



**Organisation pour l'Harmonisation en Afrique du Droit des Affaires
Organization for the Harmonization of Business Law in Africa
Organización para la Armonización en África del Derecho Mercantil
Organização para a Harmonização em África do Direito dos Negócios**

COUNCIL OF MINISTERS

ARBITRATION RULES OF THE COMMON COURT OF JUSTICE AND ARBITRATION

The Council of Ministers of the Organisation for the Harmonisation of Business Law in Africa (OHADA),

- Having regard to the Treaty on the Harmonisation of Business Law in Africa, signed on 17 October 1993 in Port Louis, as amended on 17 October 2008 in Quebec, in particular its articles 2, 8, 21, 26 and 39 ;
- Having regard to the opinion No. 04/2017/AU dated 5 and 6 October 2017 of the Common Court of Justice and Arbitration ;

After deliberating;

Adopts by unanimous vote of the Member States present and voting, the Rules providing the following:

CHAPTER ONE – POWERS OF THE COMMON COURT OF JUSTICE AND ARBITRATION IN ARBITRATION MATTERS

Article 1 – Exercise by the Court of its powers

1.1 The Common Court of Justice and Arbitration, hereinafter referred to as “the Court”, shall exercise under the conditions defined below, the power to administer arbitrations within the scope defined by article 21 of the Treaty on the Harmonisation of Business Law in Africa, hereinafter referred to as the “Treaty”.

The decisions taken by the Court as such to ensure the implementation and successful completion of arbitral proceedings and those concerning the review of the award, are of an administrative nature.

To administer the arbitral proceedings, the Court is assisted by a Secretary General.

Members of the Court having the same nationality as a State directly involved in arbitral proceedings shall withdraw from the chamber of the Court regarding the case at stake. The President of the Court shall proceed to their replacement, as the case may be, by order.

The Court shall communicate with the arbitral tribunal and with the parties during the arbitration through the intermediary of the Secretary General. The latter shall notify them its decisions, as well as of those taken by the Court.

The President of the Court may have recourse to experts for an opinion pursuant to the conditions defined in the Internal Rules of the Court.

The administrative decisions taken by the Court shall not have a *res judicata* effect and may not be appealed. The grounds for these decisions may be communicated to all parties, provided one of the parties involved in the arbitral proceedings so requests before the decision is made.

1.2 The Court shall exercise the judicial powers granted to it by Article 25 of the Treaty in respect of *res judicata* and exequatur of arbitral awards, in its ordinary judicial composition and pursuant to the applicable procedure.

1.3 The powers of the Court defined above at paragraph 1.1 regarding the administration of arbitral proceedings shall be exercised pursuant to the provisions of chapter II of these Rules.

The judicial powers of the Court defined above at paragraph 1.2 shall be exercised pursuant to the provisions of chapter III of these Rules and pursuant to the Rules of procedure of the Court.

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

Article 2 – The mandate of the Court

2.1 The mandate of the Court shall be the administration, in accordance with these Rules, of arbitral proceedings when a contractual dispute, pursuant to an arbitration agreement, is referred to it by any party to a contract, either where one of the parties is a resident or has its usual place of residence in the territory of one or more of the Member States, or where the contract is performed or to be performed, in whole or in part, in the territory of one or more Member States.

The Court may also administer arbitral proceedings based on an instrument related to an investment, in particular an investment code or a bilateral or multilateral investment treaty.

2.2 The Court does not itself settle the disputes.

The Court appoints or confirms the arbitrators. It shall be informed of the progress of the proceedings and shall review the draft awards.

2.3 The operation of Court in arbitration matters is governed by its Internal Rules, as adopted by the general assembly. These Internal Rules shall enter into force upon approval by the Council of Ministers pursuant to the provisions of article 4 of the Treaty.

Article 3 – Appointment of arbitrators

3.1 The dispute may be settled by an arbitral tribunal composed of a sole arbitrator or of three arbitrators.

Where the parties have agreed that the dispute shall be settled by a sole arbitrator, he may be appointed by mutual agreement subject to the confirmation by the Court. If the parties fail to agree within thirty (30) days following the notification of the request for arbitration, the arbitrator shall be appointed by the Court.

Where the dispute is to be referred to three arbitrators, each party shall in the request for arbitration or in the answer to the request appoint one independent arbitrator, subject to the confirmation by

the Court. If one of the parties fails to appoint an arbitrator, the latter shall be appointed by the Court. The third arbitrator, who will act as president of the arbitral tribunal, shall be appointed by the Court, unless the parties have agreed that the two arbitrators they had designated should appoint the third arbitrator within a given time limit. In such event, the Court shall confirm the third arbitrator. If the two arbitrators fail to reach an agreement within the time limit fixed by the parties or granted by the Court, the third arbitrator shall be appointed by the Court.

Where the parties have not mutually agreed upon the number of arbitrators, the Court shall appoint a sole arbitrator, unless it considers that the dispute is such as to justify the appointment of three arbitrators. In such latter case, the parties shall appoint an arbitrator within a period of fifteen (15) days.

Where there are more than two parties, either as claimants or respondents, who have to submit to the Court joint proposals for the appointment of an arbitrator and where they fail to agree on such appointment within the fixed time limit, the Court may appoint each member of the arbitral tribunal.

3.2 The arbitrators may be selected from the list of arbitrators drawn up by the Court and updated annually. The members of the Court may not be included on the said list.

3.3 In appointing arbitrators, the Court may request the opinion of the experts mentioned at article 1.1, paragraph 6, and shall consider, in particular, the nationality of the parties, their residence, the residence of their counsel, the residence of the arbitrators, the seat of the arbitration, the language of the parties, the nature of the issues in dispute, the availability of the arbitrators and, possibly, the law applicable to the merits.

Where it has to appoint one or more arbitrator(s), the Court shall proceed as quickly as possible, and, unless otherwise agreed by the parties, according to the following procedure:

- a) the Secretary General shall send each of the parties an identical list prepared by the Court comprising at least three names;
- b) within a time limit fixed by the Secretary General, each party shall return this list to the Secretary General, indicating on it the names of the arbitrators by order of preference and, if applicable, deleting the names to which it has an objection;
- c) after expiry of the deadline fixed by the Secretary General, the Court shall appoint the arbitrator or the arbitrators on the basis of the names approved on the lists sent to him, and following the order of preference indicated by the parties.

If, for any reason whatsoever, the appointment may not be made pursuant to this procedure, the Court may exercise its discretionary powers to appoint one or more arbitrators.

Article 4 – Independence, challenge and replacement of arbitrators

4.1 Any arbitrator appointed or confirmed by the Court shall be and remain impartial and independent of the parties.

He shall pursue his mission efficiently and diligently until the end of the proceedings.

Before his appointment or confirmation by the Court, the prospective arbitrator, shall disclose in writing to the Secretary General any facts or circumstances likely to raise legitimate doubts about the arbitrator's impartiality or independence.

Upon receipt of this information, the Secretary General shall inform the parties in writing and shall fix a time limit for the parties to submit their respective comments.

The arbitrator shall immediately disclose, in writing, to the Secretary General and the parties, any facts and circumstances of similar nature which may occur between his appointment or confirmation by the Court and the notification of the final award.

4.2 The challenge of an arbitrator based on the alleged lack of independence or any other reason shall be made by submission to the Secretary General of a statement specifying the facts and circumstances on which the challenge is based.

To be admissible, the challenge shall be sent by the party either within thirty (30) days from the date of receipt by that party of the notification of the appointment or confirmation of the arbitrator by the Court, or within thirty (30) days from the date when the party filing the challenge request was informed of the facts and circumstances on which the challenge is based, if such date is subsequent to the receipt of such notification.

The Court shall rule upon the admissibility of the request, and at the same time, if it deems necessary, on the merits of the challenge, after the Secretary General has given an opportunity for the arbitrator concerned, the parties and any other members of the arbitral tribunal to comment in writing within a reasonable period of time. These written comments are sent to the other parties and to the members of the arbitral tribunal.

4.3 An arbitrator shall be replaced upon his death, if the Court accepts the challenge against him, or if the Court accepts his resignation.

Where the resignation of an arbitrator is not accepted by the Court and the arbitrator nevertheless refuses to continue to perform his mandate, he shall be replaced if he is a sole arbitrator or the President of the arbitration tribunal.

In any other cases, the Court shall consider whether the replacement is appropriate taking into account the progress of the proceedings and the opinion of the two arbitrators who have not resigned. Where the Court deems the replacement unnecessary, the proceedings shall continue and the award shall be rendered despite the refusal to participate by the arbitrator whose resignation has been refused.

The Court shall make its decision having regard, in particular, to the provisions of Article 28 (2) of these Rules.

4.4 An arbitrator shall also be replaced where the Court decides that he is prevented *de jure* or *de facto* from fulfilling his mission or that he is not fulfilling his role in accordance with Part IV of the Treaty or in accordance with the Rules or within the prescribed time limits.

When, on the basis of information that has come to its attention, the Court considers applying the preceding paragraph, it shall decide on the replacement after the Secretary General has communicated this information in writing to the arbitrator concerned, the parties and any other members of the arbitral tribunal, if any, and has given them the opportunity to comment in writing within a reasonable period of time.

In case of replacement of an arbitrator who is not fulfilling his role in accordance with Part IV of the Treaty, these Rules of Arbitration, or within the prescribed time limits, the appointment of a new arbitrator shall be made by the Court upon the recommendation of the party who had appointed the arbitrator to be replaced without the Court being bound by the said recommendation.

Where the Court is informed that in an arbitral tribunal composed of three arbitrators, one of the arbitrators other than the president, is not participating in the arbitration even though he has not resigned, the Court may, pursuant to Article 4, paragraphs 3 and 4 above, not replace the said arbitrator if the two other arbitrators have agreed to continue the arbitration despite the failure of the said arbitrator to participate.

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

4.6 In all cases listed above at paragraphs 4.1 to 4.4, leading to the replacement of an arbitrator, the Secretary General shall put the parties and the other arbitrators in a position to present their written comments on the replacement, and shall communicate this information to the other parties and to the members of the arbitral tribunal.

The Court's decision regarding the appointment, confirmation, challenge or replacement of an arbitrator pursuant to the provisions of Article 3, paragraph 3.3 of these Rules is not subject to appeal.

Article 5 – Request for arbitration

Any party wishing to have recourse to arbitration pursuant to Article 21 of the Treaty, and of which the details of implementation are fixed by the present Rules shall submit its request to the Secretary General.

This Request shall contain:

- a) the names, first names, capacity, business name, postal and email addresses of the parties, with an indication of the domicile chosen for the continuation of the proceedings;
- b) the arbitration agreement binding the parties, either based on a contract or any other instrument or, as the case may be, the indication of the instrument related to an investment upon which the request is based;
- c) a brief statement of the dispute, the claimant's claims and arguments in support thereof, as well as an indication of the amount of its claims;
- d) any useful information and proposals concerning the number and choice of arbitrators;
- e) the agreements entered into between the parties relating to the seat of the arbitration, the language of the arbitration, the law applicable to the arbitration agreement, to the arbitral proceedings and to the merits of the dispute ; failing such agreements, the claimant shall state his wishes concerning these issues;

The Request shall include the payment of the fees for initiating the proceedings pursuant to the schedule of the costs in Annex II of the present Rules.

The Secretary General shall immediately notify the respondents the date of receipt of the request, and attach to this notification a copy of the request with all the supporting documents, a copy of

these Rules and shall send an acknowledgement of receipt of the request to the claimant. The Secretary General may require proof of the authority of any representative of a party acting in the name of the claimant or claimants.

The date of receipt by the Secretary General of the request for arbitration in accordance with this article constitutes the date of commencement of the arbitral proceedings.

If the request for arbitration is not accompanied by the amount of fees indicated in paragraph 3 of this article, or if the request the Secretary General to send him a sufficient number of copies of the request and all documents has not been satisfied, the Secretary General may grant the claimant a period in which to meet these requests and, if necessary, extend this deadline. When it expires, the request for arbitration file shall be closed, without this constituting an obstacle to reintroduction of the same requests at a later date in a new request for arbitration.

Article 6 – Response to the request

The respondent(s) shall, within thirty (30) days upon receipt of the notification of the request for arbitration from the Secretary General, submit their response to the latter

In the case mentioned at Article 3.1, paragraph 2 of these Rules, the parties' agreement shall be reached within the time limit of thirty (30) days provided in said article.

The response shall contain:

- a) confirmation or not of the names, first names, business name and address as stated by the claimant, with election of domicile residence for the continuation of the proceedings;
- b) confirmation or not of the existence of an arbitration agreement resulting from a contract or any other instrument between the parties that refers to arbitration pursuant to these Rules;
- c) a brief summary of the dispute and the position of the respondent regarding the claims brought against him with a statement of the arguments and documents upon which he intends to base his defense;
- d) the responses of the respondent as regards the issues raised in the request for arbitration under paragraphs (d) and (e) of Article 5 above.

Article 7 – Response to the Counterclaim

Where the respondent has filed a counterclaim with his response, the claimant may file a reply to the counterclaim by way of an additional submission within thirty (30) days from the date of receipt of the Counterclaim.

Article 8 – Advance on costs for the arbitration

Upon receipt of the request for arbitration, the response and, if applicable, the additional submission pursuant to the provisions of Articles 5, 6, and 7 above, or upon expiry of the time limit within which to file them, the Secretary General shall request the Court to fix a provisional

advance to cover the costs of the arbitration, the commencement of the arbitral proceedings and if applicable, the place of arbitration.

The file shall be sent to the arbitrator once the arbitral tribunal is constituted and once the decisions taken in accordance with Article 11.2 of these Rules for the payment of the advance have been satisfied.

Article 8-1 – Forced intervention

8-1.1 The party wishing to involve a party bound by the arbitration agreement but foreign to the arbitral proceedings, shall submit to the Secretary General a request for arbitration against the latter party.

Before the arbitral tribunal is constituted, the Court may fix a deadline for the submission of requests for intervention.

If the Tribunal has already been constituted when the request for intervention is made, or if one of the members has already been appointed or, as the case may be, confirmed, the intervention shall be declared inadmissible unless the parties and the intervening party agree otherwise and the arbitral tribunal accepts it, considering the state of progress of the arbitral proceedings.

The date of receipt of the request for intervention by the Secretary General shall be deemed to be the date of the introduction of the arbitral proceedings against the intervening party.

8-1.2 The request for intervention shall contain the following elements:

- a) the file reference for the existing proceedings,
- b) the name and full title, capacity, postal and email addresses of each of the parties, including the intervening party, and
- c) the elements required in Article 5, paragraphs 2.b, c and d of these Rules.

8-1.3 The request for intervention shall only be transmitted by the Secretary General if it is accompanied by the number of copies provided in Article 12.1 of these Rules and the amount of the filing fee required for initiation of the proceedings in the schedule of costs in Annex II.

8-1.4 The intervening party shall submit a response in accordance with and, subject to the necessary changes, the provisions of Article 6 of the present Rules or, if the arbitral tribunal has already been constituted, pursuant to the instructions of the latter. It may submit claims against any other party in accordance with the provisions of Article 7 above.

8-2 – Voluntary intervention

No voluntary intervention shall be admissible before the constitution of the arbitral tribunal.

After the constitution of the arbitral tribunal, any voluntary intervention to an arbitral proceedings shall be subject to approval by the parties and the arbitral tribunal.

Article 8-3 – Multiple parties

8.3.1 An arbitral procedure administered by the Court may take place between more than two parties if they have agreed to have recourse to arbitration in accordance with these Rules. In the event of a multipartite arbitral procedure, each party may submit claims against any other party.

8.3.2 Any party which submits claims pursuant to Article 8.3.1, shall provide the elements required in Article 5 of these Rules.

8.3.3 As soon as the file has been referred to the arbitral tribunal, it determines the procedure to be followed for any new claim.

Article 8-4 – Multiple contracts

8.4.1 Claims arising out of several contracts or in connection with them may be made within the framework of a single arbitral procedure.

8.4.2 Where these claims are made under several arbitration agreements, it will be for the arbitral tribunal to find that:

a) the parties have agreed to have recourse to arbitration pursuant to these Rules and that the arbitration agreements are compatible with one another, and

b) all parties to the arbitration have agreed that the claims will be decided within the framework of a single procedure.

Article 9 – Absence of an arbitration agreement

Where, *prima facie*, there is no arbitration agreement between the parties requiring the application of these Rules of arbitration, if the respondent objects to the arbitration of the Court or does not file a reply within the period of thirty (30) days provided in Article 6 above, the claimant shall be informed by the Secretary General that he intends to ask the Court to decide whether the arbitration can take place.

The Court decides based on the claimant's comments submitted within the next thirty (30) days, if the latter deems it necessary to file such comments.

Article 10 – Effects of the arbitration agreement

10.1 Where the parties have agreed to resort to an arbitration administered by the Court, they shall be deemed thereby to conform ipso facto with the provisions of Part IV of these Rules, of the Internal Rules of the Court, including their annexes, and the schedule of arbitration fees, in their version in force on the date of the commencement of the arbitral procedure pursuant to Article 5 of these Rules.

10.2 If one of the parties refuses or fails to participate in the arbitration, it shall proceed notwithstanding such refusal or failure.

10.3 Where one of the parties raises one or more arguments relating to the existence, validity or scope of the arbitration agreement, the Court, after having found the *prima facie* existence of this agreement, may decide whether the arbitration should take place, without prejudice to the

admissibility or the merits of these arguments. In this case, it will fall upon the arbitral tribunal to take any decisions regarding its own jurisdiction.

10.4 The arbitral tribunal alone is competent to rule on its own jurisdiction and on the admissibility of the request for arbitration.

Unless otherwise agreed, if the arbitral tribunal deems the arbitration agreement valid but the contract binding the parties to be null or inexistent, the arbitral tribunal shall have jurisdiction to determine the parties' respective rights and to decide their claims and conclusions.

Article 10-1 – Provisional measures

Unless otherwise agreed, the arbitration agreement shall confer jurisdiction on the arbitral tribunal to decide any claim for provisional or conservatory measures during the course of the arbitral proceedings, except for claims relating to judicial sureties and conservatory seizures.

Awards rendered within the framework of the above paragraph may be subject to immediate enforcement if the enforcement is necessary for implementation of these provisional or conservatory awards.

Before the file is forwarded to the arbitral tribunal and, in exceptional circumstances, even thereafter, where the urgent nature of the provisional or conservatory measures requested may not permit the arbitrator to rule promptly, the parties may apply to any competent state jurisdiction for such measures.

These requests and any measures taken by the competent state jurisdiction shall be notified to the Secretary General without delay, who shall inform the arbitral tribunal accordingly.

Article 11 – Advance on costs of the arbitration

11.1 The Court shall fix the amount of the advance on costs to cover the costs of arbitration incurred by the claims which have been referred to it, pursuant to Article 24 of these Rules, unless these claims are pursued in accordance with Articles 8-1, 8-2 and 8-3 of these Rules, in which case, Article 11.3 below applies.

This advance may be subject to readjustment where the amount of the dispute is modified by at least one quarter or if any new circumstances render such readjustment necessary.

When counterclaims are introduced by the respondent, the Court may fix separate advances on costs for the claims and the counterclaims if so requested by a party. When the Court established separate advances on costs, each party shall pay the advance on costs corresponding to its claims.

11.2 The advance on costs shall be payable in equal shares by the claimant(s) and the respondent(s). However, any party shall be free to pay the whole of the advance on costs in respect of the principal claim and the counterclaim, should the other party fail to pay its share.

The advance on costs fixed shall be paid in full to the Court before the file is sent to the arbitrator. The payment of at most three quarters of the amount fixed may be secured by an adequate bank guarantee.

11.3 Where claims are made pursuant to Articles 8-1, 8-2 and 8-3 of these Rules, the Court shall fix one or more advances and decide which party is responsible for their payment, or in what

proportion this payment shall be divided between them. Where the Court had previously fixed an advance in accordance with this article, the latter is replaced by the advance or advances pursuant to this paragraph. In that case, the amount of any advance paid previously by one party shall be considered as a partial payment by this party of its share of the advance or advances fixed by the Court in accordance with this paragraph.

11.4 The arbitrator shall only be seized with the claims for which payment has been entirely made pursuant to Article 11.2 above.

If the request for an advance is not satisfied, the Court, upon request of the Secretary General, may invite the arbitral tribunal to suspend its activities and fix a time limit which may not be less than thirty (30) days, on expiry of which the claims which correspond to the advance shall be considered to be withdrawn. Such a withdrawal does not deprive the party concerned of the right to subsequently pursue the same claim in other proceedings.

Article 12 – Notification, communication and time limits

12.1 The memorials and all written communications submitted by any party, and all additional documents, shall be filed with as many copies as the number of the parties, plus one for each arbitrator, and one electronic copy shall be sent to the Secretary General.

Once the arbitral tribunal has been seized of the file, the arbitral tribunal and the parties shall send an electronic copy of all correspondence exchanged in connection with the proceedings to the Secretary General.

12.2 All notifications or communications from the Secretary General and the arbitral tribunal shall be sent at the address or the last known address of the party which is its recipient, or its representative, as notified by the latter or by the other party, as the case may be. The notification or communication may be sent by delivery against receipt, registered letter, transport service, email or any other electronic method which allows providing the proof of sending.

12.3 The notification or communication validly made shall be considered to be acquired when it has been received by the interested party or, if it has been validly made in accordance with Article 12.2 above, should have been received by the interested party or its representative.

12.4 The time limit provided by these Rules or by the Court shall start running from the day following the date a notification or communication is deemed to have been made in accordance with the preceding paragraph.

When the next day following such date is an official holiday, or a non-working day in the country where the notification or communication is deemed to have been made, the time limit shall start to run on the first following working day.

Official holidays and non-working days shall be included in the calculation of time limits and shall not prolong them. If the last day of the relevant time limit granted is an official holiday or a non-working day in the country where the notification or communication is deemed to have been made, the time limit shall expire at the end of the first following working day.

After the arbitral tribunal has been constituted, and with the agreement of the latter, the parties may agree to reduce the different time limits provided in these Rules. If circumstances so justify, the Court may, after consultation with the parties, at the request of the tribunal extend such a time

limit or any other period resulting from these Rules to enable the arbitral tribunal to fulfil its functions.

Article 13 – Seat of the arbitration

The seat of the arbitration shall be determined by the arbitration agreement or by subsequent agreement of the parties.

Absent such agreement, it shall be determined by a decision of the Court made before the file is sent to the arbitral tribunal.

Unless otherwise agreed, and after consultation with the parties, the arbitral tribunal may decide to conduct the hearing and hold meetings and deliberate in any place it deems fit.

Where circumstances make conducting the arbitration proceedings impossible or difficult in the place which had been fixed, the Court may choose another seat at the request of the parties, or of one party, or of the arbitrator.

Article 14 – Confidentiality of arbitral proceedings

Arbitral proceedings shall be confidential. The work of the Court relating to conduct of arbitral proceedings shall be subject to this rule of confidentiality, as well as any meeting of the Court held for the purpose of administering the arbitration. Confidentiality shall also apply to documents submitted to the latter or drafted by it in the course of the administered proceedings.

Unless otherwise agreed by all parties, the latter and their counsel, the arbitrators, the experts and any person involved in arbitral proceedings shall be bound by the duty to respect the confidentiality of the information and of the documents produced during the said proceedings. Confidentiality shall extend under the same conditions to arbitral awards.

The Secretary General may publish extracts from arbitral awards without mentioning elements which would enable the parties to be identified.

Article 15 – Minutes of the scoping meeting

15.1 After it has received the file, the arbitral tribunal shall summon the parties or their duly qualified representative and counsel, to a scoping meeting which shall be held as soon as possible and not later than forty five (45) days from the date of receipt of the file. During this scoping meeting, the arbitral tribunal may request proof of the authority of any representative of a party as deemed necessary. With the consent of the parties, the arbitral tribunal may hold this meeting in the form of a telephone conference or video conference.

The purpose of the scoping meeting shall be:

a) to establish the fact that the matter has been referred to the arbitral tribunal and to determine the claims to be decided. A list of the claims as contained in the submissions filed by the parties on that date, with a summary of the reasons for these claims and the grounds raised in support thereof, shall be established;

- b) to establish whether an agreement exists between the parties regarding the issues listed in Articles 5(e) and 6 (b) and (d) above. In the absence of such an agreement, the arbitral tribunal establishes that the award shall have deal with that subject;
- c) to establish the agreement of the parties regarding the language of the arbitral proceedings or to enable the arbitral tribunal to decide this issue during the meeting, pursuant to Article 13-1;
- d) if necessary, to allow the arbitral tribunal to ask the parties if they intend to confer on it the powers of *amiable compositeur*, pursuant to Article 17 of these Rules;
- e) to take appropriate measures for the conduct of the arbitral proceedings which the arbitral tribunal intends to apply, and the methods to implement them;
- f) to draft a provisional timetable for the arbitral proceedings, fixing the dates for filing the respective submissions deemed necessary, as well as the date for hearing arguments, after which the hearing shall be declared closed. The date of the hearing fixed by the arbitral tribunal shall not be later than six (06) months from the date of the scoping meeting unless agreed otherwise by the parties.

15.2 The arbitral tribunal shall draft minutes of the scoping meeting which it shall sign after having obtained any comments which the parties may have.

The parties or their representatives shall be invited to also sign these minutes. Where one of the parties refuses to sign these minutes or expresses reservations about these minutes, it shall be submitted to the Court for approval.

A copy of these minutes shall be sent to the parties and to their counsel, as well as to the Secretary General.

15.3 The provisional timetable for the arbitration referred to in the minutes of the scoping meeting shall be amended by the arbitral tribunal if necessary, on its own initiative after comments from the parties or at their request.

This amended timetable shall be sent to the Court.

15.4 The arbitral tribunal shall issue and sign the award within ninety (90) days after its order closing the hearing, unless this is extended by an order of the Court, at its own initiative or upon request of the arbitral tribunal.

15.5 When the award does not finally terminate the arbitral proceedings, a meeting is instantly organized in order to draft, under the same conditions, a new timetable for the award that will completely decide the dispute

Article 16 – Rules governing the proceedings

The rules applicable to the arbitral proceedings, shall be the present rules and, in the event of their silence, any rules which the parties or failing them, the arbitral tribunal, establish, whether by referring to rules of procedure of the national law applicable to the arbitration or not.

The parties shall be treated on an equal footing and each party shall have every opportunity to pursue its rights. The parties shall act efficiently and with loyalty in conducting the proceedings and shall refrain from any dilatory tactics.

Any party who knowingly fails to raise an irregularity promptly and pursues the arbitral proceedings, shall be deemed to have waived the right to claim this irregularity.

Article 17 – Law applicable to the merits of the dispute

The parties shall agree upon the rules of law to be applied by the arbitral tribunal to the merits of the dispute. In the absence of any such agreement, the arbitral tribunal shall apply the law determined by the conflict of law rules which it deems appropriate in the circumstances.

In any event, the arbitral tribunal shall take into account the terms of the contract and international trade practices.

The arbitral tribunal may also rule as *amiable compositeur* upon express agreement of the parties.

Article 18 – New claims

After the arbitral tribunal has signed the minutes of the scoping meeting, the parties may not file new claims outside the scope of these minutes unless authorised to do so by the arbitral tribunal which shall consider the nature of these new claims, the state of progress of the proceedings and any other relevant circumstances.

Article 19 – Establishing the facts of the case

19.1 The arbitral tribunal shall proceed as promptly as possible to establish the facts of the case by all appropriate means.

After having reviewed the written submissions of the parties and the underlying evidence filed by the parties, the arbitral tribunal shall hear the parties in a contradictory setting upon request of any of the parties. In the absence of such a request, the arbitral tribunal may decide on its own motion to hear them.

The tribunal may invite the parties to provide factual explanations, and to produce, by any legally admissible means, the evidence which it deems necessary to settle the dispute. It shall decide on the admissibility of the evidence and freely assess their probative force.

The parties shall appear in person or be represented by duly authorised persons. They may be assisted by their counsel.

The arbitral tribunal may decide to hear the parties separately if deemed necessary. In that case, the hearing of each party shall take place in the presence of both parties' counsel.

The hearing of the parties shall take place on the day and at the place fixed by the arbitral tribunal.

If one of the parties, although it has been properly summoned, does not attend the hearing, the arbitral tribunal, after making sure that the notice has reached the party, may proceed with its mandate unless the party provides a valid reason, the debate shall be deemed contradictory.

The minutes of the parties' hearing, duly signed, shall be addressed to the Secretary General of the Court.

19.2 The arbitral tribunal may also decide to hear witnesses, experts called by the parties or any other person, in the presence of the parties, or in their absence, provided that the latter have been duly summoned.

19.3 The arbitral tribunal may decide on the sole basis of documentary evidence upon request or agreement of the parties.

19.4 Unless otherwise agreed by the parties, the arbitral tribunal may appoint one or more experts to provide it with a report on precise points which it shall determine, and invite the latter to testify at the hearing. As the case may be, the arbitral tribunal may require one party to communicate to the expert all appropriate information or to submit to the expert any exhibits or other relevant items, or to make these accessible for the purpose of examination.

19.5 The arbitral tribunal shall invite the parties to the hearings, the conduct of which it regulates. These hearings shall be contradictory.

Unless agreed by the arbitral tribunal and the parties, the hearings shall not be open to persons foreign to the proceedings.

Article 19-1 – Closing of the arbitral proceedings

19-1.1 The arbitral tribunal shall order the closing of the arbitral proceedings:

- a) as soon as possible after the last stage of submissions on the merits by the parties, according to the timetable for the proceedings;
- b) if the claimant withdraws its claim, unless the respondent objects to this and the arbitral tribunal acknowledges that it has a legitimate interest in obtaining a definitive ruling on the dispute;
- c) if the arbitral tribunal finds that pursuing the proceedings has become superfluous or impossible for any other reason.

19-1.2 After closing of the proceedings, the parties may not submit any claim or raise any plea. They similarly may not submit any comments or exhibits unless the arbitral tribunal so requests expressly and in writing.

Article 20 – Consent award

If the parties agree during the arbitral proceedings, they may request the arbitral tribunal to record this settlement in the form of an arbitral award made by consent of the parties.

Article 21 – Jurisdictional objection

21.1 If any of the parties intends to challenge the jurisdiction of the arbitral tribunal to hear all or part of the dispute for any reason whatsoever, it must raise this objection in the submissions as provided in Articles 6 and 7 of these Rules and, at the latest, during the scoping meeting.

21.2 At any time in the proceedings, the arbitral tribunal may on its own motion examine its own jurisdiction on grounds of public policy, on which the parties shall then be invited to present their own comments.

21.3 The arbitral tribunal may rule on a jurisdictional objection either by rendering an interim procedural award or in a final or partial award on the merits, which may all be subject to an annulment action.

When a party files a motion for annulment against an interim award where the arbitral tribunal upheld its jurisdiction, the arbitral proceedings shall not be suspended.

Article 21-1 – Preliminary phase to settle the dispute before the arbitration

21-1-1. In case of an agreement imposing upon the parties to follow a preliminary phase for the settlement of the dispute prior to any arbitration, the tribunal shall, upon the request of one of the parties, examine if this condition has been met and as the case may be, shall mandate the completion of this preliminary phase.

21-1-2. If this preliminary phase has not been initiated, the arbitral tribunal shall suspend the procedure for a time period which it deems appropriate, to allow the most diligent party to initiate this phase.

21-1-3. If this preliminary phase has effectively been initiated, the arbitral tribunal shall take note, as the case may be, of its failure.

Article 22 – Arbitral award

22.1 Apart from the holding, the arbitral award shall contain:

- the last and first names of the arbitrators having rendered the award;
- its date;
- the seat of the arbitral tribunal;
- the last and first names and trade name of the parties, as well as their headquarters or registered office;
- as the case may be, the last and first names of counsel or any person having represented or assisted the parties; and
- the statement of the respective claims, their pleas and arguments, as well as the procedural history.

The arbitral award must state the reasons on which it is based.

If the arbitral tribunal has been empowered by the parties to decide as *amiable compositeur*, this shall be mentioned.

22.2 The award shall be deemed to be rendered at the seat of the arbitral proceedings on the date on which it is signed after review by the Court.

22.3 The award shall be rendered in accordance with the procedure and in the form agreed by the parties. Failing such agreement, the award shall be rendered by a majority of votes when the tribunal is composed of three arbitrators.

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.

22.4 Any member of the tribunal may communicate his personal opinion to the president, to be attached to the award.

Article 23 – Preliminary review by the Court

23.1 The arbitral tribunal shall transmit its draft jurisdictional and partial awards which decide some of the parties' claims, and its final awards, to the Secretary General for review by the Court before signing.

The other awards shall not be submitted for prior review, they shall only be transmitted to the Court for information purposes.

23.2 The Court may propose purely formal amendments, draw the attention of the arbitral tribunal to claims which do not seem to have been addressed or mandatory statements which do not appear in the draft award, in the event that the award does not properly state the reasons on which it is based, or if there is an apparent contradiction in the reasoning, without, however, having the power to suggest a reasoning or a solution on the merits in respect of the dispute.

The Court shall examine the draft award submitted to it within a maximum period of one (1) month after its receipt.

Article 24 – Decision as to the costs of the arbitration

24.1 The arbitral tribunal shall fix the costs of arbitration in the arbitral award and decide which of the parties is responsible for payment of these costs, or in what proportion those are to be shared between the parties.

24.2 When deciding on the costs, the arbitral tribunal shall take into account any relevant circumstances, including the extent to which each party has conducted the arbitration proceedings quickly and efficiently in terms of cost.

24.3 The arbitration costs shall include:

a) the fees of the arbitrator and the administrative costs fixed by the Court, possible expenses of the arbitrator, operating expenses of the arbitral tribunal, fees and expenses of the experts in case of an expertise. The arbitrators' fees and the Court's administrative fees shall be fixed pursuant to a schedule defined by the General Assembly of the Court and approved by the OHADA Council of Ministers pursuant to the provisions of Article 4 of the Treaty;

b) the normal costs incurred by the parties for their defence, following the assessment which is made by the arbitral tribunal of the related claims made by the parties in that regard.

24.4 If the circumstances of the case exceptionally so require, the Court may fix, at its own initiative or upon motivated request of the arbitrator, the fees of the arbitrator at a higher or lower rate than would apply pursuant to the schedule of fees.

Any decision on the fees made without the approval of the Court is null and void, but may not be used as a ground for annulment of the award.

24.5 If all claims are withdrawn, or if the arbitral proceedings are terminated before a final award has been rendered, the Court shall fix the fees, expenses of the arbitrators and the administrative costs. If the parties have not agreed on sharing the costs of arbitration, or other relevant questions concerning costs, the Court shall decide these issues.

Article 25 – Notification of the award

25.1 When the award is made, the Secretary General shall notify the parties the text signed by the arbitral tribunal, after the arbitration costs have been fully paid to the Court by the parties or one of them.

25.2 Additional copies certified true by the Secretary General, may be issued at any time exclusively to the parties requesting them.

25.3 Pursuant to such notification, the parties waive the right to any other notification or communication to be made by the arbitral tribunal.

Article 26 – Interpretation, correction to or addition of the award

The award shall discharge the arbitral tribunal of the dispute.

The arbitral tribunal shall nevertheless have the power to interpret the award or to rectify material errors and omissions affecting the award.

Where it has omitted to rule upon a head of claim, it may do so by rendering an additional award. In one or the other events mentioned above, a request must be made within thirty (30) days from the date of the notification of the award upon receipt of the request, the Secretary General communicates it to the arbitration tribunal and the opposing party, granting the latter a period of thirty (30) days to send its comments to the requesting party and to the arbitral tribunal.

If the arbitral tribunal can no longer be reconvened, and absent any agreement between the parties to appoint a new arbitral tribunal, the Court shall appoint a sole arbitrator to decide the request for interpretation, correction to or addition of the award.

After examining the arguments of both parties and any documents which they may have submitted, the rectifying or additional draft award must be addressed for review pursuant to Article 23 of these Rules within forty five (45) days of referral to the arbitral tribunal.

The aforementioned procedure comprises no fees, except in the case foreseen in paragraph 6 of this article. Regarding the expenses, if any, they shall be assumed by the party that made the request, if the latter is rejected in its entirety. Otherwise, they are shared among the parties in the proportion fixed for the costs of arbitration in the award, which is the subject of the request.

Article 27 – Res judicata effect and provisional enforcement

27.1 Any arbitral award rendered pursuant to these Rules shall have mandatory effect on the parties and final res judicata effect in the territory of each Member State, to the same extent as judgments

made by domestic courts. It may be subject to forced enforcement on the territory of any of the Member States.

27.2 By submitting their dispute to these Rules, the parties shall undertake to enforce the future award without delay.

27.3 The arbitral tribunal may, by a reasoned decision, order or refuse the provisional enforcement of the arbitral award, if such enforcement is requested.

Article 28 – Lodging and legal validity of the award

The original of any award made in accordance with these Rules shall be lodged with the Secretary General.

In all other instances not expressly provided by these Rules, the Court and the arbitral tribunal shall act in accordance with the spirit of these rules and shall make every effort to ensure that the award is enforceable at law.

Chapter III – Annulment action, recognition and enforcement of arbitral awards

Article 29 – Annulment action

29.1 Any party which submits an annulment action against an award rendered by an arbitral tribunal in an arbitration of the Court shall address a request to the Court, which the Court shall notify to the opposing party.

29.2 The parties may agree to waive the annulment action against the arbitral award, provided the award is not contrary to international public policy.

The annulment action against the award shall only be permitted:

- a) if the arbitral tribunal has ruled without an arbitration agreement or on an agreement that is void or expired;
- b) if the arbitral tribunal was irregularly composed, or the sole arbitrator was irregularly appointed;
- c) if the arbitral tribunal ruled without conforming to the mandate with which it has been entrusted;
- d) if the principle of due process has not been respected;
- e) if the arbitral award is contrary to international public policy; or
- f) if the award fails to state the reasons on which it is based.

29.3 The annulment action shall be permitted as soon as the award is made. It shall cease to be admissible if it has not been made within two (2) months from notification of the award pursuant to Article 25 of these Rules.

29.4 The Court shall examine and render its decision pursuant to the provisions of its Rules of procedure.

In such event, the deadlines shall be reduced by half.

The Court shall render a decision on annulment within six (6) months of its seizure.

29.5 If the Court denies recognition and res judicata effect of the award referred to it, the award shall be annulled.

It shall re-hear the case and rule on the merits if the parties have requested it to do so.

If the parties have not requested the Court to re-hear the case and rule on the merits, the proceedings are resumed at the request of the most diligent party, starting from the last step in the arbitral proceedings recognised as valid by the Court, as the case may be.

Article 30 – Exequatur

30.1 The award may be enforced as soon as it is rendered.

The exequatur shall be requested by application to the President of the Court, and a copy addressed to the Secretary General. The latter shall immediately communicate to the Court the documents allowing the Court to establish the existence of the arbitral award and of the arbitration agreement.

30.2 The exequatur shall be granted within fifteen (15) days of the filing of the request, by order of the presiding judge at the Court or of the judge appointed for this purpose, and shall make the award enforceable in all Member States. These proceedings shall not be contradictory.

The exequatur shall not be granted if the Court has already been seized for the same award of a request pursuant to Article 29 abovementioned. In such a case, both requests shall be joined.

Unless provisional enforcement of the award has been ordered by the arbitral tribunal, a motion for annulment shall suspend the enforcement of the arbitral award until the Court has ruled.

The Court shall have jurisdiction to rule on any dispute related to provisional enforcement.

The decision on exequatur of the awards on interim or provisional measures shall be made within three (03) days of the date of the filing of the request to the Court.

30.3 When enforcement is rejected, the party requesting exequatur may only appeal to the Court within fifteen (15) days of the notification of the rejection. This time limit shall be reduced to three (03) days if the appeal relates to the exequatur of an award of the arbitral tribunal on provisional or conservatory measures. The Court shall notify the opposing party of the appeal.

30.4 The decision of the presiding judge of the Court granting exequatur may not be appealed.

30.5 Exequatur may only be refused in the following cases:

- a) if the arbitral tribunal has ruled without an arbitration agreement or on an agreement that is void or expired;
- b) if the arbitral tribunal ruled without conforming to the mandate with which it has been entrusted;
- c) if the principle of due process has not been respected;
- d) if the arbitral award is contrary to international public policy.

Article 31 – Enforcement certificate

31.1 The Secretary General shall deliver to the requesting party a certified true copy of the original of the award filed in conformity with the provisions of Article 28 of these Rules, including the enforcement certificate. This certificate shall state that enforcement of the arbitral award has been granted, either by a ruling of the presiding judge of the Court, which has been duly served and has become final, in the absence of any annulment action filed within 15 days as provided herein above, or by a ruling of the Court annulling a decision to reject exequatur.

31.2 In view of the certified copy of the award with the certificate from the Secretary General of the Court, the national authority appointed by the Member State in which enforcement has been solicited shall grant formal exequatur to the award pursuant to the rules applicable in the above mentioned State.

Article 32 – Application for revision

The arbitration award may be the subject of an application for revision lodged with the Secretary General, who shall notify the arbitral tribunal, pursuant to the discovery of a fact likely to exert a decisive influence and which was unknown to the arbitral tribunal or the party applying for a revision before the award was rendered. In the absence of an agreement of the parties on the appointment of a new arbitral tribunal:

- a) when the arbitral tribunal is composed of a sole arbitrator and may no longer be reconvened, the Court shall appoint a sole arbitrator to decide the application for revision,
- b) when the arbitral tribunal is composed of three arbitrators and may no longer be reconvened, after consultation with the parties, the Court shall appoint either a new tribunal composed of three arbitrators, or a sole arbitrator to decide the application for revision,
- c) when the arbitral tribunal is composed of three arbitrators, and one or more of these arbitrators may no longer reconvened, after consultation with the parties, the Court shall appoint arbitrators to complete the arbitral tribunal to decide the application for revision.

Article 33 – Third party opposition

Opposition against arbitral awards filed by a third party shall be addressed to the Court. The same shall apply to decisions of the Court where the Court has ruled on the merits of the dispute in accordance with Article 29.5, paragraph 2 above.

Third party opposition shall be filed pursuant to the provisions of article 47 of the rules of procedure.

Article 33 – Final provisions

These Rules, which abrogate the Rules of Arbitration of the Common Court of Justice and Arbitration dated 11 March 1999, shall be published in the OHADA Official Gazette within sixty (60) days from its approval. It shall also be published in the Official Gazette of the Member States.

Conakry, 23 November 2017

