

NO. 26 OF 2013

**THE NAIROBI CENTRE FOR
INTERNATIONAL ARBITRATION ACT**

SUBSIDIARY LEGISLATION

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**THE NAIROBI CENTRE FOR INTERNATIONAL
ARBITRATION (MEDIATION) RULES**

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THE NAIROBI CENTRE FOR INTERNATIONAL ARBITRATION (MEDIATION) RULES

[Legal Notice 253 of 2015]

1. Citation

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

2. Application of the Rules

(1) These Rules apply to any dispute that had arisen prior to commencement of these Rules and all disputes arising upon the enactment of these Rules, where the parties have agreed to its application.

(2) Where any of these Rules is in conflict with a provision of another law from which the parties cannot derogate, that provision of that other law shall prevail.

3. Interpretation

In these Rules, unless the context otherwise requires—

"Act" means the Nairobi Centre for International Arbitration Act (Cap. 49A);

"Centre" means the Nairobi Centre for International Arbitration established under section 4 of the Act; and

"Registrar" means the Registrar of the Centre appointed under section 9 of the Act.

4. Domestic mediation

(1) A mediation is a domestic mediation if—

- (a) the mediation agreement provides that the mediation is to be conducted in Kenya;
- (b) the mediation is between bodies corporate that are incorporated in Kenya or whose central management and control is exercised in Kenya;
- (c) the mediation is between an individual and a body corporate and—
 - (i) the individual is a national of Kenya or is habitually resident in Kenya;
 - (ii) the body corporate is incorporated in Kenya or its central management and control is exercised in Kenya;
 - (iii) the place where a substantial part of the obligations of the commercial relationship is to be performed, or the place in which the subject matter of the dispute is closely connected, is in Kenya; or
- (d) it is not an international mediation.

(2) This regulation applies to a domestic mediation either at the time when the mediation commences or when the mediation Agreement is entered into.

5. International mediation

A mediation is an international mediation if—

- (a) the parties to a mediation agreement have their places of business in countries other than Kenya at the time of the conclusion of the mediation agreement;
- (b) one of the parties to the mediation has its place of business in a country other than Kenya;
- (c) a place where a substantial part of the commercial obligation or other relationship is to be performed, or the place where the subject matter of the dispute is closely connected, is in a country other than Kenya; or

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- (d) the parties have agreed in writing that the subject matter of the mediation relates to more than one country.

6. Commencement of mediation proceedings

(1) A person shall commence mediation proceedings by submitting a written request to the Registrar in Form A set out in Part B of the First Schedule.

(2) The request under paragraph (1) shall contain the following information—

- (a) the names, addresses, e-mail addresses and telephone numbers of the parties or their representatives;
- (b) a reference to a mediation clause in the manner specified in Part A set out in the First Schedule or a copy of the separate mediation agreement;
- (c) a reference to the contract or other legal relationship out of or in relation to which the dispute arises; and
- (d) a brief explanation of the nature of dispute, the amount involved, if any, and the specific relief sought by a party,

and shall be accompanied by the registration fee set out in the Second Schedule.

(3) Upon receipt of the request under paragraph (1), the Registrar shall forward a copy of the request for mediation together with a list of the Centre's panel of Accredited Mediators to all the parties, including the initiating party.

(4) The respondent shall reply to the request for mediation under paragraph 3 through a written notice to the Registrar indicating whether the party accepts or rejects the request for mediation.

(5) When the Registrar receives the notice under paragraph (4) communicating the respondent's acceptance of the request for mediation, the mediation shall be considered to have commenced.

(6) If the respondent does not reply to the request for mediation within ten days from the date of receipt of the notice under paragraph (4), the Centre may regard it as a rejection of the request and inform the initiating party.

7. Appointment of a mediator

(1) There shall be one mediator in a dispute unless the parties agree otherwise.

(2) The mediator shall be jointly appointed by the parties to the dispute within—

- (a) five days of receipt by the Centre of the written notice of acceptance of the request for mediation; or
- (b) such other additional time as may be allowed by the Registrar, on request by either party to the dispute.

8. Appointment of mediator where parties disagree

(1) Where the parties disagree on the selection of a mediator and the time specified under paragraph 7 has lapsed, the Registrar shall, within five days after the time specified under rule 7 has lapsed, propose a mediator by providing the parties with the names of three mediators from the Centre's panel of Accredited Mediators.

(2) The parties shall, within seven days of receipt of the proposed names of mediators, jointly select a mediator and inform the Registrar in writing of their selection.

(3) The Registrar shall notify the proposed mediator selected by the parties and shall require the mediator to, within three days of receipt of the notice from the Registrar, confirm his acceptance or otherwise, to act as a mediator in the dispute.

(4) The proposed mediator shall confirm, in writing to the Registrar and to the parties of his decision under paragraph (3).

(5) If the parties do not agree on a mediator from the names proposed under paragraph (1), each party shall reply to the Registrar, within seven days of receipt of the list of proposed

mediators, indicating their order of preference for the proposed mediators and which of the proposed mediator is unacceptable.

(6) The Registrar shall appoint a mediator in accordance with the order of preference submitted by the parties.

(7) Where a party does not reply to the Registrar as required under paragraph (1), the list of proposed mediators shall be considered as accepted by all parties, in accordance with the order of preference indicated in the returned list.

(8) The Registrar shall notify the listed mediator of the proposal to appoint him as mediator.

(9) Where a mediator is not appointed under the foregoing paragraphs, a mediator may be appointed at the sole discretion of the Registrar and the parties shall be presumed to have accepted the appointment made by the Registrar.

9. Limitations of a mediator

(1) No person shall act as mediator in a dispute if that person has a conflict of interest that may affect or be perceived by the Centre or parties to affect the independence or impartiality of the Mediator, unless the parties are notified in writing of the conflict of interest and they consent in writing to the appointment of that Mediator.

(2) Where a mediator is appointed and that mediator realises a circumstance that may create a perception of bias, the Mediator shall immediately inform the parties and the Registrar.

(3) Where a party objects to the continued service of a mediator, the Mediator shall be disqualified from acting in the dispute.

(4) The parties shall, within seven days of the disqualification, appoint a new mediator from the Centre's panel of accredited Mediators and if the parties disagree on the appointment of a substitute mediator, the Registrar shall appoint a substitute Mediator.

(5) Where the parties reject a mediator appointed by the Registrar under rule 8, rule and 9(4)—

- (a) the Centre may consider the rejection as a failure of the request and shall inform the parties, accordingly; or
- (b) the Registrar shall revoke the appointment and inform the mediator.

10. Qualifications of a mediator

Notwithstanding any provision in these Rules, a person shall not act as a mediator unless that person—

- (a) is an accredited Mediator on the Centre's panel of Mediators;
- (b) is a mediator accredited by an institution recognized by the Centre; or
- (c) has been—
 - (i) a mediator in a mediation conducted under the rules of an institution recognized by the Centre;
 - (ii) in at least five international mediations, to be appointed in the Centre's international mediation; or
 - (iii) in at least five domestic mediations, to be appointed in the Centre's domestic mediation.

11. Role of a Mediator

(1) A Mediator shall be independent and impartial in the discharge of his duties.

(2) The Mediator shall conduct a mediation in a manner that he or she considers appropriate, while taking into consideration—

- (a) the circumstances of the dispute;
- (b) the wishes of the parties; and

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- (c) any practical considerations that may be relevant in the prompt resolution of the dispute.
- (3) Prior to or during the mediation, the Mediator may communicate with the parties—
- (a) jointly or separately;
 - (b) either directly or through their representatives; or
 - (c) directly, by telephone, videoconference or electronically as the Mediator considers it fit and just.

12. Preliminary conference

(1) Prior to the commencement of the mediation, the parties may participate in a preliminary conference with the assistance of the Mediator.

(2) The purpose of the preliminary conference is to enable the parties, in accordance with the Mediator's directions—

- (a) to identify the issues in dispute;
- (b) to decide on the service and exchange of documentary material relevant to the mediation, including position papers by all the parties;
- (c) to agree, subject to rule 23(2), on the terms of engagement of the Mediator including charges for cancellation, non-attendance or adjournment of a mediation session; and
- (d) to make any other necessary arrangements for the mediation to proceed.

13. Role of the parties

A party to mediation has a duty to act in good faith in the mediation and to co-operate with the other party in the settlement of the dispute.

14. Authority and representation

(1) A party to mediation may be represented by any person and the role and personal details of the representative shall be disclosed to all parties.

(2) The representative selected under paragraph (1) shall sign an undertaking to abide by the directions set by the Mediator, the Centre's Code of Conduct and the Guidelines issued from time to time.

(3) A party to mediation shall have authority to settle a dispute or be represented by a person having full authority to settle the dispute, and where the authority is limited, the limits of authority shall be disclosed to the parties and the Mediator.

(4) The Mediator may require that a party provide the proof of authority granted to his representative in such form as the Mediator may determine.

15. Confidentiality

(1) The parties and participants in a mediation shall keep all matters relating to or arising out of the mediation private and confidential unless—

- (a) the disclosure is compelled by law;
- (b) the disclosure is necessary to give effect to a mediation agreement or to enforce an agreement reached to settle or resolve the whole or any part of the dispute;
- (c) there is a written consent of the parties to the mediation.

(2) The parties and participants in a mediation shall sign a Confidentiality undertaking in the form set out in the Third Schedule.

(3) Any information submitted to the Mediator by a party in caucus or private session shall be considered as confidential information between the party providing the information and the Mediator, unless the party providing the information consents to its disclosure to any other party to the mediation.

16. Place and language

(1) The parties shall, in consultation with the Mediator, select the venue for the mediation and ensure that they have the necessary administrative services required for the mediation.

(2) Unless the parties otherwise agree in writing, the mediation shall be in the language of the documents in which the mediation agreement is contained.

(3) Where a document is written in a language other than the language of the mediation agreement and no translation of such document is submitted by the party relying upon the document, the Mediator or the Registrar may require that party to submit a translation in a form to be determined by the Mediator or the Registrar.

17. Termination of the mediation

A mediation may be terminated if—

- (a) the parties sign a written settlement agreement;
- (b) the Mediator, after consultation with the parties, makes a written declaration that further attempts at mediation are unnecessary;
- (c) one of the parties makes a written declaration to the Mediator to terminate the mediation;
- (d) on the expiry of three months from the date of the request for mediation under rule 6 unless otherwise agreed by the parties; or
- (e) the Registrar orders the termination as some of the monies payable under rule 19 are not paid as required by these Rules.

18. Termination or withdrawal from mediation

(1) A Mediator may suspend or terminate the mediation or withdraw as Mediator when he or she reasonably believes the circumstances require it, including when he or she has reasonable grounds to suspect that—

- (a) the parties are involved in illegal or fraudulent conduct;
- (b) the parties are unable to meaningfully and reasonably participate in negotiations;
- (c) the parties have not acted in good faith in the mediation; or
- (d) the continuation of the mediation shall cause significant harm to a party or a third party.

(2) Where a Mediator suspends, terminates or withdraws from a mediation, the Mediator shall—

- (a) maintain the obligation of confidentiality;
- (b) cause the least possible harm to the parties; and
- (c) promptly inform the Registrar of the termination, suspension or withdrawal.

19. Costs

(1) Unless otherwise agreed or ordered by a court, each party to a mediation shall bear his own costs of the mediation.

(2) The costs of the mediation shall include—

- (a) the professional fees of the mediator;
- (b) the cost of hiring the venue for the mediation including meeting rooms or breakout rooms;
- (c) the administrative costs, including fees for photocopying, internet access, meals and communication expenses;
- (d) fees for translation, or in respect of an expert witnesses who attend the mediation with the consent of the parties; or
- (e) any other costs reasonably incurred in respect of the organization or conduct of the mediation.

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- (3) The costs of the Centre may include—
- (a) registration fees payable on the lodging of a request;
 - (b) appointment fee if a mediator is appointed; and
 - (c) any administrative costs as specified under rule 19(2).

(4) The parties shall be jointly and severally liable for costs and expenses set out in paragraphs (2) and (3).

20. Administrative assistance

Subject to rule 16, the Registrar may, on the request of the Mediator or the parties, arrange for translators, administrative assistance or other facilities in order to facilitate the mediation.

21. Exclusion of liability

(1) A mediator shall not be liable for acts or omissions done in good faith in the discharge of his functions as a mediator or arising out of a settlement reached in a mediation conducted under these Rules.

(2) Subject to paragraph (1), a servant or agent of a mediator shall not be liable for an act or omission done, in good faith and with due authority, in the discharge of the functions of the Mediator.

(3) Nothing in this rule shall affect a liability incurred by a mediator by reason of his resignation or withdrawal.

(4) The Centre and the Registrar shall not be liable for acts or omissions done in good faith in the appointment or proposal of a Mediator or for any other purpose, in the discharge of the functions of the Centre or the Registrar in these Rules.

(5) Subject to paragraph (4), a servant or agent of a Centre shall not be liable for an act or omission done in good faith and with authority, in the discharge of the functions of the Centre or the Registrar to appoint or propose a Mediator or for any other purpose in these Rules.

(6) A statement, whether written or oral, made in the course of the mediation shall not be relied upon by any party to institute or maintain an action for defamation or any other related complaint.

22. Role of Mediator in other proceedings

- (1) The Mediator shall not—
- (a) act as a representative or counsel of a party to a mediation;
 - (b) appear as a witness in any arbitral or judicial proceedings; or
 - (c) advise a person on a dispute that is the subject of the mediation.

- (2) The parties and the mediator shall agree that they shall not—
- (a) present the mediator as a witness in any judicial proceedings;
 - (b) summon the mediator as a witness; or
 - (c) compel the mediator to give evidence or to produce documents in any subsequent judicial proceedings or arbitration.

23. Fees

(1) The fees for international mediation or domestic mediations shall be as set out in the Second Schedule.

(2) Unless otherwise agreed by the parties and the mediator, the mediator may charge a per centum rate of the fee for cancellation, non-attendance or adjournment of the mediation, which fee shall be specified in the terms of engagement of the mediator.

(3) Prior to the commencement of the mediation, each party shall pay the registration fees, appointment fees, if any, and deposit the mediator's fees and administration costs with the Centre in accordance with the Schedule of fees set out in the Second Schedule.

(4) During the mediation, the Registrar may require additional deposits to be paid by the parties for the costs referred to in rule 19.

(5) Any additional monies requested by the Registrar for the costs referred to in rule 19 shall be payable fifteen days after the receipt of the request for additional deposits.

(6) Where the monies under paragraph (5) are not paid by the parties within the specified period—

- (a) the Registrar shall inform the parties so that either of the parties may make the required payment; or
- (b) the mediator may, after consultation with the Registrar, order the suspension or termination of the mediation.

(7) The Registrar may use the deposit to pay the fees and disbursements incurred by the Centre and the mediator for the mediation.

(8) Upon termination of the mediation, the Registrar shall provide a statement of the deposits to the parties and shall specify in the statement the amount received, expended and in case of a surplus he shall return any unexpended balance to the parties.

24. Amendment

(1) These Rules may be amended by the Centre from time to time.

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

FIRST SCHEDULE

[r. 6(1)]

REQUEST FOR MEDIATION

Part A

Model mediation Clause

"Where, in the event of a dispute arising out of or relating to this contract, the parties wish to seek an amicable settlement of that dispute by mediation, the mediation shall take place in accordance with the Nairobi Centre for International Arbitration (Mediation) Rules, 2015 currently in force."

Part B

FORM A

(r. 6 (1))

Request for Mediation

Date: *(insert date of request)*

PART 1:

To: Name *(Insert name of the party/ parties to be served)*

Address: *(Insert address(es) of the party/parties to be served)*

City/Town:

Other:

Postal Code:

Email:

Telephone:

PART 2:

Give a brief description of the agreement/contract/document containing the provision for mediation under the NCIA mediation Rules(i.e. date & Clause where applicable)

[Subsidiary]

Give a brief description of the nature of the dispute for mediation:

To: Name (*Insert name of the party/ parties to be served*)

Address: (*Insert address(es) of the party/parties to be served*)

City/Town:

Other:

Postal Code:

Email:

Telephone:

PART 3:

I/we hereby (the above-named requesting party/parties) notify you of this request for mediation to be commenced under the NCIA mediation Rules. I/We have submitted a copy of this request and mediation agreement for filing with the Registrar NCIA with a request that the mediation commences under the Rules.

Signed:

Date:

SECOND SCHEDULE

[r. 6(2)(e), 23(1) & (3)]

FEES

DOMESTIC MEDIATION

- (a) **Registration Fee:**
A non-refundable registration fee to be advised by the Centre at the time of filing the request with a maximum of Kenya Shillings (KES) 1,000 is payable by the party initiating mediation pursuant to rule 6(2)(e) of the Rules.
- (b) **Administrative Costs:**
The Administrative Costs for mediation to be advised by the Centre at the time of filing the request with a maximum of Kenya Shillings (KES) 10,000 is payable by the party initiating mediation pursuant to rule 6(2)(e) of the Rules.
- (c) **Mediator's Fee:**
(i) Sum of Kenya Shillings (KES) 5,000/= for any time spent in mediation below and up to one (1) hour;
(ii) Sum of Kenya Shillings (KES) 15,000/= per mediation session (a mediation session is equivalent to time spent in mediation above one hour and not exceeding three (3) hours); and
(iii) Sum of Kenya Shillings (KES). 1,000/= per hour for review of documents and related works.

NOTE: The sum to be charged on mediator's fee for time spent in mediation above three (3) hours in a day shall be on a pro rata hourly basis at the rate of KES 5,000= per hour.

INTERNATIONAL MEDIATION

- (a) **Registration Fee:**
A non-refundable registration fee of US Dollars (USD) 50 is payable by the party initiating mediation pursuant to rule 3(e) of these Rules.
- (b) **Administrative Costs:**

The administrative costs for mediation shall be fixed at US Dollars (USD) 250

(c)

Mediator's Fee:

- (i) Sum of US Dollar (USD) 300 for any time spent in mediation below and up to one (1) hour;
- (ii) Sum of US Dollar (USD) 600 per mediation session (a mediation session is equivalent to time spent in mediation above one hour and not exceeding to three (3) hours); and
- (iii) Sum of US Dollar (USD) 300 per hour for review of documents and related works.

NOTE: The sum to be charged on mediator's fee for time spent in mediation above three (3) hours in a day shall be on a pro rata hourly basis at the rate of USD 200 per hour.

THIRD SCHEDULE

[r. 15]

CONFIDENTIALITY AGREEMENT AND UNDERTAKING

Parties:

And

And

("The Mediator")

(Have entered into a mediation Agreement dated the day of in accordance with which the Mediator will conduct a mediation.)

1. The undersigned acknowledge by their signatures that they attend the mediation on the basis of their agreement to the terms of clause 2 and 3 below.
2. Each of the undersigned undertakes to the parties and the Mediator—
 - (a) to keep confidential to themselves and any persons to whom by reason of the terms of their employment or any contract of insurance they may properly communicate it, all information disclosed during the mediation including the preliminary steps ("confidential information");
 - (b) not to act contrary to the undertaking in sub-paragraph (a) unless compelled by law to do so or with the consent of the party who disclosed the confidential information;
 - (c) not to use confidential information for a purpose other than the mediation.
3. Each of the undersigned undertakes to the parties and the Mediator that the following will be privileged and will not be disclosed in or relied upon or be the subject of any subpoena to give evidence or to produce documents in any arbitral or judicial proceedings between the parties to the mediation—
 - (a) any settlement proposal whether made by a party or the Mediator;
 - (b) the willingness of a party to consider any such proposal;

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4. (c) any admission or concession made by a party
 (d) any statement or document made by the Mediator.
 The parties acknowledge that the mediator may disclose information obtained during or in connection with the mediation in any one or more of the following circumstances —
- (a) with the consent of the person from whom the information was obtained;
 - (b) in connection with the fact that an agreement or arrangement has been reached and as to the substance of the agreement or arrangement;
 - (c) if there are reasonable grounds to believe that the disclosure is necessary to prevent or minimize the danger of injury to any person or damage to any property;
 - (d) if the disclosure is reasonably required for the purpose of referring any party or parties to a mediation session to any, person, agency, organization, or other body and the disclosure is made with the consent of the parties to the mediation session for the purpose of aiding in the resolution of a dispute between those parties or assisting the parties in any other manner;
 - (e) in accordance with a requirement imposed by or under a law of a country or a state.

Signature	Name
Signature	Name
Signature	Name

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

ARRANGEMENT OF RULES

PART I – PRELIMINARY

Rule

1. Citation
2. Interpretation
3. Application of these Rules
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SCHEDULES

[Subsidiary]

FEEES AND COSTS

EMERGENCY ARBITRATOR PROCEDURE

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

[Legal Notice 255 of 2015, Legal Notice 26 of 2019]

PART I – PRELIMINARY

1. Citation

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

2. Interpretation

In these rules unless the context otherwise requires—

"Act" means the Nairobi Centre for International Arbitration Act (Cap. 49A);

"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

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- (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 17.

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.

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 hand, registered post or courier, or transmitted by facsimile, telex, e-mail or any other means of telecommunication that provides a record of its transmission.

(7) In the course of the arbitration, a party or a party's representative's last-known place 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.

[L.N. 26/2019, r. 2.]

PART II – COMMENCEMENT OF ARBITRATION

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.

[Subsidiary]

(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.

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

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 thirty 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.

[Subsidiary]

(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.

[L.N. 26/2019, r. 3.]

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 resume 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.

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.

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 Registrar;
- (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 Registrar 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.

[L.N. 26/2019, r. 4.]

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 Registrar, 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 Registrar 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 Registrar shall decide on the amount of fees and expenses to be paid for the removed arbitrator's services, as the Registrar may consider appropriate in the circumstances.

[L.N. 26/2019, r. 5.]

12. Replacement of arbitrator

(1) An arbitrator shall be replaced upon acceptance by the Registrar 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.

[Subsidiary]

(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.

[L.N. 26/2019, r. 6.]

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 Registrar, 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 Registrar 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 Registrar for the revocation of the third arbitrator's appointment and his replacement under rule 12.

[L.N. 26/2019, r. 7.]

PART IV – THE ARBITRAL PROCEEDINGS

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 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.

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 file under subparagraph (8), the Arbitral Tribunal shall proceed in a 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.

[L.N. 26/2019, r. 8.]

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 7 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.

[Subsidiary]

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

[L.N. 26/2019, r. 9.]

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.

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.

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.

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.

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.

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.

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.

[Subsidiary]

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.

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

[Subsidiary]

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.

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.

27. Interim and conservatory measures

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).

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 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).

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.

[Subsidiary]

(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 32.

(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 32.

(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.

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.

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.

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.

[Subsidiary]

(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.

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.

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 30.

(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.

35. Exclusion of liability

(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 29 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.

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.

FIRST SCHEDULE

[r. 5(2)(h), 31(1) & (9)]

FEES AND COSTS

[L.N. 26/2019.]

PART I – 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 10,000 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.

[L.N. 26/2019, r. 10(a).]

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.

[Subsidiary]

(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) Deleted by L.N. 26/2019, r. 10(b).

[L.N. 26/2019, r. 10(b).]

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 upon confirmation with the Tribunal; 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.

[L.N. 26/2019, r. 10(c)(a).]

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 Registrar, 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.

[L.N. 26/2019, r. 10(d).]

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 AND COSTS (INTERNATIONAL ARBITRATION)

A: Arbitrator's Fees

Amounts 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

Amounts in dispute (USD)	Arbitrator's Fees (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 AND 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.

[Subsidiary]

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

SECOND SCHEDULE

[r. 28]

EMERGENCY ARBITRATOR PROCEDURE

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—

[Subsidiary]

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.
