

**ARBITRATION RULES OF THE
COMMON COURT
OF JUSTICE AND ARBITRATION**



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CHAPTER I

THE ROLE OF THE COMMON COURT OF JUSTICE AND ARBITRATION IN ARBITRATION MATTERS

ARTICLE 1 - Exercise by the Court of its functions

1.1 The Common Court of Justice and Arbitration, hereinafter referred to as «the Court», shall be responsible for the supervision of arbitration proceedings in accordance with article 21 of the Treaty and under the conditions laid down hereinafter.

The decisions which the court shall take for the purpose of ensuring the proper conduct of arbitration proceedings and the proceeding linked to the scrutiny of the award, are of an administrative nature.

The above decisions shall not be binding and may not be challenged; the reasons upon which they are based shall be made public.

The decisions shall be arrived at by the court in accordance with the rules agreed upon at the general assembly following proposals made by the President.

The Registrar-in-Chief shall perform the functions of Secretary General of the administrative organs of the Court.

1.2 The Court shall perform the judicial functions provided for in article 25 of the Treaty with respect to final arbitral awards and exequatur of the said awards while sitting in its judicial capacity and in accordance with the laid down procedure.

1.3 The administrative functions of the court as defined in paragraph 1.1 above relating to the supervision of arbitral proceedings shall be performed in accordance with chapter II below.

The judicial functions provided for in paragraph 1.2 above are defined and regulated by chapter III below and the rules of procedure of the Court.

CHAPTER II

THE PROCEDURE APPLICABLE BEFORE THE COMMON COURT OF JUSTICE AND ARBITRATION

ARTICLE 2 The role of the Court

2.1 The Court shall ensure that an arbitral award is made, in accordance with the present Rules, for the settlement by arbitration of any contractual dispute submitted to it by any party to a contract, pursuant to an arbitration clause or a submission agreement, either because one of the parties is resident or has his usual place of residence in the territory of one or more States Parties, or where the contract is performed or will be performed, wholly or partly in the territory of one or more States Parties.

2.2 The Court shall not itself settle disputes.

It shall appoint or confirm arbitrators, who shall keep the court informed of the progress of the proceedings and submit the draft award to the court for its approval.

It shall, upon request, rule on the exequatur of its arbitral awards and on disputes relating to the binding effect of the said awards.

2.3 The Court shall deal with issues relating to arbitral proceedings conducted by the Court pursuant to Part IV and Article I of these rules.

2.4 The Court may where necessary draw up its own Internal Rules. The Court may, in accordance with these internal rules, delegate to a restricted panel of the court the power to take certain decisions, provided that any such decision shall be reported to the Court at its next session. These rules shall be deliberated upon and adopted at the General Assembly.

They shall become binding upon approval by the Council of Ministers pursuant to Article 4 of the Treaty.

2.5 The President of the Court or any other member of the court delegated to this effect by him shall have the power to take, in case of urgency, decisions necessary for the smooth conduct of arbitral proceedings other than those that must be taken by the Court sitting in its judicial capacity, provided that any such decision shall be reported to the Court at its next session.

ARTICLE 3- Appointment of arbitrators

3.1 The dispute may be settled by a sole arbitrator or by three arbitrators. In the present rules of arbitration, the arbitral tribunal may also be referred to as “the arbitrator”.

Where the parties have agreed that the dispute shall be settled by a sole arbitrator, he shall be appointed by mutual agreement subject to approval of the Court. If the parties fail to agree within thirty (30) days of notification of the request for arbitration, the arbitrator shall be appointed by the Court

Where the dispute is to be referred to three arbitrators, each party shall in the request for arbitration or in the reply to the request appoint one independent arbitrator, subject to the approval of the Court. If one of the parties fails to appoint an arbitrator, the latter shall be appointed by the Court. The third arbitrator, who will act as Chairman of the arbitral tribunal, shall be appointed by the Court, unless the parties have agreed that the two arbitrators they had designated would appoint the third arbitrator within a given time limit. In such event, the Court shall confirm the third arbitrator. If the two arbitrators fail to agree on an appointment within the time limit fixed by the parties or the Court, the third arbitrator shall be appointed by the Court.

Where the parties have not mutually agreed upon the number of arbitrators, the Court shall appoint a sole arbitrator, unless it appears that the dispute is such as to justify the appointment of three arbitrators. In such latter case, the parties shall appoint an arbitrator within a period of fifteen (15) days.

Where there are more than two parties, either as claimants or defendants, who have to submit to the Court joint proposals for the appointment of an arbitrator and where they fail to agree on such appointment within the fixed time limit, the Court may appoint each member of the arbitral tribunal.

3.2 The arbitrators may be elected from the list of arbitrators drawn up by the Court and updated annually. The members of the Court cannot be included on the said list.

3.3 In appointing arbitrators, the Court shall have regard to the nationality of the parties, their residence, the residence of their counsel as well as the residence of the arbitrators, the language of the parties, the nature of the claims and, if need be, the laws chosen by the parties to govern their relationship.

With a view to proceeding with the appointments and drawing up the list of arbitrators pursuant to Article 3.2, the Court, if it deems it necessary, may first require the opinion of experts whose competence is well known in the field international commercial arbitration.

ARTICLE 4 - Independence, challenge and replacement of arbitrators

4.1 Any arbitrator appointed or confirmed by the Court shall be and remain independent of the parties involved in the arbitration.

He shall perform his duties until the end.

Before his appointment or confirmation by the Court, the prospective arbitrator who has received information on the dispute as set out in the request for arbitration as well as, if it has been submitted, as set out in the reply to such request, shall disclose in writing to the Secretary General of the Court any facts or circumstances which might be of such nature as to call into question the arbitrator's independence in the mind of the parties.

Upon receipt of this information, the Secretary General of the Court shall forward such information to the parties in writing and shall fix a time limit for the parties to present their respective comments.

The arbitrator shall immediately disclose, in writing, to the Secretary General of the Court and the parties, any facts and circumstances of similar nature which may occur between his appointment or confirmation by the Court and the notification of the final award.

4.2 The challenge of an arbitrator, whether for an alleged lack of independence or otherwise, shall be made by the submission to the General Secretary of a written statement specifying the facts and circumstances on which the challenge is based.

To be admissible, the challenge shall be sent by a party either within thirty (30) days from the date of receipt by that party of the notification of the appointment or confirmation of the arbitrator, or within thirty (30) days from the date when the party filing the challenge was informed of the facts and circumstances on which the challenge is based if such date is subsequent to the receipt of such notification.

The Court shall rule upon the admissibility of the request, and at the same time, if it deems it necessary, on the merits of the challenge, after the Secretary General has given an opportunity for the arbitrator concerned, the parties and any other members of the arbitral tribunal if any, to comment in writing within a reasonable period of time.

4.3 An arbitrator shall be replaced upon his death, upon acceptance by the Court of the challenge against him, or upon acceptance by the court of his resignation.

Where the resignation of an arbitrator is not accepted by the Court and the arbitrator nevertheless refuses to continue to perform his assignment, he shall be replaced if he is a sole arbitrator or if he is the Chairman of the arbitral tribunal.

In any event, the Court shall consider whether the replacement is appropriate taking into account the progress of the proceedings and the opinion of the two remaining arbitrators. Where the court considers replacement not necessary, the proceedings shall continue and the award may be rendered in spite of the refusal to participate by the arbitrator whose resignation has been refused.

The Court shall render its decision having regards, in particular, to the provisions of Article 28 (2) below.

4.4 An arbitrator shall also be replaced where the Court decides that he is prevented de jure or de facto from fulfilling his mission or that he is not fulfilling his functions in accordance with PART IV of the Treaty or in accordance with the Rules or within the prescribed time limits. When, on the basis of information that has come to its attention, the court considers applying the preceding paragraph, it shall decide on the replacement after the Secretary General of the Court has communicated this information in writing to the arbitrator concerned, the parties and other members of the tribunal, if any, and has given them the opportunity to comment in writing within a reasonable period of time.

In case of replacement of an arbitrator who is not fulfilling his functions in accordance with Part IV of the Treaty or in accordance with the rules of arbitration or within the prescribed time limits,, the appointment of a new arbitrator shall be made by the Court upon the recommendation of the party who had appointed the arbitrator to be replaced without the Court being bound by the said recommendation.

Where the Court is aware that in an arbitral tribunal composed of three arbitrators, one of the arbitrators other than the Chairman, is not participating in the arbitration even though he has not resigned, the Court may, pursuant article 4 sub 3 and 4 above, not replace the said arbitrator when the two other arbitrators have accepted to continue the arbitration despite the failure of the said arbitrator to participate.

4.5 Once reconstituted, and after having invited the parties to furnish their comments, the arbitral tribunal shall determine to what extent the prior proceedings shall be repeated.

4.6 In accordance with the provisions of Article 1.1 above, the ruling of the Court relating to the appointment, confirmation, challenge or replacement of an arbitrator shall be final.

ARTICLE 5 Request for Arbitration

Any party wishing to have recourse to arbitration pursuant to article 2.1 above (Article 21 of the Treaty) and whose modalities are fixed by the present rules of arbitration, shall submit the request to the Secretary General for arbitration by the Court.

This Request shall contain:

- a) the surnames, given names, capacity, corporate name and address of the parties, with indication of the address for service for the continuation of the proceedings, as well as an indication of any amount(s) claimed;
- b) the arbitration agreement entered into between the parties as well as any contractual or non-contractual documents likely to throw light on the circumstances of the dispute;
- c) a brief statement of the relief sought and the grounds upon which the request is based;
- d) any useful information and proposals concerning the number and choice of arbitrators, in accordance with the provisions of Article 2.3 above.
- e) the agreement entered into between the parties, if any, relating to:
 - the seat of the arbitration
 - the language of the arbitration
 - the rules of law to be applied to
 - the arbitration agreement
 - the arbitration proceedings, and
 - the merits of the claim,

failing such agreements, the applicant for arbitration shall state his views on these issues;

- f) the Request shall indicate the amount of costs provided for the filing of the proceedings in accordance with the scale of the costs of the Court.

The claimant shall, in his Request, state that he has sent a copy of such request with all supporting documents to the defendants.

The Secretary General shall notify all parties or respondents of the date of the receipt of the request by the Secretariat General, attach to this notification a copy of the present rules of arbitration and shall forward to the claimant an acknowledgment.

The date of receipt by the Secretary General of the request for arbitration complying with the present article is deemed to be the date on which the arbitration commences.

ARTICLE 6 – Response to the Notice

Every respondent shall submit to the Secretary General, his Response to the Notice within forty five (45) days of receiving notification from the Secretary General, with proof that he has also sent a copy to the claimant.

In the case above mentioned in Article 3.1 (2), the parties shall agree within the time limit of thirty (30) days provided in the said article .

The Response shall contain:

- a) confirmation or not of his surnames, given names corporate name and address as given by the applicant, with election of residence for the proceedings;
- b) confirmation of the existence of an arbitration agreement between the parties that refers to the arbitration provided for at title IV of the Treaty for the Harmonization of Business Law in Africa ;
- c) a brief summary of the dispute and the response of the respondent to the claim brought against him with a statement of the grounds and evidence upon which he will base his defence..
- d) the response of the respondent as regards the issues raised in the request for arbitration in relation with items (d) and (e) of Article 5 above.

ARTICLE 7

Where the respondent has filed a counterclaim in his answer, the claimant shall file a reply to the counterclaim within thirty (30) days from the date of receipt of the Counterclaim

ARTICLE 8

Upon receipt of the notice for arbitration, the respondent's reply, the claimants reply to the counterclaim pursuant to the provisions of articles 5, 6, and 7 above, or upon expiry of the time within which to file, the Secretary General shall request the court to fix a provisional advance to cover the costs of the arbitration, the institution of the arbitral proceedings and where necessary, the place of the arbitration.

The file shall be forwarded to the arbitrator as soon as the arbitral tribunal is constituted and the decisions taken in accordance with Article 11.2 have been complied with.

ARTICLE 9 - Absence of arbitration agreement

Where, prima facie, there is no arbitration agreement between the parties requiring the application of the present rules of arbitration, if the defendant objects to the arbitration of the Court or does not file a reply within a period of forty five (45) days provided for at Article 6 above, the claimant shall be informed by the Secretary General of his intention to apply to the Court for a decision that the arbitration shall not proceed.

The Court shall rule, based on the claimant's comments submitted within the next thirty (30) days, if the latter deems it necessary to file such comments.

ARTICLE 10 - Effects of the arbitration agreement

- 10.1** Where the parties have agreed to submit to arbitration by the Court, they shall be deemed thereby to have submitted ipso facto to the provisions of Part IV of the OHADA Treaty, to the present rules, to the internal rules of the Court, its annexes as well as to the scale of the costs of arbitration, as at the date of commencement of the arbitration proceedings pursuant to Article 5 above.
- 10.2** If one of the parties refuses or fails to take part in the arbitration, the arbitration shall proceed notwithstanding such refusal or failure.
- 10.3** Where one party raises one or more objections concerning the existence, validity or the scope of the arbitration agreement, and where the Court is satisfied of the *prima facie* existence of the agreement, the court may, without prejudice to the admissibility or merits of the objection, decide that the arbitration shall proceed. In such case, the arbitrator shall rule on any issues relating to his own jurisdiction.
- 10.4** Except as otherwise provided, where the arbitrator upholds the validity of the arbitration agreement, the arbitrator shall not cease to have jurisdiction by reason of any claim that the contract is null and void.
- 10.5** Unless otherwise provided, the arbitration agreement confers jurisdiction on the arbitrator to entertain any interim or conservatory applications in the course of the arbitral proceedings.

Awards made pursuant to the preceding paragraph shall be immediately enforceable by application for *exequatur*, where an *exequatur* is necessary for the enforcement of the interim or conservatory awards.

Before the file is forwarded to the arbitrator and, in exceptional circumstances, even thereafter, where the urgent nature of the interim and conservatory measures requested may not permit the arbitrator to rule promptly, the parties may apply to any competent judicial authority for such measures.

Any such application and any measures taken by the judicial authority shall without delay, be notified to the Court which shall inform the arbitrators thereof.

ARTICLE 11 - Advance to cover the costs of the arbitration

- 11.1** The court shall fix the amount of the advance on costs in a sum likely to cover the costs of arbitration of the claims which have been referred to it in accordance with article 24.2 a) below.

This amount may be subject to readjustment where the amount of the dispute is modified by at least one quarter or if any new circumstances render such readjustment necessary.

The court may fix separate advances on costs for the claims and the counter claim if so requested by a party.

11.2 The advance on costs shall be payable in equal shares by the claimant(s) and the respondents. However, any party shall be free to pay the whole of the advance on costs in respect of the principal claim and the counterclaim, should the other party fail to pay his share.

The advance on costs fixed shall be paid in full to the Secretary General of the Court before the file is transmitted to the arbitrator: the payment of at most three quarters of the amount fixed may be secured by an adequate bank guarantee.

11.3 Only claims for which the advance on costs has been duly paid pursuant to paragraph 11.2 above shall be brought to the arbitrator.

Where a supplementary advance on costs has become necessary, the arbitrator shall suspend his assignment until the supplementary deposit has been paid to the Secretary General.

ARTICLE 12 -Notification, communication and time limits.

12.1 All pleadings, correspondences and written communications exchanged by the parties, as well as documents annexed thereto, shall be furnished in as many copies as there are other parties plus one for each arbitrator and one for the Secretary General of the Court. However, the documents annexed may not be forwarded to the Secretary General except upon his request.

12.2 All pleadings, correspondences and communications from the Secretariat, the arbitrators or the parties are valid if they are:

- delivered against a receipt, or
- dispatched by registered mail to the address or last known address of the addressee, as given by him or by the other party as the case may be, or
- by any means of communication with written proof, the original being considered as authentic, in case of dispute

12.3 A notification or communication validly made shall be deemed to have been made on the day it was received by the interested party or by its representative.

12.4 The time limit prescribed by the present rules or by the Court in application of these rules or its internal rules starts running from the day following the date a notification or communication is deemed to have been made in accordance with the preceding paragraph.

When the next day following such date is an official holiday, or a non business day in the country where the notification or communication is deemed to have been made, the time limit shall start to run on the first following business day.

Official holidays and non- business days are included in the calculation of time limits and shall not prolong them. If the last day of the relevant time limit granted is an official holiday or a non- business day in the country where the notification or communication is deemed to have been made, the time limit shall expire at the end of the first following business day.

ARTICLE 13 - Seat of the arbitration

The seat of the arbitration shall be determined by the arbitration agreement or by a later agreement of the parties.

Failing such agreement, it shall be determined by a decision of the Court rendered before the file is transmitted to the arbitrator.

After consultation with the parties, the arbitrator may decide to conduct the hearing in any other place. In case of disagreement, the Court shall rule on the matter.

Where the circumstances render impossible or difficult the conduct of hearings at the decided place, the Court may, at the request of the parties, or any of them, or the arbitrator, fix another seat.

ARTICLE 14-Confidentiality of the arbitral proceedings

Arbitral proceedings shall be confidential. The work of the Court relating to conduct of arbitral proceedings is subject to this confidentiality; so too is the meeting of the Court held for the purpose of supervision of the arbitration. Confidentiality shall also apply to documents submitted to the Court or drawn up by it in the course of the proceedings it is following up.

Unless otherwise agreed by all the parties, the parties and their counsel, the arbitrators, the experts and any person involved in arbitral proceedings shall be bound by the duty to respect the confidentiality of the information and documents produced during the said proceedings. Confidentiality shall extend, under the same conditions, to the arbitral awards.

ARTICLE 15 - Report establishing the purpose of the dispute as well as the conduct of arbitral proceedings.

15.1 The arbitrator shall, upon receipt of the file, summon the parties or their duly qualified representative and their counsel, to a meeting which shall hold as soon as is possible and not later than sixty (60) days from the date of receipt of the file.

The purpose of the meeting shall be;

- a) To establish the fact that arbitration has been seized and to determine the claim submitted to him for determination. He shall proceed to list the claims as contained in the submissions filed by the parties as of that date, with a summary of the reasons for these claims and the grounds raised in support thereof;
- b) To declare if there exists an agreement between the parties on the issues listed in articles 5(e) and 6 (b) and (d) herein above.

In the absence of such an agreement, the arbitrator shall declare that the arbitral award shall contain a ruling on this issue.

The arbitrator shall, in the course of the meeting, immediately determine the language of the arbitration, with due regard to the observations of the parties on this issue, and after taking into account the circumstances.

The arbitrator shall, if necessary, enquire of the parties if they intend to confer on him the powers of aimable compositeur. The answer of the parties shall be recorded in writing.

- c) To take measures appropriate for the conduct of the arbitral proceedings in accordance with the rules which the arbitrator intends to use as well as how they will be applied.
- d) To establish a provisional calendar, fixing the dates of the filing of the respective submissions deemed necessary, as well as the date of hearing arguments after which the hearing shall be declared closed.

The hearing date fixed by the arbitrator shall not exceed six months from the date of the meeting except otherwise agreed by the parties.

15.2 The arbitrator shall draw up a report of the meeting referred to in article 15(1) herein above. This report shall be signed the arbitrator.

The parties or their representatives shall also be invited to sign the report. Where one of the parties refuses to sign the report or expresses reservations about the report, it shall be submitted to the Court for approval.

A copy of the report shall be given to the parties and to their counsel, as well as to the Secretary General of the Court.

15.3 The provisional calendar of arbitration contained in the report referred to in article 15(2) may, in case of necessity be modified by the arbitrator of his own motion after the observations of the parties, or at their request.

The modified calendar shall be sent to the Secretary General of the Court who shall communicate same to the Court.

15.4 The arbitrator shall within 90 days of the close of deliberations, draw up and sign the arbitral award. This time limit may be extended by the Court upon the application of the arbitrator if he cannot meet up with the dead line.

15.5 Where the arbitral award does not finally conclude the arbitral proceedings, a meeting shall immediately be convened to determine in the same conditions a new calendar for the arbitral award which shall completely dispose of the matter.

ARTICLE 16 - Rules governing the proceedings

The rules applicable to the proceedings before the arbitrator, shall be the present rules and, in case of silence, any rules which the parties or failing them, the arbitrator, may settle on, by referring or not to rules of procedure of national law applicable to arbitration.

ARTICLE 17- Law applicable to the merits of the dispute.

The parties shall agree upon the rules of law to be applied by the arbitrator to the merits of the dispute. In the absence of any such agreement, the arbitrator shall apply the law determined by the conflict of law rules which it considers appropriate in the circumstance.

In any event, the arbitrator shall take into account the terms of the contract and the usages of the trade.

The arbitrator shall decide as amiable compositeur if the parties have so authorised in the arbitration agreement or thereafter.

ARTICLE 18 New Claims

In the course of the proceedings, the parties shall be free to raise new grounds in support of their claims.

They may also file fresh claims, whether counter claims or not if the said claims are within the limits of the arbitration agreement, and unless the arbitrator considers that he does not have to authorise such an extension of his mission, due in particular, to the delay in filing the claim.

ARTICLE 19 Establishing the facts of the case

19.1 The arbitrator shall proceed within as short a time as possible to establish the facts of the case by all appropriate means.

After examining the written submissions of the parties and the documents filed by them, the arbitrator shall hear the parties together in person if so requested by any of the parties; failing such a request, the arbitrator may of his own motion decide to hear them.

The parties may appear either in person or through their duly authorized representatives. They may be assisted by their counsel.

The arbitrator may decide if he deems necessary to hear the parties separately. In this case, the hearing of each party shall take place in the presence of counsel of both parties.

The hearing of the parties shall take place on a day and at a place to be determined by the arbitrator.

If any of the parties duly summoned, fails to appear, the arbitrator, after establishing that the summons was properly served on him, shall, unless there is a good reason, nevertheless proceed to accomplish his mission, and the hearing shall be deemed to be after full hearing.

A copy of the report on the hearing of the parties, duly signed shall be forwarded to the Secretary General of the Court.

19.2 The arbitrator may decide the case solely on the documents filed by the parties if the parties so request or accept.

19.3 The arbitrator may appoint one or more experts, define their terms of reference, receive their reports and hear them in the presence of the parties and their counsel.

19.4 The arbitrator shall be in charge of the hearing. The hearing shall be in the presence of the parties.

Except with the consent of the arbitrator and the parties, the hearing shall not be open to persons who are strangers to the proceedings.

ARTICLE 20 Award by consent

If the parties reach a settlement, during the arbitral proceedings, they may request the arbitrator to record the settlement in the form of an arbitral award made by consent of the parties.

ARTICLE 21 Objection on lack of jurisdiction

21.1 If any of the parties intends to raise a plea that the arbitrator does not have jurisdiction to hear the whole or part of the dispute, for whatever reason, the party shall raise same in the submissions referred to in article 6 and 7 herein above and at the latest, during the meeting referred to in article 15(1) herein above.

21.2 At any time during the hearing, the arbitrator may of his own motion raise question in relation to his own jurisdiction based on grounds of public policy. In such case, the parties shall be invited to make their comments or state their views.

21.3 The arbitrator may rule on an objection on lack of jurisdiction either in an interim award or in a final or partial award on the merits.

When in accordance with the provisions of Chapter III herein, an appeal against an interim award acknowledging jurisdiction or not, is filed before the Court in its judicial capacity, the arbitrator may nonetheless continue the arbitral proceedings while the appeal is pending before the Court.

ARTICLE 22 The Arbitral award

22.1 Unless otherwise agreed by the parties, and provided that such an agreement is in conformity with the applicable law, all awards shall state the reasons upon which they are based.

22.2 They shall be deemed to be made at the seat of the arbitration and on the date of their signature after scrutiny by the Court.

22.3 They shall be signed by the arbitrator having regards, where necessary, to the provisions of article 4[3] and 4[4] above.

If three arbitrators were appointed, the award shall be made by a majority decision. Failing a majority decision, the Chairperson of the arbitral tribunal shall decide alone.

The arbitral award shall be signed, as the case may be, by the three members of the arbitral tribunal, or by the Chairperson alone.

Where the arbitral award is made by a majority decision, refusal by the dissenting arbitrator to sign same shall not affect the validity of the award.

22.4 Any member of the arbitral tribunal may hand his personal opinion to the Chairman for the purpose of being attached to the award.

ARTICLE 23- Prior scrutiny of the award by the Court

23.1 Draft awards on jurisdiction, partial awards that determine some claims of the parties, and final awards shall be submitted to the Court for scrutiny, before signature.

The other awards shall not be submitted for prior scrutiny, but shall be forwarded to the Court for information only.

23.2 The Court may only propose modifications as to the form of the award. Besides, it shall give necessary directions to the arbitrators on the fixing of the cost of arbitration, and shall in particular, fix the fees of the arbitrators.

ARTICLE 24 Decision as to the costs of the arbitration.

24.1 The final award of the arbitrator, other than the decision on the merits, shall fix the costs of the arbitration and decide which of the parties shall bear them or in what proportion they shall be borne by the parties.

24.2 The costs of arbitration shall include:

a) the fees of the arbitrator and the administrative expenses fixed by the Court, expenses incurred by the arbitrator, the running costs of the arbitral tribunal, fees and expenses of experts appointed by the arbitral tribunal.

The fees of arbitrators and the administrative expenses of the Court shall be fixed in accordance with the scale schedule of fees established by the General Assembly of the Court and approved by the Council of Ministers of OHADA, in accordance with Article 4 of the Treaty.

b) Costs incurred by the parties for the defence of their claims, as assessed by the arbitrator upon the application therefor by the parties.

24.3 Where prevailing circumstances so exceptionally require, the Court may fix the fees of the arbitrator at an amount inferior or superior to that indicated on the scale of fees.

ARTICLE 25 - Notification of the arbitral award.

25.1 Once the arbitral award has been made, the Secretary General shall notify on the parties the text signed by the arbitrator after the costs of the arbitration referred to in Article 24.2(a) have been fully paid to the Secretary General by the parties or by one of them.

25.2 Additional copies certified true by the Secretary General of the Court shall be made available at any time to the parties upon their request but to no one else.

25.3 By virtue of the notification thus made, the parties waive any other form of notification or deposit on the part of the arbitrator.

ARTICLE 26 Correction and interpretation of the arbitral award

Any application for the correction of clerical errors in the arbitral award, or for its interpretation, or for an additional award as to claims presented in the arbitration but not determined in any

award, shall be submitted to the Secretary General of the Court within 45 days of notification of the arbitral award.

The Secretary General shall upon receipt of the application forward same to the arbitrator and to the opposite party while giving the latter a time limit of 30 days within which to serve his comments on the applicant and on the arbitrator.

Where, for whatever reason, the Secretary General is unable to forward the application to the arbitrator who had ruled on it, the Court shall after consultation with the parties appoint another arbitrator.

After examining the arguments and documents submitted by both parties in an adversary proceeding, the draft arbitral award shall within 60 days of the arbitrator being seized, be forwarded for the prior scrutiny provided for in article 23.

Except in the case provided for in subsection 3 above, the preceding procedure shall attract no fees. Costs, if any, shall be borne by the party who made the application, if the said application is dismissed in its entirety. Otherwise, costs shall be shared between the parties in the proportions fixed for the costs of the arbitration in the arbitral award, in respect of which the application is made.

ARTICLE 27 Res judicata

Arbitral awards rendered in compliance with the provisions of the present rules shall have res judicata effect on the territory of each member state, in the same way as decisions given by national courts.

They may be subject to compulsory enforcement measures on the territory of any of the member Parties.

ARTICLE 28 - Miscellaneous

The original copy of any award made in accordance with the present rules shall be filed at the Secretariat of the Court

In all other cases not expressly provided for by the present rules, the Court and the arbitrator shall act in accordance with the spirit of these rules and shall make every effort to ensure that the award is enforceable at law.

CHAPTER III RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARDS

ARTICLE 29 Challenge of validity

29.1 Any party who intends to challenge the recognition of the award and its binding and res judicata effects which apply by operation of the provisions of article 27 above shall apply to the Court by a motion on notice served on the other party.

29.2 The challenge of the validity of the award shall only be admissible if the parties have not waived this possibility in their arbitration agreement.

It may only be based on one or several of the grounds enumerated hereafter in article 30 (6) for the challenge of an exequatur.

29.3 The application shall be filed as soon as the award is rendered. It shall no longer be admissible if it is not filed within two (2) months of notification of the award as provided for in article 25 above.

29.4 The Court shall hear and determine the matter in accordance with its rules of procedure.

29.5 If the Court refuses the recognition and the res judicata effect of the award, it shall annul the award.

It shall re-hear the matter on the merits if the parties have so requested.

If the parties have not requested the Court to re-hear the matter on the merits, the proceeding shall, upon the application of the most diligent party, resume before the arbitral tribunal, where necessary, from the last act of the arbitral tribunal considered valid by the Court.

ARTICLE 30 - Exequatur

30.1 The exequatur shall be requested for by application filed ex parte before the Court.

30.2 The exequatur is granted by a ruling of the President of the Court or the judge designated for this purpose and shall render the arbitral award enforceable in all the States Parties.

This procedure shall be non-contentious.

30.3 The exequatur shall not be granted if an ex parte application has already been filed to the Court, on the basis of the same award, pursuant to Article 29 above. In such case, the Court shall order a joinder of the two proceedings.

30.4 Where the exequatur is refused for some other reason, the applicant may apply to the Court within fifteen (15) days of the refusal .

30.5 Where the ruling of the President of the Court or the judge designated for that purpose has granted the exequatur, the applicant shall serve same on the other party.

The other party may, within fifteen (15) days of service, file an application to set aside, which shall be heard in the presence of all the parties at one of the ordinary sessions of the Court in accordance with its rules of procedure.

30.6 An exequatur may not be refused and the application to set aside shall be admissible only in the following cases:

- 1 - if the arbitrator has ruled without an arbitration agreement or on the basis of an arbitration agreement which is null and void or has expired;
- 2 - if the arbitrator has not ruled within the scope and terms of his mission;
- 3 - where the principle of adversary proceeding has not been respected;
- 4 - if the award is contrary to international public policy.

ARTICLE 31 Executory formula

31 .1 The Secretary General of the Court shall deliver to the party who applies, a certified true copy of the original of the award filed in conformity with the provisions of article 28, and which shall bear on it the attestation of exequatur.

The attestation shall state that exequatur has been granted to the arbitral award, either by a ruling of the President of the Court, which has been duly served and has become final, in the absence of an application to set aside filed within 15 days as provided herein above, or by a ruling of the Court annulling a decision whereby exequatur was refused.

On the basis of the certified true copy of the arbitral award bearing the attestation of the Secretary General of the Court, the national authority designated by the state for which the exequatur is destined, shall affix the executory formula as is customary in the said state.

ARTICLE 32 - Application for review

Application for a retrial brought against the arbitral awards and the decisions of the Court where the Court ruled on the merits of the dispute in accordance with article 29 (5)(1) above, shall be filed only in the cases and under the conditions provided in article 49 of the rules of procedure of the Court.

ARTICLE 33 – Application to set aside filed by third parties

Any application to set aside filed by a third party against the arbitral awards and the decisions of the Court where the court has ruled on the merits of the dispute in accordance with article 29.5(1) above, shall be filed, only in the cases and under the conditions provided for in article 47 of the rules of procedure.

ARTICLE 34 - Final provisions

These arbitration rules shall come into force thirty (30) days from the date of signature. They shall be published in the Official Gazette of OHADA. They shall also be published in the Official Gazette of the States Parties or by any other appropriate means.

Done on 11 march 1999