



# **EAST AFRICAN COURT OF JUSTICE**

## **RULES OF ARBITRATION**

**EACJ**  
**Arusha, Tanzania**  
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# East African Court of Justice Arbitration Rules, 2012

**In exercise of the powers conferred on the East African Court of Justice by Article 42 of the Treaty for the Establishment of the East African Community, the Court hereby makes the following Rules of Arbitration:**

## **PART 1 - PRELIMINARY**

### **Rule 1: Citation, application and definitions**

- (1) These Rules may be cited as the East African Court of Justice Arbitration Rules, 2012. They shall come into force on such date as the President may appoint by notice in the Gazette.
- (2) Unless the parties to arbitration agree otherwise:-
  - (a) these Rules shall apply to every arbitration under Article 32 of the Treaty;
  - (b) the parties to any arbitration may agree in writing to modify or waive the application of these Rules;
  - (c) where any of these Rules is in conflict with any provision of the law applicable to arbitration from which the parties cannot derogate, that provision shall prevail.
- (3) Unless otherwise agreed by the parties, if any party fails without sufficient cause, to do any act required to be done under these Rules, the Tribunal may make such order as it shall deem appropriate in the circumstances of the case.
- (4) In these Rules, unless the context otherwise requires:-
  - “Appointing authority” means the President or Vice President when acting on behalf of the President in his or her capacity as the person appointing an arbitrator in accordance with Rules 8 and 18 of these Rules.
  - “Arbitral award” means any award of the Tribunal and includes an interim award, a partial or a final award;
  - “Arbitration” means any proceedings instituted under Article 32 of the Treaty;
  - “Arbitration agreement” means an agreement in terms of Article 32 of the Treaty;
  - “Arbitrator” means a judge or judges of the Court appointed to constitute Tribunal;
  - “Claimant” means any party initiating recourse to arbitration;
  - “Community” means the East African Community established by Article 2 of the Treaty;
  - “Court” means the East African Court of Justice;
  - “Deputy Registrar” means the Deputy Registrar of the Court;
  - “Document” means a writing of any kind, whether recorded on paper, electronic, audio or visual recording or any other mechanical or electronic means of storing;
  - “Institution” means an institution of the Community established by Article 9 of the Treaty;

“Party” means a claimant or a respondent to an arbitration proceeding and includes any duly appointed representative of the party;

“President” means the President of the Court;

“Respondent” means a party against which recourse to arbitration is made;

“Registrar” means the Registrar of the Court;

“Treaty” means the Treaty establishing the East African Community and any annexes and protocol thereto;

“Tribunal” means the Court when exercising its arbitral jurisdiction under Article 32 of the Treaty;

“Vice President” means the Vice President of the Court.

## **Rule 2: Computation of Time**

- (1) For the purposes of these Rules, any notice, including a notification, communication or proposal, is deemed to have been received if it is physically delivered to the addressee or if it is delivered at the addressee’s habitual residence, place of business or mailing address, or if none of these can be found after making reasonable inquiry, then at the addressee’s last-known residence or place of business. Notice shall be deemed to have been received on the day it is so delivered.
- (2) For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice, notification, communication or proposal is received. If the last date of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

## **Rule 3: Commencing an Arbitration**

- (1) A Party wishing to have recourse to arbitration of a particular dispute by the Tribunal shall notify the Respondent in writing of its request for that dispute to be referred to arbitration and shall thereafter submit the request to the Registrar.
- (2) The date when the request is received by the Registrar shall, for all purposes, be deemed to be the date of commencement of the Arbitral proceedings.
- (3) The request (herein called statement of claim) shall contain *inter alia* the following information:-
  - (a) the name in full and the description of each of the parties;

- (b) a description of the nature and circumstances of the dispute giving rise to the claim(s);
  - (c) a statement of the relief sought including to the extent possible, an indication of any amount(s) claimed;
  - (d) a proposal as to the preferred number of arbitrators (one, three or more):-
  - (e) copies of the relevant agreements and, in particular, the arbitration agreement;
  - (f) any comments as to the place of arbitration, the applicable law and the language of arbitration
- (4) Together with the request, the Claimant shall submit the number of copies thereof required by Rule 10 (1) and shall make the advance payment of administrative expenses required by Schedule 1(Schedule of Arbitration Costs). In the event that the Claimant fails to comply with either of these requirements the Registrar may fix a time limit within which the Claimant must comply, failing which the file shall be closed without prejudice to the right of the Claimant to submit the same claims at a later date in another request.
- (5) Upon filing the request with the Registrar, the Claimant shall serve a copy of the request and the document annexed thereto on the Respondent for its answer to the request.

#### **Rule 4: Representation and Assistance**

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

#### **Rule 5: Answer to the Request and Counter Claims**

- (1) Within 30 days from the receipt of the Statement of Claim from the Claimant, the Respondent shall file a Statement of Defence which shall contain *inter alia* the following information:-
- (a) the Respondent's full name, description and address;
  - (b) its comments as to the nature and circumstances of the dispute giving rise to the claim(s);

- (c) its response to the relief sought;
  - (d) its comments as to the place of arbitration, the applicable law and the language of the arbitration.
- (2) The Registrar may for sufficient cause grant the Respondent an extension of the time for filing the answer.
- (3) The Statement of Defence shall be supplied to the Registrar in the number of copies specified by Rule 10 (1).
- (4) A copy of the Statement of Defence and the documents annexed thereto shall be filed with the Registrar and served on the Claimant by the Respondent.
- (5) Any counterclaim(s) made by the Respondent shall be filed with its answer and shall provide:
  - (a) a description of the nature and circumstances of the dispute giving rise to the counterclaim(s); and
  - (b) a statement of the relief sought, including, to the extent possible, an indication of any amount(s) counterclaimed.
- (6) The Claimant shall file and serve the Respondent a reply to any counterclaim within 30 days from the date of receipt of the counterclaim(s) communicated by the Respondent. The Registrar may grant the Claimant an extension of time for filing the reply.

#### **Rule 6: Default**

- (1) If within the time fixed by the Tribunal, the Claimant fails to communicate its claim without sufficient cause, the Tribunal shall issue an order for the termination of the arbitral proceedings. If, within the period of time fixed by the Tribunal, the Respondent has failed to communicate his statement of defence without sufficient cause, the Tribunal shall order that the proceedings continue.
- (2) If one of the parties, duly notified under these Rules, fails to appear at a hearing, without sufficient cause, the Tribunal may proceed with the arbitration.
- (3) If a party, duly invited to produce documentary evidence, fails to do so within the specified period, without sufficient cause, the Tribunal may make the award on the evidence before it.

### **Rule 7: Effect of the Arbitration Agreement**

- (1) Where the parties have agreed to submit to arbitration under these Rules, they shall be deemed to have submitted *ipso facto* to the Rules in effect on the date of the commencement of the arbitration proceedings, unless they have agreed to submit to the Rules in effect on the date of their arbitration agreement.
- (2) If the Respondent does not file a Statement of Defence, as provided by Rule 5, or if any party raises any plea concerning the existence, validity or scope of the arbitration agreement, the Tribunal may decide, without prejudice to the admissibility or merits of the plea, that the arbitration shall proceed if the Tribunal is *prima facie* satisfied that an arbitration agreement under the Rules may exist.

## **PART II – COMPOSITION AND PROCESS OF THE TRIBUNAL**

### **Rule 8: Appointment of Arbitrators**

- (1) The appointing authority shall appoint, from among the Judges of the Court a panel to constitute the Tribunal to conduct the arbitral proceedings, unless the parties have agreed on a Sole Arbitrator who, in the like manner, shall be appointed from among the Judges of the Court.
- (2) The Chairman of the Tribunal shall be appointed by the appointing authority from among the Judges constituting the Tribunal.
- (3) In making the appointment, the appointing authority shall have due regard to the necessity to secure the appointment of independent and impartial arbitrators.

### **Rule 9: Further Written Statements:-**

- (1) The Tribunal shall decide which further written statements, in addition to the statement of claim and the statement of defence, shall be required from the parties or may be presented by them. The Tribunal shall fix the periods of time for communicating such statements.
- (2) The time fixed by the Tribunal for the communication of written statements (including the statement of claim and statement of defence) shall not exceed 30 days. However, the Tribunal may for sufficient cause extend the time-limit.



### **Rule 10: Mode of Submitting and Service**

- (1) All pleadings and annexures thereto, shall be supplied in a number of copies sufficient to provide one copy for each party plus one for each arbitrator and one for the Registrar.
- (2) All notifications or communications from the Registrar and the Tribunal shall be made to the last address of the party or its representative for whom the same are intended, as notified either by the party in question or by the other party. Such notification or communication may be made by delivery against receipt, registered post, courier, facsimile transmission, telex, telegram, or any other means of telecommunication that provides a record of the sending thereof.
- (3) Notifications or pleadings and other written communications submitted by any party, as well as all documents communication shall be deemed to have been made on the day it was received by the party itself or its representative, or would have been received if made in accordance with sub-rule (2).

### **Rule 11: Rules Applicable to the Substance of a Dispute.**

- (1) The Tribunal shall decide the dispute in accordance with the law chosen by the parties. But if the parties expressly authorize it to do so, the Tribunal shall decide on the substance of the dispute according to considerations of justice and fairness without being bound by the rules of law (*amiable compositeur* or *ex aequo et bono*).
- (2) The choice of the law or legal system of a designated State shall be construed, unless otherwise agreed by the parties, as directly referring to the substantive law of that State and not its rules of conflict of laws.
- (3) Failing a choice of the law by the parties, the Tribunal shall apply the rules of law it considers to be appropriate given all the circumstances of the dispute.
- (4) In all cases, the Tribunal shall decide in accordance with the terms of the particular contract and shall take into account the usages of the trade applicable to the particular transaction.

### **Rule 12: Preliminary Conference**

- (1) Before proceeding with arbitration, the Tribunal shall hold a preliminary conference with the parties to draw up the document defining the agreed Terms of Reference, which shall include the following:-

- (a) the full names, addresses and description of the parties;
  - (b) the issues to be determined;
  
  - (c) the composition of the Tribunal;
  
  - (d) the place of arbitration;
  
  - (e) particulars of the substantive law chosen by the parties or, if applicable, reference to the power conferred on the Tribunal to act without being bound by the rules of law;
  
  - (f) a reference to any agreement by the parties under sub-rule (2) (b) of Rule 1 to modify or waive the application of these Rules;
  
  - (g) such other particulars as may be required to make the arbitral award enforceable in law, or as may be regarded as helpful by the Tribunal.
- (2) The Terms of Reference in sub-rule (1) shall be signed by the parties and the Tribunal.
  
  - (3) The Tribunal may, if it considers it appropriate, require a party to deliver to the Tribunal, within such time as the Tribunal shall decide, a summary of the evidence and other documents, and list of authorities which that party intends to present in support of the facts in issue set out in the agreed Terms of Reference.
  
  - (4) The Tribunal and the parties shall agree the date of the initial hearing.
  
  - (5) At least 15 days before a hearing, each party shall notify in writing to the Tribunal and the other parties the names and addresses of any witnesses it intends to call, the subject of their testimony and the languages in which such witnesses will give their evidence.
  
  - (6) If any party refuses to take part in drawing up or signing the Terms of Reference, the Tribunal shall make a ruling which shall be final on the matter and then proceed with the arbitration accordingly.
  
  - (7) When drawing up the Terms of Reference, or as soon as possible thereafter, the Tribunal after having consulted the parties, shall establish in a separate document a provisional timetable that it intends to follow for the conduct of the arbitration and shall communicate it to the parties together with any subsequent modifications.
  
  - (8) After the Terms of Reference have been signed, no party shall make new claims or counterclaims which fall outside the limits of the Terms of Reference, unless it has

been authorized to do so by the Tribunal which shall consider the nature of such new claims or counterclaims, the stage of the arbitration and other relevant circumstances.

### **Rule 13: Waiver of Right to Object**

A party that knows or should have known that a provision of these Rules, or any other Rules or agreement applicable to the proceedings, or an order of the Tribunal has not been complied with, and which fails to state promptly its objections to such non compliance, shall be deemed to have waived its right to object.

### **Rule 14: Interim Measures by the Tribunal**

- (1) At the request of either party, the Tribunal may at any time during the proceedings take any interim measure it deems necessary in respect of the subject matter of the dispute, including measures for the conservation of the goods forming the subject matter in dispute, such as ordering their deposit with a third person or the sale of perishable goods.
- (2) An interim measure under sub-rule (1) may be made in the form of an interim or partial order or award. The Tribunal may require security for the costs of such measures.
- (3) A request for interim measures addressed by any party to any court or any judicial authority shall not be deemed incompatible with the agreement to arbitrate or as a waiver of that agreement.

### **Rule 15: Death of a party**

- (1) Subject to any law by which any right or cause of action is extinguished by the death of a person, an arbitration agreement is not discharged by the death of any party, but in such event the agreement is enforceable by or against the legal representative of the deceased.
- (2) Where the death of a party occurs during the continuance of arbitration, the legal representative shall take over the proceedings.
- (3) Where an administrator or executor is not appointed within a reasonable time, the surviving party may, with the leave of the Tribunal, proceed ex parte. The Tribunal in such a case shall take into consideration the prevailing law of succession in the country of implementation of the award.

## **PART III – CONDUCT OF PROCEEDINGS**

### **Rule 16: Disclosure**

A prospective arbitrator shall disclose to the appointing authority any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. An arbitrator, once appointed, shall disclose such circumstances to the parties unless they have already been duly informed of these circumstances.

### **Rule 17: Challenge of Arbitrator**

- (1) An arbitrator may be challenged on the grounds that circumstances exist that give rise to justifiable doubts as to that arbitrator's impartiality or independence
- (2) A party who intends to challenge an arbitrator shall send notice of his challenge within 15 days after the appointment of that arbitrator has been notified to the challenging party or within 15 days after the circumstances mentioned in sub-rule (1) became known to that party.
- (3) The challenge shall be notified to the other party, to the arbitrator who is challenged and to the other members of the Tribunal. The notification shall be in writing and shall state the reasons for the challenge.
- (4) Where an arbitrator is challenged by one party, the other party may agree to the challenge. The arbitrator may also, after the challenge, withdraw from the arbitral proceedings. In neither case does this imply acceptance of the validity of the grounds for the challenge.
- (5) If the other party does not agree to the challenge and the challenged arbitrator does not withdraw, the decision on the challenge will be made by the appointing authority

### **Rule 18: Replacement of an Arbitrator**

- (1) In the event of the death or withdrawal of an arbitrator from the arbitral proceedings, a substitute arbitrator shall be appointed by the appointing authority.
- (2) In the event that an arbitrator fails or is unable to perform his or her functions, the procedure in respect of the challenge and replacement of an arbitrator as provided for in sub-rule (1) shall apply.

**Rule 19: Fresh Hearing**

If the sole or presiding arbitrator is replaced, any hearings held previously shall be repeated. If any other arbitrator is replaced, such prior hearings may be repeated at the discretion of the Tribunal, unless the parties agree otherwise.

**Rule 20: Conduct of Proceedings**

- (1) These Rules shall apply in conducting the arbitral proceedings, unless the parties agree to waive or modify them under sub-rule (2) (b) of Rule 1.
- (2) Failing such agreement, the Tribunal may, subject to the provisions of these Rules, conduct the arbitration in such manner as it considers appropriate. The powers conferred upon the Tribunal include the power to determine the admissibility, relevance, materiality and weight of any evidence.
- (3) The parties shall be treated with equality and each party shall be given full opportunity of presenting its case.

**Rule 21: Place of Arbitration**

- (1) Arbitration shall be held at a place agreed upon by the parties or in the absence of such agreement, shall be determined by the Tribunal, provided that the Tribunal may hear witnesses or hold meetings for consultation among its members at any place it deems appropriate, having regard to the circumstances of the arbitration
- (2) The Tribunal may visit any place it deems necessary for the inspection of goods, documents or other property. The parties shall be given sufficient notice to enable them to be present at such inspection.
- (3) The Award shall be deemed to be made at the place of arbitration.

**Rule 22: Language of Arbitration**

- (1) The language of the Tribunal shall be English.
- (2) A document drawn in a language other than English shall be accompanied by its certified translation into the English language.

- (3) Where oral evidence is given in a language other than English, such evidence shall be accompanied by simultaneous interpretation into English.

**Rule 23: Objection as to Jurisdiction**

- (1) The Tribunal shall have jurisdiction to hear and determine any matter in accordance with Article 32 of the Treaty, namely, disputes:-
  - (a) arising from an arbitration clause contained in a contract or agreement which confers such jurisdiction to which the Community or any of its institutions is a party; or
  - (b) arising from a dispute between the Partner States regarding the Treaty, if the dispute is submitted to it under a special agreement between the Partner States concerned; or
  - (c) arising from an arbitration clause contained in a commercial contract or agreement in which the parties have conferred jurisdiction on the Court.
- (2) The Tribunal shall have power to decide on an objection that it has no jurisdiction, including any objection concerning to the existence or validity of the arbitration agreement, and its decision shall be final.
- (3) An objection that the Tribunal does not have jurisdiction shall be raised not later than in the Statement of Defence or, with respect to a counterclaim, in the reply to the counterclaim.
- (4) An objection that the Tribunal is exceeding the scope of its jurisdiction, shall be raised as soon as the matter alleged to be beyond the scope of its jurisdiction is raised during the arbitral proceedings.
- (5) The Tribunal may, in either of the cases referred to in sub-rule (3) or (4), admit a late objection if it considers the delay justified.
- (6) The Tribunal shall rule on an objection:-
  - (a) to its jurisdiction as a preliminary question;
  - (b) concerning the existence or validity of an arbitration agreement either as a preliminary question or the Tribunal may, in exceptional circumstances, proceed with the arbitration and rule on such objection in its final award.

#### **Rule 24: Establishing the facts of the case**

- (a) The Tribunal shall proceed, within the shortest possible time, to establish the facts of the case by all appropriate means.
- (b) After studying the written submissions of the parties and all the documents relied upon, the Tribunal shall hear the parties together in person if any of them so requests, or on its own motion.
- (c) The Tribunal may decide to hear witnesses, experts appointed by the parties or any other person, in the presence of the parties.
- (a) Each party shall have the burden of proving the facts relied on to support its case.
- (b) The Tribunal may, if it considers appropriate, require a party to deliver to the Tribunal and to the other party within such time as the Tribunal shall decide, a summary of the documents and other evidence which that party intends to present in support of the facts in issue.
- (c) The Tribunal, after consulting the parties, may appoint one or more experts, define their Terms of Reference, and receive their reports. The parties shall be given the opportunity to question at a hearing any such expert appointed by the Tribunal.
- (d) The Tribunal shall be in full charge of the hearings, at which all the parties shall be entitled to be present. Save with the approval of the Tribunal and the parties, persons not involved in the proceedings shall not be admitted.
- (e) The Tribunal may make its award solely on documents submitted by the parties, unless any of the parties requests a hearing.
- (f) The Tribunal may take such measures as it deems fit for protecting trade secrets and confidential information of any person involved in the proceedings.
- (g) The parties may appear in person or through duly authorized representatives. In addition they may be assisted by advisers.

#### **Rule 25: Taking and Recording of Evidence**

- (1) In the event of an oral hearing, the Tribunal shall give the parties adequate advance notice of the date, time and place of such hearing.
- (2) If witnesses are to be heard, each party shall, within 15 days of the hearing, communicate to the Tribunal and to the other party the names and addresses of the

witnesses the party intends to present, the subject upon and the languages in which such witnesses will give their testimony.

- (3) The Tribunal shall make arrangements for the translation of oral testimony made at a hearing and for a record of the hearing if either is deemed necessary by the Tribunal under the circumstances of the case, or if the parties have agreed thereto and have communicated their agreement to the Tribunal at least 15 days before the hearing.
- (4) Hearings shall be held in camera unless the parties agree otherwise. The Tribunal may require the retirement of any witness during the testimony of other witnesses. The Tribunal is free to determine the name under which witnesses are examined.
- (5) Evidence of witnesses may also be presented in the form of written statements signed by them.
- (6) The Tribunal shall determine the advisability, relevance, materiality and weight of the evidence offered.
- (7) The Tribunal may adjourn any hearing to a subsequent date.
- (8) If a party fails to appear at a hearing or to produce evidence, the Tribunal may continue the proceedings and make an award on the evidence on record.
- (9) At any time during the arbitral proceedings, the Tribunal may require the parties to produce documents, exhibits or other evidence within such time as the Tribunal shall determine.

#### **Rule 26: Experts**

- (1) The Tribunal may:-
  - (a) appoint one or more experts to report to it on any specific issue to be determined by the Tribunal and;
  - (b) require a party to give, produce or provide to such expert any relevant information, documents, goods or other property for inspection.
- (2) Upon receipt of the expert's report, the Tribunal shall communicate a copy of the report to each party which shall be given the opportunity to present its written opinion on the report.



- (3) The expert shall, upon the request of a party at the party's cost, make available to that party for examination all documents, goods or other property in the expert's possession, which were provided to the expert for the preparation of the report.
- (4) If a party so requests or if the Tribunal considers it necessary, the expert shall participate in a hearing where each party shall have the opportunity to put questions to the expert. At such hearing a party may call any expert witness to testify on the point at issue.
- (5) The costs of the experts appointed under this Rule and of translation arrangements made under sub-rule (3) of Rule 25 shall be borne by the parties in such proportion as the Tribunal shall determine.

#### **Rule 27: Assistance in Taking Evidence**

The Tribunal may, on its own motion or upon application by a party, request the assistance of any court or tribunal to take the evidence of a witness and transmit it to the Tribunal.

### **PART IV – DECISION MAKING**

#### **Rule 28: Decision Making**

In arbitral proceedings with three or more arbitrators, any decision or order of the Tribunal shall be made by a majority.

#### **Rule 29: Settlement**

- (1) If the parties settle the dispute during the arbitral proceedings, the Tribunal shall terminate the proceedings.
- (2) The Tribunal, if requested by the parties, may record the terms of the parties' settlement in the form of an arbitral award.
- (3) An arbitral award on agreed terms shall have the same status and effect as any other award on the substance of the dispute.

## **PART V – ARBITRAL AWARD**

### **Rule 30: Form and Effect of the Award**

- (1) The award shall be made in writing and shall be final and binding on the parties. The parties shall undertake to carry out the award without delay.
- (2) The Tribunal shall state the reasons upon which the award is based, unless the parties agree that no reasons are to be given, or the award is an award on the agreed terms under sub-rule (3) of Rule 29.
- (3) An award shall be signed by the arbitrator(s) and shall contain the date when and the place where the award was made or is deemed to have been made. Where there are three or more arbitrators and one or more of them fail (s) to sign, the award shall state the reasons for the absence of the signature(s).
- (4) The award may be made public, including through law reporting, only with the consent of all the parties.
- (5) Copies of the award signed by the arbitrators shall be communicated to the parties by the Tribunal.

### **Rule 31: Termination of Arbitral Proceedings.**

- (1) The Tribunal shall issue an order for the termination of the arbitral proceedings where:-
  - (a) the Tribunal decides that it has no jurisdiction;
  - (b) the Claimant withdraws the claim, unless the Respondent objects to the withdrawal and the Tribunal recognizes a legitimate interest in obtaining a final determination of the dispute;
  - (c) the parties agree on the termination of the arbitral proceedings;
  - (d) the party defaults under Rule 6; or
  - (e) the Tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

- (2) Subject to Rules 33, 34 and 35 the mandate of the Tribunal shall cease upon the Tribunal making an award or order of termination of the arbitral proceedings.

### **Rule 32: The Award**

When there are three or more arbitrators, the award of the Tribunal shall be made by a majority of the arbitrators

### **Rule 33: Interpretation of the Award**

- (1) Within 30 days after the date on which the award was rendered, either party may request the Tribunal to give an interpretation of the award or part thereof. Such a request shall be addressed in writing to the Registrar and shall:
  - (a) identify the award to which it relates;
  - (b) indicate the date of the request;
  - (c) state in detail which part of the award needs such interpretation;
- (2) The Registrar shall transmit to each member of the Tribunal a copy of the request with its accompanying documents.
- (3) The Tribunal may, in its discretion, allow the parties to address it on the request for interpretation.
- (4) The sole Arbitrator or as the case may be, the Chairman of the Tribunal shall consult the members of the Tribunal on whether it is necessary for the Tribunal to meet in order to consider the request. The Tribunal shall fix a time limit for the parties to file their observations on the request and shall determine the procedure for its consideration.
- (5) If the request is received by the Registrar more than 45 days after the award was rendered, he shall refuse to register the request and shall so inform the requesting party.

### **Rule 34: Correction of the Award**

- (1) Within 30 days after the date on which the award was rendered, either party, with notice to the other party may request the Tribunal to correct the award or part thereof. Such a request shall be addressed in writing to the Registrar and shall:-

- (a) identify the award to which it relates;
  - (b) indicate the date of the request;
  - (c) state in detail the computational, clerical or typographical errors or any errors of similar nature which, in the opinion of the requesting party, need correction.
- (2) The Registrar shall transmit to each member of the Tribunal a copy of the request with its accompanying documents.
- (3) The Tribunal may, in its discretion, allow the parties to address it on the request for correction of the award.
- (4) The sole Arbitrator or as the case may be, the Chairman of the Tribunal shall consult the members of the Tribunal on whether it is necessary for the Tribunal to meet in order to consider the request. The Tribunal shall fix a time limit for the parties to file their observations on the request and shall determine the procedure for its consideration.
- (5) If the request is received by the Registrar more than 45 days after the award was rendered, he or she shall refuse to register the request and shall so inform the requesting party.

**Rule 35: Additional Award and Review of the Award**

- (1) Within 30 days after the receipt of the award, either party, with notice to the other party, may apply to the Tribunal requesting it to review the award on any of the following grounds, namely, that:-
- (a) a party to the arbitration agreement was under some incapacity;
  - (b) the arbitration agreement is not valid under the law to which the parties have subjected it or under the law of the State where the agreement was made;
  - (c) the party making the application was not given notice of the arbitral proceedings;
  - (d) a new and important matter or evidence discovered after the award was rendered, which could not with the exercise of due diligence, be produced in the arbitral proceedings;

- (e) there is an error apparent on the face of the record which has occasioned injustice;
  - (f) the award was obtained through fraud or corruption; or
  - (g) the award deals with a dispute not contemplated in the terms of the submission to arbitration.
- (2) If the Tribunal considers the request for the additional award to be justified and that the omission can be rectified without any further hearings or evidence, it shall make the additional award within 45 days after the receipt of the request.
- (3) If the Tribunal considers the request for review justified, it may hear such matter or evidence as it deems necessary and shall review the award accordingly within 45 days after the receipt of the request.
- (4) The Tribunal, upon application by a party or on its own motion, may for sufficient cause extend time limits specified in this Rule and in Rules 33 , 34.

## **PART VI – FINALITY AND ENFORCEABILITY OF AWARD**

### **Rule 36: Finality and Enforceability of Award**

- (1) Subject to Rules 33, 34 and 35, the arbitral award shall be final.
- (2) By submitting the dispute to arbitration under Article 32 of the Treaty, the parties shall be deemed to have undertaken to implement the resulting award without delay.
- (3) Enforcement of arbitral awards shall be in accordance with the enforcement procedures of the country in which enforcement is sought.

## **PART VII – COSTS**

### **Rule 37: Costs and Fees**


- (1) There shall be no fees payable to the arbitrators.
- (2) The Tribunal shall fix the costs of arbitration in its award separately from the expenses of the Tribunal.
- (3) The term ‘costs’ includes:-
  - (a) filing fees;

- (b) the expenses incurred by the Tribunal to obtain expert advice and other assistance;
  - (c) travel and other expenses of the Tribunal and of witnesses; and
  - (d) the costs for legal representation.
- (4) The filing fees shall be calculated in accordance with the scale of fees prescribed in the Schedule to these Rules
- (5) A successful party shall be allowed only such costs as the Tribunal considers reasonable and which shall have been claimed during the arbitral proceedings.
- (6) Except as provided in sub-rule (5) of Rule 26, the costs of arbitration shall in principle be borne by the unsuccessful party. However the Tribunal may apportion such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.
- (7) The expenses of the Tribunal shall be reasonable in amount.

**Rule 38: Security for Costs**

- (1) The Tribunal shall have the power to order any party to provide security for the costs of any other party by way of deposit or bank guarantee or in such other manner as the Tribunal deems fit.
- (2) In the event that any order under sub-rule (1) is not complied with, the Tribunal may disregard a claim or counterclaim by the non-complying party, and it may proceed to determine a claim or counterclaim by a complying party.

Dated at Arusha, Tanzania on this 13<sup>th</sup> day of March 2012.

  
.....  
President



**SCHEDULE**  
**ARBITRATION COSTS UNDER RULE 37 OF**  
**THE RULES OF ARBITRATION**

**Filing Fees**

|       | <b>Amount in dispute<br/>In US Dollars</b>                                    | <b>Amount of fee<br/>In US Dollars</b>   |
|-------|---|--|
| (i)   | Where the total amount in dispute does not exceed 10,000                      | 100  |
| (ii)  | Where the total amount in dispute exceeds 10,000 but does not exceed 50,000   | 100 plus 1 per cent of the amount by which the total amount in dispute exceeds 10,000                                      |
| (iii) | Where the total amount in dispute exceeds 50,000 but does not exceed 100,000  | 500 plus 0.75 per cent of the amount by which the total amount in dispute exceeds 50,000                                   |
| (iv)  | Where the total amount in dispute exceeds 100,000 but does not exceed 250,000 | 875 plus 0.5 per cent of the amount by which the total amount in dispute exceeds 250,000                                   |
| (v)   | Where the total amount in dispute exceeds 250,000                             | 1,575 plus 0.125 per cent of the amount by which the total amount in dispute exceeds 250,000 subject to the maximum 10,000 |