

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

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**RULE No. 001/2014/CM/AMENDING AND SUPPLEMENTING THE RULES OF PROCEDURE OF THE COMMON COURT OF JUSTICE AND ARBITRATION OF 18 APRIL 1996**

The Council of Ministers of the Organization for the Harmonization of Business Law in Africa (OHADA),

Having regard to Articles 8 and 19 of the Treaty on the Harmonization of Business Law in Africa;

Deliberated and adopted by unanimity of the States Parties present and voting, the Rules amending and supplementing the following Rules of Procedure of the Common Court of Justice and Arbitration of April 18, 1996:

**TITLE I: Organization of the Court**

**CHAPTER I: MEMBERS OF THE COURT**

**Article 1 of the amendment**

*Articles 1, 2, 3, 6, 9, 10, 12, 21, 22, 23, 23a, 24, 26, 27, 27a, 28, 28a, 28b, 32, 40, 42, 44, 44a, 44b, 45a, 45b, 48 and 51 as well as Chapter IVa, VI and VIIa of the Rules of Procedure of the Common Court of Justice and Arbitration of 18 April 1996 have been amended as follows:*

**Article 1**

- 1. The Common Court of Justice and Arbitration shall be composed of nine judges. However, the Council of Ministers may, based on a detailed and thorough report of the Permanent Secretary, seized to this effect either by the President of the Court, or by a State Party, and taking into account both the needs of the service and financial capabilities of the Organization, set an odd number of judges greater than nine.*
- 2. The mandate of the members of the Court shall become effective on January 1<sup>st</sup> of the year following their election. The mandate of a judge elected to replace another judge, pursuant to Article 35 of the Treaty, shall commence from the formal statement provided for in Article 34 of the same Treaty.*
- 3. Pursuant to Article 31 of the Treaty, judges shall be elected for a non-renewable seven-year mandate.*
- 4. Pursuant to Article 36.2, every member of the Court shall remain in office until his successor takes office.*

## Article 2

1. In the performance of their duties, the members of the Court are equal, regardless of age, the date of their election and seniority of their functions.
2. Subject to the provisions of paragraphs 3 and 4 of this Article, the members of the Court shall be ranked according to the date on which they took office, pursuant to Article 1 of these Rules.
3. Members of the Court taking office on the same date shall be ranked among themselves on the basis of their age.
4. Any member of the Court re-elected for a further term of office immediately following the previous shall remain in office.
5. For the duration of their mandate, the President, First Vice-President and Second Vice-President shall be ranked ahead of the other members of the Court.

## Article 3

1. When taking office, each member of the Court shall make the following formal statement in open Court: *“I solemnly declare that I will perform my duties of judge well and loyally to the highest honor and impartiality and that I will faithfully observe the confidentiality of the deliberations.”*
2. On the occasion of the first appointment of all the members of the Court, this affirmation shall be made in open Court in a solemn ceremony before the President of the OHADA Council of Ministers.
3. A re-elected member of the Court shall renew his formal statement only if his new term of office does not immediately follow the previous one.

## Article 4

1. The resignation of a member of the Court shall be sent in writing to the President of the Court who shall inform the OHADA Permanent Secretary. The latter shall declare the vacancy, and the Council shall proceed to replace him pursuant to Article 35 of the Treaty.
2. If the Member of the Court who resigns is the President, he shall inform the Court of his decision. The First Vice-President shall inform the Permanent Secretary. For the rest, the procedure laid down in paragraph 1 of this Article shall be applied.

## Article 5

1. When a member of the Court has ceased to perform his duties for any other reason than a temporary absence, or if he is no longer able to fulfill his mandate and, subsequently, the application of Article 35 of the Treaty is considered, that member of the Court concerned shall be informed by the President, in a written communication, explaining the reasons why the procedure has been engaged against him and indicating all the elements of evidence related thereto. He shall then be given the opportunity to submit his observations at a private meeting of the Court. Following that, a private meeting to discuss the issue further shall be held without the presence of the member of the Court; each member of the Court shall give his opinion and, if one so requests, the issue shall be put to vote.
2. Where the member of the Court concerned by paragraph 1 is the President, he shall be informed by the First Vice-President, who shall then apply the procedure laid down in the first paragraph.

## **CHAPTER II: THE PRESIDENCY**

### Article 6

1. *The Court shall elect its President for a term of three years and six months although this period may not exceed that of the mandate of the person concerned as a member of the Court.*
2. *Where the President ceases to be part of the Court or resigns from his post before the end of the term, his replacement shall be appointed for the remaining term period.*
3. *The President cannot be re-elected. However, he may be re-elected once at the end of his first term if he took office for less than three years and six months. The mandate of the President shall not result in prolonging his mandate as a judge beyond seven years.*
4. *The election of the President shall take place under the leadership of the outgoing President. If the latter is no longer a member of the Court or if he is unable to attend, the election shall be supervised by the member of the Court who is acting as President pursuant to Article 8 of these Rules.*
5. *Voting shall be by secret ballot in a plenary session after the member of the Court acting as President gives a reminder of the number of votes required to be elected. Only the members of the Court who are present shall vote.*
6. *The member of the Court who receives the absolute majority of the votes of the members of the Court of the plenary assembly shall be declared elected. From the third round of ballots, the relative majority shall be sufficient.*

- 7. The election of the First and the Second Vice-Presidents shall take place under the leadership of the newly elected President. Paragraphs 1, 2, 3, 4 and 6 of this Article shall apply to this election. The provisions of paragraph 3 shall not preclude the Court from electing one of its Vice-Presidents as President.*

#### **Article 7**

The President shall direct the work of the Court and control its services. He shall preside over the sessions. He shall represent the Court and perform any other functions conferred to him by the Court.

#### **Article 8**

When the Presidency is vacant, or when the President is prevented from exercising his functions, the First Vice-President shall act or failing that, the Second Vice-President shall take over, or failing that, one of the judges according to the rank laid down in Article 2 above.

### **CHAPTER III: THE CHAMBERS**

#### **Article 9**

- 1. The Court shall sit as a full court. However, it may constitute Chambers of three or five judges.*
- 2. These Chambers shall be chaired by the President of the Court or one of the Vice-Presidents.*
- 3. These Chambers shall be constituted by the order of the President of the Court.*

### **CHAPTER IV: THE REGISTRY**

#### **Article 10**

- 1. The President of the Court shall appoint the Chief Registrar of the Court after notice thereof, under the conditions laid down by the first paragraph of Article 39 of the Treaty. The Chief Registrar shall be appointed for a period of four years, renewable once.*
- 2. In case of actual or imminent vacancy, the President shall notify the Governments of the States Parties, either by announcing the vacancy or, if the vacancy is opened due to the expiry of the mandate of the Chief Registrar, six months at least before such expiry. The President shall set a date for closing the list of candidates so as to receive proposals and information in a timely manner.*
- 3. Proposals must be accompanied by all relevant information concerning the candidates and state their age, nationality and past and present professional experience.*

4. *The President shall communicate the list of candidates to the members of the Court and seek the opinion of the Court on their applications.*

## **Article 11**

Before taking office, the Chief Registrar shall make this formal statement:

“I solemnly declare that I will perform the duties of Chief Registrar of the Common Court of Justice and Arbitration conferred to me in all loyalty, discretion, and conscience, and I will faithfully observe the confidentiality attached to my duties.”

## **Article 12**

1. *The Chief Registrar shall perform all of his duties under the authority of the President.*
2. *The Chief Registrar shall be responsible for the Secretariat of the Court. He shall assist the Court in the performance of its duties. He shall be responsible for the organization and activities of the Registry.*
3. *He shall act as an intermediary for communications, notifications or writs from the Court or addressed to the Court on cases already brought or to be brought before it.*
4. *He shall be the custodian of the seals and responsible for the archives.*
5. *He shall be responsible for all non-judicial and administrative works.*
6. *He shall attend in person the plenary meetings of the Court and establish the minutes thereof.*
7. *The President may at any time, after receiving the opinion of the Court, confer other functions to the Chief Registrar.*

## **Article 13**

1. At the Registry, shall be kept, under the responsibility of the Chief Registrar, a register numbered and initialed by the President, in which are inscribed in date and order of their presentation all procedural document and supporting documents.
2. Reference to the entry in the register shall be made by the Chief Registrar on the originals and, at the request of the Parties, on the copies they present to this effect.
3. Entries in the register and the particulars provided for in the previous paragraph shall constitute authentic acts.

4. The terms and conditions under which the register is kept shall be determined by guidelines set forth in Article 15 of these Rules.
5. Any interested party may consult the register at the Registry and obtain copies or extracts by paying the price of the Registry fixed by the Court on the proposal of the Chief Registrar.
6. A notice shall be published in the OHADA Official Journal stating the date of the presentation of the motion instituting proceedings, the names, and domiciles of the Parties and the subject of the dispute.

Any party to the proceeding may also obtain, following the fee to the Registry, copies of the procedural documents, as well as shipments of orders and judgments.

#### **Article 14**

The Court may decide that one or more Deputy Registrars will assist the Chief Registrar and replace him within the limits of the guidelines provided for in Article 15 of these Rules. The corresponding jobs shall be filled by the President on the proposal of the Chief Registrar.

#### **Article 15**

The guidelines for the Registry shall be prepared by the Chief Registrar and approved by the President, after receiving the opinion of the Court.

#### **Article 16**

1. The Chief Registrar may be relieved of his duties only if he is unable to perform them or if he has failed to fulfill his obligations.
2. Before making a decision pursuant to this Article, the President shall inform the Chief Registrar of the measure proposed in writing and the reasons therefor, and shall present all relevant evidence. The Registrar shall be given the opportunity to formulate his observations in a private meeting of the Court.
3. The decision shall be taken by the President, after notice given by the Court.

#### **Article 17**

When the Chief Registrar is removed before the expiry of his mandate, his successor shall be appointed for a period of seven years.

#### **Article 18**

1. The organizational plan of the services of the Registry shall be prepared by the President at the proposal of the Chief Registrar.

2. The officers of the Registry shall be governed by the staff regulations of OHADA on any matter that is not incompatible with the independence of the Court.

## **CHAPTER V: FUNCTIONING OF THE COURT**

### **Article 19**

The seat of the Court is in Abidjan. The Court may, however, if it deems appropriate, meet in other places in the territory of a State Party with the prior agreement of that State, which shall not be involved financially in any manner.

### **Article 20**

The dates and times of the sessions of the Court shall be set by the President's order.

### **Article 21**

*A Chamber shall be composed of three judges. That number may be set to seven when the Court sits in plenary session.*

### **Article 22**

1. *The Court shall deliberate in the Council Chambers. Its deliberations shall be and shall remain secret.*
2. *Only judges shall take part in the deliberations.*
3. *No minutes of the deliberations of the Court shall be kept with respect to judicial proceedings.*
4. *The Court's decisions shall be taken by the majority of the judges in attendance. Votes shall be cast in reverse order from that set out in Article 2. In the event of a tie, the President shall have the casting vote.*

## **TITLE II: Dispute Proceedings**

### **CHAPTER I: GENERAL INFORMATION**

#### **Article 23**

- 1. Legal representation is mandatory before the Court. Any individual who can stand as an attorney before a Court of one of the States Parties to the Treaty shall be allowed to be a legal advisor. That individual shall be responsible for proving to the Court that he can act in that capacity. He shall also produce a special mandate from the party that he represents.*
- 2. The attorney whose behavior in the Court is incompatible with the dignity thereof or who uses entitlements he enjoys because of his duties for purposes other than those for which these rights have been conferred may, after having been heard, be dismissed at any time from the Proceedings by Court order. Such order shall be immediately enforceable.*

*When an attorney is excluded from the proceedings, the latter shall be suspended until the expiration of the time limit set by the President to allow the party concerned to appoint another lawyer.*

- 3. Orders taken in the execution of the foregoing paragraphs may be notified by the President of the Court at the request of the dismissed attorney.*

#### **Article 23 a**

*Attorneys who come before the Court in light of the special mandate referred to above shall enjoy immunity for the words uttered and written documents submitted related to the case or the parties.*

#### **Article 24**

*Judicial documents provided for in these Rules shall be sent by registered mail with acknowledgment of receipt, express mail, electronic mail, fax or any other means of communication leaving a written record, either of a copy of the act or by remitting this copy against receipt. Copies shall be drawn up and certified true by the Chief Registrar.*

#### **Article 25**

- 1. When an act or a formality required under the Treaty or these Rules must be executed before the expiry of a time limit, its origin shall be the date on which the act, event, decision or the communication of the act occurred. The day on which occurs this act, event, decision or this communication shall not be included in the time limit.*

2. Where a time limit is expressed in months or years, this period shall expire on the day of the last month or last year which bears the same number as the day on which the act, event, decision or communication occurred. In the absence of an identical calendar day, the time limit shall expire on the last day of the month.
3. Time limits shall include public holidays, Saturdays, and Sundays.
4. Any time limit shall expire on the last day at 24:00 hours. The time limit which would normally expire on a Saturday, a Sunday or a public holiday in the country where the act or formality is to be carried out shall be extended until the first following working day. The list of these holidays shall be drawn up by the Court and published at the OHADA Official Journal.
5. Procedural delays, due to the distance, shall be established by a decision of the Court and published in the OHADA Official Journal.

#### **Article 26**

*Upon referral to the Court, the President shall appoint a Judge-Rapporteur responsible for monitoring the investigation of the case and for reporting to the Court.*

*Judges shall be assisted in their functions by clerks whose number shall be set by the President, taking into account the volume of the dispute and the Organization's available financial resources.*

### **CHAPTER II: WRITTEN PROCEEDINGS**

#### **Article 27**

1. *The original of every procedural document must be signed by the attorney of the party. Such act, together with all appendices mentioned therein, shall be presented with one copy for the Court and as many copies as there are parties involved. These copies shall be certified true by the party that submits them.*
2. *All procedural documents shall be dated. With regard to procedural delays, only the date of submission at the Registry shall be taken into consideration.*
3. *To all procedural documents shall be appended a folder containing evidence and supporting documents and shall be accompanied by a delivery slip thereof.*
4. *If, due to the volume of a piece of evidence or supporting document, only an extract is annexed, the entire file or a full copy shall be submitted to the Registry.*

## **Chapter IV b: Linguistic Framework**

### **Article 27 a**

1. *The working languages of the Court shall be the languages of OHADA pursuant to Article 42 of the revised Treaty.*
2. *The language of the proceeding shall be selected by the claimant subject to the following:*
  - a) *If the respondent is a State Party, the language of the proceeding shall be the official language of that State;*
  - b) *If there are several official languages, the claimant shall have the option to select the language that is convenient for him.*
3. *The language of the proceeding shall notably be used in the communications and documents, including evidentiary and supporting documents, as well as minutes and decisions of the Court. Any evidence or supporting document submitted, appended and written in another language shall be accompanied by a version translated into the language of the proceeding.*
4. *However, in case of submission of voluminous evidence and supporting documents, translations of extracts may be presented. At any time, the Court may request a more complete and entire translation, either ex officio or at the request of one of the parties.*

### **Article 27 b**

1. *At the request of the judge or one party, the Chief Registrar shall take necessary measures to ensure the translation of anything spoken or written in the working languages pursuant to Article 27 a, paragraph 1 above.*
2. *The Court publications shall be executed in the working languages of OHADA.*

### **Article 27 c**

*Documents written in one of the working languages of OHADA are authentic.*

### **Article 28**

1. *When the Court is seized by one of the parties to the proceeding through the appeal in cassation provided for in the third or fourth paragraph of Article 14 of the Treaty, the appeal shall be submitted to the Registry within two (2) months of the notification of the decision contested by the attorney of the petitioner under the conditions set forth in Article 23. The appeal shall contain:*

- a) the names and domicile of the petitioner;
- b) the full names and domiciles of the other parties to the proceedings before the national court and of their counsel;
- c) The conclusions of the petitioner and supporting evidence of such conclusions.

The appeal shall state the Uniform Acts or Rules provided for by the Treaty whose application in the case justifies the referral of the Court.

2. The decision of the National Court which is the subject to the appeal shall be appended to the latter. The date on which the contested decision was served to the petitioner shall also be stated.
3. For the purposes of the procedure, the election of domicile in the place where the Court has its seat is not obligatory. The address for service of process, where necessary, shall state the name of the person who is authorized and has agreed to accept all communications.
4. The request may state that the attorney, having his registered residence in a State Party to the Treaty, consents to have all judicial documents sent to them by electronic mail, fax or any other means leaving a written record.
5. If the petitioner is a legal entity, it shall attach the following to its request:
  - its Articles of Association or a recent extract from the Registry of Commerce or any other proof of its legal existence;
  - The evidence that the mandate given to the attorney has been regularly established by a qualified representative to this effect.
6. If the appeal does not conform to the conditions laid down in this Article, the Chief Registrar shall set a reasonable time limit for the purpose of regularizing the appeal or of submitting the evidence mentioned above. Failing this regularization or submission within the time limit, the Court shall rule on the admissibility of the appeal.

#### **Article 28 a**

*The appeal in cassation shall be based on the:*

- *Violation of the law;*
- *Non-jurisdiction or excess of power;*
- *Violation of forms prescribed by the law under penalty of nullification;*
- *Failure of, insufficient or contradictory reasoning;*
- *Omission or refusal to respond to for the counts of the requests;*
- *Distortion of the facts of the case or of the evidence of the proceeding;*
- *Lack of legal basis ;*
- *The loss of legal grounds;*

- *Ruling on a matter, which was not requested or rule beyond what was requested.*

### **Article 28 b**

*Under penalty of non-admissibility, a plea for the cassation or an element of a plea for the cassation shall implement at least one of the bases for appeal referred to in the foregoing Article.*

### **Article 29**

The Court shall notify to all the parties to the proceedings before the national Court of the appeal. In the case provided for in paragraph 5 of the preceding Article, the communication shall be made immediately following the regularization or as soon as the Court has pronounced the admissibility in light of the terms of form listed in this Article.

### **Article 30**

1. Any party to the proceedings before the National Court may submit a statement of defense within a period of three (3) months from the communication of the appeal.
2. The statement of defense shall contain:
  - a) names and domicile of the party that responds;
  - b) the date on which the appeal was served;
  - c) The conclusions presented and the evidence invoked.
3. Paragraphs 3, 4 and 5 of Article 28 and Article 29 above shall apply.

### **Article 31**

1. The appeal and the statement of defense may be supplemented by a reply brief and a rejoinder or by any other brief, when the President, either ex officio or following an application to that effect within a period of fifteen (15) days from the serving of the statement of defense or reply, deems it necessary and expressly authorizes it.
2. When the President authorizes the filing of a reply or a rejoinder, or any other brief, he shall set the timeframe for the submission.

### **Article 32**

1. *Any exception to the jurisdiction of the Court or to the admissibility of the appeal must be submitted within the time limit set for the filing of the first part of the proceedings by the party raising the exception. The Court can rule separately on the objection or attach it to the merits.*
2. *When the Court manifestly lacks jurisdiction to hear the appeal, or when the appeal is clearly unacceptable or clearly unfounded, it may, at any time, by a reasoned decision, declare itself incompetent, declare the appeal inadmissible or reject it.*

### **Article 33**

The Court may at any time for reason of connection, order the joinder of several cases for the purposes of written or oral proceedings or of the judgment which shall terminate the proceedings. It may also separate them.

## ***CHAPTER III: ORAL PROCEEDINGS***

### **Article 34**

1. The proceedings before the Court shall essentially be in writing. However, the Court may, at the request of one of the Parties, organize an oral proceeding in some cases.
2. In such cases, the Chief Registrar shall inform the parties of the decision and the date of the hearing, as set by the President.

### **Article 35**

The hearing shall be public unless otherwise decided by the Court. Proceedings behind closed doors shall entail prohibition of the publication of the discussions.

### **Article 36**

The President shall lead the discussions and ensure its order. He shall set the order in which the parties are called upon to take the stand.

### **Article 37**

During the hearings, the President may ask questions to the parties. Every judge shall exercise the same right with authorisation by the President.

### **Article 38**

1. The Chief Registrar shall establish the minutes of each hearing. The minutes shall be signed by the President and the Chief Registrar. They shall be the authentic acts.
2. Parties may check all minutes and obtain copies thereof at their own expense from the Registry.

## ***CHAPTER IV: THE JUDGMENTS OF THE COURT***

### **Article 39**

The judgment of the Court shall contain the following items:

- statement that the judgment is rendered by the Court;
- date of the award;
- names of the judges who took part in the judgment, as well as that of the Registrar;
- statements of the parties;
- names of the attorneys of the parties;
- conclusions of the parties;
- brief summary of facts;
- argumentation;
- The terms of judgment including the decision on the costs.

#### **Article 40**

1. *The judgment shall be given in open court, the parties duly convened.*
2. *The original of the judgment shall be signed by the President and the Chief Registrar. It shall be kept at the Registry. Certified copies shall be served to the parties who request them by paying the price fixed by the Court.*

#### **Article 41**

The judgment shall be binding from the day it was rendered.

#### **Article 42**

*A collection of the jurisprudence of the Court shall be published by a committee put in place by the President. That committee shall be responsible for, inter alia, any other publications of the Court.*

### **CHAPTER V: COSTS**

#### **Article 43**

1. A ruling on costs shall be stated in the order that ends the proceedings.
2. The following shall be deemed to be recoverable costs:
  - a) the charges of the Registry;
  - b) necessary expenses incurred by the parties for the purposes of the proceedings, including travel and living expenses and remuneration of attorneys, according to the rate fixed by the Court;

- c) The costs that a party had to disclose following enforcement according to the rates in force in the State where enforcement took place.
3. The losing party shall be ordered to pay the costs, unless the Court, for exceptional reasons, decides otherwise.

If several Parties lose, the Court shall decide on the distribution of costs.

Absent conclusions on costs, each party shall bear its own costs.

## **CHAPTER VI: DISCONTINUANCE, REMOVAL AND ABATEMENT**

### **Article 44**

1. *The petitioner may discontinue his proceeding.*
2. *Discontinuance of the proceeding shall automatically entail termination thereof, if the respondent agrees or if he does not apply for a counterclaim or fails to respond.*
3. *The discontinuance of the proceeding shall not terminate the suit unless the petitioner states that he is expressly withdrawing the suit.*
4. *The discontinuance shall be recorded by an order of the President of the Court or the President of the Chamber, or by an order of the Court if this occurs after the filing of the report.*

### **Article 44 a**

*The removal punishes, under the conditions of the law, the parties' failure of diligence. It entails the withdrawal of the case from the current load of pending cases. The decision to withdraw is a court administration measure. The case may be reinstated only if it is justified that the diligences the lack of which caused the removal are accomplished; failing that, the case shall be removed if there is not yet an abatement.*

### **Article 44 b**

*The proceeding shall be abated when none of the parties accomplishes the diligence for two (2) years from the last procedural document. The abatement shall not terminate the suit; it shall only terminate the proceeding without opposing the acts of the expired proceeding or using them.*

### **Article 44 c**

*Removal and abatement decisions shall be taken ex officio by the Court or at the request of the parties.*

*In case of discontinuance and abatement, costs shall be borne by the claimant.*

## **CHAPTER VII: INTERVENTION**

### **Article 45**

1. States Parties to the Treaty may intervene in cases submitted to the Court. Anybody interested in supporting the claims of one of the parties for the conservation of his rights shall also be entitled to intervene.
2. The request for intervention shall be submitted within three (3) months of the publication provided for in paragraph 6 of Article 13 of these Rules.

The request shall contain:

- a) an indication of the case;
  - b) the main parties to the litigation;
  - c) the names and domicile of the intervener;
  - d) the election of domicile of the intervener at the place where the Court has its seat;
  - e) the pleas and arguments justifying his intervention;
  - f) In the case of requests for intervention other than those of the member States, the statement of the reasons justifying the interest in intervening.
3. The request shall be served on the parties. The President shall give the parties the opportunity to submit their written or oral observations before deciding on the intervention request.
  4. Where the intervention is admitted, the intervener shall receive communication of all the judicial documents served to the parties. The President may, however, at the request of a party, exclude, de facto, communication of confidential information.
  5. The intervener shall accept the dispute in the State where he is during his intervention.
  6. The President shall set the time limit within which the intervener may submit his intervention brief. He shall also set the time limit by which the Parties may respond to this brief.

## **CHAPTER VII a: CORRECTION AND INTERPRETATION**

### **Article 45 a**

1. *In the event of a dispute on the meaning or the scope of the ploy of an order, the Court shall be the one to interpret it.*
2. *Any party may request the interpretation of the terms of judgment of an order within three (3) years from its pronouncement.*

3. *The interpretation application shall be filed pursuant to the provisions of Articles 23 and 27 of these Rules. It shall also state:*
  - a) *The reference of the order;*
  - b) *The part of the order that needs interpretation.*
4. *The Court shall decide by way of judgment after giving the parties the opportunity to formulate their observations. The original of the interpretation order shall be appended to the original of the interpreted order. Mention of the interpretation order shall be made in the margins of the interpreted order.*

#### **Article 45 b**

*Material errors and omissions that affect the order of the Court may always be corrected thereby according to what the file reveals or, failing that, according to what is right. The Court may be seized by one of the parties or by common application; it may also be seized on its motion.*

### **CHAPTER VIII: ENFORCEMENT**

#### **Article 46**

1. The enforcement of the judgments of the Court shall be governed by the Rules of Civil Procedure in force in the State of the territory where it takes place. The enforcement order shall be executed without further control than the verification of the authenticity of the title by the national authority appointed by the government of each State Party for this purpose, which it shall report to the Court.

After the completion of such formalities at the request of the interested party, the latter may pursue the enforcement by directly contacting the competent body pursuant to national legislation.

2. The enforcement may be suspended only by a decision of the Court.
3. Any application likely to suspend the enforcement of a decision of the Court shall be made under the conditions set forth in Articles 23 and 27 of these Rules. It shall immediately be notified to the other parties, to whom the President shall set a short time limit for the submission of their written or oral comments.
4. The President shall rule on the application by a reasoned and non-appealable judgment. Such judgment shall immediately be served to the Parties.
5. At the request of a party, the judgment may, at any time, be changed or postponed.
6. Rejection of the application shall not preclude the party, which had introduced it from submitting another application based on new facts.

## **CHAPTER IX: EXTRAORDINARY REMEDIES**

### **Article 47**

1. Any natural person or legal entity may submit an application for third party objection to a judgment rendered without it being appealed, if this judgment is prejudicial to his/its rights.
2. The provisions of Articles 23 and 27 of these Rules shall apply to the application for third-party objection. It must in addition:
  - a) specify the opposing judgment;
  - b) state how this judgment is prejudicial to the rights of the opposing third parties;
  - c) state the reasons why the third party was unable to participate in the main dispute.

The application shall be filed against all the parties to the main litigation.

3. The contested judgment shall be modified insofar as it upheld the third party proceedings. The original of the judgment on third-party objection shall be appended to the minutes of the contested judgment. Mention of the judgment on the third-party judgment shall be made in the margins of the original of the contested judgment.

### **Article 48 – Revoked**

### **Article 49**

1. The revision of the judgment may only be requested at the Court due to the discovery of a fact which may have a decisive influence and which, prior to the rendering of the judgment, was unknown to the Court and to the party requesting the review.
2. The revision procedure shall be opened by a judgment of the Court expressly recording the existence of a new fact, recognizing its characteristics that prompt revision and thus making that application admissible.
3. The Court may require the initiation of the proceeding for review prior to the execution of the judgment.
4. The application for revision must be instituted within a period of three (3) months from the day on which the applicant gained knowledge of the fact on which the application for revision is based.
5. No application for revision may be made after the expiry of a period of ten (10) years from the judgment.

### **Article 50**

1. The provisions of Articles 23 and 27 of these Rules shall apply to the application for revision. It must also contain the information necessary to establish that the conditions laid down in Article 49 above are met.
2. The application for revision shall be lodged against all parties to the judgment, of which the revision is required.
3. These parties shall have the right to submit written comments on the admissibility of the application. These observations shall be communicated to the applicant.
4. Before making its decision on the admissibility of the application, the Court may give the parties the opportunity to present their views on the subject.
5. If the application is declared admissible, the Court shall set the time limits for any subsequent proceedings it considers necessary to rule on the merits of the application.
6. The original of the judgment on revision shall be appended to the original of the revised judgment. Mention of the judgment on revision shall be made in the margins of the original of the revised judgment.

## **CHAPTER X: REFERENCE BY THE NATIONAL JUDGE**

### **Article 51**

*When the Court is seized pursuant to Articles 14 and 15 of the Treaty by a national court ruling in cassation which gives it the jurisdiction to rule on questions related to the application of the Uniform Acts, that court shall ex officio relinquish its jurisdiction. It shall transmit to the Court the entire file of the case, with a copy of the judgment for reference. Upon receipt of this dossier, the Parties shall be notified of this transmission by the Court.*

*The provisions of Articles 23 to 50 of these Rules shall apply, subject to changes imposed by the mode of referral.*

### **Article 2 of the amendment**

*Article 48 of the Rules of Procedure of 18 April 1996 is revoked.*

### **Article 3 of the amendment**

*These Rules, which shall enter into force on the date of its publication repeal all provisions opposing to the Rules of Procedure of the Common Court of Justice and Arbitration of 18 April 1996, and shall be published at the OHADA Official Journal.*

*They shall also be published in the Official Journal of State Parties or by any other means.*

*Translation subject to further correction (December 2016)*

*Executed in Ouagadougou on 30 January 2014*

*For the Republic of Benin*

**Valentin DJENONTIN-AGOSSOU**

*For the Republic of Cameroon*

**Jean-Pierre FOGUI**

*For the Republic of Côte-d'Ivoire*

**Guénéma Mamadou KOULIBALY**

*For Burkina Faso*

**Dramane YAMEOGO**

*For the Republic of Congo*

**Pierre MABIALA**

*For the Republic of Gabon*

**Faustin MOUNGUENGUI NZIGOU**

## ***CHAPTER XI: APPEAL PROVIDED FOR IN ARTICLE 18 OF THE TREATY***

### **Article 52**

1. When the Court is appealed to, pursuant to Article 18 of the Treaty, for an appeal to annul a judgment by which a national Court adjudicating in cassation has disregarded the jurisdiction of the Court, this appeal shall immediately be notified by the Chief Registrar to all parties to the proceedings before the National Court.
2. Each of these parties may submit a brief within a period of three (3) months from the notification of the appeal.
3. Submissions so filed shall be communicated to the applicant and the other parties. The latter may present a new brief within the time limit set by the President. Furthermore, the President shall decide whether it is relevant to have a hearing.
4. If the Court decides that the National Court has wrongly declared itself competent, the decision of the latter shall be deemed null and void. Any party before the Court may, within two (2) months of the notification of the judgment of the Court, appeal to the latter by appealing in cassation against the decision of the trial judge under the conditions set forth in Article 14 of the Treaty and Articles 23 to 50 of these Rules.

## TITLE III: Advisory Proceedings

### Article 53

In the exercise of the advisory functions conferred to it by the second paragraph of Article 14 of the Treaty, the Court shall apply the following provisions. It shall also apply, insofar as it deems proper, the other provisions of these Rules.

### Article 54

Any application of an advisory opinion from a State Party or the Council of Ministers shall be submitted in writing. This query shall pose, in specific terms, the question on which the opinion of the Court is sought. Any document that can be used to elucidate the question shall be attached.

### Article 55

1. The Chief Registrar shall immediately notify any application for advisory opinion from one State to the other States Parties to the Treaty.
2. During such notifications, the Chief Registrar shall inform his correspondents that the Court is prepared to receive their written observations in the time limit set by the President.
3. Thus filed written observations shall be communicated to the applicant and the other authors of the submissions. They shall be permitted to discuss the comments thus received in forms, measures and time limits set in each case by the President. The latter shall decide whether it is relevant to have a hearing.

### Article 56

Any decision whereby a court referred to in Article 14 of the Treaty seeks an advisory opinion shall be notified to the Court at the behest of that Court. Such decision shall formulate in precise terms the question on which the Court felt the need to seek the opinion of the Court to make its ruling. Any document that can be used to elucidate the question shall be attached.

### Article 57

1. The Chief Registrar shall immediately notify the Parties before the Court of any application for an advisory opinion from a jurisdiction referred to in Article 14 of the Treaty. Furthermore, it shall notify the States Parties to the Treaty of this.
2. During such notifications, the Chief Registrar shall inform his correspondents that the Court is prepared to receive their written observations in the time limit set by the President.
3. Thus filed written observations shall be communicated to the applicant and to the other authors of the submissions. They shall be permitted to discuss the comments thus received in forms,

measures and time limits set in each case by the President. The latter shall decide whether it is relevant to have a hearing.

### **Article 58**

The advisory opinion shall contain:

- the indication that it is rendered by the Court;
- the date of the judgment;
- the names of the judges who took part in the judgment, as well as the name of the Registrar;
- the summary of facts;
- the reasons;
- the answer to the question posed to the Court.

## TITLE IV: Final Provisions

### Article 59

These Rules shall enter into force from their signature. They shall be published in the OHADA Official Journal.

*Adopted in accordance with Article 8 of the OHADA Treaty of 17 October 1993 by the Council of the Ministers of Justice and Finance of OHADA on 18 April 1996.*

*The Keeper of the Seals, Minister of Justice*

*Colonel OLDOM BADA ABBAS*