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. This Law may be cited as the Delta State Arbitration Law, 2022. Short Title.

2. (1) In this Law, unless the context otherwise requires: Interpretation.

"*arbitration*" means any method of resolving a dispute through an arbitral tribunal, whether or not its organisation 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;

"*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.

Scope of Application.

3. (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.

General Principles.

4. 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.

Receipt of written communications.

5. (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.

Waiver of the right to object.

6. 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.

Death of a Party.

7. (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.

Extent of Court intervention.

8. 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

Form of the arbitration agreement.

9. (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.

Stay of Court proceedings.

10. (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

Commencement of arbitral proceedings.

11. (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.

Consolidation.

12. (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 a 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.

Limitation periods.

13. (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

Number of arbitrators.

14. If the parties to an arbitration agreement do not agree on the number of arbitrators, an arbitral tribunal shall be composed of one arbitrator.

Appointment of arbitrators.

15. (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.

Multiparty arbitration.

16. (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.

Independence and impartiality of arbitrator.

17. (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.

Grounds for challenge.

18. (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.

Challenge procedure.

19. (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.

Failure or impossibility to act.

20. (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.

Termination of mandate and substitution of arbitrator.

21. (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

General duties of arbitral tribunal.

22. 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.

General duties of the parties.

23. (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.

Competence of arbitral tribunal to rule on its jurisdiction.

24. (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.

Representation in arbitral proceedings.

25. A party to arbitral proceedings may appear or act in person or may be represented or assisted by any other person.

Law applicable to substance of dispute.

26. (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.

Conflict of laws.

27. 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.

Application of agreed standards.

28. 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.

Evidence.

29. (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.

Production and evidence from non-parties.

30. (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.

Hearings and written proceedings.

31. (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.

Hearing location.

32. (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.

Procedural powers of arbitral tribunal.

33. (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.

Party default.

34. (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.

Expert appointed by arbitral tribunal.

35. (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.

Duty of expert.

36. (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

Appointment and competence of emergency arbitrator.

37. (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.

Power of arbitral tribunal to order interim measures.

38. (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.

Conditions for granting interim measures.

39. (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.

Applications for preliminary orders and conditions for granting preliminary orders.

40. (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.

Specific regime for preliminary orders.

41. (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.

Modification, suspension or termination of interim measures and preliminary orders.

42. 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.

Provision of security.

43. (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.

Disclosure.

44. (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.

Costs and damages.

45. (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.

Recognition and enforcement of interim measures.

46. (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.

Grounds for refusing recognition or enforcement of an interim measure.

47. (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.

Court Ordered Interim Measures.

48. (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.

PART VII.
MAKING OF ARBITRAL AWARDS AND TERMINATION OF ARBITRAL PROCEEDINGS

Majority decision.

49. (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.

Settlement.

50. (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.

Form, content, and delivery of arbitral award.

51. (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.

Partial awards.

52. An arbitral tribunal may make an arbitral award that finally decides a matter in dispute while retaining jurisdiction to decide another matter in dispute.

Costs.

53. (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.

Interest.

54. (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.

Withholding arbitral award.

55. (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.

Binding nature of arbitral award.

56. An arbitral award is final and binding on all the parties to the award.

Arbitral Tribunal fees and expenses.

57. (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.

Corrections, interpretations, and additional arbitral awards.

58. (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.

Termination of proceedings.

59. (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

Applications for setting aside arbitral awards.

60. (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 of 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.

Recognition and enforcement of arbitral awards.

61. (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

Interpretation.

62. 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.

Third-party funding of arbitration.

63. 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.

Funding agreement.

64. 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.

Funded party.

65. (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.

Third-party funder.

66. (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.

Particular common law offences do not apply.

67. 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.

Particular tort does not apply.

68. The tort of maintenance (including the tort of champerty) does not apply in relation to third-party funding of arbitration.

Non-application to lawyers acting for parties in arbitration.

69. (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.

Code of practice.

70. (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.

Content of code of practice.

71. (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.

Process for issuing code of practice.

72. (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.

Non-compliance with the code of practice.

73. (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.

Disclosure of information for third-party funding of arbitration.

74. (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.

Disclosure about third-party funding of arbitration.

75. (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.

Disclosure about end of third-party funding of arbitration.

76. (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).

Non-compliance with the provisions of Section 74, 75 or 76 of this Law.

77. (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

Immunity.

78. (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.

Privacy and confidentiality.

79. (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.

Applications to Court under this Law.

80. The Rules in the First Schedule to this Law shall apply to any application to the Court arising under this Law.

Repeal and transitional provisions.

81. (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.

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.

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.

Part II – Arbitration claims

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.

Part IV – Recognition and Enforcement of Interim Measures or Arbitral Awards

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 14 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.

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Clerk
Delta State House of Assembly.

ASSENTED to/~~not assented to~~ this ...22nd... day of...December...... 2022.

....

Governor
Delta State of Nigeria