

**EKITI STATE ARBITRATION LAW,
2014.**

NO. 2 OF 2014

EKITI STATE OF NIGERIA

EKITI STATE ARBITRATION LAW.

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EKITI STATE ARBITRATION LAW

**A LAW TO PROVIDE FOR THE RESOLUTION OF DISPUTES BY
ARBITRATION IN EKITI STATE AND FOR OTHER CONNECTED
PURPOSES.**

NO. 2 OF 2014.

EKITI STATE OF NIGERIA.

Commencement []

Enacted by Ekiti State House of Assembly as follows:

1. Objectives and guiding principles.

(a) Objectives:

The objectives of the Arbitration Law are:

- (i) to facilitate quick, easy and fair resolution of disputes by an impartial tribunal in Ekiti State;
- (ii) to avoid unnecessary delay and expenses involved in litigation and;
- (iii) to encourage investors and promote investment and economic development of the State.

(b) Guiding principles

- (i) parties should be free to agree on how their disputes are resolved, subject only to such safeguards as are necessary in the public interest;
- (ii) an arbitration agreement between parties for the settlement of any dispute shall be binding upon and enforceable against each of the parties unless the parties expressly agree otherwise at any time or the agreement is invalid, non-existence, ineffective or otherwise unenforceable; and
- (iii) parties, Arbitral Tribunals, Arbitral Institutions, Appointing Authorities and the Court shall do all things necessary for the proper and expeditious conduct of the arbitral proceedings.

2. Applications

From the commencement of this Law, all arbitration within the State shall be governed by the provisions of this Law except where the parties have expressly agreed that another Arbitration Law shall apply.

3. Arbitration agreement.

- 1) Parties to a dispute shall enter into an arbitration agreement to define their legal relationship whether contractual or not, to determine issues that may arise between them.
- 2) An arbitration agreement may be in the form of arbitration provisions in a contract or in the form of a separate agreement.
- 3) An arbitration agreement shall be in writing.
- 4) '**Writing**' includes data that provides a record of the Arbitration agreement or is otherwise accessible so as to be useable for subsequent reference.
- 5) '**Data**' includes information generated, sent, received or stored by electronic, optical or similar means, such as but not limited to Electronic Data Interchange (EDI), electronic mail, telegram, telex or telecopy.
- 6) An arbitration agreement is in writing if it is contained in an exchange of written statements in the course of arbitration or legal proceedings in which the existence of an agreement is alleged by one party and not denied by the other party.
- 7) For the avoidance of doubt, the reference in a contract or to a document containing an arbitration clause constitutes an Arbitration agreement in writing, provided that the reference is such that makes the arbitration clause part of the contract or the Arbitration agreement.
- 8) Where subsection (7) of this Section applies, the document containing the arbitration clause constitutes the Arbitration agreement for the purposes of this Law.

4. Arbitration agreement irrevocable except by agreement.

Unless a contrary intention is expressed, an Arbitration agreement shall be irrevocable except by the express or written agreement of the parties.

5. Death of a party

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

- (2) The authority of an arbitrator shall not be revoked by the death of any party by whom he was appointed.
- (3) Nothing in this Section shall be taken to affect the operation of any Law by virtue of which any right of action is extinguished by the death of a person.
- (4) For the purposes of this Section, 'death' shall include the meaning ascribed to it in Section 63 (1).

6. Power to stay proceedings and make preservative order.

- (1) A Court before which an action is brought in a matter subject to an Arbitration agreement shall, if a party so requests, not later than when submitting the first statement on the substance of the dispute stay proceedings so long as they concern that matter.
- (2) Where an action referred to in subsection (1) of this Section has been brought before a Court, arbitral proceedings may nevertheless be commenced or continued, and an award may be made by the Arbitral Tribunal while the matter is pending before the Court.
- (3) Where a Court makes an Order of Stay of Proceedings under subsection (1) of this Section, the Court may, for the purpose of preserving the rights of parties, make such interim or supplementary orders as may be necessary.
- (4) For the purpose of this Section, a reference to a party includes reference to any person claiming through or under such party.

7. Number of arbitrators.

- 1) The parties are free to agree on the number of arbitrators to constitute the Arbitral Tribunal and whether there is to be a presiding arbitrator or umpire.
- 2) Unless otherwise agreed by the parties, an agreement that the number of arbitrators shall be two or any other even number shall be deemed to require the appointment of an additional arbitrator to preside over the arbitration.
- 3) If there is no agreement as to the number of arbitrators, the Arbitral Tribunal shall consist of a sole arbitrator.

8. Appointment of arbitrators.

- (1) Subject to subsections (2) and (3) of this Section, the parties may specify in the arbitration agreement the procedure to be followed in appointing an arbitrator or they may designate or agree to designate an appointing authority.

- (2) When the arbitration agreement entitles each party to nominate an arbitrator; and where the parties to the dispute are more than two and such parties have not all agreed in writing within 30 days, the appointing authority shall have the power to appoint the Arbitral Tribunal without regard to any party's nomination.
- (3) Where the parties have not specified a procedure but they have designated an appointing authority, the provisions of paragraphs (a) to (i) of this subsection shall apply, that is if-
- (a) a sole arbitrator is to be appointed, the parties may propose to each other, one or more persons, to serve as the sole arbitrator;
 - (b) within thirty (30) days after the first proposal is delivered in accordance with paragraph (a) of this subsection, the parties have not reached an agreement on the choice of a sole arbitrator, the sole arbitrator shall be appointed by the designated appointing authority;
 - (c) in the case of an arbitration with three arbitrators, each party shall appoint one arbitrator and the two arbitrators so appointed shall appoint the third who shall jointly act as the presiding arbitrators of the Arbitral Tribunal;
 - (d) within thirty (30) days after the receipt of notification of the appointment by a party of an arbitrator and the other party has not given the first party notification of the arbitrator he has appointed, the first party may request the appointing authority previously designated by the parties to appoint the second arbitrator;
 - (e) within thirty (30) days after the appointment of the second arbitrator and the two arbitrators have not agreed on the choice of the third and presiding arbitrator, the third and presiding arbitrator shall be appointed by the appointing authority on the request of either or both parties;
 - (f) when the appointing authority is requested to appoint an arbitrator pursuant to the provisions of this Section, the person making the request shall send to the appointing authority a copy of the notice of arbitration, a copy of the contract out of or in relation to which the dispute has arisen and a copy of the Arbitration agreement if the term is not contained in the contract, and the appointing authority may require from the requesting person, such information as it deems necessary to fulfil its functions;
 - (g) when the names of one or more persons are proposed for appointment as arbitrators, their full names, addresses and nationalities shall be indicated, together with details of their qualifications;
 - (h) except as otherwise agreed by the parties, no person shall be disqualified from being appointed as an arbitrator by reason only of nationality; and
 - (i) in making the appointment, the appointing authority shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator knowledgeable in the field of the subject matter of the dispute and shall take into account as

well, the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties.

- (4) Where no procedure is specified under subsection (1) of this Section and no appointing authority is designated or agreed to be designated by the parties :-
- (a) in the case of an arbitration with three arbitrators, each party shall appoint one arbitrator and the two arbitrators so appointed shall appoint the third arbitrator.

However, if-

- (i) a party fails to appoint the arbitrator within thirty (30) days of receipt of a request to do so by the other party, that other party, having duly appointed its arbitrator, may give notice in writing to the party in default proposing the appointment of its arbitrator to act as sole arbitrator;
- (ii) the party in default does not within seven (7) clear days of that notice being given, make the required appointment and notify the other party of the name of its arbitrator, the other party may appoint its arbitrator as sole arbitrator whose award shall be binding on the parties as if the sole arbitrator had been so appointed by agreement of the parties; and
- (iii) the two arbitrators fail to agree on the third and presiding arbitrator within thirty (30) days of their appointments, the appointment shall be made by the Ekiti State High Court on the application of any party to the arbitration agreement.
- (b) in the case of an arbitration with one arbitrator, where the parties fail to agree on the arbitrator, the appointment shall be made by the Ekiti State High Court on the application of any party to the arbitration agreement made within thirty (30) days of such disagreement.
- (c) except as otherwise specifically provided under this Law where under an appointment procedure agreed upon by the parties-
- (i) a party fails to act as required under the procedure;
- (ii) the parties or two arbitrators are unable to reach an agreement as required under the procedure; or
- (iii) a third party, including an institution, fails to perform any duty imposed on it under the procedure;
- (iv) then any party or arbitrator may request the Ekiti State High Court to take the necessary measure, unless the appointment procedure agreed upon by the parties provides other means for securing the appointment.
- (5) No appointment made pursuant to subsection (4) of this Section shall be challenged except in accordance with the provisions of this Law.
- (6) The Ekiti State High Court in exercising the power of appointment under subsections (3) and (4) of this Section shall have due regard to any

qualification required of the arbitrator by the arbitration agreement and such other consideration as are likely to secure the appointment of an independent, impartial and competent arbitrator.

- (7) Under the provisions of this Law, all references to "third and presiding" arbitrator shall be construed as including an "additional" arbitrator appointed under Section 7(2) of this Law.

9. Umpire

- (1) Where the parties have agreed that there is to be an umpire, they are free to agree on the functions of the umpire and in particular-
- (a) whether the umpire is to attend the proceedings, and
 - (b) when the umpire is to replace the other arbitrators as the Arbitral Tribunal with power to make decisions, orders and awards.
- (2) If there is no such agreement, the following provisions will apply-
- (a) The umpire shall attend the proceedings and be supplied with the same documents and other materials as are supplied to the other arbitrators;
 - (b) Decisions, orders and awards shall be made by the other arbitrators unless they cannot agree on a matter relating to the arbitration. In that event, they shall immediately give notice in writing to the parties and the umpire, whereupon the umpire shall replace them as the arbitral tribunal power to make decisions, orders and awards as if the umpire was the sole arbitrator;
 - (c) If the arbitrators cannot agree but fail to give notice of that fact. or if any of them fails to join in the giving of notice, any party to the arbitral proceedings may (upon notice to the other parties and to the Arbitral Tribunal) apply to the Ekiti State High Court which shall give the required notice in writing to the parties and the umpire that the umpire shall replace the other arbitrators as the Arbitral Tribunal. He shall have the power to make decisions, orders and awards as if the umpire was the sole arbitrator; and
 - (d) the provisions of this Law in relation to the appointment, challenge and removal of a third and presiding arbitrator shall also apply to the appointment challenge and removal of an umpire.

10. Grounds for Challenge.

- 1) Any person who knows of circumstances likely to give rise to any justifiable doubts as to impartiality or independence of an arbitrator shall, when approached in connection with an appointment as arbitrator, disclose such circumstances to the parties.

- 2) The duty to disclose imposed under subsection (1) of this Section shall continue after a person has been appointed as an arbitrator and subsist throughout the arbitral proceedings, unless the arbitrator had previously disclosed the circumstances to the parties.
- 3) An arbitrator may be challenged if-
 - (a) circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence,
 - (b) the arbitrator does not possess the qualifications agreed by the parties;
 - (c) the arbitrator is physically or mentally incapable of conducting the proceedings or there are justifiable doubts as to the arbitrator's capacity to do so; or
 - (d) the arbitrator has refused or failed to use all reasonable despatch in conducting the proceedings or making an award, and that substantial injustice has been or will be caused to the applicant.

11. Challenge of arbitration procedure.

- (1) The parties are free to agree on the procedure to be followed in challenging an arbitrator in ad-hoc arbitration or may designate or agree to designate an appointing authority of their choice for the purpose of challenging an arbitrator.
- (2) Where no procedure is agreed, a party who intends to challenge an arbitrator shall, within fifteen (15) days of becoming aware of the constitution of the arbitral tribunal or becoming aware of any circumstances referred to in Section 10 of this Law, send to the arbitral tribunal and other parties, a written statement of the reasons for the challenge.
- (3) When an arbitrator has been challenged by one party, if the other party agrees to the challenge or the challenged arbitrator, after the challenge withdraws from office, then the appointment of the arbitrator shall cease.
- (4) Where the other party agrees to the challenge or the challenged arbitrator withdraws, the procedure provided in Section 8 of this Law shall be used in full for the appointment of the substituted arbitrator, even if during the process of appointing the challenged arbitrator, a party had failed to exercise his right to appoint or to participate in the appointment.
- (5) Unless the arbitrator who has been challenged withdraws from office or the other party agrees to the challenge, the Arbitral Tribunal or where the parties have designated an arbitral institution as the appointing authority, or where such an authority is determined in accordance with the provisions of this Law, the appointing authority shall decide on the challenge.

12. Removal of an arbitrator.

- (1) A party to an arbitral proceeding may (upon notice to the other parties to the arbitrator concerned and to any other arbitrator) apply to the Court to remove an arbitrator on the grounds that-

- (a) circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence;
 - (b) the arbitrator does not possess the qualifications required by the Arbitration Agreement;
 - (c) the arbitrator is physically or mentally incapable of conducting the proceedings or there are justifiable doubts as to the arbitrator's capacity to do so; and
 - (d) the arbitrator has refused or failed to use all reasonable despatch in conducting the proceedings or making an award, and that substantial injustice has been or will be caused to the applicant.
- (2) If there is an arbitral institution or other persons vested by the parties with power to remove an arbitrator, the Court shall not exercise its power of removal unless satisfied that the applicant has first exhausted the available recourse to that institution or persons or has made recourse to such institution or persons.
 - (3) The Arbitral Tribunal may continue the arbitral proceedings and make an award while an application to the Court under this Section is pending.
 - (4) The arbitrator concerned is entitled to appear before and be heard by the Court with or without legal representation before it makes any order under this Section.
 - (5) Where the Court removes an arbitrator, it may make such order as it thinks fit with respect to the arbitrator's entitlement (if any) to fees and expenses including indemnity for legal expenses, or the refund of any fees or expenses already paid.

13. Termination of mandate.

- 1. The mandate of an arbitrator shall terminate if-
 - (a) the parties agree to terminate the arbitrator's appointment; or
 - (b) the arbitrator is removed by an arbitral or other person(s) vested by the parties with powers in that regard.

14. Resignation.

- 1. The parties are free to agree with an arbitrator as to the consequences of the arbitrator's resignation as regards-
 - (a) the arbitrator's entitlement (if any) to fees or expenses, and
 - (b) any liability incurred by the arbitrator.
- 2. Where there is no such agreement the following provisions shall apply-
 - (a) an arbitrator who resigns may (upon notice to the parties) apply to the Court;

- (i) to grant the arbitrator relief from any liability incurred and
 - (ii) to make such order as it thinks fit with respect to the arbitrator's entitlement (if any) to fees or expenses or the repayment of any fees or expense already paid.
- (b) if the Court is satisfied that in all the circumstances it was reasonable for the arbitrator to resign, it may grant such relief as mentioned in subsection (2)(a) above on such terms as it thinks fit.

15. Death of an arbitrator.

- (1) The authority of an arbitrator is personal and ceases upon the death of such arbitrator.
- (2) The authority of an arbitrator shall not be revoked by the death of any party by whom the arbitrator was appointed.

16. Cessation of office of an arbitrator.

- (1) Where an arbitrator ceases to hold office by challenge, termination, resignation or death, the parties are free to agree on the effect (if any), that such cessation of office may have on any appointment made by the arbitrator (alone or jointly).
- (2) Where there is no such agreement-
 - (a) the Arbitral Tribunal (when reconstituted) shall determine to what extent the previous proceedings shall stand; and
 - (b) the arbitrator's ceasing to hold office shall not affect any appointment made by the arbitrator (alone or jointly) of another arbitrator and in particular, any appointment of a presiding arbitrator or umpire.

17. Appointment of substitute arbitrator.

Unless otherwise agreed by the parties where the mandate of an arbitrator ceases, a substitute arbitrator shall be appointed in accordance with the same rules and procedure that applied to the appointment of the arbitrator who is being replaced.

18. Immunity.

- (1) An arbitrator is not liable for anything done or omitted in the discharge or purported discharge of the arbitrator's functions as arbitrator unless the act or omission is determined to have been in bad faith.
- (2) Subsection (i) above applies to an employee or agent of an arbitrator as it applies to the arbitrator.

- (3) The provision of this section does not affect any liability incurred by an arbitrator by reason of resignation.

19. Jurisdiction.

- (1) An Arbitral Tribunal shall be competent on questions pertaining to its own jurisdiction and on any objection with respect to the existence or validity of an arbitration agreement.
- (2) For the purposes of subsection (1) of this Section, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract and a decision by the Arbitral Tribunal that the contract is invalid, non-existent or ineffective shall not invalidate the arbitration clause.
- (3) In any arbitral proceedings, a plea that the Arbitral Tribunal-
 - (a) does not have jurisdiction may be raised not later than the time of submission of the points of dispute and a party is not precluded from raising such plea by reason that the party has appointed or participated in the appointment of an arbitrator;
 - (b) is exceeding the scope of its authority, may be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the proceeding; and the Arbitral Tribunal may in either case admit a later plea if it considers that the delay is justified.
- (4) The arbitral tribunal may rule on any plea referred to it under subsection (3) of this Section, either as a preliminary question or in an award on the merits and such ruling shall be final and binding.

20. Substance of dispute.

- (1) The Arbitral Tribunal shall decide the dispute in accordance with such rules of Law as are chosen by the parties and applicable to the substance of the dispute.
- (2) Any designation of the Law or legal system of a given jurisdiction or territory shall be construed, unless otherwise expressed, as directly referring to the substantive Law of that jurisdiction or territory and not to its conflict of law rules.
- (3) Failing any designation by the parties, the Arbitral Tribunal shall apply the law determined by the conflict of law rules which it considers applicable.
- (4) The Arbitral Tribunal shall decide with justice and in good faith.
- (5) In all cases, the Arbitral Tribunal shall decide in accordance with the terms of the contract and shall take account of the usages of the trade applicable to the transaction.

21. Power to issue interim measures.

- 1) The High Court shall have the power to issue interim measures for the purposes of and in relation to arbitration grant proceedings as it has for the purpose of and in relation to proceedings in the Courts and shall exercise that power in accordance with the rules set out in the Schedule to this Law.
- 2) Unless otherwise agreed by the parties, the Arbitral Tribunal may, at the request of a party, grant interim measures.
- 3) An interim measure is any temporary measure, whether in the form of an award or in another form, prior to the issuance of the award by which the dispute is finally decided.
- 4) The Arbitral Tribunal may order a party to-
 - (a) maintain or restore the status quo pending the determination of the dispute;
 - (b) take action that would prevent, or refrain from taking action that is likely to cause current or imminent harm or prejudice to the subject matter of the dispute or the arbitral process itself;
 - (c) provide a means of preserving assets out of which a subsequent award may be satisfied; or
 - (d) preserve evidence that may be relevant and material to the resolution of the dispute.

22. Conditions for grants of interim measures.

- (1) Without prejudice to any Law in force in Nigeria guiding the grant of interim measures, the party requesting for an interim measure under Section 21(3)(a), (b) and (c) shall satisfy the Arbitral Tribunal that-
 - (a) harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and
 - (b) there is a serious issue to be determined on the merits of the claim, provided that any determination shall not affect the discretion of the Arbitral Tribunal in making any subsequent determination.

23. Application for preliminary orders.

- 1) Without prejudice to any Law in force in Nigeria guiding the grant of interim measures, the parties may stipulate in their Arbitration agreement that a party may, without notice to any other party, apply to the Arbitral Tribunal for a Preliminary Order directing a party not to frustrate the purpose of the interim measure requested at the same time as it makes a request for the interim measure.

- 2) If the parties had previously stipulated as stated in subsection (1) of this Section, the Arbitral Tribunal may grant a Preliminary Order provided it considers that prior disclosure of the request for the interim measure to the party against whom it is directed risks frustrating the purpose of the measure.
- 3) The conditions prescribed in Section 22 (1) of this Law shall apply in the consideration of an application requested by a party pursuant to this section.

24. Specific procedure for preliminary orders.

- (1) Immediately after the arbitral tribunal has made a determination in respect of an application for a Preliminary Order, the Arbitral Tribunal shall give notice to all parties in the Application for and decision upon the Preliminary Order, the request for the interim measure, and all other communication, written and oral, between any party and the Arbitral Tribunal in relation to it.
- (2) At the same time, the Arbitral Tribunal shall give an opportunity to any party against whom a Preliminary Order is directed to present its case at the earliest practicable time.
- (3) The Arbitral Tribunal shall decide promptly on any objection to the Preliminary Order.
- (4) A Preliminary Order shall expire after (20) twenty days from the date on which it is issued by the Arbitral Tribunal.
- (5) The party against whom the Preliminary Order is directed must be given notice and an opportunity to present its case prior to the grant of an interim measure adopting or modifying the Preliminary Order.

25. Interim measures and preliminary orders by arbitral tribunal.

1. The arbitral tribunal may extend, modify, suspend or terminate an interim measure or a preliminary order it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the Arbitral Tribunal's own initiative where-
 - (a) important facts were concealed from the Tribunal;
 - (b) the interim measures or Preliminary Order was obtained by fraudulent representation;
 - (c) facts come to the knowledge of the Tribunal, which if the Tribunal had known, it would not have granted the Order and
 - (d) it is just and equitable in the circumstance to extend, modify or suspend the order.

26. Provision of security for preliminary order.

- (1) The arbitral tribunal shall require the party applying for a preliminary order to provide security in connection with the order unless the Arbitral Tribunal considers it inappropriate or unnecessary to do so where:

- (a) important facts were concealed from the Tribunal;
 - (b) the interim measures or Preliminary Order was obtained by fraudulent misrepresentation;
 - (c) facts come to the knowledge of the tribunal which if the tribunal had known it would not have granted the Order; and
 - (d) it is just and equitable in the circumstances to extend, modify or suspend the order.
- (2) The Arbitral Tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.

27. Disclosure of material change in circumstances.

- 1) The party applying for a preliminary order shall disclose to the Arbitral Tribunal, all circumstances that are likely to be to the arbitral tribunal's determination whether to grant the order, and such obligation shall continue until the arbitral tribunal has made a determination on the request for an interim measure.
- 2) The party who desires to maintain a preliminary order shall disclose all circumstances that are likely to be relevant to the Arbitral Tribunal's determination whether to maintain the order, and such obligation shall continue until the Arbitral Tribunal has made a determination on the request for an interim measure.
- 3) The party applying for an interim measure shall promptly disclose any material change in the circumstance on the basis of which the measure was requested or granted.

28. Cost and interim damages.

- 1) The party applying for a Preliminary Order or requesting any measure shall be liable for costs and damages caused by the measure or the order to the party against whom it is directed if the Arbitral Tribunal later determines that in the circumstances, the measure or the Order should not have been granted.
- 2) The Arbitral Tribunal may award such costs and damages at any point during the proceedings.

29. Recognition and enforcement of interim measures by the High Court.

- 1) An interim measure issued by an arbitral tribunal shall be binding, unless otherwise provided by the Arbitral Tribunal, and shall be recognized and

enforced upon application to the High Court by the applying party irrespective of the jurisdiction or territory in which it was issued subject to the provisions of subsections (2) and (3) of this Section.

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

30. Grounds for refusing recognition and enforcement.

- (1) Recognition or enforcement of an interim measure may be refused only:
 - (a) at the request of the party against whom it is invoked if the Court is satisfied that-
 - (i) such refusal is warranted on the grounds provided for in Section 56(2) (a) (i), (ii), (iii), (iv), (v), (vi) or (vii) of this Law;
 - (ii) the Arbitral Tribunal's decision with respect to the provision of security in connection with the interim measure issued by the Arbitral Tribunal has not been complied with; or
 - (iii) the interim measure has been terminated or suspended by the Arbitral Tribunal or where so empowered, by the Court of the jurisdiction or territory in which the arbitration takes place or under the Law of which that interim measure was granted .
 - (b) if the Court finds that-
 - (i) the interim measure is incompatible with the powers of the Court, unless the Court decides to reformulate the interim measure to adapt it to its own powers and procedures for the purpose of enforcing and without modifying its substance; or
 - (ii) any of the grounds provided for in Section 55 subsection (2)(a) and (b) apply to the recognition and enforcement of the interim measure.
- (2) Any determination made by the Court on any ground in this Section shall be effective only for the application to recognize and enforce the interim measure, the Court where recognition or enforcement is sought shall not, undertake a review of the substance of the interim measure.

31. Commencement of arbitral proceedings.

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute shall commence on the date the request to refer the dispute to arbitration is delivered to the other party.

32. Place and time of arbitration.

- 1) Unless otherwise agreed by the parties, the place, date and time of the arbitral proceedings shall be determined by the Arbitral Tribunal having regard to the circumstances of the case.
- 2) Notwithstanding the provisions of subsection (1) of this Section and unless otherwise agreed by the parties, the Arbitral Tribunal may meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties or for the inspection of documents, goods or other property.

33. Equal treatment of parties.

In any arbitral proceedings, the Arbitral Tribunal shall ensure-

- (a) that the parties are accorded equal treatment and that the parties are given fair opportunity of presenting their case; and
- (b) a fair resolution of the dispute without unnecessary delay or expense.

34. Application of limitation laws to arbitral proceedings.

- (1) Limitation Laws shall apply to arbitral proceedings as they apply to judicial proceedings.
- (2) In computing the time prescribed by the applicable Limitation Laws for the commencement of judicial, arbitral and other proceedings in respect of a dispute which was the subject matter of-
 - (a) an award which the High Court orders to be set aside or declares to be of no effect, or
 - (b) the affected part of an award which the Court orders to be set aside in part, or declares to be in part of no effect, the period between the commencement of the arbitration and the date of the order referred to in paragraph (a) above shall be excluded.
- (3) Notwithstanding any term in an arbitration agreement to the effect, that no cause of action shall accrue in respect of any matter required by the agreement to be referred until an award is made under the agreement, the cause of action shall, for the purpose of Limitation Laws, be deemed to have accrued in respect of any such matter at the time when it would have accrued but for that term in the agreement.

- (4) "Limitation Laws" means such Limitation Laws as are applicable under the Law governing the subject of the dispute.
- (5) In computing the time for the commencement of proceedings to enforce an arbitral award, the period between the commencement of the arbitration and the date of the award shall be excluded.

35. Language of arbitral proceedings.

- (1) The parties are free to agree on the language or languages to be used in the arbitral proceedings, but where they do not do so, the language to be used shall be English.
- (2) Any language or languages agreed upon by the parties or applied under subsection (1) of this section, shall, unless a contrary intention is expressed by the parties or the Arbitral Tribunal, be the language or languages to be used in any written statements by the parties, in any hearing, award, decision or any other communication in the course of the arbitration.
- (3) The Arbitral Tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or applied under subsection (1) of this Section.

36. Points of claim and defence.

- (1) The claimant shall in the points of claim and within the period agreed upon by the parties or determined by the Arbitral Tribunal, state the facts supporting the claim, the points in issue and the relief or remedy sought and the response in respect of those particulars, unless the parties have otherwise agreed on the required elements of the points of claim and of defence.
- (2) The parties may submit such further statements as they may agree or as the Arbitral Tribunal may direct.
- (3) The parties may submit with their statements under subsections (1) and (2) of this Section, all the documents they consider to be relevant or they may add as reference to the other evidence they hope to submit at the arbitral proceedings.
- (4) Unless otherwise agreed by the parties, a party may amend or supplement their claim or defence during the course of the arbitral proceedings, if the Arbitral Tribunal considers it appropriate to allow such amendment or supplement, having regard to the time that has elapsed before the making of the amendment or supplement.

37. Powers of the arbitral tribunal.

- (1) The parties are free to agree on the powers exercisable by the Arbitral Tribunal as regards remedies.

- (2) Unless otherwise agreed by the parties, the Arbitral Tribunal has the following powers-
- (a) the Arbitral Tribunal may make a declaration as to any matter to be determined in the proceedings;
 - (b) the Arbitral Tribunal may order the payment of a sum of money, in any currency; and
 - (c) the Arbitral Tribunal has the same power as the Court-
 - (i) to order a party to do or refrain from doing anything;
 - (ii) to order specific performance of a contract (other than a contract relating to land); and
 - (iii) to order the rectification, setting aside or cancellation of a deed or other document
 - (d) The Arbitral Tribunal shall, unless otherwise agreed by the parties, have power to administer oaths to or take the affirmations of the parties and witnesses appearing before the Arbitral Tribunal.

38. Proceedings.

- (1) Subject to any agreement by the parties, the Arbitral Tribunal shall decide whether the arbitral proceedings shall be conducted-
- (a) by holding oral hearings for the presentation of evidence and oral arguments; or
 - (b) on the basis of documents or other materials; or
 - (c) by a combination of the methods described in paragraphs (a) and (b) of this subsection, and unless the parties have agreed that no hearing shall be held, the Arbitral Tribunal shall hold such hearings at an appropriate stage of the proceedings if requested to do so by any of the parties.
- (2) The Arbitral Tribunal shall give to the parties sufficient advance notice of any hearing and of any meeting of the Arbitral Tribunal requiring the attendance of the parties.
- (3) Except on the application for a preliminary order under Section 24 of this Law, every statement, document or other information supplied to the Arbitral Tribunal shall be communicated to the other party by the party supplying the statement, document or other information, and every such statement, document or other information supplied by the Arbitral Tribunal to one party shall be supplied to the other party.
- (4) A copy of any expert report or evidentiary document on which the Arbitral Tribunal may rely in making its decision shall be delivered to the parties.

39. Consolidation, concurrent hearing and joiners of parties.

- (1) The Parties are free to agree-
 - (a) that the arbitral proceedings shall be consolidated with other arbitral proceedings, or
 - (b) that concurrent hearings shall be held on such terms as may be agreed.
- (2) Where the parties have agreed under subsection (1) above, the arbitral tribunal shall give effect to the agreement unless it is of the view that it is not in the interest of justice to do so.
- (3) A party may, by application and with the consent of the parties to the arbitration, be joined to arbitral proceeding.

40. Default of a party.

- (1) Unless otherwise agreed by the parties, if, without showing sufficient cause:
 - (a) the claimant fails to state the claim as required under Section 36(1) of this Law, the Arbitral Tribunal shall terminate the proceedings unless the respondent desires to present a claim;
 - (b) the respondent fails to state the defence as required under section 36(1) of this Law, the Arbitral Tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegation; or
 - (c) any party fails to appear at a hearing or to produce documentary evidence, the Arbitral Tribunal may continue the proceedings and make an award.
- (2) The parties are free to agree on the powers of the Arbitral Tribunal in case of a party's failure to do anything necessary for the proper and expeditious conduct of the arbitration.
- (3) Unless otherwise agreed by the parties, if the Arbitral Tribunal is satisfied that there has been inordinate or inexcusable delay on the part of the claimant in pursuing the claim and that the delay-
 - (a) gives rise, or is likely to give rise, to a substantial risk that a fair resolution of the issues in that claim will not be possible, or
 - (b) has caused, or is likely to cause serious prejudice to the respondent, then the Arbitral Tribunal may make an award dismissing the claim.
- (4) Unless otherwise agreed by the parties, if without showing sufficient cause a party-

- (a) fails to attend or is not represented at an oral hearing of which due notice was given; or
- (b) where matters that are to be dealt with in writing, fails after due notice to submit written evidence or make written submissions.

The Arbitral Tribunal may continue the proceedings in the absence of that party or, as the case may be, without any written evidence or submissions on the party's behalf, and may make an award on the basis of the evidence before it.

- (5) Unless otherwise agreed by the parties, if without showing cause a party fails to comply with any order or directions of the Arbitral Tribunal, the Arbitral Tribunal shall make a Peremptory Order to the same effect, prescribing such time for compliance with it as the Arbitral Tribunal considers appropriate.
- (6) If a claimant fails to comply with a peremptory order of the Arbitral Tribunal to provide security for costs, the Arbitral Tribunal shall make an award dismissing his claim.
- (7) Where a party fails to comply with any peremptory order other than that under subsection (6) of this Section, then the Arbitral Tribunal may-
 - (a) direct that the party in default shall not be entitled to rely upon any allegation or material which was the subject matter of the order;
 - (b) draw such adverse inferences from the act of non-compliance as the circumstances justify;
 - (c) proceed to an award on the basis of such materials as have been properly provided to it; and
 - (d) make such award as it thinks fit as to the payment of costs of the arbitration by the party in default having regard to the non-compliance.

41. Power to appoint expert.

- (1) The Arbitral Tribunal may-
 - (a) appoint one or more experts to report to it on a specific issue to be determined by the Arbitral Tribunal; and
 - (b) subject to any legal privilege that a party may assert, require a party to give to the expert any relevant information to produce or provide access to any documents, goods or other property in their possession, custody or control for inspection or reproduction.
- (2) If a party so requests or if the Arbitral Tribunal considers it necessary, any expert appointed under subsection (1) of this Section shall, after delivering the written or oral report, participate in a hearing where the parties shall have the opportunity of putting questions to the expert and presenting expert witnesses to testify on their behalf on the points in issue.

42. Power to order attendance of witness.

- (1) The Court may order that a writ of subpoena ad *testificandum* or of subpoena *duces tecum* shall be issued to compel the attendance before any Arbitral Tribunal of a witness within Nigeria.
- (2) The Court may also order that a writ of habeas corpus shall be issued to bring up a prisoner for examination before any Arbitral Tribunal.
- (3) The provisions of any written law relating to the service or execution outside a State of the Federation of any subpoena or order for the production of a prisoner, issued or made in civil proceedings shall apply in relation to a subpoena or order issued or made under this section.

43. Decision making by Arbitral Tribunal.

- 1) In an Arbitral Tribunal comprising more than one arbitrator, any decision of the Arbitral Tribunal shall unless otherwise agreed by the parties, be made by a majority of all its members.
- 2) Subject to any applicable mandatory provisions under this Law, the presiding arbitrator may, if so authorized by the parties or all the members of the Arbitral Tribunal, decide questions relating to the procedure to be followed at the arbitral proceedings.

44. Settlement of disputes.

- 1) Where, during the arbitral proceedings, the parties settle the dispute, the Arbitral Tribunal shall terminate the arbitral proceedings, and shall, if requested by the parties, record the settlement in the form of an arbitral award on agreed terms.
- 2) An award on agreed terms recorded under subsection (1) of this section shall-
 - (a) be in accordance with the provisions of section 47 of this Law; and
 - (b) have the same status and effect as any other award on the merits of the case.

45. Interest

- 1) The parties are free to agree on the powers of the Arbitral Tribunal as regards the award of interest.
- 2) The following provisions shall apply:

- (a) the Arbitral Tribunal may award simple or compound interest from such dates, at such rates and with such interest as it considers just-
 - (i) on the whole or part of any amount awarded by the Arbitral Tribunal, in respect of any period up to the date of the award; or
 - (ii) on the whole or part of any amount claimed in the arbitration and outstanding at the commencement of the arbitral proceedings but paid before the award was made, in respect of any period up to the date of payment.
- (b) the Arbitral Tribunal may award simple or compound interest from the date of the award (or any later date) until payment, at such rates and with such interests as it considers just in the case on the outstanding amount of any award (including any award of interest under subsection (3) and any award as to costs);
- (c) an amount awarded by the Arbitral Tribunal include an amount payable;
- (d) the above provisions do not affect any other power of the Arbitral Tribunal to award interest.

46. Form and contents of award.

- (1) Any award made by the Arbitral Tribunal shall be in writing and signed by the arbitrators.
- (2) Where the Arbitral Tribunal comprises of more than one arbitrator, the signatures of a majority of all the members of the Arbitral Tribunal shall suffice, if the reason for the absence of any signature is stated.
- (3) The Arbitral Tribunal shall state on the award-
 - (a) the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under Section 44 of this Law;
 - (b) the date it was made; and
 - (c) the place of the arbitration as agreed or determined under Section 31 (1) of this Law, shall be deemed to be the place where the award was made.
- (4) Subject to the provisions of Section 48 of this Law. a copy of the award made and signed by the arbitrators in accordance with subsections (1), (2) and (3) of this Section shall be delivered to each party.

47. Termination of proceedings.

- (1) The Arbitral Proceedings shall terminate, when the final award is made or when an order of the Arbitral Tribunal is issued under subsection (2) of this Section.

- (2) The Arbitral Tribunal shall issue an order for the termination of the arbitral proceedings when-
 - (a) the claimant withdraws his claim, the respondent objects and the Arbitral Tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute; or
 - (b) the parties agree on the termination of the arbitral proceedings; or
 - (c) the Arbitral Tribunal finds that continuation of the Arbitral Proceedings for any other reason is unnecessary or impossible.
- (3) Subject to the provisions of Sections 48 and 53 (2) of this Law, the mandate of the Arbitral Tribunal shall cease on termination of the Arbitral Proceedings.

48. Notification.

- (1) The award shall be notified to the parties by service on them of written notice to that effect which shall be done without delay after the award is made.
- (2) The Arbitral Tribunal may refuse to deliver an award to the parties except upon full payment of the agreed fees and expenses of the arbitrators.
- (3) In the event that the fees and expenses of the arbitrators have not been agreed, and the Arbitral Tribunal refused on that ground to deliver an award, a party to the arbitral proceedings may (upon notice to the other parties and the Arbitral Tribunal) apply to the Court, which may order that-
 - (a) the Arbitral Tribunal shall deliver the award on the payment into the Court by the applicant of the fees and expenses demanded, or such lesser amount as the Court may specify;
 - (b) the amount of the fees and expenses payable shall be determined by such means and upon such terms as the Court may direct; and
 - (c) out of the money paid into Court there shall be paid out to the arbitrators such fees and expenses as may be found to be payable and the balance of the money (if any) shall be paid out to the applicant.
- (4) In determining the fees properly payable for the purposes of Subsection (3)(b) and (c) above, the Court shall have regard to Section 49 (2) of this Law.
- (5) No application to the Court may be made where there is any available arbitral process for appeal or review of the amount of the fees or expenses demanded.
- (6) References in this Section to arbitrators include an arbitrator who has ceased to act and an umpire who has not replaced the other arbitrators.

- (7) The provisions of this Section also apply in relation to any arbitral or other institution or person vested by the parties with powers in relation to the delivery of the Arbitral Tribunal's award and as they so apply, the references to the fees and expenses of the arbitrators shall be construed as including the fees and expenses of that institution or person.

49. Correction and interpretation of an award.

- (1) Unless another period has been agreed upon by the parties, a party may, within thirty (30) days of the receipt of an award and with notice to the other party, request the Arbitral Tribunal-
- (a) to correct in the award any errors in computation, any clerical or typographical errors or any errors of a similar nature; and
 - (b) to give an interpretation of a specific point or part of the award.
- (2) If the Arbitral Tribunal considers any request made under subsection (1) of this Section to be justified, it shall, within thirty (30) days of receipt of the request, make the correction or give the interpretation, and such correction or interpretation shall form part of the award.
- (3) The Arbitral Tribunal may, on its own volition and within thirty (30) days from the date of the award, correct any error of the type referred to in subsection (1) (a) of this Section.
- (4) Unless otherwise agreed by the parties, a party may within the thirty (30) days of receipt of the award and on notice to the other party request Arbitral Tribunal to make an additional award as to the claims presented in the arbitral proceedings but omitted from the award.
- (5) If the Arbitral Tribunal considers any request made under Subsection (4) of this Section to be justified, it shall, within sixty (60) days of the receipt of the request, make the additional award.
- (6) The Arbitral Tribunal may for good cause extend the time limit within which it shall make a correction, give an interpretation or make an additional award under Subsection (2) or (5) of this Section.
- (7) The provisions of Section 46 of this Law, which relate to the form and contents of an award, shall apply to any correction or interpretation and additional award made under this Section.

50. Costs.

- (1) The Arbitral Tribunal shall fix costs of arbitration in its award and the term "costs" includes-
- (a) the fees of the Arbitral Tribunal to be stated separately as to each arbitrator and to be fixed by the Arbitral Tribunal itself;

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

51. Deposit of costs.

- (1) The Arbitral Tribunal, on its establishment, may request each party to deposit an equal amount as an advance for the costs referred to in paragraphs (a), (b) and (c) of section 50(1) of this Law.
- (2) During the course of the arbitral proceedings, the Arbitral Tribunal may request supplementary deposits from the parties.

52. Security for costs.

- 1) The Arbitral Tribunal shall have the power (upon the application of a party) to order any claiming or counter-claiming party to provide security for the legal or other costs to any other party by way of deposit or bank guarantee or in any other manner and upon such terms as the Arbitral Tribunal considers appropriate, including the provision by that other party of a cross-indemnity, secured in such manner as the Arbitral Tribunal considers appropriate, for any costs and losses incurred by such claimant or counter-claimant in providing security.
- 2) The amount of any costs and losses payable under a cross-indemnity under subsection (1) of this Section may be determined by the Arbitral Tribunal in one or more awards.
- 3) In the event that a claiming or counter-claiming party does not comply with any order to provide security under this Section, the Arbitral Tribunal may stay that party's claim or counter-claim or dismiss them in an award.

53. Joint liability.

- 1) The parties are jointly and severally liable to pay the arbitrator such reasonable fees and expenses (if any) as are appropriate in the circumstances.
- 2) In this Section, references to arbitrators include an arbitrator who has ceased to act and an umpire who has not replaced the arbitrators.

54. Application for setting aside of award.

- (1) A party who is aggrieved by an arbitral award may within three months:
 - (a) from the date of the award; or
 - (b) in a case falling within Section 49 of this Law, from the date the request for additional award is disposed of by the Arbitral Tribunal, by way of an application for requesting the Court to set aside the award in accordance with subsection (2) of this Section.
- (2) The Court may set aside an arbitral award if it finds that-
 - (i) a party to the arbitration agreement was under some incapacity;
 - (ii) the arbitration agreement is not valid under the Law which the parties have indicated should be applied, or that the arbitration agreement is not valid under the Laws of Nigeria;
 - (iii) the applicant was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise not given a fair opportunity to present his case;
 - (iv) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration; or
 - (v) the award contains decisions on matters which are beyond the scope of the submission to arbitration, however if the decisions on matters submitted to arbitration can be separated from those not submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or
 - (vi) the composition of the Arbitral Tribunal or the arbitral procedure, was not in accordance with the agreements of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate; or
 - (vii) where there is no agreement between the parties under sub-paragraph (vi) of this paragraph, the composition of the Arbitral Tribunal or the arbitral procedure was not in accordance with this Law, or
 - (viii) the dispute arises under an agreement that is invalid, non-existent or ineffective; or

- (ix) the subject matter of the dispute is otherwise not capable of settlement by arbitration under the Laws of Nigeria; or
 - (x) the arbitrators or any of them received some improper payment, benefit or other consideration; .
 - (xi) the arbitrators do not possess the qualifications required by the Arbitration agreement;
 - (xii) the arbitrator or arbitrators are guilty of any misconduct in the course of the proceedings; and
 - (xiii) the award is contrary to public policy.
- (3) If the Court is satisfied that one or more of the grounds set out in subsection (2) of this Section has been proved and that it has caused or will cause substantial injustice to the applicant, the Court may:
- (a) remit the award to the Tribunal, in whole or in part, for reconsideration;
 - (b) set the award aside in whole or in part; or
 - (c) render the award to be of no effect, in whole or in part.
- (4) The Court shall not exercise its power to set aside or to declare an award to be of no effect, in whole or in part, unless it is satisfied that it would be inappropriate to remit the matter in question to the Arbitral Tribunal for consideration.

55. Recognition and enforcement of awards.

- (1) An arbitral award shall, irrespective of the jurisdiction or territory in which it is made, be recognized as binding, and subject to this Section and Section 56 of this Law, shall upon application in writing to the Court by a party, be enforced by the Court.
- (2) The party relying on an award or applying for its enforcement shall supply-
- (a) the duly authenticated original award or a duly certified copy;
 - (b) the original Arbitration agreement or a duly certified copy; and
 - (c) where the award or Arbitration agreement is not made in the English language, a duly certified translation into the English language.

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

56. Refusal of recognition or enforcement of awards.

- (1) Any of the parties to an arbitration agreement may request the Court to refuse recognition or enforcement of the award.
- (2) Where recognition or enforcement of an award is sought or where application for refusal of recognition or enforcement is brought, the Court may, irrespective of the jurisdiction or territory in which the award is made, refuse to recognize or enforce an award if the Court finds that:-
- (a) a party to the arbitration agreement was under some incapacity; or
 - (b) the arbitration agreement is not valid under the Law which the parties have indicated should be applied, or that the arbitration agreement is not valid under the Law of the place where the award was made; or
 - (c) the applicant was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise not given a fair opportunity to present his case; or
 - (d) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration; or
 - (e) the award contains decisions on matters which are beyond the scope of the submission to arbitration, however if the decisions on matters submitted to arbitration can be separated from those not submitted, only that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or
 - (f) the composition of the Arbitral Tribunal, or the arbitral procedure was not in accordance with the agreement of the parties; or
 - (g) where there is no agreement between the parties under sub-paragraph (f) of this subsection that the composition of the Arbitral Tribunal, or the arbitral procedure, was not in accordance with the Law of the place where the arbitration took place; or
 - (h) the award has not yet become binding on the parties or has been set aside or suspended by a Court in that jurisdiction or territory in which, the award was made; or
 - (i) the award does not comply with requirement of Section 46; and
 - (j) the award is contrary to public policy.
- (3) Where an application to set aside or suspend an award has been made to the Court referred to in subsection (2) (a) and (h) of this Section, the Court may, if it considers it proper, to postpone decision on the application for recognition and enforcement of the award and may order the party against

whom recognition and enforcement is sought to provide appropriate security.

57. Waiver of right to object.

A party who knows that-

- (a) any provision of this Law from which the parties may derogate; or
- (b) any requirement under the arbitration agreement, has not been complied with and yet proceeds with the arbitration without stating their objection to such non-compliance within the time limit provided, shall be deemed to have waived the right to object to the non-compliance.

58. Extent of court intervention.

- (1) A Court shall not intervene in any matter governed by this Law, except, where so provided in this Law.
- (2) All applications to the Court in respect of any matter governed by this Law shall be in accordance with the Rules set out in Section 3 of the Schedule to this Law.

59. Exclusion of this Law.

This Law shall not affect any other Law by virtue of which certain disputes-

- (a) may not be submitted to arbitration; or
- (b) may be submitted to arbitration only in accordance with the provisions of that or another Law.

60. Extension of time.

Notwithstanding the provisions of this Law, the Arbitral Tribunal may for good cause, extend the time specified for the performance of any act under this Law.

61. Delivery and receipt of written communication.

- (1) Unless otherwise agreed by the parties, any communication sent pursuant to this Law shall be deemed to have been delivered and received -
 - (a) when it is delivered to the addressee personally or when it is delivered to the addressee's place of business, habitual residence or mailing address; or
 - (b) where a communication cannot be delivered under paragraph (a) of this subsection, when it is sent to the addressee's last known place of business,

habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it.

- (2) A communication shall be deemed to have been received on the day it is delivered under subsection (1) of this Section.
- (3) The provisions of this Section shall not apply to communications in Court proceedings.

62. Interpretation.

In this Law, unless the context otherwise requires-

"**ad-hoc arbitration**" means a proceeding that is not administered by an institution or other body and which requires the parties themselves to make their own arrangements for selection of arbitrators and for designation of rules, applicable Law, procedures and administrative support;

"**appointing authority**" means a body or institution designated to appoint an arbitrator or arbitrators under the arbitration agreement;

"**arbitration**" means the reference of an existing or future dispute between two or more parties to an independent person(s) chosen by them (the arbitrator) to adjudicate upon;

"**arbitration agreement**" has the meaning given to it in Section 3;

"**award**" means a decision of the Arbitral Tribunal on the substance of the dispute and includes any interim, interlocutory or partial award but excludes any orders, measures or directions made by the Arbitral Tribunal.

"**Court**" means High Court of Ekiti State;

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

"**Judge**" means a judge of the High Court of Ekiti State;

"**party**" means a party, parties or group of parties to an arbitration agreement or, in any case where an arbitration does not involve all of the parties to an arbitration agreement, it means a party to the arbitration;

"**the place of the arbitration**" means the juridical seat of the arbitration designated by:

- (a) the parties to the arbitration agreement;
- (b) any arbitral or other institution or person authorized by the parties for that purpose; or

- (c) the Arbitral Tribunal as authorized by the parties, or determined by the High Court in the absence of such designation, having regard to the arbitration agreement and all the relevant circumstances.
- (2) Where any provision in this Law allows the parties to determine any issue, the parties may authorize a third party, including an arbitral institution to make that determination.
- (3) Where any provision in this Law refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules incorporated in that agreement.
- (4) Where a provision of this Law-
- (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, such agreement includes any arbitration rules referred to in the agreement.
- (5) Where a provision in this Law, other than Section 40 1 (a) or 47(2)(a) refers to a claim, such claim includes a counterclaim, and where it refers to a defence, such defence includes a defence to such counterclaim.

63. Citation.

This Law shall be cited as the Ekiti State Arbitration Law, 2014.

SCHEDULE

ARBITRATION APPLICATIONS RULES.

1. Interpretation.

In these Rules-

"**arbitration applications**" means any application to a Court under the Ekiti State Arbitration Law.

- (a) to stay proceedings under Section 6;
- (b) to remove an arbitrator or umpire under Section 12;
- (c) to grant interim measures of protection under Section 2I(1);
- (d) to recognize or enforce an interim measure of protection under Section 30 ;
- (e) to refuse recognition or enforcement of an interim measure of protection under Section 30 ;
- (f) to subpoena a witness to attend under Section 42;
- (g) in respect of the fees of an arbitrator under Section 48;
- (h) to set aside an award under Section 54;
- (i) to recognize and enforce an award under Section 56;
- (j) to refuse recognition and enforcement of an award under Section 55;
and
- (k) or for any other relief or remedy as is provided for under the Law.

2. Commencing arbitral application.

- (1) Except where sub-rule 2 of this rule applies an arbitration application shall be started by the issue of an Originating Motion.
- (2) An application under Section 6 of the Law to stay Legal Proceedings shall be made by Notice of Motion to the Court dealing with those proceedings.

3. Originating Motion.

- (1) An Originating Motion commencing an arbitration application shall-
 - (a) include a concise statement of-
 - (i) the remedy or relief claimed;
 - (ii) the questions on which the claimant seeks the decision of the Court;
 - (b) give details of any arbitration award challenged by the claimant, identifying which part or parts of the award are challenged and specifying the grounds for the challenge;

- (c) show that any statutory requirements have not been met;
 - (d) specify under which section of the Law the application is made;
 - (e) identify against which (if any) of the defendants a cost order is sought; and
 - (f) specify the person on whom the Originating Motion is to be served, stating their role in the arbitration and whether they are defendants.
- (2) Unless the Court orders otherwise, an Originating Motion shall be served on the defendant within fourteen (14) days from the date of issue.

4. Service out of jurisdiction.

- (1) The Court may give permission to serve an Originating Motion out of the jurisdiction if-
- (a) the claimant seeks to set aside an arbitration award made within the jurisdiction;
 - (b) the claimant-
 - (i) seeks some other remedy or requires a question to be decided by the Court affecting an arbitration (whether started or not), an arbitration agreement or an arbitration award; and
 - (ii) the seat of the arbitration is or will be within the jurisdiction.
- (2) An application for permission under Rule 4 (1) of this Rule 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 and shall comply with the Sheriffs and Civil Process Act, Cap.S6 L.F.N, 2004.

5. Notice.

- (1) Where an arbitration application is made under Section 12 of the Law, each arbitrator shall be a defendant.
- (2) Where notice shall be given to an arbitrator or any other person it may be given by sending him a copy of-
- (a) the Originating Motion; and
 - (b) any affidavit in support.
- (3) Where the Law requires an application to the Court to be made on notice to any other party to the arbitration, such notice shall be given by making that party a defendant.

6. Hearings.

Save as otherwise provided by these Rules, applications made pursuant to these Rules shall be heard in the same manner as motions and other applications under the Ekiti State (Civil Procedure) Rules.

7. Enforcement of arbitration awards and interim measure of protection.

- (1) An application to enforce an award or an interim measure of protection in the same manner as a judgment or Order shall be made by Originating Motion.
- (2) The supporting affidavit shall-
 - (a) exhibit the arbitration agreement and the original award or decision containing the interim measure of protection, or in either case 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.

8. Application in court or in chambers

The following sub-rules apply unless the Court orders otherwise:-

- (1) A defendant who does not contest any or all of the remedies claimed may file a notice stating such fact, and a Court or Judge in chambers may grant such uncontested remedy or remedies without an oral hearing.
- (2) A defendant who contests any or all of the remedies claimed and who wishes to rely on evidence before the Court shall:
 - (a) enter appearance within seven (7) days of service or such other period of time as the Court orders, of the Originating Motion; and
 - (b) file and serve any counter-affidavit upon which it is intended to rely, within fourteen (14) days after the date by which he was required to enter appearance;
- (3) A claimant who wishes to rely on evidence in reply to the counter- affidavit filed under Rule 7(2) shall file and serve his reply affidavit within seven (7) days after the service of the defendant's counter-affidavit.
- (4) Except in the case provided for in Rule (5) of this rule, an arbitration application shall be entered on the Court's list such that its first hearing is not later than forty (40) days after service of the Originating Motion on the defendant, or in the case of multiple defendants, on the defendant last served.
- (5) Where a defendant is served outside the jurisdiction pursuant to permission given under Rule 3 of these Rules, an arbitration application shall be entered on the Court's list such that its first hearing is not later than sixty

(60) days after service of the Originating Motion on the defendant served outside the jurisdiction, or in the case of multiple defendants, on the defendant last served.

- (6) Not later than two (2) days after filing the Originating Motion, the claimant shall file and serve a written brief of arguments which lists succinctly:
- (a) the issues which arise for determination;
 - (b) the grounds of relief (or opposing relief) to be relied upon;
 - (c) the submissions of fact to be made with reference to the evidence;
and
 - (d) the submission of Law with reference to the relevant authorities.
- (7) Not later than the day before the hearing date, the defendant shall file and serve a skeleton argument which lists succinctly:
- (a) the issues which arise for decision;
 - (b) the grounds for relief (or opposing relief) to be relied upon;
 - (c) the submissions of fact to be made with reference to the evidence;
and
 - (d) the submissions of Law with reference to the relevant authorities.