanding any term in an Arbitration Agreement to the effect, that no cause of action shall accrue in respect of any matter required by the agreement to be referred until an award is made under the agreement, the cause of action shall, for the purpose of Limitation Laws, be deemed to have accrued in respect of any such matter at the time when it would have accrued but for that term in the agreement.

(4) "Limitation Laws" means such Limitation Laws as are applicable under the Law governing the subject of the dispute.

(5) In computing the time for the commencement of proceedings to enforce an arbitral award, the period between the commencement of the arbitration and the date of the award shall be excluded.

*36. Language of arbitral proceedings*

(1) The parties are free to agree on the language or languages to be used in the arbitral proceedings, but where they do not do so, the language to be used shall be English.

(2) Any language or languages agreed upon by the parties or applied under subsection (1) of this Section, shall, unless a contrary intention is expressed by the parties or the Arbitral Tribunal, be the language or languages to be used in any written statements by the parties, in any hearing, award, decision or any other communication in the course of the arbitration.

(3) The Arbitral Tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or applied under subsection (1) of this Section.

*37. Points of claim and defence*

(1) The claimant shall in the points of claim and within the period agreed upon by the parties or determined by the Arbitral Tribunal, state the facts supporting the claim, the points in issue and the relief or remedy sought and the response in respect of those particulars, unless the parties have otherwise agreed on the required elements of the points of claim and of defence.

(2) The parties may submit such further statements as they may agree or as the Arbitral Tribunal may direct.

(3) The parties may submit with their statements under subsections (1) and (2) of this Section, all the documents they consider to be relevant or they may add as reference to the other evidence they hope to submit at the arbitral proceedings.

(4) Unless otherwise agreed by the parties, a party may amend or supplement their claim or defence during the course of the arbitral proceedings, if the Arbitral Tribunal considers it appropriate to allow such amendment or supplement, having regard to the time that has elapsed before the making of the amendment or supplement.

*38. Powers of the Arbitral Tribunal*

(1) The parties are free to agree on the powers exercisable by the Arbitral Tribunal as regards remedies.

(2) Unless otherwise agreed by the parties, the Arbitral Tribunal has the following powers –

(*a*) The Arbitral Tribunal may make a declaration as to any matter to be determined in the proceedings;

(*b*) The Arbitral Tribunal may order the payment of a sum of money, in any currency; and

(*c*) The Arbitral Tribunal has the same power as the Court –

(i) to order a party to do or refrain from doing anything;

(ii) to order specific performance of a contract (other than a contract relating to land); and

(iii) to order the rectification, setting aside or cancellation of a deed or other document.

(*d*) The Arbitral Tribunal shall, unless otherwise agreed by the parties, have power to administer oaths or take the affirmations of the parties and witnesses appearing before the Arbitral Tribunal.

*39. Proceedings*

(1) Subject to any agreement by the parties, the Arbitral Tribunal shall decide whether the arbitral proceedings shall be conducted –

(*a*) by holding oral hearings for the presentation of evidence and oral arguments; or

(*b*) on the basis of documents or other materials; or

(*c*) by a combination of the methods described in paragraphs (*a*) and (*b*) of this subsection,

and unless the parties have agreed that no hearing shall be held, the Arbitral Tribunal shall hold such hearings at an appropriate stage of the proceedings if requested to do so by any of the parties.

(2) The Arbitral Tribunal shall give to the parties sufficient advance notice of any hearing and of any meeting of the Arbitral Tribunal requiring the attendance of the parties.

(3) Except on the application for a Preliminary Order under Section 24 of this Law, every statement, document or other information supplied to the Arbitral Tribunal shall be communicated to the other party by the party supplying the statement, document or other information, and every such statement, document or other information supplied by the Arbitral Tribunal to one party shall be supplied to the other party.

(4) A copy of any expert report or evidentiary document on which the Arbitral Tribunal may rely in making its decision shall be delivered to the parties.

*40. Consolidation, concurrent hearing and joinder of parties*

(1) The Parties are free to agree –

(*a*) that the arbitral proceedings shall be consolidated with other arbitral proceedings, or

(*b*) that concurrent hearings shall be held on such terms as may be agreed.

(2) Where the parties have agreed under Subsection (1), above the Arbitral Tribunal shall give effect to the agreement unless it is of the view that it is not in the interest of justice to do so.

(3) A party may, by application and with the consent of the parties, be joined to arbitral proceeding.

*41. Default of a party*

(1) Unless otherwise agreed by the parties, if, without showing sufficient cause where –

(*a*) the claimant fails to state the claim as required under Section 37(1) of this Law, the Arbitral Tribunal shall terminate the proceedings unless the respondent desires to present a claim;

(*b*) the respondent fails to state the defence as required under Section 37(1) of this Law, the Arbitral Tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegation; or

(*c*) any party fails to appear at a hearing or to produce documentary evidence, the Arbitral Tribunal may continue the proceedings and make an award.

(2) The parties are free to agree on the powers of the Arbitral Tribunal in case of a party's failure to do anything necessary for the proper and expeditious conduct of the arbitration.

(3) Unless otherwise agreed by the parties, if the Arbitral Tribunal is satisfied that there has been inordinate or inexcusable delay on the part of the Claimant in pursuing the claim and that the delay –

(*a*) gives rise, or is likely to give rise, to a substantial risk that a fair resolution of the issues in that claim will not be possible, or

(*b*) has caused, or is likely to cause serious prejudice to the respondent, then the Arbitral Tribunal may make an award dismissing the claim.

(4) Unless otherwise agreed by the parties, if without showing sufficient cause a party –

(*a*) fails to attend or is not represented at an oral hearing of which due notice was given; or

(*b*) where matters that are to be dealt with in writing, fails after due notice to submit written evidence or make written submissions.

The Arbitral Tribunal may continue the proceedings in the absence of that party or, as the case may be, without any written evidence or submissions on the party's behalf, and may make an award on the basis of the evidence before it.

(5) Unless otherwise agreed by the parties, if without showing cause, a party fails to comply with any order or directions of the Arbitral Tribunal, the Arbitral Tribunal shall make a Peremptory Order to the same effect, prescribing such time for compliance with it as the Arbitral Tribunal considers appropriate.

(6) If a claimant fails to comply with a Peremptory Order of the Arbitral Tribunal to provide security for costs, the Arbitral Tribunal shall make an award dismissing his claim.

(7) Where a party fails to comply with any Peremptory Order other than that under Subsection (6) of this Section, then the Arbitral Tribunal may –

(*a*) direct that the party in default shall not be entitled to rely upon any allegation or material which was the subject matter of the order;

(*b*) draw such adverse inferences from the act of non-compliance as the circumstances justify;

(*c*) proceed to an award on the basis of such materials as have been properly provided to it; and

(*d*) make such award as it thinks fit as to the payment of costs of the arbitration by the party in default having regard to the non-compliance.

*42. Power to appoint expert*

(1) The Arbitral Tribunal may –

(*a*) appoint one or more experts to report to it on a specific issue to be determined by the Arbitral Tribunal; and

(*b*) subject to any legal privilege that a party may assert, require a party to give to the expert any relevant information to produce or provide access to any documents, goods or other property in their possession, custody or control for inspection or reproduction.

(2) if a party so requests or if the Arbitral Tribunal considers it necessary, any expert appointed under subsection (1) of this Section shall, after delivering the written or oral report, participate in a hearing where the parties shall have the opportunity of putting questions to the expert and presenting expert witnesses to testify on their behalf on the points in issue.

*43. Power to order attendance of witness*

(1) The Court or a Judge may order that a writ of subpoena *ad testificandum* or of subpoena *duces tecum* shall be issued to compel the attendance before any Arbitral Tribunal of a witness within Nigeria.

(2) The Court or Judge may also order that a writ of *habeas corpus* shall be issued to bring up a prisoner for examination before any Arbitral Tribunal.

(3) The provisions of any written law relating to the service or execution outside a State of the Federation of any subpoena or order for the production of a prisoner, issued or made in civil proceedings shall apply in relation to a subpoena or order issued or made under this section.

*44. Decision-making by Arbitral Tribunal*

(1) In an Arbitral Tribunal comprising more than one arbitrator, any decision of the Arbitral Tribunal shall, unless otherwise agreed by the parties, be made by a majority of all its members.

(2) Subject to any applicable mandatory provisions under this law, the presiding arbitrator may, if so authorized by the parties or all the members of the Arbitral Tribunal, decide questions relating to the procedure to be followed at the arbitral proceedings.

*45. Settlement of disputes*

(1) Where, during the arbitral proceedings, the parties settle the dispute, the Arbitral Tribunal shall terminate the arbitral proceedings, and shall, if requested by the parties, record the settlement in the form of an arbitral award on agreed terms.

(2) An award on agreed terms recorded under Subsection (1) of this Section shall –

(*a*) be in accordance with the provisions of Section 47 of this Law; and

(*b*) have the same status and effect as any other award on the merits of the case.

*46. Interest*

(1) The parties are free to agree on the powers of the Arbitral Tribunal as regards the award of interest.

(2) The following provisions shall apply:

(*a*) the Arbitral Tribunal may award simple or compound interest from such dates, at such rates and with such interest as it considers just –

(i) on the whole or part of any amount awarded by the Arbitral Tribunal, in respect of any period up to the date of the award; or

(ii) on the whole or part of any amount claimed in the arbitration and outstanding at the commencement of the arbitral proceedings but paid before the award was made, in respect of any period up to the date of payment.

(*b*) the Arbitral Tribunal may award simple or compound interest from the date of the award (or any later date) until payment, at such rates and with such interests as it considers just in the case, on the outstanding amount of any award (including any award of interest under Subsection (3) and any award as to costs);

(*c*) an amount awarded by the Arbitral Tribunal [ ] include an amount payable in consequence of a declaratory award by the Tribunal; and

(*d*) the above provisions do not affect any other power of the Arbitral Tribunal to award interest.

*47. Form and contents of award*

(1) Any award made by the Arbitral Tribunal shall be in writing and signed by the arbitrators.

(2) Where the Arbitral Tribunal comprises of more than one arbitrator, the signatures of a majority of all the members of the Arbitral Tribunal shall suffice, if the reason for the absence of any signature is stated.

(3) The Arbitral Tribunal shall state on the award –

(*a*) the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under Section 45 of this Law;

(*b*) the date it was made; and

(*c*) the place of the arbitration as agreed or determined under Section 33(1) of this Law, shall be deemed to be the place where the award was made.

(4) Subject to the provisions of Section 49 of this Law, a copy of the award made and signed by the arbitrators in accordance with subsections (1), (2) and (3) of this Section, shall be delivered to each party.

*48. Termination of proceedings*

(1) The Arbitral Proceedings shall terminate, when the final award is made or when an order of the Arbitral Tribunal is issued under subsection (2) of this Section.

(2) The Arbitral Tribunal shall issue an order for the termination of the Arbitral Proceedings when –

(*a*) the claimant withdraws his claim, unless the respondent objects and the Arbitral Tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute; or

(*b*) the parties agree on the termination of the arbitral proceedings; or

(*c*) the Arbitral Tribunal finds that continuation of the arbitral proceedings for any other reason is unnecessary or impossible.

(3) Subject to the provisions of Sections 50 and 55(2) of this Law, the mandate of the Arbitral Tribunal shall cease on termination of the arbitral proceedings.

*49. Notification*

(1) The award shall be notified to the parties by service on them of written notice to that effect, which shall be done without delay after the award is made.

(2) The Arbitral Tribunal may refuse to deliver an award to the parties except upon full payment of the agreed fees and expenses of the arbitrators.

(3) In the event that the fees and expenses of the arbitrators have not been agreed, and the Arbitral Tribunal refused on that ground to deliver an award, a party to the arbitral proceedings may (upon notice to the other parties and the Arbitral Tribunal) apply to the Court, which may order that –

(*a*) the Arbitral Tribunal shall deliver the award on the payment into the Court by the applicant of the fees and expenses demanded, or such lesser amount as the Court may specify;

(*b*) the amount of the fees and expenses payable shall be determined by such means and upon such terms as the Court may direct; and

(*c*) out of the money paid into Court there shall be paid out such fees and expenses as may be found to be payable and the balance of the money (if any) shall be paid out to the applicant.

(4) In determining the fees properly payable for the purposes of subsection (3)(*b*) and (*c*) above, the Court shall have regard to Section 51(2) of this Law.

(5) No application to the Court may be made where there is any available arbitral process for appeal or review of the amount of the fees or expenses demanded.

(6) References in this Section to arbitrators include an arbitrator who has ceased to act and an umpire who has not replaced the other arbitrators.

(7) The provisions of this Section also apply in relation to any arbitral or other institution or person vested by the parties with powers in relation to the delivery of the Arbitral Tribunal's award and as they so apply, the references to the fees and expenses of the arbitrators shall be construed as including the fees and expenses of that institution or person.

*50. Correction and interpretation of an award*

(1) Unless another period has been agreed upon by the parties, a party may, within thirty (30) days of the receipt of an award and with notice to the other party, request the Arbitral Tribunal –

(*a*) to correct in the award any errors in computation, any clerical or typographical errors or any errors of a similar nature; and

(*b*) to give an interpretation of a specific point or part of the award.

(2) If the Arbitral Tribunal considers any request made under Subsection (1) of this section to be justified, it shall, within thirty (30) days of receipt of the request, make the correction or give the interpretation, and such correction or interpretation shall form part of the award.

(3) The Arbitral Tribunal may, on its own volition and within thirty (30) days from the date of the award, correct any error of the type referred to in subsection (1)(*a*) of this Section.

(4) Unless otherwise agreed by the parties, a party may within thirty (30) days of receipt of the award and on notice to the other party request the Arbitral Tribunal to make an additional award as to the claims presented in the arbitral proceedings but omitted from the award.

(5) If the Arbitral Tribunal considers any request made under subsection (4) of this Section to be justified, it shall, within sixty (60) days of the receipt of the request, make the additional award.

(6) The Arbitral Tribunal may for good cause extend the time limit within which it shall make a correction, give an interpretation or make an additional award under subsection (2) or (5) of this Section.

(7) The provisions of Section 47 of this Law, which relate to the form and contents of an award, shall apply to any correction or interpretation or to an additional award made under this Section.

*51. Costs*

(1) The Arbitral Tribunal shall fix costs of arbitration in its award and the term "costs" includes –

(*a*) the fees of the Arbitral Tribunal to be stated separately as to each arbitrator and to be fixed by the Arbitral Tribunal itself;

(*b*) the travel and other expenses incurred by the arbitrators;

(*c*) the cost of expert advice and of other assistance required by the Arbitral Tribunal;

(*d*) the travel and other expenses of parties, witnesses and other experts consulted by the parties to the extent that such expenses are approved by the Arbitral Tribunal having regard to what is reasonable in the circumstances;

(*e*) the costs for legal representation and assistance of the successful party if such costs were claimed during the arbitral proceedings, and only to the extent that the Arbitral Tribunal determines that the amount of such costs is reasonable; and

(*f*) administrative costs such as cost of venue, sitting and correspondence.

(2) The fees of the Arbitral Tribunal shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject matter, the time spent by the arbitrators and any other relevant circumstances of the case.

*52. Deposit of costs*

(1) The Arbitral Tribunal, on its establishment, may request each party to deposit an equal amount as an advance for the costs referred to in paragraphs (*a*), (*b*) and (*c*) of Section 51(1) of this Law.

(2) During the course of the arbitral proceedings, the Arbitral Tribunal may request supplementary deposits from the parties.

*53. Security for costs*

(1) The Arbitral Tribunal shall have the power (upon the application of a party) to order any claiming or counterclaiming party to provide security for the legal or other costs to any other party by way of deposit or bank guarantee or in any other manner and upon such terms as the Arbitral Tribunal considers appropriate, including the provision by that other party of a cross-indemnity, secured in such manner as the Arbitral Tribunal considers appropriate, for any costs and losses incurred by such claimant or counterclaimant in providing security.

(2) The amount of any costs and losses payable under a cross-indemnity under subsection (1) of this Section may be determined by the Arbitral Tribunal in one or more awards.

(3) In the event that a claiming or counterclaiming party does not comply with any order to provide security under this Section, the Arbitral Tribunal may stay that party's claim or counterclaim or dismiss them in an award.

*54. Joint liability*

(1) The parties are jointly and severally liable to pay the arbitrator such reasonable fees and expenses (if any) as are appropriate in the circumstances.

(2) In this Section references to arbitrators include an arbitrator who has ceased to act and an umpire who has not replaced the arbitrators.

*55. Application for setting aside of award*

(1) A party who is aggrieved by an arbitral award may within three months: –

(*a*) from the date of the award; or

(*b*) in a case falling within Section 50 of this Law, from the date the request for additional award is disposed of by the Arbitral Tribunal, by way of an application requesting the Court to set aside the award in accordance with subsection (2) of this Section.

(2) The Court may set aside an arbitral award if it finds that –

(i) a party to the Arbitration Agreement was under some incapacity;

(ii) the Arbitration Agreement is not valid under the law which the parties have indicated should be applied, or that the Arbitration Agreement is not valid under the laws of Nigeria;
(iii) the applicant was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise not given a fair opportunity to present his case;
(iv) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration; or
(v) the award contains decisions on matters which are beyond the scope of the submission to arbitration, however if the decisions on matters submitted to arbitration can be separated from those not submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or
(vi) the composition of the Arbitral Tribunal, or the arbitral procedure, was not in accordance with the agreements of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate; or
(vii) where there is no agreement between the parties under sub-paragraph (vi) of this paragraph, the composition of the Arbitral Tribunal or the arbitral procedure was not in accordance with this Law; or
(viii) the dispute arises under an agreement that is invalid, non-existent or ineffective; or
(ix) the subject matter of the dispute is otherwise not capable of settlement by arbitration under the Laws of Nigeria; or
(x) the arbitrators or any of them received some improper payment, benefit or other consideration;
(xi) the arbitrators do not possess the qualifications required by the Arbitration Agreement;
(xii) the arbitrator or arbitrators are guilty of any misconduct in the course of the proceedings; and
(xiii) the award is contrary to public policy.

(3) If the Court is satisfied that one or more of the grounds set out in subsection (2) of this Section has been proved and that it has caused or will cause substantial injustice to the applicant, the Court may:

(*a*) remit the award to the Tribunal, in whole or in part, for reconsideration;
(*b*) set the award aside in whole or in part; or
(*c*) render the award to be of no effect, in whole or in part.

(4) The Court shall not exercise its power to set aside or to declare an award to be of no effect, in whole or in part, unless it is satisfied that it would be inappropriate to remit the matter in question to the Arbitral Tribunal for consideration.

*56. Recognition and enforcement of awards*

(1) An arbitral award shall, irrespective of the jurisdiction or territory in which it is made, be recognized as binding, and subject to this Section and Section 58 of this Law, shall upon application in writing to the Court by a party, be enforced by the Court.

(2) The party relying on an award or applying for its enforcement shall supply –

(*a*) the duly authenticated original award or a duly certified copy;
(*b*) the original Arbitration Agreement or a duly certified copy; and

(*c*) where the award or Arbitration Agreement is not made in the English language, a duly certified translation into the English language.

(3) An award may, by leave of the Court or a Judge, be enforced in the same manner as a judgment or order with the same effect.

*57. Refusal of recognition or enforcement of awards*

(1) Any of the parties to an Arbitration Agreement may request the Court to refuse recognition or enforcement of the award.

(2) Where recognition or enforcement of an award is sought or where application for refusal of recognition or enforcement is brought the Court may, irrespective of the jurisdiction or territory in which the award is made, refuse to recognize or enforce an award if the court finds that: –

(*a*) a party to the Arbitration Agreement was under some incapacity; or

(*b*) the Arbitration Agreement is not valid under the Law which the parties have indicated should be applied, or that the Arbitration Agreement is not valid under the Law of the country where the award was made; or

(*c*) the applicant was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise not given a fair opportunity to present his case; or

(*d*) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration; or

(*e*) the award contains decisions on matters which are beyond the scope of the submission to arbitration, however if the decisions on matters submitted to arbitration can be separated from those not submitted, only that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

(*f*) the composition of the Arbitral Tribunal, or the arbitral procedure, was not in accordance with the agreement of the parties; or

(*g*) where there is no agreement between the parties under sub-paragraph (*f*) of this subsection that the composition of the Arbitral Tribunal, or the arbitral procedure, was not in accordance with the Law of the country where the arbitration took place; or

(*h*) the award has not yet become binding on the parties or has been set aside or suspended by a Court in that jurisdiction or territory in which the award was made; or

(*i*) the award does not comply with requirement of Section 47; and

(*j*) the award is contrary to public policy.

(3) Where an application to set aside or suspend an award has been made to the Court referred to in subsection (2)(*a*) and (*h*) of this Section, the Court may, if it considers it proper, to postpone its decision on the application for recognition and enforcement of the award and may order the party against whom recognition and enforcement is sought to provide appropriate security.

*58. Waiver of right to object*

A party who knows that –

(*a*) any provision of this Law from which the parties may derogate; or

(*b*) any requirement under the Arbitration Agreement,

has not been complied with and yet proceeds with the arbitration without stating their objection to such non-compliance within the time limit provided, shall be deemed to have waived the right to object to the non-compliance.

*59. Extent of court intervention*

(1) A Court shall not intervene in any matter governed by this Law, except, where so provided in this Law.

(2) All applications to the Court in respect of any matter governed by this Law shall be in accordance with the Rules set out in Section 3 of the Schedule.

*60. Exclusion of this Law*

This Law shall not affect any other law by virtue of which certain disputes –

(*a*) may not be submitted to arbitration; or

(*b*) may be submitted to arbitration only in accordance with the provisions of that or another law.

*61. Extension of time*

Notwithstanding the provisions of this Law, the Arbitral Tribunal may for good cause, extend the time specified for the performance of any act under this Law.

*62. Delivery and receipt of written communication*

(1) Unless otherwise agreed by the parties, any communication sent pursuant to this Law shall be deemed to have been delivered and received –

(*a*) when it is delivered to the addressee personally or when it is delivered to the addressee's place of business, habitual residence or mailing address; or

(*b*) where a communication cannot be delivered under paragraph (*a*) of this subsection, when it is sent to the addressee's last known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it.

(2) A communication shall be deemed to have been received on the day it is delivered under subsection (1) of this Section.

(3) The provisions of this Section shall not apply to communications in Court proceedings.

*63. Interpretation*

(1) In this Law, unless the context otherwise requires –

"ad-hoc arbitration" means a proceeding that is not administered by an institution or other body and which requires the parties themselves to make their own arrangements for selection of arbitrators and for designation of rules, applicable law, procedures and administrative support;

"appointing authority" means a body or institution designated to appoint an arbitrator or arbitrators under the Arbitration Agreement;

"arbitration" means the reference of an existing or future dispute between two or more parties to an independent person(s) chosen by them (the arbitrator) to adjudicate upon;

"Arbitration Agreement" has the meaning given to it in Section 3;

"award" means a decision of the Arbitral Tribunal on the substance of the dispute and includes any interim, interlocutory or partial award but excludes any orders, measures or directions made by the Arbitral Tribunal;

"Court" means High Court of Lagos State;

"death" includes, in the case of a non-natural person, dissolution or other extinction by process of law;

"judge" means a judge of the High Court of Lagos State;

"Lagos Court of Arbitration" means a body established under this Law to act as an independent dispute resolution centre;

"party" means a party, parties or group of parties to an arbitration agreement or, in any case where an arbitration does not involve all of the parties to an Arbitration Agreement, it means a party to the arbitration;

"the place of the arbitration" means the juridical seat of the arbitration designated by:

(*a*) the parties to the Arbitration Agreement;

(*b*) any arbitral or other institution or person authorized by the parties for that purpose; or

(*c*) the Arbitral Tribunal as authorized by the parties,

or determined by the Lagos Court of Arbitration, in the absence of such designation, having regard to the Arbitration Agreement and all the relevant circumstances.

(2) Where any provision in this Law allows the parties to determine any issue, the parties may authorize a third party, including an arbitral institution to make that determination.

(3) Where any provision in this Law refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules incorporated in that agreement.

(4) Where a provision in this Law, other than Section 41(*a*) or 48(2)(*a*) refers to a claim, such claim includes a counterclaim, and where it refers to a defence, such defence includes a defence to such counterclaim.

*64. Citation and commencement*

This Law shall be cited as the Lagos State Arbitration Law and shall come into force on the 18th day of May 2009.

## SCHEDULE
## ARBITRATION APPLICATIONS RULES 2009

*1. Interpretation*

In these Rules –

"arbitration applications" means any application to a Court under the Lagos State Arbitration Law 2009 –

(*a*) to stay proceedings under Section 6;

(*b*) to remove an arbitrator or umpire under Section 12;

(*c*) to grant interim measures of protection under Section 21(1);

(*d*) to recognize or enforce an interim measure of protection under Section 30;
(*e*) to refuse recognition or enforcement of an interim measure of protection under Section 31;
(*f*) to subpoena a witness to attend under Section 44;
(*g*) in respect of the fees of an arbitrator under Section 50;
(*h*) to set aside an award under Section 56;
(*i*) to recognize and enforce an award under Section 57;
(*j*) to refuse recognition and enforcement of an award under Section 58;
(*k*) or for any other relief or remedy as is provided for under the Law.

*2. Starting the application*
(1) Except where sub-rule 2 of this rule applies an arbitration application shall be started by the issue of an Originating Motion.

(2) An application under Section 6 of the Law to stay legal proceedings shall be made by Notice of Motion to the Court dealing with those proceedings.

*3. Originating Motion*
(1) An Originating Motion commencing an arbitration application shall –
(*a*) include a concise statement of –
(i) the remedy or relief claimed;
(ii) the questions on which the claimant seeks the decision of the Court;
(*b*) give details of any arbitration award challenged by the claimant, identifying which part or parts of the award are challenged and specifying the grounds for the challenge;
(*c*) show that any statutory requirements have not been met;
(*d*) specify under which Section of the Law the application is made;
(*e*) identify against which (if any) of the defendants a cost order is sought; and
(*f*) specify the person on whom the Originating Motion is to be served, stating their role in the arbitration and whether they are defendants.

(2) Unless the Court orders otherwise, an Originating Motion shall be served on the defendant within fourteen (14) days from the date of issue.

*4. Service out of the jurisdiction*
(1) The Court may give permission to serve an Originating Motion out of the jurisdiction if –
(*a*) the claimant seeks to set aside an arbitration award made within the jurisdiction;
(*b*) the claimant –
(i) seeks some other remedy or requires a question to be decided by the Court affecting an arbitration (whether started or not), an Arbitration Agreement or an arbitration award; and
(ii) the seat of the arbitration is or will be within the jurisdiction.

(2) An application for permission under sub-rule 1 of this Rule shall be supported by an affidavit –
(*a*) stating the grounds on which the application is made; and showing in what place or country the person to be served is, or probably may be found.

(3) An order giving permission to serve an Originating Motion out of the jurisdiction shall specify the period within which the defendant may enter appearance

to the claim and shall comply with the Sheriffs and Civil Process Act Cap.S6 LFN 2004.

*5. Notice*

(1) Where an arbitration application is made under Section 12 of the Law, each arbitrator shall be a defendant.

(2) Where notice shall be given to an arbitrator or any other person it may be given by sending him a copy of –

(*a*) the Originating Motion; and

(*b*) any affidavit in support.

(3) Where the Law requires an application to the Court to be made on notice to any other party to the arbitration, such notice shall be given by making that party a defendant.

*6. Hearings*

Save as otherwise provided by these Rules, applications made pursuant to these Rules shall be heard in the same manner as motions and other applications under the Lagos State (Civil Procedure) Rules.

*7. Enforcement of arbitration awards and interim measures of protection*

(1) An application to enforce an award or an interim measure of protection in the same manner as a judgment or order shall be made by Originating Motion.

(2) The supporting affidavit shall –

(*a*) exhibit the Arbitration Agreement and the original award or decision containing the interim measure of protection, or in either case certifies copies of each;

(*b*) state the name and the usual or last known place of abode or business of the applicant and the person against whom it is sought to enforce the award or interim measure of protection; and

(*c*) state, as the case may require, either that the award or interim measure of protection has not been complied with or the extent to which it has not been complied with at the date of the application.

*8. Case management*

The following sub-rules apply unless the Court orders otherwise:-

(1) A defendant who does not contest any or all of the remedies claimed may file a notice stating such fact, and a Court or Judge in chambers may grant such uncontested remedy or remedies without an oral hearing.

(2) A defendant who contests any or all of the remedies claimed and who wishes to rely on evidence before the Court shall:

(*a*) enter appearance within seven (7) days of service or such other period of time as the Court orders, of the Originating Motion; and

(*b*) file and serve any counter-affidavit upon which it is intended to rely, within fourteen (14) days after the date by which he was required to enter appearance;

(3) A claimant who wishes to rely on evidence in reply to the counter-affidavit filed under Rule 7(2) shall file and serve his reply affidavit within seven (7) days after the service of the defendant's counter-affidavit.

(4) Except in the case provided for in Rule (5) of this Rule, an arbitration application shall be entered on the Court's list such that its first hearing is not later than forty (40) days after service of the Originating Motion on the defendant, or in the case of multiple defendants, on the defendant last served.

(5) Where a defendant is served outside the jurisdiction pursuant to permission given under Rule 3 of these Rules, an arbitration application shall be entered on the Court's list such that its first hearing is not later than sixty (60) days after service of the Originating Motion on the defendant served outside the jurisdiction, or in the case of multiple defendants, on the defendant last served.

(6) Not later than two (2) days after filing the Originating Motion, the claimant shall file and serve a written brief of arguments which lists succinctly:

(*a*) the issues which arise for determination;

(*b*) the grounds of relief (or opposing relief) to be relied upon;

(*c*) the submissions of fact to be made with reference to the evidence; and

(*d*) the submission of Law with reference to the relevant authorities.

(7) Not later than the day before the hearing date, the defendant shall file and serve a skeleton argument which lists succinctly:

(*a*) the issues which arise for decision;

(*b*) the grounds for relief (or opposing relief) to be relied upon;

(*c*) the submissions of fact to be made with reference to the evidence; and

(*d*) the submissions of Law with reference to the relevant authorities.

# ANNEX III

## LAGOS COURT OF ARBITRATION LAW*

[18 May 2009]

The Lagos State House of Assembly enacts as follows:

*1. Establishment of the Court of Arbitration*
(1) There is established a body to be known as "The Lagos Court of Arbitration" (referred to in this Law as "the Court of Arbitration").

(2) The Court of Arbitration shall be private sector driven, independent of regulation, direction or control by any branch of Government.

(3) The Court of Arbitration shall consist of the:

(*a*) General Meeting;

(*b*) Board of Directors; and

(*c*) Secretariat.

*2. Membership of the Court of Arbitration*
Membership of the Court of Arbitration shall be open to any person or body corporate of good standing with bona fide interest in Commercial Arbitration or Alternative Dispute Resolution, including but not limited to Lawyers, arbitrators, mediators, experts, academics, businessmen, Law firms, Commercial and trading organizations who have satisfied laid down conditions including payment of an annual subscription to be determined by the Board of Directors from time to time.

*3. Composition of the General Meeting*
Members of the Court of Arbitration shall constitute the General Meeting.

*4. Composition of the Board of Directors*
(1) The initial Board of Directors shall be composed of fifteen (15) highly reputable persons who have ability, experience and specialized knowledge of arbitration and other forms of Alternative Dispute Resolution (ADR) processes.

(2) The persons shall be drawn from various fields of commerce and industry appointed in the first instance by the Governor of Lagos State on the recommendation of the Attorney-General and Commissioner for Justice of Lagos State and subsequently by election of the General Meeting.

(3) The Board of Directors shall elect one of their members to be the President of the Court for a term of two (2) years which term may be renewed once only.

(4) A member of the Board of Directors shall hold Office for a renewable term of five (5) years.

(5) A casual vacancy in the Board shall be filled only upon a unanimous vote of the remaining members of the Board from a list of persons with ability, experience or specialised knowledge.

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* In effect from 18 May 2009. As amended.

*5. The Secretariat*
There shall be established for the Court of Arbitration a Secretariat which shall be headed by an Executive Secretary who shall be employed by and report directly to the Board and who shall serve as Secretary to the Board of Directors of the Court of Arbitration.

*6. The Executive Secretary of the Board*
The Executive Secretary shall be responsible for the day to day management and administration of the Court of Arbitration.

*7. General Meeting*
(1) The General Meeting shall be composed of persons and institutions of repute who are members of the Court of Arbitration.

(2) The General Meeting may on the advise of the Board of Directors terminate the appointment of a member on grounds of misbehaviour or inability to discharge the duties of his Office by reason of physical or mental incapacity.

*8. Cessation of Membership of the Board*
A member of the Board of Directors shall cease to be a member if:

(*a*) he resigns his appointment as a member of the Board;
(*b*) he becomes bankrupt or makes a compromise with his creditors;
(*c*) he is convicted of a felony or of any offence involving dishonesty or corruption or any other criminal offence;
(*d*) he becomes incapable of carrying out the functions of his office either arising from an infidelity of the mind or body; or
(*d*)[sic] 2/3 majority of the members unanimously vote for his removal.

*9. Functions of the Court of Arbitration*
The functions of the Court of Arbitration shall be to –

(*a*) promote resolution of disputes in the territory of Lagos State by arbitration and other Alternative Dispute Resolution mechanisms apart from litigation;
(*b*) maintain a Panel of Neutrals which shall consist of Arbitrators, Mediators as well as other experts with special skills and experience in specialised areas and who are willing to be members of any Tribunal or Panel constituted by the Court of Arbitration in respect of any dispute referred to it; and
(*c*) such other functions as shall be appropriate for the Court of Arbitration to assume in order to effectively carry out its main functions of resolving disputes by any other mechanism apart from litigation.

*10. Powers of the Court of Arbitration*
For the purposes of proper discharge of its functions under this Law, the Court of Arbitration shall have powers to –

(*a*) acquire and dispose of any interests in land or other property;
(*b*) borrow or raise money with or without security for any of the purpose of the Court of Arbitration, provided that no money shall be raised by mortgage of any real or personal property of the Court of Arbitration without such consent or approval (if any) as may be required by Law;

(*c*) make and carry out any arrangement for co-operation with any other organization whether incorporated or not, carrying on functions similar or complementary to any function for the time being carried on by the Court of Arbitration;
(*d*) employ such staff and upon such terms and conditions as may be required for the purposes of the efficient performance of the functions conferred on the Court of Arbitration under or pursuant to this Law; and
(*e*) perform such other functions as may be conferred upon the Court of Arbitration and its members

*11. Annual Reports*
(1) The income and property of the Court of Arbitration shall be applied solely towards the promotion of the objects and functions of the Court of Arbitration as set forth, and no portion shall be paid to or transferred directly by way of dividend, bonus or otherwise by way of profit to members of the Court of Arbitration, provided that nothing herein shall prevent the payment in good faith of remuneration to any officer, servant or member of the Court of Arbitration or other persons in return for any service actually rendered to the Court of Arbitration.

(2) The President of the Court of Arbitration shall, not later than 30th June in each year, submit to the General Meeting a report on the activities of the Court of Arbitration and its administration during the immediately preceding year and shall include in such report the audited accounts of the Court of Arbitration.

*12. Power to make Regulations*
Subject to the provisions of this Law, the Board of Directors may with the approval of the General Meeting make regulations generally for the purposes of this Law and the due administration of the Court of Arbitration.

*13. Citation and Commencement*
This Law may be cited as the Lagos Court of Arbitration Law and shall come into force on the 18th day of May 2009.

# ANNEX IV

## DELTA STATE ARBITRATION LAW, 2022*

A BILL
FOR

A LAW TO REPEAL THE ARBITRATION LAW 1914 CAP A13 LAWS OF DELTA STATE AND TO ENACT THE DELTA STATE ARBITRATION LAW 2022 TO REGULATE ARBITRATION AND FOR RELATED MATTERS

[*Commencement*]

BE IT ENACTED by the Delta State House of Assembly as follows:

### PART I. GENERAL PROVISIONS

*1. Short Title*
This Law may be cited as the Delta State Arbitration Law, 2022.

*2. Interpretation*
(1) In this Law, unless the context otherwise requires:
"*arbitration*" means any method of resolving a dispute through an arbitral tribunal, whether or not its organization is administered by an arbitral institution;
"*arbitration agreement*" means the agreement by which the parties decide to submit to arbitration all or some disputes, that have arisen or may arise between them, relating to certain legal, contractual or non-contractual relationships;
"*arbitral institution*" means an entity, either public, private, or of a general or specialised nature, responsible for organising, on a permanent basis, the arbitration of disputes submitted to it by the parties to an arbitration agreement under the entity's internal rules;
"*arbitral tribunal*" means a sole arbitrator or a panel of arbitrators;
"*Court*" means the High Court of Delta State;
"*emergency arbitrator*" means the arbitrator appointed, before the constitution of the arbitral tribunal, to consider and, if necessary, order urgent interim measures;
"*interim measures*" means any temporary measure, whether in the form of an award or in another form, made by the arbitral tribunal before it issues the award that finally decides the dispute;
"*Multidoor Courthouse*" means the Delta State Multidoor Courthouse;
"*place of arbitration*" means the juridical seat of the arbitration;
"*State*" means Delta State of Nigeria;

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* Enacted on 22 December 2022.

"*urgent interim measures*" means interim measures that cannot await the constitution of an arbitral tribunal.

(2) The following are interpretational guide under this Law:

(a) where a provision of this Law, except Section 26 of this Law, leaves the parties free to determine a certain issue, that freedom includes the right of the parties to authorise a third- party, including an arbitral institution, to make that determination;

(b) where a provision of this Law refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules referred to in that agreement;

(c) where a provision of this Law, other than in Sections 34 (2)(a) and 59(2)(a) of this Law, refers to a claim, it also applies to a counterclaim, and where it refers to a defence, it also applies to a defence to such counterclaim;

(d) in the resolution of issues that are not expressly provided for in this Law, but which relate to matters regulated by it, the general principles in Section 4 of this Law shall be considered.

*3. Scope of Application*

(1) Subject to subsection (4) of this Section, this Law applies to an arbitration if the place of arbitration is in Delta State.

(2) The place of arbitration is in Delta State if the arbitration agreement:

(a) names Delta State or a place in Delta State as the place of arbitration;

(b) does not name a place of arbitration, but provides that the arbitration laws of Delta State are applicable to the dispute;

(c) does not name a place of arbitration and does not provide that the arbitration laws of a specified jurisdiction are applicable to the dispute, but provides that the laws of Delta State are applicable to the substance of the dispute;

(d) empowers a person or entity to name the place of arbitration and the person or entity names Delta State or a place in the State as the place of arbitration; or

(e) does not provide for paragraphs (a) -(d) of this subsection but the parties to the arbitration agreement have, on the date the parties entered into the arbitration agreement, their places of business in the State.

(3) For the purposes of subsection (2)(e) of this Section:

(a) if a party has more than one place of business, the party's place of business is that which has the closest relationship to the arbitration agreement; and

(b) if a party does not have a place of business, a reference to the party's place of business is to be read as a reference to the party's last known place of residence.

(4) Notwithstanding subsection (2) of this Section, Sections 6, 8, 10, 30, 46, 47, 48 and 61 of this Law apply to an arbitration whether or not the place of arbitration is in Delta State.

(5) This Law does not apply to an arbitration to which the Arbitration and Conciliation Act, Cap. A18 LFN 2004 (or any amendment or re-enactment of it) applies.

*4. General Principles*

In interpreting this Law, regard shall be had to the following general principles:

(a) The principle of party autonomy, under which the parties are free to choose arbitration for the resolution of their disputes, to determine the composition of

the arbitral tribunal, to choose the law that applies to the substance of the dispute and the procedural rules, without prejudice to the mandatory rules provided in this Law;

(b) the principle of fair hearing, under which each party shall be guaranteed the opportunity to effectively participate in the arbitration, including the right to be heard and to exercise its right to respond to acts of the arbitral tribunal or of the other party that affect it, unless the arbitral tribunal deems it unnecessary, or this Law provides otherwise;

(c) the principle of equality, under which the parties shall be treated equally and each of them shall be given the opportunity to exercise their rights and fulfil their duties;

(d) the principle of confidentiality, under which the arbitration process, its subjects and its contents shall be kept confidential, without prejudice to the cases in which such confidential information may be disclosed under the terms of this Law;

(e) the principle of informality and simplicity, under which the arbitral tribunal shall conduct the arbitration in an informal and simplified manner that best serves the interests of the parties and is best suited to the terms of the dispute, without prejudice to the mandatory rules provided in this Law;

(f) the principle of speed and efficiency, according to which the arbitral tribunal shall conduct the arbitration in a prompt, efficient, and economical manner, respecting the procedural guarantees of the parties and the mandatory rules provided in this Law;

(g) the principle of impartiality and independence, under which arbitrators exercising of their functions, shall act in an impartial and independent manner, not benefiting or harming any of the parties and being immune to influence or pressure of any kind; and

(h) the principle of minimal court intervention in accordance with Section 8 of this Law.

*5. Receipt of written communication*

(1) If the parties have agreed on a method for delivering written communications, the communication shall be delivered in accordance with the agreement.

(2) If the parties have not agreed on a method for delivering written communications, the communication may be delivered to an individual by:

(a) leaving it with the individual;

(b) leaving it at the individual's last known place of business, place of residence or mailing address;

(c) sending it electronically to an address or number specified by the individual for that purpose;

(d) sending it to the individual's last known place of business, place of residence or mailing address by courier or another means that provides a record of receipt; or

(e) after the arbitral tribunal has been constituted, by any other method the arbitral tribunal directs.

(3) If the parties have not agreed on a method for delivering written communications, the communication may be delivered to a corporation or legal person by:

(a) leaving it with an officer, director or agent of the corporation;
(b) leaving it at a place of business of the corporation with a person who has apparent control or management of the place;
(c) sending it electronically to an address or number specified by the corporation for that purpose;
(d) sending it to a place of business of the corporation by courier or another means that provides a record of receipt; or
(e) after the arbitral tribunal has been constituted, any other method the arbitral tribunal directs.

(4) If the parties have not agreed on a date on which receipt of a written communication is deemed to occur, then, unless the addressee establishes that the addressee, acting in good faith, did not actually receive it until a later date:

(a) a written communication delivered under subsections (2)(a), (b) or (c) or (3)(a), (b) or (c) of this Section is deemed to have been received on the date it is delivered; and
(b) a written communication delivered under subsection (2) (d) or (e) or (3)(d) or (e) of this Section is deemed to have been received 5 days after the data is sent.

(5) If a party is satisfied that it is impractical or impossible to deliver a written communication in a manner described in subsection (1) or (2) of this Section, the party may apply to the arbitral tribunal for an order authorising an alternative method of delivering the communication.

(6) If the arbitral tribunal fails to make an order under subsection (5) of this Section within 7 days of the request, the party may apply to the Court for an order authorising an alternative method of delivering the communication.

(7) An order under subsection (5) or (6) of this Section must state the date on which receipt of the communication is deemed to occur.

(8) This Section does not apply to communications in court proceedings.

6. Waiver of the right to object

A party to an arbitration agreement is deemed to have waived the right to object if both of the following apply:

(a) the party knows that:
(i) a provision of this Law, other than a provision in respect of which the parties may otherwise agree, has not been complied with; or
(ii) a requirement under the arbitration agreement has not been complied with; and
(b) the party proceeds with the arbitration and does not state an objection to the non-compliance without undue delay, or, if a time limit is provided for stating that objection, within that period of time.

*7. Death of a Party*

(1) If a party to an arbitration agreement dies, the personal representatives of the deceased party are bound by, and are not by the death precluded from enforcing the terms of the arbitration agreement.

(2) An arbitrator's authority to hear and decide on the arbitration is not revoked by the death of the party who appointed the arbitrator.

(3) This Section does not affect a rule of law or an enactment under which the death of a person extinguishes a right of action.

(4) In this Section:

"Death" includes, in the case of a body corporate, dissolution or other extinction by process of law.

*8. Extent of Court intervention.*

In matters governed by this Law:

(a) a Court shall not intervene unless so provided in this Law; and

(b) except to the extent provided by this Law, a Court shall not question, review the substance of, or restrain:

(i) any proceedings of an arbitral tribunal; or

(ii) an order, ruling or award made by an arbitral tribunal.

PART II. ARBITRATION AGREEMENT

*9. Form of the arbitration agreement*

(1) An arbitration agreement shall be in writing.

(2) An arbitration agreement is in writing if its content is recorded in any form, irrespective of whether the arbitration agreement or contract has been concluded orally, by conduct, or by other means.

(3) The requirement that an arbitration agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference.

(4) An arbitration agreement is in writing if it is contained in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other.

(5) The reference in a contract to any document containing an arbitration clause constitutes an arbitration agreement in writing, provided that the reference is such as to make that clause part of the contract.

(6) The arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(7) In this Section:

(a) "electronic communication" means any communication that the parties make by means of data messages; and

(b) "data message" means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange (EDI), electronic mail and other electronic messages, telegram, telex or telecopy.

*10. Stay of Court proceedings.*

(1) If a party commences legal proceedings in a Court in respect of a matter agreed to be submitted to arbitration, a party to the legal proceedings may, before submitting the party's first pleading on the substance of the dispute, apply to that Court to stay the legal proceedings.

(2) In an application under subsection (1) of this Section, the Court shall make an order staying the legal proceedings unless a party shows, on a *prima facie* basis, that the arbitration agreement is void, inoperative or incapable of being performed.

(3) An arbitration may be commenced or continued and an arbitral award made even if an application has been brought under subsection (1) of this Section and the issue is pending before the Court.

## PART III. COMMENCEMENT OF ARBITRAL PROCEEDINGS

### *11. Commencement of arbitral proceedings*

(1) If the parties to an arbitration agreement have agreed on how arbitral proceedings are to be commenced, arbitral proceedings shall be commenced in accordance with that agreement.

(2) If the parties to an arbitration agreement have not agreed on how arbitral proceedings are to be commenced, a party may commence arbitral proceedings:

(a) if authorised under the arbitration agreement, by delivering to the other party to the arbitration agreement a notice appointing an arbitrator; or

(b) by delivering to the other party to the arbitration agreement a notice requesting that the other party participate in the appointment of an arbitral tribunal; or

(c) if the arbitration agreement authorises a person who is not a party to the arbitration agreement to appoint an arbitrator or arbitral tribunal, by delivering to that person a notice requesting the person exercise the power of appointment and by delivering a copy of the notice to any other party to the arbitration agreement; or

(d) by delivering to the other party a written communication containing a request for the dispute to be referred to arbitration.

(3) A person who receives a notice under subsection (2) of this Section may deliver to the party who commenced the arbitral proceedings a written request for a concise description of the matter in dispute, unless such a description is already included with the notice.

(4) A party who receives a request under subsection (3) of this Section shall comply with the request no more than 10 days after receipt of the request.

(5) An arbitral tribunal may extend the time period referred to in subsection (4) of this Section before or after the expiry of that period.

(6) A party's failure to comply with subsection (4) of this Section does not render a notice delivered under subsection (2) of this Section ineffective, but an arbitral tribunal may stay the arbitral proceedings until the party complies with the request under subsection (3) of this Section.

### *12. Consolidation*

(1) If all parties to two or more arbitral proceedings agree to consolidate those proceedings, a party, with notice to the other parties, may apply to the Court for an order that the proceedings be consolidated as agreed by the parties.

(2) Subsection (1) of this Section does not limit the parties' ability to consolidate arbitral proceedings without a Court order.

(3) If all parties to the arbitral proceedings agree to consolidate the proceedings, but do not agree by adopting procedural rules or otherwise to either of the following matters:

(a) the designation of parties as claimants or respondents or a method of making those designations; and

(b) the method for determining the composition of the arbitral tribunal;

the Court may on an application under subsection (1) of this Section but subject to subsection (4) of this Section, make an order deciding either or both of those matters.

(4) If the arbitral proceedings are under different arbitration agreements, the Court shall not make an order under this Section unless, by their arbitration agreements or otherwise, the parties agree:

(a) to the same place of arbitration or a method for determining a single place of arbitration for the consolidated proceedings in Delta State;

(b) to the same procedural rules or method for determining a single set of procedural rules for the conduct of the consolidated proceedings; and

(c) to have the consolidated proceedings either:

(i) be administered by the same person or entity; or

(ii) not be administered by any person or entity.

(5) In making an order under this Section, the Court may have regard to any circumstance it considers relevant, including:

(a) whether one or more arbitrators have been appointed in one or more of the arbitral proceedings;

(b) whether the applicant delayed applying for the order; and

(c) whether any material prejudice to any of the parties or any injustice may result from making the order.

(6) Consolidated arbitral proceedings may be continued and an arbitral award made even if a party appeals against a Court decision made under this Section.

*13. Limitation periods*

(1) The law regarding limitation periods for commencing Court proceedings applies to arbitral proceedings.

(2) If a party alleges that a claim to which an arbitration agreement applies is barred for failure to commence arbitral proceedings within the time limit specified in the agreement or otherwise or within the applicable limitation period, the arbitral proceedings shall continue and the arbitral tribunal shall determine whether the claim is barred.

(3) If Court proceedings are stayed under Section 10 of this law and the claim that was the subject of the Court proceedings is made in arbitral proceedings no more than 30 days after the Court proceedings are stayed, the limitation period applicable to the claim is suspended from the date the claim was made in the Court proceedings to the date the claim is made in the arbitral proceedings.

(4) In computing the time for commencing proceedings to enforce an arbitral award, the period between commencing the arbitration and the date of the award shall be excluded.

PART IV. COMPOSITION OF ARBITRAL TRIBUNALS

*14. Number of arbitrators*

If the parties to an arbitration agreement do not agree on the number of arbitrators, an arbitral tribunal shall be composed of one arbitrator.

*15. Appointment of arbitrators*

(1) Subject to this Section, the parties may agree on a procedure for appointing the arbitral tribunal.

(2) Unless the parties otherwise agree, in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator, the Multidoor Courthouse shall, on request of a party, appoint the arbitrator.

(3) Unless the parties otherwise agree, in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the third arbitrator, who shall preside among them.

(4) If the appointment procedure in subsection (3) of this Section applies and either of the following occurs:

(a) a party fails to appoint an arbitrator within 30 days after receipt of a request to do so from the other party; or

(b) the two appointed arbitrators fail to agree on the third arbitrator within 30 days after the parties ' last appointment;

the Multidoor Courthouse shall, on request of a party appoint an arbitrator.

(5) If under an appointment procedure agreed to by the parties, any of the following occurs:

(a) a party fails to act as required under that procedure;

(b) the parties, or two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or

(c) a third-party fails to perform any function entrusted to the third-party under that procedure;

a party may request the Multidoor Courthouse to take the necessary measure the agreement on the appointment procedure provides other means for securing the appointment.

(6) If the Multidoor Courthouse does not make the appointment requested under subsection (2) or (4) of this Section or take the necessary measure in accordance with subsection (5) of this Section within 7 days of the request, the Court shall, on application, appoint an arbitrator.

(7) In appointing an arbitrator, the Multidoor Courthouse or the Court shall (as the case may be) have due regard to:

(a) any qualifications required of the arbitrator by the agreement of the parties; and

(b) any other considerations that are likely to secure the appointment of an independent and impartial arbitrator.

(8) Arbitral proceedings may be continued and an arbitral award made even if a party challenges a decision of the Multidoor Courthouse or appeals against the decision of the Court made under this Section.

*16. Multiparty arbitration*

(1) In the case of arbitral proceedings with more than one claimant or respondent, the references made in Section 15 of this Law to one of the parties shall be deemed as made to all the claimants or respondents (as the case may be), and the references made to the parties shall be deemed as made to all claimants and respondents.

(2) In the case provided in Section 15 (2) of this Law, if all the claimants and respondents in a multiparty arbitration fail to agree on the sole arbitrator, the Multidoor Courthouse shall, on the request of any claimant or respondent, appoint the arbitrator.

(3) In the case provided in Section 15 (4) of this Law, if all the claimants or all the respondents fail to appoint an arbitrator within 30 days after receipt of a request to do so from the other party, or if the two appointed arbitrators fail to agree on the third arbitrator within 30 days after the parties' last appointment, the Multidoor Courthouse shall, on request of any claimant or respondent, make the appointment.

(4) If the Multidoor Courthouse does not make the appointment requested under subsection (2) or (3) of this Section within 7 days of the request, the Court shall, on the application of any claimant or respondent, appoint an arbitrator.

(5) In the case provided in subsection (3) of this Section, the Multidoor Courthouse or the Court may also, if it deems it justified to ensure the equality of the parties:

(a) appoint all the arbitrators, including the presiding arbitrator among them; and

(b) if applicable, nullify any arbitrator appointment that the parties have already made.

*17. Independence and impartiality of arbitrator*

(1) An arbitrator shall be independent of the parties and impartial.

(2) If a person is approached in connection with their possible appointment as an arbitrator, the person must without delay, disclose any circumstances likely to give rise to justifiable doubts as to their independence or impartiality.

(3) An arbitrator, from the time of the appointment and throughout the arbitral proceedings, shall, without delay, disclose to the parties any circumstances referred to in subsection (2) of this Section.

*18. Grounds for challenge.*

(1) A party may challenge an arbitrator only if:

(a) circumstances exist that give rise to justifiable doubts as to the arbitrator's independence or impartiality, or

(b) the arbitrator does not possess the qualifications agreed to by the parties.

(2) For the purposes of subsection (1)(a) of this Section, there are justifiable doubts as to the arbitrator's independence or impartiality only if there is a real danger of bias on the part of the arbitrator in conducting the arbitration.

(3) A party may challenge an arbitrator appointed by that party, or in whose appointment the party has participated, only for reasons of which the party becomes aware after the appointment has been made.

*19. Challenge procedure*

(1) Subject to subsection (4) of this Section, the parties to arbitral proceedings may agree on a procedure for challenging an arbitrator.

(2) Failing any agreement referred to in subsection (1) of this Section, a party who intends to challenge an arbitrator shall, within 15 days after becoming aware of the constitution of the arbitral tribunal or any circumstances referred to in Section 18 (1) of this Law, send a written statement of the reasons for the challenge to the arbitral tribunal.

(3) Unless the arbitrator challenged under subsection (2) of this Section withdraws from office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(4) If a challenge under any procedure agreed to by the parties or under the procedure referred to in subsection (2) of this Section is not successful, the challenging

party may, within 15 days after receiving notice of the decision rejecting the challenge, apply to the Court to decide on the challenge.

(5) If an application is made under subsection (4) of this Section, the Court shall refuse to decide on the challenge if it is satisfied that, under the procedure agreed to by the parties, the party making the application had an opportunity to have the challenge decided on by a person or entity other than the arbitral tribunal.

(6) While an application under subsection (4) of this Section is pending, or if a decision of the Court under subsection (4) of this Section is appealed, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an arbitral award.

*20. Failure or impossibility to act*

(1) The mandate of an arbitrator terminates if:

(a) the arbitrator becomes in law or in fact unable to perform the arbitrator's functions or for other reasons fails to act without undue delay; and

(b) the arbitrator withdraws from office or the parties agree to the termination of the arbitrator's mandate.

(2) On application by a party, the Court may terminate the mandate of an arbitrator on a ground referred to in subsection (1)(a) of this Section.

(3) If under this Section or Section 19(3) of this Law, an arbitrator withdraws from office or the parties agree to the termination of the mandate of an arbitrator, the withdrawal does not imply the arbitrator's acceptance of the validity of any ground referred to in this Section or Section 18(1) of this Law.

*21. Termination of mandate and substitution of arbitrator*

(1) In addition to the circumstances referred to in Section 19 or 20 of this Law, the mandate of an arbitrator terminates:

(a) if the arbitrator withdraws from office for any reason; or

(b) by or pursuant to the agreement of the parties to the arbitral proceedings.

(2) If the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed according to the rules applied to the appointment of the arbitrator being replaced.

(3) Unless otherwise agreed by the parties to the arbitral proceedings:

(a) if the sole or presiding arbitrator is replaced, any hearings previously held shall be repeated; and

(b) if an arbitrator other than the sole or presiding arbitrator is replaced, any hearings previously held may be repeated at the discretion of the arbitral tribunal.

(4) Unless otherwise agreed by the parties to the arbitral proceedings, an order or ruling of the arbitral tribunal made before the replacement of an arbitrator under this Section is not invalid solely because there has been a change in the composition of the arbitral tribunal.

## PART V. ARBITRAL PROCEEDINGS

*22. General duties of arbitral tribunal*

An arbitral tribunal shall:

(a) treat each party fairly;

(b) give each party a reasonable opportunity to present its case and to answer any case presented against it; and
(c) strive to achieve a just, prompt and economical determination of the proceeding on its merits.

*23. General duties of the parties*
(1) Parties to arbitral proceedings shall do all things necessary for the just, prompt and economical determination of the proceedings, in accordance with the agreement of the parties and the orders and directions of the arbitral tribunal.

(2) A party shall not wilfully do or cause to be done any act to delay or prevent an arbitral award from being made.

*24. Competence of arbitral tribunal to rule on its jurisdiction*
(1) An arbitral tribunal may rule on its own jurisdiction, including ruling on any objections regarding the existence or validity of the arbitration agreement, and for that purpose:

(a) an arbitration agreement which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and
(b) a decision by the arbitral tribunal that the contract is null and void shall not entail, as a matter of law, the invalidity of the arbitration agreement.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the first response on the substance of the dispute.

(3) A party to arbitral proceedings is not precluded from raising a plea referred to in subsection (2) of this Section by the fact that the party appointed, or participated in the appointment of an arbitrator.

(4) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

(5) The arbitral tribunal may in either of the cases referred to in subsection (2) or (4) of this Section, admit a later plea if it considers the delay justified.

(6) The arbitral tribunal may rule on a plea referred to in subsection (2) or (4) of this Section either as a preliminary question or in an arbitral award on the merits.

(7) If the arbitral tribunal rules as a preliminary question on a plea referred to in subsection (2) or (4) of this Section, any party may within 30 days after receiving notice of that ruling, apply to the Court to decide the matter.

(8) While an application under subsection (7) of this Section is pending, or the Court's decision under subsection (7) of this Section is appealed, the arbitral tribunal may continue the arbitral proceedings and make an arbitral award.

*25. Representation in arbitral proceedings*
A party to arbitral proceedings may appear or act in person or may be represented or assisted by any other person.

*26. Law applicable to substance of dispute*
(1) The law applicable to the substance of a dispute is the law designated by the parties to the arbitration agreement.

(2) If the parties to the arbitration agreement have not designated the law applicable to the substance of a dispute, the arbitral tribunal may choose the applicable law.

(3) An arbitral tribunal shall decide the substance of a dispute in accordance with the applicable law, including any equitable rights or defences available under that law.

(4) An arbitral tribunal may grant relief or remedies under the applicable law, including orders of specific performance, injunctions, declarations or other equitable remedies available under that law.

*27. Conflict of laws*

A designation by the parties to the arbitration agreement of the law of a jurisdiction refers to the jurisdiction's substantive law and not to its conflict of laws rules unless the parties expressly state that the designation includes the conflict of laws rules.

*28. Application of agreed standards*

Notwithstanding Section 26 of this Law, if all parties agree, an arbitral tribunal may resolve a dispute *ex aequo et bono* or by applying some other standard.

*29. Evidence*

(1) An arbitral tribunal may decide all evidentiary matters, including the admissibility, relevance, materiality, and weight of any evidence, and may draw such inferences as the circumstances justify.

(2) Unless otherwise agreed by the parties to the arbitral proceedings (to the extent that the law does not override such agreement), the arbitral tribunal is not required to apply the law of evidence other than the law of privilege.

(3) Unless otherwise agreed by the parties to the arbitral proceedings or directed by the arbitral tribunal, the direct evidence of every witness shall be presented in written form.

*30. Production and evidence from non-parties*

(1) If, on an application by a party to arbitral proceedings, an arbitral tribunal determines that a person who is not a party to the proceedings should give evidence or produce records, the arbitral tribunal may:

(a) issue a subpoena to a person in the State requiring the person to give evidence or produce for inspection records in the person's possession or control; or

(b) request a court of competent jurisdiction to assist the arbitral tribunal by requiring a person in or outside the State to give evidence or produce for inspection records in the person's possession or control.

(2) A subpoena under subsection (1)(a) of this Section shall set out, and a request under subsection (1)(b) of this Section shall propose, the following, as applicable:

(a) how, where and when the person is to give evidence;

(b) the records the person is to produce;

(c) how, where and when the records are to be produced and copied; and

(d) conditions for the payment of the expenses of the person named in the subpoena or request.

(3) A subpoena under subsection (1)(a) of this Section has the same effect as if it were issued in court proceedings.

(4) A subpoena under subsection (1)(a) of this Section may be set aside on application by the person named in the subpoena to the arbitral tribunal or the Court.

(5) A party to arbitral proceedings may apply to the Court or another court of competent jurisdiction for an order providing the assistance described in a request issued under subsection (1)(b) of this Section.

(6) If an application is brought to the Court under subsection (5) of this Section, the Court shall, after it finds that appropriate notice is delivered to the person named in the request, and if satisfied that the conditions proposed are reasonable, make an order that the person attend to give evidence or produce records as described in the request.

(7) Subsection (8) of this Section applies to arbitral proceedings if:

(a) the place of arbitration is within a territory outside the State;

(b) the arbitration is not considered to be an international arbitration under the laws of the place of arbitration; and

(c) the arbitral tribunal has issued a request substantially conforming to the requirements of a request under subsection (1)(b) of this Section.

(8) A party to arbitral proceedings to which this subsection applies may apply to the Court for an order providing the assistance described in the request referred to in subsection (7)(c) of this Section.

(9) A person shall not be compelled by an order under this Section, in relation to arbitral proceedings, to give evidence or produce for inspection property or records in the person's possession or control that the person may not be compelled to give or produce in court proceedings.

(10) If the Court's decision under this Section is appealed, the arbitral tribunal may continue the arbitral proceedings and make an arbitral award.

*31. Hearings and written proceedings*

(1) Unless otherwise agreed by the parties to the arbitral proceedings, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other written materials.

(2) Unless the parties have agreed that no oral hearings are to be held, the arbitral tribunal shall, on request of a party, hold oral hearings at an appropriate stage of the proceedings.

(3) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purpose of the inspection of records, goods or other property.

(3) All statements, documents and other information supplied to, or applications made to the arbitral tribunal by one party must be communicated to the other party, and any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

*32. Hearing location*

(1) Except as provided in this Section, any in - person hearing to receive oral evidence or oral submissions shall take place at:

(a) a location agreed to by the parties; or

(b) if the parties have not agreed to a location, a location determined by the arbitral tribunal.

(2) An arbitral tribunal may receive oral evidence or oral submissions at any location by telephone, video conference or other electronic means.

(3) An arbitral tribunal may meet wherever it considers appropriate for consultation among its members.

(4) An arbitral tribunal may conduct an inspection of records, goods or other property or receive evidence of a witness at any location.

*33. Procedural powers of arbitral tribunal*

(1) Subject to this Law and any agreement of the parties, an arbitral tribunal may establish procedures and make procedural orders for the conduct of the arbitral proceedings.

(2) For certainty, and without limiting subsection (1) of this Section, an arbitral tribunal may:

(a) administer an oath or affirmation; and

(b) make orders regarding any of the following:

(i) statements of position or pleadings, including when they should be delivered, their form and content, and whether amendments are allowed;

(ii) requiring security for the arbitral tribunal's fees and expenses;

(iii) requiring a party to provide security for costs that may be incurred by another party;

(iv) the determination of some matters in dispute before other matters in dispute;

(v) giving directions for the preservation of evidence;

(vi) whether to apply rules of evidence (or any other rules) as to the admissibility, relevance or weight of any material;

(vii) subject to privilege, requiring a party to produce records or information;

(viii) establishing protocols for searching for and producing electronically stored records, and allocating the costs of implementing the protocols;

(ix) giving directions in relation to any property which is the subject of the arbitral proceedings or as to which any question arises in the proceedings and which is owned by or in the possession of a party, for the purposes of:

(A) the inspection, photographing, preservation, custody or detention of the property by the arbitral tribunal, an expert or a party, or

(B) taking samples from, or making observations of any test or experiment conducted upon the property;

(x) the form in which evidence and arguments are presented;

(xi) regarding the confidentiality in the arbitral proceedings and providing for sanctions against parties for failure to observe any confidentiality requirements;

(xii) regarding the use of video or telephone conferencing or other technology to enable the examination of witnesses who are not physically present at an evidentiary hearing;

(xiii) allocating hearing time between the parties;

(xiv) excluding witnesses or potential witnesses from attending any part of an oral evidentiary hearing;

(xv) the examination of a witness on oath or affirmation;

(xvi) the language to be used in the proceedings and whether translations of any records are to be supplied and allocating the costs of interpreting or translating evidence; and

(xvii) varying a procedural order, including by shortening or extending a time limit established by the order before or after the expiry of the time limit.

*34. Party default*

(1) In this Section:

(a) "claim" means:

(i) in relation to a party who commenced arbitral proceedings, the matters put in dispute by that party, and

(ii) in relation to a party who brings a counterclaim in arbitral proceedings, the matters put in dispute by the counterclaim;

(b) "procedural time limit" means a time limit set by enactment, agreement of the parties or order of the arbitral tribunal for taking a procedural step, other than a time limit for the commencement of arbitral proceedings.

(2) If after the commencement of arbitral proceedings, a party who commenced the proceedings or who brings a counterclaim in the proceedings fails to comply with a procedural time limit, the arbitral tribunal may:

(a) terminate the arbitral proceedings in relation to the party's claim; or

(b) suspend the arbitral proceedings in relation to the party's claim, pending the fulfilment of conditions.

(3) If in other cases, a party fails to comply with a procedural time limit, the arbitral tribunal may continue the arbitral proceedings and make an order it considers appropriate, including an order that precludes the party from taking a procedural step.

(4) If without showing sufficient cause, a party fails to appear at an oral hearing or produce documentary evidence, the arbitral tribunal may continue the proceedings and make an arbitral award on the evidence before it.

(5) Unless the arbitral tribunal determines otherwise at the time of termination, an arbitral award made before termination or suspension of arbitral proceedings under this Section remains valid and enforceable.

*35. Expert appointed by arbitral tribunal*

(1) Unless otherwise agreed by the parties, an arbitral tribunal may appoint an expert to report to the arbitral tribunal and the parties on an issue.

(2) The arbitral tribunal may order a party to deliver to the expert relevant information or to produce or provide access to relevant records, goods or other property for inspection.

(3) The arbitral tribunal may, after the expert has delivered the expert's report to the arbitral tribunal, order the expert to participate in a hearing at which the parties may question the expert on the report and present evidence on issues arising from the report.

(4) Unless otherwise agreed by the parties, the expert shall on the request of a party, make available to that party, for examination, all documents, goods or other property in the expert's possession with which the expert was provided in order to prepare the expert's report.

(5) The costs of an expert appointed under this Section shall be borne by the parties as directed by the arbitral tribunal.

*36. Duty of expert*

(1) In giving an opinion to an arbitral tribunal, an expert appointed by one or more parties or by the arbitral tribunal has a duty to assist the arbitral tribunal and is not to be an advocate for any party.

(2) If an expert is appointed by one or more of the parties or by the arbitral tribunal, the expert shall in any report the expert prepares, certify that the expert:

(a) is aware of the duty referred to in subsection (1) of this Section;

(b) has made the report in conformity with that duty; and

(c) will if called on to give oral or written testimony, give that testimony in conformity with that duty.

PART VI. EMERGENCY ARBITRATOR, INTERIM MEASURES AND PRELIMINARY ORDERS

*37. Appointment and competence of emergency arbitrator*

(1) A party requiring urgent interim measures may, concurrent with or after commencing the arbitration, but before the constitution of the arbitral tribunal, submit an application to an emergency arbitrator in accordance with rules they agree to or, in the absence of any such agreement, under the procedures set out in the Second Schedule to this Law.

(2) The emergency arbitrator may order urgent interim measures at the request of either party and after hearing the opposing party.

(3) The emergency arbitrator retains the competence to decide on the request for an urgent interim measure even if the arbitral tribunal is constituted after the emergency arbitrator's appointment.

(4) The emergency arbitrator's decision extinguishes its powers and transfers jurisdiction to the arbitral tribunal, except when the latter is not yet constituted, in which case the emergency arbitrator retains its jurisdiction until the constitution of the arbitral tribunal.

*38. Power of arbitral tribunal to order interim measures*

(1) Unless otherwise agreed by the parties, the arbitral tribunal may at the request of a party and after hearing the opposing party, grant an interim measure.

(2) The arbitral tribunal may order any of the parties to:

(a) maintain or restore the *status quo* pending determination of the dispute;

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

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

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

*39. Conditions for granting interim measures*

(1) The party requesting an interim measure under Section 38(2)(a), (b) or (c) of this Law shall satisfy the arbitral tribunal that:

(a) if the interim measure is not ordered, it is likely that the requesting party will suffer harm that damages cannot adequately repair, and that such harm

substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and

(b) there is a reasonable possibility that the requesting party will succeed on the merits of its claim.

(2) The determination on the possibility referred to in subsection (1)(b) of this Section shall not affect the arbitral tribunal's discretion in making any subsequent determination.

(3) Regarding the request for an interim measure made under Section 38(2)(d) of this Law, the requirements in paragraphs (1)(a) and (b) of this Section shall apply only to the extent that the arbitral tribunal considers it appropriate.

*40. Applications for preliminary orders and conditions for granting preliminary orders.*
(1) Unless otherwise agreed by the parties, a party may without notice to any other party, make a request for an interim measure together with an application for a preliminary order directing a party not to frustrate the purpose of the interim measure requested.

(2) An arbitral tribunal may grant a preliminary order if the arbitral tribunal considers that prior disclosure of the request for the interim measure to the party against whom it is directed risks frustrating the purpose of the interim measure.

(3) The conditions defined under Section 39 of this Law apply to any preliminary order, provided that the harm to be assessed under Section 39(1)(a) of this Law is the harm likely to result from the order being granted or not.

*41. Specific regime for preliminary orders*
(1) Immediately after an arbitral tribunal makes a determination in respect of an application for a preliminary order, the arbitral tribunal shall give notice to all the parties of the following:

(a) the request for the interim measure;

(b) the application for the preliminary order;

(c) the preliminary order, if any; and

(d) all other communications, including the content of any oral communication between any party and the arbitral tribunal in relation to a matter referred to in paragraphs (a), (b) or (c) of this subsection.

(2) The arbitral tribunal shall give an opportunity to any party against whom a preliminary order is directed to present the party's case at the earliest practicable time.

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

(4) A preliminary order expires twenty days after the date on which it was issued by the arbitral tribunal.

(5) After the party against whom a preliminary order is directed has been given notice and an opportunity to present its case, the arbitral tribunal may issue an interim measure adopting or modifying the preliminary order.

(6) A preliminary order:

(a) is binding on the parties but is not subject to enforcement by a court; and

(b) is not an arbitral award.

*42. Modification, suspension or termination of interim measures and preliminary orders*
On application of any party or, in exceptional circumstances and with prior notice to the parties, on the arbitral tribunal's own initiative, an arbitral tribunal may modify, suspend, or terminate an interim measure or a preliminary order it has granted.

*43. Provision of security*

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

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

*44. Disclosure*

(1) An arbitral tribunal may require any party to promptly disclose any material change in the circumstances on the basis of which an interim measure was requested or granted.

(2) A party applying for a preliminary order must disclose to the arbitral tribunal all circumstances that are likely to be relevant to the arbitral tribunal's determination of whether to grant or maintain the order.

(3) The disclosure obligation under subsection (2) of this Section continues until the party against whom the preliminary order has been requested has had an opportunity to present its case.

(4) After the party against whom a preliminary order has been requested has had an opportunity to present its case, the arbitral tribunal may require any party to promptly disclose any material change in the circumstances on the basis of which the preliminary order was requested or granted.

*45. Costs and damages*

(1) A party requesting an interim measure or applying for a preliminary order is liable for any costs and damages caused by the interim measure or the preliminary order to any party if the arbitral tribunal later determines that in the circumstances, the measure or the order should not have been granted.

(2) The arbitral tribunal may award the costs and damages referred to in subsection (1) of this Section at any time during the arbitral proceedings.

*46. Recognition and enforcement of interim measures*

(1) Subject to Section 47 of this Law, an interim measure issued by an arbitral tribunal shall be recognised as binding and, unless otherwise provided by the arbitral tribunal, enforced on application to the Court.

(2) A party who is seeking or has obtained recognition or enforcement of an interim measure shall promptly inform the Court of any modification, suspension or termination of that interim measure.

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

*47. Grounds for refusing recognition or enforcement of an interim measure*

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

(a) at the request of the party against whom the interim measure is directed if the court is satisfied that:

(i) such refusal is warranted on the grounds referred to in Section 60 of this Law;

(ii) a decision of the arbitral tribunal with respect to the provision of security in connection with the interim measure has not been complied with; or

(iii) the interim measure has been suspended or terminated by the arbitral tribunal or where so empowered by a court of the place of arbitration, or under the law of which that interim measure was granted, or

(b) if the Court finds that:

(i) the interim measure is incompatible with the powers conferred upon the Court, unless the Court decides to vary the interim measure to the extent necessary to adapt the interim measure to its own powers and procedures for the purposes of enforcing that interim measure and without modifying its substance; or

(ii) the recognition or enforcement of the interim measure would be contrary to the public policy in the State.

(2) A determination made by the Court on a ground referred to in subsection (1) of this Section is effective only for the purposes of the application to recognise or enforce the interim measure.

(3) The Court in which recognition or enforcement is sought shall not in making a determination on a ground referred to in subsection (1) of this Section, undertake a review of the substance of the interim measure.

*48. Court Ordered Interim Measures*

(1) The Court shall have the same powers to issue an interim measure in relation to arbitral proceedings as it has in relation to court proceedings.

(2) It is not incompatible with an arbitration agreement for a party to request from the Court, before or during arbitral proceedings, an interim measure of protection and for the Court to grant that measure.

(3) As required under Section 8 of this Law, the Court shall exercise the power referred to in subsection (1) of this Section in such a manner as to support, and not to disrupt, the existing or contemplated arbitral proceedings.

(4) Where the case is one of urgency, the Court may, on the *ex parte* application of a party or proposed party to the arbitral proceedings, make such order as it thinks necessary.

(5) Where the case is not one of urgency, the Court shall act only on the application of a party to the arbitral proceedings made:

(a) on notice to the other parties and to the arbitral tribunal; and

(b) with the permission of the arbitral tribunal or the agreement in writing of the other parties.

(6) The 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.

(7) Where the Court so orders, an order made by it under this section shall cease to have effect on the order of the arbitral tribunal or of any such arbitral or other institution or person having the power to act in relation to the subject matter of the order.

*49. Majority decision*

(1) Unless otherwise agreed by the parties and subject to subsection (2) of this Section, in arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal must be made by a majority of all its members.

(2) If authorised by the parties or all the members of the arbitral tribunal, questions of procedure may be decided by a presiding arbitrator.

(3) Unless otherwise agreed by the parties, if there is no majority decision on any matter to be decided in an arbitration, the decision of the presiding arbitrator is the decision on that matter.

*50. Settlement*

(1) It is not incompatible with an arbitration agreement for an arbitral tribunal to encourage settlement of the dispute and, with the agreement of the parties the arbitral tribunal may use mediation, conciliation or other procedures at any time during arbitral proceedings to encourage settlement.

(2) If the parties settle the dispute during the arbitral tribunal shall terminate the proceedings and if the parties request it and the arbitral tribunal does not object, record the settlement in the form of an arbitral award on agreed terms.

(3) An arbitral award on agreed terms must be made in accordance with Section 51 of this Law and must state that it is an arbitral award.

(4) An arbitral award on agreed terms has the same status and effect as any other arbitral award on the substance of the dispute.

*51. Form, content, and delivery of arbitral award*

(1) An arbitral award shall be in writing and shall be delivered to the parties.

(2) The arbitral tribunal shall, on request of a party, deliver an original signed or certified copy of the arbitral award to each party.

(3) An arbitral tribunal shall provide reasons for an arbitral award, unless:

(a) the parties to the arbitral proceeding have agreed that no reasons are to be provided; or

(b) the award is an arbitral award on agreed terms under Section 50(2) of this Law.

(4) An arbitral award shall state the place of arbitration and the date on which the arbitral award is made.

(5) A failure to comply with subsection (4) of this Section is a clerical error that may be corrected under Section 58 of this Law.

(6) All members of the arbitral tribunal shall sign an arbitral award.

(7) Notwithstanding subsection (6) of this Section, a majority of the members of the arbitral tribunal may sign an arbitral award if the award includes an explanation for the omission of the signatures of the other members.

*52. Partial awards*

An arbitral tribunal may make an arbitral award that finally decides a matter in dispute while retaining jurisdiction to decide another matter in dispute.

*53. Costs*

(1) A costs award may be made at any time during arbitral proceedings, including at the termination of the proceedings, and may be made payable at any time.

(2) Unless otherwise agreed by the parties, the costs of an arbitration are in the discretion of the arbitral tribunal, which may in awarding costs:

(a) include the following as costs:

(i) the fees and expenses of the arbitrators and expert witnesses;

(ii) legal fees and expenses;

(iii) any administration fees of an arbitral institution;

(iv) any other expenses incurred in connection with the arbitral proceedings;

(b) specify the following:

(i) the party entitled to costs;

(ii) the party who shall pay the costs;

(iii) the amount of costs or method of determining that amount; and

(iv) the manner in which the costs must be paid;

(c) determine the amount of a costs award by reference to actual reasonable legal fees, expenses and witness fees; and

(d) summarily determine the amount of costs.

(3) If a party makes an offer to another party to settle the dispute or part of the dispute and the offer is not accepted, the arbitral tribunal may take that fact into account when awarding costs of the arbitration.

(4) The content of an offer to settle the dispute or part of the dispute must not be communicated to the arbitral tribunal unless the arbitral tribunal has issued an arbitral award determining all aspects of the dispute other than costs.

*54. Interest*

(1) Unless otherwise agreed by the parties, an arbitral tribunal may award simple or compound interest for the time period and at the rate that the arbitral tribunal considers appropriate as follows:

(a) on the whole or part of any amount awarded by the arbitral tribunal, in respect of any period up to the date of the arbitral award;

(b) on the whole or part of any amount claimed in the arbitration and outstanding at the commencement of the arbitral proceedings but paid before the arbitral award was made, in respect of any period before the date of payment.

(2) Unless otherwise agreed by the parties, an arbitral tribunal may award simple or compound interest from the date of the arbitral award, or any later date, until payment, at such rates as the arbitral tribunal considers appropriate, on the outstanding amount of any arbitral award, including any interest awards under subsection (1) of this Section and any costs awards.

*55. Withholding arbitral award*

(1) Notwithstanding Section 51 of this Law, an arbitral tribunal may withhold an arbitral award from the parties if the arbitral tribunal has not received full payment of its fees and expenses.

(2) A time limit for delivering the arbitral award is extended until security is provided for an amount claimed under subsection (1) of this Section.

(3) If the arbitral tribunal refuses or fails to deliver an arbitral award, a party may, upon notice to the other parties and the arbitral tribunal, make a request to the Court for one or more of the following:

(a) a direction that the arbitral tribunal deliver the arbitral award on the payment in trust to the Court of all or part of the fees and expenses demanded;

(b) a determination of the amount of the fees and expenses payable to the arbitral tribunal under Section 57 of this Law;

(c) a direction that the fees and expenses as determined under paragraph (b) of this subsection be paid out of the money paid in trust to the Court; and

(d) a direction as to how the balance of the money paid in trust to the Court should be paid out.

*56. Binding nature of arbitral award*

An arbitral award is final and binding on all the parties to the award.

*57. Arbitral Tribunal fees and expenses*

(1) The parties shall be jointly and severally liable to pay an arbitrator's fees and expenses.

(2) The fees and expenses payable to an arbitrator shall be:

(a) reasonable and appropriate in the circumstances of the dispute;

(b) in accordance with the agreement of the parties and the arbitrator; or

(c) in the absence of an agreement of the parties and the arbitrator, determined by the arbitral tribunal (after consulting with the parties) in accordance with the scale of fees of one of the arbitral institutions in Nigeria.

*58. Corrections, interpretations, and additional arbitral awards*

(1) Within 30 days after receipt of an arbitral award, unless another period of time has been agreed to by the parties:

(a) a party may request the arbitral tribunal to correct in the arbitral award any computation, clerical or typographical errors or any other errors of a similar nature; and

(b) a party may, if agreed by the parties, request the arbitral tribunal to give an interpretation of a specific point or part of the arbitral award.

(2) If the arbitral tribunal considers the request made under subsection (1) of this Section to be justified, it shall make the correction or give the interpretation within 30 days after receipt of the request, and the interpretation forms part of the arbitral award.

(3) The arbitral tribunal may correct, on its own initiative, any type of error described in subsection (1) (a) of this Section within 30 days after the date of the arbitral award.

(4) Unless otherwise agreed by the parties, a party may request within 30 days after receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to a claim, including a claim for interest or costs presented in the arbitral proceedings but omitted from the arbitral award.

(5) If the arbitral tribunal considers the request made under subsection (4) of this Section to be justified, it shall make the additional arbitral award within 60 days.

(6) The arbitral tribunal may if necessary, extend the period of time within which it must make a correction, give an interpretation or make an additional arbitral award under subsection (2) or (5) of this Section.

(7) Section 51 of this Law applies to a correction or interpretation of an arbitral award or to an additional arbitral award made under this Section.

*59. Termination of proceedings*

(1) Arbitral proceedings are terminated by the final arbitral award or by an order of the arbitral tribunal under subsection (2) of this Section.

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings if any of the following occurs:

(a) the claimant withdraws the claim, unless the respondent objects to the order and the arbitral tribunal recognises a legitimate interest on the respondent's part in obtaining a final settlement of the dispute;

(b) the parties agree on the termination of the proceedings;

(c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible; and

(d) the arbitral tribunal terminates the proceedings under Section 34(2)(a) of this Law.

(3) Subject to this Law, the arbitral tribunal's mandate terminates with the termination of the arbitral proceedings.

## PART VIII. RECOURSE AGAINST AND ENFORCEMENT OF ARBITRAL AWARDS

*60. Applications for setting aside arbitral awards*

(1) A party may apply to the Court to set aside an arbitral award only on one or more of the following grounds:

(a) a person entered into the arbitration agreement while under a legal incapacity;

(b) the arbitration agreement is void, inoperative or incapable of being performed;

(c) the arbitral award deals with a dispute not falling within the terms of the arbitration agreement or contains a decision on a matter that is beyond the scope of the arbitration agreement;

(d) the composition of the arbitral tribunal was not in accordance with the arbitration agreement or this Law;

(e) the subject matter of the dispute is not capable of resolution by arbitration under the laws of Nigeria;

(f) the applicant was not given proper notice of the arbitration or of the appointment of an arbitrator;

(g) there are justifiable doubts as to the arbitrator's independence or impartiality;

(h) the applicant was not given a reasonable opportunity to present its case or to answer the case presented against it; or

(i) the arbitral award was the result of fraud or corruption by a member of the arbitral tribunal or was obtained by fraudulent behaviour by a party or its representative in connection with the conduct of the arbitral proceedings.

(2) If the Court finds that the grounds described in subsection (1)(c) or (e) of this Section apply in respect of only part of the subject matter of the arbitral award, the Court may set aside that part of the arbitral award.

(3) For the purposes of subsection (1)(g) of this Section, there are justifiable doubts as to the arbitrator's independence or impartiality only if is there was a real danger of bias on the part of the arbitrator in conducting the arbitration.

(4) The Court shall not set aside an arbitral award on grounds referred to in subsection (1)(g) of this Section if before the award was made:

(a) the applicant was aware of the circumstances it relies upon to set aside the arbitral award and failed to follow the applicable procedure required by the arbitration agreement or this Law for seeking the removal of the arbitrator; or

(b) the Court determined that substantially the same circumstances as are relied upon to set aside the arbitral award were not sufficient to justify the removal of the arbitrator.

(5) The Court shall not set aside an arbitral award if the applicant is deemed under Section 6 of this Law to have waived the right to object on the grounds on which the applicant relies.

(6) Subject to subsection (7) of this Section, an application to set aside an arbitral award shall be brought no more than 30 days after the date on which the applicant receives the arbitral award, correction, interpretation, or additional award on which the application is based.

(7) If the applicant alleges corruption or fraud, an application to set aside the arbitral award shall be brought within 30 days after the date on which the applicant first knew or reasonably ought to have known of the circumstances relied upon to set aside the award.

(8) The Court may, where it makes an order setting aside an arbitral award or any part thereof under this Section, and considering the grounds on which the award or the relevant part thereof has been set aside, give such other directives as it considers appropriate, including directives relating to:

(a) the remittance the matter to the arbitral tribunal;

(b) the commencement of a new arbitration, including the time within which such arbitration shall be commenced;

(c) the future conduct of any Court proceedings from which the parties were referred to arbitration under Section 10(2) of this Law; and

(d) the bringing of any action, including the time within which such action shall be brought by any party to the arbitral award concerning any matter which was the subject of the arbitral award which was set aside by the Court.

*61. Recognition and enforcement of arbitral awards*

(1) An arbitral award shall, irrespective of the jurisdiction or territory in which it is made, be recognised as binding, and subject to this Section, shall upon application in writing to the Court by a party, be enforced by the Court.

(2) An application under subsection (1) of this Section shall be accompanied by an original or certified copy of the award and evidence as to whether:

(a) the time limit for commencing an application to set aside the award at the place of arbitration has elapsed;

(b) there is a pending application to set aside the award;

(c) a stay of enforcement of the award has been issued;

(d) the award has been set aside; or

(e) the award has been remitted to the arbitral tribunal.

(3) The Court shall recognise and enforce the arbitral award unless:

(a) the award has been set aside by a court of competent jurisdiction at the place of arbitration;

(b) the subject matter of the dispute is not capable of resolution by arbitration under the laws of Nigeria;

(c) the time limit for commencing an application to set aside the award under the laws of the place of arbitration has not yet elapsed;

(d) there is a pending application to set aside the award, or a stay of enforcement of the award has been issued at the place of arbitration; or

(e) the award has been remitted to the arbitral tribunal.

(4) If subsection (3)(d) or (e) of this Section applies, the Court may order that recognition and enforcement of the arbitral award is stayed for a time and on conditions, including conditions as to the deposit of security.

## PART IX. THIRD-PARTY FUNDING OF ARBITRATION

*62. Interpretation.*

In this Part:

(a) "arbitration funding" in relation to an arbitration, means money, or any other financial assistance, in relation to any costs of the arbitration;

(b) "Attorney-General" means the Attorney-General and Commissioner for Justice of Delta State;

(c) "code of practice" means the code of practice issued under Section 70 of this Law and amended from time to time;

(d) "costs" in relation to an arbitration, means the costs and expenses of the arbitration and includes:

(i) pre-arbitration costs and expenses; and

(ii) the fees and expenses of the arbitral institution;

(e) "funded party" has the meaning stated in Section 65 of this Law;

(f) "funding agreement" has the meaning stated in Section 64 of this Law;

(g) "Gazette" means the Delta State of Nigeria Gazette;

(h) "potential third-party funder" means a person who carries on any activity with a view to becoming a third-party funder;

(i) "provision" means:

(i) in relation to the provision of arbitration funding to a person (recipient) - includes the provision of the arbitration funding to another person (for example, to the recipient's legal representative) at the recipient's request; and

(ii) in relation to the provision of arbitration funding by a person (funder) - includes the provision of the arbitration funding by another person that is arranged by the funder;

(j) "third-party funding" has the meaning stated in Section 66 of this Law and includes a potential third-party funder;

(k) "third-party funding of arbitration" has the meaning stated in Section 63 of this Law.

*63. Third-party funding of arbitration*

Third-party funding of arbitration is the provision of arbitration funding for an arbitration:

(a) under a funding agreement;

(b) to a funded party;

(c) by a third-party funder; and

(d) in return for the third-party funder receiving a financial benefit only if the arbitration is successful within the meaning of the funding agreement.

*64. Funding agreement*

A funding agreement is an agreement for third -party funding of arbitration that is:

(a) in writing;

(b) made between a funded party and a third -party funder; and

(c) made after the commencement date of this Law.

*65. Funded party*

(1) A funded party is a person:

(a) who is a party to an arbitration; and

(b) who is a party to a funding agreement to provide arbitration funding to the person by a third-party funder.

(2) In subsection (1) (a) of this Section, the reference to a party to an arbitration includes:

(a) a person who is likely to be a party to an arbitration that is yet to commence; and

(b) a person who was a party to an arbitration that has ended.

*66. Third-party funder*

(1) A third-party funder is a person:

(a) who is a party to a funding agreement to provide arbitration funding to a funded party by the person; and

(b) who does not have an interest recognised by law in the arbitration other than under the funding agreement.

(2) In subsection (1)(b) of this Section, the reference to a person who does not have an interest in an arbitration includes:

(a) a person who does not have an interest in the matter about which an arbitration is yet to commence; and

(b) a person who did not have an interest in an arbitration that has ended.

*67. Particular common law offences do not apply*

The common law offences of maintenance (including the common law offence of champerty) and of being a common barrator do not apply in relation to third-party funding of arbitration.

*68. Particular tort does not apply*

The tort of maintenance (including the tort of champerty) does not apply in relation to third-party funding of arbitration.

*69. Non-application to lawyers acting for parties in arbitration*

(1) This Part does not apply to the provision of arbitration funding to a party by a lawyer who during the lawyer's legal practice, acts for any party in relation to the arbitration.

(2) If a lawyer works for, or is a member of a legal practice (however described or structured), the references in subsection (1) of this Section to "lawyer" include the legal practice and any other lawyer who works for, or is a member of the legal practice.

(3) In this section:

(a) "lawyer" means:

(i) a person who is enrolled on the Roll of Legal Practitioners kept under the Legal Practitioners Act (Cap. L11 Laws of the Federation of Nigeria 2004 or an amendment or re-enactment of it); or

(ii) a person who is qualified to practise law in a jurisdiction other than Nigeria.

(b) "party" means a party to the arbitration within the meaning of Section 65 of this Law.

*70. Code of practice*

(1) The Attorney- General may issue a code of practice setting out the practices and standards with which third-party funders are expected to comply in carrying on activities connected with third- party funding of arbitration.

(2) The Attorney-General may amend or revoke the code of practice.

(3) Section 72 of this Law applies in relation to an amendment or revocation of the code of practice in the same way as it applies in relation to the code of practice.

*71. Content of code of practice*

(1) Without limiting Section 70 of this Law, the code of practice may, in setting out practices and standards, require third-party funders to ensure that:

(a) any promotional material in connection with third -party funding of arbitration is clear and not misleading;

(b) funding agreements set out their key features, risks and terms, including:

(iii) the degree of control that third-party funders will have in relation to an arbitration;

(iv) whether, and to what extent, third- party funders (or persons associated with the third -party funders) will be liable to funded parties for adverse costs, insurance premiums, security for costs and other financial liabilities; and

(v) when, and on what basis, parties to funding agreements may terminate the funding agreements or third-party funders may withhold arbitration funding;

(c) funded parties obtain independent legal advice on funding agreements before entering into them;

(d) third-party funders have a sufficient minimum amount of capital;

(e) third-party funders have effective procedures for addressing potential, actual or perceived conflicts of interest and the procedures enhance the protection of funded parties;

(f) third-party funders have effective procedures for addressing complaints against them by funded parties and the procedures allow funded parties to obtain and enforce meaningful remedies for legitimate complaints; and

(g) third-party funders follow the procedures mentioned in paragraphs (e) and (f) of this subsection.

(2) Without limiting subsection (1) of this Section, the code of practice may:

(a) specify terms to be included, or not to be included, in funding agreements; and

(b) specify what is to be included, or not to be included, in order to have effective procedures.

(3) The code of practice may:

(a) may be of general or special application; and

(b) may make different provisions for different circumstances and provide for different cases or classes of cases.

*72. Process for issuing code of practice*

(1) Before issuing a code of practice, the Attorney-General shall:

(a) consult the public about the proposed code of practice; and

(b) publish a notice to inform the public of the proposed code of practice.

(2) In preparing the proposed code of practice for public consultation, the Attorney-General may consult a person with knowledge or experience of arbitration or third - party funding of arbitration.

(3) The notice shall state the following information:

(a) the purpose and general effect of the proposed code of practice;

(b) how a copy of the proposed code of practice may be inspected; and

(c) that written submissions by any person about the proposed code of practice may be made to the Attorney-General before a specified time.

(4) After considering all written submissions made before the specified time, the Attorney-General may issue the code of practice (with or without revision) by causing its publication in the Gazette.

(5) The code of practice comes into operation on the day on which it is published in the Gazette under subsection (4) of this Section.

(6) The code of practice is not a subsidiary legislation.

*73. Non-compliance with the code of practice*

(1) A failure to comply with a provision of the code of practice does not, in itself, render any person liable to any judicial or other proceedings.

(2) Notwithstanding subsection (1) of this Section:

(a) the code of practice is admissible in evidence in proceedings before any court or arbitral tribunal; and

(b) any compliance, or failure to comply, with a provision of the code of practice may be considered by any court or arbitral tribunal if it is relevant to a question being decided by the court or arbitral tribunal.

*74. Disclosure of information for third-party funding of arbitration*

(1) Notwithstanding Section 79(2) of this Law, the information referred to in that Section may be communicated by a party to a person for the purpose of having, or seeking, third-party funding of arbitration from the person.

(2) The person who received the communication under subsection (1) of this Section may not further communicate the information unless:

(a) the further communication is made:

(i) to protect or pursue a legal right or interest of the person; or

(ii) to enforce or challenge an award made in the arbitration, in legal proceedings before a court or other judicial authority in or outside the State;

(b) the further communication is made to any government body, regulatory body, court or tribunal and the person is required by law to make the communication; or

(c) the further communication is made to a professional adviser of the person for the purpose of obtaining advice in connection with the third-party funding of arbitration.

(3) If a further communication is made by a person to a professional adviser under subsection (2)(c) of this Section, subsection (2) of this Section applies to the professional adviser as if the professional adviser were the person.

(4) In this section:

"communicate" includes publish or disclose.

*75. Disclosure about third-party funding of arbitration*

(1) If a funding agreement is made, the funded party shall give written notice of:

(a) the fact that a funding agreement has been made; and

(b) the name of the third-party funder.

(2) The notice shall be given:

(a) for a funding agreement made on or before the commencement of the arbitration; or

(b) for a funding agreement made after the commencement of the arbitration within 15 days after the funding agreement is made.

(3) The notice shall be given to:

(a) each other party to the arbitration; and

(b) the arbitral tribunal.

(4) For subsection (3)(b) of this Section, if the arbitral tribunal for the arbitration has not been constituted at the time, or at the end of the period specified in subsection (2) of this Section for giving the notice, the notice shall instead be given to the arbitral tribunal immediately after it has been constituted.

(5) In this section:

"arbitral tribunal" includes an emergency arbitrator.

*76. Disclosure about end of third-party funding of arbitration*

(1) If a funding agreement ends (other than because of the end of the arbitration), the funded party shall give written notice of:

(a) the fact that the funding agreement has ended; and

(b) the date the funding agreement ended.

(2) The notice shall be given within 15 days after the funding agreement ends.

(3) The notice shall be given to:

(a) each other party to the arbitration; and

(b) the arbitral tribunal (if any).

*77. Non-compliance with the provisions of Section 74, 75 or 76 of this Law*

(1) A failure to comply with Section 74, 75 or 76 of this Law does not of itself, render any person liable to any judicial or other proceedings.

(2) Subject to subsection (1) of this Section any compliance, or failure to comply, with Section 74, 75 or 76 of this Law may be considered by any court or arbitral tribunal if it is relevant to a question being decided by the court or arbitral tribunal.

## PART X. FINAL PROVISIONS

*78. Immunity*

(1) Subject to subsection (2) of this Section, no legal proceeding for damages lies or may be commenced or maintained against an arbitrator, arbitral institution or the Multidoor Courthouse because of anything done or omitted:

(a) in the performance or intended performance of any duty under this Law or under an arbitration agreement; or

(b) in the exercise or intended exercise of any power under this Law or under an arbitration agreement.

(2) Subsection (1) of this Section, does not apply to an arbitrator in relation to anything done or omitted in bad faith.

*79. Privacy and confidentiality*

(1) Unless otherwise agreed by the parties, all hearings and meetings in arbitral proceedings shall be held in private.

(2) Unless otherwise agreed by the parties, the parties and the arbitral tribunal shall not disclose any of the following:

(a) proceedings, evidence, documents and information in connection with the arbitration that are not otherwise in the public domain; and

(b) an arbitral award.

(3) Subsection (2) of this Section does not apply if the disclosure is:

(a) required by law;

(b) required to protect or pursue a legal right, including for the purposes of preparing and presenting a claim or defence in the arbitral proceedings or enforcing or challenging an arbitral award; or

(c) authorised by a competent court.

*80. Applications to Court under this Law*

The Rules in the First Schedule to this Law shall apply to any application to the Court arising under this Law.

*81. Repeal and transitional provisions*

(1) The Arbitration Law 1914, Cap A13 Laws of Delta State is hereby repealed.

(2) Anything done or concluded under the repealed Law shall be deemed to have been done or concluded under this Law.

(3) This Law applies to an arbitral proceeding if the arbitral proceeding is commenced on or after the date this Law comes into force.

(4) For the purpose of an arbitral proceeding to which this Law applies, a reference in the arbitration agreement to the Arbitration Law 1914, Cap A13 Laws of Delta State is deemed to be a reference to this Law.

FEDERAL REPUBLIC OF NIGERIA

# FIRST SCHEDULE

Section 80

## HIGH COURT OF DELTA STATE (ARBITRATION CLAIMS) RULES 2022

### PART I - GENERAL

*1. Title*
These rules may be cited as the High Court of Delta State (Arbitration Claims) Rules 2022.

*2. Interpretation*
In these Rules:

(a) "arbitration claim" means any motion to the High Court of Delta State seeking relief under the Law;
(b) "enforcement claim" means a claim referred to in Rule 14;
(c) "Law" means the Delta State Arbitration Law, 2022;
(d) "Section 10 application" means an application referred to in Rule 13;
(e) "State" means Delta State.

*3. Application of Rules*
(1) Notwithstanding the High Court of Delta State (Civil Procedure) Rules 2009 or any other rules of court, these Rules shall apply to any application or matter arising under the Law (an "arbitration-related case"). However, the High Court of Delta State (Civil Procedure) Rules 2009 (or any revision thereof) shall continue to apply to such extent as provision has not been expressly made in these rules.

(2) Failure to comply with these Rules shall not result in proceedings under the Law being a nullity, and the Court may, at any time and on such terms as to costs or otherwise as it considers appropriate, grant any amendment to cure any defect or error in the proceedings for the purpose of determining the real question or issue raised by or depending on the proceedings.

### PART II - ARBITRATION CLAIMS

*4. Establishment of specialist arbitration and ADR lists and judicial training*
(1) The Court shall assign all arbitration- related cases to a specialist list and shall designate particular Judges to deal with cases on the list.

(2) The Court shall work with reputable arbitration and ADR institutions to establish and implement a training curriculum for Judges assigned to deal with the specialist lists.

*5. Application of this part*
This Part shall apply to all arbitration claims, except for Section 10 applications, and enforcement claims, where it shall only apply to the extent provided in Parts III, IV and V of this Schedule.

*6. Starting an arbitration claim*
An arbitration claim shall be started by way of an originating motion.

*7. Content of originating motion*
(1) An originating motion starting an arbitration claim shall consist of:
(a) the motion;
(b) the written evidence by way of one or more affidavits on which the motion is based;
(c) a written address, which shall succinctly set out:
(i) the issues that arise for the Court's determination;
(ii) the submissions of fact to be made with references to the evidence;
(iii)the submissions of law with references to the relevant authorities; and
(d) copies of any authorities relied on by the claimant.
(2) The originating motion shall:
(a) include a concise statement of:
(i) the remedy claimed or relief sought; and
(ii) any question on which the claimant seeks the decision of the Court;
(b) give details of any arbitration award challenged by the claimant, identifying which part or parts of the award are challenged and specifying the grounds for the challenge;
(c) state the Section of the Law under which the claim is made;
(d) show that any applicable statutory requirement under the Law has been met;
(e) identify against which, if any, respondent or respondents a costs order is sought;
(f) where the motion is to be served on parties in addition to the respondents, such as members of a tribunal or any other third- party, specify the capacity in which these additional parties should be served, and the reason therefor; and
(g) where the claim is being made without notice to any respondent or additional party, specify the grounds relied upon for making the application without notice.

*8. Service generally*
(1) Unless the Court orders otherwise, and subject to Rule 9, an originating motion shall be served on the respondent or respondents within 30 days from the date on which the originating motion is filed.
(2) A copy of the originating motion shall be served on all parties to the arbitration claim, except where the arbitration claim is made without notice to any respondent or additional party under Rule 7 (2)(g).
(3) Service of any process in an arbitration claim shall be made:
(a) where a party has given an electronic address or number for service, by sending it electronically to that address or number and providing the Court with evidence of the electronic delivery;
(b) where a party has given an address for service, at that address; and
(c) where a party has not given an address for service, personally or at the registered address of the party, as the case may be.
(4) Where the Court is satisfied that the service under paragraph (3) is not possible, the Court may order that service on the party shall be:
(a) at the party's last known address;
(b) at a place where it is likely to come to the party's attention; or
(c) by substituted service in such other ways as the Court considers appropriate.

*9. Service out of jurisdiction*

(1) The Court may grant leave to serve an arbitration claim out of the jurisdiction if:

(a) the claimant seeks to set aside an arbitration award made within the State; or

(b) the claimant:

(i). seeks some other remedy or requires a question to be decided by the court affecting an arbitration (whether started or not), an arbitration agreement or an arbitration award; and

(ii). the juridical seat of the arbitration is or will be within the State.

(2) An application for leave to serve an arbitration claim out of the jurisdiction shall be made by way of motion and shall:

(a) state the ground or grounds on which the application is made; and

(b) specify the place or country in which the person to be served is, or is probably to be found.

(3) An order granting leave to serve an arbitration claim out of the jurisdiction shall specify:

(a) the period during which service shall be effected; and

(b) the period within which the respondent shall respond to the arbitration claim following service of the arbitration claim on it.

*10. Case Management*

(1) This Rule 10 shall apply to any arbitration claim unless the Court orders otherwise, either on its own motion or upon application by any party to the arbitration claim.

(2) The Court may, in particular, adapt any time period set out in this Rule to fit the circumstances of the case, bearing in mind the need for arbitration claims to be determined promptly.

(3) A respondent who does not contest any or all the remedies in an arbitration claim may file a notice stating such fact, and a Court or Judge in Chambers may grant such uncontested remedy or remedies without an oral hearing.

(4) Subject to Rule 9(3), a respondent who wishes to contest any or all the remedies in an arbitration claim shall file and serve the following within 14 days after service upon that party of the originating motion:

(a) the respondent's written evidence in the form of one or more affidavits and any supporting documents; and

(b) the respondent's written address, which shall succinctly set out:

(i) the issues that arise for the Court's determination;

(ii) the submissions of fact to be made with references to the evidence;

(iii) the submissions of law with references to the relevant authorities; and

(c) copies of any authorities relied on by the respondent.

(5) A claimant who wishes to rely on evidence in reply to written evidence filed by the respondent shall file and serve its written evidence in the form of one or more affidavits, together with any supporting documents, within 7 days after service of the respondent's evidence.

(6) Except in the case provided for in paragraph (7) of this Rule, the Court shall list an arbitration claim for hearing not later than thirty (30) days after service of the originating motion on the respondent, or in the case of multiple respondents, on the respondent last served.

(7) Where a respondent is served outside the jurisdiction under Rule 9(3), the Court shall list an arbitration claim for hearing not later than forty (40) days after service of

the originating motion on the respondent served outside the jurisdiction, or in the case of multiple respondents, on the respondent last served.

(8) In all cases, the Court shall, as far as possible, list the matter *de die in diem* (in one block of consecutive days).

*11. Hearings*

(1) Arbitration claims shall be determined based on the affidavit evidence filed by the parties without the need for oral evidence, unless the Court orders otherwise.

(2) The Court may order that any part of an arbitration claim be heard in private.

(3) Any hearing of an arbitration claim may be facilitated in appropriate circumstances by means of secure telephone lines, secure video conferencing facilities or such other means of communication as the Court deems fit and proper.

(4) All aspects of an arbitration claim shall be conducted virtually through Online Dispute Resolution (ODR), using any appropriate technology, provided that all or particular aspects of an arbitration claim may be heard on the basis of an Oral Court Hearing (OCH) rather than by ODR where a party establishes to the satisfaction of the Court that:

(a) the case is not suitable for ODR because the case requires oral evidence, or

(b) the court will be assisted by oral submissions in an OCH.

(5) If the Court finds that there is merit in such contention, the Court may direct that:

(a) the case should be determined exclusively on the basis of an OCH; or

(b) the case should be determined on a hybrid ODR/OCH basis.

(6) In this Rule, Online Dispute Resolution (ODR) includes:

(a) E-filing, online applications/appending case files.

(b) Electronic template forms online.

(c) Costs calculator for court fees.

(d) E-payments.

(e) Tracking proceedings.

(f) E-service.

(g) Making legal submissions online.

(h) Online interaction between the Court and parties.

(i) Receiving decisions online.

*12. Applications for interim injunctions*

(1) Whenever a Judge is dealing with an application for an *ex-parte* interim injunction in relation to a dispute arising from a contractual relationship, the Judge should ascertain if the contract contains an arbitration clause.

(2) If the contract contains an arbitration clause, the Judge should ascertain if the affidavit supporting the application for an *ex-parte* order gives reasons why the dispute has not been referred to arbitration.

(3) If the supporting affidavit does not give any reasons why the dispute has not been referred to arbitration, the Judge should decline the *ex-parte* order and direct that the opposing party and any other interested parties be served with notice of the application for injunctive relief.

(4) If the supporting affidavit gives reasons why the dispute has not been referred to arbitration, the Judge should consider the merits of such reasons on a *prima facie* basis before deciding whether to:

(a) grant or refuse the *ex-parte* order, or

(b) direct that the opposing party and any other interested parties be served with notice of the application.

(5) When deciding whether to make any of the orders referred to in Rule 4 (a) and (b) above, the Judge must also consider whether:

(a) there are circumstances of real urgency disclosed in the affidavit supporting the application; and

(b) the applicant has demonstrated that it will suffer irreparable harm if the *ex-parte* interim injunction is not granted.

(6) If an interim *ex-parte* order is granted in circumstances where:

(a) the applicant has failed to give reasons why the dispute has not been referred to arbitration or,

(b) the reasons given by the applicant as to why the dispute has not been referred to arbitration are found to be factually untrue or legally unmeritorious,

the interim order shall be discharged forthwith.

(7) This Rule 12 is without prejudice to any rule of procedure by which an *ex-parte* order of interim order terminates or lapses in the circumstances prescribed by such rules of procedure.

## PART III - APPLICATIONS UNDER SECTION 10 OF THE LAW

*13. Applications for stay of Court proceedings in favour of arbitration under Section 10 of the Law*

(1) Where a party to an action pending before the Court contends that the action is the subject of an arbitration agreement, it shall make an application by motion on notice (a "Section 10 application") to that effect to that Court, together with any supporting documents and a written address.

(2) Where the application complies with paragraph (1) of this Rule and Section 10 (1) of the Law, it shall continue as an arbitration claim under Part II, save that the Court may adapt the time periods under Rule 10 pursuant to rule 10(1)(b) of this Schedule.

(3) The Court shall first make a *prima facie* determination, based on the parties written submissions (and without requiring an oral hearing), on whether a party has shown that there is a very strong probability that the arbitration agreement may be null and void, inoperative or incapable of being performed, as required under Section 10(2) of the Law.

(4) If a party is not able to show on a *prima facie* basis, that there is such a very strong probability, the Court shall refer the parties to arbitration.

(5) If a party can show on a *prima facie* basis, that there is such a very strong probability, the Court shall then proceed finally to determine whether the arbitration agreement is null and void, inoperative or incapable of being performed, and if the Court finds that the arbitration agreement:

(a) is null and void, inoperative or incapable of being performed, it shall resume its proceedings; or

(b) is not null and void, inoperative or incapable of being performed, it shall refer the parties to arbitration.

*14. Recognition and enforcement of arbitral awards or interim measures of protection*

(1) Save as otherwise provided in this Part, an application under this paragraph shall be made by way of an arbitration claim under Part II (an "enforcement claim") and shall be initially made without notice to any respondent.

(2) The written evidence filed in support of an enforcement claim shall:

(a) exhibit the original or a certified copy of the award or the decision containing the interim measure of protection;

(b) state the name and the usual or last known place of residence or business of the applicant and of the person against whom it is sought to enforce the award or the interim measure of protection;

(c) state as the case may require, either:

(i) that the award or interim measure of protection has not been complied with; or

(ii) the extent to which it has not been complied with at the date of the application.

(3) Where the party is a body corporate, references in this paragraph to the place of residence or business shall have effect as if the reference were to the registered address or the principal place of business of the body corporate.

(4) Upon receipt of an enforcement claim, the Court shall verify compliance with paragraph (2) and issue a provisional order granting recognition of the award or interim measure of protection or authorising the enforcement of the award or interim measure of protection in the same manner as a judgment of the Court.

(5) In addition to the respondents identified by the applicant, the Court may specify parties to the arbitration on whom the enforcement claim motion, comprising the originating motion, the written evidence on which the motion is based and the written address, and the provisional order, shall be served.

(6) Within 14 days after receipt of the provisional order referred to in paragraph (5), the applicant shall cause the enforcement claim motion and the provisional order to be served on the respondent and on any additional party by any of the means provided in Part II of these Rules.

(7) Within 14 days after service of the enforcement claim motion and of the provisional order on them or, if the enforcement claim motion and the provisional order are to be served out of the jurisdiction, within such other period as may be specified in an order under Rule 9 (3), a respondent may apply to set aside the provisional order.

(8) The award or interim measure shall not be enforced until after:

(a) the end of the period referred to in paragraph (7) of this Rule; or

(b) any application made by the respondent within that period has been finally disposed of.

*15. Interest on awards*

Where an applicant in an enforcement claim seeks to enforce an award on interest, the whole or any part of which relates to a period after the date of the award, that party shall include the following particulars in their enforcement claim motion:

(a) whether simple or compound interest was awarded;

(b) the date from which interest was awarded;

(c) specifying the periods of rest, if any;

(d) the rate of interest awarded; and
(e) a calculation showing:
(i) the total amount claimed up to the date of the statement; and
(ii) any sum which will become due on a daily basis.

PART V - COSTS AND SECURITY FOR COSTS IN ARBITRATION CLAIMS

*16. Scope and interpretation*

(1) This Part shall apply to all arbitration claims.

(2) A costs order shall be made against a party to the proceedings and not his legal representative, unless the order is made against a legal representative under Rule 24.

(3) In this part:

(a) "detailed assessment" means the procedure by which the Court determines the amount of any costs to be paid pursuant to an order or orders about costs;
(b) "paying party" means a party liable to pay costs;
(c) "receiving party" means the procedure by which the Court, when making an order about costs, determines the amount to be paid pursuant to the order or part thereof;
(d) "wasted costs" means costs ordered by the Court under Rule 24(2);
(e) "wasted costs order" means an order made under Rule 24.

*17. Duty to notify client*

Where:

(a) the Court makes an order against a party who is represented; and
(b) the party is not present in Court when the order is made,

the party's lawyer shall notify the party in writing on the costs order no later than 7 days after the lawyer receives notice of the order.

*18. Exercise by Court of its discretion as to costs*

(1) The Court has discretion as to:

(a) whether costs are payable by one or more parties to another party or parties;
(b) which parties are to pay costs to which other parties;
(c) whether the costs payable are all of the receiving party's costs of the proceedings, or only a proportion or part of those costs;
(d) whether the costs payable are to be the receiving party's costs of the proceedings or of part of the proceedings;
(e) the amount of those costs; and
(f) when they are to be paid.

(2) In deciding whether to make an order for costs:

(a) the general rule is that the unsuccessful party or parties shall be ordered to pay the costs of the successful party or parties; but
(b) the Court may make a different order.

(3) In deciding what order, if any, to make about costs, the Court shall have regard to all the circumstances, including:

(a) the conduct of all the parties;
(b) whether a party has succeeded on part of that party's case, even if the party has not been wholly successful; and

(c) any admissible offer to settle made by a party which is drawn to the Court's attention.

(4) Where a party entitled to costs is also liable to pay costs, the Court may assess the costs which that party is liable to pay and either:

(a) set off the amount assessed against the amount the party is entitled to be paid and direct that party to pay any balance; or

(b) delay the issue of a certificate for the costs to which the party is entitled to until the party has paid the amount for which he is liable to pay.

*19. Payment on account of costs*

(1) Where the Court has ordered a party to pay costs but has not determined the amount of those costs, it may order an amount to be paid on account before the costs are assessed.

(2) Any sum ordered to be paid on account of costs under paragraph (1) shall not exceed the sum which, on a brief *prima facie* view, the Court considers to be the minimum amount which is likely to be determined upon assessment.

*20. Procedure for assessing costs*

(1) Where the Court orders a party to pay costs to another party, it shall decide upon the basis of assessment under Rule 21, and shall make a summary assessment of costs as provided under Rule 22 unless it is not practicable to do so.

(2) If the Court does not make a summary assessment of the costs, the amount of the costs shall be determined by detailed assessment in accordance with Rule 23.

*21. Basis of assessment*

(1) Where the Court makes an order for costs:

(a) the amount of the costs shall be assessed on the standard basis unless the Court orders that the costs are to be assessed on the indemnity basis; and

(b) the Court may order that the costs are to be assessed on the indemnity basis where it is satisfied, having regard to all the circumstances, that it is fair and reasonable to do so on the grounds that:

(i) the conduct of the paying party has been highly unreasonable; or

(ii) the circumstances of the case make it exceptional in some other way.

(2) The amount of costs allowed upon an assessment on the standard basis shall be the costs incurred by the receiving party to the extent that those costs were reasonably incurred and reasonable and proportionate in amount, with any doubt being resolved in favour of the paying party.

(3) The amount of costs allowed upon an assessment on the indemnity basis shall be the costs incurred by the receiving party to the extent that those costs were reasonably incurred and reasonable in amount with any doubt being resolved in favour of the receiving party.

(4) The amount of costs allowed on an assessment on either basis shall not exceed the amount of costs which the receiving party has paid or is liable to pay.

*22. Summary assessment of costs*

(1) A summary assessment is a determination of the amount payable under an order for costs by the Court that which made the order for costs.

(2) A summary assessment shall be carried out at the hearing at which the order for costs is made.

(3) Not less than 24 hours before the hearing, each party which intends to claim costs to be assessed by summary assessment shall serve a summary schedule of the costs claimed on any party against which it intends to seek those costs, setting out the following information:

(a) the amount of costs claimed;

(b) the basis on which those costs have been calculated; and

(c) a summary of the disbursements claimed.

*23. Detailed assessment of costs*

(1) A detailed assessment of costs is a determination of the amount payable under an order for costs, other than a summary assessment.

(2) The determination referred to in sub rule (1) shall be made by the Court pursuant to the following procedure:

(a) not later than 30 days from the date of the order for costs, or such other period as may be ordered by the Court which made the order for costs, the receiving party shall serve upon each paying party a detailed schedule of the costs claimed, including the following information:

(i) the amount of costs claimed;

(ii) the basis on which those costs have been calculated;

(iii) a breakdown of the time spent by each lawyer into units of not more than one hour and the amount charged per hour or for that work, as the case may be; and

(iv) a summary of the disbursements claimed;

(b) not later than 14 days from service of the schedule under paragraph (a), each paying party shall serve upon the receiving party a counter-schedule setting out any items which the paying party asserts should be reduced or disallowed and a brief statement of the grounds for that assertion;

(c) if the parties cannot reach an agreement as to the amount payable by the paying party, the receiving party shall, within days of the service of any counter-schedules, inform the Court in writing that agreement has not been possible, and the matter shall be referred to the Court for assessment;

(d) the general rule is that the Court shall make an assessment of the amount payable by the paying party without a hearing;

(e) if the Court considers that a hearing is necessary, it shall list a hearing at which the parties may make submissions for the Court to determine the amount of costs payable. The determination of the amount payable may be made either at the hearing itself if practical, or immediately following the hearing;

(f) the Court may give reasons for any decision that it makes upon a detailed assessment but shall not be required to do so; and

(g) within 7 days of the conclusion of a detailed assessment under paragraph (d) or (e), the Court shall prepare and serve on any paying party and any receiving party a certificate of the amount assessed to be payable, together with the reasons for its decision, if any.

*24. Time for complying with order for costs*

Unless the Court orders otherwise, a party shall comply with an order for the payment of costs within 14 days of:

(a) the date of the judgment or order if it states the amount of those costs; or

(b) if the amount of those costs or part of them is decided later, the date of the order determining the amount, or the certificate issued under Rule 23(g).

*25. Wasted costs orders*

(1) This Rule shall apply where the Court is considering whether to make a costs order against the legal representative(s) of a party.

(2) The Court may order a legal representative to meet some of or all the costs of the proceedings, where such costs have been incurred by a party:

(a) as a result of any improper, unreasonable or negligent act or omission on the part of any legal representative or any employee of such a representative; or

(b) which in the light of any such act or omission occurring after they were incurred, the Court considers it is unreasonable to expect that party to pay.

(3) The Court shall give the legal representative a reasonable opportunity to attend a hearing to give reasons why it should not make a wasted costs order.

(4) For the purposes of this Rule, the Court may direct that privileged documents are to be disclosed to the Court and, if the Court so directs, to the other party to the application for a wasted costs order.

(5) When the Court makes a wasted costs order, it shall specify the amount to be disallowed or paid.

(6) The Court may direct that notice shall be given to the legal representative's client in such manner as the Court may direct, if:

(a) any proceedings under this Rule; or

(b) any wasted costs order made under it against the party's legal representative.

*26. Security for costs in arbitration claims*

(1) A defendant in any arbitration claim may apply for security for that party's costs of the proceedings.

(2) An application for security for costs shall be supported by an affidavit accompanied by any supporting documents and a written address.

(3) Where the Court decides to make an order for security for costs, it shall:

(a) determine the amount of security;

(b) direct the manner in which and the time within which the security shall be given; and

(c) make an order specifying the consequences of a breach of the order for security for costs.

*27. Conditions to be satisfied for order for security for costs*

(1) The Court may make an order for security to costs under Rule 26 if:

(a) it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order; and

(b) one or more of the conditions in paragraph (2) applies.

(2) The conditions are that:

(a) the claimant is resident out of the jurisdiction;

(b) the claimant is a company or other body, whether incorporated inside or outside Nigeria and there is reason to believe that it will be unable to pay the respondent's costs if ordered to do so;

(c) the claimant has changed its address since the claim was commenced with a view to evading the consequences of the claim;

(d) the claimant failed to give his address in the originating process, or gave an incorrect address in that process;
(e) the claimant is acting as a nominal claimant and there is reason to believe that it will be unable to pay the defendant's costs if ordered to do so; or
(f) the claimant has taken steps in relation to his assets that would make it difficult to enforce an order for costs against him.

*28. Security for costs of an appeal*
The Court may order security for costs of an appeal against:
(a) an appellant; and
(b) a respondent who also appeals on the same grounds as it may order security for costs against a claimant under Rule 26 of this Schedule.

## SECOND SCHEDULE

## EMERGENCY ARBITRATOR PROCEDURES

Section 37

*1. Appointment of emergency arbitrator*
(1) A party requiring interim measures before the constitution of the arbitral tribunal may submit an application for the appointment of an emergency arbitrator to any arbitral institution designated by the parties, or, failing such designation, to the Court.
(2) The party requesting the appointment of an emergency arbitrator shall provide sufficient copies of the application to the arbitral institution or the Court, as the case may be, to provide one copy for the emergency arbitrator and one copy for each party.
(3) Unless the parties agree otherwise, the application shall include the following information:
(a) a statement of the urgent interim measures sought;
(b) the name in full, description, address and other contact details of each of the parties;
(c) a description of the circumstances giving rise to the application and of the underlying dispute referred to arbitration;
(d) the reasons why the applicant needs the urgent interim measures that cannot await the constitution of an arbitral tribunal;
(e) the reasons why the applicant is entitled to such urgent interim measures; and
(f) any relevant agreement(s) and in particular, the arbitration agreement(s).
(4) The application may contain such other documents or information as the applicant considers appropriate or as may contribute to the efficient examination of the application.
(5) If the arbitral institution or Court determines that it should accept the application, it shall, unless the parties otherwise agree, appoint an emergency arbitrator within 5 business days after the date the application is received.
(6) Once the Emergency Arbitrator has been appointed, the arbitral institution or Court shall at the expense of the party making the application, immediately notify the emergency arbitrator and other party or parties named in the application, no later than the close of business on the business day following the date the application is granted,

or such other time (not exceeding 5 business days) as the arbitral institution or Court considers to be appropriate in the circumstances.

(7) After the arbitral institution or court appoints the emergency arbitrator, all written communications from the parties shall be submitted directly to the emergency arbitrator with a copy to the other party or parties.

(8) Every emergency arbitrator shall be and remain independent and impartial as required under Section 17 of the Law.

*2. Challenge of emergency arbitrator*

(1) Unless the parties otherwise agree:

(a) A party that wishes to challenge the appointment of the emergency arbitrator shall do so within:

(i) within three days from receipt by the party of the notification of the emergency arbitrator's appointment; or

(ii) from the date when that party was informed of the facts and circumstances on which the challenge is based, provided that the date is after the receipt of the notification.

(b) The grounds for challenging an arbitrator in Section 18 of the Law shall also apply to the challenge of an emergency arbitrator.

(2) The arbitral institution or Court that appointed the emergency arbitrator shall decide the challenge after a reasonable opportunity has been afforded to the emergency arbitrator and the parties to provide submissions in writing, but no later than three (3) business days after the date of the challenge.

(3) Where an emergency arbitrator dies, has been successfully challenged, has been otherwise removed, or has withdrawn from the proceedings, the arbitral institution or Court shall appoint a substitute emergency arbitrator within two (2) business days.

(4) Where the emergency arbitrator is replaced, the emergency proceedings shall resume at the stage where the emergency arbitrator was replaced or ceased to perform his or her functions, unless the substitute emergency arbitrator decides otherwise.

*3. Conduct of emergency proceedings*

(1) Taking into account the urgency inherent in the emergency proceedings and ensuring that each party has a reasonable opportunity to be heard, the emergency arbitrator may conduct such proceedings in such a manner as the emergency arbitrator considers appropriate.

(2) The emergency arbitrator shall have the power to rule on objections that the emergency arbitrator has no jurisdiction, including any objections with respect to the existence, validity or scope of the arbitration clause(s) or of the separate arbitration agreement(s).

(3) Any meetings between the parties and the emergency arbitrator may be conducted in person at any location the emergency arbitrator considers appropriate or by video conference, telephone or similar means of communication.

*4. Decisions of emergency arbitrator*

(1) Any decision of the emergency arbitrator shall take the form of an Order (the "Emergency Decision") and shall be made within 14 days from the date on which the file is received by the emergency arbitrator. This period may be extended by the agreement of the parties.

(2) The Emergency Decision may be made even if in the meantime the file has been transmitted to the arbitral tribunal.

(3) An Emergency Decision shall:

(a) be made in writing;

(b) state the date when it was made and a summary of the reasons upon which the Emergency Order is based (including a determination on whether the emergency arbitrator has jurisdiction to grant the urgent interim measure(s)); and

(c) be signed by the emergency arbitrator.

(4) Any Emergency Decision shall fix the costs of the emergency proceedings and decide which of the parties shall bear them or in what proportion they shall be borne by the parties, subject always to the power of the arbitral tribunal to determine finally the apportionment of such costs in accordance with Section 53 of the Law.

(5) The costs of the emergency proceedings include the emergency arbitrator's fees and expenses and the reasonable and other legal costs incurred by the parties for the emergency proceedings.

(6) Any Emergency Decision shall be recognised and enforced in the same manner as an interim measure under Section 46 of the Law and shall be binding on the parties when rendered. The parties undertake to comply with any Emergency Decision without delay.

(7) The emergency arbitrator shall be entitled to order the provision of appropriate security by the party seeking urgent interim measures.

(8) Any Emergency Decision may, upon a reasoned request by a party, be modified, suspended, or terminated by the emergency arbitrator or the arbitral tribunal (once constituted).

(9) Any Emergency Decision ceases to be binding:

(a) if the emergency arbitrator or the arbitral tribunal so decides;

(b) upon the arbitral tribunal rendering a final award, unless the arbitral tribunal expressly decides otherwise;

(c) upon the withdrawal of all claims or the termination of the arbitration before the rendering of a final award; or

(d) if the arbitral tribunal is not constituted within 90 days from the date of the Emergency Decision. This period may be extended by the agreement of the parties.

(10) The emergency arbitrator's decision shall not bind the arbitral tribunal with respect to any question, issue or dispute determined in the Emergency Decision. The arbitral tribunal may modify, terminate, or annul the Emergency Decision or any modification thereto made by the emergency arbitrator.

(11) The arbitral tribunal shall decide upon any party's requests or claims related to the emergency proceedings, including the reallocation of the costs of such proceedings and any claims arising out of or in connection with the compliance or non-compliance with the order.

*5. General provisions*

(1) The emergency arbitrator procedures set out in this Schedule are not intended to prevent any party from seeking urgent interim measures from a competent court at any time.

(2) In all matters not expressly provided for in this Schedule, the emergency arbitrator shall act in the spirit of the general principles under Section 4 of the Law.

(3) The emergency arbitrator shall make every reasonable effort to ensure that an Emergency Decision is valid.

This printed impression has been carefully compared by me with the Bill which has passed the Delta State House of Assembly and found by me to be a true and correctly printed copy of the said Bill.

[*signature*]
*Clerk*
*Delta State House of Assembly.*

ASSENTED to/~~not assented to~~ this 22nd day of December 2022.

[*signature*]
*Governor*
*Delta State of Nigeria*