Aluochier Dispute Resolution Arbitration Rules

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ARBITRATION RULES

Rule 1 – Citation

1 Citation

These Rules may be cited as the Aluochier Dispute Resolution Arbitration Rules, 2024.

Rule 2 – Interpretation

2 Interpretation

In these Rules unless the context otherwise requires —

"administrative action" includes –

(a) the powers, functions and duties exercised by authorities or quasi-judicial tribunals; or

(b) any act, omission or decision of any person, body or authority that affects the legal rights or interests of any person to whom such action relates;

"administrator" means a person who takes an administrative action or who makes an administrative decision;

"Arbitral Court" means the Arbitral Court established under these Rules;

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

"Chief Executive" means the Chief Executive Officer of the Institute;

"claimant" means a person who commences an arbitration claim and serves a request for arbitration on the Chief Executive;

"decision" means any administrative or quasi-judicial decision made, proposed to be made, or required to be made, as the case may be;

"domestic arbitration" an arbitration is domestic if the arbitration agreement or reference 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 legal rights or interests of any party is affected by an administrative action, or the place where a substantial part of the obligations of the defined legal relationship is to be performed, or the place with which the subject-matter of the dispute is most closely connected, is Kenya.

"empowering provision" means a law, a rule of common law, customary law, or an agreement, instrument or other document in terms of which an administrative action is taken or purportedly taken;

"failure" in relation to the taking of a decision, includes a refusal to take the decision;

"Institute" means Aluochier Dispute Resolution and includes its Board of Directors or any committee, sub-committee or Chief Executive and other staff or other body or person

specifically designated by the Institute to perform the functions referred to in these Rules;

"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 or residence or incorporation or exercise of central management and control in different states; or

(b) one of the following places is situated outside the state in which the parties have their places of business or residence or incorporation or exercise of central management and control –

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

(ii) any place where a substantial part of the legal rights or interests of any party is affected by an administrative action, or any place where a substantial part of the obligations of the defined legal relationship is to be performed, or the place with which the subject-matter of the dispute is most closely connected; or

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

"respondent" means a person who receives a request for arbitration served by the claimant;

"the seat of arbitration" means the place of arbitration as provided under rule 18;

"tribunal" means a tribunal established under any written law.

Rule 3 – Application of these Rules

3 Application of these Rules

3.1 These Rules shall apply to arbitrations instituted as of right, and therefore without any requirement for the existence of an arbitration agreement, pursuant to Article 50(1) of the Constitution of Kenya, 2010, that provides that every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body, pursuant also to Article 1(3)(c) that provides that the sovereign power of the people of Kenya under this Constitution is delegated to State organs that include the Judiciary and independent tribunals, which shall perform their functions in accordance with this Constitution, and pursuant also to Article 260 that provides that a "State organ" means a commission, office, agency or other body established under this Constitution, such as arbitral tribunals in arbitrations governed by the laws of Kenya, of which the Constitution of Kenya, 2010 is the supreme law and binds all persons and all State organs, pursuant to Article 2(1).

3.2 These Rules restate Article 159 of the Constitution of Kenya, 2010 providing that: (1) Judicial authority is derived from the people and vests in, and shall be exercised by, the courts and tribunals established by or under this Constitution. (2) In exercising judicial authority, the courts and tribunals shall be guided by the following principles – (a) justice shall be done to all, irrespective of status; (b) justice shall not be delayed; (c) alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause (3); (d) justice shall be administered without undue regard to procedural technicalities; and (e) the purpose and principles of this Constitution shall be protected and promoted. (3) Traditional dispute resolution mechanisms shall not be used in a way that – (a) contravenes the Bill of Rights; (b) is repugnant to justice and morality or results in outcomes that are repugnant to justice or morality; or (c) is inconsistent with this Constitution or any written law.

3.3 These Rules shall apply to arbitrations instituted pursuant to section 7(1) of the Fair Administrative Action Act, 2015, providing that any person who is aggrieved by an administrative action or decision may apply for review of the administrative action or decision to a tribunal in exercise of its jurisdiction conferred in that regard under any written law.

3.3.1 Pursuant to section 7(2) of the said Act, such a tribunal may review an administrative action or decision if –

3.3.1.1 the person who made the decision –

3.3.1.1.1 was not authorised to do so by the empowering provision;

3.3.1.1.2 acted in excess of jurisdiction or power conferred under any written law;

3.3.1.1.3 acted pursuant to delegated power in contravention of any law prohibiting such delegation;

3.3.1.1.4 was biased or may reasonably be suspected of bias; or

3.3.1.1.5 denied the person to whom the administrative action or decision relates, a reasonable opportunity to state the person's case;

3.3.1.2 a mandatory and material procedure or condition prescribed by an empowering provision was not complied with;

3.3.1.3 the action or decision was procedurally unfair;

3.3.1.4 the action or decision was materially influenced by an error of law;

3.3.1.5 the administrative action or decision in issue was taken with an ulterior motive or purpose calculated to prejudice the legal rights of the applicant;

3.3.1.6 the administrator failed to take into account relevant considerations;

3.3.1.7 the administrator acted on the direction of a person or body not authorised or empowered by any written law to give such directions;

3.3.1.8 the administrative action or decision was made in bad faith;

3.3.1.9 the administrative action or decision is not rationally connected to –

3.3.1.9.1 the purpose for which it was taken;

3.3.1.9.2 the purpose of the empowering provision;

3.3.1.9.3 the information before the administrator; or

3.3.1.9.4 the reasons given for it by the administrator;

3.3.1.10 there was an abuse of discretion, unreasonable delay or failure to act in discharge of a duty imposed under any written law;

3.3.1.11 the administrative action or decision is unreasonable;

3.3.1.12 the administrative action or decision is not proportionate to the interests or rights affected;

3.3.1.13 the administrative action or decision violates the legitimate expectations of the person to whom it relates;

3.3.1.14 the administrative action or decision is unfair; or

3.3.1.15 the administrative action or decision is taken or made in abuse of power.

3.3.2 Pursuant to section 7(3) of the said Act, such a tribunal shall not consider an application for the review of an administrative action or decision premised on the ground of unreasonable delay unless it is satisfied that –

3.3.2.1 the administrator is under a duty to act in relation to the matter in issue;

3.3.2.2 the action is required to be undertaken within a period specified under such law;

3.3.2.3 the administrator has refused, failed or neglected to take action within the prescribed period.

3.3.3 Pursuant to section 11(1) of the said Act, such a tribunal may grant any order

or award that is just and equitable, including an order or award –

3.3.3.1 declaring the rights of the parties in respect of any matter to which the administrative action relates;

3.3.3.2 restraining the administrator from acting or continuing to act in breach of duty imposed upon the administrator under any written law or from acting or continuing to act in any manner that is prejudicial to the legal rights of an applicant;

3.3.3.3 directing the administrator to give reasons for the administrative action or decision taken by the administrator;

3.3.3.4 prohibiting the administrator from acting in a particular manner;

3.3.3.5 setting aside the administrative action or decision and remitting the matter for reconsideration by the administrator, with or without directions;

3.3.3.6 compelling the performance by an administrator of a public duty owed in law and in respect of which the applicant has a legally enforceable right;

3.3.3.7 prohibiting the administrator from acting in a particular manner;

3.3.3.8 granting a temporary interdict or other temporary relief; or

3.3.3.9 for the award of costs or other pecuniary compensation in appropriate cases.

3.3.4 Pursuant to section 11(2) of the said Act, in proceedings for review relating to failure to take an administrative action, the tribunal may grant any order that is just and equitable, including an order –

3.3.4.1 directing the taking of the decision;

3.3.4.2 declaring the rights of the parties in relation to the taking of the decision;

3.3.4.3 directing any of the parties to do, or to refrain from doing, any act or thing the doing, or the refraining from doing, of which the tribunal considers necessary to do justice between the parties; or

3.3.4.4 as to costs and other monetary compensation.

3.4 These Rules shall apply to arbitrations instituted as a condition precedent to a possible judicial review of an administrative action or decision under the Fair Administrative Action Act, 2015, pursuant to section 9(2) of the said Act, that provides that the High Court, or a subordinate court upon which original jurisdiction is conferred pursuant to Article 22(3) of the Constitution of Kenya, 2010, shall not review an administrative action or decision under the said Act unless the mechanisms, including internal mechanisms, for appeal or review and all remedies available under any other written law are first exhausted.

3.5 These Rules shall apply to arbitrations subject to section 20(2) of the Arbitration Act, 1995 as read together with section 4(6) of the Fair Administrative Action Act, 2015, for circumstances where the parties in the arbitration have failed to agree on the procedure to be followed by the Arbitral Tribunal in the conduct of the proceedings, empowering the Arbitral Tribunal to conduct the arbitration in any manner it considers appropriate, having regard to the desirability of avoiding unnecessary delay or expense while at the same time affording the parties a fair and reasonable opportunity to present their cases. Section 4(6) of the Fair Administrative Action Act, 2015 provides that where the administrator is empowered by any written law to follow a procedure which conforms to the principles set out in Article 47 of the Constitution of Kenya, 2010, the administrator may act in accordance with that different procedure. Article 47 of the Constitution of Kenya, 2010 provides that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair, and a right to be given written reasons for an administrative action where a right or fundamental

freedom of the person has been or is likely to be adversely affected by the action.

3.6 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 Aluochier Dispute Resolution Arbitration Rules, 2024 or such amended Rules as the Institute may have adopted to take effect before the commencement of the arbitration.

3.7 These Rules include the Schedules in effect at the commencement of the arbitration, as separately amended from time to time by the Institute.

3.8 These Rules incorporate the values and principles of public service provided for in Article 232(1) of the Constitution of Kenya, 2010, which include:

3.8.1 high standards of professional ethics;

3.8.2 efficient, effective and economic use of resources;

3.8.3 responsive, prompt, effective, impartial and equitable provision of services;

3.8.4 accountability for administrative acts;

3.8.5 transparency and provision to the public of timely, accurate information; and

3.8.6 fair competition and merit as the basis of appointments and promotions.

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

Rule 4 – Notices, communications and time limits

4 Notices, communications and time limits

4.1 All communications between a party and the Institute shall be made through the Chief Executive.

4.2 On the formation of the Arbitral Tribunal, all written communications between a party and the Arbitral Tribunal shall continue to be made through the Chief Executive, unless the Arbitral Tribunal directs that communications shall be made directly between the Arbitral Tribunal and the party.

4.3 Where the Arbitral Tribunal directs that communication be made directly to it as provided under paragraph 4.2, any such communication shall be copied to the Chief Executive for information purposes.

4.4 Where the Chief Executive sends any written communication to one party on behalf of the Arbitral Tribunal, the Chief Executive shall also send a copy of the communication to each of the other parties.

4.5 Where a party sends any communication under rule 15 to the Chief Executive including any written statements and documents, the party shall –

4.5.1 include a copy for each arbitrator; and

4.5.2 send copies directly to all other parties and shall confirm service to the Chief Executive in writing.

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

4.7 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 Chief Executive.

4.8 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 —

4.8.1 on the date it is delivered; or

4.8.2 in the case of service by electronic communication or any other means, on the day it is transmitted in accordance with paragraphs 4.1 and 4.2.

4.9 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 4.5 and 4.6 prior to or on the date of the expiration of the time-limit.

4.10 Despite paragraphs 4.5, 4.6 and 4.7, a notice or communication by one party may be addressed to another party —

4.10.1 in the manner agreed to in writing between them;

4.10.2 in the absence of an agreement as provided under paragraph 4.10.1, according to the practice followed in the course of their previous dealings; or

4.10.3 in any other manner required by the Arbitral Tribunal.

4.11 For the purpose of calculating a period of time under these Rules –

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

4.11.2 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

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

4.12 The Arbitral Tribunal may, save where otherwise provided for in law, 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.

4.13 Notwithstanding paragraph 4.12, pursuant to section 8 of the Fair Administrative Action Act, 2015, arbitrations for the review of an administrative action under the said Act shall be determined within ninety days of the commencement of the arbitration.

Rule 5 – Request for arbitration

5 Request for arbitration

5.1 A party who intends to commence an arbitration proceeding shall submit to the Chief Executive a written request for arbitration.

5.2 A request for arbitration under paragraph 5.1 shall —

5.2.1 specify the name, address, nature and principal address of the person or business;

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

5.2.3 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; or copies of exchange of letters, telex, telegram, facsimile, electronic mail or other means of electronic communications which provide a record of the agreement; or an allegation of the existence of an arbitration agreement; or reference to a written law or laws providing for arbitration;

5.2.4 contain a 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;

5.2.5 contain a statement specifying the language of arbitration, as agreed to in writing by the parties or as proposed by the claimant to the respondent;

5.2.6 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;

5.2.7 contain a confirmation, addressed to the Chief Executive, 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

5.2.8 be accompanied by a non-refundable fee as prescribed in the First Schedule.

5.3 The date on which the complete request for arbitration is received by the Chief Executive shall be considered to be the date on which the arbitration has commenced.

5.4 The request for arbitration is deemed to be complete when all the requirements of paragraph 5.2 are met.

5.5 The Chief Executive shall notify the parties of the commencement of arbitration.

5.6 A request for arbitration that has not met the requirements of paragraph 5.2 shall not be valid and the arbitration shall be considered as not having been commenced until the requirements of paragraph 5.2 are met.

5.7 The request for arbitration and the supporting documents shall be submitted to the Chief Executive electronically, or if submitted in hard copy —

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

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

Rule 6 – Response to request for arbitration

6 Response to request for arbitration

6.1 The respondent shall send to the Chief Executive a written response to the request for arbitration within thirty days of service of the request for arbitration on the respondent, or within fourteen days in the case of arbitrations subject to section 8 of the Fair Administrative Action Act, 2015, or on such lesser period fixed by the Institute.

6.2 The response under paragraph 6.1 shall contain —

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

6.2.2 where applicable, a statement describing the nature and circumstances of any counterclaims advanced by the respondent against the claimant;

6.2.3 comments on the particulars contained in the request for arbitration, as called for under paragraph 5.2.5, on matters relating to the conduct of the arbitration;

6.2.4 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;

6.2.5 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

6.2.6 confirmation to the Chief Executive 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.

6.3 The response and all supporting documents shall be submitted to the Chief Executive electronically, or if submitted in hard copy, 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 Chief Executive in quadruplicate copies if submitted in hard copy.

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

6.5 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.

6.6 Where an empowering provision provides or allows for arbitration, but does not provide for the appointment or nomination of an arbitrator or arbitrators by the parties, failure to nominate an arbitrator within fifteen days of commencement of the arbitration shall constitute an irrevocable waiver of that party's opportunity to nominate an arbitrator.

Rule 7 – Appointment of Arbitral Tribunal

7 Appointment of Arbitral Tribunal

7.1 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.

7.2 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.

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

7.4 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.

7.5 Where a party fails to nominate an arbitrator in accordance with paragraph 7.4, the appointment shall be made by the Institute.

7.6 Where a dispute is to be referred to three arbitrators, the third arbitrator who shall act as president of the Arbitral Tribunal shall be appointed by the Institute, 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.

7.7 If the procedure agreed by the parties under paragraph 7.6 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 Institute, the third arbitrator shall be appointed by the Institute.

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

7.8.1 the claimant shall nominate an arbitrator within a period of fifteen days from date of receipt of the notification of the decision of the Institute, or within seven days in the case of arbitrations subject to section 8 of the Fair Administrative Action Act,

2015; and

7.8.2 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, or within seven days in the case of arbitrations subject to section 8 of the Fair Administrative Action Act, 2015.

7.9 If a party fails to nominate an arbitrator in accordance with either paragraph 7.8.1 or 7.8.2, the appointment shall be made by the Institute.

7.10 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.

7.11 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.

7.12 In the absence of a joint nomination under paragraph 7.10 or 7.11, and where all parties are unable to agree to a method for the constitution of the Arbitral Tribunal, the arbitration agreement, if any, shall, for all purposes, be considered as an agreement by the parties for the appointment of a three member Arbitral Tribunal by the Institute.

7.13 The Institute shall, pursuant to paragraph 7.12, appoint each member of the Arbitral Tribunal and shall designate one of the members to act as president, in which case the Institute shall be at liberty to choose any person it considers suitable to act as an arbitrator, applying rule 17 when it considers this appropriate.

7.14 The Institute shall appoint the Arbitral Tribunal on —

7.14.1 receipt of the response by the Chief Executive;

7.14.2 the expiry of fifteen days following service of the request for arbitration on the respondent, if response is not received by the Chief Executive; or

7.14.3 the expiry of such lesser period fixed by the Institute.

7.15 The Institute shall appoint arbitrators with due regard to the methods or criteria of selection agreed to in writing by the parties.

7.16 The Institute shall, in selecting arbitrators, give consideration to —

7.16.1 the nature of the transaction;

7.16.2 the nature and circumstances of the dispute;

7.16.3 the nationality, location and languages of the parties; and

7.16.4 the number of parties.

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

7.18 The decision of the Institute as to the appointment or confirmation of arbitrators shall be final.

Rule 8 – Impartiality and independence of arbitrators

8 Impartiality and independence of arbitrators

8.1 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.

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

8.3 Prior to the appointment or confirmation by the Institute, a prospective arbitrator shall –

8.3.1 furnish the Chief Executive with a written resume of his past and present professional positions;

8.3.2 agree, in writing, on rates of fees in accordance with the First Schedule; and

8.3.3 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.

8.4 An arbitrator shall, as soon as is reasonably practicable, inform the Institute, the other arbitrators and the parties where any circumstances referred to in paragraph 8.3.3 arise during the course of arbitration.

Rule 9 – Nationality of arbitrators

9 Nationality of arbitrators

9.1 Where in an international arbitration 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.

9.2 For purposes of this Rule —

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

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

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

Rule 10 – Expedited formation of an Arbitral Tribunal

10 Expedited formation of an Arbitral Tribunal

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

10.2 An application under paragraph 10.1 shall —

10.2.1 be made in writing to the Institute;

10.2.2 be copied to all other parties to the arbitration; and

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

10.3 The respondent shall be entitled to respond to the application and serve the response to the Chief Executive and the other parties within five days of receipt of the application from the applicant, or within two days in the case of arbitrations subject to section 8 of the Fair Administrative Action Act, 2015.

10.4 The Chief Executive shall decide the application within three working days of receipt of the response, or within two working days in the case of arbitrations subject to section 8 of the Fair Administrative Action Act, 2015, and shall, on request, communicate the reasons for such decision to any party.

10.5 If the Chief Executive accepts the application under paragraph 10.4, the Institute may reduce any time-limit under the Rules for the formation of the Arbitral Tribunal, including service of the response and/or any matters or documents adjudged to be missing from the request for Arbitration, but shall not be entitled to reduce any other

time-limit.

Rule 11 – Removal of arbitrator

11 Removal of arbitrator

11.1 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.

11.2 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.

11.3 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 11.1 and 11.2, or within seven days in the case of arbitrations subject to section 8 of the Fair Administrative Action Act, 2015, send a written statement of the reasons for requiring the removal, to the Arbitral Court, the Institute, the Arbitral Tribunal and all other parties.

11.4 Where an arbitrator is required to be removed by one party—

11.4.1 the other party may consent to the removal; or

11.4.2 the arbitrator may, in writing to the Institute and the parties, resign from office.

11.5 Despite paragraph 11.4, the removal or resignation from office by the arbitrator shall not indicate acceptance of the validity of the grounds of challenge.

11.6 The Arbitral Court shall make its decision on the removal of an arbitrator within fifteen days of receipt of the written statement, or within seven days in the case of arbitrations subject to section 8 of the Fair Administrative Action Act, 2015, unless –

11.6.1 the arbitrator resigns from office; or

11.6.2 all other parties agree to the removal of the arbitrator.

11.7 Upon resignation or acceptance of the removal under paragraph 11.6, a replacement arbitrator shall be appointed pursuant to rules 9 and 12.

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

Rule 12 – Replacement of arbitrator

12 Replacement of arbitrator

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

12.2 An arbitrator shall be replaced if the arbitrator –

12.2.1 dies;

12.2.2 is rendered incapable of undertaking his functions for reason of physical or mental infirmity;

12.2.3 withdraws as arbitrator under paragraph 11.4.2;

12.2.4 refuses or is unable to act; or

12.2.5 is removed from office by a decision of the Arbitral Court on his removal, either on an application by a party or at the request of the remaining arbitrators.

12.3 The Institute shall —

12.3.1 revoke an arbitrator's appointment, pursuant to paragraphs 12.1 and 12.2 and

appoint another arbitrator;

12.3.2 in exercising its powers under paragraph 12.3.1, have complete discretion to decide whether or not to follow the original nominating process, unless otherwise agreed by the parties;

12.3.3 appoint a replacement arbitrator, if an opportunity given by the Institute to a party to make a re-nomination is not exercised within fifteen days, or within seven days in the case of arbitrations subject to section 8 of the Fair Administrative Action Act, 2015, or such lesser time as the Institute may fix.

12.4 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 within seven days in the case of arbitrations subject to section 8 of the Fair Administrative Action Act, 2015, or such lesser time as the Institute may fix, after which the Institute shall appoint a replacement arbitrator.

12.5 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, taking into consideration that section 8 of the Fair Administrative Action Act, 2015 provides that the review of an administrative action under the said Act shall be determined within ninety days of the commencement of the review.

Rule 13 – Majority power to continue proceedings

13 Majority power to continue proceedings

13.1 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 Institute, 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.

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

13.2.1 the stage in which the arbitration proceedings have reached;

13.2.2 any explanation made by the third arbitrator for his non-participation; and

13.2.3 such other matters as they consider appropriate in the circumstances of the case.

13.3 The reasons for the determination made under paragraph 13.2 shall be stated in any award, order or other decision made by the two arbitrators without the participation of the third arbitrator.

13.4 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 Institute of such determination.

13.5 Upon the issue of the notification under paragraph 13.4, the two arbitrators or any party may refer the matter to the Institute for the revocation of the third arbitrator's appointment and his replacement under rule 12.

Rule 14 – Conduct of arbitral proceedings

14 Conduct of arbitral proceedings

14.1 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 —

14.1.1 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

14.1.2 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.

14.2 Unless otherwise agreed by the parties under paragraph 14.1, the Arbitral Tribunal shall have the discretion to discharge its duties in accordance with the law and as the Arbitral Tribunal may determine.

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

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

Rule 15 – Submission of written statements and documents

15 Submission of written statements and documents

15.1 Unless the parties have agreed otherwise or on the determination of the Arbitral Tribunal, the parties shall in accordance with paragraphs 15.2 to 15.10 submit to the Chief Executive written statements together with supporting documents.

15.2 Within fourteen days of commencement of arbitration under paragraph 5.3, the claimant shall send to the Chief Executive 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.

15.3 Within fourteen 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 Chief Executive 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.

15.4 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.

15.5 Within fourteen days of receipt of the statement of defence, the claimant shall send to the Chief Executive 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.

15.6 If the statement of reply contains a defence to counterclaim, within fourteen days of its receipt, the respondent shall send to the Chief Executive a statement of reply to the defence to counterclaim.

15.7 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.

15.8 The Chief Executive 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 Chief Executive under rule 26.

15.9 As soon as possible, following receipt of a statement specified in this rule, the

Arbitral Tribunal shall proceed in such manner as has been agreed in writing by the parties or pursuant to its authority under these Rules.

15.10 Where the respondent fails to submit a statement of defence or the claimant fails to submit a statement of defence to a counterclaim, or where at any point a party fails to avail himself of the opportunity to present his case in the manner specified under paragraphs 15.2 to 15.7 or directed by the Arbitral Tribunal, the Arbitral Tribunal may proceed with the arbitration and make an award.

Rule 16 – Joinder of parties

16 Joinder of parties

16.1 A party wishing to join an additional party to the arbitration shall submit to the Chief Executive a request for Joinder of the additional party.

16.2 An additional party may be joined after the appointment of any arbitrator.

16.3 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.

16.4 The date on which the request for Joinder is received by the Chief Executive shall be deemed to be the date of commencement of arbitration against the additional party.

16.5 Any joinder shall be subject to the provisions of rules 8 and 26.

16.6 A request for joinder shall contain the same information required of a request for arbitration under paragraph 5.2 and shall be accompanied by the appropriate filing fee.

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

16.8 The additional party may make claims, counterclaims, or assert set-offs against any other party in accordance with the provisions of rule 6.

16.9 Notwithstanding paragraphs 16.1 to 16.8, pursuant to section 8 of the Fair Administrative Action Act, 2015, arbitrations for the review of an administrative action under the said Act shall be determined within ninety days of the commencement of the arbitration.

Rule 17 – Consolidation of arbitration proceedings

17 Consolidation of arbitration proceedings

17.1 The Institute 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 Institute on such terms as may be agreed, where —

17.1.1 the parties have agreed to consolidation; or

17.1.2 all of the claims in the arbitrations arise from the same administrative action; or

17.1.3 all of the claims in the arbitrations are made under the same arbitration agreement; or

17.1.4 the claims in the arbitrations arise from more than one administrative action, or are made under more than one arbitration agreement —

17.1.4.1 the arbitrations are between the same parties;

17.1.4.2 the disputes in the arbitrations arise in connection with the same legal relationship; and

17.1.4.3 the Institute finds the administrative actions or the arbitration agreements to be compatible.

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

17.3 Notwithstanding paragraphs 17.1 and 17.2, pursuant to section 8 of the Fair Administrative Action Act, 2015, arbitrations for the review of an administrative action under the said Act shall be determined within ninety days of the commencement of the arbitration.

Rule 18 – Seat of arbitration and place of hearings

18 Seat of arbitration and place of hearings

18.1 The seat arbitration shall be Nairobi, Kenya, or such other place as the parties may agree in writing.

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

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

Rule 19 – Applicable law

19 Applicable law

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

Rule 20 – Language of arbitration

20 Language of arbitration

20.1 The initial language of the arbitration shall be English, unless the parties have agreed in writing otherwise.

20.2 A non-participating or defaulting party shall have no cause for complaint if communications to and from the Chief Executive and the arbitration proceedings are conducted in English.

20.3 In the event that the arbitration agreement, where applicable, is written in more than one language, the Institute 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.

20.4 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 —

20.4.1 the initial language of the arbitration; and

20.4.2 any other matter it may consider appropriate in all the circumstances of the

case.

20.5 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 Institute may direct that party to submit a translation in a form to be determined by the Arbitral Tribunal or the Institute, as the case may be.

Rule 21 – Party representation

21 Party representation

21.1 A party may be represented by any person of its choice, as provided for in section 25(5) of the Arbitration Act, 1995.

21.2 The conduct of a party's representative shall be in accordance with the code, standards or guidelines as the Institute may issue from time to time, such as has been set out in the Third Schedule, which includes remedies available to the Arbitral Tribunal for party representative misconduct.

21.3 Prior to the Arbitral Tribunal's formation, the Chief Executive may require from a party proof of authority granted to the party's representative in such form as the Chief Executive may determine. After its formation, 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.

21.4 Following the Arbitral Tribunal's formation, any intended change or addition by a party to its representatives shall be notified promptly in writing to all other parties, the Arbitral Tribunal and the Chief Executive; and any such intended change or addition shall only take effect in the arbitration subject to the approval of the Arbitral Tribunal.

21.5 The Arbitral Tribunal may withhold approval for any intended change or addition to a party's representation where such change or addition could compromise the composition of the Arbitral Tribunal or the finality of any award (on the grounds of possible conflict of interest or other like impediment). In deciding whether to grant or withhold such approval, the Arbitral Tribunal shall have regard to the circumstances, including: section 25(5) of the Arbitration Act, 1995 that a party may be represented by any person of its choice, section 19A of the Arbitration Act, 1995 that the parties to arbitration shall do all things necessary for the proper and expeditious conduct of the arbitral proceedings, the ability of the party that has introduced the new representative to properly submit its case in the absence of that representative, the stage which the arbitration has reached, the efficiency resulting from maintaining the composition of the Arbitral Tribunal (as constituted throughout the arbitration) and any likely wasted costs or loss of time resulting from such change or addition.

21.6 Each party shall ensure that its representatives appearing before the Arbitral Tribunal have agreed to comply with these Rules, including the Third Schedule, as a condition for such representation. In permitting any representative to so appear, a party shall thereby represent that the representative has agreed to such compliance.

21.7 In the event of a complaint by one party against another party's representative appearing before the Arbitral Tribunal (or of such complaint by the Arbitral Tribunal upon its own initiative), the Arbitral Tribunal may decide, after consulting the parties, and granting that representative a reasonable opportunity to answer the complaint, whether or not the representative has violated these Rules, including the Third Schedule. If such violation is found by the Arbitral Tribunal, the Arbitral Tribunal may order any or all of the following sanctions against the representative: (i) a written reprimand; (ii) a

written caution as to future conduct in the arbitration; and (iii) any other measure necessary to fulfil within the arbitration the general duties required of the Arbitral Tribunal by Rule 14.1 and 14.2.

Rule 22 – Hearings

22 Hearings

22.1 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.

22.2 The Arbitral Tribunal shall fix the date, time and physical place of any meetings and hearings in the arbitration, or credentials for electronic meetings and hearings in the stead of physical ones, and shall give the parties reasonable notice thereof.

22.3 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.

22.4 Pursuant to Article 50(1) of the Constitution of Kenya, 2010, providing that every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body, all meetings and hearings, including those held electronically, shall have a public right of access to the same. Pursuant to Article 50(8) of the Constitution of Kenya, 2010, the press and other members of the public may be excluded from any proceedings if the exclusion is necessary, in a free and democratic society, to protect witnesses or vulnerable persons, morality, public order or national security.

22.5 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 Arbitral Tribunal.

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

22.7 A party who desires a stenographer shall —

22.7.1 notify the Arbitral Tribunal at the pre-hearing conference; and

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

Rule 23 – Experts to the Arbitral Tribunal

23 Experts to the Arbitral Tribunal

23.1 Unless otherwise agreed by the parties in writing, the Arbitral Tribunal may —

23.1.1 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

23.1.2 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.

23.2 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.

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

Rule 24 – Jurisdiction of the Arbitral Tribunal

24 Jurisdiction of the Arbitral Tribunal

24.1 The Arbitral Tribunal shall have the power to rule on it own jurisdiction, including any objection to the initial or continuing existence or validity of the arbitration agreement or other empowering provision.

24.2 For the purposes of paragraph 24.1, 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 by operation of law the invalidity of the arbitration clause.

24.3 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.

24.4 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.

24.5 Despite paragraphs 24.3 and 24.4, the Arbitral Tribunal may admit an untimely plea if it considers the delay justified.

24.6 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.

24.7 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 —

24.7.1 with the agreement in writing of all parties to the arbitration;

24.7.2 with the prior authorisation of the Arbitral Tribunal; or

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

Rule 25 – Powers of the Arbitral Tribunal

25 Powers of the Arbitral Tribunal

25.1 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 —

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

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

25.1.3 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 —

25.1.3.1 identifying the issues;
25.1.3.2 ascertaining the relevant facts and the law or rules of law applicable to the arbitration;
25.1.3.3 ascertaining the merits of the parties' dispute and the arbitration agreement;
25.1.3.4 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;

25.1.4 determine —
25.1.4.1 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
25.1.4.2 the time, manner and form, in which the material shall be exchanged between the parties and presented to the Arbitral Tribunal;

25.1.5 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

25.1.6 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. This provision does not derogate the right of any party under Article 50(1) of the Constitution of Kenya, 2010, that provides that every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.

25.2 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 defences.

25.3 The Arbitral Tribunal may, on application of a party or on the Arbitral Tribunal's own initiative—
25.3.1 require the parties to exchange documents in their possession or custody on which they intend to rely;
25.3.2 require a party to update exchanges of the documents on which the party intends to rely as such documents become known to that party;
25.3.3 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
25.3.4 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.

25.4 The Arbitral Tribunal shall have the authority to issue any orders necessary to

enforce the provisions of paragraphs 25.1, 25.2 and 25.3 to achieve a fair, efficient and economical resolution of the case, including an order —

25.4.1 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;

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

25.4.3 allocating costs of producing documentation, including electronically stored documents;

25.4.4 in the case of wilful non-compliance with any order issued by the Arbitral Tribunal, 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

25.4.5 issuing any other enforcement orders which the Arbitral Tribunal is empowered to issue under applicable law.

25.5 The parties shall, on agreeing to arbitration under these Rules, or otherwise becoming subject to these Rules, be considered as having agreed not to apply to any judicial authority for any order available from the Arbitral Tribunal under paragraph 25.1, except with the agreement in writing of all parties.

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

25.7 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.

25.8 Pursuant to section 8 of the Fair Administrative Action Act, 2015, arbitrations for the review of an administrative action under the said Act shall be determined within ninety days of the commencement of the arbitration.

Rule 26 – Costs and deposits

26 Costs and deposits

26.1 The Institute may direct the parties to make one or several interim or final deposits on payments on account of the costs of the arbitration, in such proportions of amount as it considers appropriate.

26.2 The deposits under paragraph 26.1 shall be made to and held by the Institute and may be released by the Institute to the arbitrators, an expert appointed by the Arbitral Tribunal and the Institute itself as the arbitration progresses.

26.3 The Arbitral Tribunal shall not proceed with the arbitration without ascertaining from the Chief Executive that the Institute is in possession of the deposit made under paragraph 26.1.

26.4 In the event that a party fails or refuses to provide any deposit as directed by the Institute, the Institute 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.

26.5 Failure by a claimant or counterclaiming party to provide, in full, the required deposit shall be considered by the Institute and the Arbitral Tribunal as a withdrawal of

the claim or counterclaim.

26.6 Notwithstanding the provisions of paragraphs 26.1 to 26.5, the Institute may accept payment of the costs of the arbitration by third parties, or by bank guarantees, or by insurance company guarantees, or by securing a first or other acceptable charge on the subject matter of the dispute where appropriate.

Rule 27 – Interim and conservatory measures

27 Interim and conservatory measures

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

27.1.1 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;

27.1.2 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

27.1.3 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.

27.2 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.

27.3 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.

27.4 The power of the Arbitral Tribunal under paragraph 27.1 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.

27.5 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 27.4.

27.6 The parties shall, on consenting to an arbitration process in accordance with these Rules, or otherwise becoming subject to 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 27.2.

Rule 28 – Emergency arbitrator

28 Emergency arbitrator

28.1 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.

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

28.3 The emergency arbitrator may make any order or award —

28.3.1 which the Arbitral Tribunal may make under the arbitration agreement or empowering provision; or

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

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

28.5 An order or award issued by the emergency arbitrator shall cease to be binding —

28.5.1 if the Arbitral Tribunal is not constituted within ninety days of the order or award, or within thirty days in the case of arbitrations subject to section 8 of the Fair Administrative Action Act, 2015;

28.5.2 where the Arbitral Tribunal makes a final award; or

28.5.3 if the claim is withdrawn.

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

28.7 The parties undertake to carry out an order or award of an emergency arbitrator immediately and without any delay.

28.8 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.

28.9 Subject to the time-limit specified under rule 30,—

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

28.9.2 the emergency arbitrator shall make the corrections or any additional order or award within three days on receipt of the request under paragraph 28.9.1.

Rule 29 – Award of Arbitral Tribunal

29 Award of Arbitral Tribunal

29.1 The Arbitral Tribunal shall make its award in writing within a period of three months from the date of close of hearing, or within one month in the case of an arbitration subject to section 8 of the Fair Administrative Action Act, 2015.

29.2 The Arbitral Tribunal's award shall, unless all parties agree in writing —

29.2.1 state reasons on which the award is based;

29.2.2 state the date when the award is made;

29.2.3 state the seat of the arbitration; and

29.2.4 be signed by the Arbitral Tribunal or those of its members consenting to the award.

29.3 The Arbitral Tribunal shall inform the Chief Executive of the date of close of hearing.

29.4 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 29.1 and shall notify the Chief Executive and all the parties of the extension, subject to compliance with section 8 of the Fair Administrative Action Act, 2015, providing that a review of an administrative action under the said Act shall be determined within ninety days of the commencement of the review.

29.5 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.

29.6 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.

29.7 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.

29.8 The sole arbitrator or chairman shall be responsible for delivering the award to the Institute, which shall transmit certified copies to the parties provided that the costs of arbitration shall be paid to the Institute in accordance with rule 32.

29.9 The Chief Executive 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 or upon delivery by electronic mail.

29.10 An award may be expressed in any currency.

29.11 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.

29.12 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.

29.13 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.

29.14 An award made under paragraph 29.13 shall not contain reasons, but shall contain an express statement that it is an award made by the parties' consent.

29.15 If the parties do not require a consent award, on written confirmation by the parties to the Institute 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.

29.16 An award shall be final and binding on the parties.

29.17 On being subjected to or consenting to arbitration under these Rules, the parties undertake to carry out an award immediately and without any delay, subject to rule 31.

Rule 30 – Correction of awards and additional awards

30 Correction of awards and additional awards

30.1 Within fourteen days of receipt of an award, or within seven days in the case of arbitrations subject to section 8 of the Fair Administrative Action Act, 2015, or such lesser period as may be agreed in writing by the parties, a party may by written notice to the Chief Executive, 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.

30.2 If the Arbitral Tribunal considers the request under paragraph 30.1 to be justified, it shall make the corrections within fourteen days of receipt of the request, or within seven days in the case of arbitrations subject to section 8 of the Fair Administrative Action Act, 2015.

30.3 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.

30.4 The Arbitral Tribunal may also correct an error of the nature described in paragraph 30.1 on its own initiative within fourteen days of the date of the award, or within seven days in the case of arbitrations subject to section 8 of the Fair Administrative Action Act, 2015.

30.5 Within fourteen days of receipt of the final award, or within seven days in the case of arbitrations subject to section 8 of the Fair Administrative Action Act, 2015, a party may by written notice to the Chief Executive, 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.

30.6 If the Arbitral Tribunal considers the request made under paragraph 30.5 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, or within fourteen days in the case of arbitrations subject to section 8 of the Fair Administrative Action Act, 2015.

Rule 31 – Arbitration and legal costs

31 Arbitration and legal costs

31.1 The costs of the arbitration shall, except the legal or other costs incurred by the parties, be determined by the Institute in accordance with the First Schedule.

31.2 The parties shall be jointly and severally liable to the Arbitral Tribunal and the Institute for the arbitration costs.

31.3 The Arbitral Tribunal shall specify in the award the total amount of the costs of the arbitration as determined by the Institute.

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

31.5 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 Institute, the party that had made the deposit shall have the right to recover the entire amount paid from the party required to pay costs.

31.6 The Arbitral Tribunal shall —

31.6.1 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

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

31.7 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.

31.8 An order for costs shall be made with reasons in the award containing such order.

31.9 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 Institute and the Arbitral Tribunal the costs of the arbitration, as the Institute shall determine in accordance with the First Schedule.

31.10 In the event that the arbitration costs are less than the deposits made by the parties, there shall be a refund by the Institute 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 Institute.

31.11 Where parties refer their dispute to mediation pursuant to the Institute'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 Institute for the mediation shall be credited to the parties account for the purposes of covering the administrative costs of the arbitration.

Rule 32 – Mediation

32 Mediation

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

32.2 Subject to paragraph 31.9, the parties may at any stage of the proceedings agree to mediate in accordance with the Institute's Mediation Rules.

32.3 The parties shall promptly notify the Arbitral Tribunal and the Institute of the agreement to mediate.

32.4 Arbitration proceedings under these Rules may be suspended pending the outcome of the mediation commenced pursuant to paragraph 32.1 or 32.2. In considering such a suspension, regard shall be had to the provisions of section 8 of the Fair Administrative Action Act, 2015 requiring determination of reviews of administrative actions under the said Act within ninety days of commencement of the said reviews.

32.5 Where a dispute has been referred to mediation under this rule, and the parties have failed to reach a settlement, the arbitration proceedings shall proceed under these Rules.

Rule 33 – Arbitral Court

33 Arbitral Court

33.1 There is hereby established a Court to be known as the Arbitral Court.

33.2 The Court shall consist of –

33.2.1 a President;

33.2.2 at least two and not more than fourteen other members all of whom shall be

leading arbitrators; and

33.2.3 the Chief Executive.

33.3 The President and the other members shall be appointed by the Board and shall hold office for a term of office of not more than five years and shall be eligible for re-appointment for one further term of five years.

33.4 The President shall have supervisory powers over the Court and shall be answerable to the Board.

33.5 The Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with these Rules or any written law. For clarity, the Court shall have jurisdiction pursuant to Rule 3.3 and 3.4 to hear and determine all disputes arising from arbitrations under these Rules.

33.6 A decision of the Court in respect of a matter referred to it shall be final.

33.7 Subject to section 20(1) of the Arbitration Act, 1995, providing that the parties are free to agree on the procedure to be followed by the arbitral tribunal in the conduct of the proceedings, these Rules, with necessary modifications, shall apply.

33.8 Nothing in these Rules may be construed as precluding the Court from adopting and implementing, on its own motion or at the request of the parties, any other appropriate means of dispute resolution, including internal methods, conciliation, mediation and traditional dispute resolution mechanisms.

Rule 34 – Decisions of the Institute

34 Decisions of the Institute

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

Rule 35 – Public right of access

35 Public right of access

35.1 The public have a right of access to arbitrations instituted under Article 50(1) of the Constitution of Kenya, 2010, providing that every person has a right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.

35.2 Paragraph 35.1 does not, pursuant to Article 50(8) of the Constitution of Kenya, 2010, prevent the exclusion of the press or other members of the public from any proceedings if the exclusion is necessary, in a free and democratic society, to protect witnesses or vulnerable persons, morality, public order or national security.

35.3 The Institute may publish an award or any part of an award subject to these Rules without the prior written consent of any party or the Arbitral Tribunal.

Rule 36 – Exclusion of liability

36 Exclusion of liability

36.1 The members of the Board, the staff of the Institute, the Arbitral Court, the Chief Executive, the arbitrators or the experts to the Arbitral Tribunal shall not be liable to any party for any act or omission done in good faith in connection with any arbitration conducted pursuant to these Rules.

36.2 After the award has been made and the correction and additional awards referred to in rule 29 have lapsed or been exhausted, the Institute, the Arbitral Court, the Chief Executive, the arbitrator or expert to the Arbitral Tribunal shall not be under any legal obligation to make a statement to any person about any matter concerning the arbitration, and any party shall not be entitled to seek to make any of these persons a witness in any legal or other proceedings arising out of the arbitration.

Rule 37 – General rules

37 General rules

37.1 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.

37.2 In all matters not expressly provided for in these Rules, the Arbitral Court, the Arbitral Tribunal and the parties shall act in such manner as is appropriate, and shall make every reasonable effort to ensure that an award is legally enforceable.

37.3 The Institute may, from time to time, amend these Rules.

37.4 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.

Rule 38 – Status of the Rules

38 Status of the Rules

38.1 Article 94(1) of the Constitution of Kenya, 2010 provides that the legislative authority of the Republic is derived from the people and, at the national level, is vested in and exercised by Parliament. Article 94(5) provides that no person or body, other than Parliament, has the power to make provision having the force of law in Kenya except under authority conferred by this Constitution or by legislation. Article 94(6) provides that an Act of Parliament, or legislation of a county, that confers on any State organ, State officer or person the authority to make provision having the force of law in Kenya, as contemplated in clause (5), shall expressly specify the purpose and objectives for which that authority is conferred, the limits of the authority, the nature and scope of the law that may be made, and the principles and standards applicable to the law made under the authority.

38.2 The Arbitration Act, 1995 is an Act of Parliament to repeal and re-enact with amendments the Arbitration Act – as then existing, and to provide for connected purposes. Section 2 of the Arbitration Act, 1995 provides that except as otherwise provided in a particular case the provisions of the said Act shall apply to domestic arbitration and international arbitration. Section 3(1) of the said Act provides that "arbitration" means any arbitration whether or not administered by a permanent arbitral institution. The Arbitration Act therefore recognises permanent arbitral institutions administering arbitrations.

38.3 Section 20 of the Arbitration Act, 1995 deals with determination of the rules of procedure. Section 20(1) provides that subject to the provisions of the said Act, the parties are free to agree on the procedure to be followed by the arbitral tribunal in the conduct of the proceedings. Section 20(2) provides that failing an agreement under subsection (1), the arbitral tribunal may conduct the arbitration in the manner it

considers appropriate, having regard to the desirability to avoid unnecessary delay or expense while at the same time affording the parties a fair and reasonable opportunity to present their cases. For ad hoc arbitrations, that is arbitrations not administered by permanent arbitral institutions, the arbitral tribunal alone, without reference to any other person or authority, conducts the arbitration in the manner it considers appropriate. But for arbitrations administered by permanent arbitral institutions, while the arbitral tribunal still conducts the arbitration in the manner it considers appropriate, that manner is spelt out by the rules of the administering permanent arbitral institution, which the arbitral tribunal considers appropriate, and subjects the arbitration to those rules. Consequently, these Rules made by the permanent arbitral institution, Aluochier Dispute Resolution, have been adopted by disputing parties or by arbitral tribunals subjecting their arbitrations to the said Rules, and are considered by the subjecting arbitral tribunals as appropriate for purposes of section 20(2) of the Arbitration Act, 1995, as read together with the overarching authority of Article 94(5) and (6) of the Constitution of Kenya, 2010. These Rules therefore, when adopted by disputing parties, or by arbitral tribunals in the event that disputing parties do not agree on the rules for the conduct of their arbitral proceedings, have the force of law in Kenya, for the purpose of conducting of arbitral proceedings.

FIRST SCHEDULE

[Rules 8.3.2, 31.1 & 31.9]

PART 1 – FEES AND COSTS

1 – General

1 General

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

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

1.3 The fees in this Schedule may attract Value Added Tax at the prevailing rate.

1.4 A dispute regarding administration costs or the fees and expenses of the Arbitral Tribunal shall be determined by the Institute in a manner compliant with the fair hearing principles of lawfulness, independence and impartiality.

PART 2 – ARBITRATIONS ADMINISTERED UNDER THE INSTITUTE'S RULES

2 – Registration fees

2 Registration fees

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

2.2 The registration fee under paragraph 2.1 does not constitute part of the Institute's administrative costs.

2.3 The registration fee shall be payable by the Claimant in full.

3 – Administrative costs of the Institute

3 Administrative costs of the Institute

3.1 The Institute's administrative costs shall be determined in accordance with Parts 3B or 4B of this Schedule.

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

3.3 In addition to costs specified under paragraph 3.1 and 3.2, expenses incurred by the Institute in connection with the arbitration, such as postage, telephone, facsimile, travel and additional arbitration support services, whether provided by the Institute from its own resources or otherwise shall be charged as part of the Institute's administrative costs.

3.4 The invoice by the Institute 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.

3.5 The invoice by the Institute 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.

3.6 Subject to paragraph 3.4 and 3.5, any transfer or currency exchange charges shall be borne by the person paying the fees and expenses.

4 – Advance deposits

4 Advance deposits

4.1 The Institute 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 Institute and the Arbitral Tribunal.

4.2 In the event that a party fails to provide any deposit as directed by the Institute, the Institute 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.

4.3 Failure by a claimant or counterclaiming party to provide the required deposit in full, within the time specified by the Chief Executive, may be considered by the Institute and the Arbitral Tribunal as a withdrawal of the claim or counterclaim.

4.4 In the event that the Institute or the Arbitral Tribunal do not consider failure by a claimant or counterclaiming party to provide the required deposit in full, within the time specified by the Chief Executive, as a withdrawal of the claim or counterclaim, the Institute shall be entitled to recover interest at commercial rates on all such deposit shortfalls.

4.5 Any money paid by the parties on account of the fees and expenses of the Arbitral Tribunal and of the Institute shall be held in trust in the Institute's client accounts which shall be controlled by reference to each individual case and shall be

disbursed by the Institute, in accordance with these Rules and provisions of this Schedule.

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

4.7 Where applicable, the Institute shall credit interest on sums deposited to the account of each party depositing them, at the rate applicable to the amount deposited.

5 – Fees and costs

5 Fees and costs

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

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

5.3 Subject to paragraph 5.4 the Chief Executive 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 Chief Executive considers appropriate.

5.4 The rates under paragraph 5.3 may be reviewed, on an annual basis, depending on the duration of the arbitration.

5.5 Despite paragraph 5.3, 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 —

5.5.1 the fees of the Arbitral Tribunal shall be fixed by the Institute on the recommendation of the Chief Executive, following consultations with the arbitrators; and

5.5.2 all the parties shall expressly agree to the fees.

5.6 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.

5.7 Subject to paragraph 5.6, claims for expenses should be supported by invoices or receipts.

5.8 The expenses shall be borne by the parties and reimbursed at cost.

5.9 The Arbitral Tribunal's fees may include a charge for time spent travelling.

5.10 The Arbitral Tribunal's fees may be invoiced either—

5.10.1 in US dollars or in Kenya shilling for international arbitrations; or

5.10.2 in Kenya Shillings for domestic arbitrations.

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

5.12 In the event of the removal of an arbitrator, pursuant to the provisions of paragraph 12.3, the Institute shall decide on the amount of fees and expenses to be paid for the removed arbitrator's services as it may consider appropriate in all the circumstances.

6 – Interim payments

6 Interim payments

6.1 Where interim payments are required to cover the Institute'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 Institute may, on the approval of the Arbitral Court, make payments out of the deposits held.

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

7 – Requests to act as appointing authority

7 Requests to act as appointing authority

7.1 Any party intending to nominate the Institute to act as appointing authority shall make the request to the Chief Executive 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 Institute.

7.2 A request shall not be processed, unless accompanied by the appointment fee.

7.3 For additional services, the Institute may charge administrative expenses incurred by the Institute 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

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

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

B: Administrative Costs

Amount in dispute (USD)	Administrative Costs (USD)
Up to 50,000	USD 200
50,001 to 100,000	USD 400
100,001 to 500,000	USD 800
500,001 to 1,000,000	USD 1,600
1,000,001 to 2,000,000	USD 3,200
2,000,001 to 5,000,000	USD 3,200 + 0.56% above 2,000,000
5,000,001 to 10,000,000	USD 20,000 + 0.12% above 5,000,000
10,000,001 to 50,000,000	USD 26,000 + 0.01% above 10,000,000
Above 50,000,000	USD 30,000 + 0.004% above 50,000,000

PART 4 – FEES AND COSTS (DOMESTIC ARBITRATION)

A: Arbitrator's fees

1. Where the value of the subject matter can be ascertained –

That value exceeds (KES)	But does not exceed (KES)	Arbitrator's Fees (KES)
0/-	50,000/-	26,460/-
50,000/-	100,000/-	35,280/-
100,000/-	200,000/-	52,920/-
200,000/-	500,000/-	88,200/-
500,000/-	1,000,000/-	150,000/-
1,000,000/-	20,000,000/-	150,000/- plus an additional 1%
20,000,000/-	250,000,000/-	340,000/- plus an additional 0.5%
250,000,000/-	N/A	1,490,000/- plus an additional 0.1%

2. The fees shall be 50% of those in paragraph 1 above where the dispute is disposed of *ex parte*, by consent or by a decision on a preliminary question of law not dependant on fact.
3. Where the value of the subject matter cannot be ascertained, such fees as are reasonable but not less than KES 52,920 if undefended or unopposed or disposed of by consent or by a decision on a preliminary question of law not dependant on fact. Hourly based fees to be at rates advised by the Institute at the time of filing the request for arbitration, but shall not exceed KES 25,000 per hour.

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

B: Administrative costs

That value exceeds (KES)	But does not exceed (KES)	Administrative costs (KES)
0/-	50,000/-	5,292/-
50,000/-	100,000/-	7,056/-
100,000/-	200,000/-	10,584/-
200,000/-	500,000/-	17,640/-
500,000/-	1,000,000/-	30,000/-
1,000,000/-	20,000,000/-	30,000/- plus an additional 0.2%
20,000,000/-	250,000,000/-	68,000/- plus an additional 0.1%
250,000,000/-	N/A	298,000/- plus an additional 0.02%

PART 5 – FEES AND 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

[Rule 28]

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 Chief Executive.

2 The request under paragraph 1 shall —

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

2.2 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, or other empowering provision in respect of which the arbitration arises;

2.3 contain a brief description of the nature and circumstances of the dispute giving rise to the application;

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

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

2.6 contain a confirmation to the Chief Executive 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

2.7 be accompanied by a non-refundable application fee specified in the First Schedule.

3 The Chief Executive shall, if he determines that the request should be accepted, proceed to appoint an emergency arbitrator within two days of receipt by the Chief Executive of such payment of fees as may be required.

4 The decision of the Chief Executive to accept or refuse the request for emergency arbitration shall be in the Chief Executive's sole discretion and shall be final.

5 Prior to appointment by the Chief Executive, 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 Chief Executive 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 Institute.

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 paragraph 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 fourteen 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 Institute, which shall transmit certified copies to the parties provided that the costs of arbitration have been paid to the Institute in accordance with rule 31.

16 The Chief Executive 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, or upon delivery by electronic mail.

THIRD SCHEDULE

[Rule 21.2]

CONDUCT OF PARTY REPRESENTATIVES

The Institute adopts the IBA Guidelines on Party Representation in International Arbitration, adopted by a resolution of the IBA Council, 25 May 2013, International Bar Association, 4th Floor, 10 St Bride Street, London, EC4A 4AD, United Kingdom, www.ibanet.org. Absent the commentary, they are reproduced hereby below:

The Guidelines

Preamble

The IBA Arbitration Committee established the Task Force on Counsel Conduct in International Arbitration (the 'Task Force') in 2008.

The mandate of the Task Force was to focus on issues of counsel conduct and party representation in international arbitration that are subject to, or informed by, diverse and potential conflicting rules and norms. As an initial inquiry, the Task Force undertook to determine whether such differing norms and practices may undermine the fundamental fairness and integrity of internation arbitral proceedings and whether international guidelines on party representation in international arbitration may assist parties, counsel and arbitrators. In 2010, the Task Force commissioned a survey (the 'Survey') in order to examine these issues. Respondents to the Survey expressed support for the development of international guidelines for party representation.

The Task Force proposed draft guidelines to the IBA Arbitration Committee's officers in October 2012. The Committee then reviewed the draft guidelines and consulted with experienced arbitration practitioners, arbitrators and arbitral institutions. The draft guidelines were then submitted to all members of the IBA Arbitration Committee for consideration.

Unlike in domestic judicial settings, in which counsel are familiar with, and subject, to a single set of professional conduct rules, party representatives in international arbitration may be subject to diverse and potentially conflicting bodies of domestic rules and norms. The range of rules and norms applicable to the representation of parties in international arbitration may include those of the party representative's home jurisdiction, the arbitral seat, and the place where hearings physically take place. The Survey revealed a high degree of uncertainty among respondents regarding what rules govern party representation in international arbitration. The potential for confusion may be aggravated when individual counsel working collectively, either within a firm or through a co-counsel relationship, are themselves admitted to practice in multiple jurisdictions that have

conflicting rules and norms.

In addition to the potential for uncertainty, rules and norms developed for domestic judicial litigation may be ill-adapted to international arbitral proceedings. Indeed, specialised practices and procedures have been developed in international arbitration to accommodate the legal and cultural differences among participants and the complex, multinational nature of disputes. Domestic professional conduct rules and norms, by contrast, are developed to apply in specific legal cultures consistent with established national procedures.

The IBA Guidelines on Party Representation in International Arbitration (the 'Guidelines') are inspired by the principle that party representatives should act with integrity and honesty and should not engage in activities designed to produce unnecessary delay or expense, including tactics aimed at obstructing the arbitral proceedings.

As with the International Principles on Conduct for the Legal Profession, adopted by IBA on 28 May 2011, the Guidelines are not intended to displace otherwise applicable mandatory laws, professional or disciplinary rules, or agreed arbitration rules that may be relevant or applicable to matters of party representation. They are also not intended to vest arbitral tribunals with powers otherwise reserved to bars or other professional bodies.

The use of the term guidelines rather than rules is intended to highlight their contractual nature. The parties may thus adopt the Guidelines or a portion thereon by agreement. Arbitral tribunals may also apply the guidelines in their discretion, subject to any applicable mandatory rules, if they determine that they have the authority to do so.

The Guidelines are not intended to limit the flexibility that is inherent in, and a considerable advantage of, international arbitration, and parties and arbitral tribunals may adapt them to their particular circumstances in each arbitration.

Definitions

In the IBA Guidelines on Party Representation in International Arbitration:

'Arbitral Tribunal' or *'Tribunal'* means a sole Arbitrator or a panel of Arbitrators in the arbitration;

'Arbitrator' means an arbitrator in the arbitration;

'Document' means a writing, communication, picture, drawing, program or data of any kind, whether recorded or maintained on paper or by electronic, audio, visual or any other means;

'Domestic Bar' or *'Bar'* means the national or local authority or authorities responsible for the regulation of the professional conduct of lawyers;

'Evidence' means documentary evidence and written and oral testimony;

'Ex Parte Communications' means oral or written communications between a Party Representative and an Arbitrator or prospective Arbitrator without the presence or knowledge of the opposing Party or Parties;

'Expert' means a person or organisation appearing before an Arbitral Tribunal to provide expert analysis and opinion on specific issues determined by a Party or by the Arbitral Tribunal;

'Expert Report' means a written statement by an Expert;

'Guidelines' means these IBA Guidelines on Party Representation in International Arbitration, as they may be revised or amended from time to time;

'Knowingly' means with actual knowledge of the fact in question;

'Misconduct' means a breach of the present Guidelines or any other conduct that the Arbitral Tribunal determines to be contrary to the duties of a Party Representative;

'Party' means a party to the arbitration;

'Party-Nominated Arbitrator' means an Arbitrator who is nominated or appointed by one or more Parties;

'Party Representative' or *'Representative'* means any person, including a Party's employee, who appears in an Arbitration on behalf of a Party and makes submissions, arguments or representations to the Arbitral Tribunal on behalf of such Party, other than in the capacity of a Witness or Expert, and whether or not legally qualified or admitted to a Domestic Bar;

'Presiding Arbitrator' means an arbitrator who is either a sole Arbitrator or the chairperson of the Arbitral Tribunal;

'Request to Produce' means a written request by a Party that another Party produce Documents;

'Witness' means a person appearing before an Arbitral Tribunal to provide testimony of fact;

'Witness Statement' means a written statement by a Witness recording testimony.

Application of Guidelines

1. The Guidelines shall apply where and to the extent that the Parties have so agreed, or the Arbitral Tribunal, after consultation with the Parties, wishes to rely upon them after having determined that it has the authority to rule on matters of Party representation to ensure the integrity and fairness of arbitral proceedings.
2. In the event of any dispute regarding the meaning of the Guidelines, the Arbitral Tribunal should interpret them in accordance with their overall purpose and in the manner most appropriate for the particular arbitration.
3. The Guidelines are not intended to displace otherwise applicable mandatory laws, professional or disciplinary rules, or agreed arbitration rules, in matters of Party representation. The Guidelines are also not intended to derogate from the arbitration agreement or to undermine either a Party representative's primary duty of loyalty to the party whom he or she represents or a Party representative's paramount obligation to present such Party's case to the Arbitral Tribunal.

Party Representation

4. Party Representatives should identify themselves to the other Party or Parties and the Arbitral Tribunal at the earliest opportunity. A Party should promptly inform the Arbitral Tribunal and the other Party or Parties of any change in such representation.
5. Once the Arbitral Tribunal has been constituted, a person should not accept representation of a Party in the arbitration when a relationship exists between the person and an Arbitrator that would create a conflict of interest, unless none of the Parties objects after proper disclosure.
6. The Arbitral Tribunal may, in case of breach of Guideline 5, take measures appropriate to safeguard the integrity of the proceedings, including the exclusion of the new Party Representative from participating in all or part of the arbitral proceedings.

Communications with Arbitrators

7. Unless agreed otherwise by the Parties, and subject to the exceptions below, a Party Representative should not engage in any Ex Party Communications with an Arbitrator concerning the arbitration.
8. It is not improper for a Party Representative to have Ex Parte Communications in the following circumstances:
   (a) A Party Representative may communicate with a prospective Party-Nominated Arbitrator to determine his or her expertise, experience, ability, availability, willingness and the existence of potential conflicts of interest.
   (b) A Party Representative may communicate with a prospective or appointed Party-Nominated Arbitrator for the purpose of the selection of the Presiding Arbitrator.
   (c) A Party Representative may, if the Parties are in agreement that such a communication is permissible, communicate with a prospective Presiding Arbitrator to determine his or her expertise, experience, ability, availability, willingness and the existence of potential conflicts of interest.
   (d) While communications with a prospective Party-Nominated Arbitrator or Presiding Arbitrator may include a general description of the dispute, a Party Representative should not seek the views of the prospective Party-Nominated Arbitrator or Presiding Arbitrator on the substance of the dispute.

Submissions to the Arbitral Tribunal

9. A Party Representative should not make any knowingly false submission of fact to the Arbitral Tribunal.
10. In the event that a Party Representative learns that he or she previously made a false submission of fact to the Arbitral Tribunal, the Party Representative should, subject to countervailing considerations of confidentiality and privilege, promptly correct such submission.
11. A Party Representative should not submit Witness or Expert evidence that he or she knows to be false. If a Witness or Expert intends to present or presents evidence that a Party Representative knows or later discovers to be false, such Party Representative should promptly advise the Party whom he or she represents of the necessity of taking remedial measures and of the consequences of failing to do so. Depending upon the circumstances, and subject to countervailing considerations of confidentiality and privilege, the Party Representative should promptly take remedial measures, which may include one or more of the following:

(a) advise the Witness or Expert to testify truthfully;
(b) take reasonable steps to deter the Witness or Expert from submitting false evidence;
(c) urge the Witness or Expert to correct or withdraw the false evidence;
(d) correct or withdraw the false evidence;
(e) withdraw as Party Representative if circumstances so warrant.

Information Exchange and Disclosure

12. When the arbitral proceedings involve or are likely to involve Document production, a Party Representative should inform the client of the need to preserve, so far as reasonably possible, Documents, including electronic Documents that would otherwise be deleted in accordance with a document retention policy or in the ordinary course of business, which are potentially relevant to the arbitration.
13. A Party Representative should not make any Request to Produce, or any objection to a Request to Produce, for an improper purpose, such as to harass or cause unnecessary delay.
14. A Party Representative should explain to the Party whom he or she represents the necessity of producing, and potential consequences of failing to produce, any Document that the Party or Parties have undertaken, or been ordered, to produce.
15. A Party Representative should advise the Party whom he or she represents to take, and assist such Party in taking, reasonable steps to ensure that: (i) a reasonable search is make for Documents that a Party has undertaken, or been ordered, to produce; and (ii) all non-privileged, responsive Documents are produced.
16. A Party Representative should not suppress or conceal, or advise a Party to suppress or conceal, Documents that have been requested by another Party or that the Party whom he or she represents has undertaken, or been ordered, to produce.
17. If, during the course of an arbitration, a Party Representative becomes aware of the existence of a Document that should have been produced, but was not produced, such Party Representative should advise the Party whom he or she represents of the necessity of producing the Document and the consequences of failing to do so.

Witnesses and Experts

18. Before seeking any information from a potential Witness or Expert, a Party Representative should identify himself or herself, as well as the Party that he or she represents, and the reason for which the information is sought.
19. A Party Representative should make any potential Witness aware that he or she has the right to inform or instruct his or her own counsel about the contact and to discontinue the communication with the Party Representative.
20. A Party Representative may assist Witnesses in the preparation of Witness Statements and Experts in the preparation of Expert Reports.
21. A Party Representative should seek to ensure that a Witness Statement reflects the Witness's own account of relevant facts, events and circumstances.
22. A Party Representative should seek to ensure that an Expert Report reflects the Expert's own analysis and opinion.
23. A Party Representative should not invite or encourage a Witness to give false evidence.
24. A Party Representative may, consistent with the principle that the evidence given should reflect the Witness's own account of relevant facts, events or circumstances, or the

Expert's own analysis or opinion, meet or interact with Witnesses and Experts in order to discuss and prepare their prospective testimony.

25. A Party Representative may pay, offer to pay, or acquiesce in the payment of:
   (a) expenses reasonably incurred by a Witness or Expert in preparing to testify or testifying at a hearing;
   (b) reasonable compensation for the loss of time incurred by a Witness in testifying and preparing to testify; and
   (c) reasonable fees for the professional services of a Party-appointed Expert.

Remedies for Misconduct

26. If the Arbitral Tribunal, after giving the Parties notice and a reasonable opportunity to be heard, finds that a Party Representative has committed Misconduct, the Arbitral Tribunal, as appropriate, may:
   (a) admonish the Party Representative;
   (b) draw appropriate inferences in assessing the evidence relied upon, or the legal arguments advanced by, the Party Representative;
   (c) consider the Party Representative's Misconduct in apportioning the costs of the arbitration, indicating, if appropriate, how and in what amount the Party Representative's Misconduct leads the Tribunal to a different apportionment of costs;
   (d) take any other appropriate measure in order to preserve the fairness and integrity of the proceedings.

27. In addressing issues of Misconduct, the Arbitral Tribunal should take into account:
   (a) the need to preserve the integrity and fairness of the arbitral proceedings and the enforceability of the award;
   (b) the potential impact of a ruling regarding Misconduct on the rights of the Parties;
   (c) the nature and gravity of the Misconduct, including the extent to which the Misconduct affects the conduct of the proceedings;
   (d) the good faith of the Party Representative;
   (e) relevant considerations of privilege and confidentiality; and
   (f) the extent to which the Party represented by the Party Representative knew of, condoned, directed, or participated in, the Misconduct.

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 that has arisen out of or in connection with this contract, or breach, termination or invalidity thereof shall be settled by arbitration in accordance with the Aluochier Dispute Resolution Arbitration Rules.

2. Any parties to a contract without an existing arbitration clause intending to commence an arbitration under the Aluochier Dispute Resolution 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 *Aluochier Dispute Resolution Arbitration Rules* may adopt the following by agreement —

   The parties hereby agree that any dispute, controversy or claim that has arisen out of or

in connection with the contract dated ..... or breach, termination or invalidity thereof shall be settled by arbitration in accordance with the Aluochier Dispute Resolution Arbitration Rules.

Mediation and Arbitration Clause

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

   On account of a dispute, controversy or claim that has arisen out of or in connection with this contract, or breach, termination or invalidity thereof, the parties hereby refer the dispute to mediation under the Aluochier Dispute Resolution 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 fourteen days in the case of arbitrations subject to section 8 of the Fair Administrative Action Act, 2015, or within such other period as the parties may agree in writing, such dispute shall be settled by arbitration in accordance with the Aluochier Dispute Resolution Arbitration Rules.

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