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ORGANIZATION FOR THE HARMONIZATION OF BUSINESS LAW IN AFRICA

OHADA

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S U M M A R Y

Translation subject to further correction (December 2016)

UNIFORM ACT ON ARBITRATION LAW

Analytical Table

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

Having regard to the Treaty on the Harmonization of Business Law in Africa, in particular, Articles 2, 5 to 12 thereof;

Having regard to the Report of the Permanent Secretariat and comments by States Parties;
Having regard to the Opinion of December 3, 1998, of the Common Court of Justice and Arbitration;

Deliberated and adopted by unanimity of the States Parties present and voting the Uniform Act worded as follows:

CHAPTER I
SCOPE

ARTICLE 1

This Uniform Act shall govern any arbitration when the seat of the arbitral tribunal is located in one of the States Parties.

ARTICLE 2

Any natural person or legal entity may resort to arbitration to assert the rights he freely holds.

States and other territorial public bodies, as well as public institutions, may equally be parties to arbitration without being able to invoke their own law to contest the arbitrability of a dispute, their ability to enter into an agreement or the validity of the arbitration agreement.

ARTICLE 3

The arbitration agreement shall be submitted in writing, or by any other means permitting it to be evidenced, notably, by reference made to a document stipulating it.

ARTICLE 4

The arbitration agreement shall be independent of the main contract.

Its validity shall not be affected by the nullity of such contract, and it shall be assessed according to the intention of both parties, without necessary reference to a state law.
The parties can always mutually agree to resort to an arbitration agreement, even when a hearing has already been initiated before another court.

CHAPTER II
CONSTITUTION OF THE ARBITRAL TRIBUNAL

ARTICLE 5

Arbitrators shall be appointed, dismissed or replaced under the agreement of the parties.

Absent such arbitration agreement, or where the agreement does not sufficiently address every issue:

a) In case of an arbitration with three arbitrators, each party shall appoint one arbitrator and the two arbitrators thus appointed shall appoint a third arbitrator; if a party fails to appoint the arbitrator within thirty (30) days of the receipt of a request for that purpose from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty (30) days of their appointment, the appointment shall be made upon request of a party by the competent judge in the State Party;

b) In case of arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the competent judge in the State Party.

ARTICLE 6

The duties of an arbitrator may only be performed by a natural person.

The arbitrator shall enjoy full exercise of his civil rights and shall remain independent and impartial vis-à-vis the parties.

ARTICLE 7

The arbitrator who accepts his mandate shall communicate his acceptance to the parties by any means in writing.

Where the arbitrator knows of any circumstance about himself for which he may be challenged, he shall disclose this to the parties and may only accept his appointment with their unanimous and written agreement.

In case of dispute, and if the parties have not determined the procedure for challenging an arbitrator, the competent judge in the State Party shall rule on the challenge.

His decision shall not be subject to any appeal.

Any reasons for challenging an arbitrator must be disclosed without delay by the party who intends to challenge the arbitrator.

The challenge of an arbitrator shall only be admissible for reasons which became known after his appointment.

ARTICLE 8

The arbitral tribunal shall be composed of a sole arbitrator or a panel of three arbitrators.

Where the parties designate the arbitrators in even numbers, the arbitral tribunal shall be completed by one arbitrator chosen either pursuant to the agreement of the parties, or, in the absence of such agreement, by the arbitrators appointed or, where they are unable to agree on the arbitrator, by the competent court in the State Party. The same shall apply in case of challenge, incapacity, death, resignation or revocation of an arbitrator.

CHAPTER III
THE ARBITRAL PROCEEDINGS

ARTICLE 9

The parties shall be treated equally, and each party shall be given a full opportunity to assert his rights.

ARTICLE 10

The fact that the parties choose to submit themselves to an institution, makes them bound by the application of the Arbitration Rules of such institution except where the parties expressly exclude the application of certain provisions.

The arbitral proceedings shall be binding as soon as one of the parties appeals to one or all of the arbitrators pursuant to the arbitration agreement, or, failing such appointment, as soon as one of the parties initiates the procedure for the constitution of the arbitral tribunal.

ARTICLE 11

The arbitral tribunal shall rule on its own jurisdiction including on any issues concerning the existence or the validity of the arbitration agreement.

Any objection to the jurisdiction of the tribunal shall be raised before any defense on the merits of the case except where the facts on which it is based were revealed later.

The arbitral tribunal may rule on its own jurisdiction in the award based on merits or in a partial award subject to the appeal for annulment.

ARTICLE 12

Where the arbitration agreement does not set a time limit, the mandate of the arbitrators may not exceed six months as from the date on which the last appointed arbitrator accepted the assignment.

The legal or agreed time limit may be extended either by an agreement of the parties or at the request of one of them or of the arbitral tribunal, by the competent judge in the State Party.

ARTICLE 13

When a dispute, for which an arbitral tribunal is seized under an arbitration agreement, is brought before a state court, it shall, if a party so requests, declare that it lacks jurisdiction.

Where the arbitral tribunal is not yet seized, the state court shall also declare its lacks of jurisdiction, unless the arbitration agreement is clearly null and void.

In any event, the state court shall not automatically declare that it lacks jurisdiction.

However, the existence of an arbitration agreement shall not preclude a state court, at the request of a party, in the event of a recognized and reasoned emergency or when the award will be executed in a State not party to OHADA, to order conservatory and interim measures, insofar as these measures do not entail an examination of the merits of the dispute, for which only the arbitral tribunal is competent.

ARTICLE 14

The parties may, directly or by reference to Arbitration Rules, determine the arbitration procedure; they may also subject such procedures to a procedural law of their choice.

Absent such agreement, the arbitral tribunal may conduct the arbitration as it deems appropriate.

In support of their pleas and arguments, the parties have the burden of alleging and adducing evidence to prove the facts of their their claims.

The arbitrators can invite the parties to provide them with explanations of the facts and to submit before them, by any legally admissible means, the evidence they believe will provide a solution to their dispute.

They cannot retain in in their ruling, the arguments, explanations or documents submitted by the parties, except if they have been heard in the presence of both parties.

They shall not base their ruling on evidence they established *ex propio motu* without previously inviting the parties to formulate their remarks.

Where the assistance of judicial authorities is necessary for the submission of evidence, the arbitral tribunal can on its own or upon demand, request the assistance of the competent judge in the State Party.

The party who knowingly abstains from from invoking without undue delay an irregularity and yet proceeds with the arbitration, is deemed to have waived his right to object.

Unless agreed otherwise, the arbitrators shall equally be empowered to decide on any incidental claims of verification of the authenticity of documents or forgery.

ARTICLE 15

The arbitrators shall rule on the merits of the dispute pursuant to the rules of law chosen by the parties or, absent such choice, according to rules chosen by them as the most appropriate, by taking into consideration, where necessary, the international trade practices.

They may also decide as amiable compositeur when the parties have authorized them to do so.

ARTICLE 16

The arbitral proceedings shall end with the expiry of the legal arbitration time limit, with the exception of an agreed or ordered extension.

It may equally be terminated in case of an acknowledgement of the claim, discontinuation of the proceedings, settlement or final award.

ARTICLE 17

The arbitral tribunal shall set the date on which the dispute shall be deliberated upon.

After this date, no other claim can be introduced or any arguments raised.

No remarks can be presented; neither can any piece of evidence be submitted unless on the express written request of the arbitral tribunal.

ARTICLE 18

The deliberations of the arbitral tribunal shall be secret.

CHAPTER IV
THE ARBITRAL AWARD

ARTICLE 19

The arbitral award shall be made according to the procedure and forms agreed upon by the parties.

Absent such agreement, the award shall be made by a majority vote when the Tribunal is composed of three arbitrators.

ARTICLE 20

The arbitral award shall contain:

- the full name of the arbitrator or arbitrators giving the award,
- the date of the award,
- the seat of the arbitral tribunal,
- the full names and trade name of the parties, as well as their residence or registered office,
- where necessary, the full names of attorneys or any person having represented or assisted the parties,
- the statement of the respective claims, pleas and arguments of the parties, as well as the stages of the procedure.

The reasons on which this award is based shall be stated.

ARTICLE 21

The arbitral award shall be signed by the arbitrator or arbitrators.

However, if a minority of them refuses to sign the award, mention shall be made of such refusal and the award shall have the same effect as if all the arbitrators had signed it.

ARTICLE 22

The award discharges the arbitrator from the dispute.

The arbitrator shall nevertheless have the power to interpret the award or to correct the material errors and omissions

affecting the award.

Where he has omitted to rule on one portion of the claim, he may do so by rendering an additional award.

In the one or the other case mentioned above, the request must be made within thirty (30) days from the date of the notification of the award. The tribunal shall have a period of forty-five (45) days to give a ruling.

If the arbitral tribunal cannot be reconvened, this power shall belong to the competent judge in the State Party.

ARTICLE 23

As soon as the award is made, the dispute so settled is *res judicata*.

ARTICLE 24

The arbitrators may grant provisional enforcement of the award, if this has been requested, or may reject the request, by giving the reasons therefor.

CHAPTER V
APPEAL AGAINST THE ARBITRAL AWARD

ARTICLE 25

The award shall not be subject to any opposition, appeal or appeal on points of law to the Supreme Court.

It may be subject to a request for annulment, which must be lodged with the competent judge in the State Party.

The decision of the competent judge in the State Party may only be appealed on points of law before the Common Court of Justice and Arbitration.

The arbitral award may become the object of an opposition by a third party before the arbitral tribunal filed by any natural person or legal entity who had not been called and when the award prejudices his rights.

It may also be subject to a request for a judicial review before the arbitral tribunal due to the discovery of a fact likely to have a decisive influence and which, before the ruling of the award, was unknown to both the arbitral tribunal and the party requesting the review.

ARTICLE 26

The annulment request shall only be admissible in the following cases:

- when the arbitral tribunal has ruled absent an arbitration agreement or on an agreement which is void or expired;

- when the arbitral tribunal was irregularly composed, or the sole arbitrator was irregularly appointed;

- when the arbitral tribunal ruled without conforming to the mandate it has been entrusted;

- when the principle of adversary procedure has not been respected;

- when the arbitral tribunal has violated an international public policy rule of the signatory-States of the Treaty;

- when the award is not reasoned.

ARTICLE 27

The request for annulment shall be admissible as soon as the award is made; it shall cease to be admissible if it has not been made within one month of the notification of the award furnished with an exequatur.

ARTICLE 28

Except where the provisional enforcement of the award has been ordered by the arbitral tribunal, the exercise of the request for annulment shall stay execution of the award until such time that the competent judge in the State party makes a ruling.

This judge shall also be competent to rule on a dispute concerning the provisional enforcement.

ARTICLE 29

In case of annulment of the arbitral award, it rests with the most diligent party, if he so wishes, to initiate a new arbitration proceedings in accordance with this Uniform Act.

CHAPTER VI:
RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARDS

ARTICLE 30

The award shall only be subject to enforcement by virtue of an exequatur awarded by the competent judge in the State Party.

ARTICLE 31

Recognition and exequatur of the arbitral award presume that the party which prevailed shall establish the existence of the award.

The existence of the arbitral award shall be established by the production of the original award accompanied by the arbitration agreement or copies of these documents meeting the conditions required for their authenticity.

Where those documents are not written in French, the party shall submit a translation certified by a translator registered on the list of experts established by the competent courts.

The recognition and the exequatur shall be denied when the award is manifestly contrary to an international public policy rule of the States Parties.

ARTICLE 32

The decision to reject the exequatur shall only be subject to appeal on points of law before the Common Court of Justice and Arbitration.

The ruling granting the exequatur shall not be subject to any appeal.

However, an appeal for nullity of the arbitral award shall automatically entail appeal against the decision on the exequatur within the limits of the referral of the competent judge of the State Party.

ARTICLE 33

The rejection of the request for annulment shall bring, on its own right, the validation of the award as well as of the ruling granting the exequatur.

ARTICLE 34

The arbitral awards made on the basis of rules different from those provided for in this Uniform Act shall be recognized within the States Parties under the conditions provided for by international agreements possibly applicable and, in the absence of, under the same conditions as those provided in this Uniform Act.

CHAPTER VII
FINAL PROVISIONS

ARTICLE 35

This Uniform Act shall be the law governing any arbitration in the States Parties.

This Uniform Act shall only apply to arbitration proceedings arising after its entry into force.

ARTICLE 36

This Uniform Act shall be published in the OHADA Official Journal and the States Parties.
It shall enter into force pursuant to the provisions of Article 9 of the Treaty on the Harmonization of Business Law in Africa.

Executed in Ouagadougou March 11, 1999

Republic of BENIN
[signed]
M. Joseph H. GNONLONFOUN

Republic of MALI
[signed]
M. Amidou DIABATE

BURKINA FASO
[signed]
M. Paul KIEMDE

Republic of NIGER
[signed]
M. Issifou ABBA MOUSSA

Republic of CAMEROON
[signed]
M. Laurent ESSO

Republic of SENEGAL
[signed]
M. Serigne DIOP

CENTRAL AFRICAN Republic
[signed]
M. Laurent GOMINA BAMBALI

Republic of CHAD
[signed]
M. Mahamat LIMANE

Republic of COTE-D'IVOIRE
[signed]
M. Kouakou BROU JEAN

Republic of TOGO
[signed]
M. Bilokotipou YAGNINIM

RULES OF ARBITRATION OF THE COMMON COURT OF JUSTICE AND ARBITRATION

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CHAPTER III:

RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARDS.

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

- Having regard to the Treaty on the Harmonization of Business Law in Africa, notably in its Articles 8 and 26;
- Having regard to the Rules of Procedures of the Common Court of Justice and Arbitration, notably in its Article 54;
- Having regard to the Opinion of December 9, 1998, of the Common Court of Justice and Arbitration;

Has deliberated and adopted by unanimity of the States Parties present and voting the following Rules of Arbitration of the Common Court of Justice and Arbitration:

CHAPTER I: POWERS OF THE COMMON COURT OF JUSTICE AND ARBITRATION ON ARBITRATION

Article 1: Exercise by the Court of its Powers

The Common Court of Justice and Arbitration, hereinafter referred to as "the Court", shall exercise the powers of administration of arbitrations in the field vested in it under Article 21 of the Treaty in the conditions hereinafter defined.

The decisions that it makes as such, to ensure the implementation and the proper completion of arbitral proceedings and those related to the review of the awards, shall be administrative in nature. These decisions shall be devoid of any force of *res judicata*, without recourse and the reasons therefor shall not be communicated.

They shall be taken by the Court under the conditions set forth by the General Assembly after the President's proposal.

The Chief Registrar shall serve as the Secretary-General of this administrative formation of the Court.

1.1 The Court shall exercise the jurisdictional power conferred by Article 25 of the Treaty regarding the *res judicata* and the exequatur of the awards, within its ordinary formation for litigation and in accordance with the procedure laid down for that.

1.2 The administrative powers defined in point 1.1 above for the monitoring of arbitral proceedings shall be ensured under the conditions set forth in Chapter II below.

The jurisdictional powers of the Court referred to in point 1.2 above shall be defined and regulated by Chapter III below and the Rules of Procedure of the Court.

CHAPTER II THE PROCEDURE FOLLOWED BEFORE THE COMMON COURT OF JUSTICE AND ARBITRATION

Article 2: Mandate of the Court

2.1 The mandate of the Court is to provide, in accordance with these Rules, an arbitral solution related to a contractual dispute, pursuant to an arbitration clause or an arbitration agreement, submitted by any party to the contract, if one of the parties has his domicile or habitual residence in one of the States Parties, or if the contract is executed or shall be executed in whole or in part in the territory of one or several States Parties.

2.2 The Court shall not in itself resolve the disputes.

It appoints or confirms the arbitrators, is informed of the conduct of the proceedings and reviews draft awards.

It ruless on the exequatur of those awards, if it is requested, and, if it is appealed to, on the disputes which may arise with respect to the force of res judicata of these awards.

2.3 The Court shall deal with matters related to the arbitral proceedings that it monitors under Title IV of the Treaty and Article 1 of the present Rules.

2.4 The Court shall establish Internal Rules if it considers this desirable. The Court may, in the manner prescribed in these Internal Rules; delegate to a small committee, composed of its members, the power to make decisions, provided that any such decision is reported to the Court at its next session. These Rules are decided and adopted by the General Assembly. They become enforceable after their approval by the Council of Ministers acting under the condi

tions set forth in Article 4 of the Treaty.

2.5 The President of the Court shall, in an emergency situation, make decisions for the establishment and the proper conduct of the arbitral proceedings, provided that any such decision is reported to the Court at its next session, excluding the decisions that require a decision of the Court. He may delegate this authority to a member of the Court under the same condition.

Article 3: Appointment of Arbitrators

3.1 The dispute may be settled by a sole arbitrator or by three arbitrators. In these Rules, the arbitral tribunal may also be referred to by the term "arbitrator". When the parties have agreed that the dispute shall be settled by a sole arbitrator, they may designate him by mutual agreement for confirmation by the Court. In the absence of agreement between the parties within a period of thirty (30) days from the notification of the request for arbitration to the other party, the arbitrator shall be appointed by the Court.

Where three arbitrators have been provided for, each of the parties - in the request for arbitration or in the response to it – shall designate an independent arbitrator for confirmation by the Court. If one of the parties abstains, the nomination shall be made by the Court. The third arbitrator, who is the Chair of the arbitral tribunal, shall be nominated by the Court unless the parties have provided that the arbitrators that they have designated shall choose the third arbitrator within a specified time limit. In this case, it will be up to the Court to confirm the third arbitrator. If upon the expiry of the time limit set by the parties or allowed by the Court, the arbitrators appointed by the parties could not enter in agreement, the third arbitrator shall be appointed by the Court.

If the parties have not set the number of arbitrators by mutual agreement, the Court shall appoint a sole arbitrator unless the dispute appears to justify the appointment of three arbitrators. In the latter case, the parties will have a period of fifteen (15) days to designate arbitrators.

When several parties, claimants or respondents, have to submit before the Court joint proposals for the nomination of an arbitrator, and they do not agree within the set time limit, the Court may nominate the entire arbitral tribunal.

3.2 Arbitrators can be selected from the list of arbitrators established by the Court and updated annually. The members of the Court cannot be placed on this list.

3.3 In nominating arbitrators, the Court shall consider the nationality of the parties, their residence and the place of residence of their legal advisors and arbitrators, as well as the language of the parties, the nature of the issues in dispute and, potentially, the laws chosen by the parties to govern their relations.

In conducting these appointments and in putting together the list of arbitrators referred to in Article 3.2, the Court, if desirable, may seek the prior opinion of practitioners of recognized expertise in the field of international commercial arbitration.

Article 4: Independence, Challenge and Replacement of Arbitrators

4.1 Any arbitrator nominated or confirmed by the Court shall be and shall remain independent from the parties involved.

He shall fulfill his mandate until its end.

Before his nomination or confirmation by the Court, the prospective arbitrator, who was provided with information on the dispute contained in the arbitration case and, if the request has been successful, in the response to it, must submit a written statement to the Secretary-General of the Court specifying the facts or circumstances of a nature which might call into question his independence in the minds of the parties.

Upon receipt of this statement, the Secretary-General of the Court shall communicate it in writing to the parties and shall set a time limit for them to submit potential remarks. The arbitrator shall also submit immediately a written statement to the Secretary-General of the Court and the parties specifying any facts and circumstances of the same nature that may have arisen between his nomination or confirmation by the Court and the notification of the final award.

4.2 The request for for disqualification, based upon a claim of an alleged lack of independence or on any other grounds, shall be made by submitting to the Secretary-General of the Court a statement specifying the facts and circumstances on which this claim is based.

Such request shall be sent by the party, under penalty of preclusion, either within thirty (30) days of the receipt of the notification of the nomination or confirmation of the arbitrator by the Court, or within thirty (30) days of the date on which the party introducing the challenge was informed of the facts and circumstances in support of his request for disqualification if such date is after the receipt of the notification referred to above.

The Court shall decide on the admissibility, and together with, if appropriate, the merits of the request for disqualification, after the Secretary-General of the Court has given the arbitrator concerned, the parties and the other members of the arbitral tribunal, if there are more, the opportunity to submit their comments in writing within an appropriate time limit.

4.3 An arbitrator may be replaced upon death, upon acceptance by the Court of the arbitrator's disqualification, or upon acceptance by the Court of the arbitrator's resignation.

When the resignation of an arbitrator is not accepted by the Court, and the arbitrator refuses nevertheless to carry on his mandate, and if he is a sole arbitrator or the President of an arbitral tribunal, he shall be replaced.

In other cases, the Court shall have the discretion to replace an arbitrator taking into account the progress of the proceedings and the views of the two arbitrators who have not resigned. If the Court considers that a replacement is not necessary, the proceeding shall continue, and the award may be made despite the arbitrator's, whose resignation has been rejected, refusal to concur.

The Court shall make its decision having regard, *inter alia*, to the provisions of Article 28, paragraph 2 below.

4.4 An arbitrator shall also be replaced on the Court's own initiative when it decides that the arbitrator is prevented de jure or de facto from fulfilling the arbitrator's functions, or that the arbitrator is not fulfilling those functions in accordance with Title IV of the Treaty or the Rules or within the prescribed time limits. When, on the basis of information received, the Court considers the application of the preceding paragraph, it shall decide on the replacement after the Secretary-General of the Court has, in writing, communicated this information to the arbitrator concerned, the parties and the other members of the arbitral tribunal, if there are more, and has given them the opportunity to submit their written comments within an appropriate time limit.

In the event of the replacement of an arbitrator who does not fulfill his functions in accordance with Title IV of the Treaty, under these Rules or within the prescribed time limit, the appointment of a new arbitrator shall be made by the Court on the advice of the party which had appointed the arbitrator who is being replaced, without the Court being bound by the advice given. When the Court is informed that in an arbitral tribunal comprised of three people, one of the arbitrators, other than the President, is not participating in the arbitration, without so far having presented his resignation, the Court may, as stipulated in 4.3, paragraphs 3 and 4 above, decide not to replace the arbitrator when the other two arbitrators agree to continue the arbitration despite the lack of participation of one of the arbitrators.

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

4.6 As stipulated in Article 1.1 above, the Court shall, without appeal, decide on the nomination, confirmation, challenge or replacement of an arbitrator.

Article 5: Request for Arbitration

Any party wishing to have recourse to the arbitration instituted by Article 2.1 above (Article 21 of the Treaty) and for which the terms and conditions are laid down in these Rules, shall submit his request to the Secretary-General for the arbitration of the Court.
This application shall contain:

a) The full names, professions, trade names, and addresses of the parties with an indication of election of domicile for the remainder of the procedure, as well as the statement of the number of his claims;

b) The arbitration agreement entered into between the parties, and the documents, whether contractual or other, likely to clarify the circumstances of the case;

c) A statement of facts on the claimant's submissions and the evidence produced supporting them;

d) All useful statements and proposals concerning the number and the choice of arbitrators, pursuant to the provisions of Article 2.3 above;

e) If they exist, agreements made between the parties:
- on the place of arbitration
- on the language of arbitration
- on the applicable law
- on the arbitration agreement
- on the arbitral proceeding and
- on the merits of the dispute.

Absent such agreements, the wishes of the claimant to the arbitration on these various points shall be expressed;

f) The application shall be accompanied by the statutory fee provided for the filing of proceedings in the Fee Scale of the Court.

In the request, the claimant shall send copies of all the documents filed together with the documents annexed, to the respondents in the arbitration.

The Secretary-General shall notify the responding party or parties of the date of receipt of the request to the Secretariat, attaching to this notification a copy of these Rules, and shall acknowledge receipt of this application to the claimant.

The date of receipt by the Secretary-General of the arbitration request according to this Article, shall be the date of the introduction of the arbitration proceeding.

Article 6: Answer to the Request

Within forty-five (45) days from the date of receipt of the notification of the Secretary-General, the respondent(s) shall submit their answers thereto, as well as proof of a similar response being sent to the claimant.

In the case referred to in Article 3.1, paragraph 2 above, the parties shall come to an agreement within the period of thirty (30) days provided for therein.

The answer shall contain:

a) Confirmation, or not, of the respondent's full names, trade name and address as stated by the claimant, with the election of domicile for the remainder of the proceedings.

b) Confirmation, or not, of the existence of an arbitration agreement between the parties in reference to the arbitration under Title IV of the Treaty on the Harmonization of Business Law in Africa.

c) A summary of the case and the position of the respondent on claims formed against him with indication of the pleas and supporting documents on which he intends to base his defense.

d) The respondent's response to all items dealt with in the request for arbitration in sections (d) and (e) of Article 5 above.

Article 7:

If the respondent has planned to have a counterclaim in his answer, the claimant may, within thirty (30) days of receipt of his answer, submit an additional note thereon.

Article 8:

After receipt of the request for arbitration, the answer and the optionally additional note as referred to in Articles 5, 6 and 7 above, or after the passage of the time limits to receive them, the Secretary-General shall appeal to the Court for the provision of the costs of the arbitration, for the implementation thereof and, if possible, for the setting of the place of arbitration.

The file shall be sent to the arbitrator when the arbitral tribunal is constituted, and the decisions taken pursuant to Article 11.2 for the payment of the provision have been met.

Article 9: No Arbitration Agreement

When, *prima facie*, there is no agreement between the parties for the application of these Rules, if the Respondent refuses the arbitration of the Court, or does not answer within the period of forty-five (45) days provided for in Article 6 above, the claimant shall be informed thereof by the Secretary-General who expresses the intention to propose to the Court to decide not to proceed with the arbitration.

The Court shall decide, in light of the observations of the claimant submitted within thirty (30) days, whether it believes that he should present his case.

Article 10: Effects of the Arbitration Agreement

10.1 If the parties are agreed to have recourse to arbitration of the Court, they hereby shall be deemed to have submitted ipso facto to the provisions of Title IV of the OHADA Treaty, to these Rules, the Rules of Procedure of the Court, their appendices and the Fee Scale of arbitration costs, in their version in force at the date of the introduction of the arbitration proceeding referred to in Article 5 above.

10.2 If one of the parties refuses or abstains to participate in the arbitration, it shall take place notwithstanding such refusal or such abstention.

10.3 When one of the parties raises one or several pleas related to the existence, validity, or to the scope of the arbitration agreement, the Court, having recorded, prima facie, the existence of this agreement, may decide, without prejudice to the admissibility or the merits of these pleas, that the arbitration shall be held. In this case, it will be up to the arbitrator to take all decisions on its own competence.

10.4 Unless otherwise stipulated, if the arbitrator considers that the arbitration agreement is valid and that the contract between the parties is null or non-existent, the arbitrator shall be competent to determine the respective rights of the parties and rule on their requests and conclusions.

10.5 Unless otherwise stipulated, the arbitration agreement shall confer jurisdiction on the arbitrator to decide on any interim or conservatory request during the course of the arbitral proceedings.

Awards made under the preceding paragraph shall be susceptible to immediate request for exequatur, if enforcement is necessary for the implementation of these interim or conservatory awards.

Before the submission of the file to the arbitrator and exceptionally after such submission, where the urgency of interim and conservatory measures requested would not allow the arbitrator to make a decision in a timely manner, the parties may request such measures from the competent judicial authority.

Such requests, as well as the measures taken by the judicial authority, shall be communicated without delay to the Court,which shall inform the arbitrator.

ARTICLE 11: Payment of Arbitration Costs

11.1 The Court shall set the amount to pay in order to face the costs of arbitration for claims brought before it, as defined by Article 24 (2 a) below.

Such amount shall then be adjusted, where the amount in dispute is amended to a quarter at least, or if new evidence impose such adjustment.

Separate amounts for the main request and the counterclaims may be fixed if requested by a party.

11.2 Payments are due in equal shares by the claimants and the respondents. However, such payment may be made wholly by each of the parties to the main claim and the counterclaim, in the event that the other party declines to pay.

Thus fixed amounts shall be paid to the Secretary General of the Court in full, before delivery of the file to the arbitrator; for three quarters at most, their payment can be guaranteed by a satisfactory bank guarantee.

11.3 The arbitrator shall be given only the files that have met fully the conditions of paragraph 11.2 above.

When an additional amount has to be paid, the arbitrator shall adjourn the proceedings until such amount has been paid to the Secretary-General.

ARTICLE 12: Notification, Communication and Deadlines

12.1 Briefs, correspondence and written notes exchanged between the parties, as well as all appendices, shall be submitted in as many copies as there are parties, plus one copy for each arbitrator and one for the Secretary General of the Court, except for appendices that are not necessary to provide to the latter, unless there is a specific request from him.

12.2 Briefs, correspondence and communications from the Secretariat, the arbitrator or the parties, shall be validly made when:

- They are delivered against receipt or,
- They are shipped by registered letter to the address or at the last address known to the party who is the addressee, as communicated by the latter or by the other party, as the case may be, or,
- By all means of communication capable of leaving a written record, the original being authentic in cases of dispute.

12.3 Notification or communication shall be

considered valid when it has been received by the person concerned or ought to be received by the person concerned or his representative.

12.4 Time limits set by these Rules or by the Court pursuant to these Rules or its internal rules, shall enter into force from the day following that on which the notification or communication is considered as made under the terms of the previous paragraph.

When, in the country where the notification or communication was considered as made on a certain date, the next day is a public holiday or non-working day, the time limit shall run from the first following business day.

Public holidays and non-working days shall be included in the calculation of the time limits and shall not lengthen them.

If the last day of the time limit is a public holiday or a non-working day in the country where the notification or communication was considered as made, the time limit shall expire at the end of the first next business day.

Article 13: Place of arbitration

The place of the arbitration shall be set in the arbitration agreement or a subsequent agreement between the parties.

Otherwise, it shall be set by a Court decision before the delivery of the file to the arbitrator.

After consultation with the parties, the arbitrator may decide to hold hearings in any other place. In case of disagreement, the Court shall decide.

Where the circumstances make it impossible or difficult to conduct the arbitration at the place that has been set, the Court may, at the request of the parties, or a party, or the arbitrator, choose another place.

Article 14: Confidentiality of Arbitral Proceedings

The arbitral proceedings shall be confidential. The works of the Court related to the conduct of the arbitration proceedings, as well as the meetings of the Court for the administration of the arbitration shall be bound by this confidentiality. It shall also apply to the documents submitted to the Court or issued by it on the occasion of the procedures at its behest.

Unless otherwise agreed by all the parties, the latter and their legal advisors, arbitrators, experts, and all those involved in the arbitration procedure, shall respect the confidentiality of the information and of the documents that are submitted during this proceeding. The confidentiality shall extend, under the same conditions, to the arbitral awards.

Article 15: Minutes recording the Arbitration Purpose and fixing the Arbitration Conduct.

15.1 After the arbitrator receives the arbitration file, he shall convene the parties or their duly authorized representatives and their legal advisors at a meeting to be held as soon as possible and at the latest within sixty (60) days from the receipt of the request. The purpose of this meeting shall be:

a) To evidence the appointment of the arbitrator and the requests on which he has to rule. They shall list those requests as embodied in the briefs respectively submitted by the parties to that date, with a summary statement of the reasons of these requests and the pleas therefor so that he can issue judgment.

b) To record whether or not there is an agreement of the parties on the items listed in Articles 5(e) and 6(b) and (d) above.

Absent such agreement, the arbitrator shall record that the award will have to decide on this matter. During the meeting, the language of arbitration shall be decided upon immediately by the arbitrator in light of the statements of the parties on this matter, taking into account the circumstances.

Where necessary, the arbitrator shall ask the parties if they intend to confer to him the powers of amiable compositeur. Their response shall be noted.

c) To make arrangements which seem appropriate for the conduct of the arbitral proceeding that the arbitrator intends to apply, and the rules for applying them.

d) To set a provisional timetable of the arbitral proceedings, specifying the dates of

submission of the briefs which are deemed necessary, and the date of the hearing on which discussions will be declared closed.
This hearing date should not be set by the arbitrator for more than six months after the meeting unless otherwise agreed by the parties.

The arbitrator shall draw the minutes of the meeting provided for in Article 15.1 above. The minutes shall be signed by the arbitrator.

The parties or their representatives shall also be invited to sign the minutes. If one of the parties refuses to sign the minutes or forms reservations against them, said minutes shall be submitted to the Court for approval.

A copy of these minutes shall be sent to the parties and their legal advisors, as well as to the Secretary-General of the Court.

15.2 A provisional schedule of the arbitration contained in the minutes provided for in Article 15.2 may, if necessary, be amended by the arbitrator, on their own initiative after comments of the parties, or at the request thereof.

This revised schedule shall be sent to the Secretary-General of the Court to be communicated to the latter.

15.3 The arbitrator shall draft and sign the award within ninety (90) days following the close of the discussions. This time period may be extended by the Court at the request of the arbitrator if he is unable to comply therewith.

15.4 When the award made does not end the arbitration proceedings; a meeting shall immediately be convened to set a new timetable for the award, under the same conditions, which will completely settle the dispute.

Article 16: Rules Governing the Proceedings

The rules governing the proceedings before the arbitrator shall be the ones set by these Rules and, in the silence of these, those which the parties or, failing them, the arbitrator, determine by referring or not to a domestic law applicable to the arbitration proceedings.

Article 17: Law Governing the Merits of the Case

The parties shall be free to determine the law that the arbitrator shall apply to the merits of the dispute. If the parties fail to state the applicable law, the arbitrator shall apply the law deemed appropriate in such a dispute.

In all cases, the arbitrator shall take into account the provisions of the contract and the practices of the trade.

The arbitrator shall be conferred the powers of amiable compositeur if the parties have agreed on this question in the arbitration agreement or after.

Article 18: New Requests

During the proceedings, the parties shall be free to discuss new means for supporting the requests they have formulated.

They may also make new requests, counterclaims or other when these requests are covered under the arbitration agreement, and unless the arbitrator considers that he should not authorize such an extension of his mandate due, inter alia, to the lateness of the submission of the extension.

Article 19: Establishing the Facts of the Case

19.1 The arbitrator shall establish the facts of the case as soon as possible by all appropriate means.

After studying the written submissions of the parties and their supporting arguments, the arbitrator shall hear the parties adverserially if either of them so requests; failing that, he may decide ex officio their hearing.

The parties shall appear either in person or by duly appointed representatives. Their legal advisors may assist them.

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

The hearing of the parties shall take place on the day and at the place set by the arbitrator.

If one of the parties, although regularly convened, does not appear, the arbitrator, after making sure the convocation was well received, shall have the power, in the absence of just cause, to proceed with the arbitration, and the discussion having been deemed to have been in the presence of both parties.

Minutes of the hearing of the parties, duly signed, shall be addressed in copy to the Secretary-General of the Court.

19.2 The arbitrator may decide on the documents submitted if the parties so request or agree.

19.3 The arbitrator may appoint one or more experts, define their mandate, receive their reports and hear them in the presence of the parties or their legal advisors.

19.4 The arbitrator shall rule on the conduct of the hearings.

These shall be in the presence of both parties.

Unless otherwise agreed by the arbitrator and the parties, the hearings shall not be open to people outside the procedure.

Article 20: Award agreed between the Parties

If the parties reach a settlement in the arbitration proceedings, they may ask the arbitrator that such agreement be recorded in the form of an award made by consent.

Article 21: Objection to Jurisdiction

21.1 If a party intends to contest the competence of the arbitrator to hear all or part of the dispute, for any reason whatsoever, he must raise his objection in the submissions provided for in Articles 6 and 7 above, and, at the latest, at the meeting referred to in Article 15.1 above.

21.2 At any time during the arbitral proceeding, the arbitrator may consider its own jurisdiction on grounds of public policy on which the parties are then invited to submit their comments.

21.3 The arbitrator may rule on the objection to jurisdiction either by an interim award or in a final or partial award after discussions on the merits.

When the Court is seized in judicial terms, in accordance with the provisions of Chapter III below, on the decision on jurisdiction or non-jurisdiction made by an interim award, the arbitrator may nevertheless continue the proceeding without waiting for the ruling of the Court thereon.

Article 22: Arbitral Award

22.1 Unless otherwise agreed by the parties, and provided that such agreement is admissible under the applicable law, all awards must be reasoned.

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

22.3 They shall be signed by the arbitrator, having regard, where appropriate, to the provisions of Articles 4.3 and 4.4 above.

If three arbitrators have been appointed, the award shall be made by the majority. Absent a majority, the President of the arbitral tribunal shall alone make a decision. The award shall then be signed, as appropriate, by the three members of the arbitral tribunal, or by the President alone.

In the event that the award was made by the majority, the refusal to sign of the minority arbitrator does not affect the validity of the award.

22.4 Any member of the arbitral tribunal may remit to the President thereof his particular views to be attached to the award.

Article 23: Prior Scrutiny by the Court

23.1 The draft awards on the jurisdiction, partial awards which put an end to certain claims of the parties, and final awards shall be submitted for scrutiny to the Court before signing.

Other awards shall not be subject to prior scrutiny, but shall be transmitted to the Court solely for information purposes.

23.2 The Court may only lay down modifications as to the form of the award.

It shall also give the arbitrator details required for the payment of the costs of arbitration, including the amount of the arbitrator's fees.

Article 24: Decision as to the Costs of the Arbitration

24.1 The final award of the arbitrator, in addition to the decision on the merits, shall set the costs of the arbitration and decide which of the parties shall make the payment, or to what extent they shall be shared between them.

24.2 The arbitration costs shall include:

a) The arbitrator's fees and administrative expenses fixed by the Court, potential expenses incurred by the arbitrator, the operating expenses of the arbitral tribunal, and the fees and expenses of experts in case of expertise.

The regular fees of arbitrators and the administrative costs of the Court shall be fixed in accordance with a schedule established by the General Assembly of the Court and approved by the Council of Ministers of OHADA acting under the conditions set forth in Article 4 of the Treaty;

b) Regular expenses incurred by the parties for their defense, as determined by the arbitrator based on the requests made on this question by the parties;

24.3 If the circumstances of the case so exceptionally require, the Court may fix the fees of the arbitrator at a

higher or lower amount than that this which would result from the application of the scale.

Article 25: Notification of the Award

25.1 The Secretary-General shall notify the award rendered to the parties by sending them the text signed by the arbitrator, after the arbitration costs referred to in Article 24.2 a) above have been fully paid to the Secretary-General by the one or all of the parties.

25.2 Additional copies certified by the Secretary-General of the Court shall be delivered at any time to the parties who request them and to them only.

25.3 By the fact of the notification thus effected, the parties shall waive any other notification or submission for which the arbitrator is responsible.

Article 26: Correction and Interpretation of the Award

Any request for the correction of material errors of an award, or interpretation thereof, or to supplement the award which failed to rule on a request that was submitted to the arbitrator, shall be addressed to the Secretary-General of the Court within 45 days of the notification of the award.

Upon receipt, the Secretary-General shall communicate the request to the arbitrator and the opposing party and shall give them 30 days to address their observations to the claimant and the arbitrator.

If the Secretary-General for whatsoever reason is unable to transmit the application to the arbitrator who ruled on that award, the Court shall appoint a new arbitrator after receiving the submissions of the parties.

After hearing the opposing views of the parties in the presence of both parties and examining any supporting documents that were submitted, the draft award shall be sent for prior scrutiny provided for in Article 23 within sixty (60) days of the referral to the arbitrator.

The preceding procedure shall not incure fees except in the case provided for in the 3rd paragraph. If there are fees to be paid, they shall be borne by the party which filed the application if it is rejected in its entirety. Otherwise, each party shall pay in the proportion set for the costs of this arbitration in the award.

Article 27: Force of *Res Judicata*

Arbitral awards made pursuant to the provisions of these Rules shall have the final force of *res judicata* in the territory of each State Party, in the same manner as decisions made by the courts of the State.

They may be subject to enforcement in the territory of one any of the States Parties.

Article 28: Miscellaneous

Any award made under these Rules shall be filed in its original form at the General Secretariat of the Court.

In all cases not covered explicitly by these Rules, the Court, and the arbitrator proceed by refering thereto and make their best efforts to make the award legally acceptable.

CHAPTER III
RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARDS

Article 29: Objection to Validity

29.1 If a party intends to contest the validity of the arbitral award and the resulting force of *res judicata* pursuant to the foregoing Article 27 above, it shall submit a request to the Court and notify the opposing party.

29.2 This objection to the validity of the award shall only be admissible if, in the arbitration agreement, the parties have not renounced thereto.

It cannot be based on one or more of the reasons listed below in Article 30.6 authorizing objection to exequatur.

29.3 The request may be submitted as soon as the award is made. It shall cease to be admissible if it is not filed within two (2) months of the notification of the award referred to in Article 25 above.

29.4 The Court shall establish the facts of the case and shall act under the conditions set forth in its Rules of Procedure.

29.5 If the Court refuses the validity and the force of *res judicata* to the award referred to hereby, it shall annul the award.

It shall hold hearings and rule on the merits if the parties have made such request.

If the parties have not requested the hearing, the procedure shall resume at the request of the most diligent party from, where appropriate, the last act of the arbitral proceedings recognized as valid by the Court.

Article 30: Enforcement

30.1 Enforcement shall be requested by an application to the Court.

30.2 Enforcement shall be granted by order of the President of the Court or the judge delegated for this purpose and shall make the award enforceable in all States Parties. This procedure shall not be held in the presence of both parties.

30.3 Enforcement shall not be granted if the Court has already seized, for the same award, over a complaint filed pursuant to Article 29 above. In such cases, the two requests shall be attached.

30.4 If the exequatur is denied for any other reason, the claimant may submit its requests to the Court within fifteen days of the rejection of its application. It shall notify its request to the opposing party.

30.5 When the order of the President of the Court or designated judge grants the exequatur, that order must be notified by the claimant to the respondent.
The latter may submit, within fifteen days of such notification, an opposition that is being decided in the presence of both parties at an ordinary judicial hearing of the Court, in accordance with its Rules of Procedure.

30.6 Enforcement may not be refused, and opposition to exequatur shall only be open in the following cases:

1 When the arbitrator ruled without an arbitration agreement or on a void or expired agreement;

2 When the arbitrator ruled without complying with the mandate which had been conferred to him;

3 When the principle of adversarial procedures has not been complied with;

4 When the award is contrary to international public policy.

Article 31: Enforcement Order

31.1 The Secretary-General of the Court shall deliver to the party which made the request a copy of the award certified true to the original submitted pursuant to Article 28, containing a certificate of enforceability.

This certificate shall state that the exequatur has been granted, as the case may be, either by an order of the President of the Court regularly notified, becoming final in the absence of an objection formed within a period of fifteen (15) days mentioned above, or by a Court judgment dismissing such objection, or by a Court judgment reversing the refusal of exequatur.

31.2 In light of the copy of the award with the certificate of the Secretary-General of the Court, the national authority designated by the State in which enforcement is sought shall attach the enforcement order as it is in force in that State.

Article 32: Judicial review

The judicial review against awards and against the Court orders when the latter has ruled on merits pursuant to Article 29.5, paragraph 1 above, shall be open in the cases and under the conditions set forth in Article 49 of the Court's Rules of Procedures.

Article 33: Third-Party Objection

Third party proceedings against awards and against the Court orders when the latter has ruled on merits pursuant to Article 29.5, paragraph 1, shall be open in the cases and under the conditions set forth in Article 47 of the Court Rules of Procedures.

Article 34: Final Provisions

These Rules of Arbitration shall become effective thirty (30) days after they have been signed. They shall be published in the OHADA Official Journal. They shall also be published in the Official Journal of the States Parties or by any other appropriate means.

Executed in Ouagadougou on March 11, 1999

Republic of BENIN
[signed]
M. Joseph H. GNONLONFOUN

BURKINA FASO
[signed]
M. Paul KIEMDE

Republic of CAMEROON
[signed]
M. Laurent ESSO

CENTRAL AFRICAN Republic
[signed]
M. Laurent GOMINA BAMBALI

Republic of COTE-D'IVOIRE
[signed]
M. Kouakou BROU JEAN

Republic of MALI
[signed]
M. Amidou DIABATE

Republic of NIGER
[signed]
M. Issifou ABBA MOUSSA

Republic of SENEGAL
[signed]
M. Serigne DIOP

Republic of CHAD
[signed]
M. Mahamat LIMANE

Republic of TOGO
[signed]
M. Bilokotipou YAGNINIM

DECISION No. 004/99/CCJA
ON ARBITRATION COSTS

THE OHADA COMMON COURT OF JUSTICE AND ARBITRATION;

Having regard to the Treaty on the Harmonization of Business Law in Africa,

Having regard to the Rules of Arbitration of the OHADA Common Court of Justice and Arbitration, in particular, its Articles 11 and 24;

Having regard to Rule No. 001/98 CM of January 30, 1998, on the Financial Rules of OHADA Institutions, in particular, their Article 14.

DECIDES

Chapter 1: Provisions for Arbitration Costs

Article 1: Each request for arbitration subject to the terms of the Rules of Arbitration of the Common Court of Justice and Arbitration (CCJA), shall be accompanied by an advance of 200,000 CFA Francs representing administrative expenses. Such payment is non-refundable and shall be credited to the claimant's share of the advance of the arbitration administrative expenses.

Article 2: The provisional advance fixed by the Court pursuant to Article 11 of the Rules of Arbitration shall normally not exceed the amount obtained by adding together the administrative expenses (Table in Appendix I), the minimum of the arbitrator's fees corresponding to the amount of the claim (Table in Appendix II) and any refundable expenses of the arbitral tribunal incurred from the drafting of the minutes. If such amount is not stated, the Court shall set the amount of the advance at its discretion. The payment made by the claimant shall be credited to his share of the arbitration expenses determined by the Court.

Article 3: The advance of the costs fixed by the Court pursuant to Article 11 of the Rules of Arbitration shall comprise the arbitrator's fees and the administrative expenses, any eventual arbitrator's expenses, the operational costs of the arbitral tribunal, and the fees and experts' fees in the event that there are experts.

Article 4: The advance is due in equal shares by the claimants and the respondents. However, the payment of this advance may be made in full by each of the parties in the event that one or the other parties refrain from paying.

The advance thus fixed shall be paid in full at the General Secretariat of the Court before the file is delivered to the arbitrator: for three-quarters at most, its payment may be backed by sufficient bank guarantee.

The General Secretariat shall prescribe the terms governing the bank guarantees that the parties may use pursuant to the foregoing.

Article 5: The amount of the advance can be adjusted at any time if the amount of the claim is amended by a quarter at least, or if new evidence impose such adjustment.

Chapter II: Costs and Fees

Article 6: The Court shall fix the arbitrator's fees in accordance with the table of Appendix II or at its discretion when the amount in dispute is not stated.

If circumstances in the case so exceptionally require, the Court may fix the fees of the arbitrator at a higher or lower figure, than this which would result from the application of the scale.

Article 7: In setting the arbitrator's fees, the Court shall take into consideration the diligence of the arbitrator, the time spent, the rapidity of the procedure and the complexity of the dispute so as to arrive at a figure within the limits specified, or at a figure higher or lower than those limits in the exceptional circumstances described in Article 6, paragraph 2 above.

Article 8: When a case is submitted to more than one arbitrator, the Court may, at its discretion, increase the lump sum for the payment of fees, which generally shall not exceed three times what is paid to a sole arbitrator.

Article 9: The fees and expenses of the arbitrator shall exclusively be fixed by the Court, in accordance with what is provided for in the Rules of Arbitration. Any separate agreement between the parties and arbitrators on their fees shall be null and void.

Article 10: The Court shall fix the administrative expenses for each arbitration according to the Table in Appendix I, or, when the amount in dispute is not stated, at its discretion. If exceptional circumstances of the case so require, the Court may fix the administrative expenses to a lower or higher figure than that which would result from the application of the table in Appendix I, provided that they do not exceed the maximum provided for in the calculation table of Appendix III.

Article 11: If an arbitration is terminated before the rendering of the final award, the Court shall fix the costs of arbitration at its discretion taking into account the stage reached in the arbitration proceedings, as well as other relevant circumstances.

Article 12: In the case of a request made pursuant to Article 26 of the Rules of Arbitration, the Court may fix an advance to cover the additional fees and costs of the arbitral tribunal and make the transmission of such request to the arbitral tribunal subject to cash payment of the advance in full. The Court may also fix, at its discretion, the arbitrator's fees in the case provided for in Article 26, paragraph 3 of the Rules of Arbitration.

Article 13: Amounts paid to the arbitrator shall not include the value added tax (VAT) or any other taxes, charges and all dues applicable to the fees of the arbitrator. The parties shall pay these taxes, charges or dues.

Chapter II: Table of Calculation for Administrative Expenses and Arbitrator's Fees

Article 14: The annexed calculation tables for the administrative expenses and the attached arbitrator's fees shall apply to all procedures introduced after the Rules of Arbitration enter into force.

Article 15: To calculate the amount of administrative expenses and the arbitrator's fees, the amounts calculated for each portion must be added.

However, if the amount in dispute exceeds 1 billion francs, a lump sum of three million will constitute the totality of administrative expenses.

Article 16: This decision shall enter into force on the date of its approval by the OHADA Council of Ministers. It shall be published in the OHADA Official Journal.

Executed in Abidjan on February 3, 1999

[signed]
The President

DECISION No. 004/99/CM ON THE APPROVAL OF DECISION No. 004/99/CCJA ON ARBITRATION COSTS

The Council of Ministers of the Organization for the Harmonization of Business Law in Africa (OHADA), convened in Ouagadougou (Burkina Faso) on March 11 and 12, 1999;

Having regard to the Treaty on the Harmonization of Business Law in Africa;

Having regard to the Rules of Arbitration of the OHADA Common Court of Justice and Arbitration, in particular; to the articles 11 and 24;

Having regard to the scale established by the General Assembly of the OHADA Common Court of Justice and Arbitration on February 3, 1999;

Decides:

Article 1: The scale of the arbitrators' fees and the administrative expenses of the OHADA Common Court of Justice and Arbitration established by the Court in its General Assembly of February 3, 1999, are approved.

Article 2: Such decision shall be published in the OHADA Official Journal and communicated everywhere where need be.

Executed in Ouagadougou on March 12, 1999

[signed]

Paul KIEMDE

APPENDIX DECISION No. 004/99/CCJA

APPENDIX I: ADMINISTRATIVE EXPENSES

AMOUNT IN DISPUTE			ADMINISTRATIVE EXPENSES (1)
Up to		25,000,000	500,000
From 25,000,000	to	125,000,000	2.00%
De 125,000,000	to	500,000,000	1.00%
From 500,000,000	to	750,000,000	0.40%
From 750,000,000	to	1,000,000,000	0.20%
From 1,000,000,000	to	5,000,000,000	0.05%
Over		5,000,000,000	30,000,000

(1) For illustrative purposes only. The table in Appendix III indicates the arbitrator's fees when calculations are made correctly.

APPENDIX II: ARBITRATOR'S FEES

AMOUNT IN DISPUTE			FEES (1)	
			Minimum	Maximum
Up to		25,000,000	500,000	10.00%
From 25,000,000	to	125,000,000	1.50%	5.00%
From 125,000,000	to	500,000,000	1.00%	3.00%
From 500,000,000	to	750,000,000	0.50%	2.00%
From 750,000,000	to	1,000,000,000	0.30%	1.50%
From 1,000,000,000	to	5,000,000,000	0.10%	0.30%
Over		5,000,000,000	0.01%	0.05%

For illustrative purposes only. The table in Appendix III indicates the arbitrator's fees when calculations are made correctly.

APPENDIX III: ADMINISTRATIVE EXPENSES AND ARBITRATOR'S FEES CALCULATED CORRECTLY

AMOUNT IN DISPUTE	ADMINISTRATIVE EXPENSES	ARBITRATOR'S FEES	
		Minimum	Maximum
Up to 25,000,000	500,000	500,000	10.00% of the amount in dispute
From 25,000,000 to 125,000,000	500,000 + 2.00% of the amount over 25,000,000	500,000 + 1.50% of the amount over 25,000,000	2,500,000 + 5.00% of the amount over 25,000,000
From 125,000,000 to 500,000,000,000	2,500,000 + 1.00% of the amount over 125,000,000	2,000,000 + 1.00% of the amount over 125,000,000	7,500,000 + 3.00% of the amount over 125,000,000
From 500,000,000 to 750,000,000,000	6,250,000 + 0.40% of the amount over 500,000,000	5,750,000 + 0.50% of the amount over 500,000,000	18,750,000 + 2.00% of the amount over 500,000,000
From 750,000,000 to 1 ,000,000,000	7,250,000 + 0.20% of the amount over 750,000,000	7,000,000 + 0.30% of the amount over 750,000,000	23,750:000 + 1.50% of the amount over 750,000,000
From 1,000,000 to 5,000,000,000	7,750,000 + 0.05% of the amount over 1,000,000,000	7,750,000 + 0.10% of the amount over 1,000,000,000	27,500,000 + 0.30% of the amount over 1,000,000,000
Over	30,000,000	11,750,000 + 0.01% of the amount over	5,000,000,00039,500,000 + 0.05% of the amount over 5,000,000,000

Translation subject to further correction (December 2016)

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