



THE SENATE FEDERAL REPUBLIC OF NIGERIA VOTES AND PROCEEDINGS

Thursday, 1st February, 2018

1. The Senate met at 11:02 a.m. The Deputy Senate President read Prayers.

2. **Votes and Proceedings:**

The Senate examined the Votes and Proceedings of Wednesday, 31st January, 2018.

Question was put and the Votes and Proceedings were approved.

3. **Announcement:**

Acknowledgment:

The Deputy Senate President acknowledged the presence of Staff and Students of Living Word Magnet School, Gwarinpa, Abuja who were at the gallery to observe Senate Proceedings.

4. **Petition:**

Rising on Rule 41, Senator Sunny O. Ogbuoji (*Ebonyi South*) drew the attention of the Senate to a petition from his constituent, Okereke C. Samuel, against the Nigerian Navy, over his reinstatement. He urged the Senate to look into the matter.

Petition laid and accordingly referred to the Committee on Ethics, Privileges and Public Petitions [Rule 41(3)] to report within two (2) weeks.

5. **Presentation of Bills:**

(i) Public Service Efficiency Bill, 2018 (SB. 610) — *Read the First Time.*

(ii) Federal College of Education (Technical) Korinya, Benue State. (Establishment, etc.) Bill, 2018 (SB. 612) — *Read the First Time.*

(iii) Federal College of Education Omuo-Ekiti, Ekiti State (Establishment, etc.) Bill, 2018 (SB.611) — *Read the First Time.*

(iv) National Institute for Counter Terrorism (Establishment, etc.) Bill, 2018 (SB. 613) — *Read the First Time.*

6. **Committee on Public Accounts:**

Report on the Federal Audit Service Commission Bill, 2018 (HB. 107):

Motion made: That the Senate do receive the Report of the Committee on Public Accounts on the Federal Audit Service Commission Bill, 2018 (*Senator Matthew A. Urhohide — Edo South*).

Question put Agreed to.

Report Laid.

7. **Motion:**

Urgent need to support the Centre for Research, Control and Treatment of Lassa Fever disease in Nigeria:

Motion made: That the Senate notes with sadness the outbreak of Lassa fever presently ravaging many States of the Federation viz: Edo, Ondo, Ebonyi, Nasarawa, Imo, Kogi, Bauchi, Anambra, Benue, Federal Capital Territory, Abia, Ekiti and Delta;

notes further that since the outbreak of the disease on the 5th January, 2018 when the first case was reported, the geometric rise in suspected cases have risen to 363 as against lesser number of cases recorded in previous years;

further notes that of the 363 cases, 81 persons tested positive, 44 persons admitted at the Institute of Lassa Fever Research and Control, Irrua Specialist Teaching Hospital (ISTH), while 11 death of which 3 are Health Workers have so far been recorded in the Lassa Fever Ward of the Centre;

observes that lassa fever, according to World Health Organization is an acute viral haemorrhagic illness of 2 to 21 days duration that occurs in West Africa and is transmitted to human through contact with or exposure to food or household items contaminated with rodent urine or faeces;

further observes that person to person infection and laboratory transmission can also occur particularly in hospitals lacking adequate infection prevention and control equipments;

aware that the Institute is the only Centre in Nigeria known for excellence in the management, control and treatment of lassa fever in Nigeria. The Centre received samples from all states referred above for the purpose of examination and treatment. The Centre also engages in the training of Healthcare workers, i.e. Doctors, Nurses and Laboratory Technologist on the management of lassa fever in Nigeria. Last year alone, the Center trained 67 Health workers from 15 states with reported cases of outbreak;

worried that the Center is presently overwhelmed by the number of samples received including patients on admission which has stretched the bed space, beddings, Dialysis Machine, X-Ray equipment, Ultra Sound Scan, ECG Machine, Ventilator Monitors, human and financial resources beyond limit;

worried further that the Centre is confronted with the challenges of:

- Inadequate protective instruments for the Health Workers engaged in the management of victims;
- Inadequate drugs i.e Ribavirin for patient's treatment;
- Inadequate disinfectants and other infection prevention and control consumables; and
- Lack of operational vehicles, Public Address System and Health Education Materials for contact tracing and community sensitization.

Accordingly resolves to:

- (i) mandate the Committees of Health (Secondary and Tertiary); and Primary Healthcare and Communicable Diseases to investigate steps taken by the Ministry of Health to curb the spread of the disease;
- (ii) urge the Federal Government through the Ministry of Health to urgently provide the Centre all necessary equipment to enable it meet its responsibilities to Nigerians seeking medical care at the Centre;
- (iii) urge the Federal Ministry of Information and National Orientation to engage in the sensitization and education of the public on the prevention, control and treatment of Lassa fever; and
- (iv) urge the National Emergency Management Agency (NEMA) to quickly visit the Centre for on-the-spot assessment with a view to providing relief materials for the victims at the Centre (Senator Clifford A. Ordia — Edo Central).

*Debate:****Proposed Resolution (i):***

Question: That the Senate do mandate the Committees of Health (Secondary and Tertiary); and Primary Health care and Communicable Diseases to investigate steps taken by the Ministry of Health to curb the spread of the disease — *Agreed to.*

Proposed Resolution (ii):

Question: That the Senate do urge the Federal Government through the Ministry of Health to urgently provide the Centre all necessary equipment to enable it meet its responsibilities to Nigerians seeking medical care at the Centre — *Agreed to.*

Proposed Resolution (iii):

Question: That the Senate do urge the Federal Ministry of Information and National Orientation to engage in the sensitization and education of the public on the prevention, control and treatment of lassa fever — *Agreed to.*

Proposed Resolution (iv):

Question: That the Senate do urge the National Emergency Management Agency (NEMA) to quickly visit the Centre for on-the-spot assessment with a view to providing relief materials for the victims at the Centre — *Agreed to.*

Additional Proposed Resolutions:

Insert Additional Proposed Resolutions as follows:

- (i) “That the Senate do urge the National Assembly to provide adequate funds in 2018 budget for the treatment of lassa fever” (*Senator Aidoko A. Ali — Kogi East*).

Question that the amendment be made, put and agreed to.

- (ii) “That the Senate do urge the Federal Government to establish additional centres in the Six (6) Geo-political zones for the treatment of lassa fever” (*Senator Robert A. Boroffice — Ondo North*).

Question that the amendment be made, put and agreed to.

Resolved:

That the Senate:

- (i) mandate the Committees of Health (Secondary and Tertiary); and Primary Healthcare and Communicable Diseases to investigate steps taken by the Ministry of Health to curb the spread of the disease;
- (ii) urge the Federal Government through the Ministry of Health to urgently provide the Centre all necessary equipment to enable it meet its responsibilities to Nigerians seeking medical care at the Centre;
- (iii) urge the Federal Ministry of Information and National Orientation to engage in the sensitization and education of the public on the prevention, control and treatment of lassa fever;
- (iv) urge the National Emergency Management Agency (NEMA) to quickly visit the Centre for on-the-spot assessment with a view to providing relief materials for the victims at the Centre;

- (v) urge the National Assembly to provide adequate funds in 2018 budget for the treatment of lassa fever; and
- (vi) urge the Federal Government to establish additional centres in the Six (6) Geo-political zones for the treatment of lassa fever (S/Res/178/03/18).

8. Committee on Judiciary, Human Rights and Legal Matters:

Report on the Arbitration and Conciliation Act CAP A18 LFN 2004 (Repeal and Re-enactment) Bill, 2018 (SB. 427):

Motion made: That the Senate do consider the Report of the Committee on Judiciary, Human Rights and Legal Matters on the Arbitration and Conciliation Act CAP A18 LFN 2004 (Repeal and Re-enactment) Bill, 2018 (*Senator David Umaru — Niger East*).

Question put and agreed to.

Report presented.

Motion made: That the Senate do resolve into the Committee of the Whole to consider the Report (*Senate Leader*).

Question put and agreed to.

(SENATE IN THE COMMITTEE OF THE WHOLE)

CONSIDERATION OF A BILL FOR AN ACT TO REPEAL THE ARBITRATION AND CONCILIATION ACT CAP A18, LAWS OF THE FEDERATION OF NIGERIA, 2004 AND ENACT THE ARBITRATION AND CONCILIATION ACT, TO PROVIDE A UNIFIED LEGAL FRAMEWORK FOR THE FAIR AND EFFICIENT SETTLEMENT OF COMMERCIAL DISPUTES BY ARBITRATION AND CONCILIATION; MAKE APPLICABLE THE CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS (NEW YORK CONVENTION) TO ANY AWARD MADE IN NIGERIA OR IN ANY CONTRACTING STATE, ARISING OUT OF INTERNATIONAL COMMERCIAL ARBITRATION; AND FOR RELATED MATTERS.

PART I — ARBITRATION

Definition and Form of Arbitration Agreement

Clause 1: General Principles and Scope of Application.

The provisions of this Part are founded on the following principles, and shall be construed accordingly —

- a. the object of arbitration is to obtain the fair resolution of disputes by an impartial tribunal without unnecessary delay or expense;
- b. the parties are free to agree on how their disputes are resolved, subject only to such considerations relating to public interest and public policy;
- c. an arbitration agreement between parties for the settlement of their dispute shall be binding upon and enforceable against each of the parties to the exclusion of any other dispute resolution method unless the parties otherwise provide or the agreement is null and void;
- d. the parties, arbitrators, arbitral institutions, appointing authorities and the Court shall do all things necessary for the proper and expeditious conduct of the arbitral proceedings.

Committee's Recommendation:

That the provision in Clause 1 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 1 do stand part of the Bill, put and agreed to.

Clause 2: Form of Arbitration Agreement.

- (1) Arbitration agreement is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, which may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
- (2) The Arbitration agreement shall be in writing.
- (3) An arbitration agreement is in writing if its content is recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct, or by other means.
- (4) The requirement that an arbitration agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference.
- (5) An arbitration agreement is in writing if it is contained in an exchange of points of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other.
- (6) For the avoidance of doubt, the reference in a contract or a separate arbitration agreement to a document containing an arbitration clause constitutes an arbitration agreement in writing, provided that the reference is such as to make that clause part of the contract or the arbitration agreement.
- (7) For the purpose of this section —
"data message" means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy; and
"electronic communication" means any communication that the parties make by means of data messages;

Committee's Recommendation:

That the provision in Clause 2 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 2 do stand part of the Bill, put and agreed to.

Clause 3: Arbitration Agreement Irrevocable Except by Agreement or Leave of Court.

An arbitration agreement shall be irrevocable except by agreement of the parties or by leave of the Court or a Judge in Chambers.

Committee's Recommendation:

That the provision in Clause 3 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 3 do stand part of the Bill, put and agreed to.

Clause 4: Death or Change in Status of Party.

- (1) An Arbitration Agreement shall not be invalid by reason of the death of any party to the agreement.
- (2) The authority of an arbitrator shall not be revoked by the death, bankruptcy, insolvency or other change in circumstance of any party by whom the arbitrator was appointed
- (3) Nothing in this Section shall be taken to affect the operation of any law by virtue of which any right of action is extinguished by the death of a person.
- (4) For the purposes of this Section, 'death' shall include the meaning ascribed to it in Section 83 (1) of this Bill.

Committee's Recommendation:

That the provision in Clause 4 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 4 do stand part of the Bill, put and agreed to.

Clause 5: Power to Stay Court Proceedings on the Same Substantive Claim.

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

Composition of Arbitral Tribunal**Committee's Recommendation:**

That the provision in Clause 5 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 5 do stand part of the Bill, put and agreed to.

Clause 6: Number of Arbitrators.

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

Committee's Recommendation:

That the provision in Clause 6 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 6 do stand part of the Bill, put and agreed to.

Clause 7: Appointment of Arbitrators.

- (1) No person shall be precluded by reason of his or her nationality from acting as an arbitrator, unless otherwise agreed by the parties.
- (2) The parties may agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of subsections (4) and (5) of this section.
- (3) Subject to section 58 of this Bill, where no agreement is reached under section 6 of this section —
 - (a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator or, if the two arbitrators fail to agree on the third arbitrator within thirty (30) days of their appointment, the appointment shall be made, upon request of a party, by the appointing authority designated by the parties or, failing such designation, by any arbitral institution in Nigeria or by the Court;
 - (b) in an arbitration with a sole administrator, if the parties are unable to agree on the arbitrator within thirty (30) days after the receipt of a written communication containing a request for the dispute to be referred to arbitration by the other party or parties, the arbitrator shall be appointed, upon request of a party, by the appointing authority designated by the parties or, failing such designation, by any arbitral institution in Nigeria or by the Court;
 - (c) where the arbitration agreement entitles each party to nominate an arbitrator; and where the parties to the dispute are more than two and such parties have not all agreed in writing within thirty (30) days of the receipt of a written communication containing a request for the dispute to be referred to arbitration, that the disputing parties represent two separate sides for the formation of the arbitral tribunal as Claimant and Respondent respectively, then the appointing authority designated by the parties or, failing such designation, any arbitral institution in Nigeria or the Court shall, upon request of a party, have the power to appoint the arbitral tribunal without regard to any party's nomination;
 - (d) when the designated appointing authority or, failing such designation, any arbitral institution in Nigeria or the Court is requested to appoint an arbitrator pursuant to the provisions of this section, the party which makes the request shall send to the appointing authority, arbitral institution or Court a copy of the request for a dispute to be referred to arbitration, a copy of the contract out of or in relation to which the dispute has arisen and a copy of the arbitration agreement if it is not contained in the contract, and the appointing authority, arbitral institution or Court may require from either party such other information as it deems necessary to fulfil its functions under this Act;
 - (e) where any party proposes the names of one or more persons for appointment as arbitrators, their full names, addresses and nationalities shall be indicated, together with a description of their qualifications.
- (4) Save as otherwise specifically provided under this Bill, where, under an appointment procedure agreed upon by the parties —
 - (i) a party fails to act as required under the procedure; or

- (ii) the parties or the two party-appointed arbitrators are unable to reach agreement as required under the procedure; or
 - (iii) a third party, including an institution, fails to perform any duty imposed on it under the procedure, any party may request the Court to take the necessary measure, unless the appointment procedure agreed upon by the parties provides other means for securing the appointment.
- (5) The appointing authority, arbitral institution or Court exercising its power of appointment under this section shall make the required appointment within thirty (30) days of the request and shall have due regard to any qualifications required of the arbitrator by the arbitration agreement and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator, and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.

Committee's Recommendation:

That the provision in Clause 7 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 7 do stand part of the Bill, put and agreed to.

Clause 8: Umpire.

- (1) Where the parties have agreed that there is to be an umpire, they may agree what the functions of the umpire are to be, and in particular —
 - (a) whether the umpire is to attend the proceedings, and
 - (b) when the umpire is to replace the other arbitrators as the tribunal with power to make decisions, orders and awards.
- (2) If or to the extent that there is no such agreement, the following provisions apply —
 - (a) The umpire shall attend the proceedings and be supplied with the same documents and other materials as are supplied to the other arbitrators.
 - (b) Decisions, orders and awards shall be made by the other arbitrators unless and until they cannot agree on a matter relating to the arbitration. In that event they shall forthwith give notice in writing to the parties and the umpire, whereupon the umpire shall replace them as the tribunal with power to make decisions, orders and awards as if he were sole arbitrator.
 - (c) If the arbitrators cannot agree or if any of them fails to join in the giving of notice, any party to the arbitral proceedings may (upon notice to the other parties and to the tribunal) apply to the Court, which may order that the umpire shall replace the other arbitrators as the tribunal with power to make decisions, orders and awards as if he were sole arbitrator.
 - (d) The provisions of this Act in relation to the appointment, challenge and removal of a third and presiding arbitrator shall also apply to the appointment, challenge and removal of an umpire.

Committee's Recommendation:

Leave out the provision in Clause 8 (*Senator David Umaru — Niger East*) — *Agreed to.*

Clause 9: Grounds for Challenge.

- (1) When a person is approached in connection with his or her possible appointment as an arbitrator, he or she shall 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 unless they have already been informed of them by him or her.
- (2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to the Arbitrator's impartiality or independence, or does not possess qualifications agreed to by the parties, provided that a party may challenge the arbitrator it appointed, or in whose appointment it has participated, only for reasons of which it becomes aware after the appointment has been made.

Committee's Recommendation:

That the provision in Clause 9 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 9 do stand part of the Bill, put and agreed to.

Clause 10: Challenge Procedure.

- (1) The parties may agree on a procedure for challenging an arbitrator, subject to the provisions of subsection (3) of this Section
- (2) Where no such agreement is reached between the parties under subsection (1) of this section, a party who intends to challenge an arbitrator shall, within fourteen (14) days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in Section 8 (2), send a written statement of the reasons for the challenge to the arbitral tribunal and unless the challenged arbitrator withdraws from his or her office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.
- (3) If a challenge under any procedure agreed upon by the parties or under the procedure of subsection (2) of this Section is not successful, the challenging party may request the Court, within thirty (30) days after having received notice of the decision rejecting the challenge, to decide on the challenge, and while such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.
- (4) Where the Court removes an arbitrator, it may make such order as it thinks fit with respect to the arbitrator's entitlement (if any) to fees or expenses, or the refund of any fees or expenses already paid.
- (5) The arbitrator concerned may appear and be heard by the Court, with or without legal representation, before the Court makes any decision under subsections (3) and (4) this Section.

Committee's Recommendation:

That the provision in Clause 10 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 10 do stand part of the Bill, put and agreed to.

Clause 11: Failure or Impossibility to Act.

- (1) Where, by reasons of law or fact an arbitrator becomes unable to perform his or her functions or act without undue delay, the mandate of the arbitrator shall be terminated upon withdrawal by the arbitrator or by agreement of the parties on the termination and where there is any dispute between the parties as to the grounds upon which the mandate is sought to be determined, any party may request the Court to decide on the termination of the arbitrator's mandate.
- (2) If, under this Section or Section 9 (2), an arbitrator withdraws from his or her office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this Section or Section 8 (2).

Committee's Recommendation:

That the provision in Clause 11 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 11 do stand part of the Bill, put and agreed to.

Clause 12: Appointment of Substitute Arbitrator.

Where the mandate of an arbitrator terminates under Section 9 or 10 or because of his or her withdrawal from office for any other reason or because of the revocation of his or her mandate, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

Committee's Recommendation:

That the provision in Clause 12 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 12 do stand part of the Bill, put and agreed to.

Clause 13: Withdrawal, Death and Cessation of Office of an Arbitrator.

- (1) The parties may agree with an arbitrator as to the consequences of the arbitrator's withdrawal from his or her office as regards—
 - (a) the arbitrator's entitlement, if any, to fees or expenses; and
 - (b) any liability incurred by the arbitrator.
- (2) Where there is no such agreement referred to in subsection (1) of this section, the following provisions shall apply —
 - (a) an arbitrator who withdraws from his or her appointment may, upon notice to the parties, apply to the appointing authority designated by the parties or, failing such designation, apply to the Court —
 - (i) to grant the arbitrator relief from any liability thereby incurred by the arbitrator; and
 - (ii) to make such order as it thinks fit with respect to the arbitrator's entitlement, if any, to fees or expenses or the refund of any fees or expense already paid
 - (b) If the appointing authority or, where applicable, the Court is satisfied that in all the circumstances it was reasonable for the arbitrator to withdraw, it may grant such relief as mentioned in subsection (2) (a) of this section on such terms as it thinks fit.
- (3) Subject to subsection (6) of this section, the authority of an arbitrator is personal and ceases upon the death of such arbitrator

- (4) Where the mandate of an arbitrator terminates under section 10 of this Bill, or the arbitrator withdraws or dies, the parties may agree —
 - (a) whether and if so, to what extent the previous proceedings should stand; and
 - (b) in the event of the death of the arbitrator, the sum, if any, to be paid to the estate of the arbitrator for work done and the refund of expenses incurred.
- (5) If and to the extent that there is no such agreement, the Tribunal, when reconstituted, shall determine —
 - (a) whether and, if so, to what extent the previous proceedings shall stand;
 - (b) the sum (if any) payable to the estate of the deceased arbitrator; and
- (6) The fact that an arbitrator ceases to hold office, shall not affect any appointment made by him, either alone or jointly, whether it be the appointment of another arbitrator or a presiding arbitrator.

Committee's Recommendation:

That the provision in Clause 13 be retained (*Senator David Umaru — Niger East*) — Agreed to.

Question that Clause 13 do stand part of the Bill, put and agreed to.

Clause 14: Appointment, Challenge and Removal of Umpire.

The provisions of this Act in relation to the appointment, challenge, resignation, removal or replacement of an arbitrator shall also apply to the appointment, challenge, resignation, removal or replacement of an umpire.

Committee's Recommendation:

Leave out the provision in Clause 14 (*Senator David Umaru — Niger East*) — Agreed to.

Immunity

Clause 15: Immunity of Arbitrator, Appointing Authority and Arbitral Institution.

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

Committee's Recommendation:

That the provision in Clause 15 be retained (*Senator David Umaru — Niger East*) — Agreed to.

Question that Clause 15 do stand part of the Bill, put and agreed to.

Jurisdiction of Arbitral Tribunal.**Clause 16: Competence of Arbitral Tribunal to Rule on its Jurisdiction.**

- (1) The arbitral tribunal shall rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement.
- (2) For 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 the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.
- (3) In any arbitral proceedings, a plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the points of defence and party is not precluded from raising such a plea by the fact that it has appointed a participated in the appointment of, an arbitrator.
- (4) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings and the arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.
- (5) The arbitral tribunal may rule on any plea referred to it under subsection (3) of this Section, either as a preliminary question or in an award on the merits and such ruling shall be final and binding.
- (6) Where the arbitral tribunal rules upon its jurisdiction as a preliminary question, it may continue with the proceedings and make an award notwithstanding that a party had recourse to a Court in respect of such ruling except where the court makes an order staying the proceedings.

Committee's Recommendation:

That the provision in Clause 16 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 16 do stand part of the Bill, put and agreed to.

Clause 17: Rules Applicable to Substance of Dispute.

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

Committee's Recommendation:

That the provision in Clause 17 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 17 do stand part of the Bill, put and agreed to.

Interim Measures of Protection and Emergency Relief.**Clause 18: Appointment of an 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 any 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 at least Ten (10) copies of the application to the arbitral institution or the Court as the case may be and upon appointment of the emergency arbitrator, the arbitral institution or the court shall forward a copy of the said application to the emergency arbitrator so appointed.
- (3) The application shall include the following information —
 - (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(s) and, in particular, the arbitration agreement(s).
- (4) The application may contain such other documents or information as the applicant considers appropriate or as may contribute to the efficient examination of the application.
- (5) If the arbitral institution or Court determines that it should accept the application, it shall, unless the parties otherwise agree, appoint an emergency arbitrator within two (2) business days after the date the application is received.
- (6) Once the Emergency Arbitrator has been appointed, the arbitral institution or Court shall 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 two (2) business 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.

- (7) Every emergency arbitrator shall be and remain impartial and independent of the parties involved in the dispute.
- (8) A prospective emergency arbitrator shall sign and deliver to the parties a statement of acceptance, availability, impartiality and independence.
- (9) This Section and Article 27 of the First Schedule to this Act are not intended to prevent any party from seeking urgent interim measures from a Court under Section 21 of this Act, at any time prior to making an application for such measures, and in appropriate circumstances thereafter pursuant to this Act. Any application for such measures from a competent Court shall not be deemed to be an infringement or a waiver of the arbitration agreement.
- (10) Section and Article 27 of the First Schedule to this Bill are not intended to prevent any party from seeking emergency interim measures from a Court under Section 19 of this Bill, at any time prior to making an application for such measures, and in appropriate circumstances thereafter pursuant to this Bill.
- (11) Any application for such measures from a competent Court shall not be deemed to be an infringement or a waiver of the arbitration agreement.

Committee's Recommendation:

That the provision in Clause 18 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 18 do stand part of the Bill, put and agreed to.

Clause 19: Challenge of an Emergency Arbitrator.

- (1) Unless the parties otherwise agree —
 - (a) A challenge against the appointment of the Emergency Arbitrator must be made within three (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.
 - (b) The provisions of this Bill relating to the grounds for challenge of an arbitrator (section 8) shall also apply to the grounds for challenge of an emergency arbitrator.
- (2) The arbitral institution or Court that appointed the Emergency Arbitrator will decide the challenge after a reasonable opportunity has been afforded to the Emergency Arbitrator and the parties to provide submissions in writing, but no later than three business days after the date of the challenge.
- (3) Where an emergency arbitrator dies or has been successfully challenged or has been otherwise removed, or has withdrawn, the arbitral institution or Court shall appoint a substitute emergency arbitrator within two (2) business days thereof.
- (4) Where the emergency arbitrator is replaced, the Emergency Relief proceedings shall resume at the stage where the Emergency Arbitrator was replaced or ceased to perform his or her functions, unless the substitute Emergency Arbitrator decides otherwise.

Committee's Recommendation:

That the provision in Clause 19 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 19 do stand part of the Bill, put and agreed to.

Clause 20: Seat of the Emergency Relief Proceedings.

- (1) If 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 the arbitration, the arbitral institution or Court that appointed the Emergency Arbitrator shall fix the seat of the Emergency Relief Proceedings, without prejudice to the arbitral tribunal's determination of the seat of arbitration pursuant to Section 32 of this Bill.

Committee's Recommendation:

That the provision in Clause 20 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 20 do stand part of the Bill, put and agreed to.

Clause 21: Power of Court to Grant Interim Measures of Protection.

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

Committee's Recommendation:

That the provision in Clause 21 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 21 do stand part of the Bill, put and agreed to.

Clause 22: Power of Arbitral Tribunal to Grant Interim Measures.

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

Committee's Recommendation:

That the provision in Clause 22 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 22 do stand part of the Bill, put and agreed to.

Clause 23: Conditions for Grant of Interim Measures.

- (1) The party requesting an interim measure under Section 20 (2) (a), (b) and (c) shall satisfy the arbitral tribunal that —
 - (a) Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such damage substantially outweighs the damage 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, provided that any determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.
- (2) With regard to a request for an interim measure under section 20 (2)(d), the requirements in paragraphs (a) and (b) of subsection 1 of this Section shall apply only to the extent the arbitral tribunal considers appropriate.

Committee's Recommendation:

That the provision in Clause 23 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 23 do stand part of the Bill, put and agreed to.

Clause 24: Applications for 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) The arbitral tribunal may grant a preliminary order provided it considers that prior disclosure of the request for the interim measure to the party against whom it is directed risks frustrating the purpose of the measure.
- (3) The conditions defined under Section 21 (1) of this Bill apply to any preliminary order, provided that the harm to be assessed under Section 21 (1)(a) is the damage likely to result from the order being granted or not.

Committee's Recommendation:

That the provision in Clause 24 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 24 do stand part of the Bill, put and agreed to.

Clause 25: Specific Regime for Preliminary Orders.

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

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

Committee's Recommendation:

That the provision in Clause 25 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 25 do stand part of the Bill, put and agreed to.

Clause 26: Modification, Suspension and Termination of Interim Measures and Preliminary Orders

The arbitral tribunal may modify, suspend or terminate an interim measure or a preliminary order it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal's own initiative including but not limited to where —

- (a) important facts were concealed from the Tribunal;
- (b) the interim measures or preliminary order was fraudulently obtained;
- (c) facts come to the knowledge of the tribunal, which, if the tribunal had known at the material time, it would not have granted the order; and it is just and equitable in the circumstance to modify, suspend or terminate the order.

Committee's Recommendation:

That the provision in Clause 26 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 26 do stand part of the Bill, put and agreed to.

Clause 27: Order by the Arbitral Tribunal for Provision of Security.

- (1) The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.
- (2) The arbitral tribunal shall require the party applying for a preliminary order to provide security in connection with the order unless the arbitral tribunal considers it inappropriate or unnecessary to do so.

Committee's Recommendation:

That the provision in Clause 27 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 27 do stand part of the Bill, put and agreed to.

Clause 28: Disclosure of Material Change in Circumstances.

- (1) The party requesting an interim measure shall promptly disclose any material change in the circumstances upon which the measure was requested or granted.
- (2) The party applying for a preliminary order shall disclose to the arbitral tribunal all circumstances that are likely to be relevant to the 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.
- (3) The party applying shall have the same disclosure obligation with respect to the preliminary order that a requesting party has with respect to an interim measure under subsection (1) of this Section.

Committee's Recommendation:

That the provision in Clause 28 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 28 do stand part of the Bill, put and agreed to.

Clause 29: Costs and Damages.

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

Committee's Recommendation:

That the provision in Clause 29 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 29 do stand part of the Bill, put and agreed to.

Clause 30: Recognition and Enforcement of Interim Measures.

- (1) An interim measure issued by an arbitral tribunal shall be binding and, unless otherwise provided by the arbitral tribunal, shall, subject to Section 29, be enforced upon application to the Court, irrespective of the country in which it was issued, subject to Section 29 of this Bill.
- (2) The party who is seeking or has obtained recognition or enforcement of an interim measure shall promptly inform the Court of any termination, suspension or modification of that interim measure.
- (3) The Court to which a request for recognition and enforcement of an interim measure is presented may, if it considers it proper, order the requesting party to provide appropriate security if the arbitral tribunal has not already made a determination with respect to security or where such a decision is necessary to protect the rights of third parties.

Committee's Recommendation:

That the provision in Clause 30 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 30 do stand part of the Bill, put and agreed to.

Clause 31: Grounds for Refusing Recognition or Enforcement of Interim Measures.

- (1) Recognition or enforcement of an interim measure may be refused only —
- (a) at the request of the party against whom it is invoked if the Court is satisfied that —
 - (i) such refusal is warranted on the grounds set forth in Section 57 (2) (a) (i), (ii), (iii), (iv), (v), (vi) or (vii) of this Bill, or;
 - (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 a competent authority in the Country in which the arbitration takes place or under the law of which that interim measure was granted;
 - (b) if the Court finds that —
 - (i) the interim measure is incompatible with the powers conferred upon the Court, unless the Court decides to reformulate the interim measure to the extent necessary to adapt it to its own powers and procedures for the purposes of enforcing that interim measure and without modifying its substance; or
 - (ii) any of the grounds set forth in Section 57 (2)(b) apply to the recognition and enforcement of the interim measure.
- (2) Any determination made by the Court on any ground in subsection (1) of this section, shall be effective only for the purposes of the application to recognize and enforce the interim measure.
- (3) The Court where recognition or enforcement is sought shall not, in making that determination, undertake a review of the substance of the interim measure.

Committee's Recommendation:

That the provision in Clause 31 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 31 do stand part of the Bill, put and agreed to.

Conduct of Arbitral Proceedings.**Clause 32: Equal Treatment of Parties.**

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

- (a) treated with equality and that each party is given a full opportunity of presenting its case.
- (b) Accorded a fair resolution of the dispute without unnecessary delay or expense.

Committee's Recommendation:

That the provision in Clause 32 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 32 do stand part of the Bill, put and agreed to.

Clause 33: Arbitral Proceedings.

- (1) Subject to the provisions of this Bill, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings, otherwise, the arbitral proceedings shall be in accordance with the procedure contained in the Arbitration Rules set out in the First Schedule to this Bill.
- (2) Where the agreed procedure or Rules referred to in subsection (1) of this section contain no provision in respect of any matter related to or connected with particular arbitral proceedings, the arbitral tribunal shall conduct the arbitral proceedings in such a manner as to be consistent with section 30 of this Bill.
- (3) The power conferred on the arbitral tribunal under subsection (2) of this section shall include the power to determine the admissibility, relevance, materiality and weight of any evidence placed before it.

Committee's Recommendation:

That the provision in Clause 33 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 33 do stand part of the Bill, put and agreed to.

Clause 34: The Seat and Place of the Arbitration.

- (1) The seat of the arbitration shall be designated —
 - (a) by the parties to the arbitration agreement, or failing such agreement;
 - (b) by any arbitral or other institution or person vested authorised by the parties with powers in that regard, or failing such authorisation;
 - (c) by the arbitral tribunal if so authorized by the parties;
 - (d) in the absence of any such designation, it shall be determined, having regard to the parties' agreement and all the relevant circumstances.
- (2) Where the parties have not designated the seat of the arbitration and they have not authorized any arbitral or other institution or the arbitral tribunal to designate the seat of the arbitration, then the seat of the arbitration shall be any place in Nigeria as the arbitral tribunal may determine, unless the arbitral tribunal decides that a place in another country should be the seat of the arbitration having regard to all the relevant circumstances, including, but not limited to —
 - (a) the country with which the parties and the transaction have the closest connection;
 - (b) the law that the parties have selected to govern their substantive rights under the contract; and
 - (c) any law that the parties may have chosen to govern the arbitration.

- (3) Notwithstanding the provisions of subsections (1) and (2) of this Section, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any 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.
- (4) In this section the expression "seat of arbitration" means the juridical seat of the arbitration for purposes of determination of the law that will govern the arbitration.

Committee's Recommendation:

That the provision in Clause 34 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 34 do stand part of the Bill, put and agreed to.

Clause 35: Commencement of Arbitral Proceedings.

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

Committee's Recommendation:

That the provision in Clause 35 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 35 do stand part of the Bill, put and agreed to.

Clause 36: Application of Statutes of Limitation to Arbitral Proceedings.

- (1) The Limitation Act applies to arbitral proceedings as they apply to judicial proceedings.
- (2) In computing the time prescribed by the Limitation Act for the commencement of judicial, arbitral or other proceedings in respect of a dispute which was the subject matter of —
 - (a) an award which the court orders to be set aside or declares to be of no effect, or
 - (b) the affected part of an award which the court orders to be set aside in part, or declares to be in part of no effect,the period between the commencement of the arbitration and the date of the order referred to in paragraph (a) or (b) of subsection (1) of this section shall be excluded.
- (3) In determining for the purposes of the Limitation Laws Act when a cause of action accrued, any provision that an 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

Committee's Recommendation:

That the provision in Clause 36 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 36 do stand part of the Bill, put and agreed to.

Clause 37: Language to be Used in Arbitral Proceedings.

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

Committee's Recommendation:

That the provision in Clause 37 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 37 do stand part of the Bill, put and agreed to.

Clause 38: Points of Claim and Defence.

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

Committee's Recommendation:

That the provision in Clause 38 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 38 do stand part of the Bill, put and agreed to.

Clause 39: Power of the Arbitral Tribunal as to Remedies.

- (1) The parties may agree on the powers exercisable by the arbitral tribunal as regards remedies.
- (2) Unless otherwise agreed by the parties, the arbitral tribunal has the following powers —
 - (a) it may make a declaration as to any matter to be determined in the proceedings.

- (b) it may order the payment of a sum of money, in any currency claimed by a party.
- (c) The tribunal has the same powers as the court —
 - (i) to order a party to do or refrain from doing anything;
 - (ii) to order specific performance of a contract (other than a contract relating to land);
 - (iii) to order the rectification, setting aside or cancellation of a deed or other document.

Committee's Recommendation:

That the provision in Clause 39 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 39 do stand part of the Bill, put and agreed to.

Clause 40: Hearing and Written Proceedings.

- (1) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether the arbitral proceedings shall be conducted —
 - (a) by holding oral hearings for the presentation of evidence or oral arguments; or
 - (b) on the basis of documents or other materials; or
 - (c) by a combination of the methods described in paragraphs (a) and (b) of this subsection, and unless the parties have agreed that no hearing be held, the Arbitral Tribunal shall hold such hearings at an appropriate stage of the proceedings if requested so to do by any of the party.
- (2) The arbitral tribunal shall give the parties sufficient advance notice of any hearing and of any meeting of the arbitral tribunal, held for the purposes of inspection of documents, goods, or other property.
- (3) Except on the application for a Preliminary Order under Section 24 of this Act, every statement, document or other information supplied to the arbitral tribunal or other authority by one party shall be communicated to the other party.
- (4) Any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be made available to the parties.
- (5) Unless otherwise agreed by the parties, the arbitral tribunal may for the purposes of the arbitral proceedings concerned —
 - (a) direct that a party to an arbitration agreement or a witness who gives evidence in proceedings before the arbitral tribunal be examined on oath or on affirmation, and
 - (b) administer oaths or affirmations for the purposes of the examination.

Committee's Recommendation:

That the provision in Clause 40 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 40 do stand part of the Bill, put and agreed to.

Clause 41: Consolidation and Concurrent Hearing.

- (1) The Parties may agree —
 - (a) that the an arbitral proceedings shall be consolidated with other arbitral proceedings between the same parties, or
 - (b) that for the purpose of two or more proceedings between the same parties, concurrent hearings shall be held on such terms as may be agreed.
- (2) Unless the parties agree to confer such power on the tribunal, the arbitral tribunal has no power to order consolidation of proceedings or concurrent hearings
- (3) 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, whether one or more arbitrators have been nominated or confirmed in more than one of the arbitral proceedings, and if so, whether the same or different arbitrators have been confirmed or appointed.
- (4) 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.
- (5) The Arbitral Tribunal shall provide copies of such decision to all parties and to any confirmed arbitrator(s) in all arbitral proceedings.
- (6) 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.
- (7) Where the arbitral tribunal decides to consolidate two or more arbitral proceedings, the parties to all such arbitral proceedings shall be deemed to have waived their right to designate an arbitrator and arbitrator(s) in the proceedings into which the other arbitral proceedings are consolidated shall continue with the consolidated proceedings.
- (8) Where any arbitrator ceases to act pursuant to subsection (7) of this section, it shall be without prejudice to —
 - (a) the validity of any act done or order made by that arbitrator before his or her appointment ceased;
 - (b) the arbitrator's entitlement to fees and expenses subject to Section 50 (2) of this Act; and
 - (c) the date when any claim or defence was raised for the purpose of applying any Statutes of Limitation or any similar rule or provision.
- (9) The parties shall not object to the validity and/or enforcement of any award made by the arbitral tribunal in the consolidated proceedings on the basis of the arbitral proceedings under this section.

Committee's Recommendation:

That the provision in Clause 41 be retained (*Senator David Umaru — Niger East*) — Agreed to.

Question that Clause 41 do stand part of the Bill, put and agreed to.

Clause 42: Joinder of Parties.

- (1) The Arbitral Tribunal shall have the power to allow an additional party to be joined to the arbitration, provided that, prima facie, the additional party is bound by the arbitration agreement giving rise to the arbitration.
- (2) The Arbitral Tribunal's decision pursuant to subsection (1) of this Section is without prejudice to its power to subsequently decide any question as to its jurisdiction arising from such decision.
- (3) An existing party to the arbitral proceedings wishing to join an additional party to the arbitration shall submit a Request for Joinder to the tribunal and the Tribunal may fix a time limit for the submission of a Request for Joinder.
- (4) 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 legal arguments supporting the request;
 - (f) the relief or remedy sought; and
 - (g) 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.
- (5) The additional party shall submit to the tribunal an Answer to the Request for Joinder within fifteen (15) days of the receipt of the Request for Joinder.
- (6) 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 and/or lacks jurisdiction over the additional party;
 - (c) the additional party's comments on the particulars set forth in the Request for Joinder, pursuant to Section 40 (4) (a) to (e);
 - (d) the additional party's answer to the relief or remedy sought in the Request for Joinder, pursuant to Section 40 (4) (f);
 - (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.
- (7) A third party wishing to be joined as an additional party to the arbitration shall submit a Request for Joinder to the arbitral tribunal and the provisions of subsection (4) of this Section shall apply to such Request for Joinder.
- (8) 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 Section 40 (3) or 40 (6) and such comments may include but 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, pursuant to Section 40 (4) (a) to (e);
 - (c) answer to the relief or remedy sought in the Request for Joinder, pursuant to Section 40 (4) (f);
 - (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.
- (9) The parties waive any objection, on the 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.
- (10) The parties shall not object to the validity and/or enforcement of any award made by the arbitral tribunal in the consolidated proceedings on the basis of the arbitral proceedings under this section.

Committee's Recommendation:

That the provision in Clause 42 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 42 do stand part of the Bill, put and agreed to.

Clause 43: Default of a Party.

- (1) Unless otherwise agreed by the parties, if, without showing sufficient cause—
 - (a) the claimant fails to state the claim as required under section 36 (1) of this Bill, the arbitral tribunal shall terminate the proceedings provided that where a respondent has a counterclaim or has evinced an intention to file same, the proceedings shall not be terminated; or
 - (b) the respondent fails to state the defence as required under section 36 (1) of this Act, the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegation; or
 - (c) any party fails to appear at a hearing or to produce evidence whether documentary or otherwise, the arbitral tribunal may continue the proceedings and make an award on the evidence before it.

- (2) The parties may agree on any additional powers of the arbitral tribunal for the proper and expeditious conduct of the arbitration in case of a party's default.
- (3) Unless otherwise agreed by the parties, if the arbitral tribunal is satisfied that there has been inordinate and inexcusable delay on the part of the claimant in pursuing the claim and that the delay —
 - (a) gives rise, or is likely to give rise, to a substantial risk that a fair resolution of the issues in that claim will not be possible, or
 - (b) has caused, or is likely to cause serious prejudice to the respondent, the arbitral tribunal may make an award dismissing the claim.
- (4) Unless otherwise agreed by the parties, if without showing cause, a party fails to comply with any order or directions of the arbitral tribunal, the arbitral tribunal may make a peremptory order to the same effect, prescribing such time for compliance with it as the tribunal considers appropriate.
- (5) Unless otherwise agreed by the parties, if a claimant fails to comply with a peremptory order of the arbitral tribunal to provide security for costs, the arbitral tribunal may make an award dismissing its claim.
- (6) Unless otherwise agreed by the parties, if a party fails to comply with any other kind of peremptory order, then the tribunal may —
 - (a) direct that the party in default shall not be entitled to rely upon any allegation or material which was the subject matter of the order;
 - (b) draw such adverse inferences from the act of non-compliance as the circumstances justify;
 - (c) proceed to an award on the basis of such materials as have been properly provided to it;
 - (d) make such order as it thinks fit as to the payment of costs of the arbitration incurred in consequence of the non-compliance.

Committee's Recommendation:

That the provision in Clause 43 be retained (*Senator David Umaru — Niger East*) — Agreed to.

Question that Clause 43 do stand part of the Bill, put and agreed to.

Clause 44: Power of Arbitral Tribunal to Appoint Expert.

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

Committee's Recommendation:

That the provision in Clause 44 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 44 do stand part of the Bill, put and agreed to.

Clause 45: Power of Court to Order Attendance of Witness.

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

Committee's Recommendation:

That the provision in Clause 45 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 45 do stand part of the Bill, put and agreed to.

Making of Award and Termination of Proceedings.**Clause 46: Decision Making by Arbitral Tribunal.**

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

Committee's Recommendation:

That the provision in Clause 46 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 46 do stand part of the Bill, put and agreed to.

Clause 47: Settlement.

- (1) If, during the arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the arbitral proceedings, and shall, if requested by the parties and agreed to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.
- (2) An award on agreed terms recorded under subsection (1) of this Section shall—
 - (a) be in accordance with the provisions of Section 47 of this Bill and state that it is such an award; and
 - (b) have the same status and effect as any other award on the merits of the case.

Committee's Recommendation:

That the provision in Clause 47 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 47 do stand part of the Bill, put and agreed to.

Clause 48: Award of Interest.

- (1) The parties may agree on the powers of the arbitral tribunal to the award of interest.
- (2) Unless otherwise agreed by the parties the following provisions shall apply —
 - (a) The arbitral tribunal may award simple or compound interest from such dates, at such rates and with such rests as it considers just —
 - (i) on the whole or part of any amount awarded by the arbitral tribunal, in respect of any period up to the date of the award;
 - (ii) on the whole or part of any amount claimed in the arbitration and outstanding at the commencement of the arbitral proceedings but paid before the award was made, in respect of any period up to the date of payment;
 - (b) The arbitral tribunal may award simple or compound interest from the date of the award, or any later date, until payment, at such rates and with such interests as it considers just in the case, on the outstanding amount of any award, including any award of interest under subsection (3) and any award as to costs;
 - (c) References in this section to an amount awarded by the arbitral tribunal include an amount payable in consequence of a declaratory award by the tribunal.

Committee's Recommendation:

That the provision in Clause 48 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 48 do stand part of the Bill, put and agreed to.

Clause 49: Form and Contents of Award.

- (1) Any award made by the arbitral tribunal shall be in writing and signed by the arbitrators.
- (2) Where the arbitral tribunal comprises more than one arbitrator, the signatures of a majority of all the members of the arbitral tribunal shall suffice, if the reason for the absence of any signature is stated.
- (3) The arbitral tribunal shall state on the award —
 - (a) the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under Section 45 of this Bill;
 - (b) the date it was made; and
 - (c) the seat of the arbitration as agreed or determined under Section 32 (1) of this Bill, which seat shall be deemed to be the place where the award was made.

- (4) Subject to the provisions of section 54 of this Bill, which relate to the power of the arbitral tribunal to withhold an award upon a failure to pay fees and expenses of the arbitrators, a copy of the award made and signed by the arbitrators in accordance with subsections (1) and (2) of this section shall be delivered to each party.

Committee's Recommendation:

That the provision in Clause 49 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 49 do stand part of the Bill, put and agreed to.

Clause 50: Termination of Proceedings.

- (1) The arbitral proceedings shall terminate, when the final award is made or when an order of the arbitral tribunal is issued under subsection (2) of this Section.
- (2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when —
- (a) the claimant withdraws the claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on its part in obtaining a final settlement of the dispute; or
- (b) the parties agree to the termination of the arbitral proceedings; or
- (c) the arbitral tribunal finds that continuation of the arbitral proceedings has for any other reason become unnecessary or impossible;
- (3) Subject to the provisions of Sections 49 and 55 (3) and (6) of this Bill, the mandate of the arbitral tribunal shall cease on termination of the arbitral proceedings.

Committee's Recommendation:

That the provision in Clause 50 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 50 do stand part of the Bill, put and agreed to.

Clause 51: Correction and Interpretation of Award and Additional Award.

- (1) Unless another period has been agreed upon by the parties, a party may, within thirty (30) days of the receipt of an award and with notice to the other party, request the arbitral tribunal —
- (a) to correct in the award any errors in computation, any clerical or typographical errors or any errors of a similar nature;
- (b) to give an interpretation of a specific point or part of the award.
- (2) If the arbitral tribunal considers any request made under subsection (1) of this Section to be justified, it shall, within thirty (30) days of receipt of the request, make the correction or give the interpretation, and such correction or interpretation shall form part of the award.
- (3) The arbitral tribunal may, on its own volition and within thirty (30) days from the date of the award, correct any error of the type referred to in subsection (1) (a) of this Section.

- (4) Unless otherwise agreed by the parties, a party may within thirty (30) days of receipt of the award, request the arbitral tribunal to make an additional award as to the claims presented in the arbitral proceedings but omitted from the award.
- (5) If the arbitral tribunal considers any request made under subsection (4) of this Section to be justified, it shall, within sixty (60) days of the receipt of the request, make the additional award.
- (6) The arbitral tribunal may, if it considers it necessary, extend the time limit within which it shall make a correction, give an interpretation or make an additional award under subsection (2) or (5) of this section.
- (7) The provisions of section 47 of this Bill, which relate to the form and contents of an award, shall apply to any correction or interpretation or to an additional award made under this section.

Committee's Recommendation:

That the provision in Clause 51 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 51 do stand part of the Bill, put and agreed to.

Costs

Clause 52: Costs of the Arbitration.

- (1) The arbitral tribunal shall fix costs of arbitration in its award and the term "costs" includes —
 - (a) the fees of the arbitrators ;
 - (b) the travel and other expenses incurred by the arbitrators;
 - (c) the cost of expert advice and of other assistance required by the arbitral tribunal;
 - (d) the travel and other expenses of parties, witnesses and other experts consulted by the parties to the extent that 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.
- (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.

Committee's Recommendation:

That the provision in Clause 52 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 52 do stand part of the Bill, put and agreed to.

Clause 53: Deposit of Costs.

- (1) The arbitral tribunal, on its establishment, may request each party to deposit an equal amount as an advance for the costs referred to in paragraphs (a), (b) and (c) of Section 50(1) of this Bill.
- (2) During the course of the arbitral proceedings, the arbitral tribunal may request supplementary deposits from the parties.
- (3) If the required deposits are not paid in full within thirty (30) days after the receipt of the request, the arbitral tribunal shall so inform the parties in order that one or more of them 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.

Committee's Recommendation:

That the provision in Clause 53 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 53 do stand part of the Bill, put and agreed to.

Clause 54: Security for Costs.

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

Committee's Recommendation:

That the provision in Clause 54 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 54 do stand part of the Bill, put and agreed to.

Clause 55: Joint and Several Liability of the Parties for Arbitrator's Fees and Expenses.

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

Committee's Recommendation:

That the provision in Clause 55 be retained (*Senator David Umaru — Niger East*) — Agreed to.

Question that Clause 55 do stand part of the Bill, put and agreed to.

Clause 56: Lien on the Award.

- (1) The arbitral tribunal or 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 and, if applicable, 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 due or 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, if any, shall be paid out to the applicant.
- (3) For this purpose the amount of fees and expenses properly payable is the amount the applicant is liable to pay under Section 53 or any agreement relating to the payment of the arbitrators.
- (4) No application to the Court may be made unless any available arbitral process for appeal or review of the amount of the fees or expenses demanded has been exhausted.
- (5) References in this section to arbitrators include an arbitrator who has ceased to act.
- (6) The leave of the Court is required for any appeal from a decision of the Court under this Section.
- (7) Nothing in this section shall be construed as excluding an application under Section 55 where payment has been made to the arbitrators in order to obtain the award.

Committee's Recommendation:

That the provision in Clause 56 be retained (*Senator David Umaru — Niger East*) — Agreed to.

Question that Clause 56 do stand part of the Bill, put and agreed to.

Recourse Against Award.**Clause 57: Application for Setting Aside an Arbitral Award.**

- (1) A party who is aggrieved by an arbitral award may have recourse to a court against the arbitral award by way of an application made for setting aside in accordance with subsections (3) and (4) of this section.

- (2) An application for setting aside an arbitral award shall not be made on the ground of an error on the face of the award, or any other ground except those expressly stated in subsection (3) of this section.
- (3) The Court may set aside an arbitral award if —
- (a) the party making the application furnishes proof that —
- (i) a party to the arbitration agreement was under some legal incapacity; or
 - (ii) that the arbitration agreement is not valid under the law which the parties have indicated should be applied, or failing such indication, that the arbitration agreement is not valid under the laws of the Federal Republic of Nigeria; or
 - (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 not able to present its case; or
 - (iv) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration; or
 - (v) the award contains decisions on matters which are beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or
 - (vi) the composition of the arbitral tribunal, or the arbitral procedure, was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Bill from which the parties cannot derogate; or
 - (vii) where there is no agreement between the parties under subparagraph (vi) of this paragraph, that the composition of the arbitral tribunal or the arbitral procedure was not in accordance with this Bill; or
- (b) if the Court finds that —
- (i) the dispute arises out of an illegal contract, or
 - (ii) the subject matter of the dispute is otherwise not capable of settlement by arbitration under the laws of Nigeria; or
 - (iii) the award is against public policy of the Federal Republic of Nigeria.
- (4) An application for setting aside shall not be made after three (3) months have elapsed from the date on which the party making that application had received the award or, if a request had been made under Section 49, from the date on which that request had been disposed of by the arbitral tribunal.
- (5) If the Court is satisfied that one or more of the grounds set out in subsection (3) of this section has been proved and that it has caused or will cause substantial injustice to the applicant, the court may:
- (a) remit the award to the tribunal, in whole or in part, for reconsideration;

- (b) set aside the award in whole or in part, or
 - (c) declare the award to be of no effect, in whole or in part.
- (6) The Court shall not exercise its power to set aside or to declare an award to be of no effect, in whole or in part, unless it is satisfied that it would be inappropriate to remit the matter in question to the tribunal for consideration.
- (7) The Court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

Committee's Recommendation:

That the provision in Clause 57 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 57 do stand part of the Bill, put and agreed to.

Clause 58: Review of Arbitral Award.

- (1) Notwithstanding subsection (1) of this section, the parties may provide in their arbitration agreement that an application to review an arbitral award on any of the grounds set out in subsection (3) of this section shall be made to an Award Review Tribunal.
- (2) Where the parties have agreed that an award shall be reviewed by an Award Review Tribunal, a party who is aggrieved by an arbitral award and who seeks to challenge such award on any of the grounds set out in subsection (3) of this section shall, within the same time frame specified in subsection (4) of this section, give the other party a written communication indicating its intent to challenge the award.
- (3) The Notice of Challenge shall include the documents referred to in section 57 (2) of this Bill.
- (4) Unless the parties otherwise agree —
 - (a) the Award Review Tribunal shall consist of the same number of arbitrators in the arbitral tribunal that first determined the dispute; and
 - (b) the Award Review Tribunal shall be constituted, when in the case of an arbitral proceedings presided by a sole arbitrator in the first instance nominated for the review tribunal, accepts appointment or, where there are more than one arbitrator, when all the arbitrators accept their appointments in the review tribunal.
- (5) The following provisions of this Act shall apply mutatis mutandis to the Award Review Tribunal —
 - (a) section 7 (Appointment of Arbitrators);
 - (b) section 8 (grounds for challenge);
 - (c) section 9 (challenge procedure);
 - (d) section 10 (failure or impossibility to act);
 - (e) section 11 (appointment of substitute arbitrator);

- (f) section 12 (Withdrawal, death and cessation of office of an arbitrator);
 - (g) section 13 (immunity of arbitrator and arbitral institution);
 - (h) section 14 (competence of arbitral tribunal to rule on its jurisdiction)—
 - (i) section 30 (equal treatment of parties);
 - (j) section 41 (default of a party);
 - (k) section 44 (decision making of arbitral tribunal)
 - (l) section 47 (form and content of award);
 - (m) section 50 (costs) and Article 42 of the First Schedule (fees and expenses of arbitrators);
 - (n) section 53 (joint and several liability of the parties for arbitrator's fees and expenses);
 - (o) section 54 (lien on the Award).
- (6) The parties may agree the procedure to be followed by the Award Review Tribunal, otherwise the Award Review Tribunal shall conduct its proceedings in such manner as it considers appropriate and the Award Review Tribunal shall endeavour to render its decision in the form of an award within sixty (60) days from the date on which it is constituted.
- (7) An application for enforcement of an award under section 57 of this Act may be made to the Court notwithstanding that a party has given a Notice of Challenge to the other party under subsection 2 of this section, save that —
- (a) proceedings upon such application for enforcement shall be stayed until after the decision of the Award Review Tribunal has been rendered, and
 - (b) notwithstanding (a) above, the court may make such orders as to the interim preservation of the subject of the dispute, or as to giving security for the award as may be just in the circumstances of the case.
- (8) Where the Award Review Tribunal has set aside the award in whole or in part, a party may apply to the Court to review the decision of the Award Review Tribunal and if the Court decides that the decision of the Award Review Tribunal cannot stand, having regard to the ground on which the Award Review Tribunal sets aside the award, shall reinstate the award, or the part of it that was set aside.
- (9) Where the Award Review Tribunal has affirmed the Award in whole or in part, an application to the Court to set aside the award of the First Instance Tribunal or the award of the Award Review Tribunal, such application may only be made on the grounds set out in section 55 (3) (b) (i) (ii) (arbitrability) and (iii) (public policy) of this Bill.

Committee's Recommendation:

That the provision in Clause 58 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 58 do stand part of the Bill, put and agreed to.

Clause 59: Recognition and Enforcement of Awards.

- (1) An arbitral award shall, irrespective of the Country or State in which it is made, be recognized as binding and upon application in writing to the Court, be enforced by the Court subject to the provisions of this section and section 58 of this Bill.
- (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 duly certified copy thereof; and
 - (c) where the award or arbitration agreement is not made in the English language, a duly certified translation thereof into the English language.
- (3) An award may, by leave of the Court or a Judge, be enforced in the same manner as a judgment or order with the same effect.

Committee's Recommendation:

That the provision in Clause 59 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 59 do stand part of the Bill, put and agreed to.

Clause 60: Refusal of Recognition or Enforcement of Awards.

- (1) Any of the parties to an arbitration agreement may request the Court to refuse recognition or enforcement of the award.
- (2) The Court where recognition or enforcement of an award is sought or where application for refusal of recognition or enforcement thereof is brought, the Court may, irrespective of the Country in which the award is made, refuse to recognize or enforce an award —
 - (a) if the party against whom it is invoked furnishes the Court proof
 - (i) that a party to the arbitration agreement was under some incapacity; or
 - (ii) that the arbitration agreement is not valid under the law 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; or
 - (iii) that he 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; or
 - (iv) that the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration; or
 - (v) that 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 submitted, only that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or
 - (vi) that the composition of the arbitral tribunal, or the arbitral procedure, was not in accordance with the agreement of the parties; or

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

Committee's Recommendation:

That the provision in Clause 60 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 60 do stand part of the Bill, put and agreed to.

Provisions Applicable Only to International Arbitration.

Clause 61: Appointment in Default.

Where under an agreement for an international arbitration,

- (a) no procedure is specified for the appointment of an arbitrator, and
- (b) no appointing authority is designated or agreed to be designated by the parties, the Director of the Regional Centre for International Commercial Arbitration in Nigeria, shall be deemed to be the appointing authority designated by the parties, and the provisions of section 7 (2) of this Bill shall apply.

Committee's Recommendation:

That the provision in Clause 61 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 61 do stand part of the Bill, put and agreed to.

Clause 62: Application of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards

Without prejudice to sections 57 and 58 of this Bill, where the recognition and enforcement of any award made in an arbitration in a Country other than the Federal Republic of Nigeria is sought, the Convention on the Recognition and Enforcement of Foreign Awards set out in the Second Schedule to this Bill shall apply to any award made in Nigeria or in any contracting State —

- (a) provided that, the country is a party to the Convention; and

- (b) that the differences arising out of a legal relationship, whether contractual or not, is considered a commercial dispute under the laws of the Federal Republic of Nigeria.

Committee's Recommendation:

That the provision in Clause 62 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 62 do stand part of the Bill, put and agreed to.

General — Applies to Domestic, International and Convention Arbitrations.

Clause 63: Waiver of Right to Object.

A party who knows that any provision of this Bill from which the parties may derogate or any requirement under the 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.

Committee's Recommendation:

That the provision in Clause 63 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 63 do stand part of the Bill, put and agreed to.

Clause 64: Extent of Court Intervention.

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

Committee's Recommendation:

That the provision in Clause 64 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 64 do stand part of the Bill, put and agreed to.

Clause 65: 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 the provisions of that or another law.

Committee's Recommendation:

That the provision in Clause 65 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 65 do stand part of the Bill, put and agreed to.

Clause 66: Extension of Time.

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

Committee's Recommendation:

That the provision in Clause 66 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 66 do stand part of the Bill, put and agreed to.

Conciliation.**Clause 67: Scope of Application and Settlement of Disputes by Conciliation**

- (1) The parties to any dispute of a commercial nature may seek amicable settlement of their dispute by conciliation under the provisions of this Part of the Bill.
- (2) The parties are free to agree to exclude the applicability of this Part of the Bill.
- (3) For the purposes of this Bill, "conciliation" means a process, whether referred to by the expression conciliation, mediation or an expression of similar import, whereby parties request a third person or persons ("the conciliator") to assist them in their attempt to reach an amicable settlement of their dispute arising out of or relating to a contractual or other legal relationship and the conciliator does not have the authority to impose upon the parties a solution to the dispute.

Committee's Recommendation:

That the provision in Clause 67 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 67 do stand part of the Bill, put and agreed to.

Clause 68: Request to Conciliate.

- (1) Unless the parties otherwise agree, a party who wishes to initiate conciliation shall, send to the other party a written request to conciliation under the provisions of this Part of this Bill.
- (2) Any request sent under subsection (1) of this Section shall, contain a brief statement setting out the subject of the dispute and an invitation to engage in conciliation proceedings.

Committee's Recommendation:

That the provision in Clause 68 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 68 do stand part of the Bill, put and agreed to.

Clause 69: Commencement of Conciliation Proceedings.

- (1) The conciliation proceedings shall, commence on the date the request to conciliate is accepted by the other party.
- (2) If a party that requests another party to conciliate does not receive an acceptance of the request within thirty (30) days from the day on which the request to conciliate was sent, or within such other period of time as specified in the request, the party may elect to treat the failure of the other party to send an acceptance, as a rejection of the invitation to conciliate.

Committee's Recommendation:

That the provision in Clause 69 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 69 do stand part of the Bill, put and agreed to.

Clause 70: Number and Appointment of Conciliators.

- (1) There shall be one conciliator, unless the parties agree otherwise agree.
- (2) The parties shall endeavour to reach agreement on a conciliator or conciliators, unless a different procedure for their appointment has been agreed upon.
- (3) Parties may seek the assistance of an institution or person in connection with the appointment of conciliators in particular—

- (a) a party may request such an institution or person to recommend suitable persons to act as conciliator; or
- (b) the parties may agree that the appointment of one or more conciliators be made directly by such an institution or person.
- (4) In recommending or appointing individuals to act as conciliator, the institution or person shall, unless the parties otherwise agree, have regard to such considerations as are likely to secure the appointment of an independent and impartial conciliator.
- (5) When a person is approached in connection with his or her possible appointment as conciliator, he or she shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence as a conciliator, from the time of his or her appointment and throughout the conciliation proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him or her
- (6) The conciliator shall withdraw from the conciliation if facts or circumstances arise, which give rise to a justifiable doubt as to the conciliator's independence, impartiality and neutrality, unless, after full disclosure, all parties consent to the conciliator's continuing participation in the conciliation.

Committee's Recommendation:

That the provision in Clause 70 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 70 do stand part of the Bill, put and agreed to.

Clause 71: Conduct of Conciliation.

- (1) The parties may agree, by reference to a set of rules or otherwise, on the manner in which the conciliation is to be conducted.
- (2) Failing agreement on the manner in which the conciliation is to be conducted, the conciliator may conduct the conciliation proceedings in accordance with the Conciliation Rules set out in the Fourth Schedule to this Bill, or in such a manner as the conciliator considers appropriate, taking into account the circumstances of the case, any wishes that the parties may express and the need for a speedy settlement of the dispute.
- (3) In any case, in conducting the proceedings, the conciliator shall seek to maintain fair treatment of the parties and, in so doing, shall take into account the circumstances of the case.
- (4) The conciliator may, at any stage of the conciliation proceedings, make proposals for a settlement of the dispute.
- (5) The conciliator shall acquaint himself with the facts of the case and procure such other information as he may require for the purpose of facilitating the settlement of the dispute.

Committee's Recommendation:

That the provision in Clause 71 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 71 do stand part of the Bill, put and agreed to.

Clause 72: Communication Between Conciliator and Parties.

- (1) The conciliator may meet with each party in a separate session to clarify the subject matter and issues in dispute, determine options for resolving the dispute and discuss terms of settlement proposals.
- (2) Any communication between conciliator and parties in a separate session or any document discussed in the separate session shall not be disclosed to any other person without the consent of the party with whom conciliator had discussed at the session.

Committee's Recommendation:

That the provision in Clause 72 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 72 do stand part of the Bill, put and agreed to.

Clause 73: Disclosure of Information.

Subject to section 70 of this Bill, when the conciliator receives information concerning the dispute from a party, the conciliator may disclose the substance of that information to any other party to the conciliation and when a party gives any information to the conciliator, subject to a specific condition that it be kept confidential, that information shall not be disclosed to any other party to the conciliation.

Committee's Recommendation:

That the provision in Clause 73 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 73 do stand part of the Bill, put and agreed to.

Clause 74: Confidentiality.

Unless otherwise agreed by the parties, all information relating to the conciliation proceedings, including documents prepared for the proceedings, shall be kept confidential, except where disclosure is required under the law or for the purposes of implementation or enforcement of a settlement agreement.

Committee's Recommendation:

That the provision in Clause 74 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 74 do stand part of the Bill, put and agreed to.

Clause 75: Admissibility of Evidence in Other Proceedings.

- (1) Unless the parties otherwise agree, a party to the conciliation proceedings, the conciliator and any third person, including those involved in the administration of the conciliation proceedings, shall not in arbitral, judicial or similar proceedings rely on, introduce as evidence or give testimony or evidence regarding any of the following —
 - (a) An invitation by a party to engage in conciliation proceedings or the fact that a party was willing to participate in conciliation proceedings;
 - (b) Views expressed or suggestions made by a party in the conciliation in respect of a possible settlement of the dispute;
 - (c) Statements or admissions made by a party in the course of the conciliation proceedings;
 - (d) Proposals made by the conciliator;

- (e) The fact that a party had indicated its willingness to accept a proposal for settlement made by the conciliator;
 - (f) A document prepared solely for purposes of the conciliation proceedings.
- (2) Subsection (1) of this Section applies irrespective of the form of the information or evidence referred to therein.
 - (3) The disclosure of the information referred to in subsection (1) of this Section shall not be ordered by an arbitral tribunal, court or other competent governmental authority and, if such information is offered as evidence in contravention of subsection (1) of this Section, that evidence shall be treated as inadmissible, but such information may be disclosed or admitted in evidence to the extent required under the law or for the purposes of implementation or enforcement of a settlement agreement.
 - (4) The provisions of subsections (1), (2) and (3) of this Section apply whether or not the arbitral, judicial or similar proceedings relate to the dispute that is or was the subject matter of the conciliation proceedings.
 - (5) Subject to the limitations of subsection (1) of this Section, evidence that is otherwise admissible in arbitral or judicial or similar proceedings does not become inadmissible as a consequence of having been used in a conciliation.

Committee's Recommendation:

That the provision in Clause 75 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 75 do stand part of the Bill, put and agreed to.

Clause 76: Termination of Conciliation Proceedings.

The conciliation proceedings are terminated —

- (a) By the conclusion of a settlement agreement by the parties, on the date of the agreement;
- (b) By a declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of the declaration;
- (c) By a declaration of the parties addressed to the conciliator to the effect that the conciliation proceedings are terminated, on the date of the declaration; or
- (d) By a declaration of a party to the other party or parties and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of the declaration.

Committee's Recommendation:

That the provision in Clause 76 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 76 do stand part of the Bill, put and agreed to.

Clause 77: Conciliator Acting as Arbitrator.

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

Committee's Recommendation:

That the provision in Clause 77 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 77 do stand part of the Bill, put and agreed to.

Clause 78: Resort to Arbitral or Judicial Proceedings.

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

Committee's Recommendation:

That the provision in Clause 78 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 78 do stand part of the Bill, put and agreed to.

Clause 79: Settlement Agreement.

- (1) If the parties agree to settle all or part of their disputes, the parties shall enter into a written settlement agreement which evidences the parties' names and addresses, the agreement of the parties and the signatures of the parties, duly witnessed by the conciliator and this shall be the settlement agreement.
- (2) If the parties do not agree to settle their dispute, they may —
 - (a) submit the dispute to arbitration in accordance with any agreement between them; or
 - (b) take any action in court as they may deem fit.
- (3) Nothing done in connection with the conciliation proceedings shall affect the legal rights of the parties in any submission to arbitration or any action taken under subsection (2) of this Section.

Committee's Recommendation:

That the provision in Clause 79 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 79 do stand part of the Bill, put and agreed to.

Clause 80: Application of Statutes of Limitation to Conciliation.

- (1) The Limitation Act shall apply to conciliation proceedings as they apply to legal proceedings.
- (2) The court may order that in computing the time prescribed by the Limitation Act for the commencement of proceedings, including conciliation proceedings, in respect of a dispute which was the subject matter of —
 - (a) of a conciliation agreement which the court orders to be set aside or declares to be of no effect, or
 - (b) of the affected part of a conciliation agreement which the court orders to be set aside in part, or declares to be part of no effect, the period between the commencement of the conciliation and the date of the order referred to in paragraph (a) or (b) shall be excluded.

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

Committee's Recommendation:

That the provision in Clause 80 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 80 do stand part of the Bill, put and agreed to.

Clause 81: Enforcement of Settlement Agreement.

- (1) The settlement agreement is final and binding upon the parties.
- (2) If the parties conclude an agreement settling a dispute, that settlement agreement is binding and enforceable on the parties as a contract.

Committee's Recommendation:

That the provision in Clause 81 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 81 do stand part of the Bill, put and agreed to.

Clause 82: Conciliation Rules.

Notwithstanding the provisions of this Act, the parties to an international commercial agreement may agree in writing that disputes in relation to the agreement shall be settled by conciliation under the Conciliation Rules set out in the Fourth Schedule to this Act and such other rules as the parties may choose.

Committee's Recommendation:

That the provision in Clause 82 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 82 do stand part of the Bill, put and agreed to.

[Fourth Schedule]

Clause 83: Civil Immunity for Conciliators.

Conciliators or conciliation institutions are not liable for anything done or omitted in the discharge or purported discharge of their functions as provided in this Bill, unless their action or omission is shown to have been done in bad faith.

Committee's Recommendation:

That the provision in Clause 83 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 83 do stand part of the Bill, put and agreed to.

PART III — MISCELLANEOUS

Clause 84: Receipt of Written Communication.

- (1) Unless otherwise agreed by the parties, any communication sent under or pursuant to this Act shall be deemed to have been received —
 - (a) when it is delivered to the addressee personally or when it is delivered to his place of business, habitual residence or mailing address; or

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

Committee's Recommendation:

That the provision in Clause 84 be retained (*Senator David Umaru — Niger East*) — Agreed to.

Question that Clause 84 do stand part of the Bill, put and agreed to.

Clause 85: Savings and Transitional Provisions

- (1) This Bill shall not apply to an arbitration under an arbitration agreement concerning an arbitration, which has commenced before the coming into force of this Bill, but shall apply to an arbitration commenced on or after the coming into force of this Bill.
- (2) Subject to Subsection 2 of this Section, the repeal of the Arbitration and Conciliation Act, Cap A18, Laws of the Federation of Nigeria, 2004 shall not prejudice or affect any proceedings, whether or not pending at the time of the repeal, in respect of any right, privilege, obligation or liability and any proceedings taken under that Act in respect of any such right, privilege, obligation or liability acquired, accrued or incurred under the Act may be instituted, continued or enforced as if the Act concerned had not been repealed.

Committee's Recommendation:

That the provision in Clause 85 be retained (*Senator David Umaru — Niger East*) — Agreed to.

Question that Clause 85 do stand part of the Bill, put and agreed to.

Clause 86: Repeal.

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

Committee's Recommendation:

That the provision in Clause 86 be retained (*Senator David Umaru — Niger East*) — Agreed to.

Question that Clause 86 do stand part of the Bill, put and agreed to.

Clause 87: Interpretation.

- (1) In this Act, unless the context otherwise requires —
"Arbitrator" means a person to whom a reference is made for determination and includes substitute or emergency Arbitrator;

Question: That the word "Arbitrator" be as defined in the Interpretation to this Act, put and agreed to.

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

Question: That the words "Arbitral tribunal" be as defined in the Interpretation to this Act, put and agreed to.

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

Question: That the word "Arbitration" be as defined in the Interpretation to this Act, put and agreed to.

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

Question: That the word "Commercial" be as defined in the Interpretation to this Act, put and agreed to.

"Court" means the High Court of a State, the High Court of the Federal Capital Territory, Abuja or the Federal High Court, unless the parties otherwise agree and for the purpose of appointment of an arbitrator including an emergency arbitrator, "Court" means the Chief Judge of any of the Courts mentioned above, sitting as a Judge in Chambers;

Question: That the word "Court" be as defined in the Interpretation to this Act, put and agreed to.

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

Question: That the word "Death" be as defined in the Interpretation to this Act, put and agreed to.

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

Question: That the word "Judge" be as defined in the Interpretation to this Act, put and agreed to.

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

Question: That the word "Party" be as defined in the Interpretation to this Act, put and agreed to.

"Preliminary Order" means an order or a direction of the arbitral tribunal that accompanies or precedes a requested interim measure to ensure that the grant of that measure is not rendered nugatory by any act of the parties.

Question: That the words "Preliminary Order" be as defined in the Interpretation to this Act, put and agreed to.

"Third-Party Funding" means an arrangement between a specialist funding company, an individual, a corporation, a bank, an insurance company or an institution the funder and a party involved in the arbitration, whereby the funder will agree to finance some or all of the party's legal fees in exchange for a share of the recovered damages.

Question: That the words "Third-Party Funding" be as defined in the Interpretation to this Act, put and agreed to.

- (2) Where a provision of this Bill, other than section 13 and 81, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party, including an institution, to make that determination.
- (3) Where a provision of this Act —
 - (a) refers to the fact that parties have agreed or that they may agree; or
 - (b) in any other way refers to an agreement of the parties, such agreement includes any arbitration rules referred to in the agreement.
- (4) Where a provision of this Act, other than Section 41 (1) (a) or 48 (2) (a) refers to a claim, such claim includes a counterclaim, and where it refers to a defence, such defence includes a defence to such counterclaim.
- (5) An arbitration is international if —
 - (a) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different Countries; or
 - (b) one of the following places is situated outside the Country in which the parties have their places of business —
 - i. the seat of the arbitration if determined in, or pursuant to the arbitration agreement;
 - ii. any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject matter of the dispute is most closely connected; or
 - (c) the place where a substantial part of the obligations of the commercial relationship is to be performed or the place where the subject matter of the dispute is most closely connected; is situated outside the Country in which the parties have their places of business;
- (6) An arbitration is interstate if —
 - (a) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different Federating states within the Federal Republic of Nigeria.
 - (b) the Federating state of the Federation in which the seat of arbitration is situated is different from the Federating State or States in which the parties have their places of business;
 - (c) the place where a substantial part of the obligations of the commercial relationship is to be performed or the place where the subject matter of the dispute is most closely connected is situated in a Federating State which is different from the Federating State or States in which the parties have their places of business;
 - (d) the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one Federating State within the Federal Republic of Nigeria.

- (7) For the purposes of subsections (5) and (6) of this Section —
- (a) if a party has more than one place of business, the place of business shall be that which has the closest relationship to the arbitration agreement;
 - (b) if a party does not have a place of business, reference shall be made to his or her habitual residence.
- (8) In the interpretation of this Bill, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith and the Court may also have recourse to the travaux préparatoires of the UNCITRAL Working Model Law on International Commercial Arbitration and Conciliation.
- (9) Questions concerning matters governed by this Bill which are not expressly settled in it are to be settled in conformity with the general principles on which this Act is based.

Committee's Recommendation:

That the provision in Clause 87 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 87 do stand part of the Bill, put and agreed to.

Clause 88: Short Title.

This Bill may be cited as the Arbitration and Conciliation Bill, 2018.

Committee's Recommendation:

That the provision in Clause 88 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 88 do stand part of the Bill, put and agreed to.

FIRST SCHEDULE

[Section 31 (1)]

ARBITRATION RULES

PART I. INTRODUCTORY RULES

Article 1

Scope of Application.

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

Notice, Calculation of Periods of Time

Article 2

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

3. In the absence of such designation or authorization, 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. 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 provide a record of delivery or of attempted delivery.
5. A notice shall be deemed to have been received on the day it is delivered in accordance with paragraphs 2, 3 or 4, or attempted to be delivered in accordance with paragraph 4. A notice transmitted by electronic means is deemed to have been received on the day it is sent, except that a request for arbitration so transmitted is only deemed to have been received on the day when it reaches the addressee's electronic address.
6. For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice, notification, communication or proposal is received. 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.

Written communication requesting arbitration.

Article 3

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

- (b) a proposal for the appointment of a sole arbitrator referred to in Article 8, paragraph 1;
 - (c) notification of the appointment of an arbitrator referred to in Article 9 or 10;
 - (d) the points of claim referred to in Article 20.
5. The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the sufficiency of the written communication containing a request for the dispute to be referred to arbitration, which shall be finally resolved by the arbitral tribunal.

Response to the Written Communication Requesting Arbitration

Article 4

1. Within 30 days of the receipt of the written communication containing a request for the dispute to be referred to arbitration, the respondent shall convey to the claimant a response to the said written communication, which shall include —
 - (a) the name and contact details of each respondent;
 - (b) a response to the information set forth in the notice of arbitration, pursuant to Article 3, paragraphs 3 (c) to (g).
2. The response to the written communication requesting arbitration may also include —
 - (a) any plea that an arbitral tribunal to be constituted under these Rules lacks jurisdiction;
 - (b) a proposal for the designation of an appointing authority referred to in Article 6, paragraph 1;
 - (c) a proposal for the appointment of a sole arbitrator referred to in Article 8, paragraph 1;
 - (d) Notification of the appointment of an arbitrator referred to in Article 9 or 10;
 - (e) a brief description of counterclaims or claims for the purpose of a set-off, if any, including where relevant, an indication of the amounts involved, and the relief or remedy sought;
 - (f) a written communication containing a request for the dispute to be referred to arbitration in accordance with Article 3 in case the respondent formulates a claim against a party to the arbitration agreement other than the claimant.
 - (g) the points of defence and counterclaim (if any) referred to in Article 21.
3. The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the respondent's failure to communicate a response to the written communication requesting arbitration, or an incomplete or late response to the said written communication, which shall be finally resolved by the arbitral tribunal.

Article 5

Representation and Assistance.

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

2. Where a person is to act as a representative of a party, the arbitral tribunal, on its own initiative or at the request of any party, may at any time require proof of authority granted to the representative in such a form as the arbitral tribunal may determine.

Article 6

Designated and Appointing Authorities.

1. Unless the parties have already agreed on the choice of an appointing authority, a party may at any time propose the name or names of one or more institutions or persons, including the Director of the Regional Centre for International Commercial Arbitration in Nigeria (hereinafter called the "RCICAN") one of whom would serve as appointing authority.
2. If all parties have not agreed on the choice of an appointing authority within 30 days after a proposal made in accordance with paragraph 1 has been received by all other parties, any party may request the Director of the RCICAN to designate the appointing authority.
3. Where these Rules provide for a period of time within which a party must refer a matter to an appointing authority and no appointing authority has been agreed on or designated, the period is suspended from the date on which a party initiates the procedure for agreeing on or designating an appointing authority until the date of such agreement or designation.
4. Except as referred to in Article 41, paragraph 4, if the appointing authority refuses to act, or if it fails to appoint an arbitrator within 30 days after it receives a party's request to do so, fails to act within any other period provided by these Rules, or fails to decide on a challenge to an arbitrator within a reasonable time after receiving a party's request to do so, any party may request the Director of the RCICAN to designate a substitute appointing authority.
5. In exercising their functions under these Rules, the appointing authority and the Director of the RCICAN may require from any party and the arbitrators the information they deem necessary and they shall give the parties and, where appropriate, the arbitrators, an opportunity to present their views in any manner they consider appropriate. All such communications to and from the appointing authority and the Director of the RCICAN shall also be provided by the sender to all other parties.
6. When the appointing authority is requested to appoint an arbitrator pursuant to Articles 8, 9, 10 or 14, the party making the request shall send to the appointing authority copies of the written communication containing a request for the dispute to be referred to arbitration and, if it exists, any response to the said written communication.
7. The appointing authority shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and shall take into account the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties.

PART II — COMPOSITION OF THE ARBITRAL TRIBUNAL

Article 7

Number of Arbitrators

1. If the parties have not previously agreed on the number of arbitrators, and if within thirty (30) days after the receipt by the respondent of the written communication containing a request for the dispute to be referred to arbitration the parties have not agreed that there shall be only one arbitrator, one arbitrator shall be appointed.
2. Notwithstanding paragraph 1, 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**

1. If the parties have agreed that a sole arbitrator is to be appointed and if within thirty (30) days after receipt by all other parties of a proposal for the appointment of a sole arbitrator the parties have not reached agreement thereon, a sole arbitrator shall, at the request of a party, be appointed by the appointing authority.
2. The appointing authority shall appoint the sole arbitrator as promptly as possible. In making the appointment, the appointing authority shall use the following list-procedure, unless the parties agree that the list-procedure should not be used or unless the appointing authority determines in its discretion that the use of the list-procedure is not appropriate for the case —
 - (a) The appointing authority shall communicate to each of the parties an identical list containing at least three names;
 - (b) Within 15 days after the receipt of this list, each party may return the list to the appointing authority after having deleted the name or names to which it objects and numbered the remaining names on the list in the order of its preference;
 - (c) After the expiration of the above period of time the appointing authority shall appoint the sole arbitrator from among the names approved on the lists returned to it 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

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

4. For the purposes of Article 9, paragraph 1, where three arbitrators are to be appointed and there are multiple parties as claimant or as respondent, unless the parties have agreed to another method of appointment of arbitrators, the multiple parties jointly, whether as claimant or as respondent, shall appoint an arbitrator.
5. If the parties have agreed that the arbitral tribunal is to be composed of a number of arbitrators other than one or three, the arbitrators shall be appointed according to the method agreed upon by the parties.
6. In the event of any failure to constitute the arbitral tribunal under these Rules, the appointing authority shall, at the request of any party, constitute the arbitral tribunal and, in doing so, may revoke any appointment already made and appoint or reappoint each of the arbitrators and designate one of them as the presiding arbitrator.

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

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

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

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

*Replacement of an Arbitrator.***Article 14**

1. Subject to paragraph 2 of Article 14, in any event where an arbitrator has to be replaced during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in Articles 8 to 11 that was applicable to the appointment or choice of the arbitrator being replaced and this procedure shall apply even if during the process of appointing the arbitrator to be replaced, a party had failed to exercise its right to appoint or to participate in the appointment.
2. If, at the request of a party, the appointing authority determines that, in view of the exceptional circumstances of the case, it would be justified for a party to be deprived of its right to appoint a substitute arbitrator, the appointing authority may, after giving an opportunity to the parties and the remaining arbitrators to express their views: (a) appoint the substitute arbitrator; or (b) after the closure of the hearings, authorize the other arbitrators to proceed with the arbitration and make any decision or award.

*Repetition of hearings in the event of the replacement of an Arbitrator***Article 15**

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.

*Exclusion of liability.***Article 16**

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

PART III — ARBITRAL PROCEEDINGS**Article 17***General Provisions.*

1. Subject to the Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that, the parties are treated with equality and that at any stage of the proceedings each party is given a full opportunity of presenting his case. The arbitral tribunal, in exercising its discretion, shall conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the parties' dispute.
2. As soon as practicable after its constitution and after inviting the parties to express their views, the arbitral tribunal shall establish the provisional timetable of the arbitration. The arbitral tribunal may, at any time, after inviting the parties to express their views, extend or abridge any period of time prescribed under these Rules or agreed by the parties.
3. If at an appropriate stage of the proceedings any party so requests, the arbitral tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument and where there is no such a request, the arbitral tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.
4. All communications to the arbitral tribunal by one party shall be communicated by that party to all other parties; such communications shall be made at the same time, except as otherwise permitted by the arbitral tribunal if it may do so under applicable law.
5. The arbitral tribunal may, at the request of any party, allow one or more third persons to be joined in the arbitration as a party in accordance with Section 40 of the Act, provided such person is a party to the arbitration agreement, unless the arbitral tribunal finds, after giving all parties, including the person or persons to be joined, the opportunity to be heard, that joinder should not be permitted because of prejudice to any of those parties but the arbitral tribunal may make a single award or several awards in respect of all parties so involved in the arbitration.

Article 18*Seat and Venue of Arbitration.*

1. 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 and any Award thereto shall be deemed to have been made at the seat of arbitration.

2. The arbitral tribunal may meet at any location (venue) it considers appropriate for deliberations, unless otherwise agreed by the parties, the arbitral tribunal may also meet at any location it considers appropriate for any other purpose, including hearings.

Language.

Article 19

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

Points of Claim.

Article 20

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

Points of Defence

Article 21

1. Unless the points of defence was contained in response to the written communication containing a request for the dispute to be referred to arbitration, the respondent shall, within a period of time to be determined by the arbitral tribunal, communicate its points of claim in writing to the respondent and to each of the arbitrators.
2. The points of defence shall reply to the particulars (b), (c), (d) and (e) of the points of claim (Article 20, paragraph 2). The statement of defence should, as far as possible, be accompanied by all documents and other evidence relied upon by the respondent, or contain references to them.

3. In its points of defence, or at a later stage in the arbitral proceedings, if the arbitral tribunal decides that the delay was justified under the circumstances, the respondent may make a counterclaim or rely on a claim for the purpose of a set-off provided that the arbitral tribunal has jurisdiction over it.
4. The provisions of Article 20, paragraphs 2 to 4, shall apply to a counterclaim, a claim under Article 4, paragraph 2(f), and a claim relied on for the purpose of set-off.

Amendments to the claim or defence.

Article 22

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

Pleas as to the jurisdiction of the Arbitral Tribunal.

Article 23

1. The arbitral tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration clause or of the separate arbitration agreement. For that purpose, an arbitration clause that forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null shall not entail automatically the invalidity of the arbitration clause.
2. A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than in the points of defence, or with respect to a counterclaim or a claim for the purpose of a set-off, in the reply to the counterclaim or to the claim for the purpose of a set-off. A party is not precluded from raising such a plea by the fact that it has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.
3. The arbitral tribunal may rule on a plea referred to in paragraph 2 either as a preliminary question or in an award on the merits. The arbitral tribunal may continue the arbitral proceedings and make an award, notwithstanding any pending challenge to its jurisdiction before a court.

Further written statements.

Article 24

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

Periods of time.

Article 25

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

*Interim measures.***Article 26**

1. The arbitral tribunal may, at the request of a party, grant interim measures.
2. An interim measure is any temporary measure by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party, for example and without limitation, to —
 - (a) Maintain or restore the status quo pending determination of the dispute;
 - (b) Take action that would prevent, or refrain from taking action that is likely to cause, (i) current or imminent harm or (ii) prejudice to the arbitral process itself;
 - (c) Provide a means of preserving assets out of which a subsequent award may be satisfied; or
 - (d) Preserve evidence that may be relevant and material to the resolution of the dispute.
3. The party requesting an interim measure under paragraphs 2 (a) to (c) shall satisfy the arbitral tribunal that —
 - (a) Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and
 - (b) There is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.
4. With regard to a request for an interim measure under paragraph 2 (d), the requirements in paragraphs 3 (a) and (b) shall apply only to the extent the arbitral tribunal considers appropriate.
5. The arbitral tribunal may modify, suspend or terminate an interim measure it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal's own initiative.
6. The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.
7. The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the interim measure was requested or granted.
8. The party requesting an interim measure may be liable for any costs and damages caused by the measure to any party if the arbitral tribunal later determines that, in the circumstances then prevailing, the measure should not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings.
9. A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

*Emergency Arbitrator Proceedings.***Article 27***Conduct of Emergency Relief Proceedings.*

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

Decisions of the Emergency Arbitrator.

2. Any decision of the Emergency Arbitrator shall take the form of an Order (the "Emergency Decision") shall be made within fourteen (14) days from the date on which the file is received by the Emergency Arbitrator. This period of time may be extended by agreement of the parties.
3. The Emergency Decision may be made even if in the meantime the file has been transmitted to the arbitral tribunal.
4. Any Emergency Decision shall —
 - (a) be made in writing;
 - (b) state the date when it was made and summary reasons upon which the Emergency Order is based (including a determination on whether the Application is admissible under Section 16 of the Bill and whether the Emergency Arbitrator has jurisdiction to grant the Emergency Relief); and
 - (c) be signed by the Emergency Arbitrator.
5. Any Emergency Decision shall fix the costs of the Emergency Relief proceedings and decide which of the parties shall bear them or in what proportion they shall be borne by the parties, subject always to the power of the arbitral tribunal to determine finally the apportionment of such costs in accordance with Section 50 of the Bill. The costs of the Emergency Relief proceedings include the Emergency Arbitrator's fees and expenses and the reasonable and other legal costs incurred by the parties for the Emergency Relief proceedings.
6. Any Emergency Decision shall be recognised and enforced in the same manner as an interim measure under to Section 28 of the Bill and shall be binding on the parties when rendered. By agreeing to arbitration under these Rules, the parties undertake to comply with any Emergency Decision without delay.
7. The Emergency Arbitrator shall be entitled to order the provision of appropriate security by the party seeking Emergency Relief.
8. Any Emergency Decision may, upon a reasoned request by a party, be modified, suspended or terminated by the Emergency Arbitrator or the arbitral tribunal (once constituted).
9. Any Emergency Decision ceases to be binding —
 - (a) if the Emergency Arbitrator or the arbitral tribunal so decides;
 - (b) upon the arbitral tribunal rendering a final award, unless the arbitral tribunal expressly decides otherwise;
 - (c) upon the withdrawal of all claims or the termination of the arbitration before the rendering of a final award; or

- (d) if the arbitral tribunal is not constituted within 90 days from the date of the Emergency Decision. This period of time may be extended by agreement of the parties.
10. The Emergency Arbitrator's decision shall not bind the arbitral tribunal with respect to any question, issue or dispute determined in the Emergency Decision. The arbitral tribunal may modify, terminate or annul the Emergency Decision or any modification thereto made by the Emergency Arbitrator.
11. The arbitral tribunal shall decide upon any party's requests or claims related to the Emergency Relief proceedings, including the reallocation of the costs of such proceedings and any claims arising out of or in connection with the compliance or non-compliance with the order.

General provisions.

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

Evidence.

Article 28

1. Each party shall have the burden of proving the facts relied on to support his claim or defence.
2. Witnesses, including expert witnesses, who are presented by the parties to testify to the arbitral tribunal on any issue of fact or expertise may be any individual, notwithstanding that the individual is a party to the arbitration or in any way related to a party. Unless otherwise directed by the arbitral tribunal, statements by witnesses, including expert witnesses, may be presented in writing and signed by them.
3. The arbitral tribunal may, if it considers it appropriate, require a party to deliver to the tribunal and to the other party within such a period of time as the arbitral tribunal shall decide, a summary of the documents and other evidence which that party intends to present in support of the facts in issue set out in his points of claim or points of defence.
4. At any time during the arbitral proceedings, the arbitral tribunal may require the parties to produce documents, exhibits or other evidence within such a period of time as the arbitral tribunal shall determine.
5. The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

Hearings.

Article 29

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

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

Experts appointed by the Arbitral Tribunal.

Article 30

1. After consultation with the parties, the arbitral tribunal may appoint one or more independent experts to report to it in writing, on specific issues to be determined by the arbitral tribunal. A copy of the expert's terms of reference, established by the arbitral tribunal, shall be communicated to the parties.
2. The expert shall, in principle before accepting appointment, submit to the arbitral tribunal and to the parties a description of his or her qualifications and a statement of his or her impartiality and independence. Within the time ordered by the arbitral tribunal, the parties shall inform the arbitral tribunal whether they have any objections as to the expert's qualifications, impartiality or independence. The arbitral tribunal shall decide promptly whether to accept any such objections. After an expert's appointment, a party may object to the expert's qualifications, impartiality or independence only if the objection is for reasons of which the party becomes aware after the appointment has been made. The arbitral tribunal shall decide promptly what, if any, action to take.
3. The parties shall give the expert any relevant information or produce for his or her inspection any relevant documents or goods that he or she may require of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.
4. Upon receipt of the expert's report, the arbitral tribunal shall communicate a copy of the report to the parties, who shall be given the opportunity to express, in writing, their opinion on the report. A party shall be entitled to examine any document on which the expert has relied in his or her report.
5. At the request of either party, the expert, after delivery of the report, may be heard at a hearing where the parties shall have the opportunity to be present and to interrogate the expert. At this hearing, either party may present expert witnesses in order to testify on the points at issue. The provisions of Article 29 shall be applicable to such proceedings.

Default.

Article 31

1. If, within the period of time fixed by these Rules or the arbitral tribunal, without showing sufficient cause —
 - (a) The claimant fails 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;

- (b) The respondent fails to communicate its response to the written communication containing a request for the dispute to be referred to arbitration or its points of defence, the arbitral tribunal shall order that the proceedings continue, without treating such failure in itself as an admission of the claimant's allegations; the provisions of this subparagraph also apply to a claimant's failure to submit a defence to a counterclaim or to a claim for the purpose of a set-off.
2. 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.
3. 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.

Closure of Hearings.

Article 32

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

Waiver of Right to Object.

Article 33

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, failure to object was justified.

PART IV — THE AWARD

Article 34

Decisions.

1. When there are three arbitrators, any award or other decision of the arbitral tribunal shall be made by a majority of the arbitral tribunal.
2. In the case of questions of procedure, when there is no majority or when the arbitral tribunal so authorises, the presiding arbitrator may decide alone, subject to revision, if any, by the arbitral tribunal.

Form and Effect of the Award.

Article 35

1. The arbitral tribunal may make separate awards on different issues at different times.
2. All awards shall be made in writing and shall be final and binding on the parties. The parties undertake to carry out the award without delay.
3. The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.

4. An award shall be signed by the arbitrators and it shall contain the date on which the award was made and indicate the seat of arbitration. Where there is more than one arbitrator and any of them fails to sign, the award shall state the reason for the absence of the signature.
5. The award may be made public only with the consent of all parties or where and to the extent disclosure is required of a party by legal duty, to protect or pursue a legal right or in relation to legal proceedings before a court or other competent authority.
6. Copies of the award signed by the arbitrators shall be communicated to the parties by the arbitral tribunal.

Applicable Law, Amiable Compositeur.

Article 36

1. The arbitral tribunal shall apply the rules designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall apply the law which it determines to be appropriate.
2. The arbitral tribunal shall decide as amiable compositeur or ex aequo et bono only if the parties have expressly authorised the arbitral tribunal to do so.
3. In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract, if any, and shall take into account any usage of trade applicable to the transaction.

Settlement or Other Grounds for Termination

Article 37

1. If, before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by both parties and accepted by the tribunal, record the settlement in the form of an arbitral award on agreed terms. The arbitral tribunal is not obliged to give reasons for such an award.
2. If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reasons not mentioned in paragraph 1, the arbitral tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The arbitral tribunal shall have the power to issue such an order unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so.
3. Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated by the arbitral tribunal to the parties. Where an arbitral award on agreed terms is made, the provisions of Article 35, paragraphs 2, 4 and 6, shall apply.

Interpretation of the Award

Article 38

1. Within thirty days after the receipt of the award, a party, with notice to the other parties, may request that the arbitral tribunal give an interpretation of the award.
2. The interpretation shall be given in writing within forty-five days after the receipt of the request. The interpretation shall form part of the award and the provisions of Article 35, paragraphs 2 to 6, shall apply.

Correction of the Award.

Article 39

1. Within thirty days after the receipt of the award, a party, with notice to other parties, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical error, or any error of similar nature. If the arbitral tribunal considers that the request is justified, it shall make the correction within forty-five days of receipt of the request.
2. The arbitral tribunal may within thirty days after the communication of the award make such corrections on its own initiative.
3. Such corrections shall be in writing and shall form part of the award. The provisions of Article 35, paragraphs 2 to 6, shall apply.

*Additional Award.***Article 40**

1. Within thirty days after the receipt of the termination order of the award, a party, with notice to the other parties, may request the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but not decided by the arbitral tribunal.
2. 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.

*Definition of Costs.***Article 41**

1. The arbitral tribunal shall fix the costs of arbitration in the final award and, if it deems appropriate, in another decision.
2. The term "costs" includes only —
 - (a) The fees of the arbitral tribunal to be stated separately as to each arbitrator and to be fixed by the tribunal itself in accordance with Article 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) Any fees and expenses of the appointing authority as well as the fees and expenses of the Director of the RCICAN;
 - (g) The cost of third party funding;
 - (h) Other Costs.

3. 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.

Fees and Expenses of Arbitrators.

Article 42

1. The fees and expenses of the arbitrators shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject matter, the time spent by the arbitrators and any other relevant circumstances of the case.
2. If there is an appointing authority and it applies or has stated that it will apply a schedule or particular method for determining the fees for arbitrators in international cases, the arbitral tribunal in fixing its fees shall take that schedule or method into account to the extent that it considers appropriate in the circumstances of the case.
3. Promptly after its constitution, the arbitral tribunal shall inform the parties as to how it proposes to determine its fees and expenses, including any rates it intends to apply. Within 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.
4.
 - (a) When informing parties of the arbitrators' fees and expenses that have been fixed pursuant to Article 41, paragraphs 2 (a) and (b), the arbitral tribunal shall also explain the manner in which the corresponding amounts have been calculated;
 - (b) Within fifteen days of receiving the arbitral tribunal's determination of fees and expenses, any party may refer for review such determination to the appointing authority. If no appointing authority has been agreed upon or designated, or if the appointing authority fails to act within the time specified in these Rules, then the review shall be made by the Director of the RCICAN;
 - (c) If the appointing authority or the Director of the RCICAN finds that the arbitral tribunal's determination is inconsistent with the arbitral tribunal's proposal (and any adjustment thereto) under paragraph 3 or is otherwise manifestly excessive, it shall, within forty-five days of receiving such a referral, make any adjustments to the arbitral tribunal's determination that are necessary to satisfy the criteria in paragraph 1. Any such adjustments shall be binding upon the arbitral tribunal;
 - (d) Any such adjustments shall either be included by the arbitral tribunal in its award or, if the award has already been issued, be implemented in a correction to the award, to which the procedure of Article 39, paragraph 3, shall apply.
5. Throughout the procedure under paragraphs 3 and 4, the arbitral tribunal shall proceed with the arbitration, in accordance with Article 17, paragraph 1.
6. A referral under paragraph 4 shall not affect any determination in the award other than the arbitral tribunal's fees and expenses; nor shall it delay the recognition and enforcement of all parts of the award other than those relating to the determination of the arbitral tribunal's fees and expenses.

Allocation of Costs.

Article 43

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

*Deposit of Costs.***Article 44**

1. The arbitral tribunal, on its establishment, may request the parties to deposit an equal amount as an advance for the costs referred to in Article 41, paragraphs 2 (a) to (c).
2. During the course of the arbitral proceedings, the arbitral tribunal may request supplementary deposits from the parties.
3. If an appointing authority has been agreed upon or designated, and when a party so requests and the appointing authority consents to perform the function, the arbitral tribunal shall fix the amounts of any deposits or supplementary deposits only after consultation with the appointing authority, which may make any comments to the arbitral tribunal that it deems appropriate concerning the amount of such deposits and supplementary deposits.
4. If the required deposits are not paid in full within thirty days after the receipt of the requests, the arbitral tribunal shall so inform the parties, in order that one or more of them may make the required payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.
5. After the award has been made, the arbitral tribunal shall render an account to the parties of the deposits received and return any unexpended balance to the parties.

Annex.*Model Arbitration Clause for Contracts.*

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

Note: Parties should consider adding —

- (a) The appointing authority shall be ... [name of institution or person];
- (b) The number of arbitrators shall be ... [one or three];
- (c) The seat of arbitration shall be ... [town and country];
- (d) The language to be used in the arbitral proceedings shall be Model Statements of Independence Pursuant to Article 11 of the Rules.

No Circumstances to Disclose.

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

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

Circumstances to Disclose.

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

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

Question that the provision of First Schedule stand part of this Bill — Agreed to.

SECOND SCHEDULE

[Section 59 (1)]

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.

Appendices.

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

3. 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; or
 - (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; or
 - (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; or
 - (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.
4. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that —
 - (a) the subject matter of the difference is not capable of settlement by arbitration under the law of that country; or
 - (b) the recognition or enforcement of the award would be contrary to the public policy of that country.

Article VI

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

Article VII

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

Article VIII

1. This Convention shall be open until 31 December 1958 for signature on behalf of any member of the United Nations and also on behalf of any other State which is or hereafter becomes a member of any specialised agency of the United Nations, or which is or hereafter becomes a party to the Statute of the International Court of Justice, or any other State to which an invitation has been addressed by the General Assembly of the United Nations.
2. This Convention shall be ratified and the instrument of ratification shall be deposited with the Secretary-General of the United Nations.

Article IX

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

Article X

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.
2. At any time thereafter, any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect from the 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. Any contracting State may denounce this Convention by a written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.
2. Any State which has made a declaration or notification under Article X may, at any time thereafter, by notification to the Secretary-General of the United Nations, declare that this Convention shall cease to extend to the territory concerned one year after the date of the receipt of the notification by the Secretary-General.
3. This Convention shall continue to be applicable to arbitral awards in respect of which recognition or enforcement proceedings have been instituted before the denunciation takes effect.

Article XIV

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

Article XV

The Secretary-General of the United Nations shall notify the States contemplated in Article VIII of the following —

- (a) signature and ratifications in accordance with Article VIII;
- (b) accessions in accordance with Article IX;
- (c) declarations and notifications under Articles I, X and XI;
- (d) the date upon which this Convention enters into force in accordance with Article XII;
- (e) denunciations and notifications in accordance with Article XIII.

Article XVI

1. This Convention, of which the Chinese, English, French and Spanish texts should be equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit a certified copy of this Convention to the States contemplated in Article VIII.

Question that the provision of Second Schedule stand part of this Bill — Agreed to.

THIRD SCHEDULE

[Section 61(2)]

ARBITRATION PROCEEDINGS RULES 2018

Interpretation

1. In these Rules —
"arbitration claim" means any application to a High Court under the Federal Arbitration and Conciliation Act 2017 —
 - (a) to revoke an arbitration agreement under Section 3 thereof;
 - (b) to stay proceedings under Section 5 thereof;
 - (c) to determine the challenge of an arbitrator under Section 9 thereof;
 - (d) to appoint, remove or substitute an emergency arbitrator under Sections 16 and 17 thereof;
 - (e) to grant interim measures of protection under Section 19 thereof;
 - (f) to recognize or enforce an interim measure of protection under Section 28 thereof;
 - (g) to refuse recognition or enforcement of an interim measure of protection under Section 29 thereof;
 - (h) to subpoena a witness to attend under Section 43 thereof;
 - (i) in respect of the fees of an arbitrator under Section 54 thereof;
 - (j) to set aside an award or review the decision of an Award review Tribunal under Section 55 thereof;
 - (k) to recognise and enforce an award under Section 56 thereof;
 - (l) to refuse recognition and enforcement of an award under Section 57 thereof;

"arbitration award" includes a settlement agreement that is enforceable in the same manner as an award under Section 76 of this Act.

Starting the Claim.

2. (1) Except where sub-rules 2 and 3 of this Rule applies, an arbitration claim shall be started by the issue of an Originating Motion.
- (2) An application under Section 5 of the Act to stay legal proceedings shall be made by notice of motion to the court seised of those proceedings.
- (3) An application under Sections 16 or 17 of the Act for the appointment, challenge or replacement of an emergency arbitrator; or under 18 of the Act to fix the seat of the Emergency Relief Proceedings, shall be contained in a written communication addressed to the appropriate Court as defined under Section 84(1) of the Act.

Originating Motion:

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

Service out of the Jurisdiction.

4. (1) The court may give permission to serve an Originating Motion out of the jurisdiction if —
- (a) the claimant seeks to set aside an arbitration award made within the jurisdiction;
 - (b) the claimant —
 - (i) seeks some other remedy or requires a question to be decided by the court affecting an arbitration (whether started or not), an arbitration agreement or an arbitration award; and
 - (ii) the seat of the arbitration is or will be within the jurisdiction.
- (2) An application for permission under sub-rule 1 of this rule shall be supported by an affidavit —
- (a) stating the grounds on which the application is made; and
 - (b) showing in what place or country the person to be served is, or probably may be found.
- (3) An order giving permission to serve an Originating Motion out of the jurisdiction shall specify the period within which the defendant may enter appearance to the claim.

Notice.

5. (1) Where an arbitration claim is made, pursuant to section 18 of the Act, each arbitrator shall be a defendant.
- (2) Where notice shall be given to an arbitrator or any other person it may be given by sending him a copy of —
- (a) the Originating Notice of Motion; and
 - (b) any affidavit in support.

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

Hearings.

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

Enforcement of Arbitration Awards and Interim Measures of Protection.

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

Case Management.

7. (1) The following rules apply unless the court orders otherwise.
- (2) A defendant who does not contest any or all of the remedies claimed may file a notice stating such fact, and a court or judge in chambers may grant such uncontested remedy or remedies without an oral hearing.
- (3) A defendant who contests any or all of the remedies claimed and who wishes to rely on evidence before the court shall file and serve his counter-affidavit —
 - (a) within 21 days after the date by which he was required to enter appearance; or,
 - (b) where a defendant is not required to enter appearance, within 21 days after the service of the Originating Notice of Motion.
- (4) A claimant who wishes to rely on evidence in reply to the counter-affidavit filed under rule 7(2) shall file and serve his reply affidavit within 7 days after the service of the defendant's counter-affidavit.
- (5) Except in the case provided for in sub-rule (5) of this rule, an arbitration claim shall be entered on the court's list such that its first hearing is not later than thirty (30) days after service of the originating motion on the defendant, or in the case of multiple defendants, on the defendant last served.
- (6) Where a defendant is served outside the jurisdiction pursuant to permission given under rule 3 of these rules, an arbitration claim shall be entered on the court's list such that its first hearing is not later than forty (40) days after service of the originating motion on the defendant served outside the jurisdiction, or in the case of multiple defendants, on the defendant last served.
- (7) Not later than two (2) days before the hearing date, the claimant shall file and serve a written brief of arguments which lists succinctly —
 - (a) the issues which arise for decision;

- (b) the grounds of relief (or opposing relief) to be relied upon;
 - (c) the submissions of fact to be made with the references to the evidence; and
 - (d) the submissions of law with references to the relevant authorities.
- (8) Not later than the day before the hearing date the defendant shall file and serve a skeleton argument which lists succinctly —
- (a) the issues which arise for decision;
 - (b) the grounds of relief (or opposing relief) to be relied upon;
 - (c) the submissions of fact to be made with the references to the evidence; and
 - (d) the submissions of law with references to the relevant authorities;
 - (e) unless a party specifically requests an oral hearing, the court may decide the entire arbitration claim or particular issues arising in it without an oral hearing.

Appeals.

- (9) Rules 10 to 13 of these Rules shall apply to appeals from a High Court to the Court of Appeal and from the Court of Appeal to the Supreme Court in all arbitration claims as defined in rule 1 above, hereafter referred to as "arbitration appeals".
- (10) It shall not be necessary for the Registrar of a High Court or the Registrar of the Court of Appeal to prepare a record in respect of an arbitration appeal, and accordingly the record for the purpose of such appeal shall be prepared in the manner set forth in rule 11 of these Rules.
11. (1) The appellant shall, either simultaneously with filing his notice of appeal or within fourteen (14) days thereafter prepare for the use of the Justices a record comprising—
- (a) the index;
 - (b) certified true copies of documents and proceedings which the appellant considers relevant to the appeal; and
 - (c) a certified true copy of the notice of appeal.
- (2) If the respondent considers that the documents and proceedings filed by the appellant are inaccurate or are not sufficient for the purposes of the appeal, he shall, within a period of seven (7) days after service on him of the record filed by the appellant, file any further or other documents that he wishes to file.
- (3) In all arbitration appeals the provisions of the Court of Appeal Rules and the Supreme Court Rules for the time being in force in relation to the filing of briefs of arguments in civil matters shall apply mutatis mutandis upon the filing of the record of appeal pursuant to rule 11 above.

Case Management on Appeals.

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

Effect of Default.

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

Costs.

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

Application.

16. These rules shall apply to all arbitration claims and arbitration appeals instituted on or after the date of commencement of the Federal Arbitration and Conciliation Act 2017.
17. The rules of procedure in civil matters for the time in force in the High Courts, Courts of Appeal and the Supreme Court shall apply to arbitration claims and arbitration appeals only in respect of such matters and to such extent as provision has not been expressly made in these rules.

Question that the provision of Third Schedule stand part of this Bill — Agreed to.

FORTH SCHEDULE

[Sections 68 and 79]

CONCILIATION RULES

Article 1*Application of the Rules.*

1. These Rules apply to conciliation of disputes arising out of or relating to a contractual or other legal relationship where the parties seeking an amicable settlement of their dispute have agreed that the Conciliation Rules apply.
2. The parties may agree to exclude or vary any of these Rules at any time.
3. Where any of these Rules is in conflict with a provision of this Act or any law from which the parties cannot derogate, that provision prevails.

*Commencement of Conciliation Proceedings.***Article 2**

1. The party initiating conciliation sends to the other party a written invitation to conciliate under these Rules, briefly identifying the subject of the dispute.
2. Conciliation proceedings commence when the other party accepts the invitation to conciliate. If the acceptance is made orally, it is advisable that it be confirmed in writing.

3. If the other party rejects the invitation, there will be no conciliation proceedings.
4. If the party initiating conciliation does not receive a reply within thirty days from the date on which he sends the invitation, or within such other period of time as specified in the invitation, he may elect to treat this as rejection for the invitation to conciliate. If he so elects, he informs the other party accordingly.

Number of Conciliators.

Article 3

There shall be one conciliator unless the parties agree that there shall be two or three conciliators. Where there is more than one conciliator, they ought, as a general rule, to act jointly.

Appointment of Conciliator.

Article 4

1.
 - (a) In conciliation proceedings with one conciliator, the parties shall endeavour to reach agreement on the name of a sole conciliator.
 - (b) In conciliation proceedings with two conciliators, each party appoints one conciliator.
 - (c) In conciliation proceedings with three conciliators, each party appoints one conciliator. The parties shall endeavour to reach agreement on the name of the third conciliator.
2. Parties may enlist the assistance of an appropriate institution or person in connection with the appointment of conciliators. In particular —
 - (a) a party may request such an institution or person to recommend the names of suitable individuals to act as conciliators; or
 - (b) the parties may agree that the appointment of one or more conciliators be made by such institution or person.

In recommending or appointing individuals to act as conciliator, the institution or person shall have regard to such consideration as are likely to secure the appointment of an independent and impartial conciliator and, with respect to a sole or third conciliator, shall take into account the advisability of appointing a conciliator of a nationality other than the nationalities of the parties.

Submission of Statement to Conciliator.

Article 5

1. The conciliator upon his or her appointment requests each party to submit to him or her a brief written statement describing the general nature of the dispute and the points at issue. Each party sends a copy of their statement to the other party.
2. The conciliator may request each party to submit to him or her a further written statement of the party's position and the facts and grounds in support thereof, supplemented by any documents and other evidence that such party deems appropriate. The party sends a copy of their statement to the other party.
3. At any stage of the conciliation proceedings, the conciliator may request a party to submit to him such additional information as he deems appropriate.

Presentation and Assistance.

Article 6

The parties may be represented or assisted by persons of their choice. The names and addresses of such persons are to be communicated in writing to the other party and to the conciliator; such communication is to specify whether the appointment is made for purposes of representation or of assistance.

*Role of Conciliator.***Article 7**

1. The conciliator assists the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.
2. The conciliator will be guided by principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties.
3. The conciliator may conduct the conciliation proceedings in such a manner as he considers appropriate, taking into account the circumstances of the case, the wishes the parties may express, including any request by a party that the conciliator hear oral statements, and the need for a speedy settlement of the dispute.
4. The conciliator may, at any stage of the conciliation proceedings, make proposals for a settlement of the dispute. Such proposals need not be in writing and need not be accompanied by a statement of the reasons therefor.

*Administrative Assistance.***Article 8**

In order to facilitate the conduct of the conciliation proceedings, the parties, or the conciliator with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.

*Communication Between Conciliator and Parties.***Article 9**

1. The conciliator may invite the parties to meet with him or may communicate with them orally or in writing. He may meet or communicate with the parties together or with each of them separately.
2. Unless the parties have agreed upon the place where meetings with the conciliator are to be held, such place will be determined by the conciliator after consultation with the parties having regard to the circumstances of the conciliation proceedings.

*Disclosure of Information.***Article 10**

When the conciliator receives factual information concerning the dispute from a party, he or she discloses the substance of that information to the other party in order that the other party may have the opportunity to present any explanation which he considers appropriate. However, when a party gives any information to the conciliator subject to a specific condition that it be kept confidential, the conciliator does not disclose that information to the other party.

Co-operation of Parties with Conciliator.

Article 11

The parties will in good faith cooperate with the conciliator and, in particular, will endeavour to comply with requests by the conciliator to submit written materials, provide evidence and attend meetings.

*Suggestions by Parties for Settlement of Dispute.***Article 12**

Each party may, on his own initiative or at the invitation for the conciliator, submit to the conciliator suggestions for the settlement of the dispute

*Settlement Agreement.***Article 13**

1. When it appears to the conciliator that there exists, elements of a settlement which would be acceptable to the parties, he formulates the terms of a possible settlement and submits them to the parties for their observations. After receiving the observations of the parties, the conciliator may reformulate the terms of a possible settlement in the light of such observations.
2. If the parties reach agreement on a settlement of the dispute, they draw up and sign a written settlement agreement. If requested by the parties the conciliator draws up, or assists the parties in drawing up, the settlement agreement.
3. The parties by signing the settlement agreement put an end to the dispute and are bound by the agreement.

*Confidentiality.***Article 14**

The conciliator and the parties must keep confidential all matters relating to the conciliation proceedings. Confidentiality extends also to the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement.

*Termination of Conciliation Proceedings.***Article 15**

The Conciliation proceedings are terminated —

- (a) by the signing of the settlement agreement by the parties, on the date of the agreement; or
- (b) by a written declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified on the date of the declaration; or
- (c) by a written declaration of the parties addressed to the conciliator to the effect that the conciliation proceedings are terminated, on the date for the declaration; or
- (d) by a written declaration of a party to the other party and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated on the date of the declaration.

*Resort to Arbitral or Judicial Proceedings.***Article 16**

The parties undertake not to initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject of the conciliation proceedings.

Costs.

Article 17

- (1) Upon termination of the conciliation proceedings, the conciliator fixes the costs of the conciliation and gives written notice thereof to the parties.

The term "costs" includes only —

- (a) the fee of the conciliator which shall be a reasonable amount;
 - (b) the travel and other expenses of the conciliator;
 - (c) the travel and other expenses of witnesses requested by the conciliator with the consent of the parties;
 - (d) the cost of any assistance provided pursuant to Article 4 paragraph 2(b), and 8 of these Rules.
- (2) The costs, as defined above are borne equally by the parties unless the settlement agreement provides for a different apportionment. All other expenses incurred by a party are borne by the party.

Deposits.**Article 18**

- (1) The conciliator, upon his appointment, may request each party to deposit an equal amount as an advance for the costs referred to in Article 17, paragraph (1) which he expects will be incurred.
- (2) During the course of the conciliation proceedings, the conciliator may request supplementary deposits, in equal amount from each party.
- (3) If the required deposits under paragraphs (1) and (2) of this Article are not paid in full by both parties within thirty days, the conciliator may suspend the proceedings or may make a written declaration of termination to the parties, effective on the date of that declaration.
- (4) Upon termination of the conciliation proceedings, the conciliator renders an account to the parties of the deposits received and returns any unexpended balance to the parties.

Role of Conciliator in Other Proceedings.**Article 19**

The parties and the conciliator undertake that the conciliator shall not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceedings in respect of a dispute that is the subject of the conciliation proceedings. The conciliator shall not be presented as a witness in any such proceedings.

Admissibility of Evidence in Other Proceedings.**Article 20**

The parties undertake not to rely on or introduce as evidence in arbitral or judicial proceedings, whether or not such proceedings relate to the dispute that is the subject of the conciliation proceedings —

- (a) views expressed or suggestions made by the other party in respect of a possible settlement of the dispute;
- (b) admissions made by the other party in the course of the conciliation proceedings;
- (c) proposals made by the conciliator;

- (d) the fact that the other party had indicated his willingness to accept a proposal for settlement made by the conciliator.

Model Conciliation Clause.

Where, in the event of a dispute arising out of or relating to this contract, the parties wish to seek an amicable settlement of that dispute by conciliation, the conciliation shall take place in accordance with the Conciliation Rules in the Fourth Schedule to the Arbitration and Conciliation Act as at present in force in Nigeria.

Question that the provision of Forth Schedule stand part of this Bill — Agreed to.

Chairman to report Bill.

(SENATE IN PLENARY)

The Deputy Senate President reported that the Senate in the Committee of the Whole considered the Report of the Committee on Judiciary, Human Rights and Legal Matters on the Arbitration and Conciliation Act CAP A18 LFN 2004 (Repeal and Re-enactment) Bill, 2018 and approved as follows:

Clauses 1- 88 — As Recommended

Schedules 1- 4 — As Recommended

Question: That the Senate do approve the Report of the Committee of the Whole — *Resolved in the Affirmative.*

Motion made: That the Bill be now Read the Third Time (*Senate Leader*).

Question put and agreed to.

Bill accordingly Read the Third Time and Passed.

9. Committee on Judiciary, Human Rights and Legal Matters:

Report on the Emergency Powers (Repeal and Re-enactment) Bill, 2018 (SB. 182):

Motion made: That the Senate do consider the Report of the Committee on Judiciary, Human Rights and Legal Matters on the Emergency Powers (Repeal and Re-enactment) Bill, 2018 (*Senator David Umaru — Niger East*).

Question put and agreed to.

Report presented.

Motion made: That the Senate do resolve into the Committee of the Whole to consider the Report (*Senate Leader*).

Question put and agreed to.

(SENATE IN THE COMMITTEE OF THE WHOLE)

CONSIDERATION OF A BILL FOR AN ACT TO REPEAL THE EMERGENCY POWERS ACT, 1961 AND TO ENACT THE EMERGENCY POWERS ACT 2018; TO PROVIDE FOR THE DECLARATION OF A STATE OF EMERGENCY AND FOR RELATED MATTERS.

Clause 1: Objectives:

The objective of this Bill is to make provision for the declaration of a State of Emergency in Nigeria or any part thereof subject to the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and to provide for the:

- (a) general administration of an emergency area;
- (b) search, arrest without warrant and detention of persons in the emergency area;
- (c) prohibition of public processions, demonstrations and meetings in the emergency area;
- (d) imposition of curfew in the emergency area;
- (e) declaration of protected places and control of persons in the protected places; and
- (f) control of arms and explosives in the emergency area.

Committee's Recommendation:

That the provision in Clause 1 be retained (*Senator David Umaru — Niger East*) — Agreed to.

Question that Clause 1 do stand part of the Bill, put and agreed to.

Clause 2: Application.

The provisions of this Bill shall apply in any emergency area and or throughout the Federal Republic of Nigeria.

Committee's Recommendation:

That the provision in Clause 2 be retained (*Senator David Umaru — Niger East*) — Agreed to.

Question that Clause 2 do stand part of the Bill, put and agreed to.

PART II - DECLARATION OF A STATE OF EMERGENCY**Clause 3: Declaration of a State of Emergency.**

- (1) The President may in accordance with the advice of the Federal Executive Council may, by proclamation published in the Official Gazette, declare that a state of emergency exists in Nigeria or in any part of Nigeria.
- (2) The Governor of a State, supported by two-third majority of the House of Assembly may request the President to make a proclamation of state of emergency in a state or any part thereof, where the need for such declaration is reasonably justifiable.
- (3) The President shall, in the declaration of state of emergency, state the reason for the proclamation.

Committee's Recommendation:

That the provision in Clause 3 be retained (*Senator David Umaru — Niger East*) — Agreed to.

Question that Clause 3 do stand part of the Bill, put and agreed to.

Clause 4: National Assembly to be Informed.

- (1) Notwithstanding any other provision of this Bill, where a proclamation is published under subsection (1) of section 3 of this Bill, the President shall place immediately before the two Chambers of National Assembly the facts and circumstances leading to the declaration of the state of emergency.
- (2) The National Assembly shall, within seventy-two hours after being so notified, decide whether the proclamation should remain in force or should be revoked; and the President shall act in accordance with the decision of the National Assembly.
- (3) Notwithstanding any other provision of this Bill, where a request for the proclamation under subsection (2) of section 3 of this Bill is desired by a Governor of a state, the President shall be given a reasonable time within which to issue the proclamation.

Committee's Recommendation:

That the provision in Clause 4 be retained (*Senator David Umaru — Niger East*) — Agreed to.

Question that Clause 4 do stand part of the Bill, put and agreed to.

Clause 5: Duration of a State of Emergency.

- (1) A declaration of a state of emergency shall cease to have effect at the expiration of a period of six months beginning with the date of publication of the proclamation, unless, before the expiration of that period, it is approved by members through a resolution passed by simple majority of both chambers of the National Assembly.
- (2) Subject to subsection (2) of section 4 of this Bill, where a declaration of a state of emergency is approved by a simple majority resolution of both chambers of the National Assembly, the state of emergency shall continue to be in force until the expiration of a period of six months beginning with the date upon which it was approved or until such earlier date as may be specified in the resolution.

Committee's Recommendation:

That the provision in Clause 5 be retained (*Senator David Umaru — Niger East*) — Agreed to.

Question that Clause 5 do stand part of the Bill, put and agreed to.

Clause 6: Extension or Revocation of a State of Emergency.

- (1) The National Assembly may, by resolution passed by simple majority of its members, extend the approval of proclamation for periods of not more than three months at a time.
- (2) The National Assembly may, by a resolution passed by a simple majority of its members, at any time, revoke a declaration of a state of emergency it earlier approved.

Committee's Recommendation:

That the provision in Clause 6 be retained (*Senator David Umaru — Niger East*) — Agreed to.

Question that Clause 6 do stand part of the Bill, put and agreed to.

Clause 7: Circumstances under which a State of Emergency May Be Declared.

The President may issue a Proclamation of a state of emergency where:

- (a) the Federation is at war;
- (b) the Federation is in imminent danger of invasion or involvement in a state of war or insurgency;
- (c) there is actual breakdown of public order and public safety in the Federation or any part thereof to such extent as to require extraordinary measures to restore peace and security;
- (d) there is a clear and present danger of an actual breakdown of public order and public safety in the Federation or any part thereof requiring extraordinary measures to avert such danger;
- (e) there is an occurrence or imminent danger, or the occurrence of any disaster or natural calamity, affecting the community or a section of the community in the Federation;
- (f) there is any other public danger which clearly constitutes a threat to the existence of the Federation; or
- (g) the President receives a request to do so in accordance with the provisions of subsection (2) of section 3 of this Bill.

Committee's Recommendation:

That the provision in Clause 7 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 7 do stand part of the Bill, put and agreed to.

Clause 8: Consequential Powers.

- (1) On the declaration of a state of emergency under section 3 of this Bill, the President may take such measures as he considers necessary and justifiable for the purpose of dealing with the situation that exists during the period that the state of emergency is in force.
- (2) Without prejudice to subsection (1) of this section, the President during the period of state of emergency, may in the case of an emergency affecting the whole of Nigeria—
 - (a) prevent assistance to an enemy in case of war; and
 - (b) or in any part of Nigeria, take any of the following steps, which includes the:
 - (i) detention of persons or the restriction of their movement;
 - (ii) deportation and expulsion from Nigeria of persons whose presence in Nigeria constitute threat;
 - (iii) acquisition of any property or taking possession of or controlling on behalf of the state of any property;
 - (iv) searching without warrant of any premises;
 - (v) payment of compensation to any person affected by any action taken under the emergency that is not in conformity with the provisions of this Bill or any other law;

- (vi) arrest, trial and punishment of any person for breach of any instruments, orders or declaration related to the proclamation of state of emergency;
 - (vii) suspension of operation of any law; and
 - (viii) removal of any person from the emergency area where the emergency relates only to a part of the country.
- (3) The powers conferred on the President under this Bill may be exercised by the issuance of executive instruments, orders or declarations published in the Official Gazette.

Committee's Recommendation:

That the provision in Clause 8 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 8 do stand part of the Bill, put and agreed to.

Clause 9: Termination of State of Emergency.

At the end of an emergency period declared under section 3 of this Bill, a person in restriction or detention or in custody as a result of the declaration of the emergency, shall be released either conditionally or unconditionally.

Committee's Recommendation:

That the provision in Clause 9 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 9 do stand part of the Bill, put and agreed to.

Clause 10: Report to National Assembly of Restricted or Detained Persons.

- (1) The person authorised by the President shall make monthly report to the National Assembly of the number of persons restricted or detained by virtue of this Bill or any other enactment conferring emergency powers and the number of cases in which the authority that ordered the restriction or detention has acted in accordance with the decisions of the tribunal appointed under this Bill.
- (2) Notwithstanding subsection (1) of this section, the person referred to in subsection (1) shall publish on monthly basis in the Gazette, the number of—
 - (a) persons restricted or detained stating their names and addresses;
 - (b) cases reviewed by the court or tribunal appointed under the provisions of this Bill; and
 - (c) cases in which the authority which ordered their restriction or detention has acted in accordance with the decisions of the court or tribunal appointed under this Bill.

Committee's Recommendation:

That the provision in Clause 10 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 10 do stand part of the Bill, put and agreed to.

Clause 11: Administration of the Emergency Area

- (1) The State Governor or the Local Government Chairman in an emergency area shall continue with the general functions of administering the emergency area under the control of the President or any person designated or authorized to act on his behalf.
- (2) The President may give directions to a State Governor or Local Government Chairman directly or through his designate or a duly authorized person with respect to the administration of the emergency area and it shall be the duty of the State Governor or Local Government Chairman to comply with the direction.
- (3) The President may with the approval of the National Assembly suspend a State Governor or the Local Government Chairman in an emergency area during an emergency period.

Committee's Recommendation:

That the provision in Clause 11 be retained (*Senator David Umaru — Niger East*) — Agreed to.

Question that Clause 11 do stand part of the Bill, put and agreed to.

Clause 12: Power of the President to Make Order for an Emergency Area.

- (1) The President may make such Orders as appear to him to be necessary or expedient for the purpose of maintaining and securing peace, public order, public safety and good Government in the emergency area.
- (2) Any Order made under subsection (1) of this section, may, if it appears to the President to be necessary or expedient for the purpose mentioned in the subsection —
 - (a) make provision for the detention of any person either within the emergency area or elsewhere and removal and exclusion of any person from the emergency area;
 - (b) authorized the taking of possession or control of any property or undertaking in the emergency area;
 - (c) authorize the entry and search of any premises;
 - (d) provide for the application of any law (with or without modification), in relation to that area;
 - (e) provide for the utilization of the funds of any Local Government in the emergency area;
 - (f) provide for the payment of compensation and remuneration to persons affected by the Order;
 - (g) provide for the apprehension, trials and punishment of persons offending against the Order; or
 - (h) provide for the maintenance of such supplies and services as the President considers essential to the lives of persons in the emergency area.
- (3) Nothing in subsection (2) of this section shall authorize the making of provisions for the trials of a person by military courts.

- (4) An Order made under this section may provide that the Order shall have effect for all purposes as if it were a law made by the House of Assembly of the State of the emergency area concerned.
- (5) The President shall, as soon as reasonably practicable after an Order has been made under this Bill, transmit a copy of the Order to each House of the National Assembly for approval and if the National Assembly disallows the Order, it shall cease to have effect without prejudice to anything done thereunder.

Committee's Recommendation:

That the provision in Clause 12 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 12 do stand part of the Bill, put and agreed to.

Clause 13: Control of the Police in the Emergency Area.

Subject to the provisions of subsection (3) of section 215 of the Constitution of the Federal Republic of Nigeria 1999, as amended and of any directions given in pursuance of that subsection, a person designated or authorized by the President may give to the Commissioner of Police in the emergency area such directions with respect to the maintenance and security of public safety and order as the person considers expedient and it shall be the duty of the Commissioner of Police to comply with the directions.

Committee's Recommendation:

That the provision in Clause 13 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 13 do stand part of the Bill, put and agreed to.

Clause 14: Suspension and Control of Functions of Certain Authorities in the Emergency Area

The President or his designate or authorised person shall, without prejudice to the generality of the powers conferred on him by these Regulations —

- (a) allow any person holding offices in the Local Government of the emergency area, or public service of the State within the meaning of the Constitution of the Federal Republic of Nigeria 1999, as amended in the emergency area; or any customary court or Local Government Authority in the emergency area, to exercise their functions in accordance with any directions given to them; and
- (b) may suspend from office any such person, who in his opinion, fails to comply with direction given under this regulation and may appoint some other person to act in the place of the suspended person during the period of the emergency.

Committee's Recommendation:

That the provision in Clause 14 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 14 do stand part of the Bill, put and agreed to.

Clause 15: Authentication of Instruments.

Any instrument purported to be signed by the President, his designate or a person authorized by him shall until the contrary is proved, be deemed to be signed by the President, his designate or the authorized person.

Committee's Recommendation:

That the provision in Clause 15 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 15 do stand part of the Bill, put and agreed to.

PART IV — DETENTION OF PERSONS**Clause 16: Detention Orders.**

- (1) Where the Appropriate Authority is satisfied that a person in the emergency area is or has been involved in the preparation or instigation of acts prejudicial to public safety and that by reason thereof, it is necessary to exercise control over him, he may make a Detention Order directing that the person be detained in any place in the emergency area or in any Maximum Prison in Nigeria as may be specified in the Detention Order.
- (2) Any Detention Order under subsection (1) of this section may be made orally or in writing provided that if made orally, it shall as soon as practicable be confirmed in writing and in either case, the Detention Order issued shall be complied with immediately.
- (3) Any person detained pursuant to a Detention Order made under subsection (1) of this section shall be deemed to be in lawful custody.

Committee's Recommendation:

That the provision in Clause 16 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 16 do stand part of the Bill, put and agreed to.

Clause 17: Authority for Detention.

An order of the Appropriate Authority made under the provisions of section 16 of this Bill shall be full authority fully executed by the person or persons to whom the order is given, to arrest the person(s) against whom it is made and to detain him or her during such time as the Detention Order is in force.

Committee's Recommendation:

That the provision in Clause 17 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 17 do stand part of the Bill, put and agreed to.

Clause 18: Powers of Search Without Warrant.

- (1) Any superior police officer or any member personnel of the armed forces not below the rank of an Army Captain or its equivalent may, at any time, enter without warrant and search any building (including a dwelling house), ship, aircraft, vehicle or place where he has reasonable cause to believe that there is or likely to be—
 - (a) any person against whom an order has been made under section 16 of this Bill; or
 - (b) any seditious or subversive document, pamphlet or literature; or
 - (c) anything which may provide evidence of the preparation, instigation or commission of any act referred to in subsection (1) of section 16 of this Bill; and
 - (d) any firearm or ammunition owned, possessed or kept contrary to the law.

- (2) Where any person or thing referred to in sub-regulation (1) of this regulation is found in any building, ship, aircraft, vehicle or place, any superior police officer or any personnel of the armed forces may arrest the person or seize the thing as the case may be.
- (3) The police or members of the armed forces conducting any search pursuant to the provision of subsection (1) of this section may require the assistance of any person as deemed necessary for the purpose and such person shall render such assistance to the best of his or her ability.
- (4) Where any person is conducting a search in pursuance of powers conferred upon him by subsection (1) of this section, the provisions of the Administration of Criminal Justice Act, 2015 shall apply as though he were conducting such search in the execution of a search warrant.
- (5) Any property, item or thing seized under the provisions of section (1) of this section may be detained and disposed of in accordance with the Administration of Criminal Justice Act, 2015, as though it had been seized in the execution of a search warrant.

Committee's Recommendation:

That the provision in Clause 18 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 18 do stand part of the Bill, put and agreed to.

Clause 19: Variation and Suspension of Detention Order.

At any time after a Detention Order is made against any person under the provisions of section 16 of this Act, the Appropriate Authority may direct —

- (a) that the person so detained be removed to any other place of detention within the emergency area, or with the consent of the President, to another place in Nigeria;
- (b) that the operation of the Detention Order be suspended, subject to such conditions: —
 - (i) prohibiting or restricting the possession or use by the person of any specified articles;
 - (ii) imposing on the person such restrictions as may be specified in the direction in respect of his employment or business, concerning the place of his residence or his association or communication with other persons;
 - (iii) restricting his movement between such hours as may be so specified, except under the authority of a written permit granted by any relevant authority or person;
 - (iv) requiring him to notify his movements, in such manner and at such times, and to such authority or person as may be so specified of his movement; or
 - (v) prohibiting him from travelling except in accordance with permission given to him by such authority or person as may be specified.

Committee's Recommendation:

That the provision in Clause 19 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 19 do stand part of the Bill, put and agreed to.

Clause 20: Revocation.

The Appropriate Authority may revoke any direction issued pursuant to this Part of this Bill, if he is satisfied that the person against whom the Order was made has failed to observe any condition imposed or that the operation of the Order can no longer remain suspended without it being detrimental to public safety.

Committee's Recommendation:

That the provision in Clause 20 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 20 do stand part of the Bill, put and agreed to.

Clause 21: Control of Detention Orders by President.

Where the Appropriate Authority is a designated or authorized person acting on behalf of the President, he shall immediately after a Detention Order has been issued under these regulations, transmit a copy of the Detention Order to the President for approval and where the President disallows the Detention Order, it shall cease to have effect without prejudice to anything done thereunder.

Committee's Recommendation:

That the provision in Clause 21 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 21 do stand part of the Bill, put and agreed to.

PART V — RESTRICTION ORDERS**Clause 22: Restriction Orders.**

- (1) For the purpose of maintaining public order in the emergency area, the Appropriate Authority may make an order (in this Act referred to as "a Restriction Order"):
 - (a) providing that a person shall be and remain or not be or not remain, in a particular place or area as may be specified in the Restriction Order; and
 - (b) requiring a person to notify the Appropriate Authority or such other authority or person of his movement in such manner and at such times and as may be specified in the Restriction Order or any permit made pursuant to the Restriction Order.
- (2) A permit may be issued by the Appropriate Authority on such terms and conditions as the Appropriate Authority deems expedient.
- (3) A Restriction Order shall come into force immediately upon its service on the restricted person.
- (4) Where at the time of the service of a Restriction Order, the Restricted Person is within the place or area specified in the Restriction Order, the Restricted Person may be removed from that place or area by a police officer or any person authorised in writing by the Appropriate Authority.

- (5) Without prejudice to any proceedings which may be taken against a Restricted Person under these Regulations, a Restricted Person who is in contravention of the provisions of a Restriction Order, or any term or condition of a permit issued pursuant to Restriction Order, may be removed from the place or area by any police officer or any person authorised in writing by the Appropriate Authority.
- (6) A person while being removed under this Part shall be deemed to be in lawful custody.

Committee's Recommendation:

That the provision in Clause 22 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 22 do stand part of the Bill, put and agreed to.

Clause 23: Control of Restriction Orders by the President.

Where the Appropriate Authority is a designated or authorized person acting on behalf of the President, he shall immediately after a Restriction Order has been made under this Act, transmit a copy of the Restriction Order to the President for approval and where the President disallows the Restriction Order, such Restriction Order shall cease to have effect without prejudice to anything done there under.

Committee's Recommendation:

That the provision in Clause 23 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 23 do stand part of the Bill, put and agreed to.

PART VI — REPORTING OF PERSONS

Clause 24: Power to Require Persons to Report.

The Appropriate Authority may, if he deems it expedient for securing public safety and maintenance or restoration of public order, issue a direction in writing requiring any person in the emergency area to whom the direction is addressed, to report to such place in the emergency area within such time as may be specified in the direction and to comply with direction relating to his movements as may be given by the Appropriate Authority.

Committee's Recommendation:

That the provision in Clause 24 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 24 do stand part of the Bill, put and agreed to.

Clause 25: Duration of a Direction.

(1) A direction issued pursuant to the provision of section 24 of this Act shall remain in force for a period of 21 days from the date of receipt by the person to whom it is addressed.

(2) On the expiration of the period specified in subsection (1) of this section, the Appropriate Authority may issue a further direction.

Committee's Recommendation:

That the provision in Clause 25 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 25 do stand part of the Bill, put and agreed to.

Clause 26: Control of Directions by the President.

Where the Appropriate Authority is a designated or authorized person acting on behalf of the President, he shall immediately after a direction has been issued under these regulations, transmit a copy of the direction to the President for approval and where the President disallows the direction, it shall cease to have effect without prejudice to anything done there under.

Committee's Recommendation:

That the provision in Clause 26 be retained (*Senator David Umaru — Niger East*) — Agreed to.

Question that Clause 26 do stand part of the Bill, put and agreed to.

Clause 27: Notice of Direction.

- (1) For the purpose of this Part of this Bill, a direction shall be deemed to have been received if it is delivered to the:—
 - (a) the person to whom it is addressed or made known to him; or
 - (b) the usual place of abode or business of such a person.
- (2) It shall be a defence for a person who is found to be in contravention of the provision of subsection (1) (b) of this section to prove that he was absent from his usual place of abode or business as the case may be when the direction was delivered and that on his return, he took immediate steps to comply with the direction.

Committee's Recommendation:

That the provision in Clause 27 be retained (*Senator David Umaru — Niger East*) — Agreed to.

Question that Clause 27 do stand part of the Bill, put and agreed to.

PART VII — PROCESSION AND MEETINGS**Clause 28: Prohibition of Public Processions, Demonstrations and Meetings.**

The Appropriate Authority, may by order prohibit the holding of any public procession, demonstration or public meeting in any emergency area for such period as may be specified in the order if he is satisfied that the holding of the public procession, demonstration or public meeting would be likely to cause serious public disorder.

Committee's Recommendation:

That the provision in Clause 28 be retained (*Senator David Umaru — Niger East*) — Agreed to.

Question that Clause 28 do stand part of the Bill, put and agreed to.

Clause 29: Use of Force.

Any police officer or a member of the Armed Forces of the Federal Republic of Nigeria may take such steps and use such force as may be necessary to secure compliance with any order made under these Regulations (*Senator David Umaru — Niger East*).

Amendment Proposed:

Immediately after the words "may be" in line 2, insert the word "reasonably" (*Senator Joshua M. Lidani — Gombe South*).

Question that the amendment be made, put and agreed to.

Question that Clause 29 as amended do stand part of the Bill, put and agreed to.

PART VIII— CURFEW

Clause 30: Power to Impose Curfew.

The Appropriate Authority may, by order, impose a curfew upon the inhabitants of the emergency area or any part thereof.

Committee's Recommendation:

That the provision in Clause 30 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 30 do stand part of the Bill, put and agreed to.

Clause 31: Publication, Commencement and Proof of Curfew Order.

- (1) Every curfew order shall be made known to the inhabitants of the area to which it relates in such manner as the Appropriate Authority thinks fit, and shall come into operation on the date it is issued.
- (2) Without prejudice to any other mode of proof, a certificate signed by the Appropriate Authority or at his direction stating the terms of any curfew order and the date on which it came into operation in accordance with the provisions subsection (1) of this section shall be conclusive evidence of those matters.
- (3) As soon as a curfew order is made, the Appropriate Authority shall cause it to be published by notice in the Government Gazette.

Committee's Recommendation:

That the provision in Clause 31 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 31 do stand part of the Bill, put and agreed to.

Clause 32: Effect of Curfew Order.

Where a curfew has been imposed in any area, no person other than a police officer, a member of the armed forces of the Federation, a person registered as a medical practitioner or any other person authorized in writing under this Part of this Bill shall be outdoors within the area between such hours as may be specified in the curfew order (in this Bill referred to as 'the hours of curfew').

Committee's Recommendation:

That the provision in Clause 32 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 32 do stand part of the Bill, put and agreed to.

Clause 33: Permits.

- (1) Any superior police officer may issue to any person applying therefrom a written permit authorizing the holder thereof to be outdoors within a curfew area during such times and for such purposes and subject to such conditions or limitations as may be specified in such permit.
- (2) It shall be a condition of every such permit that the person to whom it has been granted shall carry it on his person at all times when he is outdoors in a curfew area during the hours of curfew.
- (3) Every such permit shall, on demand, be produced for the inspection of a police officer or a member of the armed forces of the Federation.

Committee's Recommendation:

That the provision in Clause 33 be retained (*Senator David Umaru — Niger East*) — Agreed to.

Question that Clause 33 do stand part of the Bill, put and agreed to.

PART IX — PROTECTED PLACES**Clause 34: Declaration of Protected Places.**

The Appropriate Authority may by order, where it appears to him to be necessary or expedient:—

- (a) for the maintenance of supplies and services essential to the life of the community; or
- (b) for securing the public safety; or
- (c) that special precautions should be taken to prevent the entry of unauthorized persons, declare those premises to be a protected place for the purpose of this Act and so long as the order is in force, no person shall, subject to any exemptions for which provision may be made by the order, enter or attempt to enter or be in those premises without the permission of such authority or person as may be specified in the order.

Committee's Recommendation:

That the provision in Clause 34 be retained (*Senator David Umaru — Niger East*) — Agreed to.

Question that Clause 34 do stand part of the Bill, put and agreed to.

Clause 35: Control of Persons in Protected Places.

Every person to whom permission to enter a protected place is granted pursuant to section 34 of this Bill shall, while in that place, comply with such directions for regulating his conduct as may be given by the Appropriate Authority or by the authority or person granting the permission, and any authorized officer or any person authorized in that behalf by the occupier of the premises, may search any person entering or seeking to enter or being in any protected place, and may detain any such person for the purpose of searching him.

Committee's Recommendation:

That the provision in Clause 35 be retained (*Senator David Umaru — Niger East*) — Agreed to.

Question that Clause 35 do stand part of the Bill, put and agreed to.

Clause 36: Removal of Unauthorized Persons.

Where a person is in a protected place in contravention of this Part of this Bill or while in any such place, fails to comply with any direction given under this Part of this Bill, then without prejudice to any proceedings which may be taken against him, he may be removed from there by any authorized officer or any person authorized in that behalf by the occupier of the premises.

Committee's Recommendation:

That the provision in Clause 36 be retained (*Senator David Umaru — Niger East*) — Agreed to.

Question that Clause 36 do stand part of the Bill, put and agreed to.

Clause 37: Additional Protective Measures.

- (1) The Appropriate Authority may authorize such steps to be taken as he may deem necessary for the protection of any protected place, and such steps may extend to the taking of defensive measures which involve or may involve danger to the life of any person entering or attempting to enter any protected place.
- (2) Where any measures involving such danger as aforesaid are adopted, the senior police officer or a member of the Armed Forces of the Federal Republic of Nigeria responsible for the locality in which the protected place is situated, shall cause such precautions to be taken, including the prominent display of warning notices, as he deems necessary to prevent inadvertent or accidental entry into the protected place and, where such precautions have been duly taken, no person shall be entitled to compensation or damages in respect of injury received or death caused as a result of any unauthorized entry into the protected place.

Committee's Recommendation:

That the provision in Clause 37 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 37 do stand part of the Bill, put and agreed to.

PART X — POSSESSION OF EXPLOSIVES

Clause 38: Exercise of Powers by the Appropriate Authority is subject to directions, if any, given by the Appropriate Authority, a superior police officer or any member of the armed forces not below the rank of an Army Captain or its equivalent may exercise in the emergency area, all or any of the powers conferred upon the Appropriate Authority by section 39 of this Bill.

Committee's Recommendation:

That the provision in Clause 38 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 38 do stand part of the Bill, put and agreed to.

Clause 39: Possession of Explosives etc.

- (1) The Appropriate Authority may by order made in respect of the whole or any part of the emergency area prohibit, either absolutely or conditionally, the possession by any person of any explosive, ammunition, arms or component parts thereof, and any such order may be made with respect to all explosives, ammunition, arms or component parts thereof.
- (2) The Appropriate Authority may by order made in respect of the whole or any part of the emergency area provide for the custody of explosives, ammunition, arms and component parts thereof, as he shall deem fit.
- (3) Any person who, in any such area as may be specified in an order made pursuant to subsection (2) of this section, has in his possession, custody or control any explosive, ammunition, arms or component part thereof, shall comply with such directions in respect thereof as may be given by a police officer or a member of the Armed Forces of the Federal Republic of Nigeria in the district in which the articles are situated; and the directions may require the removal of the articles to such place as may be specified therein.

- (4) Where any directions given by any police officer or a member of the Armed Forces of the Federal Republic of Nigeria under subsection (3) of this section are not complied with, then (without prejudice to any proceedings which may be taken in respect of the offence) the said officer may cause the articles to which the directions relate to be dealt with in such manner as may be necessary for securing compliance with the directions.

Committee's Recommendation:

That the provision in Clause 39 be retained (*Senator David Umaru — Niger East*) — Agreed to.

Question that Clause 39 do stand part of the Bill, put and agreed to.

PART XI — MISCELLANEOUS

Clause 40: Gazetting and Publication of Detained Persons.

- (1) Not more than fourteen (14) days after the commencement of the restriction or detention of any person under section 16 of this Bill, a notification shall be published in the Official Gazette, stating the number of person(s) that have been arrested, restricted or detained on the grounds of violating the proclamation of state of emergency.
- (2) The person(s) detained shall be allowed to consult with a lawyer of his choice who shall also be permitted to make representations to either the court or tribunal appointed for the review of his case, and at the hearing of his case, he shall be permitted to appear in person or by a lawyer of his choice.

Committee's Recommendation:

That the provision in Clause 40 be retained (*Senator David Umaru — Niger East*) — Agreed to.

Question that Clause 40 do stand part of the Bill, put and agreed to.

Clause 41: Review by Either a Court or Tribunal.

- (1) Not more than ten (10) days after the commencement of the restriction or detention, and after that, during the restriction or detention, at intervals of not more than three months, the case shall be reviewed by either a court or tribunal composed of not less than three Justices of the Superior Court appointed by the Chief Justice of Nigeria; except that the same court or tribunal shall not review more than once the case of a person restricted or detained.
- (2) On a review by a court or tribunal of the case of a restricted or detained person, the tribunal may order the release of the person and the payment to him of adequate compensation or uphold the grounds of his restriction or detention, and the authority by which the restriction or detention was ordered shall act accordingly.

Committee's Recommendation:

That the provision in Clause 41 be retained (*Senator David Umaru — Niger East*) — Agreed to.

Question that Clause 41 do stand part of the Bill, put and agreed to.

Clause 42: Hearing of Proceedings in Camera.

- (1) A court sitting in any part of Nigeria where a proclamation under section 3 of this Bill is in force, if it is satisfied that it is in the interest of the public safety or the defence of the State, may—

- (a) direct that throughout or during any part of its proceedings, such persons or classes of persons as the court may determine shall be excluded; and
 - (b) prohibit or restrict the disclosure of information relating to its proceedings.
- (2) A person who contravenes the directions of the court under subsection (1) of this section, commits an offence and is liable on conviction to imprisonment for a term of not less than 30 days.
- (3) Nothing in this Act shall authorise the making of any provision for the trial of a non-military person by a military court.

Committee's Recommendation:

That the provision in Clause 42 be retained (*Senator David Umaru. — Niger East*) — *Agreed to.*

Question that Clause 42 do stand part of the Bill, put and agreed to.

Clause 43: Offences and Penalties.

- (1) A person who—
 - (a) contravenes the provisions of a Restriction Order; or
 - (b) fails to comply with any term or condition of a permit pursuant to a Restriction Order, commits an offence and liable on summary conviction to imprisonment for a term not exceeding two years or to a fine of N500, 000.00 or to both.
- (2) A person who receives a direction in pursuance of Part VI of this Bill and fails to comply with the requirements of the direction, commits an offence and shall be liable on summary conviction to imprisonment, for a term not exceeding 6 months or to a fine of N200,000.00 or to both.
- (3) A person who fails to comply with any order made under Part VII of this Bill commits an offence and shall be liable on summary conviction to imprisonment for a term not exceeding two years or to a fine of not less than N500,000.00 or to both.
- (4) A person found outdoors in any area where a curfew has been imposed contrary to the provisions of Part VII of this Bill may be arrested without warrant by a police officer or a member of the armed forces of the Federation, and shall be liable on summary conviction to a fine not exceeding N200,000 or to imprisonment for a term not exceeding six months or to both.
- (5) A person to whom a permit has been granted under Part VIII of this Act who fails to produce it when lawfully required to do so shall be liable on summary conviction to a fine not exceeding N100,000 or to imprisonment for a term not exceeding three months.
- (6) A person who enters or attempts to enter a protected place in contravention of any of the provisions of Part IX of this Bill or a person while in a protected place fails to comply with any direction given under Bill, commits an offence and shall be liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 2 years; or

- (4) Where any directions given by any police officer or a member of the Armed Forces of the Federal Republic of Nigeria under subsection (3) of this section are not complied with, then (without prejudice to any proceedings which may be taken in respect of the offence) the said officer may cause the articles to which the directions relate to be dealt with in such manner as may be necessary for securing compliance with the directions.

Committee's Recommendation:

That the provision in Clause 39 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 39 do stand part of the Bill, put and agreed to.

PART XI — MISCELLANEOUS

Clause 40: Gazetting and Publication of Detained Persons.

- (1) Not more than fourteen (14) days after the commencement of the restriction or detention of any person under section 16 of this Bill, a notification shall be published in the Official Gazette, stating the number of person(s) that have been arrested, restricted or detained on the grounds of violating the proclamation of state of emergency.
- (2) The person(s) detained shall be allowed to consult with a lawyer of his choice who shall also be permitted to make representations to either the court or tribunal appointed for the review of his case, and at the hearing of his case, he shall be permitted to appear in person or by a lawyer of his choice.

Committee's Recommendation:

That the provision in Clause 40 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 40 do stand part of the Bill, put and agreed to.

Clause 41: Review by Either a Court or Tribunal.

- (1) Not more than ten (10) days after the commencement of the restriction or detention, and after that, during the restriction or detention, at intervals of not more than three months, the case shall be reviewed by either a court or tribunal composed of not less than three Justices of the Superior Court appointed by the Chief Justice of Nigeria; except that the same court or tribunal shall not review more than once the case of a person restricted or detained.
- (2) On a review by a court or tribunal of the case of a restricted or detained person, the tribunal may order the release of the person and the payment to him of adequate compensation or uphold the grounds of his restriction or detention, and the authority by which the restriction or detention was ordered shall act accordingly.

Committee's Recommendation:

That the provision in Clause 41 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 41 do stand part of the Bill, put and agreed to.

Clause 42: Hearing of Proceedings in Camera.

- (1) A court sitting in any part of Nigeria where a proclamation under section 3 of this Bill is in force, if it is satisfied that it is in the interest of the public safety or the defence of the State, may—

- (a) direct that throughout or during any part of its proceedings, such persons or classes of persons as the court may determine shall be excluded; and
 - (b) prohibit or restrict the disclosure of information relating to its proceedings.
- (2) A person who contravenes the directions of the court under subsection (1) of this section, commits an offence and is liable on conviction to imprisonment for a term of not less than 30 days.
- (3) Nothing in this Act shall authorise the making of any provision for the trial of a non-military person by a military court.

Committee's Recommendation:

That the provision in Clause 42 be retained (*Senator David Umaru — Niger East*) — *Agreed to.*

Question that Clause 42 do stand part of the Bill, put and agreed to.

Clause 43: Offences and Penalties.

- (1) A person who—
 - (a) contravenes the provisions of a Restriction Order; or
 - (b) fails to comply with any term or condition of a permit pursuant to a Restriction Order, commits an offence and liable on summary conviction to imprisonment for a term not exceeding two years or to a fine of N500, 000.00 or to both.
- (2) A person who receives a direction in pursuance of Part VI of this Bill and fails to comply with the requirements of the direction, commits an offence and shall be liable on summary conviction to imprisonment, for a term not exceeding 6 months or to a fine of N200,000.00 or to both.
- (3) A person who fails to comply with any order made under Part VII of this Bill commits an offence and shall be liable on summary conviction to imprisonment for a term not exceeding two years or to a fine of not less than N500,000.00 or to both.
- (4) A person found outdoors in any area where a curfew has been imposed contrary to the provisions of Part VII of this Bill may be arrested without warrant by a police officer or a member of the armed forces of the Federation, and shall be liable on summary conviction to a fine not exceeding N200,000 or to imprisonment for a term not exceeding six months or to both.
- (5) A person to whom a permit has been granted under Part VIII of this Act who fails to produce it when lawfully required to do so shall be liable on summary conviction to a fine not exceeding N100,000 or to imprisonment for a term not exceeding three months.
- (6) A person who enters or attempts to enter a protected place in contravention of any of the provisions of Part IX of this Bill or a person while in a protected place fails to comply with any direction given under Bill, commits an offence and shall be liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 2 years; or

- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years.
- (7) A person who fails to comply with the provisions of any order or direction made or given under Part X of this Bill commits an offence and shall be liable on summary conviction, to imprisonment for a term not exceeding 5 years.

Committee's Recommendation:

That the provision in Clause 43 be retained (*Senator David Umaru — Niger East*) — Agreed to.

Question that Clause 43 do stand part of the Bill, put and agreed to.

Clause 44: Repeal and Savings Provisions.

- (1) The State of Emergency Act, 1961 is repealed.
- (2) Without limiting the provisions of the Interpretation Act, the repeal of the Act referred to in subsection (1) of this section, shall not affect any proclamation made or anything whatsoever done under the repealed enactment.
- (3) Every order, requirement, certificate, notice, direction, decision, authorisation, consent, application, request or thing made, issued, given or done under the enactment repealed by this Bill, shall continue in force and shall have effect as if made, issued, given or done under the corresponding provision of this Bill.

Committee's Recommendation:

That the provision in Clause 44 be retained (*Senator David Umaru — Niger East*) — Agreed to.

Question that Clause 44 do stand part of the Bill, put and agreed to.

Clause 45: Interpretation.

"Appropriate Authority" means the President of the Federal Republic of Nigeria or any person designated or authorised to act on his behalf;

Question: That the word "Appropriate Authority" be as defined in the Interpretation to this Act, put and agreed to.

"ammunition" includes all materials for loading firearms, percussion caps and gunpowder of every kind;

Question: That the word "ammunition" be as defined in the Interpretation to this Act, put and agreed to.

"arms" means offensive weapons and includes firearms of all descriptions;

Question: That the word "arms" be as defined in the Interpretation to this Act, put and agreed to.

"Detention Order" means an order made in accordance with the provision of Part IV of this Bill;

Question: That the word "Detention Order" be as defined in the Interpretation to this Act, put and agreed to.

"duly authorized person" means any person designated or authorised to act on behalf of the President of the Federal Republic of Nigeria with respect to the administration of any emergency area;

Question: That the word "duly authorised person" be as defined in the Interpretation to this Act, put and agreed to.

"emergency area" means the Areas listed in the Schedule to Proclamation issued pursuant to this Bill;

Question: That the word "emergency area" be as defined in the Interpretation to this Act, put and agreed to.

"explosives" includes gunpowder of every kind, rockets, nitroglycerine, dynamite, gun-cotton, blasting powder, detonators, fulminate of mercury or other metals, and every other explosive substance being any compound of or having any ingredients in common with any of the above;

Question: That the word "explosives" be as defined in the Interpretation to this Act, put and agreed to.

"firearms" includes any cannon, gun, rifle, machine-gun, cap-gun, flint-lock gun, revolver, pistol or other firearm (In detached pieces; and

Question: That the word "firearms" be as defined in the Interpretation to this Act, put and agreed to.

"offensive weapons" includes air guns, air pistols, bows and arrows, spears, cutlasses, machetes, daggers, cudgels or any piece of wood, metal or stone capable of being used as an offensive weapon;

Question: That the word "offensive weapons" be as defined in the Interpretation to this Act, put and agreed to.

"outdoors" means out-of-doors and includes open air, place of worship, schools or other public places;

Question: That the word "outdoors" be as defined in the Interpretation to this Act, put and agreed to.

"protected place" means any premises in respect of which an order has been made by the Appropriate Authority pursuant to this Bill;

Question: That the word "protected place" be as defined in the Interpretation to this Act, put and agreed to.

"public meeting" means a meeting in a public place;

Question: That the word "public meeting" be as defined in the Interpretation to this Act, put and agreed to.

"public procession" means a procession in a public place and includes a demonstration;

Question: That the word "public procession" be as defined in the Interpretation to this Act, put and agreed to.

"public place" includes any —

- (a) public way;
- (b) building, place or conveyance, to which for the time being the public is entitled or permitted to have access, with or without any condition; or
- (c) building or place which is for the time being used for any public or religious meeting, assembly or as an open court.

Question: That the word "public place" be as defined in the Interpretation to this Act, put and agreed to.

"Restricted Person" means a person subject to a Restriction Order as provided under this Bill;

Question: That the word "Restricted person" be as defined in the Interpretation to this Act, put and agreed to.

"Restriction Order" means an order made in accordance with the provision of section 22 of this Bill;

Question: That the word "Restriction Order" be as defined in the Interpretation to this Act, put and agreed to.

"specified" means specified in the Restriction Order or a permit, issued pursuant to a Restriction Order.

Question: That the word "specified" be as defined in the Interpretation to this Act, put and agreed to.

Committee's Recommendation:

That the provision in Clause 45 be retained (*Senator David Umaru — Niger East*) — Agreed to.

Question that Clause 45 do stand part of the Bill, put and agreed to.

Clause 46: Short title.

This Bill may be cited as The Emergency Powers (Repeal and Enactment) Bill, 2018.

Committee's Recommendation:

That the provision in Clause 46 be retained (*Senator David Umaru — Niger East*) — Agreed to.

Question that Clause 46 do stand part of the Bill, put and agreed to.

Chairman to report Bill.

(SENATE IN PLENARY)

The Deputy Senate President reported that the Senate in the Committee of the Whole considered the Report of the Committee on Judiciary, Human Rights and Legal Matters on the Emergency Powers (Repeal and Re-enactment) Bill, 2018 and approved as follows:

Clauses 1- 28 — As Recommended

Clause 29 — As Amended

Clauses 30 - 46 — As Recommended

Question: That the Senate do approve the Report of the Committee of the Whole — *Resolved in the Affirmative.*

Motion made: That the Bill be now Read the Third Time (*Senate Leader*).

Question put and agreed to.

Bill accordingly Read the Third Time and Passed.

10. Committee on Works:

Report on the National Roads Fund (Establishment, etc.) Bill, 2018 (HB. 49 & 163):

Motion made: That the Senate do consider the Report of the Committee on Works on National Road Funds (Establishment, etc.) Bill, 2018 (*Senator Kabiru I. Gaya — Kano South*).

Question put and agreed to.

Report presented.

Motion made: That the Senate do resolve into the Committee of the Whole to consider the Report (*Senate Leader*).

Question put and agreed to.

(SENATE IN THE COMMITTEE OF THE WHOLE)

CONSIDERATION OF A BILL FOR AN ACT TO ESTABLISH THE NATIONAL ROADS FUND FOR THE PURPOSE OF FINANCING ROUTINE AND PERIODIC MAINTENANCE OF NATIONAL ROADS AND FOR OTHER RELATED MATTERS, 2018:

PART I — OBJECTIVES AND APPLICATION

Clause 1: Objectives.

The objectives of this Bill are to —

- (a) establish the National Roads Fund which shall be a repository of revenues accruing from road user related charges and other sources for financing which shall be managed and administered for routine and periodic maintenance works on roads and related matters in Nigeria;
- (b) provide predictable and sustainable funding for road maintenance in order to promote the sustainable development and management of the road network;
- (c) establish the Governing Board of the Roads Fund which shall be responsible for the management of the Roads Fund in accordance with the provisions of this Bill;
- (d) create an enabling environment for private sector participation, management and financing in the road sector.

Committee's Recommendation:

That the provision in Clause 1 be retained (*Senator Kabiru I. Gaya — Kano South*) — *Agreed to.*

Question that Clause 1 do stand part of the Bill, put and agreed to.

Clause 2: Application.

The provisions of this Bill shall apply to the funding, maintenance and administration of the road network in Nigeria.

Committee's Recommendation:

That the provision in Clause 2 be retained (*Senator Kabiru I. Gaya — Kano South*) — *Agreed to.*

Question that Clause 2 do stand part of the Bill, put and agreed to.

PART II — ESTABLISHMENT OF THE NATIONAL ROADS FUND**Clause 3: Establishment of the National Roads Fund.**

- (1) There is established, a fund to be known as the National Roads Fund (in this Bill referred to as "the Roads Fund") which shall be a repository of revenues accruing from prescribed road user related charges and other sources for financing which shall be managed and administered for the routine and periodic maintenance of roads in Nigeria.
- (2) The Roads Fund shall —
 - (a) be a body corporate with perpetual succession and a common seal;
 - (b) have power to sue or be sued in its corporate name; and,
 - (c) be capable of holding, purchasing, acquiring and disposing of property movable or immovable, for the purpose of carrying out its functions under this Bill.

Committee's Recommendation:

That the provision in Clause 3 be retained (*Senator Kabiru I. Gaya — Kano South*) — *Agreed to.*

Question that Clause 3 do stand part of the Bill, put and agreed to.

Clause 4: Sources of the Roads Fund.

- (1) From the commencement of this Bill revenue accruing from all of the following sources shall be chargeable and paid into the Roads Fund as prescribed under the Second Schedule to this Bill —
 - (a) Axle Load Control Charges
 - (b) Toll Fees
 - (c) International Vehicle Transit Charges
 - (d) Inter-State Mass Transit User Charge
 - (e) Roads Fund Surcharge
 - (f) Lease, License or other Fees from Non-Vehicular Road Usages
 - (g) grants and loans to the Roads Fund by the federal, state or local government, statutory corporations in the Federation, or any agency or institutions of any government, any international organization, or private foundation or any person whatsoever;
 - (h) gifts of land, money or other property upon such terms and conditions, if any, as may be specified by the person or organization making the gift, provided such terms and conditions are not inconsistent with the objectives of the Roads Fund under this Bill; and,
 - (i) all other assets which may, from time to time, accrue to the Roads Fund.

- (2) In the interests of cost effectiveness, efficiency and transparency, the Roads Fund shall —
 - (a) put in place cost-effective, transparent and accountable arrangements for the collection of money falling due for payment into the Fund, such arrangements may include direct payment into the Roads Fund by the government agencies, or their agents, responsible for the collection of money from which money accruing to the Roads Fund is paid into the Roads Fund designated account; and,
 - (b) notwithstanding arrangements put in place, incorporate an effective and efficient independent system for verifying amounts.
- (3) Any revenue accruing to the Roads Fund shall be payable into the designated Roads Fund account only and shall not be deemed to be revenue accruing or payable into the Consolidated Revenue Fund of the Federation.

Committee's Recommendation:

That the provision in Clause 4 be retained (*Senator Kabiru I. Gaya — Kano South*) — *Agreed to.*

Question that Clause 4 do stand part of the Bill, put and agreed to.

Clause 5: Application of the Roads Fund.

- (1) The Roads Fund shall, in each year, before disbursement of the amount in the Roads Fund, set aside an amount not exceeding 3% of the total monies accruing to the Roads Fund in the preceding year (in this Bill referred to as "the Administrative Fund") for the purposes as stated under section 17 of this Bill.
- (2) The funds that shall accrue to the Roads Fund shall be disbursed to Statutory Federal, State and Local Government Road Agencies specifically for routine and periodic maintenance works on roads and the administration of a safe national road network in Nigeria.
- (3) The basis for the allocation and any formula for the disbursement of the Roads Fund shall be as determined by the Governing Board provided that it shall consider —
 - (a) the quality and cost effectiveness of the road asset management maintenance proposals;
 - (b) the extent of the road network;
 - (c) the specific maintenance or wear and tear requirements of any road;
 - (d) volume of vehicular use of road use;
 - (e) amount of revenue collected within and contributed by the state;
 - (f) demonstrated institutional performance and capacity in the executing Road Agency's functions for oversight and works delivery in line with the Roads Funds objectives and stipulations; and
 - (g) other socio-political and strategic connectivity priorities.

Committee's Recommendation:

That the provision in Clause 5 be retained (*Senator Kabiru I. Gaya — Kano South*) — *Agreed to.*

Question that Clause 5 do stand part of the Bill, put and agreed to.

Clause 6: Establishment of the Governing Board of Directors.

- (1) There is established for the management of the Roads Fund, a Governing Board (in this Bill referred to as "the Board") which shall control and determine the collection of accruable revenue, and oversee the administration, management, allocation and disbursement of the fund in accordance with the provisions of this Bill.
- (2) The Governing Board shall be an independent and autonomous body with exclusive responsibility to manage the Roads Fund in a diligent and transparent manner in accordance with the provisions of this Bill.
- (3) The Board shall consist of —
 - (a) a non-Executive Chairman who shall be appointed from the private sector;
 - (b) one representative from each of the following Ministries —
 - (i) Federal Ministry of Finance;
 - (ii) Federal Ministry responsible for roads;
 - (c) one representative from each of the following bodies —
 - (i) the Nigerian Association of Chambers of Commerce and Industry;
 - (ii) Nigerian Society of Engineers and the Nigerian Institution of Highway and Transportation Engineers jointly;
 - (iii) Petroleum Products Pricing and Regulatory Agency;
 - (iv) Federal Roads Maintenance Agency and or any relevant Agency in charge of roads maintenance;
 - (v) Nigerian Association of Road Transport Owners;
 - (vi) the Agency responsible for the marketing of petroleum products; and
 - (vii) the Nigerian Institute of Quantity Surveyors;
 - (d) one (1) person from a state Road Agency to be selected from each of the six (6) geopolitical zones, which shall be rotationally selected in an alphabetical order of state names within each zone, to represent the zone;
 - (e) the Managing Director who shall be appointed by the Board.

Amendment Proposed:

Leave out the provision in Clause 3(6)(e) (Senator Joshua M. Lidani — Gombe South).

Question that the amendment be made, put and agreed to.

- (4) The Chairman and members of the Board other than the Managing Director shall be appointed by the President on the recommendation of the Ministry or body they represent.
- (5) Each Member of the Board shall be a person of recognized expertise and knowledge, with not less than ten (10) years cognate experience in one or more of the following fields —
 - (a) management;
 - (b) engineering;
 - (c) transport management technology;
 - (d) law;
 - (e) finance;
 - (f) accountancy; or
 - (g) economics.
- (6) Apart from the Managing Director who shall be the Chief Executive Officer, all other members of the Board shall be non-executive and part-time.
- (7) The provisions of the First Schedule to this Bill shall regulate the proceedings of the Board and other matters in the Schedule (*Senator Kabiru I. Gaya — Kano South*).

Question that Clause 6 as amended do stand part of the Bill, put and agreed to.

Clause 7: Tenure of Office of Members.

A member of the Board other than the Managing Director and the ex-officio members shall hold office —

- (a) for a term of four (4) years in the first instance and may be re-appointed for another term of four (4) years and no more; and
- (b) on such terms and conditions as may be specified in their letters of appointment.

Committee's Recommendation:

That the provision in Clause 7 be retained (*Senator Kabiru I. Gaya — Kano South*) — *Agreed to.*

Question that Clause 7 do stand part of the Bill, put and agreed to.

Clause 8: Allowances of Members.

Members of the Board shall be paid such part time allowances, expenses and benefits as may be approved by the Federal Government in accordance with extant Laws and regulations.

Committee's Recommendation:

That the provision in Clause 8 be retained (*Senator Kabiru I. Gaya — Kano South*) — *Agreed to.*

Question that Clause 8 do stand part of the Bill, put and agreed to.

Clause 9: Cessation of Membership.

- (1) A member of the Board shall cease to hold office if such person —
 - (a) becomes bankrupt;
 - (b) is convicted of a felony or any offence involving dishonesty or fraud;
 - (c) becomes of unsound mind or is incapable of carrying out his duties;
 - (d) is guilty of a serious misconduct in relation to his duties;
 - (e) is disqualified or suspended from practicing his profession, in the case of a person possessed of professional qualifications by a court of law or the disciplinary committee of his professional body;
 - (f) resigns his appointment by a letter addressed to the President through the Chairman of the Board; or,
 - (g) ceases to hold the office on the basis of which he is a member of the Board, in the case of an ex-officio member.
- (2) The President may remove a member from office if satisfied that his membership is no longer in the interest of the Roads Fund or the public.
- (3) Where a member of the Board ceases to hold office for any reason whatsoever before the expiration of the term for which he is appointed, another person representing the same interest as that member shall be appointed to the Board for the unexpired term.
- (4) A vacancy on the Board shall be filled by the appointment of another person by the President on the recommendation of the Ministry or body they represent as soon as is reasonably practicable after the occurrence of such a vacancy.

Committee's Recommendation:

That the provision in Clause 9 be retained (*Senator Kabiru I. Gaya — Kano South*) — *Agreed to.*

Question that Clause 9 do stand part of the Bill, put and agreed to.

PART III — FUNCTIONS AND POWERS OF THE BOARD**Clause 10: Functions of the Board.**

The Board shall —

- (a) put in place cost-effective, transparent and accountable arrangements for the collection of money falling due for payment into the Roads Fund and request for data, records from any agency, body, organization or person in order to ensure the accuracy of any assessment or remittance of money falling due for payments into the Roads Fund;
- (b) receive monies accruing to the Roads Fund;
- (c) administer and manage the Roads Fund;
- (d) coordinate and ensure total and timely accountability of all monies allocated or accruable to the Roads Fund;

- (e) receive information, records and data to determine quantities, volumes, frequency or any other information required from any of its sources of revenue;
- (f) disburse monies from the Roads Fund to the Road Agencies for financing approved road maintenance plan on road networks under their jurisdiction;
- (g) disburse monies from the Fund to such other beneficiaries, agencies, bodies persons or authorities that may be authorized under the provision of this Bill for the purpose of the maintenance and management of the national road network and the administration of the Fund;
- (h) retain the balance of money in the Roads Fund at the end of any given year after the disbursements specified under this Bill, as the Reserve Fund;
- (i) scrutinize and approve applications of the Roads Fund for road maintenance projects from Roads Agencies and other bodies and monitor expenditure to ensure prudent management, accountability and proper utilization of the Roads Fund for the purposes set out in this Bill;
- (j) establish the allocation criteria to disburse monies to the Road Agencies;
- (k) ensure transparency and accountability in the disbursement of money from the Roads Fund, prepare and publish annual reports and issue guidelines to the public on the criteria for accessing the Roads Fund;
- (l) make such rules as the Board may consider necessary for the effective administration and management of the Roads Fund;
- (m) prepare, publish and submit to the National Assembly through the Minister audited annual report of the Fund;
- (n) make policy recommendations to the Federal Government on matters relating to the national roads network financing;
- (o) advise and make recommendation to the Minister, agency or body responsible for finance on the funding policy and the level of road user charges and other forms of finance required for road maintenance programmes;
- (p) in consultation with the Federal Ministry responsible for roads, Road Agencies and other user representatives assess the allocation of financial resources required by the Road Agencies for the maintenance of the different classes of roads under the responsibility of the Road Agencies; and to determine the allocation of financial resources required for the maintenance of roads as well as for road safety management;
- (q) commission and act on regular financial and management audits undertaken on all entities enjoying the resources of the funds;
- (r) liaise with the Federal Road Safety Corps or any other body charged with matters relating to the provision of safe and sustainable road infrastructure or the collection of user fees and levies;
- (s) ensure compliance with national procurement, financial management and anticorruption regulation; and

- (t) carry out such other activities as the Board may consider necessary for the discharge of its functions under this Bill.

Committee's Recommendation:

That the provision in Clause 10 be retained (*Senator Kabiru I. Gaya — Kano South*) — Agreed to.

Question that Clause 10 do stand part of the Bill, put and agreed to.

Clause 11: Powers of the Board.

- (1) In carrying out its functions, the Board shall —
- (a) maintain its buildings and facilities necessary for the discharge of its functions under this Bill;
 - (b) accept, acquire and hold security of any kind; and,
 - (c) invest, surrender, transfer, recover, exchange, discharge or in any manner, deal with the security held by the Board as a private individual can do.
- (2) The Board shall train the employees of the Roads Fund for the purpose of advancing their skills, knowledge and performance for cost effective and efficient operation of the Roads Fund.
- (3) The Board may delegate any of its functions in this or any other section of this Bill to any authority, or body established; to any person; or to any officer, employee or servant appointed in accordance with the provisions of this Bill, to act as its agent for the execution, performance or supervision of such functions as may be delegated.

Committee's Recommendation:

That the provision in Clause 11 be retained (*Senator Kabiru I. Gaya — Kano South*) — Agreed to.

Question that Clause 11 do stand part of the Bill, put and agreed to.

PART IV — STAFF OF THE ROADS FUND

Clause 12: Appointment of the Managing Director.

- (1) There shall be for the Roads Fund a Managing Director.
- (2) Managing Director who shall —
- (a) be appointed by the president on the recommendation of the Board from the private sector;
 - (b) possess a degree and cognate experience of not less than fifteen (15) years in at least any one of the following fields: management, engineering, transport management technology, law, finance, accountancy or economics;
 - (c) be the Chief Executive and Accounting Officer of the Roads Fund; and,
 - (d) hold office for a term of four (4) years in the first instance and may be reappointed for a further term of four (4) years and no more.
- (3) The Managing Director shall subject to the direction of the Board, be responsible for —

- (a) the day to day administration and facilitation of the Board; excisions of the Board;
- (b) the administration of the secretariat of the Board; and
- (c) the general direction and control of all other employees of the Roads Fund.

Committee's Recommendation:

That the provision in Clause 12 be retained (*Senator Kabiru I. Gaya — Kano South*) — *Agreed to.*

Question that Clause 12 do stand part of the Bill, put and agreed to.

Clause 13: Removal of the Managing Director.

- (1) The Managing Director may in addition to the conditions prescribed in Section 9 (1) be suspended or removed from office by the Board if he has
 - (a) demonstrated inability to effectively perform the duties of his; or
 - (b) been absent from three (3) consecutive meetings of the Board without the consent of the Chairman unless he shows good reasons for such absence.
- (2) Where the Managing Director is unable to perform the functions of his office due to temporary incapacity, which exceeds 3 months, the Board may appoint a substitute to act as the Managing Director.

Committee's Recommendation:

That the provision in Clause 13 be retained (*Senator Kabiru I. Gaya — Kano South*) — *Agreed to.*

Question that Clause 13 do stand part of the Bill, put and agreed to.

Clause 14: Appointment of the Legal Adviser.

There shall be for the Roads Fund a Legal Adviser who shall —

- (a) be appointed by the Board;
- (b) be the Secretary to the Board; and
- (c) possess a degree in law with a minimum of ten (10) years post call experience.

Committee's Recommendation:

That the provision in Clause 14 be retained (*Senator Kabiru I. Gaya — Kano South*) — *Agreed to.*

Question that Clause 14 do stand part of the Bill, put and agreed to.

Clause 15: Other staff.

- (1) The Roads Fund shall employ directly, or by transfer or secondment from any civil service or public service of the Federation such number of employees as may in the opinion of the Board be necessary to assist the Board and the Managing Director in the performance of their functions under this Bill.
- (2) The terms and conditions of service of employees of the Roads Fund shall be as may be determined by the Board from time to time.

- (3) The Board shall have power to establish and review from time to time market-oriented criteria for establishing the remuneration of the members of staff of the Roads Fund in accordance with extant laws and regulations.

Committee's Recommendation:

That the provision in Clause 15 be retained (*Senator Kabiru I. Gaya — Kano South*) — *Agreed to.*

Question that Clause 15 do stand part of the Bill, put and agreed to.

Clause 16: Pension.

- (1) The service in the Roads Fund shall be approved service for the purpose of the Pension Reforms Act and accordingly officers and other employees of the Roads Fund shall be entitled to pensions and other retirement benefits as prescribed under the Pensions Act in force.
- (2) The provision of subsection (1) of this section shall not prevent the appointment of a person to any office on terms, which may preclude the grant of a pension, gratuity or other retirement benefits in respect of that office.

Committee's Recommendation:

That the provision in Clause 16 be retained (*Senator Kabiru I. Gaya — Kano South*) — *Agreed to.*

Question that Clause 16 do stand part of the Bill, put and agreed to.

PART V — FINANCIAL PROVISIONS

Clause 17: Application of the Administrative Fund.

- (1) The Roads Fund shall apply the Administrative Fund specified in section 5 of this Bill —
- (a) to the administration of the Roads Fund;
 - (b) to the payment of allowances and benefits of members of the Board and for reimbursing members of the Board or of any Committee set up by the Board for such expenses as may be expressly authorized by the Board;
 - (c) to the payment of the salaries, fees or other remuneration, allowances and other benefits payable to the officers and other employees of the Roads Fund;
 - (d) for the development and maintenance of any property vested in or owned by the Fund;
 - (e) to such capital expenditure as the Board may deem necessary from time to time;
 - (f) to the management and administration of the Roads Fund, including audit expenses, research, data collection and data management associated with the implementation of the Roads Fund and;
 - (g) for such other payment in connection with all or any of its functions as stipulated under this Bill.

Committee's Recommendation:

That the provision in Clause 17 be retained (*Senator Kabiru I. Gaya — Kano South*) — *Agreed to.*

Question that Clause 17 do stand part of the Bill, put and agreed to.

Clause 18: Statement of Estimated Income and Expenditure.

- (1) The Roads Fund shall not later than four (4) months to the end of a financial year, prepare and present to the National Assembly through the President for approval a statement of estimated income and expenditure for the following financial year.
- (2) The Board shall ensure that in any financial year, the expenditure and commitments of the Roads Fund does not exceed the Administrative Fund.
- (3) Where, in exceptional circumstances, the Roads Fund and any surplus income brought forward from a previous year, is insufficient to meet the actual or estimated liabilities of the Roads Fund, the Minister may make advances to the Roads Fund in order to meet the deficiency or any part thereof and such advances shall be made on such terms and conditions, whether as to repayment or otherwise, as the Minister responsible for Finance may determine.

Committee's Recommendation:

That the provision in Clause 18 be retained (*Senator Kabiru I. Gaya — Kano South*) — *Agreed to.*

Question that Clause 18 do stand part of the Bill, put and agreed to.

Clause 19: Books and Records of Accounts.

- (1) The Roads Fund shall keep proper records of books and other records of account in respect of its operations including receipts and expenditure of the Roads Fund and the Administrative Fund in accordance with generally acceptable principles of accounting.
- (2) The accounts of the Roads Fund shall be audited by Auditors to be appointed annually by the Governing Board of the Roads Fund from the list of auditors and guidelines prepared by the Auditor-General for the Federation and in accordance with International Financial Reporting Standards applicable in Nigeria.
- (3) The Roads Fund shall submit to the National Assembly through the Minister not later than 30th June in each financial year, a report of its activities and implementation performance during the preceding year, which shall include a copy of the audited accounts of the Roads Fund for that year and a copy of the auditor's report.
- (4) Auditors appointed pursuant to subsection (2) of this section shall have access to all accounts and other records relating to such accounts which are kept by the Roads Fund or its agents and shall have the power to require from any member of the Board or employee or agent of the Roads Fund such information and explanation as in the Auditors opinion are necessary for the purpose of the audit including records, documents and papers of the Roads Fund relating directly or indirectly to the receipt or payment of money made by the Fund or to the acquisition, receipt, custody or disposal of assets by the Roads Fund.

- (5) The Auditor shall on the completion of the audit of the accounts of each financial year prepare and submit to the Board a report setting out his observations and recommendations on all aspects of the accounts of the Board; and the Board shall forward a copy of the report to the Minister.
- (6) A member of the Board, employee or agent of the Roads Fund who fails without reasonable cause to comply with a request or instruction of an Auditor pursuant to subsection (4) of this section commits an offence and liable on conviction to a fine not less than one million naira (₦1,000,000.00).

Committee's Recommendation:

That the provision in Clause 19 be retained (*Senator Kabiru I. Gaya — Kano South*) — Agreed to.

Question that Clause 19 do stand part of the Bill, put and agreed to.

Clause 20: Audit and Accounts.

- (1) The Roads Fund shall, within three (3) months after the end of each financial year, furnish the Minister with —
 - (a) a copy of the audited accounts of the Roads Fund and the Administrative Fund, prepared by a reputable external auditing firm;
 - (b) a copy of the general report and full report of the external Auditor; and
 - (c) an Annual Report detailing —
 - (i) the state of affairs of the Roads Fund for the financial year and including any change in the Reserve Fund arising from the activities of the Board during the year; and,
 - (ii) the performance of the Road Fund, its agents and beneficiaries in the collection, allocation and utilization of the Fund and its impact on the performance and condition of the national road network, and
 - (iii) opportunities and constraints impacting upon the Board's performance and the actions proposed for addressing them.
- (2) All sums received for the purpose of the Roads Fund shall be paid into one or more banking accounts at such bank or banks as the Board may determine, and no amount shall be withdrawn therefrom except under the authority of the Board and by means of cheques or other financial instruments or procedures as are authorized in that regard by the Board.
- (3) The signatories to the account(s) referred to in subsection (2) of this section shall be the Head of Finance and Accounts, and one other officer of sufficient seniority.
- (4) The balance of the revenue accruing to the Roads Fund in any financial year shall be applied for the purpose of creating the Reserve Fund or such other reserve as the Board may from time to time approve to fund future planned road maintenance activities.

- (5) Any part of the Roads Fund not immediately required for the purpose of the Roads Fund may be invested in such manner as the Board may, in its discretion, determine subject to the approval of the Minister provided that such investment shall be strictly evaluated, bear low risk and are technically consistent with the maintenance priorities and plans developed by the Roads Fund.
- (6) The financial year of the Roads Fund shall be a period of twelve months commencing on the 1st of January of each year and ending on the 31st of December of the same year. Provided that the first financial year may be a period shorter or longer than twelve (12) months as the Board shall determine, but in any case, not longer than eighteen (18) months.
- (7) The Annual Report and a report of the activity and implementation performance during the preceding year shall be published, and also made available to the public on demand.

Committee's Recommendation:

That the provision in Clause 20 be retained (*Senator Kabiru I. Gaya — Kano South*) — *Agreed to.*

Question that Clause 20 do stand part of the Bill, put and agreed to.

PART VI — LEGAL PROCEEDINGS

Clause 21: Limitation of Suit.

- (1) The provisions of the Public Officers Protection Act shall apply in relation to any suit Instituted against the Roads Fund, an official or employee of the Board.
- (2) A suit shall not be commenced against a member of the Roads Fund, any official or employee of the Board before the expiration of a period of one (1) month after written notice of the intention to commence the suit shall have been served on the Roads Fund, an official or employee of the Board by the intending plaintiff or his agent.
- (3) The notice referred to in subsection (2) of this section shall clearly state the cause of action, the particulars of the claim, the name and address of the intending plaintiff and the relief which he claims.
- (4) A notice, summons or other document required or authorized to be served on the Roads Fund, an official or employee of the Board under the provisions of this Bill or any other law or enactment may be served by delivery of such notice, summons or other document to the Roads Fund, an official or employee of the Board or by sending such notice, summons or other document by registered post, addressed to the Managing Director or Secretary to the Board at the principal office of the Roads Fund.
- (5) A member of the Board, his secretary or any official or employee of the Board shall be indemnified out of the assets of the Roads Fund, against any liability incurred in defending any proceeding whether civil or criminal, if the proceeding is brought against the person in his capacity as a member, secretary, officer or employee of the Board.

- (6) In any action or suit against the Roads Fund, an official or employee of the Board, no execution or attachment or process in the nature thereof shall be issued against the Roads Fund, an official or employee of the Board but any sums of money which may, by the judgment of the Court, be awarded against the Roads Fund, an official or employee of the Board shall be paid from the funds of the Roads Fund

Committee's Recommendation:

That the provision in Clause 21 be retained (*Senator Kabiru I. Gaya — Kano South*) — Agreed to.

Question that Clause 21 do stand part of the Bill, put and agreed to.

PART VII — ROADS PROGRAMME

Clause 22: Five-year Rolling Road Financing Plan.

- (1) The Board shall, within the first year of its establishment, prepare a Five-Year Rolling Road Financing Plan (hereinafter referred to as the "Plan") for the fulfillment of its responsibilities under this Bill.
- (2) The Plan shall be broken into yearly action programmes and shall contain information, amongst others, that would allow the determination of the Board's proposed activities over the Plan period in respect of each element of the national road network.
- (3) The Plan shall constitute the basis for determining the financial needs of the Board and of its sourcing, including the needed contribution from its sources of finance.
- (4) The Plan shall constitute the basis upon which Road Agencies shall develop the road maintenance component of their own programmes from funding provided by the Roads Fund and the Board shall use the Plan as a monitoring to check the utilization of the funds disbursed to the Roads Agencies by it.
- (5) Notwithstanding the provisions of subsection (8) of this section, the Board shall ensure that the process and method used in the preparation of the first plan allows for adequate consultation and input to the Plan by the Road Agencies in a manner such as to make its intent and purpose consistent with their objectives of this Bill.
- (6) The Board shall within the five-year rolling plan cycle keep the Plan under review and update it annually with consideration given to extant government policy including the master plan for the transportation sector, the National Integrated Infrastructure Master Plan and with appropriate input from the Road Agencies as well as any directives given by the Minister pursuant to section 27 provided that any of the foregoing are not inconsistent with the provisions of this Bill.
- (7) The Board shall ensure that its maintenance Plans and accurate periodic updates of the status of its implementation are made available to the public.
- (8) In preparing the Plan or any amendment, revision or update thereto, the Board shall —

- (a) require Road Agencies to submit to it four (4) months before the commencement of the financial year, their annual roads programmes in such form and containing such details as the Board shall specify, outlining a comprehensive plan of action for the maintenance of roads under the jurisdiction of the Road Agency and the estimated costs of every activity required to implement the plan of action;
- (b) establish financial, road condition, economic and social criteria, for the allocation of funds to the Roads Agencies and for the general achievement of the objects of the Roads Fund;
- (c) review the funding submissions of the Road Agencies against set criteria; and
- (d) after agreeing to amendments and satisfying itself of the integrity of the submissions taken singly and as a whole, consolidate the Roads Agencies' annual roads programmes into Roads Fund's programme which shall specify details to include —
 - (i) specifying the amounts allocated for the maintenance of each class of roads;
 - (ii) matching the cost of implementing the annual roads programme with revenues collected or estimated to be collected by and within the Fund; and
 - (iii) identifying roads requiring maintenance in order of priority.

Committee's Recommendation:

That the provision in Clause 22 be retained (*Senator Kabiru I. Gaya — Kano South*) — *Agreed to.*

Question that Clause 22 do stand part of the Bill, put and agreed to.

Clause 23: Exemption from Taxation.

The provisions of any enactment relating to the taxation of companies or trust funds shall not apply to the Roads Fund, except under circumstances where they have earned profit.

Committee's Recommendation:

That the provision in Clause 23 be retained (*Senator Kabiru I. Gaya — Kano South*) — *Agreed to.*

Question that Clause 23 do stand part of the Bill, put and agreed to.

PART VIII — OFFENCES AND PENALTIES

Clause 24: Offences.

- (1) A person who contravenes or fails to comply with any of the provisions of section 4 of this Bill is guilty of an offence under this Bill.
- (2) If a sum is due payable under any of the provisions of section 4 of this Bill and such sum is not paid as and when due and in the prescribed manner, then any person upon whom the responsibility to pay falls is guilty of an offence under this Bill.
- (3) Notwithstanding any other provision in this Bill, a person liable to pay any charge, levy, surcharge, fee, or tax however prescribed shall make the payment in full and in the prescribed manner.

- (4) Where an offence under this Bill is committed by a body corporate, firm or association of individuals, every director, manager, partner or officer concerned in the management of the affairs of such an organization or any person who was purporting to act in that capacity is severally guilty of that offence and liable to be proceeded against and punished for that offence in a like manner as if he himself had committed the offence unless he can prove that the act constituting the offence took place without his actual or constructive knowledge and consent.

Committee's Recommendation:

That the provision in Clause 24 be retained (*Senator Kabiru I. Gaya — Kano South*) — Agreed to.

Question that Clause 24 do stand part of the Bill, put and agreed to.

Clause 25: Penalties.

- (1) Except as otherwise provided under this Bill, a person guilty of an offence under this Bill shall upon conviction, be liable to imprisonment for a term of six (6) months or to a fine not exceeding one million naira (₦1,000,000.00) or both.

Amendment Proposed:

Leave out the provision in Clause 25(1) and insert the following instead thereof:

"Except as otherwise provided under this Bill, a person guilty of an offence under this Bill shall upon conviction, be liable to imprisonment for a term of six (6) months or a fine of not less than (₦500,000.00) or both" (*Senator Dino Melaye — Kogi West*).

Question that the amendment be made, put and agreed to.

- (2) The institution of proceedings or the imposition of any penalty under this Bill, under any Regulation made under this Bill or under any other Act or Regulation shall not relieve any person from liability to pay any sum due as payable under this Bill or any Regulation made under this Bill.
- (3) A person who fails to pay or remit any charges, surcharges, levies, fees as prescribed under this Bill, is liable to pay as penalty 150% of the amount not collected, plus 5% interest above the Central Bank of Nigeria rediscount rate (*Senator Kabiru I. Gaya — Kano South*).

Question that Clause 25 as amended do stand part of the Bill, put and agreed to.

PART IX — MISCELLANEOUS

Clause 26: Regulations.

- (1) The Board may from time to time and with the approval of the Minister, make, amend, revoke or supplement regulations, codes, internal guidelines and procedures in line with and for giving effect to the provisions of this Bill.
- (2) The regulations, codes, internal guidelines and procedures made pursuant to subsection (1) of this section may govern matters to include the manner, mode and modalities for the collection of any revenue accruable to the Roads Fund under this Bill; Provided that only the Minister may upon the recommendation of the Board make Regulations relating to fixing the rates, sums, or percentages applicable to any charges, surcharges, levies, or fees including variations thereto to be applied to any of the sources of revenue of the Roads Fund under this Bill.

- (3) Regulations made pursuant to subsections (1) - (2) of this section shall be published in the official Gazette.

Committee's Recommendation:

That the provision in Clause 26 be retained (*Senator Kabiru I. Gaya — Kano South*) — *Agreed to.*

Question that Clause 26 do stand part of the Bill, put and agreed to.

Clause 27: The Role of the Minister.

- (1) The Minister shall not later than three months after the coming into force of this Bill, take such steps as are necessary to bring into being the institutional structures of the National Roads Fund.
- (2) The Minister shall perform any function or role as designated as being such under this Bill including the giving of approvals where required under the Act; fixing the rates, sums, or percentages applicable to any charges, surcharges, levies, or fees including variations thereto to be applied to any of the sources of revenue of the Roads Fund under this Bill; promulgation of Regulations; providing advice on government policies related to the activities of the Roads Fund.
- (3) The Minister may give directives to the Board relating to the performance by the Board of any of its functions under this Bill; provided that such directives are not inconsistent with the objectives of the Roads Fund, the functions and powers of the Board and any provisions of this Bill.

Committee's Recommendation:

That the provision in Clause 27 be retained (*Senator Kabiru I. Gaya — Kano South*) — *Agreed to.*

Question that Clause 27 do stand part of the Bill, put and agreed to.

Clause 28: Interpretation.

In this Bill, unless the context otherwise requires —

"Administrative Fund" means the percentage funds to be set aside from the total revenue accruing to the Roads Fund and to be utilized only for the purposes as specified under this Bill;

Question: That the words "Administrative Fund" be as defined in the Interpretation to this Act; put and agreed to.

"Board" means the Governing Board established under section 6 of this Bill;

Question: That the word "Board" be as defined in the Interpretation to this Act, put and agreed to.

"Financial year" means every period of twelve months beginning from 1st January and terminating on 31st day of December; provided that the first financial year may be shorter or longer than twelve (12) months as the Board shall determine, but in any case not longer than eighteen months;

Question: That the words "Financial year" be as defined in the Interpretation to this Act, put and agreed to.

"Gazette" means the official Gazette of the Federal Republic of Nigeria;

Question: That the word "Gazette" be as defined in the Interpretation to this Act, put and agreed to.

"Minister" means the Minister responsible for Finance;

Question: That the word "Minister" be as defined in the Interpretation to this Act, put and agreed to.

"Member" in relation to the Board includes the Chairman and Managing Director

Question: That the word "Member" be as defined in the Interpretation to this Act, put and agreed to.

"National Roads" means roads and bridges, including their rights of way, that are owned and legally managed by Federal, State and Local Governments;

Question: That the words "National Roads" be as defined in the Interpretation to this Act, put and agreed to.

"Person" shall include a natural person or body corporate where the context admits;

Question: That the word "Person" be as defined in the Interpretation to this Act, put and agreed to.

"Reserve Fund" shall mean the balance between the revenue accruing to the Roads Fund in any financial year and the expenditure for that year;

Question: That the words "Reserve Fund" be as defined in the Interpretation to this Act, put and agreed to.

"Road Agency (ies)" means statutory institutions created at federal, state or local government level charged with the responsibilities which include the maintenance and safety management of road networks under their jurisdiction;

Question: That the words "Road Agency (ies)" be as defined in the Interpretation to this Act, put and agreed to.

"Roads Fund" means the Roads Fund established by section 3 of this Bill;

Question: That the words "Roads Fund" be as defined in the Interpretation to this Act, put and agreed to.

"Rolling Road Financing Plan" means a five year roads programme prepared by the Board in the manner stipulated under this Bill for the Roads Fund's fulfillment of its objectives under this Bill;

Question: That the words "Rolling Road Financing" be as defined in the Interpretation to this Act, put and agreed to.

"Tariffs" includes road user charges such as fuel levy, charges, fees, surcharges as well as supplementary heavy vehicle permit, international transit fees, tolls and fines for overloading, etc.; and

Question: That the word "Tariffs" be as defined in the Interpretation to this Act, put and agreed to.

"Road Sector Regulator" Agency responsible for Regulating the Road Sector.

Question: That the words "Roads Sector Regulator" be as defined in the Interpretation to this Act, put and agreed to.

Committee's Recommendation:

That the provision in Clause 28 be retained (*Senator Kabiru I. Gaya — Kano South*) — *Agreed to.*

Question that Clause 28 do stand part of the Bill, put and agreed to.

Clause 29: Short Title.

This Bill may be cited as the National Roads Fund Bill, 2018.

Committee's Recommendation:

That the provision in Clause 29 be retained (*Senator Kabiru I. Gaya — Kano South*) — *Agreed to.*

Question that Clause 29 do stand part of the Bill, put and agreed to.

FIRST SCHEDULE

SUPPLEMENTARY PROVISIONS RELATING TO THE BOARD

Proceedings of the Board.

1. Subject to the provisions of this Bill, the Board may make standing orders regulating its proceedings or that of any of its Committees.
2. The Board shall hold a meeting at least once in every three months and, at such other time as may be convened by the Chairman.
3. A notice of not less than fourteen (14) days or such other period as may be agreed from time to time by all the members at a meeting shall be given to all members and the notice shall specify the date, time and place of the meeting and the business to be transacted.
4. The Chairman shall preside at meetings of the Board, and in his absence the members present shall elect one of their numbers to preside at the meeting.
5. Where not less than five members of the Board request the Chairman by notice in writing, signed by them, to convene an extra-ordinary meeting of the Board for any purpose specified in the notice, the Chairman shall upon receipt of such notice convene an extraordinary meeting of the Board for that purpose within seven days at such place and time as he may appoint. A written notice shall be addressed and sent to the members at least three working days prior to the date of the meeting.
6. Notwithstanding anything in the foregoing provisions of this paragraph, the inaugural meeting of the Board shall be summoned by the Minister responsible for Finance, who may give such directions as he thinks fit as to the procedure which shall be followed at that meeting.
7. The quorum for a meeting of the Board shall be five members. If, within half an hour from the time appointed for the meeting of the Board, a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same time and place, or such other date, time or place as the Chairman of the meeting shall appoint.
8. A meeting of the Board shall not be adjourned to a date which is less than two (2) days later than the day it was to be held unless otherwise agreed by all the members, and the meeting may only deal with the matters which were on the agenda of the meeting that was adjourned.

9. Where a meeting has been adjourned, notice of the adjourned date shall be given by the Secretary of the Board to the members.
10. The Board may co-opt non-voting observers at any of its meetings, as and when required.
11. The Board shall appoint such groups or committees as may be necessary for the proper discharge its functions.
12. A study group or committee shall consist of some members of the Board and such other persons as the Board may determine, and the objectives of the groups or committees shall be defined.
13. Members of the Board and other persons appointed as members of the study groups or committees shall be paid allowances as may be determined by the Board.
14. A member of the Board shall not appoint any proxy to represent him at any meeting of the Board.
15. All questions at a meeting of the Board shall be determined by a simple majority of votes of the members present and voting, being members who under this paragraph are entitled to vote at such meeting. All relevant Board papers for Board meetings shall be sent to all members prior to the Board meeting, and the minutes of the meeting will be sent as soon as practicable after the holding of the meeting.
16. At any meeting of the Board each member shall have a vote, and if there is equality of votes the Chairman shall have a second or casting vote.
17. The minutes of meetings of the Board and its committees shall be recorded in a register and kept by the Secretary of the Board or his nominee and be confirmed at the next succeeding ordinary meeting of the Board.
18. Subject to the provisions of this Bill, the Board may make standing orders with respect to the—
 - (a) holding of meetings of the Board;
 - (b) notices to be given of the meetings;
 - (c) proceedings of the meetings;
 - (d) keeping of minutes of the proceedings; and,
 - (e) production of the proceedings for inspection.
19. Without limiting the discretion of the Board to regulate its meetings, the members of the Board may, in a matter that requires urgent attention —
 - (a) confer by telephone;
 - (b) close circuit television;
 - (c) other electronic means; or
 - (d) audio or audiovisual communication.

Committees of the Board.

20. A resolution passed at a meeting held in line with paragraph 19 above shall, notwithstanding that the members are not present together in one place at the time of the meeting, be deemed to have been passed at a meeting of the Board duly called and constituted on the day and at the time at which the meeting was held, it being agreed that the provisions of the Bill relating to meetings of members shall apply to the meeting.
21. The Board may appoint one or more Committees to carry out, some of its functions.
22. The decision of a Committee of the Board shall be of no effect until it is confirmed by the Board.

Disclosure of Interest by Members of the Board.

23. A member of the Board who is in any way directly or indirectly interested in any contract, proposed contract or arrangement shall disclose the nature of his interest at a meeting of the Board where the subject is first discussed, and the disclosure shall be recorded in the minutes book of the Board, and the member shall not take part in any deliberation or decision of the Board with respect to that transaction or project.
24. A member of the Board need not attend in person a meeting of the Board in order to make a disclosure which he is required to make under this paragraph if he takes reasonable steps to ensure that the disclosure is made by a notice which is brought up and read at the meeting.

Conflict of Interest.

25. The personal interest of a member shall not conflict with any of his duties as a member of the Board under this Bill.
26. A member shall not in the course of the management of affairs of the Roads Fund or in the utilisation of the Roads Fund's property, make any secret profit or achieve other unnecessary benefits.
27. A member shall be accountable to the Roads Fund for any secret profit made by him or any unnecessary benefit derived by him contrary to this provision.

The Common Seal.

28. The common seal of the Roads Fund shall not be affixed to any instrument except by the authority of a resolution of the Board and the affixing of the common seal shall be authenticated by the signatures of the Chairman and the Secretary, or of some other members authorised generally or specifically by the Board to act for the purpose. Any document purporting to be a document duly executed under the common seal of the Roads Fund shall be received in any court and shall, unless the contrary is proved, be deemed to be so executed.
29. The validity of any proceedings of the Board shall not be affected by vacancy in the membership of the Board, any defect in the appointment of a member of the Board or by reason that a person not entitled to do so took part in the proceedings.

Question that the provision of First Schedule stand part of this Bill — Agreed to.

SECOND SCHEDULE

PROVISIONS RELATED TO CHARGING, PAYMENT AND COLLECTION
OF LEVIES, FEES, CHARGES, SURCHARGES OR OTHER STIPULATED
SOURCES OF FUNDING UNDER THIS BILL

Axle Load Control Charges.

1. (a) There shall be paid into the Roads Fund Axle Load Control Charges which shall be paid in a manner and rate as shall be determined and prescribed by the Minister from time to time under Regulations to be made under the provisions of this Bill; and,
- (b) The Federal Roads Agency shall be responsible for assessing and ensuring the accurate remittance of all Axle Load Control Charges into the designated accounts of the Roads Fund.

Toll Fees.

2. (a) There shall be paid into the Roads Fund, Toll Fees, chargeable on any road owned by the federal government and designated as a toll road by the Minister;
- (b) A percentage not less than 10% of any revenue paid as user charge per vehicle on any road designated as a toll road under subsection (a) of this subsection shall accrue and be payable to the Roads Fund;
- (c) Any toll road operator, concessionaire or other authority responsible for the collection of toll fees on any road designated as a toll road under subsection (a) of this section shall be responsible for assessing and ensuring the accurate payment or remittance of the payable revenue from toll fees into the designated accounts of the Roads Fund; and
- (d) The Minister has the power to review and vary the amount of the percentage of revenue that shall accrue to the Roads Fund as provided under subsection (b) of this section.

International Vehicle Transit Charges.

3. (a) There shall be paid into the Roads Fund, International Vehicle Transit Charges on any foreign registered vehicle entering into Nigeria at any time through any land border;
- (b) The charge shall be paid in full directly into the designated accounts of the Roads Fund by the person bringing a vehicle into Nigeria and the evidence of the payment of which shall be provided to the Customs Service for the purposes of permitting of such vehicle entry into Nigeria;
- (c) The Nigerian Customs Service shall ensure accurate remittance of the payable International Vehicle Transit Charge into the designated accounts of the Roads Fund and shall render reports and accounts to the Board of the Roads Fund and to the Minister of the total amounts from receipts of payment of charges to the Roads Fund and the account; and,
- (d) The Minister shall have the power to review and determine the amount to be charged as International Vehicle Transit Charge from time to time.

Inter-State Mass Transit User Charge.

4. (a) There shall be paid into the Roads Fund, Inter-State Mass Transit User Charge being a 0.5% charge on the fare paid by passengers to commercial mass transit operators for inter-state travel;
- (b) The charging and collection of the Inter-State Mass Transit User Charge shall be as determined by the Road Sector Regulator under the provisions of its Act;
- (c) Any funds accruing to the Roads Fund for Inter-State Mass Transit User Charges shall be paid into the designated accounts of Roads Fund.

Roads Fund Surcharge.

5. (a) There shall be paid into the Roads Fund a surcharge of 0.5% on the assessed value of any vehicle imported at any time into Nigeria;
- (b) The surcharge shall be paid in full into the designated accounts of the Roads Fund by the importer of any vehicle and the evidence of the payment shall be provided to the Nigeria Customs Service for the purposes of clearing and permitting the importation of a vehicle;
- (c) The Nigeria Customs Service shall be responsible for assessing and ensuring the accurate remittance of the payable Roads Fund Surcharge into the designated accounts of the Roads Fund and shall render reports and accounts to the Board of the Roads Fund of the total amounts from receipts of payment of such levies to the Roads Fund account; and
- (d) The Minister shall have the power to review and determine the amount to be charged as Roads Fund Surcharge from time to time.

Lease, License or Other Fees.

6. (a) There shall be paid into the Roads Fund revenue accruing from lease or license or other fees pertaining to non-vehicular road usages to include the placement of advertising, billboard and signage, telecommunications equipment (masts, cables etc.) or other equipment along any Federal road at rates as may be prescribed by the Minister under a regulation made under this Bill.
- (b) The Federal Roads Agency shall be responsible for the assessment, charging and collection of fees prescribed under this section as above, and shall remit an amount of not less than 10% of such revenue into the Roads Fund.

Question that the provision of Second Schedule stand part of this Bill — Agreed to.

Chairman to report Bill.

(SENATE IN PLENARY)

The Deputy Senate President reported that the Senate in the Committee of the Whole considered the Report of the Committee on Works on National Roads Fund (Establishment, etc.) Bill, 2018 and approved as follows:

Clauses 1- 5	—	As Recommended
Clause 6	—	As Amended
Clauses 7- 24	—	As Recommended
Clause 25	—	As Amended
Clauses 26- 29	—	As Recommended
Schedules 1- 2	—	As Recommended

Question: That the Senate do approve the Report of the Committee of the Whole — Resolved in the Affirmative.

Motion made: That the Bill be now Read the Third Time (*Senate Leader*).

Question put and agreed to.

Bill accordingly Read the Third Time and Passed.

11. Adjournment:

Motion made: That the Senate do now adjourn till Tuesday, 6th February, 2018 at 10:00 a.m. (*Senate Leader*).

Adjourned accordingly at 1:23 p.m.

Ike Ekweremadu, CFR
*Deputy Senate President,
Senate of the Federal Republic of Nigeria.*

