

## COSTS OF ARBITRATION

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**DECISION N° 004/99/CM APPROVING DECISION N° 004/99/CCJA ON COSTS OF ARBITRATION**

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**- Appendix to decision n°004/99/CCJA**

1. Administrative expenses
2. Fees of an arbitrator
3. Administrative expenses and fees of an arbitrator resulting from correct calculation

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## **DECISION N° 004/99/CM APPROVING DECISION N° 004/99/CCJA ON COSTS OF ARBITRATION**

The Council of Ministers of the Organization for the Harmonization of Business Law in Africa (OHBLA) meeting in Ouagadougou ( BURKINA FASO) on the 11 and 12 of March 1999;

Mindful of the Treaty on the Harmonization of Business Law in Africa;

Mindful of the arbitration rules of the Common Court of Justice and Arbitration of OHBLA, notably its articles il and 24;

Mindful of the rate established by the General meeting of the Common Court of Justice and Arbitration of OHBLA on 3 of February 1999;

Decides:

**ARTICLE 1:** The rates for the fees of arbitrators and administrative expenses of the Common Court of Justice and Arbitration of OHBLA established by the said Court in its General meeting on the 3rd of February 1999 is approved.

**ARTICLE 2:** This decision shah be published in the Official Gazette of OHBLA and communicated wherever need be.

Done at Ouagadougou, on 12 march 1999

## **DECISION N° 004/99/CCJA ON COSTS OF ARBITRATION**

### **THE COMMON COURT OF JUSTICE AND ARBITRATION OF OHBLA,**

Mindful of the Treaty on the Harmonization of Business Law in Africa ,  
Mindful of the arbitration rules of the Common Court of Justice and Arbitration of OUBLA ,  
notably its articles 11 and 24 ,  
Mindful of rules N° 001/98 CM of 30 January 1998 on the financial regulation of OHBLA Institution, notably its article 14 ,

### **DECIDES**

#### **CHAPTER 1 : DEPOSIT FOR COSTS OF ARBITRATION**

**ARTICLE 1 :** Each request for arbitration submitted according to the arbitration rules of the Common Court of Justice and Arbitration (CCJA) shall be accompanied by an advance payment of 200.000 francs CFA for administrative expenses. This payment is non refundable and shall be credited to the claimant as part of the administrative expenses of arbitration to be borne by him.

**ARTICLE 2 :** The advance on deposit determined by the Court in accordance with article 11 of the arbitration rules shall, in principle, not exceed the amount obtained by the addition of administrative expenses (appended table 1) the minimum fees of the arbitrator corresponding to the amount of the claim (table appendix II) and possible refundable cost incurred by the arbitral Tribunal to establish the report. When this amount is not declared, the amount of advance to be paid shall be at the discretion of the Court. The payment made by the claimant shall be credited to him as part of his deposit for costs of arbitration to be borne by him is fixed by the Court.

**ARTICLE 3 :** The deposit for costs of arbitration fixed by the Court in accordance with article 11 of the arbitration rules include the fees of the arbitrator and administrative expenses, possible expenses incurred by the arbitrator, costs of functioning of the arbitral Tribunal, fees and costs of experts in case of expert evidence.

**ARTICLE 4 :** Deposits shall be paid in equal shares by the claimant or claimants and defendant or defendants. However, the payment of this deposit may be paid fully by any party in case where the other party or parties abstained from paying.

The deposit thus fixed shall be paid at the General Secretariat of the Court in full before the file is handed over to the arbitrator; for

the three quarters at most, payment may be guaranteed by a sufficient bank surety.

The General Secretariat shall define the conditions applicable to the bank guarantees the parties may give in conformity with the above provisions.

**ARTICLE 5 :** The amount of deposit may be adjusted at any time if the amount of the claim is modified by at least one-quarter or if new elements make such adjustment necessary.

## **CHAPTER II : COSTS AND FEES**

**ARTICLE 6 :** The Court shall fix the fees of the arbitrator following the table in appendix II, or at its discretion when the amount of the claim is not stated.

If circumstances of the case make it absolutely necessary, the Court may fix the fees of the arbitrator to an amount above or less than the normal rate.

**ARTICLE 7 :** When determining the fees of the arbitrator, the Court shall take into consideration the diligence of the arbitrator, the time spent, rapidity of the proceedings and complexity of the claim such as to arrive at a figure within the prescribed limits or, more or less in the exceptional circumstances provided for in article 6 (2) above.

**ARTICLE 8 :** When a claim is submitted to more than one arbitrator, the Court may, at its discretion, increase the lump sum destined for the payment of fees, normally not more than thrice the sum provided for the payment of a sole arbitrator.

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**ARTICLE 9 :** The fees and expenses of the arbitrator shall be determined exclusively by the Court, in accordance with what is provided for in the arbitration rules. Any separate agreement between the parties and arbitrators on their fees shall be void and to no purpose.

**ARTICLE 10 :** The Court shall determine the administrative expenses for each arbitration in accordance with the table in appendix 1, or at its discretion when the amount of the case makes it absolutely necessary, the Court may raise the administrative expenses to an amount inferior or superior to that contained in the table in appendix 1, but without being able to exceed the maximum provided in the calculation table of appendix III.

**ARTICLE 11 :** If an arbitration comes to an end before a final award is pronounced, the Court shall, at its discretion, determine the costs of arbitration taking into account the stage at which the arbitral proceedings were extinguished as well as other pertinent

elements.

**ARTICLE 12 :** When a request is made in accordance with article 26 of the arbitration rules, the Court may determine the deposit to cover the fees and supplementary costs of the arbitral Tribunal and condition the transmission of this request to the arbitral Tribunal on the full payment of the deposit. The Court may equally, at its discretion, determine the possible fees of the arbitrator in the case mentioned in article 26 (3) of the arbitration rules.

**ARTICLE 13:** The amounts paid to the arbitrator does not include the Value Added Tax (VAT) or any other tax, charges and all taxes which may be due on the fees of the arbitrator. The parties must themselves pay these taxes or charges.

### **CHAPTER III : SCHEDULES FOR THE CALCULATION OF ADMINISTRATIVE EXPENSES AND THE FEES OF THE**

**ARTICLE 14:** The schedules for the calculation of administrative expenses and fees of the arbitrator appended to this decision apply to all proceedings introduced as from the entry into force of these arbitration rules.

**ARTICLE 15:** To calculate the amount of administrative expenses and fees of the arbitrator, the amounts calculated for each range must be added.

However, if the amount of claim is above five billion francs, a lump sum of thirty millions francs shall constitute the totality of administrative expenses.

**ARTICLE 16:** This decision shall enter into force as from the date of its approval by the Council of Ministers of OHBLA. It shall be published in the Official Gazette of OHBLA.

Done at Abidjan, on 3 February 1999

## APPENDIX TO DECISION N° 004/99/CCJA

### APPENDIX 1 ADMINISTRATIVE EXPENSES

FOR AN AMOUNT OF CLAIM			ADMINISTRATIVE EXPENSES (1)	
UPTO		25.000.000	500.000	
FROM	25.000.001	TO	2,00%	
FROM	125.000.001	TO	1,00%	
FROM	500.000.001	TO	750.000.000	0,40%
FROM	750.000.001	TO	125.000.000	0,20%
FROM	1.000.000.001	TO	500.000.000	0,05%
<b>OVER</b>		<b>5.000.000.000</b>	<b>30.000.000</b>	

(1) As example only, the table in appendix III indicates administrative expenses resulting from correct calculations

**APPENDIX II  
FEES OF AN ARBITRATOR**

FOR AN AMOUNT OF CLAIM			FEES (1)	
			MINIMUM	MAXIMUM
UPTO		25.000.00	500.000	10,00%
FROM	TO	125.000.00	1,50%	5,00%
FROM	TO	500.00	1,00%	3,00%
FROM	TO	750.000.00	0,50%	2,00%
FROM	TO	1.000.000.00	0,30%	1,50%
FROM	TO	5.000.000.00	0,10%	0,30%
OVER		5.000.000.00	0,01%	0,05%

(1) As example only, the table in appendix III indicates the fees of an arbitrator resulting from correct calculations

**APPENDIX III  
ADMINISTRATIVE EXPENSIVES AND FEES OF AN ARBITRATOR  
RESULTING FROM CORRECT CALCULATIONS**

AMOUNT OF CLAIM	ADMINISTRATIVES EXPENSES	FEES OF THE ARBITRATOR	
		MINIMUM	MAXIMUM
UP TO 25.000.000	500.000	500.000	10% amount of claim
FROM 25.000.001 to 125.000.000	5.00.000 + 2% of amount above 25 000 000	500.000 + 1,5% of amount above 25.000.000	2.500.000 + 5,00% of amount above 25.000.000
FROM 125.000.001 to 500.000.000	2.500.000 + 1,00% of amount above 125.000.000	2.000.000 + 1,00% of amount above 125.000.000	7.500.000 + 3,00% of amount above 125.000.000
FROM 500.000.001 to 750.000.000	6.250.000 + 0,40% of amount above 500.000.000	5.750.000 + 0,50% of amount above 500.000.000	18.750.000 + 2,00% of amount above 500.000.000
FROM 750.000.001 to 1 .000.000.000	7.250.000 + 0,20% of amount above 750.000.000	7.000.000 + 0,30% of amount above 750.000.000	23.750.000 + 1,50% of amount above 750.000.000
FROM 1.000.000.001 to 5.000.000.000	7.750.000.+ 0,05% of amount above 1.000.000.000	7.750.000 + 0,10% of amount above 1.000.000.000	27.500.000 + 0,30% of amount above 1.000.000.000
OVER 5.000.000.000	30.000.000	11.750.000 + 0,01% of amount above 5.000.000.000	39.500.000 + 0,05% of amount above 5.000.000.000