

NAIROBI
CENTRE FOR
INTERNATIONAL ARBITRATION

ARBITRATION RULES, 2015

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**THE NAIROBI CENTRE
FOR INTERNATIONAL
ARBITRATION
(ARBITRATION) RULES, 2015**

Effective from 24th December 2015

PART I

PRELIMINARY

RULE 1

Citation.

These Rules may be cited as the Nairobi Centre for International Arbitration (Arbitration) Rules, 2015.

RULE 2

Interpretation.

In these rules unless the context otherwise requires—

“Act” means the Nairobi Centre for International Arbitration Act, 2013;

“Arbitral Court” means the Arbitral Court established under section 21 of the Act;

“Arbitral Tribunal” means a sole arbitrator or a panel of arbitrators appointed in accordance with these Rules;

“Board” means the Board of Directors constituted under section 6 of the Act;

“Centre” means the Nairobi Centre for International Arbitration established under section 4 of the Act and includes the Board of Directors or any committee, sub-committee or Registrar and other staff or other body or person specifically designated by the Centre to perform the functions referred to in these rules;

“claimant” means a person who commences an arbitration claim and serves a request for arbitration on the Registrar;

“domestic arbitration” an arbitration is domestic if the arbitration agreement provides expressly or by implication for arbitration in Kenya, and at the time when proceedings are commenced or the arbitration is entered into—

(a) where the arbitration is between individuals, the parties are nationals of Kenya or are habitually resident in Kenya;

(b) where the arbitration is between bodies corporate, the parties are incorporated in Kenya or their central management and control are exercised in Kenya;

(c) where the arbitration is between an individual and a body corporate—

(i) the party who is an individual is a national of Kenya or is habitually resident in Kenya; and

(ii) the party that is a body corporate is incorporated in Kenya or its central management and control are exercised in Kenya; or

(d) the place where a substantial part of the obligations of the commercial relationship is to be performed, or the place with which the subject-matter of the dispute is most closely connected, is Kenya.

“international arbitration” 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 states; or

(b) one of the following places is situated outside the state in which the parties have their places of business—

(i) the juridical seat of arbitration if determined by, or pursuant to, the arbitration agreement; or

(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 parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one state.

“Registrar” means the Chief Executive Officer of the Centre appointed under section 9 of the Act;

“respondent” means a person who receives a request for Arbitration served by the claimant;

“the seat of arbitration” means the place of arbitration as provided under rule 18.

RULE 3

Application of these Rules.

(1) These Rules shall apply to arbitrations where any agreement, submission or reference, whether entered into before or after a dispute has arisen, provides in writing for arbitration under the Nairobi Centre for International Arbitration Rules or such amended Rules as the Centre may have adopted to take effect before the commencement of the arbitration.

(2) These Rules include the Schedules in effect at the commencement of the arbitration, as separately amended from time to time by the Centre.

(3) Nothing in these Rules shall prevent parties to a dispute or arbitration agreement from naming the Centre as appointing authority without submitting the arbitration to the provisions of these Rules.

RULE 4

Notices, communications and time limits.

(1) All communications between a party and the Centre shall be made through the Registrar.

(2) On the formation of the Arbitral Tribunal, all written communications between a party and the Arbitral Tribunal shall continue to be made through the Registrar, unless the Arbitral Tribunal directs that communications shall be made directly between the Arbitral Tribunal and the party.

(3) Where the Arbitral Tribunal directs that communication be made directly to it as provided under paragraph (2), any such communication

shall be copied to the Registrar for information purposes.

(4) Where the Registrar sends any written communication to one party on behalf of the Arbitral Tribunal, the Registrar shall also send a copy of the communication to each of the other parties.

(5) Where a party sends any communication under rule 15 to the Registrar including any written statements and documents, the party shall—

(a) include a copy for each arbitrator; and

(b) send copies directly to all other parties and shall confirm service, to the Registrar in writing.

(6) A notice or other communication that is required to be given by a party under these Rules shall be, in writing, and shall be delivered by registered post or courier, or transmitted by facsimile, telex, e-mail or any other means of telecommunication that provide a record of its transmission.

(7) In the course of the arbitration, a party or a party's representative's last-known place of residence or business shall be considered as a valid address for the purpose of service of any notice or other communication, in the absence of any notification of a change of the address by that party to the other parties, the Arbitral Tribunal or the Registrar.

(8) For purposes of determining whether service of any communication by a party is made within the time specified under these Rules, a notice or other communication shall be considered as having been received—

(a) on the date it is delivered; or

(b) in the case of service by telecommunications or any other means, on the day it is transmitted in accordance with paragraphs (1) and (2).

(9) For the purpose of determining compliance with a time limit, a notice or other communication shall be deemed to have been sent, made or transmitted if it is dispatched in accordance with paragraphs (5) and (6) prior to or on the date of the expiration of the time-limit.

(10) Despite paragraphs (5), (6) and (7), a notice or communication by one party may be addressed to another party—

(a) in the manner agreed to in writing between them;

(b) in the absence of an agreement as provided under paragraph (a), according to the practice followed in the course of their previous dealings; or

(c) in any other manner required by the Arbitral Tribunal.

(11) For the purpose of calculating a period of time under these Rules—

(a) time shall begin to run on the day following the day when a notice or other communication is received;

(b) if the last day of the period is an official holiday or a non-business day at the place of residence or business of the addressee, the period is extended until the first business day which follows; and

(c) official holidays or non-business days occurring during the running of the period of time are included in calculating that period.

(12) The Arbitral Tribunal may at any time extend time, where the period of time has expired, or abridge a period of time prescribed under these Rules or under an arbitration agreement for the conduct of arbitration or for the service of a notice or communication by one party on the other party.

PART II COMMENCEMENT OF ARBITRATION

RULE 5

Request for arbitration

(1) A party who intends to commence an arbitration proceeding shall submit to the Registrar a written request for arbitration,

(2) A request for arbitration under paragraph (1) shall—

(a) specify the name, address, nature and principal address of business;

(b) specify the contact details of each of the parties and the claimant's representative which contacts include telephone, facsimile or email address;

(c) contain a copy of the contract in which the arbitration clause is provided or in respect of which the arbitration arises, or a copy of a separate arbitration agreement invoked by the claimant;

(d) contain a brief statement describing the nature and circumstances of the dispute giving rise to the claim, and specifying the relief sought by the claimant against the respondent;

(e) contain a statement specifying the seat and language of arbitration, as agreed to in writing by the parties or as proposed by the claimant to the respondent;

(f) if the arbitration agreement provides for nomination of arbitrators by the parties, specify the name, address, telephone, e-mail address, nationality and qualifications of the claimant's nominee;

(g) contain a confirmation, addressed to the Registrar, that copies of the request for arbitration and all supporting documents have been served on all parties to the arbitration and the means of service used or intended to be used; and

(h) be accompanied by a non-refundable fee as prescribed in the First Schedule.

(3) The date on which the complete request for arbitration is received by the Registrar shall be considered to be the date on which the arbitration has commenced.

(4) The request for arbitration is deemed to be complete when all the requirements of paragraph (2) are met.

(5) The Registrar shall notify the parties of the commencement of arbitration.

(6) A request for arbitration that has not met the requirements of paragraph (2) shall not be valid and the arbitration shall be considered as not having been commenced until the requirements of paragraph (2) are met.

(7) The request for arbitration and the supporting documents shall be submitted to the Registrar—

(a) in duplicate copies, in instances where a sole arbitrator is to be appointed; or

(b) in quadruplicate copies, in instances where the parties have agreed or the claimant proposes that three or more arbitrators should be appointed.

RULE 6

Response to request for arbitration.

(1) The respondent shall send to the Registrar a written response to the request for arbitration within thirty days of service of the request for arbitration on the respondent or on such lesser period fixed by the Centre.

(2) The response under paragraph (1) shall contain—

(a) an admission or denial of all or part of the claims stated by the claimant in the request for arbitration;

(b) where applicable, a brief statement describing the nature and circumstances of any counterclaims advanced by the respondent against the claimant;

(c) comments on the particulars contained in the request for arbitration, as called for under rule 5(2) (e), on matters relating to the conduct of the arbitration;

(d) the name, address, telephone, facsimile, telex and e-mail address of the respondent's nominee, if the arbitration agreement calls for nomination of arbitrators by the parties;

(e) where the respondent intends to join a third party, the name, address, contact details, nature and principal address of business of the third party and a brief statement describing the nature and circumstances of the dispute giving rise to the joinder; and

(f) confirmation to the Registrar that copies of the response and all the supporting documents have been or are being served at the same time, on all other parties to the arbitration by one or more means of service to be identified in such confirmation.

(3) The response and all the supporting documents shall be submitted to the Registrar in duplicate copies, and where the parties have agreed or the respondent proposes that a panel of arbitrators be appointed, the response shall be submitted to the Registrar in quadruplicate copies.

(4) Failure to send a response shall not prohibit the respondent from denying any claim or from advancing a counterclaim in the arbitration.

(5) Where an arbitration agreement requires the nomination of arbitrators by the parties, failure to send a response or to nominate an arbitrator within the specified time shall constitute an irrevocable waiver of that party's opportunity to nominate an arbitrator.

PART III

THE ARBITRAL TRIBUNAL

RULE 7

Appointment of Arbitral Tribunal.

(1) A dispute subjected to arbitration under these Rules shall be decided by a sole arbitrator unless the parties to the dispute agree that the dispute shall be decided by three arbitrators.

(2) Where the parties have agreed that a dispute shall be resolved by a sole arbitrator, they may, by agreement, nominate the sole arbitrator for confirmation.

(3) If the parties fail to nominate a sole arbitrator within fifteen days from the date when the claimant's request for arbitration is received by the other party, or within such additional time as may be allowed by the Centre, the sole arbitrator shall be appointed by the Centre.

(4) Where the parties have agreed that the dispute shall be resolved by three arbitrators, each party shall nominate in the request for arbitration and the response, respectively, one arbitrator for confirmation.

(5) Where a party fails to nominate an arbitrator in accordance with paragraph (4), the appointment shall be made by the Centre.

(6) Where a dispute is to be referred to three arbitrators, the third arbitrator who shall act as president of the Tribunal shall be appointed by the Centre, unless the parties have agreed on another procedure for the appointment, in which case the nomination shall be subject to confirmation pursuant to rule 9.

(7) If the procedure agreed by the parties under paragraph (6) does not result in a nomination within fifteen days from the date of confirmation or appointment of the co-arbitrators or any other time limit agreed by the parties or fixed by the

Centre, the third arbitrator shall be appointed by the Centre.

(8) Where the parties have not agreed on the number of arbitrators, the Centre shall appoint a sole arbitrator, unless it appears to the Centre that the dispute warrants the appointment of three arbitrators in which case—

(a) the claimant shall nominate an arbitrator within a period of fifteen days from date of receipt of the notification of the decision of the Centre; and

(b) the respondent shall nominate an arbitrator within a period of fifteen days from the date of receipt of the notification of the nomination made by the claimant.

(9) If a party fails to nominate an arbitrator in accordance with either paragraph (8) (a) or (b), the appointment shall be made by the Centre.

(10) Where there are multiple claimants or multiple respondents, and where the dispute is to be referred to three arbitrators, the multiple claimants, jointly, and the multiple respondents, jointly, shall nominate an arbitrator for confirmation pursuant to rule 9.

(11) Where an additional party has been joined, and where the dispute is to be referred to three arbitrators, the additional party may, jointly with the claimant, or with the respondent, nominate an arbitrator for confirmation pursuant to rule 9.

(12) In the absence of a joint nomination under paragraph (10) or (11), and where all parties are unable to agree to a method for the constitution of the Arbitral Tribunal, the arbitration agreement shall, for all purposes, be considered as an agreement by the parties for the appointment of a three member Arbitral Tribunal by the Centre.

(13) The Centre shall, pursuant to paragraph (12) appoint each member of the Arbitral Tribunal and shall designate one of the members to act as president, in which case the Centre shall be at

liberty to choose any person it considers suitable to act as an arbitrator, applying paragraph (17) when it considers this appropriate.

(14) The Centre shall appoint the Arbitral Tribunal on—

(a) receipt of the response by the Registrar;

(b) the expiry of fifteen days following service of the request for arbitration on the respondent, if response is not received by the Registrar; or

(c) the expiry of such lesser period fixed by the Centre.

(15) The Centre may proceed with the formation of the Arbitral Tribunal notwithstanding that the request may not be complete or if the response has not been filed, is late or incomplete.

(16) The Centre shall appoint arbitrators with due regard to the methods or criteria of selection agreed to in writing by the parties.

(17) The Centre shall, in selecting arbitrators, give consideration to—

(a) the nature of the transaction:

(b) the nature and circumstances of the dispute;

(c) the nationality, location and languages of the parties; and

(d) the number of parties.

(18) The designation of any arbitrator, whether made by the parties or the arbitrators, is subject to confirmation by the Centre, upon which the appointments shall become effective.

(19) The decision of the Centre as to the appointment or confirmation of arbitrators shall be final.

RULE 8

Impartiality and independence of arbitrators.

(1) An arbitrator conducting arbitration under these Rules shall be impartial and independent of the parties and shall not act in the arbitration as advocate for any party.

(2) An arbitrator shall not, whether before or after appointment, advise any party on the merits or outcome of the dispute.

(3) Prior to the appointment or confirmation by the Centre, a prospective arbitrator shall—

(a) furnish the Registrar with a written résumé of his past and present professional positions;

(b) agree, in writing, on rates on fees in accordance with the First Schedule ; and

(c) sign a declaration to the effect that there are no circumstances known to him that are likely to give rise to any justified doubts as to his impartiality or independence, other than the circumstances disclosed in the arbitrator's declaration.

(4) An arbitrator shall, as soon as is reasonably practicable, inform the Centre, the other arbitrators and the parties where any circumstances referred to in paragraph (3) (c) arise during the course of arbitration.

RULE 9

Nationality of arbitrators.

(1) Where the parties are of different nationalities, a sole arbitrator or chairman of the Arbitral Tribunal shall not have the same nationality as any party unless the parties who are not of the same nationality as the proposed arbitrator all agree in writing.

(2) For purposes of this Rule—

(a) the nationality of a party shall be that of controlling shareholders or interests;

(b) a person who is a citizen of two or more countries shall be treated as a national of each state; and

(c) a citizen of a regional economic or political community, union or bloc shall be treated as a national of the citizen's individual member State.

RULE 10

Expedited formation of an Arbitral Tribunal.

(1) In exceptional circumstances or due to an emergency, prior to or on the commencement of the arbitration, a party may apply to the Centre for the expedited formation of an Arbitral Tribunal, or the appointment of a replacement arbitrator under rules 12 and 13.

(2) An application under paragraph (1) shall—

(a) be made in writing to the Centre;

(b) be copied to all other parties to the arbitration; and

(c) set out the specific grounds for exceptional circumstances or urgency in the formation of the Arbitral Tribunal.

(3) The respondent shall be entitled to respond to the application and serve the response to the Registrar and the other parties within five days of receipt of the application from the applicant.

(4) The Registrar shall decide the application within three working days of receipt of the response and shall, on request, communicate the reasons for such decision to any party.

(5) If the Registrar accepts the application under paragraph (4), the Centre may reduce any time-limit under the Rules for the formation of the Arbitral Tribunal, including service of the response and of any matters or documents adjudged to be missing from the request for Arbitration, but shall not be entitled to reduce any other time-limit.

RULE 11

Removal of arbitrator.

(1) A party may require the removal of an arbitrator if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.

(2) A party may remove an arbitrator it has nominated, or in whose appointment it has participated, only for reasons of which the party becomes aware after the appointment has been made.

(3) A party who intends to remove an arbitrator shall, within fifteen days of the formation of the Arbitral Tribunal or on becoming aware of any circumstances referred to in paragraph (1) and (2), send a written statement of the reasons for requiring the removal, to the Arbitral Court, the Centre, the Arbitral Tribunal and all other parties.

(4) Where an arbitrator is required to be removed by one party—

(a) the other party may consent to the removal; or

(b) the arbitrator may, in writing to the Centre and the parties, resign from office.

(5) Despite paragraph (4), the removal or resignation from office by the arbitrator shall not indicate acceptance of the validity of the grounds of challenge.

(6) The Arbitral Court shall make its decision on the removal of an arbitrator within fifteen days of receipt of the written statement, unless—

(a) the arbitrator resigns from office; or

(b) all other parties agree to the removal of the arbitrator.

(7) Upon resignation or acceptance of the removal under paragraph (6), a replacement arbitrator shall

be appointed pursuant to rules 9 and 12.

(8) The Centre shall decide on the amount of fees and expenses to be paid for the removed arbitrator's services, as it may consider appropriate in the circumstances.

RULE 12

Replacement of arbitrator.

(1) An arbitrator shall be replaced upon acceptance by the Centre of the arbitrator's written notice of resignation, copied to the parties and the other arbitrators, where applicable.

(2) An arbitrator shall be replaced, if the arbitrator—

(a) dies;

(b) is rendered incapable of undertaking his functions for reason of physical or mental infirmity;

(c) withdraws as arbitrator under rule 11(4)(b);

(d) refuses or is unable to act; or

(e) accepts the decision by the Arbitral Court of his removal, either on an application by a party or at the request of the remaining arbitrators.

(3) The Centre shall—

(a) revoke an arbitrator's appointment, pursuant to paragraphs (1) and (2) and appoint another arbitrator;

(b) in exercising its powers under paragraph (a), have complete discretion to decide whether or not to follow the original nominating process, unless otherwise agreed by the parties;

(c) appoint a replacement arbitrator, if an opportunity given by the Centre to a party to make a re-nomination is not exercised within fifteen days or such lesser time as the Centre may fix.

(4) An opportunity given to a party to make a re-nomination shall be deemed as having been waived if it is not exercised within fifteen days or such lesser time as the Centre may fix, after which the Centre shall appoint a replacement arbitrator.

(5) Upon the appointment of a replacement arbitrator, and after having given the parties an opportunity to make written comments, the Arbitral Tribunal shall determine whether and to what extent prior proceedings shall be repeated before the reconstituted Arbitral Tribunal.

RULE 13

Majority power to continue proceedings.

(1) If an arbitrator on a three-member Arbitral Tribunal refuses or persistently fails to participate in its deliberations, the two other arbitrators shall have the power, upon their written notice of such refusal or failure to the Centre, the parties and the third arbitrator, to continue the arbitration, including the making of any decision, ruling or award, despite the absence of the third arbitrator.

(2) In determining whether to continue the arbitration, the two other arbitrators shall take into consideration—

(a) the stage in which the arbitration proceedings have reached;

(b) any explanation made by the third arbitrator for his non-participation; and

(c) such other matters as they consider appropriate in the circumstances of the case.

(3) The reasons for the determination made under paragraph (2) shall be stated in any award, order or other decision made by the two arbitrators without the participation of the third arbitrator.

(4) In the event that the two other arbitrators determine at any time not to continue the arbitration without the participation of the third arbitrator, the

two arbitrators shall notify, in writing, the parties and the Centre of such determination.

(5) Upon the issue of the notification under paragraph (3), the two arbitrators or any party may refer the matter to the Centre for the revocation of the third arbitrator's appointment and his replacement under rule 12.

PART IV THE ARBITRAL PROCEEDINGS

RULE 14

Conduct of arbitral proceedings.

(1) The parties may agree in writing or have the Arbitral Tribunal record in writing its agreement on the conduct of the arbitral proceedings, consistent with the Arbitral Tribunal's general duties at all times to—

(a) act fairly and impartially as between all parties, giving each a reasonable opportunity of putting its case and dealing with that of its opponent; and

(b) adopt procedures suitable to the circumstances of the arbitration, avoiding unnecessary delay or expense, so as to provide a fair and efficient means for the final resolution of the parties' dispute.

(2) Unless otherwise agreed by the parties under paragraph (1), the Arbitral Tribunal shall have the discretion to discharge its duties as the Arbitral Tribunal in accordance with the law and as the Arbitral Tribunal may determine.

(3) The parties shall do everything necessary for the fair, efficient and expeditious conduct of the arbitration.

(4) In the case of a three-member Arbitral Tribunal the chairman may, with the prior consent of the other two arbitrators, make procedural rulings alone.

RULE 15

Submission of written statements and documents.

(1) Unless the parties have agreed otherwise or on the determination of the Arbitral Tribunal, the parties shall in accordance with paragraphs (2) to (10) submit to the Registrar written statements together with supporting documents.

(2) Within fifteen days of receipt of written statement from the Registrar of the formation of the Arbitral Tribunal, the claimant shall send to the Registrar a statement of case setting out in sufficient detail the facts and any contentious issues of law on which the claimant relies, together with the relief claimed against all other parties, except that and in so far as such matters have not been set out in its request for arbitration.

(3) Within fifteen days of receipt of the statement of case or written notice from the claimant that it elects to treat the request for arbitration as its statement of case, the respondent shall send to the Registrar a statement of defence setting out in sufficient detail which of the facts and contentions of law in the statement of case or request for arbitration, as the case may be, it admits or denies, on what grounds and on what other facts and contentions of law it relies.

(4) Any counterclaims shall be submitted with the statement of defence in the same manner as claims are to be set out in the statement of case.

(5) Within fifteen days of receipt of the statement of defence, the claimant shall send to the Registrar a statement of reply which, where there are any counterclaims, shall include a defence to counterclaim in the same manner as a defence is to be set out in the statement of defence.

(6) If the statement of reply contains a defence to counterclaim, within fifteen days of its receipt, the respondent shall send to the Registrar a statement of reply to counterclaim.

(7) A statement referred to in this rule shall be accompanied by copies or, if they are voluminous, lists of all essential documents on which the party concerned relies and which have not previously been submitted by any party, and, where appropriate, any relevant samples and exhibits.

(8) The Registrar shall forward a file to the Arbitral Tribunal containing all statements referred to in this rule as soon as is practicable to do so, provided that the parties have complied with the directions by the Registrar under rule 26.

(9) As soon as possible, following receipt of a statement specified in this rule, the Arbitral Tribunal shall proceed in such manner as has been agreed in writing by the parties or pursuant to its authority under these Rules.

(10) Where the respondent fails to submit a statement of defence or the claimant fails to submit a statement of defence to a counterclaim, or where at any point a party fails to avail himself of the opportunity to present his case in the manner specified under paragraphs 15(2) to 15(7) or directed by the Arbitral Tribunal, the Arbitral Tribunal may proceed with the arbitration and make an award.

RULE 16

Joinder of parties.

(1) A party wishing to join an additional party to the arbitration shall submit to the Registrar a request for Joinder of the additional party.

(2) An additional party may not be joined after the appointment of any arbitrator, unless all the parties agree otherwise.

(3) The party wishing to join the additional party shall, at the same time, submit a request for Joinder to the additional party and all other parties.

(4) The date on which the request for Joinder is received by the Registrar shall be deemed to be

the date of commencement of arbitration against the additional party.

(5) Any joinder shall be subject to the provisions of rules 8 and 26.

(6) A request for joinder shall contain the same information required of a request for arbitration under rule 5(2) and shall be accompanied by the appropriate filing fee.

(7) The additional party shall submit a response in accordance with the provisions of rule 6.

(8) The additional party may make claims, counterclaims, or assert setoffs against any other party in accordance with the provisions of rule 6.

RULE 17

Consolidation of arbitration proceedings.

(1) The Centre may, at the request of a party, consolidate the arbitration proceedings with other pending arbitration proceedings commenced under these Rules or other Rules administered by the Centre on such terms as may be agreed, where—

(a) the parties have agreed to consolidation;

(b) all of the claims in the arbitrations are made under the same arbitration agreement; or

(c) the claims in the arbitrations are made under more than one arbitration agreement—

(i) the arbitrations are between the same parties;

(ii) the disputes in the arbitrations arise in connection with the same legal relationship; and

(iii) the Centre finds the arbitration agreements to be compatible.

(2) Unless otherwise agreed by the parties, the arbitrations shall be consolidated into the arbitration that commenced first.

RULE 18

Seat of arbitration and place of hearings.

(1) The parties may agree in writing on the seat of arbitration.

(2) Unless otherwise agreed under paragraph (1), the seat of arbitration shall be Nairobi, Kenya.

(3) The Arbitral Tribunal may, on considering all the circumstances, and on giving the parties an opportunity to make written comments, determine a more appropriate seat.

(4) The Arbitral Tribunal may, with the consent of all the parties to the arbitration, meet at any geographical location it considers appropriate to hold meetings or hearings.

(5) Where the Arbitral Tribunal holds a meeting or hearing in a place other than the seat of arbitration, the arbitration shall be treated as arbitration conducted at the seat of the arbitration and any award as an award made at the seat of the arbitration for all purposes.

RULE 19

Applicable law.

The law applicable to the arbitration shall be the arbitration law of the seat of arbitration, unless and to the extent that the parties have expressly agreed in writing on the application of another arbitration law and such agreement is not prohibited by the law of the arbitral seat.

RULE 20

Language of Arbitration.

(1) The initial language of the arbitration shall be the language of the arbitration agreement, unless the parties have agreed in writing otherwise.

(2) A non-participating or defaulting party shall have no cause for complaint if communications to and from the Registrar and the arbitration proceedings

are conducted in English.

(3) In the event that the arbitration agreement is written in more than one language, the Centre may, unless the arbitration agreement provides that the arbitration proceedings shall be conducted in more than one language, decide which of those languages shall be the initial language of the arbitration.

(4) Upon the formation of the Arbitral Tribunal and unless the parties have agreed upon the language of the arbitration, the Arbitral Tribunal shall decide upon the language of the arbitration, after giving the parties an opportunity to make written comments and after taking into account—

(a) the initial language of the arbitration; and

(b) any other matter it may consider appropriate in all the circumstances of the case.

(5) If a document is expressed in a language other than the language of the arbitration and no translation of such document is submitted by the party relying upon the document, the Arbitral Tribunal or, if the Arbitral Tribunal has not been formed, the Centre may direct that party to submit a translation in a form to be determined by the Arbitral Tribunal or the Centre, as the case may be.

RULE 21

Party representation.

(1) A party may be represented by a legal practitioner or any other representative.

(2) The conduct of a party's representative shall be in accordance with the code, standards or guidelines as the Centre may issue from time to time.

(3) The Arbitral Tribunal may require from a party proof of authority granted to the party's representative in such form as the Arbitral Tribunal may determine.

RULE 22

Hearings.

(1) Each party has the right to be heard orally before the Arbitral Tribunal on the merits of the dispute, unless the parties have agreed on a documents-only arbitration.

(2) The Arbitral Tribunal shall fix the date, time and physical place of any meetings and hearings in the arbitration, and shall give the parties reasonable notice thereof.

(3) The Arbitral Tribunal may in advance of a hearing submit to the parties a list of questions which it wishes them to answer with special attention.

(4) All meetings and hearings shall be in private unless the parties agree otherwise in writing.

(5) A hearing or any part of a hearing may be conducted via video-conference, telephone or such other electronic means, with the agreement of parties or at the discretion of the arbitrator.

(6) The Arbitral Tribunal shall have the fullest authority to establish time-limits for meetings and hearings, or for any parts thereof.

(7) A party who desires a stenographer shall—

(a) notify the Arbitral Tribunal at the pre-conference hearing; and

(b) be responsible for meeting the cost of the stenographer within such proportions as the Arbitral Tribunal may determine.

RULE 23

Experts to the Arbitral Tribunal.

(1) Unless otherwise agreed by the parties in writing, the Arbitral Tribunal may—

(a) appoint one or more experts, who shall be impartial and independent of the parties throughout

the arbitration proceedings, and shall be required to report to the Arbitral Tribunal on specific issues; and

(b) require a party to give the expert any relevant information or to provide access to any relevant documents, goods, samples, property or site for inspection by the expert.

(2) Unless otherwise agreed to by the parties in writing, if a party requests or if the Arbitral Tribunal considers it necessary, the expert shall, after delivery of the expert's written or oral report to the Arbitral Tribunal and the parties, participate in one or more hearings at which the parties shall have the opportunity to question the expert on the expert's report and to present expert witnesses in order to testify on the points at issue.

(3) The fees and expenses of an expert appointed by the Arbitral Tribunal under this rule shall be paid out of the deposits payable by the parties under rule 26 and shall form part of the costs of the arbitration.

RULE 24

Jurisdiction of the Arbitral Tribunal.

(1) The Arbitral Tribunal shall have the power to rule on its own jurisdiction, including any objection to the initial or continuing existence or validity of the arbitration agreement.

(2) For the purposes of paragraph(1), an arbitration clause which forms part of a contract shall be treated as an arbitration agreement independent of other terms of that contract, and a decision by the Arbitral Tribunal that such contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

(3) A plea by a respondent that the Arbitral Tribunal does not have jurisdiction shall be raised not later than in the statement of defence or, with respect to a counterclaim, not later than in the statement of defence to the counterclaim, failing which such plea shall be considered as having been waived

irrevocably.

(4) A plea that the Arbitral Tribunal is exceeding the scope of its authority shall be raised at least within three days after the Arbitral Tribunal has indicated its intention to decide on the matter alleged by any party to be beyond the scope of its authority, failing which the plea shall be considered as having been waived irrevocably.

(5) Despite paragraph (3) and (4), the Arbitral Tribunal may admit an untimely plea if it considers the delay justified.

(6) The Arbitral Tribunal may determine the plea to its jurisdiction or authority in an award as to jurisdiction or later in an award on the merits, as it considers appropriate in the circumstances.

(7) The parties shall, by agreeing to arbitration under these Rules, be treated as having agreed not to apply to a judicial authority for any relief regarding the Arbitral Tribunal's jurisdiction or authority, except—

(a) with the agreement in writing of all parties to the arbitration;

(b) with the prior authorization of the Arbitral Tribunal; or

(c) after the Arbitral Tribunal's award ruling on the objection to its jurisdiction or authority.

RULE 25

Powers of the Arbitral Tribunal.

(1) Unless the parties at any time agree in writing, the Arbitral Tribunal shall, on the application of any party or of its own motion, and after giving the parties a reasonable opportunity to state their views, have the power to—

(a) allow a party, upon such terms as to costs, as it shall determine, to amend any claim, counterclaim, defence or reply;

(b) extend any time-limit provided by the arbitration agreement, these Rules or by the Arbitral Tribunal's orders during the conduct of the arbitration;

(c) conduct the enquiries as may appear to the Arbitral Tribunal to be necessary or expedient, including whether and to what extent the Arbitral Tribunal shall take the initiative in—

(i) identifying the issues;

(ii) ascertaining the relevant facts and the law or rules of law applicable to the arbitration;

(iii) ascertaining the merits of the parties' dispute and the arbitration agreement;

(iv) ordering any party to make any property, site or thing under that party's control and relating to the subject matter of the arbitration available for inspection by the Arbitral Tribunal, any other party, the party's expert or any expert to the Arbitral Tribunal;

(d) determine—

(i) whether or not to apply any strict rules of evidence, or any other rules, as to the admissibility, relevance or weight of any material tendered by a party on any matter of fact or expert opinion; and

(ii) the time, manner and form, in which the material shall be exchanged between the parties and presented to the Arbitral Tribunal.

(e) order the correction of any contract between the parties or the arbitration agreement, but only to the extent required to rectify a mistake which the Arbitral Tribunal determines to be common to the parties and only to the extent to which the law or rules of law applicable to the contract or arbitration agreement permit the correction; and

(f) allow, upon the application of a party a third person to be joined in the arbitration as a party

provided that the third person and the other parties have consented in writing thereafter and to make a single final award, or separate awards, in respect of all parties implicated in the arbitration.

(2) The Arbitral Tribunal shall manage any necessary exchange of information among the parties with a view to achieving an efficient and economical resolution of the dispute, while at the same time promoting equal treatment and safeguarding each party's opportunity to fairly present its claims and defenses.

(3) The Arbitral Tribunal may, on application of a party or on the Arbitral Tribunal's own initiative—

(a) require the parties to exchange documents in their possession or custody on which they intend to rely;

(b) require a party to update exchanges of the documents on which the party intends to rely as such documents become known to that party;

(c) require a party, in response to reasonable document requests, to make available to the other party documents, in the responding party's possession or custody, not otherwise readily available to the party seeking the documents, reasonably believed by the party seeking the documents to exist and to be relevant and material to the outcome of disputed issues; and

(d) require a party, when a document to be exchanged or produced is maintained in electronic form, to make such document available in the form most convenient and economical for the party in possession of such document, unless the arbitrator determines that there is good cause for requiring the document to be produced in a different form.

(4) The Arbitral Tribunal shall have the authority to issue any orders necessary to enforce the provisions of paragraphs (1), (2) and (3) to achieve a fair, efficient and economical resolution of the case, including an order—

(a) requiring any exchange or production of confidential documents and information, and the admission of confidential evidence at the hearing, on appropriate orders to preserve such confidentiality;

(b) imposing reasonable search parameters for electronic and other documents, if the parties are unable to agree;

(c) allocating costs of producing documentation, including electronically stored documents;

(d) in the case of willful non-compliance with any order issued by the arbitrator, drawing adverse inferences, excluding evidence and other submissions, or making special allocations of costs or an interim award of costs arising from such non-compliance; and

(e) issuing any other enforcement orders which the arbitrator is empowered to issue under applicable law.

(5) The parties shall, on agreeing to arbitration under these Rules, be considered as having agreed not to apply to any judicial authority for any order available from the Arbitral Tribunal under paragraph (1), except with the agreement in writing of all parties.

(6) The Arbitral Tribunal shall decide the parties' dispute in accordance with the law or rules of law selected by the parties as applicable to the merits of their dispute, but if parties have made no such choice, the Arbitral Tribunal shall apply the law or rules of law which it considers appropriate.

(7) The Arbitral Tribunal shall only apply to the merits of the dispute principles deriving from "*ex aequo et bono*", "*amiable compositeur*" or "*honourable engagement*" where the parties have so agreed expressly in writing.

RULE 26

Costs and deposits.

(1) The Centre may direct the parties, to make one or several interim or final deposit on payments on account of the costs of the arbitration, in such proportions of amount as it considers appropriate.

(2) The deposits under paragraph (1) shall be made to and held by the Centre and may be released by the Centre to the arbitrators, an expert appointed by the Arbitral Tribunal and the Centre itself as the arbitration progresses.

(3) The Arbitral Tribunal shall not proceed with the arbitration without ascertaining from the Registrar that the Centre is in possession of the deposit made under paragraph (1).

(4) In the event that a party fails or refuses to provide any deposit as directed by the Centre, the Centre may direct the other party to effect a substitute payment to allow the arbitration to proceed, subject to an award on costs, in which case the party paying the substitute payment shall be entitled to recover that amount as an immediate debt due from the defaulting party.

(5) Failure by a claimant or counterclaiming party to provide, in full, the required deposit shall be considered by the Centre and the Arbitral Tribunal as a withdrawal of the claim or counterclaim.

RULE 27

Interim and conservatory measures.

(1) The Arbitral Tribunal shall, unless otherwise agreed by the parties in writing, on the application of any party have the power to—

(a) order a respondent party to a claim or counterclaim to provide security for all or part of the amount in dispute, by way of deposit or bank guarantee or in any other manner and upon such terms as the Arbitral Tribunal considers appropriate, which terms may include the provision by the claiming or

counterclaiming party of a cross-indemnity, secured in such manner as the Arbitral Tribunal considers appropriate, for any costs or losses incurred by such respondent in providing security as may be determined by the Arbitral Tribunal in an award;

(b) order the preservation, storage, sale or other disposal of any property or thing under the control of any party and relating to the subject matter of the arbitration; and

(c) order on a provisional basis, subject to final determination in an award, any relief which the Arbitral Tribunal may have power to grant in an award, including a provisional order for the payment of money or the disposition of property as between any parties.

(2) 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, which terms may include the provision by that other party of a cross-indemnity, secured in the manner as the Arbitral Tribunal considers appropriate, for any costs and losses incurred by the claimant or counterclaimant in providing security, as 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 an order to provide security, the Arbitral Tribunal may stay that party's claims or counterclaims or dismiss them in an award.

(4) The power of the Arbitral Tribunal under paragraph (1) shall not prejudice a party's right to apply to a judicial authority for interim or conservatory measures prior to the formation of the Arbitral Tribunal and in exceptional cases.

(5) The applicant shall, after the formation of the Arbitral Tribunal inform the Arbitral Tribunal and

all other parties of the existence of any application or orders made in accordance with paragraph (4).

(6) The parties shall, on consenting to an arbitration process in accordance with these Rules, be considered to have agreed not to apply to a judicial authority for any order for security for legal or other costs available from the Arbitral Tribunal under paragraph (2).

RULE 28

Emergency arbitrator.

(1) At any time prior to the formation or expedited formation of the Arbitral Tribunal, a party may make an application for emergency measures in accordance with the procedure set out in the Second Schedule.

(2) The emergency arbitrator provisions shall not apply if the parties have agreed to opt out of the emergency arbitrator provisions.

(3) The emergency arbitrator may make any order or award—

(a) which the Arbitral Tribunal may make under the arbitration agreement; or

(b) adjourning the consideration of all or any part of the claim for emergency relief to the proceedings conducted by the Arbitral Tribunal.

(4) Upon the formation or expedited formation of the Arbitral Tribunal, the emergency arbitrator shall have no further power to act in the dispute.

(5) An order or award issued by the emergency arbitrator shall cease to be binding—

(a) if the Arbitral Tribunal is not constituted within ninety days' of the order or award;

(b) where the Arbitral Tribunal makes a final award; or

(c) if the claim is withdrawn.

(6) An order or award made by the emergency arbitrator shall be binding on the parties upon being issued.

(7) The parties shall, on consenting to arbitration under these Rules, undertake to carry out an order or award of an emergency arbitrator immediately and without any delay.

(8) The Arbitral Tribunal may upon application by a party or on its own motion confirm, vary, discharge or revoke, in whole or in part an order or award of the Emergency Arbitrator, except an order referring to the Arbitral Tribunal, when formed, any part of the claim for emergency relief.

(9) Subject to the time-limit specified under rule 30,—

(a) a party requesting the emergency arbitrator to make correction or make an additional order or award shall make the request within two days after the order or award is issued ; and

(b) the emergency arbitrator shall make the corrections or any additional order or award within three days on receipt of the request under paragraph (a).

RULE 29

Award of Arbitral Tribunal.

(1) The Arbitral Tribunal shall make its award in writing within a period of three months from the date of close of hearing.

(2) The Arbitral Tribunal's award shall, unless all parties agree in writing—

(a) state reasons on which the award is based;

(b) state the date when the award is made ;

(c) state the seat of the arbitration; and

(d) be signed by the Arbitral Tribunal or those of its members consenting to the award.

(3) The Arbitral Tribunal shall inform the Registrar of the date of close of hearing.

(4) The Arbitral Tribunal may on application by any party, or on its own motion or with the consent of all parties, extend the time limit in paragraph (1) and shall notify the Registrar and all the parties of the extension.

(5) If an arbitrator fails to comply with the mandatory provisions of any applicable law relating to the making of an award, having been given a reasonable opportunity to comply, the remaining arbitrators may proceed in his absence and state in their award the circumstances of the other arbitrator's failure to participate in the making of the award.

(6) Where there are three arbitrators and the Arbitral Tribunal fails to agree on any issue, the arbitrators shall decide that issue by a majority decision failing which the chairman of the Arbitral Tribunal shall make a determination.

(7) If an arbitrator refuses or fails to sign the award, the signatures of the majority or if there is no majority, of the chairman shall be sufficient, provided that the reason for the omitted signature is stated in the award.

(8) The sole arbitrator or chairman shall be responsible for delivering the award to the Centre, which shall transmit certified copies to the parties provided that the costs of arbitration shall be paid to the Centre in accordance with rule 31.

(9) The Registrar shall notify the parties of the receipt of the award from the Arbitral Tribunal, and the award shall be considered to have been received by the parties upon collection by hand by an authorized representative or upon delivery by registered mail.

(10) An award may be expressed in any currency.

(11) The Arbitral Tribunal may order that simple or compound interest be paid by a party on any sum awarded at such rates as the Arbitral Tribunal determines to be appropriate, without being bound by legal rates of interest imposed by any judicial authority in respect of a period which the Arbitral Tribunal determines to be appropriate, ending not later than the date upon which the award is complied with.

(12) The Arbitral Tribunal may make separate awards on different issues at different times which shall have the same status and effect as any other award made by the Arbitral Tribunal.

(13) In the event of a settlement of the parties' dispute, the Arbitral Tribunal may render a consent award recording the settlement, if the parties request in writing.

(14) An award made under paragraph (13) shall not contain reasons, but shall contain an express statement that it is an award made by the parties' consent.

(15) If the parties do not require a consent award, on written confirmation by the parties to the Centre that a settlement has been reached, the Arbitral Tribunal shall be discharged and the arbitration proceedings concluded, subject to payment by the parties of any outstanding costs of the arbitration under rule 31.

(16) An award shall be final and binding on the parties.

(17) On consenting to arbitration under these Rules, the parties undertake to carry out an award immediately and without any delay, subject to rule 31.

RULE 30

Correction of awards and additional awards.

(1) Within fifteen days of receipt of an award, or such lesser period as may be agreed in writing by the parties, a party may by written notice to the Registrar, copied to all other parties, request the Arbitral Tribunal to correct a computation, clerical or typographical error, or any error of a similar nature contained in the award.

(2) If the Arbitral Tribunal considers the request under paragraph (1) to be justified, it shall make the corrections within fifteen days' of receipt of the request.

(3) A correction shall take the form of an addendum dated and signed by the Arbitral Tribunal or if there are three arbitrators, signed by those of its members assenting to it and shall constitute part of the award.

(4) The Arbitral Tribunal may also correct an error of the nature described in paragraph (1) on its own initiative within fifteen days' of the date of the award.

(5) Within fifteen days of receipt of the final award, a party may by written notice to the Registrar, copied to all other parties, request the Arbitral Tribunal to make an additional award as to a claim or counterclaim presented in the arbitration but not determined in any award.

(6) If the Arbitral Tribunal considers the request made under paragraph (5) to be justified, it shall make the additional award within thirty days' of receipt of the request in accordance with the provisions of rule 29.

RULE 31

Arbitration and legal costs.

(1) The costs of the arbitration shall, except the legal or other costs incurred by the parties, be determined by the Centre in accordance with the

First Schedule.

(2) The parties shall be jointly and severally liable to the Arbitral Tribunal and the Centre for the arbitration costs.

(3) The Arbitral Tribunal shall specify in the award the total amount of the costs of the arbitration as determined by the Centre.

(4) Unless the parties otherwise agree in writing, the Arbitral Tribunal shall determine the proportions in which the parties shall bear the arbitration costs.

(5) If the Arbitral Tribunal has determined that all or any part of the arbitration costs shall be borne by a party other than a party which has already paid the costs to the Centre, the party that had made the deposit shall have the right to recover the entire amount paid from the party required to pay costs.

(6) The Arbitral Tribunal shall—

(a) have the power to order, in its award, that all or part of the legal or other costs incurred by a party be paid by another party, unless the parties otherwise agree in writing; and

(b) determine and specify the amount of each item comprising the costs on such terms as it considers fit.

(7) The Arbitral Tribunal shall, unless the parties otherwise agree in writing, make its orders on both arbitration and legal costs on the general principle that costs shall reflect the parties' relative success or failure in the award or arbitration, except where the Arbitral Tribunal considers the general principle inappropriate.

(8) An order for costs shall be made with reasons in the award containing such order.

(9) If the arbitration is abandoned, suspended or concluded, by agreement or otherwise, prior to the final award being made, the parties shall be jointly and severally liable to pay to the Centre and the Arbitral Tribunal the costs of the arbitration, as the Centre shall determine in accordance with the First Schedule.

(10) In the event that the arbitration costs are less than the deposits made by the parties, there shall be a refund by the Centre in the proportion as the parties may agree in writing, or in the absence of the agreement, in the same proportions as the deposits were made by the parties to the Centre.

(11) Where parties refer their dispute to mediation pursuant to the Centre's Rules on mediation and a settlement is not reached and the parties opt to proceed to arbitration under these Rules, the one half of the administrative costs paid to the Centre for the mediation shall be credited to the parties account for the purposes of covering the administrative costs of the arbitration.

RULE 32

Mediation.

(1) Upon receipt of the response under rule 6, the Centre may invite the parties to mediate in accordance with the Centre's Mediation Rules and the parties shall be at liberty to accept or decline the invitation.

(2) Subject to rule 31(9), the parties may at any stage of the proceedings agree to mediate in accordance with the Centre's Mediation Rules.

(3) The parties shall promptly notify the Arbitral Tribunal and the Centre of the agreement to mediate.

(4) Unless the parties otherwise agree, arbitration proceedings under these Rules shall be suspended pending the outcome of the mediation commenced pursuant to paragraph (1) or (2).

(5) Where a dispute has been referred to mediation under this rule, and the parties have failed to reach

a settlement, the arbitration proceedings shall proceed under these Rules.

RULE 33

Decisions of the Centre.

The decisions of the Centre, with respect to all matters relating to the arbitration, shall be conclusive and binding upon the parties and the Arbitral Tribunal.

RULE 34

Confidentiality.

(1) Unless the parties expressly agree in writing to the contrary, the parties shall undertake to keep confidential all awards in their arbitration, as well as all materials in the proceedings created for the purpose of the arbitration and all other documents produced by another party in the proceedings not in the public domain, except where disclosure may be required of a party by legal duty, to protect or pursue a legal right or to enforce or challenge an award in legal proceedings before a judicial authority.

(2) The deliberations of the Arbitral Tribunal are confidential to its members, except where disclosure of an arbitrator's refusal to participate in the arbitration is required of the other members of the Arbitral Tribunal under rules 12, 14 and 29.

(3) The Centre shall not publish an award or any part of an award without the prior written consent of all parties and the Arbitral Tribunal.

RULE 35

Exclusion of liability.

35. (1) The members of Board, the staff of the Centre, the Arbitral Court, the Registrar, the arbitrators or the experts to the Arbitral Tribunal shall not be liable to any party for any act or omission in connection with any arbitration conducted pursuant to these Rules, except where the act or omission is proved by that party to constitute intentional act or omission committed by the body or person

alleged to be liable to that party.

(2) After the award has been made and the correction and additional awards referred to in rule 30 have lapsed or been exhausted, the Centre, the Arbitral Court, the Registrar, the arbitrator or expert to the Arbitral Tribunal shall not be under any legal obligation to make a statement to any person about any matter concerning the arbitration, and any party shall not be entitled to seek to make any of these persons a witness in any legal or other proceedings arising out of the arbitration.

RULE 36

General rules.

(1) A party who knows that a provision of the arbitration agreement or these Rules has not been complied with and opts to proceed with the arbitration without promptly stating its objection to such non-compliance, shall be considered as having irrevocably waived the right to object.

(2) In all matters not expressly provided for in these Rules, the Arbitral Court, the Arbitral Tribunal and the parties shall act in accordance with the provisions of these Rules and shall make every reasonable effort to ensure that an award is legally enforceable.

(3) The Centre may, from time to time, amend these Rules.

(4) The Rules applicable to the arbitration shall be those in force at the time of commencement of the arbitration, unless the parties have agreed otherwise.

SCHEDULES

FIRST SCHEDULE (r.8 (3) (b), 31(1) & (9))

PART 1

FEES AND COSTS

1. General.

(1) The parties shall be jointly and severally liable to the Arbitral Tribunal and the Centre for the arbitration costs, other than the legal or other costs incurred by the parties themselves.

(2) The Arbitral Tribunal's award shall be transmitted to the parties by the Centre provided that the costs of the arbitration have been paid in accordance with the provisions of rule 31.

(3) The fees in this Schedule may attract Value Added Tax at the prevailing rate.

(4) A dispute regarding administration costs or the fees and expenses of the Arbitral Tribunal shall be determined by the Centre.

PART 2

THE ARBITRATIONS ADMINISTERED UNDER THE CENTRE'S AND UNCITRAL RULES.

2. Registration fees.

(1) A non-refundable registration fee of USD100 for international arbitration and KES 1,000 in domestic arbitration.

(2) The registration fee under paragraph (1) does not constitute part of the Centre's administrative costs.

(3) The registration fee shall be payable by the Claimant in full.

3. Administrative Costs of the Centre.

(1) The Centre's administrative costs shall be determined

in accordance with Parts 3B or 4B of this Schedule.

(2) The administrative costs shall be payable by the parties in equal share and shall form part of the advance deposit.

(3) In addition to costs specified under paragraph (1) and (2), expenses incurred by the Centre in connection with the arbitration, such as postage, telephone, facsimile, travel, and additional arbitration support services, whether provided by the Centre from its own resources, or otherwise shall be charged as part of the Centre's administrative costs.

(4) The invoice by Centre on fees and expenses in domestic arbitrations shall be in Kenya shillings, but may be paid in other convertible currencies, at rates prevailing at the time of payment.

(5) The invoice by Centre on fees and expenses in international arbitrations shall be invoiced in US dollars, but may be paid in other convertible currencies, at the rates prevailing at the time of payment.

(6) Subject to paragraph (4) and (5), any transfer or currency exchange charges shall be borne by the person paying the fees and expenses.

4. Advance deposits.

(1) The Centre may direct the parties to make one or several interim or final payments, in such proportions as it considers appropriate, on account of the costs of the arbitration and may limit the payments to a sum sufficient to cover fees, expenses and costs for the Centre and the Arbitral Tribunal.

(2) The Arbitral Tribunal shall not proceed with the arbitration without ascertaining at all times from the Registrar that the Centre has received the requisite payments from the parties.

(3) In the event that a party fails to provide any deposit as directed by the Centre, the Centre

may direct the other party or parties to make a substitute payment to allow the arbitration to proceed, subject to any award on costs, in which case the party making the substitute payment shall be entitled to recover that amount as a debt immediately due from the defaulting party.

(4) Failure by a claimant or counterclaiming party to provide the required deposit in full, within the time specified by the Registrar, may be considered by the Centre and the Arbitral Tribunal as a withdrawal of the claim or counterclaim.

(5) Any money paid by the parties on account of the fees, and expenses of the Arbitral Tribunal and of the Centre shall be held in trust, in the Centre's client accounts which shall be controlled by reference to each individual case and shall be disbursed by the Centre, in accordance with these Rules and provisions of this Schedule.

(6) In the event that funds lodged by the parties exceed the costs of the arbitration at the conclusion of the arbitration, the Centre shall return surplus monies to the parties as the ultimate default beneficiaries under the trust.

(7) Where applicable, the Centre shall credit interest on sums deposited to the account of each party depositing them, at the rate applicable to the amount deposited.

5. Fees and costs.

(1) The Arbitral Tribunal's fee shall be calculated in accordance with Parts 3A or 4A of the First Schedule.

(2) The Arbitral Tribunal shall agree in writing upon fee rates conforming to this Schedule of Fees and Costs prior to its appointment by the Centre.

(3) Subject to paragraph (4) the Registrar shall, at the time of appointing the Tribunal, advise the parties on the rates of payment of fees and costs in such proportions as the Registrar considers

appropriate.

(4) The rates under paragraph (3) may be reviewed, on an annual basis, depending on the duration of the arbitration.

(5) Despite paragraph (3), in exceptional cases, the rates of payment of fees and costs may be higher than the rates provided, while taking into consideration the circumstances of the case, including its complexity and the special qualifications of the arbitrators provided that, in such cases—

(a) the fees of the Arbitral Tribunal shall be fixed by the Centre on the recommendation of the Registrar, following consultations with the arbitrators; and

(b) all the parties shall expressly agree to the fees .

(6) The Arbitral Tribunal may in addition recover such expenses as are reasonably incurred in connection with the arbitration, and as are in a reasonable amount.

(7) Subject to paragraph (6), claims for expenses should be supported by invoices or receipts.

(8) The expenses shall be borne by the parties and reimbursed at cost.

(9) The Arbitral Tribunal's fees may include a charge for time spent travelling.

(10) The Arbitral Tribunal's fees may be invoiced either—

(a) in US dollars or in Kenya shilling for international arbitrations; or

(b) in Kenya Shillings for domestic arbitrations.

(11) The expenses of the Arbitral Tribunal may be invoiced in the currency in which they were incurred or in Kenya shillings.

(12) In the event of the removal of an arbitrator, pursuant to the provisions of rule 12(3), the Centre shall decide on the amount of fees and expenses to be paid for the removed arbitrator's services as it may consider appropriate in all the circumstances.

6. Interim payments.

(1) Where interim payments are required to cover the Centre's administrative costs or the Arbitral Tribunal's fees or expenses, including the fees or expenses of an expert appointed by the Arbitral Tribunal, the Centre may, on the approval of the Arbitral Court, make payments out of the deposits held.

(2) The Centre may, in any event, submit interim invoices in respect of all current arbitrations, periodically, for payment direct by the parties or from funds held on deposit.

7. Requests to act as appointing authority.

(1) Any party intending to nominate the Centre to act as appointing authority shall make the request to the Registrar together with payment of a non-refundable appointment fee of USD 1000 in international arbitration and KES 5,000 in domestic arbitration payable to the Centre.

(2) A request shall not be processed, unless accompanied by the appointment fee.

(3) For additional services, the Centre may charge administrative expenses incurred by the Centre in connection with the arbitration which include postage, telephone, facsimile or travel expenses and arbitration support services.

PART 3

Fees & Costs (International Arbitration)

A: Arbitrator's Fees

Amount in dispute (USD)	Arbitrator's Fees (USD)
Up to 50,000	1,000
50,001 to 100,000	2,000
100,001 to 500,000	4,000
500,001 to 1,000,000	8,000
1,000,001 to 2,000,000	16,000
2,000,001 to 5,000,000	16,000 + 2.8% above 2,000,000
5,000,001 to 10,000,000	100,000 + 0.6% above 5,000,000
10,000,001 to 50,000,000	130,000 + 0.05% above 10,000,000
Above 50,000,001	150,000 + 0.02% above 50,000,000

The amount of arbitrator's fee indicated in this annex is the rate payable to one arbitrator.

B: Administrative Costs

Amount in dispute (USD)	Administrative costs (USD)
Up to 50,000	700
50,001 to 100,001	700 + 0.2% above 50,000
100,001 to 500,000	800 + 0.25% above 100,000
500,001 to 1,000,000	1,800 + 0.6% above 500,000
1,000,001 to 2,000,000	4,800 + 0.12% above 1,000,000
2,000,001 to 5,000,000	6,000 + 0.2% above 2,000,000
5,000,001 to 10,000,000	12,000 + 0.18% above 5,000,000
Above 10,000,001	21,000

PART 4

Fees & Costs (Domestic Arbitration)

A: Arbitrator's fees

Hourly rate to be advised by the Centre at the time of filing the request with a maximum of KES 25,000 per Hour.

The rate of arbitrator's fee indicated in this annex is the rate payable to one arbitrator.

B: Administrative Costs

1.5% of the rate charged for arbitrator's fee.

PART 5

Fees & Costs (Emergency Arbitrator)

Administrative Costs

International Arbitration	USD 1,000
Domestic Arbitration	KES 10,000

Emergency Arbitrator's fee

International Arbitration	USD 10,000
Domestic Arbitration	KES 200,000

EMERGENCY ARBITRATOR RULES

Emergency arbitrator rules.

(1) A party who intends to make an application for an emergency arbitration pursuant to these Rules shall submit a written request to the Registrar.

(2) The request under paragraph (1) shall—

(a) specify the applicant's name, address, and other contact details of each of the other parties in the arbitration;

(b) contain a copy of the written arbitration clause or separate written arbitration agreement invoked by the claimant and the contractual documentation in which the arbitration clause is contained or in respect of which the arbitration arises;

(c) contain a brief description of the nature and circumstances of the dispute giving rise to the application;

(d) contain a statement of the reasons why the applicant seeks emergency relief against another party to the arbitration;

(e) specify the name in full, address, telephone, and e-mail address and other relevant description of any person representing the applicant;

(f) contain a confirmation to the Registrar that copies of the request for arbitration and all supporting documents have been served on all other parties to the arbitration by one or more means of service to be identified in such confirmation; and

(g) be accompanied by a non-refundable application fee specified in the First Schedule.

(3) The Registrar shall, if he determines that the request should be accepted, proceed to appoint an emergency arbitrator within two days of receipt

by the Registrar of such payment of fees as may be required.

(4) The decision of the Registrar to accept or refuse the request for emergency arbitration shall be in the Registrar's sole discretion and shall be final, and the reasons for the decision shall not be communicated.

(5) Prior to appointment by the Registrar, each prospective arbitrator shall agree in writing on the rates of fees, and shall sign a declaration to the effect that there are no circumstances known to the arbitrator likely to give rise to any justified doubts as to the arbitrator's impartiality or independence, other than any circumstances disclosed by the arbitrator in the declaration.

(6) An emergency arbitrator may not act as an arbitrator in any future arbitration relating to the dispute, unless the parties consent.

(7) The Registrar shall, as soon as practicable, notify all parties to the arbitration of the appointment of an emergency arbitrator.

(8) On receipt of the notice under paragraph (7), all written communication by the parties shall be submitted directly to the emergency arbitrator with a copy to the Centre.

(9) A party may challenge an emergency arbitrator in which case, the procedure provided under these Rules shall apply except that the time limits set out in rule 11(3) are for purposes of this Schedule reduced to one day.

(10) Upon withdrawal or acceptance of the challenge, the replacement arbitrator shall be appointed in accordance with rule 12.

(11) The emergency arbitrator shall, within two days of appointment, establish a schedule for consideration of the application for emergency relief.

(12) The emergency arbitrator shall be under a continuing duty to act fairly and impartially as between the parties and adopt procedures suitable to the circumstances of the application including proceedings by video-conferencing or written submissions as alternatives to a formal hearing.

(13) The emergency arbitrator shall have the same powers vested in the Arbitral Tribunal under these Rules, including the power to rule on his own jurisdiction and any objection to the application of this Schedule.

(14) The emergency arbitrator shall make an order or award within fifteen days from the date of appointment, which period may be extended by agreement of the parties.

(15) The emergency arbitrator shall be responsible for delivering the award to the Centre, which shall transmit certified copies to the parties provided that the costs of arbitration have been paid to the Centre in accordance with rule 31.

(16) The Registrar shall, on receipt of the award from the emergency arbitrator, notify the parties of the award.

(17) The award shall be deemed to have been received by the parties upon collection by hand by an authorized representative or upon delivery by registered mail.

NOTES:

Arbitration Clauses

1. It is recommended that parties intending to commence arbitration in their contracts pursuant to these Rules shall use the following model clause—

Any dispute, controversy or claim arising out of or in connection to this contract, or breach, termination or invalidity thereof shall be settled by arbitration in accordance with the Nairobi Centre for International Arbitration Rules.

2. Any parties to a contract without an existing arbitration clause intending to commence an arbitration under the Nairobi Centre for International Arbitration Rules; or

Any parties to a contract with an existing arbitration clause intending to substitute the clause in the contract for a clause making reference to the ***Nairobi Centre for International Arbitration*** Rules may adopt the following by agreement—

The parties hereby agree that any dispute, controversy or claim arising out of or in connection to the contract dated....., or breach, termination or invalidity thereof shall be settled by arbitration in accordance with the Nairobi Centre for International Arbitration Rules.

Mediation and Arbitration Clause

3. A party who intends to refer a dispute to mediation under the Centre’s Mediation Rules in the first instance followed by arbitration under the Centre’s Arbitration Rules, if required, may use the following model clause—

In the event of a dispute, controversy or claim arising out of or in connection to this contract, or breach, termination or invalidity thereof shall first refer the, dispute to mediation under the Nairobi Centre for International Arbitration (Mediation) Rules. If the dispute has not been settled pursuant

to the said rules within thirty days following the filing of the request for mediation or within such other period as the parties may agree in writing, such dispute shall be settled by arbitration in accordance with the Nairobi Centre for International Arbitration Rules.

4. The parties may also adopt the model clause to suit their specific mediation and arbitration requirements.

ARTHUR IGERIA,
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