

## **ARBITRATION AND MEDIATION ACT, 2023**

### **EXPLANATORY MEMORANDUM**

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

## **ARBITRATION AND MEDIATION ACT, 2023**

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## **ARBITRATION AND MEDIATION ACT, 2023**

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

**[26th Day of May, 2023]    [Commencement]**

**ENACTED** by the National Assembly of the Federal Republic of Nigeria as follows -

### **PART I - ARBITRATION**

#### **Objectives and Application**

- 1.(1)** The objective of this Part is to promote fair resolution of disputes by an impartial tribunal without unnecessary delay or expense.
- (2)** Parties to a dispute are at liberty to decide the means by which their disputes may be resolved, provided they adhere to measures that are necessary to promote peaceful existence and protect public interest.
- (3)** An arbitration agreement between parties for settlement of dispute shall be binding on parties and enforceable against each of the parties to the exclusion of any other dispute resolution method unless the parties otherwise provide or the agreement is void.
- (4)** Parties, arbitrators, arbitral institutions, appointing authorities and the court shall do all things necessary for the proper and expeditious conduct of the arbitral proceedings.
- (5)** This Part shall apply to -

- (a) international commercial arbitration, subject to any agreement in force between Federal Republic of Nigeria and any other country or countries;
- (b) inter-state commercial arbitration within the Federal Republic of Nigeria; and
- (c) commercial arbitration within the Federal Republic of Nigeria
- (6) The provisions of this Part shall apply, where the seat of the arbitration is in the territory of the Federal Republic of Nigeria.
- (7) The powers of the Court under this subsection shall apply even where the seat of the arbitration is outside the Federal Republic of Nigeria or the parties have not designated the seat or no seat has been determined -
  - (a) section 5 (power to stay court proceedings);
  - (b) section 19 (power of Court to grant interim measures of protection);
  - (c) section 28 (recognition and enforcement of interim measures);
  - (d) section 29 (refusing recognition and enforcement of interim measures);
  - (e) section 43 (securing the attendance of witnesses);
  - (f) section 57 (recognition and enforcement of awards); and
  - (g) section 58 (refusing recognition and enforcement of awards).

#### **Forms of arbitration agreement**

- 2. (1) Arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate complete agreement.
- (2) The arbitration agreement shall be in writing.
- (3) An arbitration agreement shall be in writing where its content is recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct, or by any other means.



- (4) The requirement for arbitration agreement to be in writing is met, where it is—
- (a) by an electronic communication, as defined in section 91, and the information contained in it is accessible so as to be useable for subsequent reference; and
- (b) it is contained in an exchange of points of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other.
- (5) Reference in a contract or a separate arbitration agreement to a document containing an arbitration clause constitutes an arbitration agreement in writing, provided that the reference is in a manner that makes it part of the contract or the arbitration agreement.

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

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

**Death or change status of party**

4. (1) An arbitration agreement shall not be invalid by reason of the death of any of the parties to the agreement.
- (2) The authority of an arbitrator shall not be revoked by the death, bankruptcy, insolvency or other change in circumstance of any party by whom the arbitrator was appointed.
- (3) Nothing in this section shall be construed to affect the operation of any law by virtue of which any right of action is extinguished by the death of a person.
- (4) For the purposes of this section, "death" includes the meaning ascribed to it in section 91(1) of this Act.

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

- 5.(1) Notwithstanding the provisions of any other law, a court before which an action is brought in a matter, which is the subject of an arbitration agreement shall, if any of the parties request, not later than when submitting their first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is void, inoperative or incapable of being performed.
- (2) Where an action referred to in subsection (1) has been brought before a court, arbitral proceedings may be commenced or continued, and an award may be made by the arbitral tribunal while the matter is pending before the court.
- (3) Where a court makes an order for stay of proceedings under subsection (1), the court may, for the purpose of preserving the rights of parties, make an interim or supplementary order as may be necessary.

**Number of arbitrators**

6. (1) Parties to an arbitration agreement may agree on the number of arbitrators to constitute an arbitral tribunal.
- (2) Where there is no agreement as to the number of arbitrators, the arbitral tribunal shall consist of a sole arbitrator.

**Appointment of arbitrators**

- 7.(1) A person shall not be precluded, by reason of the person's nationality, from acting as an arbitrator, unless it is agreed to by the parties.
- (2) Parties may agree on a procedure of appointing an arbitrator, subject to the provisions of subsections (4) and (5).
- (3) Subject to section 59 of this Act, where the parties fail to agree on the procedure for appointing an arbitrator under subsection (2), in an arbitration -
- (a) with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators appointed shall appoint the third arbitrator. Where a party fails to appoint the arbitrator within 30 days of receipt of a request



to do so from the other party, or where the two arbitrators appointed by the parties fail to agree on the third arbitrator within 30 days of their appointment, the appointment shall be made, upon request of a party, by the appointing authority designated by the parties or, failing such designation, by an arbitral institution in Nigeria or by the Court;

- (b) with a sole arbitrator, where the parties are unable to agree on the arbitrator within 30 days after the receipt of a written communication containing a request for the dispute to be referred to arbitration by the other party or parties, the arbitrator shall be appointed, upon request of a party, by the appointing authority designated by the parties or, failing such designation, by any arbitral institution in Nigeria or by the Court;
- (c) where the parties to a dispute are more than two, and the arbitration agreement entitles each party to nominate an arbitrator, if within 30 days of the receipt of a written communication containing a request for the dispute to be referred to arbitration, the parties have not agreed in writing that the disputing parties represent two separate sides for the formation of the arbitral tribunal as claimant and respondent respectively, then the appointing authority designated by the parties or, failing such designation, any arbitral institution in Nigeria or the Court shall, upon request of a party, have the power to appoint the arbitral tribunal without regard to any party's nomination;
- (d) where the designated appointing authority or, failing such designation, any arbitral institution in Nigeria or the Court is requested to appoint an arbitrator under the provisions of this section, the party which makes the request shall send to the appointing authority, arbitral institution or Court, a copy of the request for a dispute to be referred to arbitration, a copy of the contract out of or in relation to which the dispute has arisen and a copy of the arbitration agreement if it is not contained in the contract. The appointing authority, arbitral institution or Court may require from either party such other information as it deems necessary to fulfil its functions under this Act; and
- (e) where a party proposes the names of one or more persons for appointment as arbitrators, their full names, addresses and nationalities shall be indicated, together with a description of their qualifications.



- (4) Save as otherwise specifically provided under this Act, where, under an appointment procedure agreed upon by the parties -
- (a) a party fails to act as required under the procedure;
  - (b) the parties, or the two arbitrators appointed by the parties, are unable to appoint the third and presiding arbitrator; or
  - (c) the appointing authority, a third party, including an arbitral institution fails to perform any function entrusted to it under such appointment procedure, any party may request the Court to take the necessary action, or perform the necessary function, unless the appointment procedure agreed by the parties provides other means for securing the appointment.
- (5) The appointing authority, arbitral institution or the Court exercising its power of appointment under this section shall -
- (a) appoint within 30 days of the request;
  - (b) have due regard to the qualification required of an arbitrator in the arbitration agreement and to the considerations as are likely to secure the appointment of an independent and impartial arbitrator; and
  - (c) in the case of a sole or third arbitrator, take into account the advisability of appointing an arbitrator of a nationality other than those of the parties.
- (6) The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the arbitral institution chosen by a party.

#### **Grounds for challenge**

8. (1) Where a person is approached in connection with possible appointment as an arbitrator, the person shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence.
- (2) An arbitrator shall from the time appointed and throughout the arbitral proceedings, disclose to the parties any relevant circumstances not



within the knowledge of the parties.

- (3) An arbitrator may only be challenged where circumstances exist that give rise to justifiable doubts as to his or her impartiality or independence, or if he or she does not possess qualifications agreed to by the parties.
- (4) A party may only challenge an arbitrator it appointed, or in whose appointment it has participated for reasons of which it becomes aware after the appointment has been made.

### **Challenge procedure**

- 9. (1) The parties may agree on a procedure for challenging an arbitrator, subject to the provisions of subsection (3).
- (2) Where agreement is not reached between the parties under subsection (1), a party who intends to challenge an arbitrator shall, within 14 days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in section 8 (3) and (4) of this Act, send a written statement of the reasons for the challenge to the arbitral tribunal and unless the challenged arbitrator withdraws or the other party or parties agree to the challenge, the arbitral tribunal shall decide on the challenge.
- (3) Where a challenge under any procedure agreed upon by the parties or under subsection (2) is not successful, the challenging party may, within 30 days after having received notice of the decision rejecting the challenge, request either -
  - (a) the appointing authority, arbitral institution or the Court that appointed the arbitrator; or
  - (b) where the party that appointed the arbitrator, the Court, as may be appropriate to decide the challenge and while the request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.
- (4) The appointing authority, arbitral institution or Court shall decide on the admissibility and, at the same time, if necessary, on the merits of the

challenge after affording an opportunity for the arbitrator concerned, the other party or parties and any other members of the arbitral tribunal to comment in writing within a suitable period of time.

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

**Failure or impossibility to act**

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

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

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

**Appointment of substitute arbitrator**

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

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

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



- (a) the arbitrator's entitlement, if any, to fees or expenses; and
- (b) any liability incurred by the arbitrator.
- (2) Where there is no agreement referred to in subsection (1)-
  - (a) an arbitrator who withdraws from appointment may, upon notice to the parties, apply to the appointing authority designated by the parties or, failing such designation, apply to the Court to -
    - (i) grant the arbitrator relief from any liability incurred by the arbitrator, and
    - (ii) make any order as it deems fit with respect to the arbitrator's entitlement, if any, fees, expenses or the refund of any fees or expense already paid; and
  - (b) where the appointing authority or, where applicable, the Court is satisfied that it was reasonable for the arbitrator to withdraw, the Court may grant any relief under paragraph (a) on such terms as it deems fit.
- (3) Subject to subsection (6), the authority of an arbitrator is personal and ceases upon the death of the arbitrator.
- (4) Where the mandate of an arbitrator terminates under section 10 of this Act, or by resignation or death, the parties may agree -
  - (a) whether and to what extent the previous proceedings should stand; and
  - (b) in the event of the death of the arbitrator, the sum, if any to be paid to the estate of the arbitrator for work done and the refund of expenses incurred.
- (5) Where and to the extent that there is no such agreement, the tribunal when reconstituted shall determine -
  - (a) whether and to what extent the previous proceedings shall stand; and
  - (b) the sum, if any, payable to the estate of the deceased arbitrator.

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

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

13. (1) An arbitrator, appointing authority or an arbitral institution is not liable for anything done or omitted in the discharge or purported discharge of their functions as provided in this Act, unless their action or omission is shown to have been in bad faith.
- (2) Subsection (1) applies to an employee of an arbitrator, appointing authority or an arbitral institution as it applies to the arbitrator, the appointing authority or the arbitral institution in question.
- (3) This section shall not affect any liability incurred by an arbitrator by reason of the arbitrator's withdrawal under section 12 of this Act.

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

14. (1) The arbitral tribunal shall rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement.
- (2) For the purpose of subsection (1), an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract and a decision by the arbitral tribunal that the contract is void does not entail ipso jure the invalidity of the arbitration clause.
- (3) In any arbitral proceeding, a plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the points of defence and a party is not precluded from raising such a plea by the fact that it has appointed or participated in the appointment of an arbitrator.
- (4) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings and the arbitral



tribunal may, in a case falling either under subsection (3), admit a later plea where it considers the delay justified.

- (5) The arbitral tribunal may rule on any plea referred to it under subsections (3) and (4), either as a preliminary question or in an award on the merits and the ruling is final and binding.
- (6) Where the tribunal rules as a preliminary question that it has jurisdiction, a party may request, within 30 days after having received notice of the ruling, the Court to decide the matter.
- (7) Where the arbitral tribunal rules on its jurisdiction as a preliminary question, it may continue with the proceedings and make an award notwithstanding that a party has recourse to a Court in respect of such ruling.

**Rules applicable to substance of dispute**

- 15. (1) The arbitral tribunal shall decide the disputes in accordance with the rules of law that is chosen by the parties as applicable to the substance of the dispute.
- (2) Any designation of the law or legal system of a given jurisdiction or territory shall be construed, unless otherwise expressed, as directly referring to the substantive law of that jurisdiction or territory and not to its conflict of law rules.
- (3) Where parties fail to choose or designate any law or legal system of a given jurisdiction or territory as required in subsection (1), the arbitral tribunal shall apply the law determined by the conflict of law rules which it considers applicable.
- (4) The arbitral tribunal shall not decide *ex aequo et bono* or as *amiable compositeur*, unless the parties have expressly authorised it to do so.
- (5) In all cases, the arbitral tribunal shall -
  - (a) decide in accordance with the terms of the contract; and

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

**Appointment of an emergency arbitrator**

- 16.(1) A party that requires emergency relief may, concurrent with or following the filing of a request for a dispute to be referred to arbitration but before the constitution of the arbitral tribunal, submit an application for the appointment of an emergency arbitrator to any arbitral institution designated by the parties, or, failing such designation, to the Court, as defined in section 91.
- (2) The party who requires the appointment of an emergency arbitrator shall provide sufficient copies of the application to the arbitral institution or the Court to make one copy available for the emergency arbitrator and one copy for each party, who shall be notified of the proceedings in accordance with subsection (6).
  - (3) Unless the parties agree otherwise, the application shall include the following information about-
    - (a) a statement of the emergency relief sought;
    - (b) the name in full, description, address and other contact details of each party;
    - (c) a description of the circumstances that give rise to the application and of the underlying dispute referred to arbitration;
    - (d) the reason why the applicant needs the emergency relief on an urgent basis that cannot await the constitution of an arbitral tribunal;
    - (e) the reasons why the applicant is entitled to the emergency relief; and
    - (f) any relevant agreement and, in particular, the arbitration agreement.
  - (4) The application may contain any other document or information as the applicant considers appropriate or that may contribute to the efficient examination of the application.



- (5) Where the arbitral institution or Court determines that it should accept the application, it shall, unless the parties otherwise agree, appoint an emergency arbitrator within two business days after the date the application is received.
- (6) Once the emergency arbitrator has been appointed, the arbitral institution or Court shall, at the expense of the party making the application, immediately notify the emergency arbitrator and other party or parties named in the application, not later than the close of business on the business day following the date the application is granted, or any other time, not exceeding two business days, as the arbitral institution or Court considers to be appropriate in the circumstances, and written communications from the parties shall subsequently be submitted directly to the emergency arbitrator with a copy to the other party or parties.
- (7) Every emergency arbitrator shall be and remain impartial and independent of the parties involved in the dispute.
- (8) A prospective emergency arbitrator shall sign and deliver to the parties a statement of acceptance, availability, impartiality and independence.
- (9) The emergency relief proceedings shall be in accordance with the provisions of Article 27 of the First Schedule to this Act.
- (10) This section and Article 27 of the First Schedule to this Act shall not prevent any party from seeking urgent interim measures from a Court under section 19 of this Act, at any time before making an application for the measures, and in appropriate circumstances thereafter.
- (11) Any application for urgent interim measures from a competent Court is not deemed to be an infringement or waiver of the arbitration agreement.

#### **Challenge of an emergency arbitration**

- 17. (1) Unless the parties agree otherwise-
  - (a) a challenge against the appointment of the emergency arbitrator shall

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

- (b) the provisions of this Act relating to the grounds for challenge of an arbitrator under section 8 of this Act shall also apply to the grounds for challenge of an emergency arbitrator.
- (2) The arbitral institution or Court that appoints the emergency arbitrator will decide the challenge after a reasonable opportunity has been afforded to the emergency arbitrator and the parties to provide submissions in writing, but no later than three business days after the date of the challenge.
- (3) Where an emergency arbitrator -
  - (a) dies,
  - (b) has been successfully challenged,
  - (c) has been removed, or
  - (d) has withdrawn,the arbitral institution or Court shall appoint a substitute emergency arbitrator within two business days.
- (4) Where the emergency arbitrator is replaced, the emergency relief proceedings shall resume at the stage where the emergency arbitrator was replaced or ceased to perform assigned functions, unless the substitute emergency arbitrator decides otherwise.

**Seat of the emergency relief proceedings**

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



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

**Power of the Court to grant interim measure of protection**

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

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

20. (1) Unless otherwise agreed to by the parties, the arbitral tribunal may, at the request of a party, grant interim measures.
- (2) An interim measure is a temporary measure, whether in the form of an award or in another form, which, at any time before the award which decides the dispute is issued, the arbitral tribunal orders a party to -
- (a) maintain or restore the status quo pending determination of the dispute;
- (b) take action that may prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral process itself;
- (c) provide a means of preserving assets out of which a subsequent award may be satisfied; or
- (d) preserve evidence that may be relevant and material to the resolution of the dispute or preserve the subject matter of the arbitration itself.

**Conditions for grant of interim measures**

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

- (a) harm not adequately reparable by an award of damages is likely to result where the measure is not ordered, and the harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed where the measure is granted; and
  - (b) there is a reasonable possibility that the requesting party may succeed on the merits of the claim, provided that any determination on this possibility does not affect the discretion of the arbitral tribunal to make any subsequent determination.
- (2) With regard to a request for an interim measure under section 20 (2) (d), the requirements under subsection (1)(a) and (b) shall apply only to the extent the arbitral tribunal considers appropriate.

**Applications for preliminary orders**

- 22.(1) Unless otherwise agreed to by the parties, a party may, without notice to any other party, make a request to the arbitral tribunal for an interim measure together with an application for a preliminary order directing a party not to frustrate the purpose of the interim measure requested.
- (2) The arbitral tribunal may grant a preliminary order, provided it considers that prior disclosure of the request for the interim measure to the party against whom it is directed may frustrate the purpose of the measure.
- (4) The conditions defined under section 21(1) of this Act apply to any preliminary order, provided that the harm to be assessed under section 21(1) (a) is the harm likely to result from the order being granted or not.

**Specific regime for preliminary orders**

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



- (2) The arbitral tribunal shall give opportunity to any party against whom a preliminary order is directed to present its case at the earliest possible time.
- (3) The arbitral tribunal shall decide promptly on any objection to the preliminary order.
- (4) A preliminary order shall expire after 20 days from the date on which it was issued by the arbitral tribunal, provided that the arbitral tribunal may issue an interim measure adopting or modifying the preliminary order, after the party against whom the preliminary order is directed has been given notice and an opportunity to present its case.
- (5) A preliminary order is binding on the parties but is not subject to enforcement by a Court and the preliminary order does not constitute an award.

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

24. The arbitral tribunal may modify, suspend or terminate an interim measure or a preliminary order it has granted on application of a party or, in exceptional circumstances and upon prior notice to the parties, on the initiative of the arbitral tribunal including where -
- (a) important facts were concealed from the arbitral tribunal;
  - (b) the interim measures or preliminary order was fraudulently obtained;
  - (c) facts have come to the knowledge of the arbitral tribunal, which, if the arbitral tribunal had known at the material time, it would not have granted the order; and
  - (d) it is just and equitable in the circumstance to modify, suspend or terminate the order.

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

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

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

**Disclosure of material change in circumstances**

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

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

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

**Costs and damages**

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

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

**Recognition and enforcement of interim measures**

28. (1) An interim measure issued by an arbitral tribunal is binding and, unless otherwise provided by the arbitral tribunal, shall be enforced upon an



application to the Court, irrespective of the country in which it was issued, subject to section 29 of this Act.

- (2) The party who is seeking or has obtained recognition or enforcement of an interim measure shall promptly inform the Court of any termination, suspension or modification of that interim measure.
- (3) The Court to which a request for recognition and enforcement of an interim measure is presented may, where it considers it proper, order the requesting party to provide appropriate security if the arbitral tribunal has not already made a determination with respect to security or where the decision is necessary to protect the rights of third parties.

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

**29.(1)** Recognition or enforcement of an interim measure may be refused only-

- (a) at the request of the party against whom it is invoked, where the Court is satisfied that the -
  - (i) refusal is warranted on the grounds set forth in section 58(2)(a) (i), (ii), (iii), (iv), (v), (vi) or (vii) of this Act,
  - (ii) decision of the arbitral tribunal with respect to the provision of security in connection with the interim measure issued by the arbitral tribunal has not been complied with, or
  - (iii) interim measure has been terminated or suspended by the arbitral tribunal or, where so empowered, by a competent authority in the Country in which the arbitration takes place or under the law of which that interim measure was granted; or
- (b) where the Court finds that -
  - (i) the interim measure is incompatible with the powers conferred upon the Court, unless the Court decides to reformulate the interim measure to the extent necessary to adapt it to its own powers and procedures for

the purposes of enforcing that interim measure and without modifying its substance, or

- (ii) any of the grounds set forth in section 58(2)(b) apply to the recognition and enforcement of the interim measure.
- (2) Any determination made by the Court on any ground in subsection (1) is effective only for the purposes of the application to recognise and enforce the interim measure.
- (3) The Court where recognition or enforcement is sought shall not, in making determination, undertake a review of the substance of the interim measure.

**Equal treatment of parties**

- 30.** In any arbitral proceedings, the arbitral tribunal shall ensure that the parties are -
- (a) treated equally and that each party is given reasonable opportunity of presenting its case; and
  - (b) accorded a fair resolution of the dispute without unnecessary delay or expense.

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

- 31.(1)** Subject to the provisions of this Act, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings, provided that where parties do not have arbitral agreement, the arbitral proceedings shall be in accordance with the procedure contained in the Arbitration Rules set out in the First Schedule to this Act.
- (2) Where the agreed procedure or rules referred to in subsection (1) contain no provision in respect of any matter related to the arbitral proceedings, the arbitral tribunal shall conduct the arbitral proceedings in such a manner that is consistent with section 30 of this Act.



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

**The seat and place of the arbitration**

32. (1) The seat of the arbitration shall be designated -

- (a) by the parties to the arbitration agreement;
- (b) by an arbitral or other institution or person authorised by the parties with powers in that regard; or
- (c) subject to subsection (2), by the arbitral tribunal.

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

- (a) the Country with which the parties and the transaction have the closest connection;
- (b) the law that the parties have selected to govern their substantive rights under the contract, and
- (c) any law that the parties may have chosen to govern the arbitration.

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

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

**Commencement of arbitral proceedings**

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

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

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

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

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

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

- (3) In determining for the purposes of a statute of limitation when a cause of action accrued, any provision that an award is a condition precedent to bring legal proceedings in respect of a matter to which an arbitration agreement applies shall be disregarded.  
(4) In computing the time for the commencement of proceedings to enforce an arbitral award, the period between the commencement of the arbitration and the date of the award shall be excluded.

**Language to be used in arbitral proceedings**

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



- (2) Any language or languages agreed upon by the parties or determined by the arbitral tribunal under subsection (1) shall, unless the parties or the arbitral tribunal state otherwise, be the language or languages to be used in any written statements by the parties, in any hearing, award decision or any other communication in the course of the arbitration.
- (3) The arbitral tribunal may order that documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

**Points of claim and defence**

- 36. (1) Within the time agreed by the parties or determined by the arbitral tribunal, the claimant shall, in its points of claim, state the facts supporting the claim, the points at issue and the relief or remedy sought, and the respondent shall state, in its points of defence, the response in respect of those particulars, unless the parties have otherwise agreed on the required elements of the points of claim and of defence.
- (2) The parties may submit further statements as they may agree or as the arbitral tribunal may direct.
- (3) The parties may submit with their statements under subsections (1) and (2), documents they consider to be relevant or they may add a reference to the documents, or other evidence they intend to submit during the course of the arbitral proceedings.
- (4) Unless otherwise agreed to by the parties, a party may amend or supplement its claim or defence during the course of the arbitral proceedings unless the tribunal considers it inappropriate to allow any amendment or supplement having regard to the delay in making it.

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

- 37.(1) The parties may agree on the powers exercisable by the arbitral tribunal as regards remedies
- (2) Unless otherwise agreed to by the parties, the arbitral tribunal has powers -

- (a) to make a declaration as to any matter to be determined in the proceedings;
- (b) to order the payment of a sum of money, in any currency claimed by a party; and
- (c) as the Court, to order -
  - (i) a party to do or refrain from doing anything,
  - (ii) specific performance of a contract (other than a contract relating to land), and
  - (iii) the rectification, setting aside or cancellation of a deed or other document.

**Hearing and written proceedings**

- 38.** (1) Subject to a contrary agreement by the parties, the arbitral tribunal shall decide whether the arbitral proceedings shall be conducted -
- (a) by holding oral hearings for the presentation of evidence or for oral arguments;
  - (b) on the basis of documents and other materials; or
  - (c) by a combination of the methods described in paragraphs (a) and (b), and, unless the parties have agreed that no hearing be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings if so requested by any party.
- (2) The arbitral tribunal shall give the parties sufficient advance notice of any hearing and meeting of the arbitral tribunal, held for the purposes of inspection of documents, goods, or other property.
- (3) Except on the application for a preliminary order under section 22 of this Act, every statement, document or other information supplied to the arbitral tribunal or other authority by one party shall be communicated to the other party.



- (4) Any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.
- (5) Unless otherwise agreed by the parties, the arbitral tribunal may, for the purposes of the arbitral proceedings concerned -
  - (a) direct that a party to an arbitration agreement or a witness who gives evidence in proceedings before the arbitral tribunal be examined on oath or on affirmation; and
  - (b) administer oaths or affirmations for the purposes of the examination.

#### **Consolidation and concurrent hearing**

**39.(1)** Parties may agree -

- (a) that the arbitral proceedings shall be consolidated with other arbitral proceedings, including arbitral proceedings involving a different party or parties with the agreement of that party or parties, or
  - (b) concurrent hearings shall be held, on such terms as may be agreed.
- (2) The arbitral tribunal shall not order the consolidation of proceedings or concurrent hearings unless the parties agree to the making of such an order.

#### **Joinder of parties**

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

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

**Default of a party**

- 41.(1)** Unless otherwise agreed to by the parties, if, without showing sufficient cause -
- (a) the claimant fails to state the claim as required under section 36(1) of this Act, the arbitral tribunal shall terminate the proceedings provided that where a respondent has a counterclaim and has evinced an intention to file same, the proceedings shall not be terminated;
  - (b) the respondent fails to state the defence as required under section 36(1) of this Act, the arbitral tribunal shall continue the proceedings without treating the failure in itself as an admission of the claimant's allegation; or
  - (c) any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make an award on the evidence before it.
- (2) Parties may agree on any additional powers of the arbitral tribunal for the proper and expeditious conduct of the arbitration in case of a party's default.
- (3) Unless otherwise agreed by the parties, if, after stating the claim as required under section 36(1) of this Act, the arbitral tribunal is satisfied that there has been inordinate and inexcusable delay on the part of the claimant in pursuing the claim and that the delay -
- (a) gives rise, or is likely to give rise, to a substantial risk that a fair resolution of the issues in that claim may not be possible, or
  - (b) has caused, or is likely to cause serious prejudice to the respondent, the arbitral tribunal may make an award dismissing the claim.
- (4) Unless otherwise agreed by the parties, if without showing cause, a party fails to comply with an order or directions of the arbitral tribunal, the arbitral tribunal may make a peremptory order to the same effect, prescribing such time for compliance with it as the tribunal considers appropriate.



- (5) Unless otherwise agreed by the parties, where a claimant fails to comply with a peremptory order of the arbitral tribunal to provide security for costs, the arbitral tribunal may make an award dismissing its claim.
- (6) Unless otherwise agreed by the parties, where a party fails to comply with any other kind of peremptory order, the arbitral tribunal may-
  - (a) direct that the party in default is not entitled to rely upon any allegation or material which was the subject matter of the order;
  - (b) draw any adverse inference from the act of non-compliance as the circumstances justify;
  - (c) proceed to make an award on the basis of the materials as have been properly provided to it; or
  - (d) make any order as it deems fit about the payment of costs of the arbitration incurred in consequence of the non-compliance.

**Power of arbitral tribunal to appoint expert**

42. (1) Unless otherwise agreed by the parties, the arbitral tribunal may -
- (a) appoint one or more experts to report to it on a specific issue to be determined by the arbitral tribunal; and
  - (b) subject to any legal privilege that a party may assert, require a party to give to the expert any relevant information or to produce or provide access to documents, goods or other property for inspection.
- (2) Unless otherwise agreed by the parties, where a party so requests or where the arbitral tribunal considers it necessary, an expert appointed under subsection (1) shall, after delivering the expert's written or oral report, participate in a hearing where the parties have the opportunity to put questions to the expert and present other expert witnesses to testify on their behalf on the points at issue.

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

- 43.**(1) At the request of a party to the arbitral proceedings, a Court or a judge in chambers may order that a writ of subpoena ad testificandum or of subpoena duces tecum shall be issued to compel the attendance before an arbitral tribunal of a witness wherever they may be within Nigeria.
- (2) The Court or a judge in chambers may also order that a writ of habeas corpus ad testificandum shall be issued to bring up a prisoner for examination before any arbitral tribunal.
- (3) The provisions of any written law relating to the service or execution outside a state of the Federation of such subpoena or order for the production of a prisoner, issued or made in civil proceedings by the Court or a judge in chambers, shall apply in relation to a subpoena or order issued or made under this section.

**Decision making by arbitral tribunal**

- 44.**(1) In an arbitral tribunal with more than one arbitrator, any decision of the tribunal shall, unless otherwise agreed by the parties, be made by a majority of all its members.
- (2) Subject to the provisions of this Act, in any arbitral tribunal, the presiding arbitrator may, where it is authorised by the parties or all the members of the arbitral tribunal, decide questions relating to the procedure to be followed at the arbitral proceedings.

**Settlement**

- 45.**(1) Where, during the arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the arbitral proceedings, and may where requested by the parties and agreed to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.
- (2) An award on agreed terms recorded under subsection (1) shall -
- (a) be in accordance with the provisions of section 47 of this Act and state that it is such an award; and



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

**Award of interest**

- 46.**(1) The parties may agree on the arbitral tribunal's powers to award interest.
- (2) Unless otherwise agreed by the parties, the following provisions shall apply-
    - (a) the arbitral tribunal may award simple or compound interest from such dates, at such rates and with such rests as it considers just-
      - (i) on the whole or part of any amount awarded by the arbitral tribunal, in respect of any period up to the date of the award,
      - (ii) on the whole or part of any amount claimed in the arbitration and outstanding at the commencement of the arbitral proceedings but paid before the award was made, in respect of any period up to the date of payment.
    - (b) The arbitral tribunal may award simple or complex interest from the date of the award (or any later date) until payment, at such rates and such rests as it considers just in the case, on the outstanding amount of any award (including any award of interest under subsection (2) and any award as to costs);
    - (c) References in this section to an amount awarded by the arbitral tribunal include an amount payable in consequence of a declaratory award by the arbitral tribunal.

**Form and contents of award**

- 47.**(1) The award shall be in writing and signed by the arbitrator or arbitrators.
- (2) In an arbitral proceeding with more than one arbitrator, the signatures of a majority of all the members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.
  - (3) The award shall state the -

- (a) reasons upon which it is based, unless the parties have agreed that no reason should be given or the award is an award on agreed terms under section 45 of this Act;
  - (b) date it was made; and
  - (c) seat of the arbitration as agreed or determined under section 32(1) of this Act, which seat is deemed to be the place where the award was made.
- (4) Subject to the provisions of section 54 of this Act, after the award is made, a copy signed by the arbitrators in accordance with subsections (1) and (2) shall be delivered to each party.

#### **Termination of proceedings**

48. (1) The arbitral proceedings shall terminate when the final award is made or when an order of the arbitral tribunal is issued under subsection (2).
- (2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where the-
    - (a) claimant withdraws the claim, unless the respondent objects to it and the arbitral tribunal recognises a legitimate interest on its part to obtain a final settlement of the dispute;
    - (b) parties agree to the termination of the arbitral proceedings; or
    - (c) arbitral tribunal finds that continuation of the arbitral proceedings has become unnecessary or impossible.
  - (3) Subject to the provisions of sections 49 and 55 (5) and (6) of this Act, the mandate of the arbitral tribunal shall cease on termination of the arbitral proceedings.

#### **Correction and interpretation of award and additional award**

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



- (a) to correct in the award any error in computation, clerical or typographical errors or errors of a similar nature; or
  - (b) where it is agreed by the parties, to give an interpretation of a specific point or part of the award.
- (2) Where the arbitral tribunal considers a request made under subsection (1) to be justified, it shall, within 30 days of receipt of the request, make the correction or give the interpretation, and such correction or interpretation shall form part of the award.
- (3) The arbitral tribunal may, on its own volition and within 30 days from the date of the award, correct an error of the type referred to in subsection (1) (a).
- (4) Unless otherwise agreed to by the parties, a party may within 30 days of receipt of the award, request the arbitral tribunal to make an additional award as to the claims presented in the arbitral proceedings but omitted from the award.
- (5) Where the arbitral tribunal considers a request made under subsection (4) to be justified, it shall, within 60 days of the receipt of the request, make the additional award.
- (6) The arbitral tribunal may, if it considers it necessary, extend the time limit within which it shall make a correction, give an interpretation or make an additional award under subsection (2) or (5).
- (7) The provisions of section 47 of this Act applies to any correction or interpretation or to an additional award made under this section.

#### **Costs of the arbitration**

50. (1) The arbitral tribunal shall fix costs of arbitration in its award and the term "**costs**" includes-
- (a) the fees of the arbitrators;
  - (b) the travel and other expenses incurred by the arbitrators;

- (c) the cost of expert advice and of other assistance required by the arbitral tribunal;
  - (d) the travel and other expenses of parties, witnesses and other experts consulted by the parties to the extent that the expenses are approved by the arbitral tribunal having regard to what is reasonable in the circumstances;
  - (e) the costs for legal representation and assistance of the successful party where the costs were claimed during the arbitral proceedings, and only to the extent that the arbitral tribunal determines that the amount of such costs is reasonable;
  - (f) administrative costs such as cost of the arbitral institution or the appointing authority, cost of venue, sitting and correspondence;
  - (g) the costs of obtaining Third-Party Funding; and
  - (h) other costs as approved by the arbitral tribunal.
- (2) The fees of the arbitral tribunal shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject-matter, the time spent by the arbitrators and any other relevant circumstances of the case.

#### **Deposit of costs**

51. (1) The arbitral tribunal may, on its establishment, request each party to deposit an equal amount as an advance for the costs referred to in section 50 (1) (a), (b) and (c) of this Act.
- (2) During the course of the arbitral proceedings, the arbitral tribunal may request supplementary deposits from the parties.
- (3) Where the required deposits are not paid in full within 30 days after the receipt of the request, the arbitral tribunal shall inform the parties in order that one or more of them may make the required payment and where the payment is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.



**Security for costs**

- 52.** (1) The arbitral tribunal shall have the power, upon the application of a party, to order any claiming or counterclaiming party to provide security for the legal or other costs of any other party by way of deposit or bank guarantee or in any other manner and upon the terms as the arbitral tribunal considers appropriate.
- (2) The terms under subsection (1) may include the provision by that other party of a cross indemnity, itself secured in a manner as the arbitral tribunal considers appropriate, for costs and losses incurred by the claimant or counterclaimant in providing security.
- (3) The amount of any costs and losses payable under a cross-indemnity under subsection (1) may be determined by the arbitral tribunal in one or more awards.
- (4) In the event that a claiming or counterclaiming party does not comply with any order to provide security under this section, the arbitral tribunal may stay that party's claims or counterclaims or dismiss them in an award.

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

- 53.**(1) The parties are jointly and severally liable to pay the arbitrator such reasonable fees and expenses as are appropriate in the circumstances.
- (2) In this section, references to arbitrators include an arbitrator who has ceased to act, an arbitral institution an appointing authority.

**Lien on the award**

- 54.**(1) The arbitral tribunal or arbitration institution may refuse to deliver an award to the parties except on full payment of the fees and expenses of the arbitrators or the arbitral institution.
- (2) Where the fees and expenses of the arbitrators or the arbitral institution have not been agreed, and the arbitral tribunal or arbitral institution refuses on that ground to deliver an award, a party to the arbitral

proceedings may, upon notice to the other parties, the tribunal and, where applicable, the arbitral institution, apply to the Court, which may order that-

- (a) the arbitral tribunal or arbitral institution shall deliver the award where the applicant pays the fees and expenses demanded into Court, or pays such lesser amount as the Court may specify;
- (b) the amount of the fees and expenses properly payable shall be determined by the means and upon the terms as the Court may direct; and
- (c) out of the money paid into Court there shall be paid out the fees and expenses as may be found to be properly payable and the balance of the money (if any) shall be paid out to the applicant.
- (3) For this purpose, the amount of fees and expenses properly payable is the amount the applicant is liable to pay under section 53 of this Act or any agreement relating to the payment of the arbitrators.
- (4) No application to the Court may be made unless every available arbitral process for appeal or review of the amount of the fees or expenses demanded has been exhausted.
- (5) References in this section to arbitrators include an arbitrator who has ceased to act.
- (6) The leave of the Court is required for any appeal from a decision of the Court under this section.
- (7) Nothing in this section shall be construed as excluding an application under section 55 of this Act, where payment has been made to the arbitrators in order to obtain the award.

#### **Application for setting aside an arbitral award**

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



- (2) An application for setting aside an arbitral award shall not be made on the ground of an error on the face of the award, or any other ground except those expressly stated in subsection (3).
- (3) The Court may set aside an arbitral award, where-
  - (a) the party who makes the application furnishes proof that-
    - (i) a party to the arbitration agreement was under some legal incapacity,
    - (ii) the arbitration agreement is not valid under the law to which the parties have subjected it, or failing such indication, under the laws of Nigeria,
    - (iii) the party who makes the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise not able to present its case,
    - (iv) the award deals with a dispute not contemplated by or does not fall within the terms of the submission to arbitration,
    - (v) the award contains decisions on matters which are beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside,
    - (vi) the composition of the arbitral tribunal, or the arbitral procedure, was not in accordance with the agreement of the parties, unless the agreement was in conflict with a provision of this Act from which the parties cannot derogate, or
    - (vii) where there is no agreement between the parties under subparagraph (vi), that the composition of the arbitral tribunal or the arbitral procedure was not in accordance with this Act; or
  - (b) the Court finds that the -
    - (i) subject matter of the dispute is otherwise not capable of settlement by

- (ii) arbitration under the laws of Nigeria, or  
award is against public policy of Nigeria.
- (4) An application for setting aside shall not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under section 49 of this Act, from the date on which that request had been disposed of by the arbitral tribunal.
- (5) Where the Court is satisfied that one or more of the grounds set out in subsection (3) has been proved and that it has caused or will cause substantial injustice to the applicant, the court may-
  - (a) remit the award to the tribunal, in whole or in part, for reconsideration; or
  - (b) set the award aside in whole or in part.
- (6) The Court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take any other action which in the opinion of the arbitral tribunal will eliminate the grounds for setting aside.

#### **Award Review Tribunal**

56. (1) Notwithstanding section 55(1) of this Act, the parties may provide in their arbitration agreement that an application to review an arbitral award on any of the grounds set out in section 55(3) of this Act shall be made to an Award Review Tribunal.
- (2) Where the parties have agreed that an award shall be reviewed by an Award Review Tribunal, a party who is aggrieved by an arbitral award and who seeks to challenge the award on any of the grounds set out in section 55(3) of this Act shall, within the same time frame specified in section 55(4) of this Act, send the other party a written communication which indicates its intent to challenge the award (in this Act referred to as "**the Notice of Challenge**").



- (3) The Notice of Challenge shall include the documents referred to in section 57(2) of this Act.
- (4) Unless the parties otherwise agree, the Award Review Tribunal shall -
  - (a) consist of the same number of arbitrators in the arbitral tribunal that first determined the dispute (in this Act referred to as "**the First Instance Tribunal**"); and
  - (b) be constituted when, in the case of a sole arbitrator, the arbitrator accepts the appointment or, where there is more than one arbitrator, when every arbitrators accept their respective appointments.
- (5) The provisions of this Act applies mutatis mutandis to the Award Review Tribunal-
  - (a) section 7 (appointment of arbitrators);
  - (b) section 8 (grounds for challenge);
  - (c) section 9 (challenge procedure);
  - (d) section 10 (failure or impossibility to act);
  - (e) section 11 (appointment of substitute arbitrator);
  - (f) section 12 (withdrawal, death and cessation of office of an arbitrator);
  - (g) section 13 (immunity of an arbitrator appointing authority and arbitral institution);
  - (h) section 14 (competence of arbitral tribunal to rule on its on jurisdiction);
  - (i) section 30 (equal treatment of parties);
  - (j) section 41 (default of a party);
  - (k) section 44 (decision making by arbitral tribunal);
  - (l) section 47 (form and contents of award);
  - (m) section 50 (costs of the arbitration) and Article 49 of the First Schedule (fees and expenses of arbitrators);
  - (n) section 53 (joint and several liability of the parties for arbitrator's fees and expenses); and
  - (o) section 54 (lien on the award).
- (6) Parties may agree on the procedure to be followed by the Award Review Tribunal, otherwise the Award Review Tribunal shall conduct

its proceedings in a manner as it considers appropriate and shall endeavour to render its decision in the form of an award within 60 days from the date on which it is constituted.

- (7) An application for enforcement of an award under section 57 of this Act may be made to the Court notwithstanding that a party has given a Notice of Challenge to the other party under subsection 2, unless -
  - (a) proceedings upon the application for enforcement is stayed until after the decision of the Award Review Tribunal has been rendered, and
  - (b) notwithstanding subparagraph (a), the Court makes such orders as to the interim preservation of the subject of the dispute, or as to giving security for the award as may be just in the circumstances of the case.
- (8) Where the Award Review Tribunal has set aside the award in whole or in part, a party may apply to the Court to review the decision of the Award Review Tribunal and where the Court decides that the decision of the Award Review Tribunal is unsupportable having regard to the ground on which the Award Review Tribunal set aside the award, the Court shall reinstate the award, or the part of it that was set aside by the Award Review Tribunal.
- (9) Where the Award Review Tribunal has affirmed the award in whole or in part, an application to the Court to set aside the award of the First Instance Tribunal or the award of the Award Review Tribunal, the application may only be made on the grounds set out in section 55 (3)(b)(i) or section 55 (3) (b) (ii) of this Act.

#### **Recognition and enforcement of awards**

- 57. (1)** An arbitral award shall, irrespective of the country or state in which it is made, be recognised as binding, and on application in writing to the Court, be enforced by the Court subject to the provisions of this section and section 58 of this Act.
- (2) The party relying on an award or applying for its enforcement shall supply -



- (a) the original award or a certified copy of it;
  - (b) the original arbitration agreement or a certified copy of it; and
  - (c) where the award or arbitration agreement is not made in the English language, a certified translation of it into the English Language.
- (3) An award may, by leave of the Court, be enforced in the same manner as a judgment or order to the same effect.

**Refusal of recognition or enforcement of awards**

- 58.(1) A party to an arbitration agreement may request the Court to refuse recognition or enforcement of the award.
- (2) Irrespective of the country in which the award was made, the Court may only refuse recognition or enforcement of an award -
- (a) at the request of the party against whom it is invoked, if that party furnishes the Court with proof that -
    - (i) a party to the arbitration agreement was under some incapacity,
    - (ii) the arbitration agreement is not valid under the law to which the parties have indicated should be applied, or that the arbitration agreement is not valid under the law of the country where the award was made,
    - (iii) the party against whom the award was invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise not able to present his case,
    - (iv) the award deals with a dispute not contemplated by or does not fall within the terms of the submission to arbitration,
    - (v) the award contains decisions on matters which are beyond the scope of the submission to arbitration, so however that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters submitted to arbitration may be recognised and enforced,

- (vi) the composition of the arbitral tribunal, or the arbitral procedure, was not in accordance with the agreement of the parties,
  - (vii) where there is no agreement between the parties under sub paragraph (vi), that the composition of the arbitral tribunal, or the arbitral procedure, was not in accordance with the law of the country where the arbitration took place, or
  - (viii) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, the award was made; or
- (b) where the Court finds -
- (i) the subject matter of the dispute is otherwise not capable of settlement by arbitration under the laws of Nigeria, or
  - (ii) that the award is against public policy of Nigeria.
- (3) Where an application to set aside or suspend an award has been made to a court referred to in subsection (2)(a)(viii), the Court before where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.

#### **Appointment in default**

59. Where under an agreement for an international arbitration no -

- (a) procedure is agreed for the appointment of an arbitrator, and
- (b) appointing authority is designated or agreed to be designated by the parties, the Director of the Regional Centre for International Commercial Arbitration Lagos shall be deemed to be the appointing authority designated by the parties, and the provisions of section 7(2) of this Act shall apply.



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

60. Without prejudice to sections 57 and 58 of this Act, where the recognition and enforcement of any award made in an arbitration in a Country other than Nigeria is sought, the New York Convention on the Recognition and Enforcement of Foreign Awards set out in the Second Schedule to this Act applies to an award, provided that the -
- (a) country is a party to the New York Convention; and
  - (b) differences arise out of a legal relationship, whether contractual or not, considered commercial under the laws of Nigeria.

**Abolition of torts of maintenance and champerty**

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

**Disclosure of Third-Party Funding**

- 62.(1) Where a Third-Party Funding agreement is made, the party benefitting from it shall give written notice to the other party or parties, the arbitral tribunal and, where applicable, the arbitral institution, of the name and address of the Third-Party Funder.
- (2) The written notice shall be made for a funding agreement made -
    - (a) on or before the commencement of the arbitration, at the commencement of the arbitration, or
    - (b) after the commencement of the arbitration, without delay as soon as the funding agreement is made.
  - (3) Where a respondent has brought an application for security for cost based on the disclosure of Third-Party Funding, the arbitral tribunal may allow the funded party or its counsel to provide the arbitral tribunal with an affidavit stating whether under the funding

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

**Waiver of right to object**

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

**Extent of court intervention**

- 64.(1) A Court shall not intervene in any matter governed by this Act, except where it is provided in this Act.
- (2) Applications to Court in respect of any matter governed by this Act shall be in accordance with the Rules set out in the Third Schedule to this Act.

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

65. This Act does not affect any other law by virtue of which certain disputes may-
- (a) not be submitted to arbitration; or
- (b) be submitted to arbitration only in accordance with the provisions of that or another law.

**Extension of time**

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



## **PART II-MEDIATION**

### **(A)- General Provisions**

#### **Scope of application of this Part**

**67. (1)** This Part applies to -

- (a) international commercial mediation;
- (b) domestic commercial mediation;
- (c) domestic civil mediation;
- (d) domestic and international settlement agreements resulting from mediation, and concluded in writing by parties to resolve a commercial dispute; and
- (e) where the parties agree in writing that this Part should apply to the dispute.

**(2)** This Part shall not apply to -

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

**(3)** This Part applies irrespective of the basis upon which the mediation is carried out, including agreement between the parties whether reached

before or after a dispute has arisen, an obligation established by law, or a direction or suggestion of a court, arbitral tribunal or competent governmental entity.

**Uniformity of interpretation**

- 68.(1) In the interpretation of this Part, regard is to be had to the need to promote uniformity in its application and the observance of good faith.
- (2) Questions concerning matters governed by this Part which are not expressly settled in it are to be settled in conformity with the general principles on which this Part is based.

**(B) - Commencement of mediation Proceedings**

**Variation by agreement**

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

**Commencement of mediation proceedings**

70. (1) Where the initiation of a mediation procedure is prescribed by a special statute as a condition for the conduct of judicial or other proceedings, or where the parties have agreed when concluding the agreement to try to resolve the dispute through mediation before resorting to judicial or other proceedings, the party concerned shall propose to the other party, in writing, the conclusion of a mediation agreement.
- (2) Where a party that invited another party to mediate does not receive an acceptance of the invitation within 30 days from the day on which the invitation was sent, or within any other time as specified in the invitation, the party may elect to treat this as a rejection of the invitation to mediate.
- (3) A party can propose to the other party, a recourse to mediation process, regardless of all the other judicial or arbitral proceedings, before, during or after the initiation of the judicial proceedings.



- (4) During any arbitral, judicial, administrative or other proceedings, the body conducting the proceedings may, recommend to the parties to resolve their dispute in mediation proceedings in accordance with the provisions of this Part where it assesses that there exists the possibility of resolving the dispute by mediation.
- (5) The date of commencement of the mediation process shall be the date that the agreement to mediate was signed, where this is drawn up in writing after a dispute has arisen, or, in case of reference to mediation by a court, the date the court made its decision or, in any other case, on the date when the mediator took the first step to start the mediation process.

#### **Suspension of limitation period**

- 71.(1) When the mediation proceedings commence, the running of the limitation period regarding the claim that is the subject matter of the mediation is suspended.
- (2) Where the mediation proceedings have terminated without a settlement agreement, the limitation period resumes running from the time or day the mediation ended without a settlement agreement.

#### **Number and appointment of mediators**

- 72.(1) There shall be one mediator, unless the parties agree to have two or more mediators.
- (2) The parties shall endeavor to reach agreement on a mediator or mediators, unless a different procedure for their appointment has been agreed upon.
- (3) A party may seek the assistance of a mediation provider that he keeps a list of qualified mediators in connection with the appointment of mediators and in particular a party may request-
  - (a) the mediation provider to recommend suitable persons to act as mediator; or
  - (b) that the appointment of one or more mediators be made directly by the

mediation provider, and the appointment made by the institution that is approached is final and binding on the parties.

- (4) In recommending or appointing individuals to act as mediator, the mediation provider shall have regard to the consideration as are likely to secure the appointment of an independent and impartial mediator and, where appropriate, shall take into account the advisability of appointing a mediator of a nationality other than the nationalities of the parties.
- (5) When a person is approached in connection with possible appointment as mediator, the person shall disclose the circumstances likely to give rise to justifiable doubts as to impartiality or independence.
- (6) A mediator, from the time of appointment and throughout the mediation proceedings, shall without delay disclose any circumstance under subsection (5) to the parties unless they have already been informed of them and where the circumstances exist, the mediator shall be permitted to act as a mediator only where the parties agree to it.

#### **Conduct of mediation, fees and expenses**

- 73.(1) Parties are free to agree, by reference to a set of rules or otherwise, on the manner in which the mediation is to be conducted, and the parties shall attend and participate in the mediation in good faith.
- (2) Where no agreement on the manner in which the mediation is to be conducted, the mediator may conduct the mediation proceedings in a manner as the mediator considers appropriate, taking into account the circumstances of the case, any wish that the parties may jointly express and the need for a speedy settlement of the dispute.
- (3) In any case, in conducting the proceedings, the mediator shall seek to maintain fair treatment of the parties and, in so doing, shall take into account the circumstances of the case and the mediator's obligations shall be equal with regards to all parties.
- (4) The mediator shall-
- (a) promote communication between the parties; and



- (b) ensure that the parties are integrated into the mediation process in an appropriate and fair manner.
- (5) The parties and the mediator may agree that all or any of the mediation sessions are to be carried out by electronic means, by video conference or other similar means of transmission of the voice or image, provided that the identity of the parties concerned are ensured and comply with the principles of mediation laid down in this Part.
- (6) The mediator may, with the agreement of the parties, at any stage of the mediation proceedings, make proposals for a settlement of the dispute but does not have the right to impose a settlement on the parties and the proposal may be based on what the mediator deems appropriate in view of what the parties have brought forward in the mediation.
- (7) A mediator is entitled to a fee and reimbursement of expenses incurred in connection with mediation unless the mediator agreed to mediate without a fee and the parties bear their own costs, and unless the parties agree otherwise, the fee and expenses of the mediator as well as the fees of the mediation provider shall be borne by the parties in equal shares.

#### **Communication between mediator and parties**

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

#### **Disclosure of information**

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

#### **Confidentiality**

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

- (a) under the law;
- (b) for the purposes of implementation or enforcement of a settlement agreement;
- (c) necessary in the interests of preventing or revealing -
  - (i) the commission of a crime (including an attempt or conspiracy to commit a crime),
  - (ii) concealment of a crime, or
  - (iii) a threat to a party; or
- (d) necessary to protect public order, but only under the conditions and in the scope prescribed by law.

**Admissibility of evidence in other proceedings**

- 77.(1) A party to the mediation proceedings, the mediator and any third-party, including those involved in the administration of the mediation proceedings, shall not in arbitral, judicial or similar proceedings rely on, introduce as evidence or give testimony or evidence regarding-
- (a) an invitation by a party to engage in mediation proceedings or the fact that a party was willing to participate in mediation proceedings;
  - (b) views expressed or suggestions made by a party in the mediation in respect of a possible settlement of the dispute;
  - (c) statements or admissions made by a party in the course of the mediation proceedings;
  - (d) proposals made by the mediator;
  - (e) the fact that a party had indicated its willingness to accept a proposal for settlement made by the mediator; and
  - (f) a document prepared solely for purposes of the mediation proceedings.
- (2) Subsection (1) applies irrespective of the form of the information or evidence referred to therein.



- (3) Subject to the provisions of section 76 of this Act, the disclosure of the information referred to in subsection (1) shall not be ordered by an arbitral tribunal, court or other competent governmental authority and, where the information is offered as evidence in contravention of subsection (1), that evidence shall be treated as inadmissible.
- (4) The provisions of subsections (1), (2) and (3) apply whether or not the arbitral, judicial or similar proceedings relate to the dispute that is or was the subject matter of the mediation proceedings.
- (5) Subject to the limitations of subsection (1), evidence that is otherwise admissible in arbitral or judicial or similar proceedings does not become inadmissible as a consequence of having been used in mediation.

**Termination of mediation proceedings**

78. The mediation proceedings are terminated by -

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

**Mediator acting as arbitrator**

79. Unless otherwise agreed by the parties, a mediator shall not act as an arbitrator in respect of dispute that was or is the subject of the

mediation proceedings or in respect of another dispute that has arisen from the same contract or legal relationship or any related contract or legal relationship.

**Resort to arbitral or judicial proceedings**

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

**Immunity for mediators and mediation providers**

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

**Binding and enforceable nature of settlement agreements**

- 82.(1) Where parties conclude an agreement settling a dispute, the mediator shall participate in the preparation and drafting of the settlement agreement, where the parties agree.
- (2) Subject to section 87 of this Act, the settlement agreement resulting from the mediation is binding on the parties and enforceable in Court as a contract, consent judgment or consent award.

**Requirements for reliance on settlement agreements**

- 83.(1) Subject to section 87 on this Act party relying on a settlement agreement shall supply to the Court-
- (a) the settlement agreement signed by the parties; and
- (b) evidence that the settlement agreement resulted from mediation, such



as -

- (i) the mediator's signature on the settlement agreement,
  - (ii) a document signed by the mediator indicating that the mediation was carried out,
  - (iii) an attestation by the mediation provider that administered the mediation, or
  - (iv) in the absence of (i), (ii) or (iii), any other evidence acceptable to the Court.
- (2) The requirement that a settlement agreement shall be signed by the parties or, where applicable, the mediator, is met in relation to an electronic communication if-
- (a) a method is used to identify the parties or the mediator and to indicate the parties' or mediator's intention in respect of the information contained in the electronic communication; and
  - (b) the method used is either -
    - (i) as reliable and as appropriate for the purpose for which the electronic communication was generated or communicated, in the light of all the circumstances, including any relevant agreement, or
    - (ii) proven in fact to have fulfilled the functions described in subparagraph (a), by itself or together with further evidence.
- (3) Where settlement agreement is not in an official language of this State, the Court may request a translation from it into the official language.
- (4) The Court may require any necessary document in order to verify that the requirements of this section have been complied with.
- (5) When considering the request for relief, the Court shall act expeditiously.

**Grounds for refusing to grant relief**

84. (1) Subject to section 87 of this Act the Court may refuse to grant reliefs at the request of the party against whom the relief is sought only if that party furnishes to the Court proof that-
- (a) a party to the settlement agreement was under some incapacity; or
  - (b) the settlement agreement sought to be relied upon -
    - (i) is void, inoperative or incapable of being performed under the law to which the parties have validly subjected it or, under the law deemed applicable by the Court,
    - (ii) is not binding, or is not final, according to its terms, or
    - (iii) has been subsequently modified;
  - (c) the obligations in the settlement agreement-
    - (i) have been performed, or
    - (ii) are not clear or comprehensible;
  - (d) granting relief would be contrary to the terms of the settlement agreement; or
  - (e) there was a failure by the mediator to disclose to the parties' circumstances that raise justifiable doubts as to the mediator's impartiality or independence and the failure to disclose had a material impact or undue influence on a party without which failure that party would not have entered into the settlement agreement.
- (2) The Court of this State may also refuse to grant reliefs if it finds that -
- (a) granting relief would be contrary to the public policy of this State; or
  - (b) the subject matter of the dispute is not capable of settlement by mediation under the law of this State.



**Parallel applications or claims**

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

**General principles**

86. Unless otherwise provided in this Part-
- (1) A settlement agreement shall be enforced in accordance with the rules of procedure of this State, and under the conditions laid down in this Part.
  - (2) Where a dispute arises concerning a matter that a party claims was already resolved by a settlement agreement, the party may invoke the settlement agreement in accordance with the rules of procedure of this State, and under the conditions laid down under these provisions, to prove that the matter has already been resolved.

**(C)- Provisions applicable to international settlement agreements only**

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

87. Without prejudice to sections 81 and 83 of this Act, where the enforcement of an international settlement agreement made in a State other than the Federal Republic of Nigeria is sought, the Convention on International Settlement Agreements Resulting Mediation (the Singapore Convention applies to that international settlement agreement, provided that the -
- (a) State is a party to the Singapore Convention; and
  - (b) difference arises out of a legal relationship, whether contractual or, it is not, considered commercial under the laws of Nigeria.

### **PART III - MISCELLANEOUS PROVISIONS**

#### **Receipt of written communication**

- 88.**(1) Unless otherwise agreed by the parties, any communication sent under this Act is deemed to have been received -
- (a) where it is delivered to the addressee personally or when it is delivered to the place of business, habitual residence or mailing address; or
  - (b) where a communication cannot be delivered in accordance with paragraph (a), when it is sent to the addressee's last known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it.
- (2) A communication is deemed to have been received on the day it is delivered under subsection (1).
- (3) The provisions of this section shall not apply to communications in court proceedings.

#### **Saving and transitional provisions**

- 89.** (1) This Act shall not apply to an arbitration agreement concerning an arbitration, which has commenced before the coming into effect of this Act, but applies to an arbitration commenced on or after the coming into effect of this Act.
- (2) Subject to subsection (1), the repeal of the Arbitration and Conciliation Act, shall not prejudice or affect any proceedings, whether or not pending at the time of the repeal, in respect of any right, privilege, obligation or liability and any proceedings taken under that Act in respect of any such right, privilege, obligation or liability acquired, accrued or incurred under the Act may be instituted, continued or enforced as if that Act had not been repealed.

#### **Repeal**

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



## **Interpretation**

### **91. (1) In this Act-**

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

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

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

**"arbitration agreement"** is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not;

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

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

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

**"electronic communication"** means any communication that the

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

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

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

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

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

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

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

**"Third-Party Funder"** means any natural or legal person who is not a party to the dispute but who enters into an agreement either with a disputing party, an affiliate of that party, or a law firm representing that party, in order to finance part or all of the cost of the proceedings, either individually or as part of a selected range of cases, and the financing is provided either through a donation or grant or in return for



reimbursement dependent on the outcome of the dispute or in return for a premium payment; and

**"Third-Party Funding Agreement"** means a contract between the Third-Party Funder and a disputing party, an affiliate of that party, or a law firm representing that party, in order to finance part or all of the cost of the proceedings, either individually or as part of a selected range of cases, and the financing is provided either through a donation or grant or in return for reimbursement dependent on the outcome of the dispute or in return for a premium payment.

- (2) Where a provision of this Act, other than sections 13 and 81, leaves the parties free to determine a certain issue, the freedom includes the right of the parties to authorise a third party, including an institution, to make that determination.
- (3) Where a provision of this Act -
  - (a) refers to the fact that parties have agreed or that they may agree, or
  - (b) in any other way refers to an agreement of the parties, that agreement includes any arbitration rules referred to in the agreement.
- (4) Where a provision of this Act, other than sections 41(1) (a) or 48 (2) (a) refers to a claim, the claim includes a counterclaim, and where it refers to a defence, the defence includes a defence to the counterclaim.
- (5) An arbitration is international if-
  - (a) the parties to an arbitration agreement have their places of business in different Countries at the time of the conclusion of that agreement;
  - (b) the seat of the arbitration, if determined under the arbitration agreement or any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject matter of the dispute is most closely connected is situated outside the State in which the parties have their places of business; or

- (c) the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one State.
- (6) An arbitration is interstate if the -
  - (a) parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different Federating States within the Federal Republic of Nigeria;
  - (b) Federating State in which the seat of arbitration is situated is different from the Federating State or States in which the parties have their places of business;
  - (c) place where a substantial part of the obligations of the commercial relationship is to be performed or the place where the subject matter of the dispute is most closely connected is situated in a Federating State which is different from the Federating State or States in which the parties have their places of business; or
  - (d) the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one Federating State within the Federal Republic of Nigeria.
- (7) For the purposes of subsections (5) and (6)-
  - (a) if a party has more than one place of business, the place of business shall be that which has the closest relationship to the arbitration agreement; and
  - (b) if a party does not have a place of business, reference shall be made to his or her habitual residence.
- (8) A mediation is "**international**" if the -
  - (a) parties to an agreement to mediate have, at the time of the conclusion of that agreement, their places of business in different Countries; or
  - (b) State in which the parties have their places of business is different from



either the State in which -

- (i) a substantial part of the obligations of the commercial relationship is to be performed, or
  - (ii) the subject matter of the dispute is most closely connected.
- (9) For the purposes of subsection (8) if-
- (a) a party has more than one place of business, the place of business is that which has the closest relationship to the agreement to mediate;
  - (b) a party does not have a place of business, reference is to be made to the party's habitual residence; or
  - (c) the parties agree that the mediation is international.
- (10) In the interpretation of this Act, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith and the Court may also have recourse to the travaux préparatoires of the UNCITRAL Model Law on International Commercial Arbitration and Model Law on International Commercial Mediation.
- (11) Questions concerning matters governed by this Act which are not expressly settled in it are to be settled in conformity with the general principles on which this Act is based.

#### **Citation**

- 92.** This Act may be cited as the Arbitration and Mediation Act, 2023.

**SCHEDULES**  
**First Schedule**

**Sections 16(9),(10), 31(1)  
and 56(5)(m)**

**Arbitration Rules**

**SECTION I: INTRODUCTORY RULES**

**Scope of Application**

**Article 1**

1. Where parties have agreed that disputes between them in respect of a defined legal relationship, whether contractual or not, shall be referred to arbitration under the Arbitration and Mediation Act, then such disputes shall be settled in accordance with these Rules subject to such modification as the parties may agree.
2. These Rules shall govern the arbitration, except that where any of these Rules is in conflict with a provision of this Act, the provisions of this Act shall prevail.

**Notice, Calculation of Periods of Time**

**Article 2**

1. A notice, including a notification, communication or proposal, may be transmitted by any means of communication that provides or allows for a record of its transmission.
2. Where an address has been designated by a party specifically for this purpose or authorised by the arbitral tribunal, any notice shall be delivered to that party at that address, and if so delivered shall be deemed to have been received. Delivery by electronic means such as facsimile or e-mail may only be made to an address so designated or authorised.



3. In the absence of such designation or authorisation, a notice is -
  - (a) received where it is physically delivered to the addressee; or
  - (b) deemed to have been received where it is delivered at the place of business, habitual residence or mailing address of the addressee.
4. Where, after reasonable efforts, delivery cannot be effected in accordance with paragraphs 2 or 3, a notice is deemed to have been received where it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means that provides a record of delivery or of attempted delivery.
5. A notice shall be deemed to have been received on the day it is delivered in accordance with paragraphs 2, 3 or 4, or attempted to be delivered in accordance with paragraph 4 and a notice transmitted by electronic means is deemed to have been received on the day it is sent, except that a request for arbitration so transmitted is only deemed to have been received on the day when it reaches the addressee's electronic address.
6. For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice, notification, communication or proposal is received and where the last day of such period is an official holiday or non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows, and official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

### **Written communication requesting arbitration**

#### **Article 3**

1. The party initiating recourse to arbitration (hereinafter called the "claimant") shall give to the other party (hereinafter called the

**"respondent"**) a written communication containing a request for the dispute to be referred to arbitration (the **"written communication"** or the **"request"**).

2. Arbitral proceedings shall be deemed to commence on the date on which the written communication is received by the respondent.
3. The written communication shall include the following -
  - (a) a demand that the dispute be referred to arbitration;
  - (b) the names and contact details of the parties;
  - (c) identification of the arbitration clause or the separate arbitration agreement that is invoked;
  - (d) identification of any contract or other legal instrument out of or in relation to which the dispute arises or, in the absence of such contract or instrument, a brief description of the relevant relationship;
  - (e) a brief description of the claim and an indication of the amount involved, if any;
  - (f) the relief or remedy sought; and
  - (g) a proposal as to the number of arbitrators (i.e. one or three), language and seat of arbitration if the parties have not previously agreed thereon.
4. The written communication may also include -
  - (a) a proposal for the designation of an appointing authority referred to in Article 6, paragraph 1;
  - (b) a proposal for the appointment of a sole arbitrator referred to in Article 8, paragraph 1;
  - (c) notification of the appointment of an arbitrator referred to in Article 9 or 10; and



- (d) the points of claim referred to in Article 20.
- 5. The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the sufficiency of the written communication containing a request for the dispute to be referred to arbitration, which shall be finally resolved by the arbitral tribunal.

### **Response to the written communication requesting arbitration**

#### **Article 4**

- 1. Within 30 days of the receipt of the written communication containing a request for the dispute to be referred to arbitration, the respondent shall convey to the claimant a response to the said written communication, which shall include -
  - (a) the name and contact details of each respondent; and
  - (b) a response to the information set forth in the notice of arbitration under Article 3, paragraphs 3 (c)-(g).
- 2. The response to the written communication requesting arbitration may also include -
  - (a) any plea that an arbitral tribunal to be constituted under these Rules lacks jurisdiction;
  - (b) a proposal for the designation of an appointing authority referred to in Article 6, paragraph 1;
  - (c) a proposal for the appointment of a sole arbitrator referred to in Article 8, paragraph 1;
  - (d) notification of the appointment of an arbitrator referred to in Article 9 or 10;
  - (e) a brief description of counterclaims or claims for the purpose of a set-off, if any, including where relevant, an indication of the amounts involved, and the relief or remedy sought;

- (t) a written communication containing a request for the dispute to be referred to arbitration in accordance with Article 3 in case the respondent formulates a claim against a party to the arbitration agreement other than the claimant; and
  - (g) the points of defence and counterclaim (if any) referred to in Article 21.
3. The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the respondent's failure to communicate a response to the written communication requesting arbitration, or an incomplete or late response to the said written communication, which shall be finally resolved by the arbitral tribunal.

### **Representation and Assistance**

#### **Article 5**

Each party may be represented or assisted by persons chosen by it. The names and addresses of such persons must be communicated in writing to all parties and to the arbitral tribunal. Such communication must specify whether the appointment is being made for purposes of representation or assistance.

### **Designated and Appointing Authorities**

#### **Article 6**

1. Unless the parties have already agreed on the choice of an appointing authority, a party may at any time propose the name or names of one or more institutions or persons, and may include the Director of the Regional Centre for International Commercial Arbitration- Lagos (hereinafter called the "RCICAL"), one of whom would serve as appointing authority.
2. Where parties have not agreed on the choice of an appointing authority within 30 days after a proposal made in accordance with paragraph 1 has been received by all other parties, any party may request the



Director of the RCICAL to designate the appointing authority.

3. Where these Rules provide for a period of time within which a party must refer a matter to an appointing authority and no appointing authority has been agreed on or designated, the period is suspended from the date on which a party initiates the procedure for agreeing on or designating an appointing authority until the date of such agreement or designation.
4. Except as referred to in Article 49, paragraph 4, where the appointing authority refuses to act, or where it fails to appoint an arbitrator within 30 days after it receives a party's request to do so, fails to act within any other period provided by these Rules, or fails to decide on a challenge to an arbitrator within a reasonable time after receiving a party's request to do so, any party may request the Director of the RCICAL to designate a substitute appointing authority.
5. In exercising their functions under these Rules, the appointing authority or the Director of the RCICAL may require from any party and the arbitrators the information they deem necessary and they shall give the parties and, where appropriate, the arbitrators, an opportunity to present their views in any manner they consider appropriate. All such communications to and from the appointing authority and the Director of the RCICAL shall also be provided by the sender to all other parties.
6. When the appointing authority is requested to appoint an arbitrator under Articles 8, 9, 10 or 14, the party making the request shall send to the appointing authority copies of the written communication containing a request for the dispute to be referred to arbitration and, if it exists, any response to the said written communication.
7. The appointing authority shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and shall take into account the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties.

## **SECTION II. COMPOSITION OF THE ARBITRAL TRIBUNAL**

### **Number of Arbitrators**

#### **Article 7**

1. Where parties have not previously agreed on the number of arbitrators, and if within 30 days after the receipt by the respondent of the written communication containing a request for the dispute to be referred to arbitration the parties have not agreed that there shall be only one arbitrator, one arbitrator shall be appointed.
2. Notwithstanding paragraph 1, where no other parties responded to a party's proposal to appoint a sole arbitrator within the time limit provided for in paragraph 1 and the party or parties concerned have failed to appoint a second arbitrator in accordance with Article 9 or 10, the appointing authority may at the request of a party, appoint a sole arbitrator under the procedure provided for in Article 8, paragraph 2, if it determines that, in view of the circumstances of the case, this is more appropriate.

### **Appointment of Arbitrators (Articles 8 to 10)**

#### **Article 8**

1. Where parties have agreed that a sole arbitrator is to be appointed and if within 30 days after receipt by all other parties of a proposal for the appointment of a sole arbitrator the parties have not reached agreement thereon, a sole arbitrator shall, at the request of a party, be appointed by the appointing authority.
2. The appointing authority shall appoint the sole arbitrator as promptly as possible. In making the appointment, the appointing authority shall use the following list-procedure, unless the parties agree that the list-procedure should not be used or unless the appointing authority determines in its discretion that the use of the list-procedure is not appropriate for the case -



- (a) the appointing authority shall communicate to each of the parties an identical list containing at least three names;
- (b) within 15 days after the receipt of this list, each party may return the list to the appointing authority after having deleted the name or names to which it objects and numbered the remaining names on the list in the order of its preference;
- (c) after the expiration of the above period of time the appointing authority shall appoint the sole arbitrator from among the names approved on the lists returned to it and in accordance with the order of preference indicated by the parties; and
- (d) where for any reason the appointment cannot be made according to this procedure, the appointing authority may exercise its discretion in appointing the sole arbitrator.

### **Article 9**

- 1. Where three arbitrators are to be appointed, each party shall appoint one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the arbitral tribunal.
- 2. Where within 30 days after the receipt of a party's notification of the appointment of an arbitrator the other party has not notified the first party of the arbitrator it has appointed, the first party may request the appointing authority to appoint the second arbitrator.
- 3. where within 30 days after the appointment of the second arbitrator the two arbitrators have not agreed on the choice of the presiding arbitrator, the presiding arbitrator shall be appointed by the appointing authority in the same way as a sole arbitrator would be appointed under Article 8.

### **Article 10**

- 1. For the purposes of Article 9, paragraph 1, where three arbitrators are to be appointed and there are multiple parties as claimant or as

respondent, unless the parties have agreed to another method of appointment of arbitrators, the multiple parties jointly, whether as claimant or as respondent, shall appoint an arbitrator.

2. Where parties have agreed that the arbitral tribunal is to be composed of a number of arbitrators other than one or three, the arbitrators shall be appointed according to the method agreed upon by the parties.
3. In the event of any failure to constitute the arbitral tribunal under these Rules, the appointing authority shall, at the request of any party, constitute the arbitral tribunal and, in doing so, may revoke any appointment already made and appoint or reappoint each of the arbitrators and designate one of them as the presiding arbitrator.

### **Disclosures by and challenge of arbitrators (Articles 11 to 13)**

#### **Article 11**

Where a person is approached in connection with possible appointment as an arbitrator, the person shall confirm their availability and disclose any circumstances likely to give rise to justifiable doubts as to the person's impartiality or independence. An arbitrator, from the time of appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties and the other arbitrators unless they have already been informed by him or her of these circumstances.

#### **Article 12**

1. An arbitrator may be challenged where circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.
2. A party may challenge the arbitrator appointed by it only for reasons of which it becomes aware after the appointment has been made.
3. In the event that an arbitrator fails to act or in the event of the de Jure or de facto impossibility of performing the functions, the procedure in



respect of the challenge of an arbitrator as provided in Article 13 shall apply.

### **Article 13**

1. A party that intends to challenge an arbitrator shall send notice of its challenge within 15 days after it has been notified of the appointment of the challenged arbitrator, or within 15 days after the circumstances mentioned in Articles 11 and 12 became known to that party.
2. The notice of challenge shall be communicated to all other parties, to the arbitrator who is challenged and to the other arbitrators. The notice of challenge shall state the reasons for the challenge.
3. When an arbitrator has been challenged by a party, all parties may agree to the challenge, and the arbitrator may also, after the challenge, withdraw from his or her office. In neither case does this imply acceptance of the validity of the grounds for the challenge.
4. If, within 15 days from the date of the notice of challenge, all parties do not agree to the challenge or the challenged arbitrator does not withdraw, the party making the challenge may elect to pursue it further and, in that case, within 30 days from the date of the notice of challenge, it shall seek a decision on the challenge by -
  - (a) the appointing authority, arbitral institution or the Court, as the case may be, that appointed the arbitrator; or
  - (b) where a party appointed the arbitrator, the Court.

### **Replacement of an Arbitrator**

#### **Article 14**

1. Subject to paragraph 2, in any event where an arbitrator has to be replaced during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen under the procedure provided for in Articles 8 to 11 that was applicable to the appointment or choice

of the arbitrator being replaced. This procedure shall apply even if during the process of appointing the arbitrator to be replaced, a party had failed to exercise its right to appoint or to participate in the appointment.

2. If, at the request of a party, the appointing authority determines that, in view of the exceptional circumstances of the case, it would be justified for a party to be deprived of its right to appoint a substitute arbitrator, the appointing authority may, after giving an opportunity to the parties and the remaining arbitrators to express their views:
  - (a) appoint the substitute arbitrator; or
  - (b) after the closure of the hearings, authorise the other arbitrators to proceed with the arbitration and make any decision or award.

### **Repetition of hearings in the event of the replacement of an Arbitrator**

#### **Article 15**

Where an arbitrator is replaced, the proceedings shall resume at the stage where the arbitrator who was replaced ceased to perform his or her functions, unless the parties decides otherwise.

### **Exclusion of liability**

#### **Article 16**

Save for intentional wrongdoing, the parties waive, to the fullest extent permitted under the applicable law, any claim against the arbitrators, the emergency arbitrator, the appointing authority and any person appointed by the arbitral tribunal based on any act or omission in connection with the arbitration.



## **SECTION III: ARBITRAL PROCEEDINGS**

### **General Provisions**

#### **Article 17**

1. Subject to the Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that, the parties are treated with equality and that at any stage of the proceedings each party is given a full opportunity of presenting his case. The arbitral tribunal, in exercising its discretion, shall conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the parties' dispute.
2. As soon as practicable after its constitution and after inviting the parties to express their views, the arbitral tribunal shall establish the provisional timetable of the arbitration. The arbitral tribunal may, at any time, after inviting the parties to express their views, extend or abridge any period of time prescribed under these Rules or agreed by the parties.
3. If at an appropriate stage of the proceedings any party so requests, the arbitral tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the arbitral tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.
4. All communications to the arbitral tribunal by one party shall be communicated by that party to all other parties. Such communications shall be made at the same time, except as otherwise permitted by the arbitral tribunal if it may do so under applicable law.
5. The arbitral tribunal may, at the request of any party, allow one or more third persons to be joined in the arbitration as a party in accordance with section 40 of the Act, provided such person is a party to the arbitration agreement, unless the arbitral tribunal finds, after giving all parties, including the person or persons to be joined, the opportunity to

be heard, that joinder should not be permitted because of prejudice to any of those parties. The arbitral tribunal may make a single award or several awards in respect of all parties so involved in the arbitration.

### **Seat and Venue of Arbitration**

#### **Article 18**

1. Where parties have not previously agreed on the seat of the arbitration, the seat of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the arbitration. The Award shall be deemed to have been made at the seat of arbitration.
2. The arbitral tribunal may meet at any location (venue) it considers appropriate for deliberations. Unless otherwise agreed by the parties, the arbitral tribunal may also meet at any location it considers appropriate for any other purpose, including hearings.

### **Language**

#### **Article 19**

1. Subject to an agreement by the parties, the arbitral tribunal shall promptly after its appointment, determine the language or languages to be used in the proceedings. This determination shall apply to the points of claim, the points of defence, and any further written statements and, if oral hearings take place, to the language or languages to be used at such hearings.
2. The arbitral tribunal may order that any documents annexed to the points of claim or points of defence, and any supplementary documents or exhibits submitted in the course of the proceedings, delivered in their original language, shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.



## **Points of Claim**

### **Article 20**

1. Unless the points of claim was contained in the written communication containing a request for the dispute to be referred to arbitration, the claimant shall, within a period of time to be determined by the arbitral tribunal, communicate its points of claim in writing to the respondent and to each of the arbitrators.
2. The points of claim shall include the following particulars -
  - (a) the names and addresses of the parties;
  - (b) a statement of the facts supporting the claim;
  - (c) the point at issue;
  - (d) the relief or remedy sought; and
  - (e) the legal grounds or arguments supporting the claim.
3. A copy of any contract or other legal instrument out of which or in relation to which the dispute arises and of the arbitration agreement, if not contained in the contract or other legal instrument, shall be annexed to the points of claim.
4. The points of claim should, as far as possible, be accompanied by all documents and other evidence relied upon by the claimant, or contains references to them.

## **Points of Defence**

### **Article 21**

1. Unless the points of defence was contained in response to the written communication containing a request for the dispute to be referred to arbitration, the respondent shall, within a period of time to be determined by the arbitral tribunal, communicate its points of claim in

writing to the respondent and to each of the arbitrators.

2. The points of defence shall reply to the particulars (b), (c), (d) and (e) of the points of claim (Article 20, paragraph 2). The statement of defence should, as far as possible, be accompanied by all documents and other evidence relied upon by the respondent, or contain references to them.
3. In its points of defence, or at a later stage in the arbitral proceedings, if the arbitral tribunal decides that the delay was justified under the circumstances, the respondent may make a counterclaim or rely on a claim for the purpose of a set-off provided that the arbitral tribunal has jurisdiction over it.
4. The provisions of Article 20, paragraphs 2 to 4, shall apply to a counterclaim, a claim under Article 4, paragraph 2(f), and a claim relied on for the purpose of set-off.

### **Amendments to the claim or defence**

#### **Article 22**

During the course of the arbitral proceedings, either party may amend or supplement its claim or defence, including a counterclaim or a claim for the purpose of a set-off, unless the arbitral tribunal considers it inappropriate to allow such amendment or supplement having regard to the delay in making it or prejudice to the other parties or any other circumstances. However, a claim or defence, including a counterclaim or a claim for the purpose of a set-off, may not be amended or supplemented in such a manner that the amended or supplemented claim or defence falls outside the jurisdiction of the arbitral tribunal.

### **Pleas as to the jurisdiction of the Arbitral Tribunal**

#### **Article 23**

1. The arbitral tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration clause or of the separate arbitration agreement. For that



purpose, an arbitration clause that forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null shall not entail automatically the invalidity of the arbitration clause.

2. A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than in the points of defence, or with respect to a counterclaim or a claim for the purpose of a set-off, in the reply to the counterclaim or to the claim for the purpose of a set-off. A party is not precluded from raising such a plea by the fact that it has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.
3. The arbitral tribunal may rule on a plea referred to in paragraph 2 either as a preliminary question or in an award on the merits. The arbitral tribunal may continue the arbitral proceedings and make an award, notwithstanding any pending challenge to its jurisdiction before a court.

### **Further written statements**

#### **Article 24**

The arbitral tribunal shall decide which further written statements, in addition to the points of claim and the points of defence, shall be required from the parties or may be presented by them and shall fix the periods of time for communicating such statements.

### **Periods of time**

#### **Article 25**

The periods of time fixed by the arbitral tribunal for the communication of written statements (including the points of claim and points of defence) should

not exceed 45 days. However, the arbitral tribunal may extend the time limits if it concludes that an extension is justified.

### **Interim measures**

#### **Article 26**

1. The arbitral tribunal may, at the request of a party, grant interim measures.
2. An interim measure is any temporary measure by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party, for example and without limitation, to -
  - (a) maintain or restore the status quo pending determination of the dispute;
  - (b) take action that would prevent, or refrain from taking action that is likely to cause -
    - (i) current or imminent harm, or
    - (ii) prejudice to the arbitral process itself;
  - (c) provide a means of preserving assets out of which a subsequent award may be satisfied; or
  - (d) preserve evidence that may be relevant and material to the resolution of the dispute.
3. The party requesting an interim measure under paragraphs 2 (a) to (c) shall satisfy the arbitral tribunal that -
  - (a) harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and



- (b) there is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.
- 4. With regard to a request for an interim measure under paragraph 2 (d), the requirements in paragraphs 3 (a) and (b) shall apply only to the extent the arbitral tribunal considers appropriate.
- 5. The arbitral tribunal may modify, suspend or terminate an interim measure it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal's own initiative.
- 6. The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.
- 7. The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the interim measure was requested or granted.
- 8. The party requesting an interim measure may be liable for any costs and damages caused by the measure to any party if the arbitral tribunal later determines that, in the circumstances then prevailing, the measure should not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings.
- 9. A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

## **Emergency arbitrator proceedings**

### **Article 27**

#### **Conduct of Emergency Relief Proceedings**

1. Taking into account the urgency inherent in the Emergency Relief proceedings and ensuring that each party has a reasonable opportunity to be heard on the application, the emergency arbitrator may conduct such proceedings in such a manner as the emergency arbitrator considers appropriate. The emergency arbitrator shall have the power to rule on objections that the emergency arbitrator has no jurisdiction, including any objections with respect to the existence, validity or scope of the arbitration clause(s) or of the separate arbitration agreement(s), and shall resolve any disputes over the applicability of this Article and of section 16 of the Act.

#### **Decisions of the emergency arbitrator**

2. Any decision of the emergency arbitrator shall take the form of an order (the "**Emergency Decision**") shall be made within 14 days from the date on which the file is received by the emergency arbitrator. This period of time may be extended by agreement of the parties.
3. The Emergency Decision may be made even if in the meantime the file has been transmitted to the arbitral tribunal.
4. Any Emergency Decision shall-
  - (a) be made in writing;
  - (b) state the date when it was made and summary reasons upon which the Emergency Decision is based (including a determination on whether the application is admissible under section 16 of the Act and whether the emergency arbitrator has jurisdiction to grant the Emergency Relief); and



- (c) be signed by the emergency arbitrator.
- 5. Any Emergency Decision shall fix the costs of the Emergency Relief proceedings and decide which of the parties shall bear them or in what proportion they shall be borne by the parties, subject always to the power of the arbitral tribunal to determine finally the apportionment of such costs in accordance with section 50 of this Act. The costs of the Emergency Relief proceedings include the emergency arbitrator's fees and expenses and the reasonable and other legal costs incurred by the parties for the Emergency Relief proceedings.
- 6. Any Emergency Decision shall be recognised and enforced in the same manner as an interim measure under to section 28 of this Act and shall be binding on the parties when rendered. By agreeing to arbitration under these Rules, the parties undertake to comply with any Emergency Decision without delay.
- 7. The emergency arbitrator shall be entitled to order the provision of appropriate security by the party seeking Emergency Relief.
- 8. Any Emergency Decision may, upon a reasoned request by a party, be modified, suspended or terminated by the emergency arbitrator or the arbitral tribunal (once constituted).
- 9. Any Emergency Decision ceases to be binding -
  - (a) if the emergency arbitrator or the arbitral tribunal so decides;
  - (b) upon the arbitral tribunal rendering a final award unless the arbitral tribunal expressly decides otherwise;
  - (c) upon the withdrawal of all claims or the termination of the arbitration before the rendering of a final award; or
  - (d) if the arbitral tribunal is not constituted within 90 days from the date of the Emergency Decision. This period of time may be extended by agreement of the parties.
- 10. The emergency arbitrator's decision shall not bind the arbitral tribunal

with respect to any question, issue or dispute determined in the Emergency Decision. The arbitral tribunal may modify, terminate or annul the Emergency Decision or any modification thereto made by the emergency arbitrator.

11. The arbitral tribunal shall decide upon any party's requests or claims related to the Emergency Relief proceedings, including the reallocation of the costs of such proceedings and any claims arising out of or in connection with the compliance or non-compliance with the order.

### **General provisions**

12. Subject to subparagraph 15 of this Article, the emergency arbitrator shall have no further power to act once the arbitral tribunal is constituted.
13. The emergency arbitrator procedures set out in this Article are not intended to prevent any party from seeking urgent interim or conservatory measures from a competent Court at any time.
14. In all matters not expressly provided for in this Article, the emergency arbitrator shall act in the spirit of the Act and these Rules.
15. The emergency arbitrator shall make every reasonable effort to ensure that an Emergency Decision is valid.

### **Evidence**

#### **Article 28**

1. Each party shall have the burden of proving the facts relied on to support his claim or defence.
2. Witnesses, including expert witnesses, who are presented by the parties to testify to the arbitral tribunal on any issue of fact or expertise may be any individual, notwithstanding that the individual is a party to the



arbitration or in any way related to a party. Unless otherwise directed by the arbitral tribunal, statements by witnesses, including expert witnesses, may be presented in writing and signed by them.

3. The arbitral tribunal may, if it considers it appropriate, require a party to deliver to the tribunal and to the other party within such a period of time as the arbitral tribunal shall decide, a summary of the documents and other evidence which that party intends to present in support of the facts in issue set out in his points of claim or points of defence.
4. At any time during the arbitral proceedings, the arbitral tribunal may require the parties to produce documents, exhibits or other evidence within such a period of time as the arbitral tribunal shall determine.
5. The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

### **Hearings**

#### **Article 29**

1. In the event of an oral hearing, the arbitral tribunal shall give the parties adequate advance notice of the date, time and place thereof.
2. Witnesses, including expert witnesses, may be heard under the conditions and examined in the manner set by the arbitral tribunal.
3. Hearings shall be held in camera unless the parties agree otherwise. The arbitral tribunal may require the retirement of any witness or witnesses, including expert witnesses, during the testimony of such other witnesses, except that a witness, including an expert witness, who is a party to the arbitration shall not, in principle, be asked to retire.
4. The arbitral tribunal may direct that witnesses, including expert witnesses, be examined through means of telecommunication that do not require their physical presence at the hearing (such as video conference).

**Experts appointed by the Arbitral Tribunal**  
**Article 30**

1. After consultation with the parties, the arbitral tribunal may appoint one or more independent experts to report to it in writing, on specific issues to be determined by the arbitral tribunal. A copy of the expert's terms of reference, established by the arbitral tribunal, shall be communicated to the parties.
2. The expert shall, in principle before accepting appointment, submit to the arbitral tribunal and to the parties a description of his or her qualifications and a statement of his or her impartiality and independence. Within the time ordered by the arbitral tribunal, the parties shall inform the arbitral tribunal whether they have any objections as to the expert's qualifications, impartiality or independence. The arbitral tribunal shall decide promptly whether to accept any such objections. After an expert's appointment, a party may object to the expert's qualifications, impartiality or independence only if the objection is for reasons of which the party becomes aware after the appointment has been made. The arbitral tribunal shall decide promptly what, if any, action to take.
3. The parties shall give the expert any relevant information or produce for his or her inspection any relevant documents or goods that he or she may require of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.
4. Upon receipt of the expert's report, the arbitral tribunal shall communicate a copy of the report to the parties, who shall be given the opportunity to express, in writing, their opinion on the report. A party shall be entitled to examine any document on which the expert has relied in his or her report.
5. At the request of either party, the expert, after delivery of the report, may be heard at a hearing where the parties shall have the opportunity to be present and to interrogate the expert. At this hearing, either party may present expert witnesses in order to testify on the points at issue.



The provisions of Article 29 shall be applicable to such proceedings.

**Default  
Article 31**

1. If, within the period of time fixed by these Rules or the arbitral tribunal, without showing sufficient cause -
  - (a) the claimant has failed to communicate its point of claim, the arbitral tribunal shall issue an order for the termination of the arbitral proceedings, unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so; or
  - (b) the respondent has failed to communicate its response to the written communication containing a request for the dispute to be referred to arbitration or its points of defence, the arbitral tribunal shall order that the proceedings continue, without treating such failure in itself as an admission of the claimant's allegations; the provisions of this subparagraph also apply to a claimant's failure to submit a defence to a counterclaim or to a claim for the purpose of a set-off.
2. Where a party, duly notified under these Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration.
3. Where a party, duly invited by the arbitral tribunal to produce documents, exhibits or other evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the arbitral tribunal may make the award on the evidence before it.

**Consolidation  
Article 32**

1. In deciding whether to consolidate proceedings or to hold concurrent hearings, the arbitral tribunal shall take into account the circumstances of the case, which may include, but are not limited to where -

- (a) one or more arbitrators have been nominated or confirmed in more than one of the arbitrations, and if so, whether the same or different arbitrators have been confirmed;
- (b) all of the claims in the arbitrations are made under the same arbitration agreement; or
- (c) the claims are under more than one arbitration agreement, a common question of law or fact arises in both or all of the arbitrations, the rights to relief claimed are in respect of, or arise out of the same transaction or series of transactions, and the tribunal finds the arbitrations to be compatible.

2. A Request for Consolidation shall include -

- (a) the names and addresses, telephone numbers, and email addresses of each of the parties to the arbitrations, their counsel and any arbitrator who have been appointed or confirmed in the arbitrations;
- (b) a request that the arbitrations be consolidated;
- (c) a copy of the arbitration agreements giving rise to the arbitrations;
- (d) a reference to the contracts or other legal instruments out of or in relation to which the Request arises;
- (e) a description of the general nature of the claim and an indication of the amount involved, if any, in each of the arbitrations;
- (f) a statement of the facts supporting the Request (including, where applicable, evidence of all parties' written consent to consolidate the arbitrations);
- (g) the points at issue;
- (h) the legal arguments supporting the Request;
- (i) the relief or remedy sought;
- (j) comments on the appointment of the arbitral tribunal if the Request is granted, including whether to preserve the appointment of any already



appointed or confirmed arbitrators; and

- (k) confirmation that copies of the Request and any exhibits included therewith have been or are being served simultaneously on all other relevant parties and any appointed or confirmed arbitrator.
- 3. The Request for Consolidation shall not be rendered incompetent by any controversy with respect to the sufficiency of its contents as set out in Article 32(2). Any such controversy shall be finally resolved by the arbitral tribunal.

### **Effect of Consolidation**

#### **Article 33**

- 1. Where the arbitral tribunal decides to consolidate two or more arbitral proceedings, the arbitral proceedings shall be consolidated into the arbitral proceedings that commenced first, unless all parties agree or the arbitral tribunal decides otherwise taking into account the circumstances of the case.
- 2. The consolidation of two or more arbitral proceedings is without prejudice to the validity of any act done or order made by a Court in support of the relevant arbitral proceedings before it was consolidated.
- 3. Where the arbitral tribunal decides to consolidate two or more arbitrations, the parties to all such arbitrations shall be deemed to have waived their right to designate an arbitrator. In these circumstances, the Director of the Regional Centre for International Commercial Arbitration, Lagos shall appoint the arbitral tribunal in respect of the consolidated proceedings.
- 4. Where any arbitrator ceases to act under this Article, it shall be without prejudice to -
  - (a) the validity of any act done or order made by that arbitrator before his or her appointment ceased;

- (b) the arbitrator's entitlement to fees and expenses subject to section 50(2) of this Act; and
  - (c) the date when any claim or defence was raised for the purpose of applying any Statute of Limitation or any similar rule or provision.
5. The parties shall not object to the validity and enforcement of any award made by the arbitral tribunal in the consolidated proceedings on the basis of the arbitral proceedings under section 39 of the Act.

***Request to Join a Third Party***  
**Article 34**

1. An existing party to the arbitral proceedings wishing to join an additional party to the arbitration shall submit a Request for Joinder to the arbitral tribunal. The arbitral tribunal may fix a time limit for the submission of a Request for Joinder.
2. The Request for Joinder shall include the following -
  - (a) the names and addresses, telephone numbers, and email addresses of each of the parties in the existing arbitration, and the additional party;
  - (b) a request that the additional party be joined to the arbitration;
  - (c) a reference to the contracts or other legal instruments out of or in relation to which the request arises;
  - (d) a statement of the facts supporting the request;
  - (e) the points at issue;
  - (f) the legal arguments supporting the request;
  - (g) the relief or remedy sought; and
  - (h) confirmation that copies of the Request for Joinder and any exhibits included therewith have been or are being served simultaneously on all other parties and the tribunal.



3. The Request for Joinder shall not be rendered incompetent by any controversy with respect to the sufficiency of its contents as set out in Article 33(2). Any such controversy shall be finally resolved by the arbitral tribunal.

### **Answer to Request for Joinder by a Third Party**

#### **Article 35**

1. The additional party, to whom a Request for Joinder is addressed, shall submit to the tribunal an Answer to the Request for Joinder within fifteen (15) days of the receipt of the Request for Joinder.
2. The Answer to the Request for Joinder shall include the following-
  - (a) the name, address, telephone numbers, and email address of the additional party and its counsel if different from the description contained in the Request for Joinder;
  - (b) any plea that the arbitral tribunal has been improperly constituted or lacks jurisdiction over the additional party;
  - (c) the additional party's comments on the particulars set forth in the Request for Joinder;
  - (d) the additional party's answer to the relief or remedy sought in the Request for Joinder;
  - (e) details of any claims by the additional party against any other party to the arbitration; and
  - (f) confirmation that copies of the Answer to the Request for Joinder and any exhibits included therewith have been or are being served simultaneously on all other parties and the arbitral tribunal.

### **Request by a Third Party to Join the arbitration**

#### **Article 36**

A third party wishing to be joined as an additional party to the arbitration shall submit a Request for Joinder to the arbitral tribunal. The provisions of Article 34 shall apply to such Request for Joinder.

### **Comments on the Request for Joinder by existing parties to the arbitration**

#### **Article 37**

The other parties to the arbitration shall submit their comments on the Request for Joinder to the arbitral tribunal within 15 days of receiving a Request for Joinder under Article 34 or 36 and such comments may include but are not limited to the following particulars -

- (a) any plea that the arbitral tribunal lacks jurisdiction over the additional party;
- (b) comments on the particulars set forth in the Request for Joinder;
- (c) answer to the relief or remedy sought in the Request for Joinder;
- (d) details of any claims against the additional party; and
- (e) confirmation that copies of the comments have been or are being served simultaneously on all other parties and the tribunal.

### **General provisions on Joinder**

#### **Article 38**

1. Where an additional party is joined to the arbitration, the date on which the Request for Joinder is received by the arbitral tribunal shall be



deemed to be the date on which the arbitration in respect of the additional party commences.

2. The parties waive any objection, on basis of any decision to join an additional party to the arbitration, to the validity and enforcement of any award made by the arbitral tribunal in the arbitration.

### **Closure of hearings**

#### **Article 39**

1. The arbitral tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the hearings closed.
2. The arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own initiative or upon application of a party, to reopen the hearings at any time before the award is made.

### **Waiver of right to object**

#### **Article 40**

A failure by any party to object promptly to any non-compliance with these Rules or with any requirement of the arbitration agreement shall be deemed to be a waiver of the right of such party to make such an objection, unless such party can show that, under the circumstances, its failure to object was justified.

## **SECTION IV: THE AWARD**

### **Decisions**

#### **Article 41**

1. When there are three arbitrators, any award or other decision of the arbitral tribunal shall be made by a majority of the arbitral tribunal.

2. In the case of questions of procedure, when there is no majority or when the arbitral tribunal so authorises, the presiding arbitrator may decide alone, subject to revision, if any, by the arbitral tribunal.

### **Form and effect of the Award**

#### **Article 42**

1. The arbitral tribunal may make separate awards on different issues at different times.
2. All awards shall be made in writing and shall be final and binding on the parties. The parties undertake to carry out the award without delay.
3. The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.
4. An award shall be signed by the arbitrators and it shall contain the date on which the award was made and indicate the seat of arbitration. Where there is more than one arbitrator and any of them fails to sign, the award shall state the reason for the absence of the signature.
5. The award may be made public only with the consent of all parties or where and to the extent disclosure is required of a party by legal duty, to protect or pursue a legal right or in relation to legal proceedings before a Court or other competent authority.
6. Copies of the award signed by the arbitrators shall be communicated to the parties by the arbitral tribunal.

### **Applicable Law, Amiable Compositeur**

#### **Article 43**

1. The arbitral tribunal shall apply the rules of law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall apply the law which it determines to be appropriate.



2. The arbitral tribunal shall decide as *amiable compositeur* or *ex aequo et bono* only if the parties have expressly authorised the arbitral tribunal to do so.
3. In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract, if any, and shall take into account any usage of trade applicable to the transaction.

#### **Settlement or other grounds for termination**

##### **Article 44**

1. If, before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by both parties and accepted by the tribunal, record the settlement in the form of an arbitral award on agreed terms. The arbitral tribunal is not obliged to give reasons for such an award.
2. If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reasons not mentioned in paragraph 1, the arbitral tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The arbitral tribunal shall have the power to issue such an order unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so.
3. Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated by the arbitral tribunal to the parties. Where an arbitral award on agreed terms is made, the provisions of Article 42, paragraphs 2, 4 and 6, shall apply.

#### **Interpretation of the award**

##### **Article 45**

1. Within thirty days after the receipt of the award, a party, with notice to the other parties, may request that the arbitral tribunal give an interpretation of the award.

2. The interpretation shall be given in writing within forty-five days after the receipt of the request. The interpretation shall form part of the award and the provisions of Article 42, paragraphs 2 to 6, shall apply.

### **Correction of the award**

#### **Article 46**

1. Within thirty days after the receipt of the award, a party, with notice to other parties, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical error, or any error of similar nature. If the arbitral tribunal considers that the request is justified, it shall make the correction within forty-five days of receipt of the request.
2. The arbitral tribunal may within thirty days after the communication of the award make such corrections on its own initiative.
3. Such corrections shall be in writing and shall form part of the award. The provisions of Article 42, paragraphs 2-6, shall apply.

### **Additional award**

#### **Article 47**

1. Within thirty days after the receipt of the termination order of the award, a party, with notice to the other parties, may request the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but not decided by the arbitral tribunal.
2. Where arbitral tribunal considers the request for an award or additional award to be justified, it shall render or complete its awards within 60 days after the receipt of the request. The arbitral tribunal may extend, if necessary, the period of time within which it shall make the award.
3. When an award or additional award is made, the provisions of Article 42, paragraphs 2-6, shall apply.



**Definition of costs**  
**Article 48**

1. The arbitral tribunal shall fix the costs of arbitration in the final award and, if it deems appropriate, in another decision.
2. The term "**costs**" includes only -
  - (a) the fees of the arbitral tribunal to be stated separately as to each arbitrator and to be fixed by the tribunal itself in accordance with Article 49;
  - (b) the reasonable travel and other expenses incurred by the arbitrators;
  - (c) the reasonable costs of expert advice and of other assistance required by the arbitral tribunal;
  - (d) the reasonable travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;
  - (e) the legal and other costs incurred by the parties in relation to the arbitration to the extent that the arbitral tribunal determines that the amount of such costs is reasonable;
  - (f) any fees and expenses of the appointing authority as well as the fees and expenses of the Director of the RCICAL;
  - (g) the cost of Third-Party Funding; and
  - (h) other costs
3. In relation to interpretation, correction or completion of any award under Articles 45 to 47, the arbitral tribunal may charge the costs referred to in paragraphs 2 (b)-(f), but no additional fees.

**Fees and expenses of Arbitrators**  
**Article 49**

1. The fees and expenses of the arbitrators shall be reasonable in amount,

taking into account the amount in dispute, the complexity of the subject matter, the time spent by the arbitrators and any other relevant circumstances of the case.

2. If there is an appointing authority and it applies or has stated that it will apply a schedule or particular method for determining the fees for arbitrators in international cases, the arbitral tribunal in fixing its fees shall take that schedule or method into account to the extent that it considers appropriate in the circumstances of the case.
3. Promptly after its constitution, the arbitral tribunal shall inform the parties as to how it proposes to determine its fees and expenses, including any rates it intends to apply. Within 15 days of receiving that proposal, any party may refer the proposal to the appointing authority for review. If, within 45 days of receipt of such a referral, the appointing authority finds that the proposal of the arbitral tribunal is inconsistent with paragraph 1, it shall make any necessary adjustments thereto, which shall be binding upon the arbitral tribunal -
  - (a) when informing parties of the arbitrators' fees and expenses that have been fixed under Article 48, paragraphs 2 (a) and (b), the arbitral tribunal shall also explain the manner in which the corresponding amounts have been calculated;
  - (b) within 15 days of receiving the arbitral tribunal's determination of fees and expenses, any party may refer for review such determination to the appointing authority. If no appointing authority has been agreed upon or designated, or if the appointing authority fails to act within the time specified in these Rules, then the review shall be made by the Director of the RCICAL;
  - (c) if the appointing authority or the Director of the RCICAL finds that the arbitral tribunal's determination is inconsistent with the arbitral tribunal's proposal (and any adjustment thereto) under paragraph 3 or is otherwise manifestly excessive, it shall, within 45 days of receiving such a referral, make any adjustments to the arbitral tribunal's determination that are necessary to satisfy the criteria in paragraph 1. Any such adjustments shall be binding upon the arbitral tribunal;



- (d) any such adjustments shall either be included by the arbitral tribunal in its award or, if the award has already been issued, be implemented in a correction to the award, to which the procedure of Article 46, paragraph 3, shall apply.
- 4. Throughout the procedure under paragraphs 3 and 4, the arbitral tribunal shall proceed with the arbitration, in accordance with Article 17, paragraph 1.
- 5. A referral under paragraph 4 shall not affect any determination in the award other than the arbitral tribunal's fees and expenses, nor shall it delay the recognition and enforcement of all parts of the award other than those relating to the determination of the arbitral tribunal's fees and expenses.

#### **Allocation of costs**

##### **Article 50**

- 1. The costs of the arbitration shall in principle be borne by the unsuccessful party or parties. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.
- 2. The arbitral tribunal shall in the final award or, if it deems appropriate, in any other award, determine any amount that a party may have to pay to another party as a result of the decision on allocation of costs.

#### **Deposit of costs**

##### **Article 51**

- 1. The arbitral tribunal, on its establishment, may request the parties to deposit an equal amount as an advance for the costs referred to in Article 48, paragraphs 2 (a)-(c).
- 2. During the course of the arbitral proceedings, the arbitral tribunal may request supplementary deposits from the parties.

3. If an appointing authority has been agreed upon or designated, and when a party so requests and the appointing authority consents to perform the function, the arbitral tribunal shall fix the amounts of any deposits or supplementary deposits only after consultation with the appointing authority, which may make any comments to the arbitral tribunal that it deems appropriate concerning the amount of such deposits and supplementary deposits.
4. If the required deposits are not paid in full within thirty days after the receipt of the requests, the arbitral tribunal shall so inform the parties, in order that one or more of them may make the required payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.
5. After the award has been made, the arbitral tribunal shall render an account to the parties of the deposits received and return any unexpended balance to the parties.

## **ANNEX**

### **Model arbitration clause for contracts**

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the Arbitration and Mediation Act in force in the Federal Republic of Nigeria.

Note, for arbitration, parties should consider adding-

- (a) the appointing authority shall be ... (name of institution or person);
- (b) the number of arbitrators shall be ... (one or three);
- (c) the seat of arbitration shall be ... (town and country);
- (d) the language to be used in the arbitral proceedings shall be and
- (e) model statements of independence under Article 11 of the Rule



**No circumstances to disclose.**

I am impartial and independent of each of the parties and intend to remain so. To the best of my knowledge, there are no circumstances, past or present, likely to give rise to justifiable doubts as to my impartiality or independence. I shall promptly notify the parties and the other arbitrators of any such circumstances that may subsequently come to my attention during this arbitration.

I confirm, on the basis of the information presently available to me, that I can devote the time necessary to conduct this arbitration diligently, efficiently and in accordance with the time limits in the Rules.

**Circumstances to disclose**

I am impartial and independent of each of the parties and intend to remain so. Attached is a statement made under Article 11 of the Arbitration Rules in the First Schedule to the Arbitration and Mediation Act of (a) my past and present professional, business and other relationships with the parties and (b) any other relevant circumstances. [Include statement.] I confirm that those circumstances do not affect my independence and impartiality. I shall promptly notify the parties and the other arbitrators of any such further relationships or circumstances that may subsequently come to my attention during this arbitration.

I confirm, on the basis of the information presently available to me, that I can devote the time necessary to conduct this arbitration diligently, efficiently and in accordance with the time limits in the Rules.

**Second Schedule. Section 60**

**CONVENTION ON THE RECOGNITION AND ENFORCEMENT  
OF FOREIGN ARBITRAL AWARDS JUNE 10, 1958**

**Article I**

1. This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of difference between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the state where their recognition and enforcement are sought.
2. The terms "**arbitral awards**" shall include not only awards made by arbitrator, appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.
3. When signing, ratifying or acceding to this Convention, or notifying extension under Article X hereof, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships whether contractual or not, which are considered as commercial under the national law of the State making such declaration.

**Article II**

1. Each Contracting State shall recognise an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.
2. The term "**agreement in writing**" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained



in an exchange of letters or telegrams.

3. The Court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

### **Article III**

Each Contracting State shall recognise arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

### **Article IV**

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply -
  - (a) the duly authenticated original award or a duly certified copy thereof; and
  - (b) the original agreement referred to in Article II or a duly certified copy thereof.
2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

### **Article V**

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that-
  - (a) the parties to the agreement referred to in Article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing an indication thereon under the law of the country where the award was made;
  - (b) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case;
  - (c) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognised and enforced;
  - (d) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
  - (e) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.
2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that -



- (a) the subject matter of the difference is not capable of settlement by arbitration under the law of that country; or
- (b) the recognition or enforcement of the award would be contrary to the public policy of that country.

### **Article VI**

If an application for the setting aside or suspension of the award has been made to a competent authority referred to in Article V paragraph (1) (e), the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

### **Article VII**

1. The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.
2. The Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention of the Execution of Foreign Arbitral Awards of 1927 shall cease to have effect between Contracting States on their becoming bound and to the extent that they become bound, by this Convention.

### **Article VIII**

1. This Convention shall be open until 31 December 1958 for signature on behalf of any member of the United Nations and also on behalf of any other State which is or hereafter becomes a member of any specialised agency of the United Nations, or which is or hereafter becomes a party to the Statute of the International Court of Justice, or any other State to

which an invitation has been addressed by the General Assembly of the United Nations.

2. This Convention shall be ratified and the instrument of ratification shall be deposited with the Secretary-General of the United Nations.

### **Article IX**

1. This Convention shall be open for accession to all States referred to in Article VIII.
2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

### **Article X**

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.
2. At any time thereafter, any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect from the 90th day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.
3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the governments of such territories.



### **Article XI**

- 1.** In the case of a federal or non-unitary state, the following provisions shall apply -
  - (a) with respect to those Articles of this Convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal government shall to this extent be the same as those of Contracting States which are not federal states;
  - (b) with respect to those Articles of this Convention that come within the legislative jurisdiction of constituent states or provinces which are not, under the constitutional system of the federation, bound to take legislative action, the federal government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of constituent states or provinces at the earliest possible moment; and
  - (c) a federal state party to this Convention shall, at the request of any other contracting state transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the federation and its constituent units in regard to any particular provisions of this Convention, showing the extent to which effect has been given to that provision by legislative or other action.

### **Article XII**

- 1.** This Convention shall come into force on the 90th day following the date of deposit of the third instrument of ratification or accession.
- 2.** For each State ratifying or acceding to this Convention after the deposit of the third instrument of ratification or accession, this Convention shall enter into force on the 90th day after deposit by such State of its instrument of ratification or accession.

### **Article XIII**

- 1.** Any contracting State may denounce this Convention by a written

notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Any State which has made a declaration or notification under Article X may, at any time thereafter, by notification to the Secretary-General of the United Nations, declare that this Convention shall cease to extend to the territory concerned one year after the date of the receipt of the notification by the Secretary-General.
3. This Convention shall continue to be applicable to arbitral awards in respect of which recognition or enforcement proceedings have been instituted before the denunciation takes effect.

#### **Article XIV**

A Contracting State shall not be entitled to avail itself of the present Convention against other Contracting States except to the extent that it is itself, bound to apply the Convention.

#### **Article XV**

1. The Secretary-General of the United Nations shall notify the States contemplated in Article VIII of the following -
  - (a) signature and ratifications in accordance with Article VIII;
  - (b) accessions in accordance with Article IX;
  - (c) declarations and notifications under Articles I, X and XI;
  - (d) the date upon which this Convention enters into force in accordance with Article XII; and
  - (e) denunciations and notifications in accordance with Article XIII.

#### **Article XVI**

1. This Convention, of which the Chinese, English, French and Spanish texts should be equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit a certified copy of this Convention to the States contemplated in Article VIII.



**Third Schedule**

**Sections 19 and 64(2)**

**ARBITRATION PROCEEDINGS RULES 2020**

**Interpretation**

**1. In these Rules -**

**"arbitration claim"** means an application to a High Court under the Arbitration and Mediation Act, 2023 to -

- (a) revoke an arbitration agreement under section 3;
- (b) stay proceedings under section 5;
- (c) determine the challenge of an arbitrator under section 9;
- (d) appoint, remove or substitute an emergency arbitrator under sections 16 and 17;
- (e) grant interim measures of protection under section 19;
- (f) recognise or enforce an interim measure of protection under section 28;
- (g) refuse recognition or enforcement of an interim measure of protection under section 29;
- (h) subpoena a witness to attend under section 43;
- (i) fees of an arbitrator under section 54;
- (j) set aside an award under section 55 or review the decision of an Award Review Tribunal under section 56;
- (k) recognise and enforce an award under section 57; and
- (l) refuse recognition and enforcement of an award under section 58.

**Starting the claim**

- 2.(1) Except where subrules 2 and 3 applies, an arbitration claim shall be started by the issue of an Originating Motion.
- (2) An application under section 5 of the Act to stay legal proceedings shall be made by notice of motion to the court seized of those proceedings.
- (3) An application under sections 16 or 17 of the Act for the appointment, challenge or replacement of an emergency arbitrator; or under 18 of the Act to fix the seat of the „Emergency Relief Proceedings, shall be contained in a written communication addressed to the appropriate Court as defined under section 91(1) of this Act.

**Originating Motion**

- 3.(1) An Originating Motion commencing an arbitration claim shall
  - (a) include a concise statement of-
    - (i) the remedy claimed,
    - (ii) any question on which the claimant seeks the decision of the Court;
  - (b) give details of any arbitration award challenged by the claimant, identifying which part or parts of the award are challenged and specifying the grounds for the challenge;
  - (c) show that any statutory requirement have been met;
  - (d) specify under which section of the Act the claim is made;
  - (e) identify against which (if any) of the defendants, a cost order is sought; and
  - (f) specify the person on whom the Originating Motion is to be served, stating their role in the arbitration and whether they are defendants.



- (2) Unless the court orders otherwise an Originating Motion shall be served on the defendant within one month from the date of issue.

**Service out of the jurisdiction**

- 4.(1) The court may give permission to serve an Originating Motion out of the jurisdiction if-

- (a) the claimant seeks to set aside an arbitration award made within the jurisdiction; and
- (b) the claimant -
  - (i) seeks some other remedy or requires a question to be decided by the court affecting an arbitration (whether started or not), an arbitration agreement or an arbitration award, and
  - (ii) the seat of the arbitration is or will be within the jurisdiction.

- (2) An application for permission under subrule 1 shall be supported by an affidavit -

- (a) stating the grounds on which the application is made; and
  - (b) showing in what place or country the person to be served is, or probably may be found.
- (3) An order giving permission to serve an Originating Motion out of the jurisdiction shall specify the period within which the defendant may enter appearance to the claim.

**Notice**

- 5.(1) Where an arbitration claim is made under section 8 of the Act, each arbitrator shall be a defendant.
- (2) Where notice shall be given to an arbitrator or any other person it may be given by sending him a copy of-
- (a) the Originating Notice of Motion; and

- (b) any affidavit in support.
- (3) Where the Act requires an application to the court to be made on notice to any other party to the arbitration, such notice shall be given by making that party a defendant.

### **Hearings**

- 6. The court may order that an arbitration claim be heard either in public or in private.

### **Enforcement of arbitration awards and interim measures of protection**

- 7.(1) An application to enforce an award or an interim measure of protection in the same manner as a judgment or order shall be made by Originating Notice of Motion.
- (2) The supporting affidavit shall -
  - (a) exhibit the arbitration agreement and the original award or decision containing the interim measure of protection, or in either case certified copies of each;
  - (b) state the name and the usual or last known place of abode or business of the applicant and the person against whom it is sought to enforce the award or interim measure of protection; and
  - (c) state, as the case may require, either that the award or interim measure of protection has not been complied with or the extent to which it has not been complied with at the date of the application.

### **Case Management**

- 8.(1) Except the court orders otherwise, the following rules apply.
- (2) A defendant who does not contest any or all of the remedies claimed may file a notice stating the fact, and a court or judge in chambers may grant such uncontested remedy or remedies without an oral hearing.



- (3) A defendant who contests any or all of the remedies claimed and wishes to rely on evidence before the court shall file and serve the counter-affidavit -
  - (a) within 21 days after the date the defendant was required to enter appearance; or
  - (b) where a defendant is not required to enter appearance, within 21 days after the service of the Originating Notice of Motion.
- (4) Where a claimant wishes to rely on evidence in reply to a counter-affidavit filed under rule 7(2), shall file and serve such reply affidavit within seven days after the service of the defendant's counter-affidavit.
- (5) Except in the case provided for in subrule (5), an arbitration claim shall be entered on the court's list such that its first hearing is not later than 30 days after service of the originating motion on the defendant, or in the case of multiple defendants, on the defendant last served.
- (6) Where a defendant is served outside the jurisdiction under permission given under rule 3 of these rules, an arbitration claim shall be entered on the court's list such that its first hearing is not later than 40 days after service of the originating motion on the defendant served outside the jurisdiction, or in the case of multiple defendants, on the defendant last served.
- (7) Not later than two days before the hearing date, the claimant shall file and serve a written brief of arguments which lists succinctly the -
  - (a) issues which arise for decision;
  - (b) grounds of relief (or opposing relief) to be relied upon;
  - (c) submissions of fact to be made with the references to the evidence; and
  - (d) submissions of law with references to the relevant authorities.

- (8) A day before the hearing date, the defendant shall file and serve a skeleton argument which lists succinctly the -
  - (a) issues which arise for decision;
  - (b) grounds of relief, or opposing relief to be relied upon;
  - (c) submissions of fact to be made with the references to the evidence; and
  - (d) submissions of law with references to the relevant authorities.
- (9) Except a party specifically requests an oral hearing, the court may decide the entire arbitration claim or particular issues arising in it without an oral hearing.

#### **Appeals**

- 9. Rules 10-13 of these Rules shall apply to appeals from a High Court to the Court of Appeal and from the Court of Appeal to the Supreme Court in all arbitration claims as defined in rule 1, in these Rules referred to as "**arbitration appeals**".
- 10. The Registrar of a High Court or the Registrar of the Court of Appeal shall not be required to prepare a record in respect of an arbitration appeal, and accordingly the record for the purpose of such appeal shall be prepared in the manner set forth in rule 11 of these Rules.
- 11.(1) An appellant shall, either simultaneously with filing a notice of appeal or within 14 days thereafter, prepare for the use of the Justices a record comprising -
  - (a) the index;
  - (b) certified true copies of documents and proceedings which the appellant considers relevant to the appeal; and
  - (c) a certified true copy of the notice of appeal.



- (2) Where the respondent considers that the documents and proceedings filed by the appellant are inaccurate or are not sufficient for the purposes of the appeal, the respondent shall, within seven days after service of the record filed by the appellant, file any further or other documents as may be necessary to the appeal.
- (3) In arbitration appeals, the provisions of the Court of Appeal Rules and the Supreme Court Rules for the time being in force in relation to the filing of briefs of arguments in civil matters shall apply *mutatis mutandis* upon the filing of the record of appeal under rule 11.

#### **Case Management on Appeals**

- 12. An arbitration appeal shall be entered on the court's list such that its first hearing is not later than six months after the filing of the record of appeal under rule 11.
- 13. Unless a party specifically requests an oral hearing, the court may decide the entire arbitration appeal or particular issues arising in it without an oral hearing.

#### **Effect of Default**

- 14. Where, in an arbitration claim or an arbitration appeal, a claimant or appellant seeks to set aside an arbitral award, or seeks refusal of recognition or enforcement of an interim measure of protection, and such claimant or appellant fails to comply with -
  - (a) any of the time limits set out in rules 3(2), 8(6) and 11(1) of these rules, or
  - (b) the time limits for the filing of briefs of arguments as set out in the rules of the Court of Appeal and the Supreme Court for the time being in force in relation to civil appeals,the arbitral award or interim measure of protection shall immediately become enforceable, unless the court otherwise orders.

**Costs**

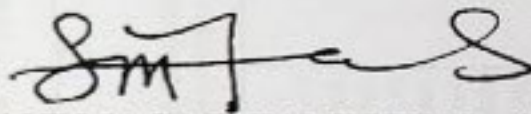
15. The rules of the High Courts, Court of Appeal and the Supreme Court for the time being in force shall apply in relation to costs in all arbitration claims and arbitrating appeals, so however that the term "costs" shall include -
- (a) all expenses actually incurred by the successful party, including his travel expenses and the travel and other expenses of his witnesses;
  - (b) the costs for legal representation of the successful party, to the extent that the court or a taxing officer considers that such costs are reasonable.

**Application**

16. These rules shall apply to all arbitration claims and arbitration appeals instituted on or after the date of commencement of the Arbitration and Mediation Act, 2023.
17. The rules of procedure in civil matters for the time in force in the High Courts, Courts of Appeal and the Supreme Court shall apply to arbitration claims and arbitration appeals only in respect of such matters and to such extent as provision has not been expressly made in these rules.



I, CERTIFY, IN ACCORDANCE WITH SECTION 2 (1) OF THE ACT AUTHENTICATION ACT, CAP. A2, LAWS OF THE FEDERATION OF NIGERIA 2004, THAT THIS IS A TRUE COPY OF THE BILL PASSED BY BOTH HOUSES OF THE NATIONAL ASSEMBLY.




**SANI MAGAJI TAMB UWAL, fcna**  
**CLERK TO THE NATIONAL ASSEMBLY**  
**8TH DAY OF MAY 2023**

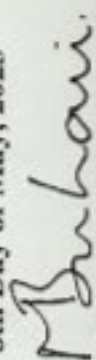
## SCHEDULE TO THE ARBITRATION AND MEDIATION ACT, 2023

SHORT TITLE OF THE ACT	LONG TITLE OF THE ACT	SUMMARY OF THE CONTENT OF THE ACT	DATE PASSED BY THE SENATE	DATE PASSED BY THE HOUSE OF REPRESENTATIVES
Arbitration And Mediation Act, 2023	An Act to repeal the Arbitration and Conciliation Act, Cap. A18, Laws of the Federation of Nigeria, 2004 and enact the Arbitration and Mediation Act, 2023 to provide a unified legal framework for fair and efficient settlement of commercial disputes through arbitration and mediation, make applicable the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) to any award made in Nigeria or in any contracting state arising out of international commercial arbitration.	This Act repeals the Arbitration and Conciliation Act, Cap. A18, Laws of the Federation of Nigeria, 2004 and enact the Arbitration and Mediation Act, 2023 to provide a unified legal framework for the fair and efficient settlement of commercial disputes through arbitration and mediation, make applicable the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) to any award made in Nigeria or in any contracting state arising out of international commercial arbitration.	28th March, 2023	4th April, 2023

I certify that this Bill has been carefully compared by me with the decision reached by the National Assembly and found by me to be true and correct decision of the Houses and is in accordance with the provisions of the Acts Authentication Act Cap. A2, Laws of the Federation of Nigeria, 2004.

**I ASSENT.**

  
**SANI MAGAJI TAMB UWAL, fcn**  
 Clerk to the National Assembly  
 8th Day of May, 2023

  
**MUHAMMADU BUHARI, GCFR**  
 President of the Federal Republic of Nigeria  
 26th Day of May, 2023