

Sierra Leone

Arbitration Act, 2022

Act 18 of 2022

Legislation as at 22 September 2022

FRBR URI: /akn/sl/act/2022/18/eng@2022-09-22

There may have been updates since this file was created.

PDF created on 21 February 2024 at 14:26.

[Check for updates](#)



About this collection

The legislation in this collection has been reproduced as it was originally printed in the Government Gazette, with improved formatting and with minor typographical errors corrected. All amendments have been applied directly to the text and annotated. A scan of the original gazette of each piece of legislation (including amendments) is available for reference.

This is a free download from the Laws.Africa Legislation Commons, a collection of African legislation that is digitised by Laws.Africa and made available for free.

www.laws.africa
info@laws.africa

There is no copyright on the legislative content of this document.
This PDF copy is licensed under a Creative Commons Attribution 4.0 License (CC BY 4.0). Share widely and freely.

Arbitration Act, 2022
 Contents

Part I – Preliminary 1

 1. Interpretation 1

 2. Application of Act 3

 3. Application of Limitation Act, 1961 3

 4. Guiding principles 3

Part II – Arbitration agreement 4

 5. Arbitration agreement shall be in writing 4

 6. Separability of arbitration agreements 4

 7. Death of a party 4

 8. Seat and place of arbitration 4

Part III – Pre-Arbitral proceedings 5

 9. Stay of proceedings on substantive claim 5

 10. Retention of security where proceedings are stayed 5

 11. Request for interim protection measure 5

Part IV – Composition of arbitral tribunal 5

 12. Number of arbitrators 5

 13. Appointment of arbitrators 6

 14. Arbitrator to be an individual 6

 15. Failure of appointment procedure 6

 16. Presiding arbitrator 7

 17. Grounds for challenge 7

 18. Filling of vacancy, etc. 7

 19. Resignation of arbitrator 8

 20. Death of arbitrator or person appointing him 8

 21. Immunity of arbitrator 8

 22. Challenge of appointment procedure 8

Part V – Commencement of arbitration 9

 23. Notice of Arbitration 9

 24. Response to Notice of Arbitration 9

 25. Transmission of notice and calculating period of time 10

 26. Extension of time for beginning arbitral proceedings 10

Part VI – Jurisdiction of arbitral tribunal 11

 27. Competence of arbitral tribunal to rule on its own jurisdiction 11

Part VII – Emergency arbitrator, interim measures and preliminary orders 11

28. Appointment of emergency arbitrator	11
29. Challenge of emergency arbitrator	12
30. Seat of emergency relief proceedings	13
31. Interim measures	13
32. Conditions for granting interim measures	13
33. Preliminary orders	14
34. Specific regime for preliminary orders	14
35. Modification, suspension, termination	14
36. Provision of security	14
37. Disclosure	14
38. Costs and damages	15
39. Recognition and enforcement of interim measure	15
40. Grounds for refusing recognition and enforcement of interim measure	15
41. Court interim measure	15
Part VIII – Conduct of arbitral proceedings	16
42. General duty of arbitral tribunal	16
43. Procedural and evidential matter	16
44. Consolidation of proceedings and concurrent hearings	17
45. Legal or other representation	17
46. General duties of parties	17
47. Arbitration management conference	17
48. Language of arbitral proceedings	17
49. Hearings and written proceedings	18
50. Confidentiality	18
51. Default of a party	18
52. Expert appointed by arbitral tribunal	19
Part IX – Powers of Court in relation to arbitration proceedings	19
53. Enforcement or preemptory orders of arbitral tribunal	19
54. Securing attendance of witnesses	20
55. Court powers exercisable in support of arbitral proceedings	20
Part X – Making of award and termination of proceedings	21
56. Rules applicable to substance of dispute	21
57. Decision-making by panel of arbitrators	21
58. Settlement	21
59. Form and contents of award	21

60. Termination of proceedings	22
61. Correction and interpretation of award and additional award	22
62. Fees and expenses of arbitrators	22
Part XI – Challenging the award	23
63. Application for setting aside arbitral award	23
64. Directions relating to setting aside award	24
Part XII – Recognition and enforcement of awards	24
65. Recognition and enforcement of awards	24
66. Refusal of recognition or enforcement of awards	24
67. Application of New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards	25
Part XIII – Enforcement of ICSID Convention awards	26
68. Enforcement of ICSID Convention awards	26
69. Non-application of this Act to ICSID Convention awards	26
70. Status, immunities and privileges conferred by ICSID Convention	26
71. Government contribution to expenses under Convention	26
Part XIV – Costs of arbitration	26
72. Costs of arbitration	26
73. Deposit of costs	27
74. Security for costs	27
75. Joint and several liabilities for arbitrator’s fees and expenses	28
76. Lien on award	28
77. Recoverable fees and expenses of arbitrators	28
78. Power to limit recoverable costs	29
Part XV – Third party funding	29
79. Abolition of maintenance and champerty	29
80. Disclosure of third-party funding agreement	29
Part XVI – Additional provisions relating to International Commercial Arbitration	29
81. Recognition and enforcement of foreign awards, etc.	29
Part XVII – Sierra Leone International Arbitration Centre	30
82. Sierra Leone International Arbitration Centre	30
83. Administration of Centre	30
84. Funds of Centre	31
85. Register of Arbitrators	31
86. Independence of Centre	32
Part XVIII – Miscellaneous	32

87. Rights of person who takes no part in proceedings	32
88. Loss of right to object	32
89. Immunity of arbitral institutions, etc.	33
90. Service of notices and other documents	33
91. Reckoning periods of time	33
92. Extension of time limits relating to arbitral proceedings	34
93. Matters governed by common law	34
94. Repeal and savings	34
95. Waiver of right to object	34
96. Extent of application of this Act to arbitration	35
97. Extension of time	35
98. Rules applicable to domestic arbitration	35
Third Schedule	57
Second Schedule (Section 67)	53
Fourth Schedule	60

Sierra Leone

Arbitration Act, 2022

Act 18 of 2022

[Published in Sierra Leone Gazette 68 on 22 September 2022](#)

Assented to on 6 September 2022

Commenced on 22 September 2022

[This is the version of this document from 22 September 2022.]

Being an Act to repeal and replace the Arbitration Act CAP 25 to provide for the incorporation of the Convention on the Recognition and Enforcement of Arbitral Awards 1958 (New York Convention) in respect of awards made in Sierra Leone or in a contracting State, to provide for the implementation of the Convention on the Settlement of investment disputes between states and nationals of other states; to provide for fair settlement of disputes by domestic and international arbitration and to provide for other related matters.

ENACTED by the President and Members of Parliament in this present Parliament assembled.

Part I – Preliminary

1. Interpretation

In this Act, unless the context otherwise requires—

"**appointing authority**" means a person or authority including the Centre in whom parties to an arbitration agreement vest power to take an action for or on behalf of the parties in relation to the arbitration;

"**arbitral tribunal**" means a panel of unbiased adjudicators which is convened and sits to resolve a dispute by way of arbitration, and may consist of a sole arbitrator or two or more arbitrators including a Chairman or an umpire;

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

"**arbitration agreement**" means 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 and may be in the form of an arbitration clause in a contract or in the form of a separate agreement;

"**available arbitral process**" includes a process of appeal to or review by an arbitral or other institution or person vested by the parties with powers in relation to that matter;

"**award**" means a decision of the tribunal on the substance of the dispute and includes final, interim, partial award and award on costs or interest;

"**Centre**" means the Sierra Leone International Arbitration Centre established under [section 82](#);

"**claimant**" includes a counter-claimant and related expressions shall be construed accordingly;

"**commercial**" means matters arising from all relationships of a commercial nature including trade transactions for the supply or exchange of goods or services, distribution agreement, commercial representation or agency, factoring, leasing, construction of works, constructing, 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;

"costs" includes—

- (a) fees of the arbitral tribunal stated separately as to each arbitrator and fixed by the tribunal itself;
- (b) reasonable travel and other expenses incurred by the arbitrators;
- (c) reasonable costs of expert advice and of other assistance required by the arbitral tribunal;
- (d) reasonable travel and other expenses of witnesses to the extent approved by the arbitral tribunal;
- (e) legal and other costs incurred by the parties in relation to the arbitration that the arbitral tribunal determines reasonable;

"Court" means the High Court save that, for the purposes of appointment of an emergency arbitrator, "court" means the Chief Justice sitting as a Judge in Chamber;

"data message" means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, electronic data interchange, electronic mail, telegram, telex or telecopy;

"dispute" includes difference or disagreement which has arisen or which may arise between parties in respect of a defined legal relationship, whether contractual or not;

"domestic arbitration" means an arbitration which is not an international arbitration;

"electronic communication" means communication by means of data messages made by the parties;

"ICSID Convention" means the Convention on the Settlement of Investment Disputes between States and Nations of other States 1966, to which Sierra Leone became a party on 14th October 1966;

"international arbitration" means an arbitration where—

- (a) at least one of the parties to an arbitration agreement, at the time of the conclusion of that agreement, has its place of business in a State other than Sierra Leone;
- (b) the parties have their place of business in Sierra Leone and one of the following is situated in another State—
 - (i) the seat of arbitration, if determined in or pursuant to the arbitration agreement;
 - (ii) a place where a substantial part of the obligations of a commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or
 - (iii) the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one State;

"legal proceedings" means proceedings in the High Court;

"New York Convention" means the New York Convention on the Recognition and Enforcement of Arbitral Awards 1958;

"party" means a party to an arbitration agreement or a person claiming through or under that party and "parties" shall be construed accordingly;

"peremptory order" means an order prescribing time for compliance by a party, with an order or direction of the tribunal made under paragraphs (c), (d), (e) of subsection (3) of [section 51](#) and subsections (1) and (3) of [section 53](#), or made in exercise of a corresponding power conferred by the parties;

"place of business" means, in the case of a party who—

- (a) has more than one place of business, that which has the closest relationship to the arbitration agreement; and
- (b) does not have a place of business, the party's habitual residence;

"premises" includes land, buildings, moveable structures, vehicles, vessels, aircraft and hovercraft;

"**public holiday**" includes a day listed as a public holiday in the schedule to the Public Holidays Act, Cap. 58 of the Laws of Sierra Leone;

"**seat of arbitration**" means the juridical seat of an arbitration for purposes of determination of the law that will govern the arbitration proceedings;

"**Third-Party Funder**" means a natural or legal person who is not a party to a 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 such 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;

"**Third-Party Funding Agreement**" means a contract between a 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 costs of the proceedings, either individually or as part of a selected range of cases, and such 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. Application of Act

- (1) This Act shall apply to—
 - (a) domestic arbitration and international arbitration where the seat of arbitration is Sierra Leone;
 - (b) an arbitration agreement to which the Government of Sierra Leone is a party; and
 - (c) arbitral proceedings commenced on or after the commencement of this Act under an arbitration agreement whether made before or after the commencement of this Act.
- (2) This Act shall not apply to arbitral proceedings originated before the commencement of this Act, unless the parties have agreed otherwise.

3. Application of Limitation Act, 1961

- (1) The Limitation Act, 1961 shall apply to domestic arbitral proceedings.
- (2) In computing the time prescribed by the Limitation Act, 1961 for the commencement of proceedings in respect of an award or of the affected part of an award, which the Court orders to be set aside in part or declares to be of no effect in part, the Court may order that the period between the commencement of the arbitration and the date of the order shall be excluded.
- (3) In determining, for the purposes of the Limitation Act, 1961, when a cause of action accrued, a provision that an arbitral award is a condition precedent to the bringing of 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.

4. Guiding principles

The application and construction of this Act shall be based on the following guiding principles—

- (a) that an arbitration is to resolve disputes fairly, impartially and efficiently without unnecessary delay or expense;
- (b) that the parties should be free to agree how their disputes are to be resolved, subject only to such safeguards, specified in this Act or as are necessary in the public interest; and
- (c) that the Court shall not intervene in a matter governed by this Act, except where so provided by this Act.

Part II – Arbitration agreement

5. Arbitration agreement shall be in writing

- (1) An arbitration agreement shall be in writing and its content shall be recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct or by other means.
- (2) An electronic communication shall, for the purposes of an arbitration agreement under subsection (1), be deemed to be in writing if—
 - (a) the information contained therein is accessible so as to be useable for subsequent reference;
 - (b) it is contained in an exchange of statements of claim or statements of defence in which the existence of an agreement is alleged by one party and not denied by the other.
- (3) A reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement in writing, provided that the reference is such as to make that clause part of the contract.
- (4) Subject to subsection (1) of [section 9](#), unless the parties agree otherwise, an arbitration agreement shall be irrevocable.

6. Separability of arbitration agreements

Unless otherwise agreed by the parties, an arbitration agreement which forms or was intended to form part of another agreement, shall be treated as a distinct agreement, whether in writing or not, shall not be regarded as invalid, non-existent or ineffective because that other agreement is invalid, did not come into existence or has become ineffective.

7. Death of a party

- (1) Unless otherwise agreed by the parties, an arbitration agreement is not discharged by the death of a party and may be enforced by or against the personal representatives of that party.
- (2) Nothing in this section affects the operation of law by virtue of which a substantive right or obligation is extinguished by the death of a person.

8. Seat and place of arbitration

- (1) The seat of an 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 an arbitral tribunal.
- (2) Where the parties have not designated the seat of an arbitration and they have not authorised an arbitral or other institution to designate the seat of the arbitration, then the seat of the arbitration shall be Sierra Leone 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 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 subsections (1) and (2), an arbitral tribunal may, unless otherwise agreed by the parties, meet at a place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties or for inspection of goods, other property or documents.

Part III – Pre-Arbitral proceedings

9. Stay of proceedings on substantive claim

- (1) A Court before which an action is brought in respect of a matter which is the subject of an arbitration agreement shall, where a party makes an application before taking any other step to answer the substantive claim, excluding a procedural steps necessary to acknowledge the proceedings, stay that action and refer the parties to arbitration unless it finds that the arbitration agreement is null and void, inoperative or incapable of being performed.
- (2) Where an action referred to in subsection (1) has been brought, arbitral proceedings may be commenced or continued and an arbitral award may be made, while the issue 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 such interim or supplementary orders, as may be necessary.

10. Retention of security where proceedings are stayed

- (1) Where an admiralty proceedings is stayed on the ground that the dispute in question should be submitted to arbitration, the Court granting the stay may, if in the admiralty proceedings property has been arrested, bailed or other security has been given to prevent or obtain release from arrest, order that—
 - (a) the property arrested be retained as security for the satisfaction of an award given in the arbitration in respect of that dispute;
 - (b) the stay of proceedings be conditional on the provision of equivalent security for the satisfaction of an award.
- (2) Subject to any other law to the contrary, subsection (1) shall apply in relation to property retained in pursuance of an order as would apply if it were held for the purposes of proceedings in the Court making the order.

11. Request for interim protection measure

It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, an interim measure of protection from a Court and for a Court to grant such measure.

Part IV – Composition of arbitral tribunal

12. Number of arbitrators

- (1) The parties are free to determine the number of arbitrators.
- (2) Where the parties fail to determine the number of arbitrators, an arbitral tribunal shall, in the case of—
 - (a) an international arbitration, consist of 3 arbitrators; and
 - (b) a domestic arbitration, consist of a single arbitrator.

13. Appointment of arbitrators

- (1) Unless otherwise agreed by the parties, a person shall not be precluded by reason of nationality from acting as an arbitrator.
- (2) The parties are free to agree on a procedure for appointing an arbitrator or presiding arbitrator.
- (3) Where the parties fail to agree on the procedure referred to in subsection (2), [section 15](#) shall apply.

14. Arbitrator to be an individual

Only an individual may act as an arbitrator.

15. Failure of appointment procedure

- (1) Where the parties fail to agree on that appointment of an arbitrator or arbitrators, the following procedure shall apply—
 - (a) in an arbitration with a sole arbitrator, an arbitrator shall be appointed by the Court, on the request of a party, if the parties are unable to agree on the arbitrator 14 days after service of request in writing by either party to do so; and
 - (b) in an arbitration with 3 arbitrators, each party shall appoint one arbitrator and the 2 arbitrators so appointed are to appoint the third arbitrator, who shall be the presiding arbitrator and where—
 - (i) a party fails to appoint an arbitrator within 14 days of receipt of a request to do so from the other party; or
 - (ii) 2 arbitrators fail to agree on the third arbitrator within 14 days of their appointment;
 - (iii) the 2 appointed arbitrators fail to agree on the third arbitrator within 14 days from the date of their appointment;the appointment shall be made by the appointing authority upon a request by a party.
 - (c) if there are more than 2 parties, then the procedure in paragraph (b) shall apply, save that the claimants shall jointly appoint one arbitrator, and the respondents shall jointly appoint one arbitrator, and the 2 appointed arbitrators shall appoint the third arbitrator as the presiding arbitrator; and
 - (d) in an arbitration with more than 3 arbitrators, a party may for the purpose of appointing an arbitrator request for the register of arbitrators maintained by the Centre and the Centre shall comply with the request, if the parties fail to—
 - (i) agree on a process; and
 - (ii) appoint a tribunal 14 days after service of a request in writing.
- (2) Where, under an appointment procedure agreed on by the parties—
 - (a) a party fails to act as required under the appointment procedure;
 - (b) the parties, or 2 or more arbitrators, are unable to reach an agreement expected of them under the appointment procedure; or
 - (c) a third party, including an institution fails to perform a function entrusted to it under the appointment procedure, a party may request the Court to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

- (3) The Court shall, in appointing an arbitrator, have due regard to qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator.
- (4) In the event of failure of the parties' procedure for the appointment of the arbitral tribunal or in the absence of an agreement on such procedure, the Court may revoke any appointments already made.

16. Presiding arbitrator

- (1) Where the parties have agreed that there is to be a presiding arbitrator, they may agree what the functions of the presiding arbitrator are to be in relation to the making of decisions, orders and awards.
- (2) If or to the extent that there is no such agreement—
 - a) decisions, orders and awards shall be made by all or a majority of the arbitrators, including the presiding arbitrator;
 - b) 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 by the arbitral tribunal.
- (3) Where there is no agreement as to how the arbitral tribunal is to make decisions under subsection (1), decisions, orders and awards shall be made by all or a majority of the arbitrators.

17. Grounds for challenge

- (1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence.
- (2) An arbitrator shall, from the time of his appointment and throughout the arbitral proceedings, without delay, disclose any such circumstances to the parties unless they have already been informed of them by him.
- (3) An arbitrator may be challenged only if the circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties.
- (4) A party may challenge an arbitrator it appointed or in whose appointment it has participated, only for reasons of which it becomes aware after the appointment has been made.

18. Filling of vacancy, etc.

- (1) Where an arbitrator ceases to hold office, the parties may agree, on—
 - a) how the vacancy is to be filled;
 - b) to what extent the previous proceedings should stand; and
 - c) the effect that the arbitrator ceasing to hold office has on an appointment made by such arbitrator alone or jointly with another arbitrator.
- (2) If or to the extent that there is no such agreement,—
 - a) sections [12](#) and [13](#) shall apply in relation to the filling of the vacancy as in relation to an original appointment;
 - b) an arbitral tribunal, when reconstituted, shall determine whether and if so to what extent the previous arbitral proceedings should stand;
 - c) the reconstitution of an arbitral tribunal and the determination in accordance with paragraph

- (d) shall not affect the right of a party to challenge the previous arbitral proceedings on any ground which had arisen before the arbitrator ceased to hold office; and
- (e) the ceasing to hold office by the arbitrator shall not affect an appointment by such arbitrator alone or jointly, of another arbitrator, in particular any appointment of a presiding arbitrator.

19. Resignation of arbitrator

- (1) The parties may agree with an arbitrator as to the consequences of his resignation as regards—
 - (a) the arbitrator's entitlement to fees or expenses; and
 - (b) liability thereby incurred by the arbitrator.
- (2) If or to the extent that there is no such agreement an arbitrator who resigns its appointment may, upon notice to the parties, apply to the Court to—
 - (a) grant the arbitrator relief from any liability thereby incurred by him; and
 - (b) make such order, as it thinks fit, with respect to the arbitrator's entitlement to fees or expenses or the repayment of fees or expenses already paid.
- (3) Where the Centre is satisfied that in all the circumstances it was reasonable for the arbitrator to resign, it may grant relief under paragraph (a) of subsection (2) on such terms as it thinks fit.
- (4) A decision of the Court on a matter under this section shall be final.

20. Death of arbitrator or person appointing him

- (1) The authority of an arbitrator shall be personal and shall cease upon his death.
- (2) Unless otherwise agreed by the parties, the death of the person by whom an arbitrator was appointed does not revoke the arbitrator's authority.

21. Immunity of arbitrator

- (1) An arbitrator is not liable for anything done or omitted in the discharge or purported discharge of its functions as arbitrator unless the act or omission is shown to have been in bad faith.
- (2) Subsection (1) shall apply to an employee or agent of an arbitrator.
- (3) This section shall not affect liability incurred by an arbitrator by reason of his resignation.

22. Challenge of appointment procedure

- (1) Subject to subsection (2), the parties in an arbitration are free to agree on a procedure for challenging the appointment of an arbitrator.
- (2) A party challenging the appointment of an arbitrator, shall within 14 days of becoming aware of the constitution of the arbitral tribunal or after becoming aware of circumstances that justify the challenge of the appointment of an arbitrator, submit a written statement of the reasons for the challenge to the arbitrator and any other arbitrators.
- (3) Where an arbitrator whose appointment is challenged, fails to withdraw from the arbitration or the other party to the arbitration fails to agree to the challenge, the challenge shall be decided by—
 - (a) the arbitral tribunal;
 - (b) the appointing authority, in the case of a sole arbitrator;
 - (c) the High Court, in the case of an arbitrator appointed by the party challenging the arbitrator.

- (4) Where a sole arbitrator's appointment is successfully challenged he shall cease to be the arbitrator for the case.
- (5) Where the challenge of an arbitrator is from both parties, the appointing authority shall replace the arbitrator.

Part V – Commencement of arbitration

23. Notice of Arbitration

- (1) A party wishing to have recourse to arbitration under this Act, shall send a Notice of Arbitration to the other party.
- (2) Unless otherwise agreed by the parties, an arbitral proceedings in respect of a particular dispute shall commence on the date on which a Notice of Arbitration under subsection (1), is received by the respondent.
- (3) A Notice of Arbitration shall include—
 - (a) a demand that the dispute be referred to arbitration;
 - (b) the names and contact details of the parties;
 - (c) the arbitration agreement that is invoked;
 - (d) other relevant clauses of the 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;
 - (f) the relief or remedy sought;
 - (g) a proposal as to the number of arbitrators, language and place of arbitration, if the parties have not previously agreed thereon.
- (4) The Notice of Arbitration may also include—
 - a) a proposal for the appointment of a sole arbitrator;
 - b) notification of the appointment of an arbitrator.
- (5) The constitution of an arbitral tribunal shall not be hindered by a controversy with respect to the sufficiency of the Notice of Arbitration.

24. Response to Notice or Arbitration

- (1) Within 30 days of the receipt of a Notice of Arbitration, the respondent shall communicate to the claimant, a response to the Notice of Arbitration, which shall include—
 - (a) the name and contact details of each respondent;
 - (b) a response to the information set out in the Notice of Arbitration, under subsection (1) of [section 23](#);
 - (c) a brief description of counterclaims or claims for the purpose of a set-off, including, where relevant, an indication of the amounts involved and the relief or remedy sought;
- (2) The response to the Notice of Arbitration may also include—
 - (a) a plea that an arbitral tribunal to be constituted under this Act lacks jurisdiction;
 - (b) a proposal for the appointment of a sole arbitrator;

- (c) notification of the appointment of an arbitrator;
 - (d) a Notice of Arbitration under [section 23](#), where a respondent has a claim against a party to an arbitration agreement, other than the claimant.
- (3) An issue regarding the sufficiency of the response shall be resolved by the arbitral tribunal.

25. Transmission of notice and calculating period of time

- (1) A notice or proposal may be transmitted by a 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, notice, including notice by electronic means such as facsimile or e-mail, shall be delivered to that party at that address and if so delivered shall be deemed to have been received.
- (3) In the absence of such designation or authorization under subsection (2), a notice is—
- (a) received if it is physically delivered to the addressee; or
 - (b) deemed to have been received if 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 subsections (2) or (3), a notice is deemed to have been received if 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 subsections (2), (3) or (4), or attempted to be delivered in accordance with subsection (4) and a notice transmitted by electronic means is deemed to have been received on the day it is sent, except that a notice of arbitration so transmitted is only deemed to have been received on the day when it reaches the addressee's electronic address.
- (6) For the purpose of calculating a period of time under this Part, such period shall begin to run on the day following the day when a notice is received, if the last day of such period is an official holiday or a 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.

26. Extension of time for beginning arbitral proceedings

- (1) Where an arbitration agreement to refer future disputes to arbitration provides that a claim shall be barred or the claimant's right extinguished, unless the claimant takes, within a time fixed by arbitral the arbitration agreement, some step to begin—
- (a) arbitral proceedings; or
 - (b) other dispute resolution procedures which must be exhausted before arbitral proceedings can begin,
- the Centre or other appointing authority may by order extend the time for taking that step.
- (2) A party to an arbitration agreement may apply for an order under subsection (1), upon notice to the other parties.
- (3) The Court shall make an order under subsection (1), only if satisfied that—
- (a) the circumstances are such as were outside the reasonable contemplation of the parties when they agreed the provision in question and that it would be just to extend time; or

- (b) the conduct of one party makes it unjust to hold the other party to the strict terms of the provision in question.
- (4) The Court may extend the time for such period and on such terms as it thinks fit and may do so whether or not the time previously fixed by agreement or by a previous order has expired.
- (5) An order under subsection (1), does not affect the operation of the Limitation Act, 1961 or any other applicable limitation statute
- (6) The leave of the Court is required for an appeal from a decision of the Court under this section.

Part VI – Jurisdiction of arbitral tribunal

27. Competence of arbitral tribunal to rule on its own jurisdiction

- (1) An arbitral tribunal may rule on its own jurisdiction, including objections with respect to the existence or validity of an arbitration agreement, for that purpose, 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 a contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.
- (2) A plea that an arbitral tribunal—
 - (a) does not have jurisdiction shall be raised not later than the submission of the statement of defence or response and a party is not precluded from raising such plea by the fact that he has appointed or participated in the appointment of an arbitrator;
 - (b) 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 either case, admit a later plea if it considers the delay justified.
- (3) The power of an arbitral tribunal to rule on its own jurisdiction under subsection (1) includes the power to decide as to—
 - (a) whether there is a valid arbitration agreement;
 - (b) whether the tribunal is properly constituted; and
 - (c) what matters have been submitted to arbitration in accordance with the arbitration agreement.
- (4) Where a dispute is submitted to arbitration in accordance with an arbitration agreement and a party—
 - (a) makes a counter-claim arising out of the same dispute; or
 - (b) relies on a claim arising out of that dispute for the purposes of a set-off, the arbitral tribunal has jurisdiction to decide on the counter-claim or the claim so relied on only to the extent that the subject matter of that counter-claim or that claim falls within the scope of the same arbitration agreement.

Part VII – Emergency arbitrator, interim measures and preliminary orders

28. Appointment of emergency arbitrator

- (1) A party requiring emergency relief may, concurrent with or following the filing of a request for a dispute to be referred to arbitration, but prior to the constitution of the arbitral tribunal, submit an application for the appointment of an emergency arbitrator to an arbitral institution designated by the parties or, failing such designation, to the Court.

- (2) The party requiring the appointment of an emergency arbitrator, shall provide sufficient copies of the application so as to provide one copy for the arbitral institution or the Court, as the case may be, one copy for the emergency arbitrator and one copy for each party.
- (3) An application for an emergency arbitrator may contain such other documents or information as the applicant considers appropriate or as may contribute to the efficient examination of the application and unless the parties agree otherwise, the application shall include—
 - (a) a statement of the emergency relief sought;
 - (b) the name in full, description, address and other contact details of each of the parties;
 - (c) a description of the circumstances giving rise to the application and of the underlying dispute referred to arbitration;
 - (d) the reasons why the applicant needs the emergency relief on an urgent basis that cannot await the constitution of an arbitral tribunal;
 - (e) the reasons why the applicant is entitled to such emergency relief; and
 - (f) any relevant agreement and, in particular, the arbitration agreement.
- (4) Where an arbitral institution or Court determines that it should accept an application for the appointment of an emergency arbitrator, it shall, unless the parties otherwise agree, appoint an emergency arbitrator within 2 working days after the date the application is received.
- (5) On the appointment of an emergency arbitrator, the arbitral institution or Court shall, at the expense of the party making the application, immediately notify the emergency arbitrator and other party or parties named in the application, no later than the close of business on the business day following the date the application is granted, or such other time, not exceeding 2 working days as the arbitral institution or Court considers to be appropriate in the circumstances and thereafter all written communications from the parties shall be submitted directly to the emergency arbitrator with a copy to the other party or parties.
- (6) An emergency arbitrator shall sign and deliver to the parties a statement of acceptance, availability, impartiality and independence and shall be and remain impartial and independent of the parties involved in the dispute.
- (7) Notwithstanding this section and Article 6 of the First Schedule, a party may seek urgent interim measures from a Court at any time prior to making an application for such measures and an application for such measures from a competent Court shall not be deemed to be an infringement or waiver of the arbitration agreement.

29. Challenge of emergency arbitrator

- (1) Unless the parties otherwise agree a challenge against the appointment of the emergency arbitrator shall be made within 3 days from receipt by the party making the challenge of 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, if such date is subsequent to the receipt of such notification.
- (2) The provisions of this Act relating to the grounds for challenge of an arbitrator shall also apply to the grounds for challenge of an emergency arbitrator.
- (3) The designated arbitral institution or Court that appointed the emergency arbitrator shall decide the challenge after a reasonable opportunity has been afforded to the emergency arbitrator and the parties to provide submissions in writing not later than 3 working days after the date of the challenge.
- (4) Where an emergency arbitrator dies, has been successfully challenged, has been otherwise removed or has withdrawn, the arbitral institution or Court shall appoint a substitute emergency arbitrator within 2 working days thereof.

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

30. Seat of emergency relief proceedings

- (1) Where the parties have agreed on the seat of arbitration, such seat shall be the seat of the emergency relief proceedings.
- (2) Where the parties have not agreed on the seat of an arbitration, the arbitral institution or Court that appointed the emergency arbitrator shall fix the seat of the emergency relief proceedings, without prejudice to the arbitral tribunal's determination of the seat once constituted.
- (3) A meeting with an emergency arbitrator may be conducted in person at a location that the emergency arbitrator considers appropriate or by video conference, telephone or similar means of communication.
- (4) Where a meeting or proceedings with an emergency arbitrator is conducted by video conference, telephone or similar means of communication, the parties or the arbitrator may apply the Africa Arbitration Academy Protocol on Virtual Hearings in Africa 2020.

31. Interim measures

- (1) Unless otherwise agreed by the parties, an arbitral tribunal may, at the request of a party, grant interim measures.
- (2) An interim measure granted under subsection (1), is a temporary measure, whether in the form of an arbitral award or in another form, by which the arbitral tribunal orders a party, at any time prior to the issuance of the arbitral award by which the dispute is finally decided, to—
 - (a) make a provisional payment of money or the disposition of property as between the parties;
 - (b) make an interim payment on account of, or provide security for, the costs of the arbitration;
 - (c) maintain or restore the status quo pending the determination of the dispute;
 - (d) take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral process itself;
 - (e) provide a means of preserving assets out of which a subsequent arbitral award may be satisfied; or
 - (f) preserve evidence that may be relevant and material to the resolution of the dispute.

32. Conditions for granting interim measures

- (1) A party requesting an interim measure under paragraphs (a), (b), (c), (d) or (e) of subsection (2) of [section 31](#) 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 reasonable possibility that the requesting party will succeed on the merits of the claim and the determination on this possibility shall not affect the discretion of the arbitral tribunal in making a subsequent determination.
- (2) With regard to a request for an interim measure under paragraph (f) of subsection (2) of [section 31](#) the requirements in paragraphs (a) and (b) of subsection (1) shall apply only to the extent the arbitral tribunal considers appropriate.

33. Preliminary orders

- (1) Unless otherwise agreed by the parties, a party may, without notice to any other party, make a request for an interim measure together with an application for a preliminary order directing a party not to frustrate the purpose of the interim measure requested.
- (2) An arbitral tribunal may grant a preliminary order 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 defined under [section 32](#) apply to a preliminary order, provided that the harm to be assessed under paragraph (a) of subsection (1) of [section 31](#), is the harm likely to result from the order being granted or not.

34. Specific regime for preliminary orders

- (1) Immediately after an 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 and all other communications, including by indicating the content of oral communication, between a party and the arbitral tribunal in relation thereto.
- (2) At the same time, an arbitral tribunal shall give an opportunity to a party against whom a preliminary order is directed, to present its case at the earliest practicable time.
- (3) An arbitral tribunal shall decide promptly on an objection to a preliminary order.
- (4) A preliminary order shall expire after 20 days from the date on which it was issued by the arbitral tribunal and the arbitral tribunal may however issue an interim measure adopting or modifying a 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 shall be binding on the parties but shall not be subject to enforcement by a Court.

35. Modification, suspension, termination

An arbitral tribunal may modify, suspend or terminate an interim measure or a preliminary order it has granted, upon application of a party or, in exceptional circumstances, upon prior notice to the parties on the arbitral tribunal's initiative.

36. Provision of security

An arbitral tribunal may require a party—

- (a) requesting an interim measure to provide appropriate security in connection with the measure;
- (b) 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.

37. Disclosure

- (1) An arbitral tribunal may require a party to promptly disclose any material change in the circumstances on the basis of which the interim measure was requested or granted.
- (2) A party applying for a preliminary order shall disclose to the arbitral tribunal all circumstances that are likely to be relevant to the arbitral tribunal's determination whether to grant or maintain the order and such obligation shall continue until the party against whom the order has been requested has had an opportunity to present its case.

38. Costs and damages

A party requesting an interim measure or applying for a preliminary order shall be liable for costs and damages caused by the measure or the order to a party if the arbitral tribunal later determines that, in the circumstances, the measure or the order should not have been granted and the arbitral tribunal may award such costs and damages at any point during the arbitral proceedings.

39. Recognition and enforcement of interim measure

- (1) Subject to [section 41](#), an interim measure issued by an arbitral tribunal shall be recognised as binding and unless otherwise provided by the arbitral tribunal, enforced upon application to the Court, irrespective of the country in which it was issued.
- (2) A party who is seeking or has obtained recognition or enforcement of an interim measure shall promptly inform the Court of a termination, suspension or modification of that interim measure.
- (3) The Court of the State where recognition or enforcement is sought may, if it considers 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.

40. Grounds for refusing recognition and enforcement of interim measure

- (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 set out in subparagraphs (i), (ii) (iii) and (iv) of paragraph (a) of subsection (2) of [section 63](#);
 - (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 State 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 out in subparagraph (i) or (ii) of paragraph (b) of subsection (2) of [section 63](#) apply to the recognition and enforcement of the interim measure.
- (2) A determination made by the Court on any ground in subsection (1) shall be effective only for the purposes of the application to recognise and enforce the interim measure and the Court where recognition or enforcement is sought shall not, in making that determination, undertake a review of the substance of the interim measure.

41. Court interim measure

- (1) The Court shall—
 - (a) have the same power of issuing an interim measure in relation to arbitration proceedings, as it has in relation to proceedings in Court; and

- (b) exercise such power in accordance with its own procedures taking into account the specific features of international arbitration.
- (2) Where a party applies to the Court for an interim measure and an arbitral tribunal has already ruled on a matter which is relevant to the application, the Court shall treat any findings of fact made in the course of such ruling by the arbitral tribunal as conclusive for the purposes of the application.
- (3) The Court shall issue an interim measure only where an application to the Court is upon notice to the other party and to the arbitrator and is made with the permission of the arbitrator or is supported by an agreement in writing of the other party and in any case, the Court shall act if the arbitrator or other institution or person vested by the parties with power to issue interim measures is unable for the time being to act effectively.

Part VIII – Conduct of arbitral proceedings

42. General duty of arbitral tribunal

- (1) An arbitral tribunal shall—
 - (a) act fairly and impartially as between the parties, giving each party a reasonable opportunity of putting his case and dealing with that of his opponent; and
 - (b) adopt procedures suitable to the circumstances of a particular case, avoiding unnecessary delay or expense, so as to provide a fair means for the resolution of the matters.
- (2) An arbitral tribunal shall comply with the general duty in subsection (1) in conducting the arbitral proceedings, in its decisions on matters of procedure and evidence and in the exercise of all other powers conferred on it.

43. Procedural and evidential matter

- (1) An arbitral tribunal shall decide all procedural and matters, subject to the right of the parties to agree any evidential matters.
- (2) Matters of procedure and evidence to be decided by an arbitral tribunal under subsection (1), include—
 - (a) the time and place for holding any part of an arbitral proceeding;
 - (b) the form of written statements of claim or defence are to be used, when these should be supplied and the extent to which such statements can be amended;
 - (c) which documents or classes of documents should be disclosed and produced by the parties and at what stage of the arbitral proceedings;
 - (d) what questions should be put to or answered by the respective parties and when and in what form this should be done;
 - (e) whether to apply strict rules of evidence or any other rules as to admissibility, relevance or weight of material, oral, written or other, sought to be tendered on matters of fact or opinion and the time, manner and form in which such material should be exchanged and presented;
 - (f) whether and to what extent the arbitral tribunal should itself take the initiative in ascertaining the facts and the law; and
 - (g) whether and to what extent there should be written evidence or submissions.
- (3) An arbitral tribunal may—
 - (a) direct that a party or witness shall be examined on oath or affirmation and may, for that purpose, administer the relevant oath or take the necessary affirmation; and

- (b) fix the time within which a direction given by it is to be complied with and may, if it thinks fit, extend the time so fixed, whether or not it has expired.

44. Consolidation of proceedings and concurrent hearings

- (1) The parties to an arbitral proceeding may agree that—
 - (a) the arbitral proceeding shall be consolidated with other arbitral proceedings; and
 - (b) concurrent hearings shall be held, on such terms as may be agreed.
- (2) Unless the parties agree to confer the power under subsection (1) on an arbitral tribunal, an arbitral tribunal has no power to order consolidation of arbitral proceedings or concurrent hearings.

45. Legal or other representation

Unless otherwise agreed by the parties, a party to arbitral proceedings may be represented in the proceedings by a lawyer or other person chosen by that party.

46. General duties of parties

- (1) The parties to an arbitral proceeding shall do all things necessary for the proper and expeditious conduct of the arbitral proceeding.
- (2) Notwithstanding the generality of subsection (1), the parties to an arbitral proceeding shall—
 - (a) comply, without delay, with a determination of the arbitral tribunal on procedural or evidential matters or with an order or direction of the arbitral tribunal;
 - (b) where appropriate, take without delay, necessary steps to obtain a decision of the Court on a preliminary question of jurisdiction or law as provided in this Act; or
 - (c) ensure that the arbitral proceedings are conducted without incurring unnecessary expense.

47. Arbitration management conference

- (1) Unless otherwise agreed by the parties, an arbitral tribunal management shall, within 21 days of being appointed, schedule an arbitration conference, upon giving not less than 7 days' written notice to the parties and the arbitration management conference shall be held with the parties or their representatives in person or through electronic or telecommunication media.
- (2) The decisions of the arbitral tribunal at an arbitration management conference shall be in writing.
- (3) The arbitral tribunal may hold further arbitration management conferences as is considered necessary upon written notice to the parties.

48. Language of arbitral proceedings

- (1) The parties to an arbitral proceeding may agree on the language or languages to be used in the arbitral proceedings and arbitral failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the arbitral proceedings.
- (2) An agreement or determination on the language or languages to be used in an arbitral proceeding, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any arbitral award, decision or other communication by the arbitral tribunal.
- (3) An 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.

49. Hearings and written proceedings

- (1) Unless otherwise agreed by the parties, an arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the arbitral proceedings shall be conducted on the basis of documents and other materials and save where the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the arbitral proceedings, if so requested by a party.
- (2) The parties to an arbitral proceeding shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents.
- (3) All statements, documents or other information supplied to an arbitral tribunal by one party shall be communicated to the other party and any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall also be communicated to the parties.

50. Confidentiality

- (1) Unless otherwise agreed by the parties, all information relating to arbitration proceedings shall be kept confidential, except where disclosure is—
 - (a) required under the law; or
 - (b) necessary in the interests of preventing or revealing—
 - (i) the commission of a crime, including an attempt or conspiracy to commit a crime;
 - (ii) the concealment of a crime; or
 - (iii) a threat to a party; or
 - (c) necessary for the protection of public order.
- (2) A party seeking third-party funding shall ensure the confidentiality of all information relating to the dispute to the extent permitted by the law and to this end, the funded party may enter into a Confidentiality or Non-Disclosure Agreement with the funder.
- (3) The specific provisions of a funding agreement may be subject to confidentiality obligations as between the parties and may include information that is subject to a legal privilege and consequently, the tribunal should permit appropriate redaction or and limit the purposes for which such information may be used.

51. Default of a party

- (1) The parties to an arbitration proceeding may agree on the powers of the arbitral tribunal in case of a party's failure to do something necessary for the proper and expeditious conduct of the arbitration.
- (2) Where an arbitral tribunal is satisfied that there has been delay on the part of a claimant in pursuing its claim and that the delay—
 - (a) gives rise, or is likely to give rise, to a substantial risk that it is not possible to have a fair resolution of the issues in that claim; or
 - (b) has caused, or is likely to cause, serious prejudice to the respondent,the arbitral tribunal may make an arbitral award dismissing the claim.
- (3) Where, without showing sufficient cause, a party fails to—
 - (a) attend or be represented at an oral hearing of which due notice was given;

- (b) submit written evidence or make written submissions, on matters that are to be dealt with in writing, of which due notice was given;
 - (c) comply with an order or directions of an arbitral tribunal, the arbitral tribunal may make a peremptory order to the same effect, prescribing such time for compliance with it as the arbitral tribunal considers appropriate;
 - (d) comply with a peremptory order of the arbitral tribunal to provide security for costs, the arbitral tribunal may make an arbitral award dismissing its claim;
 - (e) comply with any other kind of peremptory order,
- the arbitral tribunal may make such order, as specified in subsection (4), including the payment of costs of the arbitration incurred in consequence of the non-compliance.
- (4) In consequence of the non-compliance of a party to an arbitration proceeding under subsection (3), an arbitral tribunal may—
- (a) direct that the party in default shall not be entitled to rely upon an 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 arbitral award on the basis of such materials as have been properly provided to it;
 - (d) continue the arbitral proceedings in the absence of that party or, as the case may be, without written evidence or submissions on its behalf and make an arbitral award on the basis of the evidence before it.

52. Expert appointed by arbitral tribunal

- (1) Unless otherwise agreed by the parties, the arbitral tribunal may—
 - (a) appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal; and
 - (b) require a party to give the expert any relevant information, to produce or to provide access to relevant documents, goods or other property for its inspection.
- (2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, an expert appointed by the arbitral tribunal under subsection (1) shall, after delivery of its written or oral report, participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.
- (3) The fees and expenses of an expert appointed by the arbitral tribunal for which the arbitrators are liable are expenses of the arbitrators for the purposes of this Act.

Part IX – Powers of Court in relation to arbitration proceedings

53. Enforcement or peremptory orders of arbitral tribunal

- (1) Unless otherwise agreed by the parties, the Court may peremptory make an order requiring a party to comply with a peremptory order made by the arbitral tribunal.
- (2) An application for an order under subsection (1) may be made—
 - (a) by the arbitral tribunal upon notice to the parties;
 - (b) by a party to the arbitral proceedings with the permission of the arbitral tribunal and upon notice to the other parties; or

- (c) where the parties have agreed that the powers of the Court under this section shall be available.
- (3) The Court shall not act on an application made under subsection (2) unless it is satisfied that the applicant has exhausted all available arbitral process in respect of failure to comply with the arbitral tribunal's peremptory order.
- (4) An order shall not be made under this section unless the Court is satisfied that the person to whom the arbitral tribunal's peremptory order was directed has failed to comply with it within the time prescribed in the peremptory order or, if no time was prescribed, within a reasonable time.
- (5) The leave of the Court is required for an appeal from a decision of the Court under this section.

54. Securing attendance of witnesses

- (1) A party to arbitral proceedings may use the same Court procedures as are available in relation to legal proceedings to secure the attendance before the arbitral tribunal of a witness in order to give oral testimony or to produce documents or other material evidence.
- (2) Securing the attendance before the arbitral tribunal of a witness under subsection (1), may only be done with the permission of the arbitral tribunal or with the agreement of the other parties.
- (3) Court procedures under subsection (1), may be used if—
 - (a) the witness is in Sierra Leone; and
 - (b) the arbitral proceedings are being conducted in Sierra Leone.
- (4) A person shall not be compelled by virtue of this section to produce a document or other material evidence which he could not be compelled to produce in legal proceedings.

55. Court powers exercisable in support of arbitral proceedings

- (1) Unless otherwise agreed by the parties, the Court has, for the purposes of and in relation to arbitral proceedings, the same power of making orders about the following matters as it has for the purposes of and in relation to legal proceedings—
 - (a) the taking of the evidence of witnesses;
 - (b) the preservation of evidence;
 - (c) making orders relating to property which is the subject of the arbitral proceeding or as to which a question arises in the arbitral proceedings—
 - (i) for the inspection, photographing, preservation, custody or detention of the property, or
 - (ii) ordering that samples be taken from, or an observation be made of or experiment conducted upon, the property, and for that purpose authorising a person to enter a premises in the possession or control of a party to an arbitration;
 - (d) the sale of any goods the subject of the arbitral proceedings;
 - (e) the granting of an interim injunction or the appointment of a receiver.
- (2) Where the case is one of urgency, the Court—
 - (a) may, on the application of a party or proposed party to the arbitral proceedings, make such orders as it thinks necessary for the purpose of preserving evidence or assets;
 - (b) shall act only on the application of a party to the arbitral proceedings, upon notice to the other parties and to the arbitral tribunal, made with the permission of the arbitral tribunal or the agreement in writing of the other parties.

- (3) The Court shall act only if or to the extent that the arbitral tribunal and any arbitral or other institution or person vested by the parties with power make such order, has no power or is unable for the time being to act effectively.
- (4) Where the Court so orders, an order made by it under this section shall cease to have effect in whole or in part on the order of an arbitral tribunal or of any such arbitral or other institution or person having power to act in relation to the subject-matter of the order.

Part X – Making of award and termination of proceedings

56. Rules applicable to substance of dispute

- (1) An arbitral tribunal shall decide a dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute and any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of law rules.
- (2) Failing a designation by the parties, an arbitral tribunal shall apply the law determined by the conflict of law rules which it considers applicable.
- (3) An arbitral tribunal shall decide *ex aequo et bono* or as amiable compositeur only if the parties have expressly authorised it to do so.
- (4) In all cases, an arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

57. Decision-making by panel of arbitrators

In an arbitral proceeding with more than one arbitrator, a decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members and questions procedure may be decided by a presiding arbitrator; if so authorised by the parties or all members of the arbitral tribunal.

58. Settlement

- (1) Where during an arbitral proceeding the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.
- (2) An award on agreed terms under subsection (1), shall be made in accordance with [section 60](#), shall state that it is an award and that the award has the same status and effect as any other award on the merits of the case.
- (3) Unless the parties have also settled the matter of the payment of the costs of an arbitration, the provisions of this Act in relation to costs shall apply.

59. Form and contents of award

- (1) An award shall be made in writing and shall be signed by the arbitrator or arbitrators and in an arbitral proceeding with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.
- (2) An award under subsection (1), shall state—
 - (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; and
 - (b) the date of the award and the place of arbitration as determined by the parties or the arbitral tribunal and the award shall be deemed to have been made at that place.

- (3) After an award is made, a copy signed by the arbitrators in accordance with subsection (1) shall be delivered to each party.

60. Termination of proceedings

- (1) An arbitral proceeding is terminated by the final award or by an order of the arbitral tribunal in accordance with subsection (2).
- (2) An arbitral tribunal shall issue an order for the termination of an arbitral proceedings where—
 - (a) a claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute;
 - (b) the parties agree on the termination of the proceedings;
 - (c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.
- (3) The mandate of an arbitral tribunal terminates with the termination of the arbitral proceedings, subject to [section 61](#) or subsection (5) of [section 63](#).

61. Correction and interpretation of award and additional award

- (1) Within 30 days of receipt of an award, unless another period of time has been agreed upon by the parties, a party, with notice to the other party, may request the arbitral tribunal to—
 - (a) correct in the award, an error in computation, clerical or typographical error or any error of similar nature;
 - (b) give an interpretation of a specific point or part of the award, and the arbitral tribunal shall, where it considers the request to be justified, make the correction or give the interpretation, which shall form part of the award, within 30 days of receipt of the request.
- (2) An arbitral tribunal may correct an error of the type referred to in paragraph (a) of subsection (1) on its own initiative within 30 days of the date of the award.
- (3) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within 30 days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award and if the arbitral tribunal considers the request to be justified, it shall make the additional award within 60 days.
- (4) An arbitral tribunal may extend the period of time within which it shall make a correction, interpretation or an additional award under this section.
- (5) This section shall apply to a correction or interpretation of an award or to an additional award.

62. Fees and expenses of arbitrators

- (1) An arbitral tribunal may refuse to deliver an award to the parties except upon full payment of the fees and expenses of the arbitrators.
- (2) In the event that the fees and expenses of the arbitrators have not been agreed and the arbitral tribunal refuses on that ground to deliver an award, a party to the arbitral proceedings may, upon notice to the other parties and the tribunal, apply to the Court, which may—
 - (a) order the arbitral tribunal to deliver the award on the payment into Court by the applicant of the fees and expenses demanded, or such lesser amount as the Court may specify;
 - (b) by such means and upon such terms as the Court may direct, determine the amount of the fees and expenses properly payable by the parties to the arbitrators; and

- (c) out of the money paid into Court, order payment to the arbitrators of such fees and expenses as the Court may find to be properly payable and the balance of the money, if any, shall be paid out to the applicant.
- (3) An application to the Court under subsection (2) shall not be made unless all available arbitral process for review of the amount of the fees or expenses demanded has been exhausted.
- (4) Reference in this section to arbitrator include an arbitrator who has ceased to hold office.
- (5) The leave of the Court is required for an appeal from a decision of the Court under this section.
- (6) Nothing in this section shall be construed as excluding an application under [section 63](#), where payment has been made to the arbitrators in order to obtain the award.

Part XI – Challenging the award

63. Application for setting aside arbitral award

- (1) Challenging an arbitral award may be made only by an application for setting aside, upon notice to the other parties, in accordance with subsections (2) and (3).
- (2) An arbitral award may be set aside by the Court only if—
 - (a) the party making the application furnishes proof that—
 - (i) the party to the arbitration agreement was under some incapacity;
 - (ii) the arbitration agreement is not valid under the law to which the parties have subjected it or under the laws of Sierra Leone;
 - (iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present its case;
 - (iv) the arbitral award deals with a dispute not contemplated by, or not falling within the terms of the submission to arbitration, or 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, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or
 - (v) the composition of the arbitral tribunal or the arbitral proceedings was not in accordance with the agreement of the parties, unless such agreement was in conflict with this Act from which the parties cannot derogate or, failing such agreement, was not in accordance with this Act; or
 - (b) the Court finds that—
 - (i) the subject matter of the dispute is not capable of settlement by arbitration under the laws of Sierra Leone; or
 - (ii) the arbitral award is in conflict with the public policy of Sierra Leone.
- (3) An application for setting aside an arbitral award may not be made after 90 days have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under [section 61](#), from the date on which that request had been disposed of by the arbitral tribunal.
- (4) Where the Court is satisfied that one or more of the grounds set out in subsection (2) 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.
- (5) The Court, when asked to set aside an arbitral 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 such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.
- (6) Where an application is made to set aside an arbitral award, the Court may order the party making the application to provide appropriate security for the award pending the determination of the application.

64. Directions relating to setting aside award

The Court may, where it makes an order setting aside an arbitral award or a part thereof under [section 63](#), taking into account the grounds on which the award or the relevant part thereof has been set aside, give such other directions as it considers appropriate, including directions relating to—

- (a) the remittance of the matter to the arbitral tribunal;
- (b) the commencement of a new arbitration, including the time within which such arbitration shall be commenced; or
- (c) the bringing of any action, including the time within which such action shall be brought, by any party to the arbitral award concerning any matter which was the subject of the arbitral award which was set aside by the Court.

Part XII – Recognition and enforcement of awards

65. Recognition and enforcement of awards

- (1) An arbitral award shall, irrespective of the country State in which it is made, be recognised as binding and upon application in writing to the Court, be enforced by the Court subject to this section and [section 66](#).
- (2) The party relying on an award or applying for its enforcement shall supply—
 - (a) the original award or a certified copy thereof;
 - (b) the original arbitration agreement or a certified copy thereof; and
 - (c) a certified translation thereof into the English language, where the award or arbitration agreement is not made in the English.
- (3) An award may, by leave of the Court, be enforced in the same manner as a judgment or order to the same effect.

66. Refusal of recognition or enforcement of awards

- (1) a party to an arbitration agreement may request Court to refuse recognition or enforcement of an award.
- (2) Irrespective of the country in which the award was made, the Court may only refuse recognition or enforcement of an award at the request of the party against whom it is invoked, if that party furnishes the Court with proof that—
 - (a) a party to the arbitration agreement was under some incapacity;
 - (b) the arbitration agreement is not valid under the law to which the parties have indicated should be applied, or, failing such indication, that the arbitration agreement is not valid under the law of the country where the award was made;

- (c) 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;
 - (d) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration;
 - (e) 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;
 - (f) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties;
 - (g) 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 that there is no agreement between the parties;
 - (h) 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;
 - (i) the subject matter of the dispute is otherwise not capable of settlement by arbitration under the laws of Sierra Leone; or
 - (j) that the award is against public policy of Sierra Leone.
- (3) Where an application to set aside or suspend an award has been made under [section 63\(1\)](#), the Court before which recognition or enforcement is sought may, if it considers it proper,—
- (a) adjourn its decision; and
 - (b) on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.

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

- (1) The New York Convention shall, subject to this Act, have the force of law in Sierra Leone.
- (2) Without prejudice to [sections 65](#) and [68](#), where the recognition and enforcement of an award made in an arbitration in a country other than Sierra Leone is sought, the New York Convention on the Recognition and Enforcement of Foreign Awards set out in the Second Schedule shall apply:
- Provided that—
- (a) the country is a party to the New York Convention;
 - (b) the differences arise out of a legal relationship, whether contractual or not, considered commercial under the laws of Sierra Leone; and
 - (c) the differences arise out of arbitration agreements concluded and arbitral awards rendered after the date of Sierra Leone's accession to the New York Convention.
- (3) The Rules of Court Committee may make rules necessary to give effect to the section and in the absence of such rules, the rules in Schedule 3 shall apply.

Part XIII – Enforcement of ICSID Convention awards

68. Enforcement of ICSID Convention awards

- (1) Where, for any reason, it is necessary or expedient to enforce an award made by the International Centre for Settlement of Investment Disputes in Sierra Leone, a copy of the award duly certified by the Secretary-General of the Centre, if filed in the Supreme Court by the party seeking its recognition for enforcement in Sierra Leone, shall for all purposes have effect as if it were an award contained in a final judgment of the Supreme Court, and the award shall be enforceable accordingly.
- (2) The Rules of Court Committee may make rules necessary to give effect to this section.

69. Non-application of this Act to ICSID Convention awards

The ICSID Convention shall not apply to Parts I-XIII and XV-XVII of this Act.

70. Status, immunities and privileges conferred by ICSID Convention

- (1) Articles 18 to 24 of the ICSID Convention, which governs the immunities status, of the International Centre for Settlements and privileges of Investment Disputes, of members of Council and Secretariat and of persons concerned with conciliation or arbitration under the ICSID Convention, shall have the force of law.
- (2) Nothing in Article 24 (1) of the ICSID Convention shall be construed as—
 - (a) entitling the Centre to import goods free of customs duty without restriction on their subsequent sale in the country to which they were imported;
 - (b) conferring on the Centre an exemption from duties or taxes which form part of the price of goods sold; or
 - (c) conferring on the Centre an exemption from duties or taxes which are no more than charges for services rendered.
- (3) For the purposes of Article 20 and Article 21(a) of the ICSID Convention, a statement to the effect that the Centre has waived an immunity in the circumstances specified in the statement, being a statement certified by the Secretary-General of the Centre or by the person acting as Secretary-General, shall be conclusive evidence of such waiver.

71. Government contribution to expenses under Convention

The Ministry of Finance may discharge out of money provided by Parliament, obligations of the Government arising under Article 17 of the ICSID Convention, which obliges the Contracting States to meet any deficit of the International Centre for Settlement of Investment Disputes and any sums required for that purpose.

Part XIV – Costs of arbitration

72. Costs of arbitration

- (1) An arbitral tribunal shall fix costs of arbitration in its award and the term "costs" include—
 - (a) the fees of the arbitrators;
 - (b) the travel and other expenses incurred by the arbitrators;
 - (c) the cost of expert advice and of other assistance required by the arbitral tribunal;

- (d) the travel and other expenses of parties, witnesses and other experts consulted by the parties to the extent that such expenses are approved by the arbitral tribunal having regard to what is reasonable in the circumstances;
 - (e) the costs for legal representation and assistance of the successful party if such costs were claimed during the arbitral proceedings, and only to the extent that the arbitral tribunal determines that the amount of such costs is reasonable;
 - (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.

73. Deposit of costs

- (1) An arbitral tribunal may,—
- (a) on its establishment, request each party to deposit an equal amount as an advance for the costs referred to in paragraphs (a), (b) and (c) of subsection (1) of [section 72](#); or
 - (b) in the course of its proceedings, request supplementary deposits from the parties.
- (2) Where a required deposit, under subsection (1) is not paid in full within 30 days after the receipt of the request, the arbitral tribunal shall so inform the party in order that he may make the required payment and if such payment is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.

74. Security for costs

- (1) An arbitral tribunal shall have the power, upon the application of a party, to order a 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 such terms as the arbitral tribunal considers appropriate.
- (2) Terms which the arbitral tribunal may consider appropriate under subsection (1), include the provision by that other party of a cross-indemnity for costs and losses incurred by a claimant or counterclaimant in providing security.
- (3) The amount of costs and losses payable in 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 an order to provide security under this section, the arbitral tribunal may stay that party's claims or counterclaims or dismiss them in an award.
- (5) Where a Respondent has brought an application for security for cost based on the disclosure of third-party funding, the tribunal may allow the funded party or its counsel to provide the tribunal with an affidavit stating that under the funding arrangement, the funder has irrevocably agreed to cover adverse costs order and the funder is adequately capitalised.
- (6) Tribunals may order the funded party to disclose provisions of the funding agreement in determination of security for costs application provided that the tribunal shall limit disclosure orders to the provisions that are strictly necessary to assess the extent to which the funder may cover (or not) an adverse costs order.

- (7) Where there is proof of impecuniosity of the funded party, any funding agreement in which a funder is not obligated to irrevocably pay an adverse costs award may justify the order of security for costs.

75. Joint and several liabilities for arbitrator's fees and expenses

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

76. Lien on award

- (1) An arbitral tribunal or arbitration institution may refuse to deliver an award to the parties except upon full payment of the fees and expenses of the arbitrators or the arbitral institution.
- (2) In the event that 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 or the arbitral institution, apply to the Court, which may order that—
 - (a) the arbitral tribunal or arbitral institution shall deliver the award on the payment into 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 properly payable shall be determined by such means and upon such terms as the Court may direct; and
 - (c) out of the money paid into Court there shall be paid out such fees and expenses as may be found to be properly payable and the balance of the money shall be paid out to the applicant.
- (3) The amount of fees and expenses properly payable is the amount the applicant is liable to pay or an agreement relating to the payment of the arbitrators.
- (4) An application to the Court may not be made unless an 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.

77. Recoverable fees and expenses of arbitrators

- (1) The recoverable costs of the arbitration shall, unless otherwise agreed by the parties, include, in respect of the arbitrators only, such reasonable fees and expenses as are appropriate in the circumstances.
- (2) Each party shall be responsible for its own legal and other expenses and for an equal share of the fees and expenses of the arbitral tribunal and any other expenses relating to the arbitration in the absence of an arbitral award or additional arbitral award fixing and allocating the costs and expenses of the arbitration.
- (3) Nothing in this section shall affect a right of the arbitrator to payment of its fees and expenses.
- (4) The fees and expenses of an expert, legal adviser or assessor appointed by the arbitral tribunal for which the arbitrators are liable are expenses of the arbitrators for the purposes of this Act.

78. Power to limit recoverable costs

- (1) Unless otherwise agreed by the parties, an arbitral tribunal may direct that the recoverable costs of the arbitration or of a part of the arbitral proceedings shall be limited to a specified amount.
- (2) A direction under subsection (1) may be made or varied at any stage, but shall be done sufficiently in advance of the incurring of costs to which it relates or the taking of steps in the arbitral proceedings which may be affected by it, for the limit to be taken into account.

Part XV – Third party funding**79. Abolition of maintenance and champerty**

- (1) Third-party funding of arbitration shall not apply to torts of maintenance and champerty, including being a common barrator.
- (2) Subsection (1) applies to arbitrations seated in Sierra Leone and to arbitration related proceedings in a Court within Sierra Leone.

80. Disclosure of third-party funding agreement

- (1) Where a third-party funding agreement is made, the party benefiting from it shall give written notice to the other party or parties, the arbitral tribunal or the arbitral institution, of the name and address of the third-party funder.
- (2) A written notice to the other party or parties under subsection (1), shall be made, for a funding agreement—
 - (a) before the commencement of an arbitration;
 - (b) at the commencement of an arbitration; or
 - (c) after the commencement of an arbitration, without delay as soon as the funding agreement is made.
- (3) Where a notice is received under subsection (2), the arbitrators shall conduct a conflict check, to ascertain any information that may raise justifiable doubt as to their independence and impartiality.
- (4) Arbitrators have the authority to issue orders, directing parties and their representatives to disclose whether they are receiving support from a third-party funder and, if so, the identity of the funder.
- (5) Arbitrators' authority to issue disclosure orders under this provision is limited to information that are strictly necessary for assessing potential conflicts of interest or determining extent to which the funder may cover (or not) an adverse costs order.
- (6) Where a notice is received under subsection (2), the arbitrators shall conduct a conflict check, to ascertain any information that may raise justifiable doubt as to their independence and impartiality.

Part XVI – Additional provisions relating to International Commercial Arbitration**81. Recognition and enforcement of foreign awards, etc.**

The Foreign Judgments (Reciprocal Enforcement) Act, Chapter 21 of the Laws of Sierra Leone 1960, shall continue to apply in relation to foreign awards which are not enforceable under the New York Convention.

Part XVII – Sierra Leone International Arbitration Centre

82. Sierra Leone International Arbitration Centre

- (1) There is established the Sierra Leone International Arbitration Centre, a body corporate, responsible to—
 - (a) promote, facilitate and encourage the conduct of international commercial arbitration in accordance with this Act;
 - (b) provide procedural and technical advice for the administration of domestic and international arbitrations as well as alternative dispute resolution techniques;
 - (c) ensure that arbitration is reserved as the dispute resolution process of choice;
 - (d) develop rules encompassing conciliation and mediation processes;
 - (e) organise international conferences, seminars and training programs for arbitrators and scholars;
 - (f) coordinate and facilitate, in collaboration with other lead agencies and non-state actors, the formulation of national policies, laws and plans of action on alternative dispute resolution and facilitate their implementation, enforcement, continuous review, monitoring and evaluation;
 - (g) maintain proactive co-operation with other regional and international institutions in areas relevant to achieving the Centre's objectives;
 - (h) in collaboration with other public and private agencies, facilitate, conduct, promote and coordinate research and dissemination of findings on data on arbitration and serve as repository of such data;
 - (i) establish a comprehensive library specialising in arbitration and alternative dispute resolution;
 - (j) provide *ad hoc* arbitration by facilitating the parties with necessary technical and administrative assistance at the behest of the parties;
 - (k) provide advice and assistance for the enforcement and translation of arbitral awards;
 - (l) provide training and accreditation for mediators and arbitrators;
 - (m) educate the public on arbitration as well as other alternative dispute resolution mechanisms;
 - (n) enter into strategic agreements with other regional and international bodies for purposes of securing technical assistance to enable the Centre achieve its objectives;
 - (o) provide facilities for hearing, transcription and other technological services;
 - (p) hold, manage and apply the General Fund in accordance with this Act; and
 - (q) perform such other functions as may be conferred on it by this Act or any other law.
- (2) The Centre shall be a commercial and for profit entity.

83. Administration of Centre

- (1) The Centre shall be administered by a Board of Directors which shall consist of a Chairman, who shall be a legal practitioner of not less than 12 years appointed by the President on the recommendation of the Chief Justice, and the following other members—
 - (a) the Attorney-General or his representative;

- (b) 5 persons, not being public officers, Two of which shall be women, appointed by the Chief Justice from among persons with proven knowledge and experience in international arbitration;
- (c) one person each, with not less than 10 years' experience, nominated by of the following bodies—
 - (i) Sierra Leone Chamber of Commerce and Industry;
 - (ii) Sierra Leone Bar Association;
 - (iii) Sierra Leone Institute of Chartered Engineers;
 - (iv) Sierra Leone Institute of Chartered Accountants;
 - (v) Sierra Leone private sector investors;
 - (vi) Chartered Institute of Arbitrators; and
 - (vii) the Secretary.
- (2) Board members shall serve for 4 years and may be appointed for another term of 4 years only.
- (3) There shall be a Secretary of the Board, appointed by the Board, who shall be responsible for the day to day management of the affairs and staff of the Centre.

84. Funds of Centre

- (1) There is established a Fund of the Centre to be known as the General Fund and shall consist of—
 - (a) monies received as contributions or donations to the Centre;
 - (b) all other monies which may, in any manner become lawfully payable to, received by or vested in the Centre relating to any matter incidental to its duties and functions under this Act.
- (2) The General Fund shall be administered by the Board and shall be used for meeting the capital and current expenditure relating to—
 - (a) educating the public on arbitration as well as on other alternative dispute resolution mechanisms;
 - (b) provision of procedural and technical advice to disputants;
 - (c) training for mediators and arbitrators;
 - (d) research, documentation and dissemination of data on arbitration; and
 - (e) any other matter incidental to the functions of the Centre.
- (3) The General Fund shall not be liable to taxes, fees, penalties, charges, levies or other like imposts payable to any government or authority and contributions to the Fund shall be recognised for tax purposes as expenditure towards the sustenance of the donor's business.

85. Register of Arbitrators

- (1) The Centre shall establish and maintain a Register of Arbitrators, in both physical and electronic form, which shall contain the name and other particulars of registered professional in law, medicine, engineering, commerce and other fields of practice that may be the subject of an arbitration.
- (2) The Register of Arbitrators established and maintained under subsection (1), shall contain not less than 15 registered arbitrators.

- (3) The Secretary shall remove from the Register the name and other particulars of a person who has died, is of unsound mind, is otherwise incapable of discharging his duties or whose name has been struck off the register of his profession.

86. Independence of Centre

The Centre shall act with complete independence in carrying out its functions, powers, duties, and responsibilities under this Act and shall not be subject to the direction or control of Government or any other person or authority.

Part XVIII – Miscellaneous

87. Rights of person who takes no part in proceedings

- (1) A person alleged to be a party to arbitral proceedings but who takes no part in the proceedings may question—
 - (a) whether there is a valid arbitration agreement;
 - (b) whether the tribunal is properly constituted; or
 - (c) what matters have been submitted to arbitration in accordance with the arbitration agreement, by proceedings in the Arbitral Court for a declaration or injunction or other appropriate relief.
- (2) A person alleged to be a party to arbitral proceedings but who takes no part in the proceedings also has the same right as a party to the arbitral proceedings to challenge an award by an application under [section 63](#).

88. Loss of right to object

- (1) Where a party to an arbitral proceeding takes part or continues to take part, in the arbitral proceedings without making, either forthwith or within such time as is allowed by the arbitration agreement, the arbitral tribunal or by this Act, an objection that—
 - (a) the arbitral tribunal lacks substantive jurisdiction;
 - (b) the arbitral proceedings have been improperly conducted;
 - (c) there has been a failure to comply with the arbitration agreement or with any provision of this Act; or
 - (d) there has been any other irregularity affecting the arbitral tribunal or the arbitral proceedings, that party shall not raise that objection later, before the arbitral tribunal or the Arbitral tribunal, unless he shows that, at the time he took to take part in the arbitral proceedings, he did not know and could not with reasonable diligence have discovered the grounds for the objection.
- (2) Where an arbitral tribunal rules that it has substantive jurisdiction and a party to arbitral proceedings who could have questioned that ruling by—
 - (a) an available arbitral process of appeal or review, or
 - (b) challenging the arbitral award,does not do so or does not do so within the time allowed by the arbitration agreement or this Act, he shall not object later to the arbitral tribunal's substantive jurisdiction on any ground which was the subject of that ruling.

89. Immunity of arbitral institutions, etc.

- (1) An arbitral tribunal or other institution or person designated by the parties to appoint or nominate an arbitrator shall not be liable for anything done or omitted in the discharge or purported discharge of that function unless the act or omission is shown to have been in bad faith.
- (2) An arbitral tribunal or other institution or person by whom an arbitrator is appointed or nominated shall not be liable, by reason of having appointed or nominated him, for anything done or omitted by the arbitrator, or its employees or agents, in the discharge or purported discharge of its functions as arbitrator.
- (3) Subsections (1) and (2) shall apply to an employee or agent of an arbitral or other institution or person as they apply to the institution or person himself.

90. Service of notices and other documents

- (1) The parties to an arbitral proceeding may agree on the manner of service of a notice or other document required or authorised to be given or served in pursuance of the arbitration, agreement or for the purposes of the arbitral proceedings.
- (2) Where or to the extent that there is no agreement between the parties to an arbitral proceeding on the manner of service or the service of a notice or a document in the manner agreed by the parties is not reasonably practicable, a notice or other document shall be treated as effectively served if delivered—
 - (a) by post to the addressee or last known principal residence;
 - (b) to his last known principal business address, if he is or has been carrying on a trade, profession or business; or
 - (c) to his registered or principal office, where the addressee is a body corporate.
- (3) Unless otherwise agreed by the parties, on application by a party or on its own initiative, an arbitral tribunal may make such order as it thinks fit for service in such manner as it may direct.
- (4) This section shall not apply to communications in legal proceedings.
- (5) Reference in this Act to a notice or other document include any form of communication in writing and a reference to giving or serving a notice or other document shall be construed accordingly.

91. Reckoning periods of time

- (1) The parties may agree on the method of reckoning periods of time for the purposes of any provision agreed by them or any provision of this Act having effect in default of such agreement.
- (2) Where or to the extent there is no such agreement, periods of time shall be reckoned as follows—
 - (a) where the act is required to be done within a specified period after or from a specified date, the period shall begin immediately after that date;
 - (b) where the act is required to be done within a specified number of clear days after a specified date, at least that number of days must intervene between the day on which the act is done and that date;
 - (c) Where the period is a period of 7 days or less which would include a Sunday or a public holiday in the place where anything which has to be done within the period fails to be done, that day shall be excluded.

92. Extension of time limits relating to arbitral proceedings

- (1) The Court shall not exercise its power to extend a time limit unless it is satisfied that—
 - (a) any available recourse to an arbitral tribunal, or to an arbitral or other institution or person vested by the parties with power in that regard, has first been exhausted; and
 - (b) a substantial injustice would otherwise be done.
- (2) The Court's power under this section may be exercised whether or not the time has already expired.
- (3) An order under this section may be made on such terms as the Court thinks fit.
- (4) The decision of the Court shall be final and not subject to appeal.

93. Matters governed by common law

Nothing in this Act shall be construed as excluding the operation of any rule of law consistent with this Act, in particular, any rule of law as to—

- (a) matters which are not capable of settlement by arbitration;
- (b) the effect of an oral arbitration agreement; or the refusal of recognition or enforcement of an arbitral award on grounds of public policy.

94. Repeal and savings

- (1) The Arbitration Act, Cap. 25 of the Laws of Sierra Leone is hereby repealed.
- (2) Notwithstanding the repeal of Cap. 25 of the Laws of Sierra Leone, all awards, orders, appointments, and agreements made or notices issued under the repealed enactment before the commencement of this Act shall be enforced as if this Act had not been enacted.
- (3) This Act shall—
 - (a) apply to arbitral proceedings commenced on or after the commencement of this Act under an arbitration agreement whether made before or after the commencement of this Act;
 - (b) not apply to arbitral proceedings commenced before the commencement of this Act, unless the parties have agreed otherwise.
- (4) In any agreement in writing or other document, a reference to arbitration under the Arbitration Act (Cap 25) shall, so far as relevant and unless a contrary intention appears, be construed to mean a reference to arbitration under this Act.
- (5) Where arbitral proceedings were commenced before the commencement of this Act, the Arbitration Act (Cap 25) shall be applicable as if this Act had not been enacted.
- (6) For the purposes of this section, an arbitral proceedings shall be deemed to have commenced on the date the parties have agreed the arbitral proceedings should be commenced or, failing such agreement, on the date of commencement of arbitral proceedings calculated under subsection (6) of [section 25](#).

95. Waiver of right to object

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

96. Extent of application of this Act to arbitration

This Act 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 that law or another law.

97. Extension of time

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

98. Rules applicable to domestic arbitration

- (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 this Act, then such disputes shall be settled in accordance with the Rules in the First Schedule, subject to such modification as the parties may agree.
- (2) The Rules shall govern the arbitration, except that where any of these Rules conflicts with a provision of this Act, the Provisions of this Act shall prevail.

First Schedule (Section 98(1))**Arbitration Rules****Section 1 – Introductory Rules****Article 1 – Scope of application**

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 Act, then such disputes shall be settled in accordance with these Rules subject to such modification as the parties may agree.

These Rules shall govern an arbitration, except that where any of these Rules is in conflict with a provision of the Act, the Provisions of the Act shall prevail.

Article 2 – Notice, calculation of periods of time

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.

If an address has been designated by a party specifically for this purpose or authorised by an arbitral tribunal, a 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.

In the absence of such designation or authorisation, a notice is—

- (a) received if it is physically delivered to the addressee; or
- (b) deemed to have been received if it is delivered at the place of business, habitual residence or mailing address of the addressee.

If, after reasonable efforts, delivery cannot be effected in accordance with paragraphs 2 or 3, a notice is deemed to have been received if 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.

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. 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.

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. If 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. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

Article 3 – Written communication requesting arbitration

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").

Arbitral proceedings shall be deemed to commence on the date on which the written communication is received by the respondent.

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 an 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;
- (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.

The constitution of an 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 an arbitral tribunal.

Article 4 – Response to the written communication requesting arbitration

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;
- (b) a response to the information set forth in the notice of arbitration, pursuant to Article 3, paragraphs 3 (c) to (g).

The constitution of an arbitral tribunal shall not be hindered by a 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 written communication, which shall be finally resolved by the arbitral tribunal.

Article 5 – Representation and assistance

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

Article 6 – Emergency Arbitrator Proceedings

Conduct of Emergency relief proceedings

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 an arbitration clause(s) or of the separate arbitration agreement(s), and shall resolve any disputes over the applicability of this Article.

Decisions of the Emergency Arbitrator

A decision of an 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.

An Emergency Decision may be made even if in the meantime the file has been transmitted to the arbitral tribunal.

An Emergency Decision shall—

- (a) be made in writing;
- (b) state the date when it was made and summary reasons upon which the Emergency Order is based (including a determination on whether the Emergency Arbitrator has jurisdiction to grant the Emergency relief); and
- (c) be signed by the Emergency Arbitrator.

An 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. 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.

Any Emergency Decision shall be recognised and enforced in the same manner as an interim measure 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.

The Emergency Arbitrator shall be entitled to order the provision of appropriate security by the party seeking Emergency relief.

An 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).

An 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 an arbitration before the rendering of a final award; or
- (d) if an 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.

The decision of an Emergency Arbitrator shall not bind the arbitral tribunal with respect to a question, issue or dispute determined in an Emergency Decision. An arbitral tribunal may modify, terminate or annul an Emergency Decision or a modification thereto made by the Emergency Arbitrator.

An arbitral tribunal shall decide upon any party's request or claim related to an Emergency relief proceedings, including the reallocation of the costs of such proceedings and a claim arising out of or in connection with the compliance or non-compliance with the order.

General provisions

Subject to subparagraph 15 of this Article, an Emergency Arbitrator shall have no further power to act once the arbitral tribunal is constituted.

The Emergency Arbitrator procedures set out in this Article are not intended to prevent a party from seeking urgent interim or conservatory measures from a competent Court at any time.

In all matters not expressly provided for in this Article, the Emergency Arbitrator shall act in the spirit of the Act and these Rules.

The Emergency Arbitrator shall make every reasonable effort to ensure that an Emergency Decision is valid.

Section 6 – Composition of an arbitral tribunal

Article 7 – Number of arbitrators

If the 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.

Notwithstanding paragraph 1, if no other parties have 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 pursuant to 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

If the 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.

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 3 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;
- (d) If 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

If 3 arbitrators are to be appointed, each party shall appoint one arbitrator. The 2 arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the arbitral tribunal.

If 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.

If 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

For the purposes of Article 9, paragraph 1, where 3 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.

If the parties have agreed that an 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.

In the event of any failure to constitute an 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

Article 11

When a person is approached in connection with his or her possible appointment as an arbitrator, he or she shall confirm their availability and disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. An arbitrator, from the time of his or her 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

Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.

A party may challenge the arbitrator appointed by it only for reasons of which it becomes aware after the appointment has been made.

In the event that an arbitrator fails to act or in the event of the de jure or de facto impossibility of his or her performing his or her functions, the procedure in respect of the challenge of an arbitrator as provided in Article 13 shall apply.

Article 13

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.

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.

When an arbitrator has been challenged by a party, all parties may agree to the challenge. 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.

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.

Article 14 – Replacement of an arbitrator

Subject to paragraph 2, in any event where an arbitrator has to be replaced during the course of an arbitral proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in Articles 8 to 10 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.

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, authorize the other arbitrators to proceed with an arbitration and make any decision or award.

Article 15 – Repetition of hearings in the event of the replacement of an arbitrator

If 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 decide otherwise.

Article 16 – Exclusion of liability

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 a person appointed by the arbitral tribunal based on any act or omission in connection with the arbitration.

Section 17 – Arbitral proceedings

Article 17 – General provisions

Subject to the Rules, an arbitral tribunal may conduct an 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. An 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.

As soon as practicable after its constitution and after inviting the parties to express their views, an arbitral tribunal shall establish the provisional timetable of the arbitration. An arbitral tribunal may, at any time, after inviting the parties to express their views, extend or abridge a period of time prescribed under these Rules or agreed by the parties.

If at an appropriate stage of the proceedings any party so requests, an 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, an arbitral tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.

All communications to an arbitral tribunal by one party shall be communicated by that party to all other parties. The communications shall be made at the same time, except as otherwise permitted by the arbitral tribunal if it may do so under applicable law.

An arbitral tribunal may, at the request of a party, allow one or more third persons to be joined in the arbitration as a party, provided such person is a party to the arbitration agreement, unless an 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. An arbitral tribunal may make a single award or several awards in respect of all parties so involved in an arbitration.

Article 18 – Seat and venue of arbitration

If the 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.

An 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.

Article 19 – Language

Subject to an agreement by the parties, an 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.

An 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.

Article 20 – Points of claim

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 an arbitral tribunal, communicate its points of claim in writing to the respondent and to each of the arbitrators.

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;
- (e) the legal grounds or arguments supporting the claim.

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.

The points of claim should, as far as possible, be accompanied by all documents and other evidence relied upon by the claimant or contain references to them.

Article 21 – Points of defence

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 an arbitral tribunal, communicate its points of claim in writing to the respondent and to each of the arbitrators.

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.

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.

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.

Article 22 – Amendments to the claim or defence

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.

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.

Article 23 – Pleas as to the jurisdiction of an arbitral tribunal

An 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 an arbitral tribunal that the contract is null shall not entail automatically the invalidity of the arbitration clause.

A plea that an 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 an 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 an arbitral proceedings. An arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

An arbitral tribunal may rule on a plea referred to in paragraph 2 either as a preliminary question or in an award on the merits. An arbitral tribunal may continue the arbitral proceedings and make an award, notwithstanding any pending challenge to its jurisdiction before a court.

Article 24 – Further written statements

An 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.

Article 25 – Periods of time

The periods of time fixed by an arbitral tribunal for the communication of written statements (including the points of claim and points of defence) should not exceed 45 days. An arbitral tribunal may however extend the time limits if it concludes that an extension is justified.

Article 26 – Interim measures

An arbitral tribunal may, at the request of a party, grant interim measures.

An interim measure is a 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.

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 an arbitral tribunal in making a subsequent determination.

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.

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.

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

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.

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.

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.

Article 27 – Evidence

Each party shall have the burden of proving the facts relied on to support his claim or defence.

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.

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.

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.

The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

Article 28 – Oral and virtual hearings

Where a physical hearing is impracticable due to health, safety, cost, or other considerations, tribunals shall conduct proceedings virtually.

In conducting virtual hearings, tribunals shall have regard to the Africa Arbitration Academy Protocol on Virtual Hearings in Africa 2020, which is incorporated and forms part of these Rules.

In the event of an oral hearing, the arbitral tribunal shall give the parties adequate advance notice of the date, time and place thereof.

Witnesses, including expert witnesses, may be heard under the conditions and examined in the manner set by the arbitral tribunal.

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.

The arbitral tribunal may direct that witnesses, including expert witnesses, be examined through means of telecommunication that do not require their physical presence at the hearing (such as videoconference).

Article 29 – Experts appointed by the arbitral tribunal

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.

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.

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.

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.

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.

Article 30 – Default

If, within the period of time fixed by these Rules or the arbitral tribunal, without showing sufficient cause—

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.

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.

If 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.

If 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.

Article 31 – Consolidation

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 arbitration to be compatible.

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 arbitrators who have been appointed confirmed in the arbitrations;
- (b) a request that arbitrations be consolidated;
- (c) a copy of the arbitration agreement(s) giving rise to the arbitrations;
- (d) a reference to the contract(s) or other legal instrument(s) 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 arbitrators.

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.

Article 32 – Effect of consolidation

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.

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.

Where the arbitral tribunal decides to consolidate two or more arbitrations, the parties to all such arbitrations shall appoint the arbitral tribunal in respect of the consolidated proceedings.

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 appointment ceased;
- (b) the arbitrator's entitlement to fees and expenses; 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.

The parties shall not object to the validity and/or enforcement of any award made by the arbitral tribunal in the consolidated proceedings.

Article 33 – Request to join a third party

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.

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 contract(s) or other legal instrument(s) 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.

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.

Article 34 – Answer to Request for Joinder by a third party

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.

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;
- (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.

Article 35 – Request by a third party to join the arbitration

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.

Article 36 – Comments on the Request for Joinder by existing parties to the arbitration

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 pursuant to 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.

Article 37 – General provisions on Joinder

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.

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

Article 38 – Closure of hearings

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.

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.

Article 39 – Waiver of right to object

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

Article 40 – Decisions

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

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.

Article 41 – Form and effect of the award

The arbitral tribunal may make separate awards on different issues at different times.

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.

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.

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.

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.

Copies of the award signed by the arbitrators shall be communicated to the parties by the arbitral tribunal.

Article 42 – Applicable law, amiable compositeur

The arbitral tribunal shall apply the rules 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.

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.

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.

Article 43 – Settlement or other grounds for termination

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.

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.

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 35, paragraphs 2,4 and 6, shall apply.

Article 44 – Interpretation of the award

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.

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 35, paragraphs 2 to 6, shall apply.

Article 45 – Correction of the award

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.

The arbitral tribunal may within thirty days after the communication of the award make such corrections on its own initiative.

Such corrections shall be in writing and shall form part of the award. The provisions of Article 35, paragraphs 2 to 6, shall apply.

Article 46 – Additional award

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.

If the arbitral tribunal considers the request for an award or additional award to be justified, it shall render or complete its awards within sixty 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 35, paragraphs 2 to 6, shall apply.

Article 47 – Definition of costs

The arbitral tribunal shall fix the costs of arbitration in the final award and, if it deems appropriate, in another decision.

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 42;
- (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) The cost of third-party funding;
- (g) Other costs

In relation to interpretation, correction or completion of any award under Articles 38 to 40, the arbitral tribunal may charge the costs referred to in paragraphs 2 (b) to (f), but no additional fees.

Article 48 – Fees and expenses of arbitrators

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.

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.

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 fifteen days of receiving that proposal, any party may refer the proposal to the appointing authority for review. If, within forty-five 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.

Article 49 – Allocation of costs

The costs of the arbitration shall in principle be borne by the unsuccessful party or parties. The arbitral tribunal may however apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.

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.

Article 50 – Deposit of costs

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 41, paragraphs 2(a) to (c).

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

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.

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.

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.

Second Schedule (Section 67)

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 seised 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. A 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 ninetieth 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;
 - (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 ninetieth 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 ninetieth day after deposit by such State of its instrument of ratification or accession.

Article XIII

1. A 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. A 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;
- (d) declarations and notifications under Articles I, X and XI;
[Please note: numbering as in original.]
- (e) the date upon which this Convention enters into force in accordance with Article XII;
- (f) 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

Arbitration proceedings rules

1. Scope of application

1. These rules shall apply to all arbitration related applications filed before the Sierra Leone Court on or after the date of commencement of the Arbitration Act.
2. 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 application and arbitration appeals only in respect of such matters and to such extent as provision has not been expressly made in these rules.

2. Interpretation

Applications to which these Rules apply are—

- (a) to revoke an arbitration agreement;
- (b) to stay proceedings;
- (c) to determine the challenge of an arbitrator;
- (d) to appoint, remove or substitute an emergency arbitrator;
- (e) to grant interim measures of protection;
- (f) to recognize or enforce an interim measure of protection;
- (g) to refuse recognition or enforcement of an interim measure of protection;
- (h) to subpoena a witness to attend proceedings;
- (i) in respect of the fees of an arbitrator;
- (j) to set aside an award;
- (k) to recognise and enforce an award; and
- (l) to refuse recognition and enforcement of an award.

3. Commencing an application

- (1) Except where sub-rules 2 and 3 of this Rule applies, an arbitration application shall be started by the issue of an Originating Motion.
- (2) An application to stay legal proceedings shall be made by notice of motion to the court seised of those proceedings.
- (3) An application for the appointment, challenge or replacement of an emergency arbitrator; or to fix the seat of the emergency relief proceedings, shall be contained in a written communication addressed to the appropriate Court.

4. Hearings

The Court may order that an arbitration application or claim related to arbitration be heard either in public or in private.

5. Enforcement of arbitration awards and interim measures of protection

- (1) An application to enforce an award or an interim measure of protection in the same manner as a judgement 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;
 - (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.

6. Case management

- (1) The following rules apply unless the Court orders otherwise.
- (2) All Arbitration related cases shall be given expedited hearing and considered as urgent matters and can be heard by designated judges or courts.
- (3) A defendant who does not contest any of or all 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.
- (4) The time limit for hearing Arbitration related proceedings (Fast Track) shall be as follows—
 - (a) Application for preservative orders or interim reliefs shall be determined within 30 days from the date of filing;
 - (b) Application for appointment of arbitrator, where parties or party appointed arbitrators fail to agree on appointment of arbitrators or the chair of the tribunal shall be determined within 30 days;
 - (c) Application relating to compelling witnesses, production of documents and other procedural matters shall be determined within 30 days;
 - (d) Applications for annulment or recognition and enforcement of awards shall be determined within 60 days;

- (e) An appeal from a decision of the High Court to the Court of Appeal in an arbitration related matter shall be heard and determined within 45 days from the date of the judgement of the High Court;
- (f) An appeal from a decision of the Court of Appeal to the Supreme Court in an Arbitration related matter shall be heard and determined within 90 days from the date of the judgement of the Court of Appeal.
- (f) An appeal from a decision of the Court of Appeal to the Supreme Court in an Arbitration related matter shall be heard and determined within 90 days from the date of the judgement of the Court of Appeal.

7. Costs

The rules of the High Court, Court of Appeal and the Supreme Court for the time being in force shall apply in relation to costs in all arbitration applications 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.

8. Establishment of specialist arbitration list and judicial training

The Court will assign arbitration-related cases to a specialist list and will designate particular judges to deal with cases on the list.

The Court will work with designated arbitration and ADR institutions to establish and implement a training curriculum for judges assigned to deal with the specialist lists.

In this Rules, the phrase "arbitration-related" cases refer to the proceedings for or in relation to the following remedies, as may be provided for by law, i.e. proceedings—

- (a) to remove an arbitrator or umpire;
- (b) to grant interim measures of protection;
- (c) to recognize or enforce an interim measure of protection;
- (d) to refuse recognition or enforcement of an interim measure of protection;
- (e) to subpoena a witness to attend and give evidence in arbitral proceedings;
- (f) in respect of the fees of an arbitrator;
- (g) to set aside an award;
- (h) to recognize and enforce an award;
- (i) to refuse recognition and enforcement of an award, and
- (j) for any other relief or remedy as is provided for by law.

9. Conduct of arbitration-related cases with Online Court Hearing

An arbitration-related case may be conducted virtually through Oral Court Hearing except where a party establishes to the satisfaction of the Court that—

- (a) the case is not suitable for Oral Court Hearing because the case requires oral evidence, or
- (b) the Court will be assisted by physical hearing.

2. If the Court finds that there is merit in such contention, the court may direct that:
 - (a) the case should be determined exclusively by physical hearing; or
 - (b) the case should be determined on a hybrid Oral Court Hearing physical hearing basis.
3. In this Rule, Oral Court Hearing includes—
 - (a) e-filing, online applications/appending case files
 - (b) e-payments and costs calculator
 - (c) e-tracking of proceedings
 - (d) making legal submissions online
 - (e) online interaction between court and parties
 - (f) receiving decisions online
4. In conducting Oral Court Hearing, the Court may adopt or apply the Africa Arbitration Academy Protocol on Virtual Hearings in Africa 2020, which is incorporated and forms part of these Rules.

10. Order to provide security

Where a party applies to set aside an arbitral award, a court may, at the instance of the beneficiary of the award, direct the applicant to provide security for the value of the award or for such other sum as the court may consider appropriate, and in such manner and on such other terms as the court may consider appropriate.

When determining an application for security, a court shall take into consideration:

- (a) the length of time between the date of the application to set the award aside and the date of the application for security and
- (b) whether any act or omission of the party applying to set aside the award has caused or contributed to any delay in the hearing schedule.

Fourth Schedule

The Convention on the Settlement of Investment Disputes between States and Nationals of other States, which Sierra Leone signed and ratified on 27th September 1965 and 2nd August 1966 respectively, with the Convention coming into force on 14th October 1966.

Convention on the settlement of investment disputes between States and nationals of other States

Preamble

The Contracting States Considering the need for international cooperation for economic development, and the role of private international investment therein;

Bearing in mind the possibility that from time to time disputes may arise in connection with such investment between Contracting States and nationals of other Contracting States;

Recognizing that while such disputes would usually be subject to national legal processes, international methods of settlement may be appropriate in certain cases; Attaching particular importance to the availability of facilities for international conciliation or arbitration to which Contracting States and nationals of other Contracting States may submit such disputes if they so desire;

Desiring to establish such facilities under the auspices of the International Bank for Reconstruction and Development;

Recognizing that mutual consent by the parties to submit such disputes to conciliation or to arbitration through such facilities constitutes a binding agreement which requires in particular that due consideration be given to any recommendation of conciliators, and that any arbitral award be complied with; and

Declaring that no Contracting State shall by the mere fact of its ratification, acceptance or approval of this Convention and without its consent be deemed to be under any obligation to submit any particular dispute to conciliation or arbitration,

Have agreed as follows:

Chapter I

International Centre for Settlement of Investment Disputes

Section 1. Establishment and organization

Article 1

- (1) There is hereby established the International Centre for Settlement of Investment Disputes (hereinafter called the Centre).
- (2) The purpose of the Centre shall be to provide facilities for conciliation and arbitration of investment disputes between Contracting States and nationals of other Contracting States in accordance with the provisions of this Convention.

Article 2

The seat of the Centre shall be at the principal office of the International Bank for Reconstruction and Development (hereinafter called the Bank). The seat may be moved to another place by decision of the Administrative Council adopted by a majority of two-thirds of its members.

Article 3

The Centre shall have an Administrative Council and a Secretariat and shall maintain a Panel of Conciliators and a Panel of Arbitrators.

Section 2. Administrative Council

Article 4

- (1) The Administrative Council shall be composed of one representative of each Contracting State. An alternate may act as representative in case of his principal's absence from a meeting or inability to act.
- (2) In the absence of a contrary designation, each governor and alternate governor of the Bank appointed by a Contracting State shall be ex officio its representative and its alternate respectively.

Article 5

The President of the Bank shall be ex officio Chairman of the Administrative Council (hereinafter called the Chairman) but shall have no vote. During his absence or inability to act and during any vacancy in the office of President of the Bank, the person for the time being acting as President shall act as Chairman of the Administrative Council.

Article 6

- (1) Without prejudice to the powers and functions vested in it by other provisions of this Convention, the Administrative Council shall:
 - (a) adopt the administrative and financial regulations of the Centre;
 - (b) adopt the rules of procedure for the institution of conciliation and arbitration proceedings;
 - (c) adopt the rules of procedure for conciliation and arbitration proceedings (hereinafter called the Conciliation Rules and the Arbitration Rules);
 - (d) approve arrangements with the Bank for the use of the Bank's administrative facilities and services;
 - (e) determine the conditions of service of the Secretary-General and of any Deputy Secretary-General;
 - (f) adopt the annual budget, of revenues and expenditures of the Centre;
 - (g) approve the annual report on the operation of the Centre.

The decisions referred to in sub-paragraphs (a), (b), (c) and (f) above shall be adopted by a majority of two-thirds of the members of the Administrative Council.

- (2) The Administrative Council may appoint such committees as it considers necessary.
- (3) The Administrative Council shall also exercise such other powers and perform such other functions as it shall determine to be necessary for the implementation of the provisions of this Convention.

Article 7

- (1) The Administrative Council shall hold an annual meeting and such other meetings as may be determined by the Council, or convened by the Chairman, or convened by the Secretary-General at the request of not less than five members of the Council.
- (2) Each member of the Administrative Council shall have one vote and, except as otherwise herein provided, all matters before the Council shall be decided by a majority of the votes cast.
- (3) A quorum for any meeting of the Administrative Council shall be a majority of its members.
- (4) The Administrative Council may establish, by a majority of two-thirds of its members, a procedure whereby the Chairman may seek a vote of the Council without convening a meeting of the Council.

The vote shall be considered valid only if the majority of the members of the Council cast their votes within the time limit fixed by the said procedure.

Article 8

Members of the Administrative Council and the Chairman shall serve without remuneration from the Centre.

Section 7. Secretariat

Article 9

The Secretariat shall consist of a Secretary-General, one or more Deputy Secretaries-General and staff.

Article 10

- (1) The Secretary-General and any Deputy Secretary-General shall be elected by the Administrative Council by a majority of two-thirds of its members upon the nomination of the Chairman for a term of service not exceeding six years and shall be eligible for re-election. After consulting the members of the Administrative Council, the Chairman shall propose one or more candidates for each such office.
- (2) The offices of Secretary-General and Deputy Secretary-General shall be incompatible with the exercise of any political function. Neither the Secretary-General nor any Deputy Secretary-General may hold any other employment or engage in any other occupation except with the approval of the Administrative Council.
- (3) During the Secretary-General's absence or inability to act, and during any vacancy of the office of Secretary-General, the Deputy Secretary-General shall act as Secretary-General. If there shall be more than one Deputy Secretary-General, the Administrative Council shall determine in advance the order in which they shall act as Secretary-General.

Article 11

The Secretary-General shall be the legal representative and the principal officer of the Centre and shall be responsible for its administration, including the appointment of staff, in accordance with the provisions of this Convention and the rules adopted by the Administrative Council. He shall perform the function of registrar and shall have the power to authenticate arbitral awards rendered pursuant to this Convention, and to certify copies thereof.

Section 8. Panels

Article 12

The Panel of Conciliators and the Panel of Arbitrators shall each consist of qualified persons, designated as hereinafter provided, who are willing to serve thereon.

Article 13

- (1) Each Contracting State may designate to each Panel four persons who may but need not be its nationals.
- (2) The Chairman may designate ten persons to each Panel. The persons so designated to a Panel shall each have a different nationality.

Article 14

- (1) Persons designated to serve on the Panels shall be persons of high moral character and recognized competence in the fields of law, commerce, industry or finance, who may be relied upon to exercise independent judgment. Competence in the field of law shall be of particular importance in the case of persons on the Panel of Arbitrators.
- (2) The Chairman, in designating persons to serve on the Panels, shall in addition pay due regard to the importance of assuring representation on the Panels of the principal legal systems of the world and of the main forms of economic activity.

Article 15

- (1) Panel members shall serve for renewable periods of six years.
- (2) In case of death or resignation of a member of a Panel, the authority which designated the member shall have the right to designate another person to serve for the remainder of that member's term.
- (3) Panel members shall continue in office until their successors have been designated.

Article 16

- (1) A person may serve on both Panels.
- (2) If a person shall have been designated to serve on the same Panel by more than one Contracting State, or by one or more Contracting States and the Chairman, he shall be deemed to have been designated by the authority which first designated him or, if one such authority is the State of which he is a national, by that State.
- (3) All designations shall be notified to the Secretary-General and shall take effect from the date on which the notification is received.

Section 15 Financing the Centre

Article 17

If the expenditure of the Centre cannot be met out of charges for the use of its facilities, or out of other receipts, the excess shall be borne by Contracting States which are members of the Bank in proportion to their respective subscriptions to the capital stock of the Bank, and by Contracting States which are not members of the Bank in accordance with rules adopted by the Administrative Council.

Section 18 Status, immunities and privileges

Article 18

The Centre shall have full international legal personality. The legal capacity of the Centre shall include the capacity—

- (a) to contract;
- (b) to acquire and dispose of movable and immovable property;
- (c) to institute legal proceedings.

Article 19

To enable the Centre to fulfil its functions, it shall enjoy in the territories of each Contracting State the immunities and privileges set forth in this Section.

Article 20

The Centre, its property and assets shall enjoy immunity from all legal process, except when the Centre waives this immunity.

Article 21

The Chairman, the members of the Administrative Council, persons acting as conciliators or arbitrators or members of a Committee appointed pursuant to paragraph (3) of Article 52, and the officers and employees of the Secretariat—

- (a) shall enjoy immunity from legal process with respect to acts performed by them in the exercise of their functions, except when the Centre waives this immunity;
- (b) not being local nationals, shall enjoy the same immunities from immigration restrictions, alien registration requirements and national service obligations, the same facilities as regards exchange restrictions and the same treatment in respect of travelling facilities as are accorded by Contracting States to the representatives, officials and employees of comparable rank of other Contracting States.

Article 22

The provisions of Article 21 shall apply to persons appearing in proceedings under this Convention as parties, agents, counsel, advocates, witnesses or experts; provided, however, that sub-paragraph (b) thereof shall apply only in connection with their travel to and from, and their stay at, the place where the proceedings are held.

Article 23

- (1) The archives of the Centre shall be inviolable, wherever they may be.
- (2) With regard to its official communications, the Centre shall be accorded by each Contracting State treatment not less favourable than that accorded to other international organizations.

Article 24

- (1) The Centre, its assets, property and income, and its operations and transactions authorized by this Convention shall be exempt from all taxation and customs duties. The Centre shall also be exempt from liability for the collection or payment of any taxes or customs duties.
- (2) Except in the case of local nationals, no tax shall be levied on or in respect of expense allowances paid by the Centre to the Chairman or members of the Administrative Council, or on or in respect of salaries, expense allowances or other emoluments paid by the Centre to officials or employees of the Secretariat.
- (3) No tax shall be levied on or in respect of fees or expense allowances received by persons acting as conciliators, or arbitrators, or members of a Committee appointed pursuant to paragraph (3) of Article 52, in proceedings under this Convention, if the sole jurisdictional basis for such tax is the location of the Centre or the place where such proceedings are conducted or the place where such fees or allowances are paid.

Chapter II Jurisdiction of the Centre

Article 25

- (1) The jurisdiction of the Centre shall extend to any legal dispute arising directly out of an investment, between a Contracting State (or any constituent subdivision or agency of a Contracting State designated to the Centre by that State) and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre. When the parties have given their consent, no party may withdraw its consent unilaterally.
- (2) "National of another Contracting State" means—
 - (a) any natural person who had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration as well as on the date on which the request was registered pursuant to paragraph (3) of Article 28 or paragraph (3) of Article 36, but does not include any person who on either date also had the nationality of the Contracting State party to the dispute; and
 - (b) any juridical person which had the nationality of a Contracting State other than the State party to the dispute on the date on which the parties consented to submit such dispute to conciliation or arbitration and any juridical person which had the nationality of the Contracting State party to the dispute on that date and which, because of foreign control, the parties have agreed should be treated as a national of another Contracting State for the purposes of this Convention.
- (3) Consent by a constituent subdivision or agency of a Contracting State shall require the approval of that State unless that State notifies the Centre that no such approval is required.
- (4) Any Contracting State may, at the time of ratification, acceptance or approval of this Convention or at any time thereafter, notify the Centre of the class or classes of disputes which it would or would not consider submitting to the jurisdiction of the Centre. The Secretary-General shall forthwith transmit such notification to all Contracting States. Such notification shall not constitute the consent required by paragraph (1).

Article 26

Consent of the parties to arbitration under this Convention shall, unless otherwise stated, be deemed consent to such arbitration to the exclusion of any other remedy. A Contracting State may require the exhaustion of local administrative or judicial remedies as a condition of its consent to arbitration under this Convention.

Article 27

- (1) No Contracting State shall give diplomatic protection, or bring an international claim, in respect of a dispute which one of its nationals and another Contracting State shall have consented to submit or shall have submitted to arbitration under this Convention, unless such other Contracting State shall have failed to abide by and comply with the award rendered in such dispute.
- (2) Diplomatic protection, for the purposes of paragraph (1), shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.

Chapter III Conciliation

Section 1 Request for conciliation

Article 28

- (1) Any Contracting State or any national of a Contracting State wishing to institute conciliation proceedings shall address a request to that effect in writing to the Secretary-General who shall send a copy of the request to the other party.
- (2) The request shall contain information concerning the issues in dispute, the identity of the parties and their consent to conciliation in accordance with the rules of procedure for the institution of conciliation and arbitration proceedings.
- (3) The Secretary-General shall register the request unless he finds, on the basis of the information contained in the request, that the dispute is manifestly outside the jurisdiction of the Centre. He shall forthwith notify the parties of registration or refusal to register.

Section 2 Constitution of the Conciliation Commission

Article 29

- (1) The Conciliation Commission (hereinafter called the Commission) shall be constituted as soon as possible after registration of a request pursuant to Article 28.
- (2) (a) The Commission shall consist of a sole conciliator or any uneven number of conciliators appointed as the parties shall agree.
(b) Where the parties do not agree upon the number of conciliators and the method of their appointment, the Commission shall consist of three conciliators, one conciliator appointed by each party and the third, who shall be the president of the Commission, appointed by agreement of the parties.

Article 30

If the Commission shall not have been constituted within 90 days after notice of registration of the request has been dispatched by the Secretary-General in accordance with paragraph (3) of Article 28, or such other period as the parties may agree, the Chairman shall, at the request of either party and after consulting both parties as far as possible, appoint the conciliator or conciliators not yet appointed.

Article 31

- (1) Conciliators may be appointed from outside the Panel of Conciliators, except in the case of appointments by the Chairman pursuant to Article 30.
- (2) Conciliators appointed from outside the Panel of Conciliators shall possess the qualities stated in paragraph (1) of Article 14.

Section 7 Conciliation proceedings

Article 32

- (1) The Commission shall be the judge of its own competence.
- (2) Any objection by a party to the dispute that that dispute is not within the jurisdiction of the Centre, or for other reasons is not within the competence of the Commission, shall be considered by the Commission which shall determine whether to deal with it as a preliminary question or to join it to the merits of the dispute.

Article 33

Any conciliation proceeding shall be conducted in accordance with the provisions of this Section and, except as the parties otherwise agree, in accordance with the Conciliation Rules in effect on the date on which the parties consented to conciliation. If any question of procedure arises which is not covered by this Section or the Conciliation Rules or any rules agreed by the parties, the Commission shall decide the question.

Article 34

- (1) It shall be the duty of the Commission to clarify the issues in dispute between the parties and to endeavour to bring about agreement between them upon mutually acceptable terms. To that end, the Commission may at any stage of the proceedings and from time to time recommend terms of settlement to the parties. The parties shall cooperate in good faith with the Commission in order to enable the Commission to carry out its functions, and shall give their most serious consideration to its recommendations.
- (2) If the parties reach agreement, the Commission shall draw up a report noting the issues in dispute and recording that the parties have reached agreement. If, at any stage of the proceedings, it appears to the Commission that there is no likelihood of agreement between the parties, it shall close the proceedings and shall draw up a report noting the submission of the dispute and recording the failure of the parties to reach agreement. If one party fails to appear or participate in the proceedings, the Commission shall close the proceedings and shall draw up a report noting that party's failure to appear or participate.

Article 35

Except as the parties to the dispute shall otherwise agree, neither party to a conciliation proceeding shall be entitled in any other proceeding, whether before arbitrators or in a court of law or otherwise, to invoke or rely on any views expressed or statements or admissions or offers of settlement made by the other party in the conciliation proceedings, or the report or any recommendations made by the Commission.

Chapter IV Arbitration

Section 1 Request for arbitration

Article 36

- (1) Any Contracting State or any national of a Contracting State wishing to institute arbitration proceedings shall address a request to that effect in writing to the Secretary-General who shall send a copy of the request to the other party.
- (2) The request shall contain information concerning the issues in dispute, the identity of the parties and their consent to arbitration in accordance with the rules of procedure for the institution of conciliation and arbitration proceedings.
- (3) The Secretary-General shall register the request unless he finds, on the basis of the information contained in the request, that the dispute is manifestly outside the jurisdiction of the Centre. He shall forthwith notify the parties of registration or refusal to register.

Section 2 Constitution of the Tribunal

Article 37

- (1) The Arbitral Tribunal (hereinafter called the Tribunal) shall be constituted as soon as possible after registration of a request pursuant to Article 36.
- (2)
 - (a) The Tribunal shall consist of a sole arbitrator or any uneven number of arbitrators appointed as the parties shall agree.
 - (b) Where the parties do not agree upon the number of arbitrators and the method of their appointment, the Tribunal shall consist of three arbitrators, one arbitrator appointed by each party and the third, who shall be the president of the Tribunal, appointed by agreement of the parties.

Article 38

If the Tribunal shall not have been constituted within 90 days after notice of registration of the request has been dispatched by the Secretary-General in accordance with paragraph (3) of Article 36, or such other period as the parties may agree, the Chairman shall, at the request of either party and after consulting both parties as far as possible, appoint the arbitrator or arbitrators not yet appointed. Arbitrators appointed by the Chairman pursuant to this Article shall not be nationals of the Contracting State party to the dispute or of the Contracting State whose national is a party to the dispute.

Article 39

The majority of the arbitrators shall be nationals of States other than the Contracting State party to the dispute and the Contracting State whose national is a party to the dispute; provided, however, that the foregoing provisions of this Article shall not apply if the sole arbitrator or each individual member of the Tribunal has been appointed by agreement of the parties.

Article 40

- (1) Arbitrators may be appointed from outside the Panel of Arbitrators, except in the case of appointments by the Chairman pursuant to Article 38.
- (2) Arbitrators appointed from outside the Panel of Arbitrators shall possess the qualities stated in paragraph (1) of Article 14.

Section 5 Powers and functions of the Tribunal

Article 41

- (1) The Tribunal shall be the judge of its own competence.
- (2) Any objection by a party to the dispute that that dispute is not within the jurisdiction of the Centre, or for other reasons is not within the competence of the Tribunal, shall be considered by the Tribunal which shall determine whether to deal with it as a preliminary question or to join it to the merits of the dispute.

Article 42

- (1) The Tribunal shall decide a dispute in accordance with such rules of law as may be agreed by the parties. In the absence of such agreement, the Tribunal shall apply the law of the Contracting State party to the dispute (including its rules on the conflict of laws) and such rules of international law as may be applicable.
- (2) The Tribunal may not bring in a finding of non liquet on the ground of silence or obscurity of the law.
- (3) The provisions of paragraphs (1) and (2) shall not prejudice the power of the Tribunal to decide a dispute *ex aequo et bono* if the parties so agree.

Section 4. Award**Article 48**

- (1) The Tribunal shall decide questions by a majority of the votes of all its members.
- (2) The award of the Tribunal shall be in writing and shall be signed by the members of the Tribunal who voted for it.
- (3) The award shall deal with every question submitted to the Tribunal, and shall state the reasons upon which it is based.
- (4) Any member of the Tribunal may attach his individual opinion to the award, whether he dissents from the majority or not, or a statement of his dissent.
- (5) The Centre shall not publish the award without the consent of the parties.

Article 49

- (1) The Secretary-General shall promptly dispatch certified copies of the award to the parties. The award shall be deemed to have been rendered on the date on which the certified copies were dispatched.
- (2) The Tribunal upon the request of a party made within 45 days after the date on which the award was rendered may after notice to the other party decide any question which it had omitted to decide in the award, and shall rectify any clerical, arithmetical or similar error in the award. Its decision shall become part of the award and shall be notified to the parties in the same manner as the award. The periods of time provided for under paragraph (2) of Article 51 and paragraph (2) of Article 52 shall run from the date on which the decision was rendered.

Section 5. Interpretation, revision and annulment of the Award**Article 50**

- (1) If any dispute shall arise between the parties as to the meaning or scope of an award, either party may request interpretation of the award by an application in writing addressed to the Secretary-General.
- (2) The request shall, if possible, be submitted to the Tribunal which rendered the award. If this shall not be possible, a new Tribunal shall be constituted in accordance with Section 2 of this Chapter. The Tribunal may, if it considers that the circumstances so require, stay enforcement of the award pending its decision.

Article 51

- (1) Either party may request revision of the award by an application in writing addressed to the Secretary-General on the ground of discovery of some fact of such a nature as decisively to affect the award, provided that when the award was rendered that fact was unknown to the

- Tribunal and to the applicant and that the applicant's ignorance of that fact was not due to negligence.
- (2) The application shall be made within 90 days after the discovery of such fact and in any event within three years after the date on which the award was rendered.
 - (3) The request shall, if possible, be submitted to the Tribunal which rendered the award. If this shall not be possible, a new Tribunal shall be constituted in accordance with Section 2 of this Chapter.
 - (4) The Tribunal may, if it considers that the circumstances so require, stay enforcement of the award pending its decision. If the applicant requests a stay of enforcement of the award in his application, enforcement shall be stayed provisionally until the Tribunal rules on such request.

Article 52

- (1) Either party may request annulment of the award by an application in writing addressed to the Secretary-General on one or more of the following grounds—
 - (a) that the Tribunal was not properly constituted;
 - (b) that the Tribunal has manifestly exceeded its powers;
 - (c) that there was corruption on the part of a member of the Tribunal;
 - (d) that there has been a serious departure from a fundamental rule of procedure; or
 - (e) that the award has failed to state the reasons on which it is based.
- (2) The application shall be made within 120 days after the date on which the award was rendered except that when annulment is requested on the ground of corruption such application shall be made within 120 days after discovery of the corruption and in any event within three years after the date on which the award was rendered.
- (3) On receipt of the request the Chairman shall forthwith appoint from the Panel of Arbitrators an *ad hoc* Committee of three persons. None of the members of the Committee shall have been a member of the Tribunal which rendered the award, shall be of the same nationality as any such member, shall be a national of the State party to the dispute or of the State whose national is a party to the dispute, shall have been designated to the Panel of Arbitrators by either of those States, or shall have acted as a conciliator in the same dispute. The Committee shall have the authority to annul the award or any part thereof on any of the grounds set forth in paragraph (1).
- (4) The provisions of Articles 41-45, 48, 49, 53 and 54, and of Chapters VI and VII shall apply *mutatis mutandis* to proceedings before the Committee.
- (5) The Committee may, if it considers that the circumstances so require, stay enforcement of the award pending its decision. If the applicant requests a stay of enforcement of the award in his application, enforcement shall be stayed provisionally until the Committee rules on such request.
- (6) If the award is annulled the dispute shall, at the request of either party, be submitted to a new Tribunal constituted in accordance with Section 2 of this Chapter.

Section 6 Recognition and enforcement of the Award

Article 53

- (1) The award shall be binding on the parties and shall not be subject to any appeal or to any other remedy except those provided for in this Convention. Each party shall abide by and comply with the terms of the award except to the extent that enforcement shall have been stayed pursuant to the relevant provisions of this Convention.
- (2) For the purposes of this Section, "award" shall include any decision interpreting, revising or annulling such award pursuant to Articles 50, 51 or 52.

Article 54

- (1) Each Contracting State shall recognize an award rendered pursuant to this Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that State. A Contracting State with a federal constitution may enforce such an award in or through its federal courts and may provide that such courts shall treat the award as if it were a final judgment of the courts of a constituent state.
- (2) A party seeking recognition or enforcement in the territories of a Contracting State shall furnish to a competent court or other authority which such State shall have designated for this purpose a copy of the award certified by the Secretary-General. Each Contracting State shall notify the Secretary-General of the designation of the competent court or other authority for this purpose and of any subsequent change in such designation.
- (3) Execution of the award shall be governed by the laws concerning the execution of judgments in force in the State in whose territories such execution is sought.

Article 55

Nothing in Article 54 shall be construed as derogating from the law in force in any Contracting State relating to immunity of that State or of any foreign State from execution.

Chapter V

Replacement and disqualification of conciliators and arbitrators

Article 56

- (1) After a Commission or a Tribunal has been constituted and proceedings have begun, its composition shall remain unchanged; provided, however, that if a conciliator or an arbitrator should die, become incapacitated, or resign, the resulting vacancy shall be filled in accordance with the provisions of Section 2 of Chapter III or Section 2 of Chapter IV.
- (2) A member of a Commission or Tribunal shall continue to serve in that capacity notwithstanding that he shall have ceased to be a member of the Panel.
- (3) If a conciliator or arbitrator appointed by a party shall have resigned without the consent of the Commission or Tribunal of which he was a member, the Chairman shall appoint a person from the appropriate Panel to fill the resulting vacancy.

Article 57

A party may propose to a Commission or Tribunal the disqualification of any of its members on account of any fact indicating a manifest lack of the qualities required by paragraph (1) of Article 14. A party to arbitration proceedings may, in addition, propose the disqualification of an arbitrator on the ground that he was ineligible for appointment to the Tribunal under Section 2 of Chapter IV.

Article 58

The decision on any proposal to disqualify a conciliator or arbitrator shall be taken by the other members of the Commission or Tribunal as the case may be, provided that where those members are equally divided, or in the case of a proposal to disqualify a sole conciliator or arbitrator, or a majority of the conciliators or arbitrators, the Chairman shall take that decision. If it is decided that the proposal is well-founded the conciliator or arbitrator to whom the decision relates shall be replaced in accordance with the provisions of Section 2 of Chapter III or Section 2 of Chapter IV.

Chapter VI Cost of proceedings

Article 59

The charges payable by the parties for the use of the facilities of the Centre shall be determined by the Secretary-General in accordance with the regulations adopted by the Administrative Council.

Article 60

- (1) Each Commission and each Tribunal shall determine the fees and expenses of its members within limits established from time to time by the Administrative Council and after consultation with the Secretary-General.
- (2) Nothing in paragraph (1) of this Article shall preclude the parties from agreeing in advance with the Commission or Tribunal concerned upon the fees and expenses of its members.

Article 61

- (1) In the case of conciliation proceedings the fees and expenses of members of the Commission as well as the charges for the use of the facilities of the Centre, shall be borne equally by the parties. Each party shall bear any other expenses it incurs in connection with the proceedings.
- (2) In the case of arbitration proceedings the Tribunal shall, except as the parties otherwise agree, assess the expenses incurred by the parties in connection with the proceedings, and shall decide how and by whom those expenses, the fees and expenses of the members of the Tribunal and the charges for the use of the facilities of the Centre shall be paid. Such decision shall form part of the award.

Chapter VII Place of proceedings

Article 62

Conciliation and arbitration proceedings shall be held at the seat of the Centre except as hereinafter provided.

Article 63

Conciliation and arbitration proceedings may be held, if the parties so agree,

- (a) at the seat of the Permanent Court of Arbitration or of any other appropriate institution, whether private or public, with which the Centre may make arrangements for that purpose; or
- (b) at any other place approved by the Commission or Tribunal after consultation with the Secretary-General.

Chapter VIII Disputes between Contracting States

Article 64

Any dispute arising between Contracting States concerning the interpretation or application of this Convention which is not settled by negotiation shall be referred, to the International Court of Justice by the application of any party to such dispute, unless the States concerned agree to another method of settlement.

Chapter IX Amendment

Article 65

Any Contracting State may propose amendment of this Convention. The text of a proposed amendment shall be communicated to the Secretary-General not less than 90 days prior to the meeting of the Administrative Council at which such amendment is to be considered and shall forthwith be transmitted by him to all the members of the Administrative Council.

Article 66

- (1) If the Administrative Council shall so decide by a majority of two-thirds of its members, the proposed amendment shall be circulated to all Contracting States for ratification, acceptance or approval. Each amendment shall enter into force 30 days after dispatch by the depositary of this Convention of a notification to Contracting States that all Contracting States have ratified, accepted or approved the amendment.
- (2) No amendment shall affect the rights and obligations under this Convention of any Contracting State or of any of its constituent subdivisions or agencies, or of any national of such State arising out of consent to the jurisdiction of the Centre given before the date of entry into force of the amendment.

Chapter X Final provisions

Article 67

This Convention shall be open for signature on behalf of States members of the Bank. It shall also be open for signature on behalf of any other State which is a party to the Statute of the International Court of Justice and which the Administrative Council, by a vote of two-thirds of its members, shall have invited to sign the Convention.

Article 68

- (1) This Convention shall be subject to ratification, acceptance or approval by the signatory States in accordance with their respective constitutional procedures.
- (2) This Convention shall enter into force 30 days after the date of deposit of the twentieth instrument of ratification, acceptance or approval. It shall enter into force for each State which subsequently deposits its instrument of ratification, acceptance or approval 30 days after the date of such deposit.

Article 69

Each Contracting State shall take such legislative or other measures as may be necessary for making the provisions of this Convention effective in its territories.

Article 70

This Convention shall apply to all territories for whose international relations a Contracting State is responsible, except those which are excluded by such State by written notice to the depositary of this Convention either at the time of ratification, acceptance or approval or subsequently.

Article 71

Any Contracting State may denounce this Convention by written notice to the depositary of this Convention. The denunciation shall take effect six months after receipt of such notice.

Article 72

Notice by a Contracting State pursuant to Articles 70 or 71 shall not affect the rights or obligations under this Convention of that State or of any of its constituent subdivisions or agencies or of any national of that State arising out of consent to the jurisdiction of the Centre given by one of them before such notice was received by the depositary.

Article 73

Instruments of ratification, acceptance or approval of this Convention and of amendments thereto shall be deposited with the Bank which shall act as the depositary of this Convention. The depositary shall transmit certified copies of this Convention to States members of the Bank and to any other State invited to sign the Convention.

Article 74

The depositary shall register this Convention with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations and the Regulations thereunder adopted by the General Assembly.

Article 75

The depositary shall notify all signatory States of the following—

- (a) signatures in accordance with Article 67;
- (b) deposits of instruments of ratification, acceptance and approval in accordance with Article 73;
- (c) the date on which this Convention enters into force in accordance with Article 68;

- (d) exclusions from territorial application pursuant to Article 70;