

# **OHADA**

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

## **TABLE OF CONTENTS**

### CHAPTER ONE

#### THE FUNCTIONS OF THE COMMON COURT OF JUSTICE AND ARBITRATION IN MATTERS OF ARBITRATION

ARTICLE 1: Exercise by the Court of its functions

### CHAPTER TWO

#### PROCEDURE FOLLOWED IN THE COMMON COURT OF JUSTICE AND ARBITRATION

ARTICLE 2 Assignment of the Court ARTICLE 3: The appointment of the arbitrators ARTICLE

4: Independence, challenge and replacement of arbitrators

ARTICLE 5: Request for arbitration ARTICLE 6: reply to the request

ARTICLE 7: Counter claim

ARTICLE 8: Transmission of the dossier to the arbitrator

ARTICLE 9 : Absence of an arbitration agreement ARTICLE 10: Effects of an arbitration agreement

ARTICLE 11: Deposits in respect of costs of arbitration

ARTICLE 12: Notification, communication and time limit

ARTICLE 13: Seat of the arbitration

ARTICLE 14: Confidentiality of arbitration proceedings

ARTICLE 15: Report establishing the subject matter of the arbitration and fixing the progress of arbitral proceedings

ARTICLE 16: Rules applicable to the proceedings

ARTICLE 17: Law applicable to the substance

ARTICLE 18: New claims

ARTICLE 19: Establishing the facts of the case

ARTICLE 20: Award agreed upon by the parties

ARTICLE 21: Plea of lack of jurisdiction

ARTICLE 22: Award

ARTICLE 23: Preliminary examination by the Court

ARTICLE 24: Ruling on costs of arbitration

ARTICLE 25: Notification of award

ARTICLE 26: Correction of award

ARTICLE 27: Res judicata and exequatur

ARTICLE 28: Others

### CHAPTER THREE

#### RECOGNITION AND COMPULSORY ENFORCEMENT OF AWARDS

ARTICLE 29: Challenge of validity

ARTICLE 30: The exequatur

ARTICLE 3 1: The executory clause  
ARTICLE 32: Recourse to revision  
ARTICLE 33: Opposition by third party  
ARTICLE 34: Final provisions

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The Council of Ministers of the Organization for the Harmonization of Business Law in Africa (OHBLA);

Mindful of the Treaty on the Harmonization of Business Law in Africa, in particular articles 8 and 26 thereof

Mindful of the rules of procedure of the Common Court of Justice and Arbitration, notably article 54;

Mindful of the opinion of the Common Court of Justice and Arbitration dated 9 December 1998

The contracting States present and voting have deliberated upon and unanimously adopted the arbitration rules of the Common Court of Justice and Arbitration set out below:

## **CHAPTER ONE**

### **THE FUNCTIONS OF THE COMMON COURT OF JUSTICE AND ARBITRATION IN MATTERS OF ARBITRATION**

#### **ARTICLE 1 : Exercise by the Court of its functions**

1.1 The Common Court of Justice and Arbitration hereafter referred to as « the Court » shall perform the functions of administering arbitrations within the domain devolved upon it by article 21 of the Treaty under the conditions hereafter defined.

The decision it takes with a view to ensuring the proper setting in motion and satisfactory termination of arbitral proceedings and those linked to the scrutiny of the award are of administrative nature.

These decisions shall be devoid of any res judicata, without recourse, and no reasons shall be given.

They shall be made by the Court under the conditions fixed by the general meeting on the proposal of the president.

The Chief Court Registrar shall perform functions of Secretary General of administrative composition of the Court.

1.2 The Court shall perform the jurisdictional functions conferred upon it by article 25 of the Treaty in matters of res judicata and exequatur of awards made, in its ordinary contentious composition and in conformity with the procedure provided for this purpose.

1.3 The administrative functions defined in 1.1 above for the follow up of arbitral proceedings shall be assured under the conditions provided in chapter II below.

The jurisdictional functions of the Court provided in 1.2 above are defined and regulated in chapter III above and the rules of procedure of the Court.

**CHAPTER TWO**  
**PROCEDURE FOLLOWED IN THE COMMON COURT OF JUSTICE AND**  
**ARBITRATION**

**ARTICLE 2 Assignment of the Court**

**2.1** The assignment of the Court shall be to procure in conformity with these arbitration rules, arbitral solution when a dispute is of contractual nature in application of an arbitration clause or compromise submitted to it by any party to a contract either when one of the parties has his residence or is habitually resident in one of the member States, or, when the contract has been performed or is to be performed, wholly or partially, on the territory of one or several member States.

**2.2** The Court shall not itself settle disputes.

It shall appoint or confirm arbitrators, shall be informed about the development of the arbitral proceedings, and shall examine the draft awards.

It shall rule on the exequatur of these awards where it is requested and, where it is seized of disputes arising from the res judicata of these awards.

**2.3** The Court shall deal with questions related to arbitral proceedings supervised by it within the framework of the Treaty and article I of these arbitration rules.

**2.4** The Court shall establish internal arbitration rules if it deems it necessary. The Court may, according to the modalities provided by these internal arbitration rules, delegate to a limited composition of its members the power to take decisions subject to the Court being informed of decisions taken in the next hearing. These internal rules shall be deliberated upon and adopted in the general meeting. It shall become enforceable after its approval by the Council of Ministers ruling under the conditions provided in article 4 of the Treaty.

**2.5** : In urgent cases, the President of the court may take decisions necessary for the putting into place and proper functioning of arbitral proceedings, subject to informing the Court in the next meeting, to the exclusion of decisions requiring an order of the Court. He may delegate this power to a member of the Court under the same conditions.

**ARTICLE 3 : Appointment of arbitrators**

**3.1** A dispute may be settled by a sole arbitrator or by three arbitrators. In these arbitration rules, the arbitral Tribunal may equally be designated by the wording "the arbitrator"

When the parties have agreed that the dispute shall be settled by a sole arbitrator, they may appoint him by mutual agreement for confirmation by the Court.

If the parties fail to agree within thirty (30) days of notification of the request for arbitration by the other party, the arbitrator shall be appointed by the Court.

In arbitration with three arbitrators, each party in the request for arbitration or in the answer to the request shall appoint one independent arbitrator for confirmation by the Court. If one of the parties abstains from making the appointment, the appointment shall be made by the Court. The third arbitrator who shall assume the presidency of the arbitral Tribunal, shall be appointed by the Court, unless the parties had provided that the arbitrators they chose would choose the third arbitrator within a given time limit. In this case, the Court shall confirm the third arbitrator. If at the expiration of the time limit fixed by the parties or prescribed by the Court, the arbitrators appointed by parties have not reached an agreement, the third arbitrator shall be appointed by the Court.

If the parties have not mutually agreed on the number of arbitrators, the Court shall appoint a sole arbitrator, unless the dispute appears to it to justify the appointment of three arbitrators. In this case, the parties shall have a time limit of fifteen (15) days to appoint the arbitrators.

Where several parties, either as claimants or defendants, have to submit to the Court joint proposals for the appointment of an arbitrator and they do not agree within the prescribed time limit, the Court may appoint all the members of the arbitral Tribunal.

3.2: The arbitrators may be chosen from the list of arbitrators established by the Court and updated yearly. The members of the Court cannot be registered on the list.

3.3: To appoint arbitrators, the Court shall take into consideration the nationality of the parties, their residence, residence of their legal advisers and arbitrators, the language of the parties, the nature of the claim and possibly the choice of laws of the parties to govern their relationship.

With a view to making these appointment and establishing the list of arbitrators provided in article 3.2, the Court, when it deems it necessary, may first take into consideration the opinion of experts whose competence are known in the area of international commercial arbitration's.

#### **ARTICLE 4: Independence, challenge and replacement of arbitrators**

4.1 : Any arbitrator appointed by the Court shall be and shall remain independent of the parties involved in the arbitration.

He shall perform his assignment to the end.

Before his appointment or confirmation by the Court, the arbitrator who is approached and has been given information concerning the dispute shall in his reply, if he accepts, disclose to the Secretary general of the Court, in writing, the facts or circumstances which are likely to give rise to doubts as to his independence in the minds of the parties.

As soon as this information is received, the Secretary general of the Court shall inform the parties in writing and shall give them a time limit to make known their possible remarks.

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

4.2 : An application to challenge based on an allegation of lack of independence or any other reason, shall be introduced by dispatching to the Secretary general of the Court, a statement stating the facts and circumstances on which the application is based.

Under the penalty of foreclosure, this application shall be forwarded by the party either within thirty (30) days of receipt by him of the notification of the appointment or confirmation of the arbitrator by the Court, or within thirty (30) days following the date on which the party introducing the challenge had been informed of the facts and circumstances that he invokes to support his application to challenge, if this date is subsequent to the receipt of the aforementioned notification.

The Court shall rule on the admissibility of the request, the merits of the application to challenge, after the Secretary general must have requested the arbitrator concerned, the parties and other members of the arbitral Tribunal, where there are any, to give their remarks, in writing, within the prescribed time limit.

4.3. An arbitrator shall be replaced on death, when the Court allows a challenge against him or when his resignation has been accepted by the Court.

Where the resignation of an arbitrator is not accepted by the Court and the arbitrator nevertheless refuses to pursue his assignment, he shall be replaced if he is a sole arbitrator or the

President of the arbitral Tribunal.

In other cases, the Court shall assess whether there is need for replacement taking into consideration the advanced stage of the proceedings and the opinion of the two arbitrators who have not resigned. If the Court sees that there is no need for replacement, proceedings shall continue and the award could still be made in spite of the refusal of the arbitrator whose resignation was not accepted, to take part in the proceedings.

The Court shall make a ruling in accordance, notably, with the provisions of article 28 (2) below.

4.4. The Court shall equally replace an arbitrator when it establishes that there is a de jure or de facto impediment for him to accomplish his assignment, or that he does not perform his functions in conformity with Part IV of the Treaty or the arbitration rules or within the prescribed time limits.

Where, on information before it, the Court envisages the application of the preceding subsection, it shall rule on the replacement after the Secretary general of the Court has communicated, in writing, this information to the arbitrator concerned, the parties and other members of the arbitral Tribunal, if there are any, and has requested

them to make their remarks, in writing, within a prescribed time limit.

In case of replacement of an arbitrator who does not perform his functions in accordance with Part IV of the Treaty, these arbitration rules, or within prescribed time limit, the appointment of a new arbitrator shall be made by the Court on the recommendation of the party who had appointed the arbitrator to be replaced without the Court being obliged to respect the recommendation thus expressed.

Where the Court is informed that in an arbitral Tribunal with three persons, one of the arbitrators other than the President is not participating in the arbitration even though he had not tendered his resignation, the Court may, as indicated in 4.3, subsections 3 and 4 above, not replace the said arbitrator when the two other arbitrators accept to pursue the arbitration in spite of the non-participation of one of the arbitrators.

4.5. Once reconstituted, the Tribunal shall fix, after inviting the parties to make known their remarks, in what manner the prior proceedings shall be repeated.

4.6. As indicated in article 1 .1 above, the Court shall rule without recourse on the appointment, confirmation, challenge or replacement of an arbitrator.

#### **ARTICLE 5 Request for arbitration**

Any person wishing to resort to arbitration instituted in article 2.1 above ( article 21 of the Treaty) and whose modalities are fixed by these arbitration rules, shall forward his request to the Secretary general for arbitration by the Court.

This request shall contain:

- a) the full names, qualities, commercial name and address of the parties, with indication of the election of residence for the continuation of the procedure, as well as an indication of the amount of his claim;
- b) the arbitration agreement concluded by the parties as well as contractual or non-contractual documents likely to establish clearly the circumstances of the claim;
- c) a summary statement of the claim of the claimant and the arguments produced in support thereof.
- d) any useful indications and proposals concerning the number and choice of

arbitrators, in accordance with the provisions of article 2.3 above.

e) Where there is one, the agreement concluded by the parties:

- On the seat of the arbitration
- on the language of the arbitration
- on the law applicable:
  - . to the arbitration agreement
  - . to the arbitral proceedings
  - . to the substance of the claimdaim

failing such agreement, the wishes of the applicant for arbitration on the different points expressed;

f) the request must be accompanied by the amount of fees for bearings in accordance with the rate of Court charges.

The claimant shall, in his request, mention that he has sent a copy of the request with all appended exhibits to the defendants.

The Secretary general shall notify the defendant or defendants of the date of the receipt of the request at the Secretariat, shall attach to this notification a copy of the arbitration rules and acknowledge receipt of his request to the claimant.

The date of receipt of the request for arbitration by the Secretary general in conformity with this article, shall constitute the date of the introduction of the arbitral proceedings.

#### **ARTICLE 6 Answer to the request**

The defendant or defendants shall, within forty-five (45) days of receipt of the notification of the Secretary general, forward their answer to the Secretary general with justification that a similar dispatch has been made to the applicant.

In the case mentioned in article 3.1 (2) above, the parties must agree within the time limit of thirty (30) days provided in the said article.

The answer shall contain:

a) confirmation or non-confirmation of his full names, commercial name and address as has been given by the applicant, with election of residence for the continuation of the proceedings;

b) confirmation or non-confirmation of the existence of an arbitration agreement between the parties referring to the arbitration instituted in Part IV of the Treaty on the Harmonization of Business Law in Africa;

c) a summary exposé of the claims and the position of the defendant on the claims made against him with an indication of the arguments and documents on which he intends to base his defence.

d) a statement of defence on every point treated in the request for arbitration in columns (d) and (e) of article 5 above,

#### **ARTICLE 7**

If the defendant has introduced a counter-claim in his statement of defence the claimant may, within thirty (30) days of receipt of his defence, present a supplementary note on the issue.

#### **ARTICLE 8**

After receipt of the request for arbitration, answer and possibly the supplementary note

mentioned in articles 5, 6 and 7 above, or when the time limit for receiving them has lapsed, the Secretary general shall seise the Court to determine the advance towards the costs of arbitration, setting up the arbitration and, if there is need, determine the place of arbitration.

The file shall be sent to the arbitrator when the arbitration Tribunal is set up and when the decision taken in application of article 11.2 for the payment of costs has been satisfied.

#### **ARTICLE 9 Absence of an arbitration agreement**

Where, prima facie, there is no arbitration agreement between the parties referring to the application of these arbitration rules, if the defendant declines the arbitration of the Court or does not respond within the forty-five (45) days time limit stated above in article 6, the claimant shall be informed by the Secretary general that he intends to seise the Court of the matter with a view to have it rule that the arbitration cannot take place.

The Court shall rule with due regard to the remarks of the claimant submitted within the next thirty (30) days, where the latter thinks it necessary to present them.

#### **ARTICLE 10 Effects of an arbitration agreement**

10.1 When the parties have agreed to resort to arbitration by the Court, they shall by the same agreement subject themselves to the provisions of

Part IV of the OHBLA Treaty, these arbitration rules, the internal rules of the Court, their appendixes and costs of arbitration rates, in their draft in force at the time of the introduction of the arbitral proceedings indicated in article 5 above.

10.2 : If one of the parties refuses or abstains from participating in the arbitration, the arbitration shall take place notwithstanding the refusal or abstention.

10.3 When one party raises one or several arguments relative to the existence, validity or the scope of the arbitration agreement, the Court, having prima facie established the existence of the agreement, may decide without prejudicing the admissibility or merits of these arguments, that the arbitration shall take place. In this case, it shall be for the arbitrator to rule on his own jurisdiction.

10.4 Except otherwise stipulated, if the arbitrator considers that the arbitration agreement is valid and that the contract binding the parties is void or non-existent, the arbitrator is competent to determine the respective rights of the parties and rule on their statements of claims and defence.

10.5 Except otherwise stipulated, the arbitration agreement shall make the arbitrator competent to rule on any interim or provisional claim in the course of the arbitral proceedings.

Awards made within the framework of the preceding subsection are subject to immediate exequatur applications, if the exequatur is necessary for the enforcement of these interim or provisional awards.

Before handing the dossier to the arbitrator and exceptionally after the banding over, in case where the urgency of the interim or preventive measure requested is such that the arbitrator will not be able to make a ruling in time, the parties may apply to the competent judicial authority for such measures.

Such requests as well as measures taken by the judicial authority shall without delay, be brought to the notice of the Court which shall inform the arbitrators.

#### **ARTICLE 11 Deposits in respect of costs of arbitration**

11. 1 : The Court shall, in determining the amount of deposit, take into consideration the costs of arbitration resulting from the claims of which it is seised such as are defined in article 24.2 a) above.

This deposit shall later be adjusted if the amount of the claim is later modified by at least one-quarter or if new elements make the adjustment necessary.

Distinct deposits for the principal claim and counter-claim may be determined if one party requests for it.

11.2 The deposit shall be in equal shares by the claimant or claimants and defendant or defendants. However, this payment can be made in full by each of the parties for the principal claim and the counter-claim, where the other party abstains from making the deposit

The deposit thus determined shall be paid in full to the secretary general of the Court before the dossier is handed to the arbitrator: for the three quarters at most, their payment may be guaranteed by a satisfactory bank surety.

11.3 The arbitrator may only be seized of claims which have entirely satisfied the requirements of paragraph 11.2 above.

When a supplementary deposit has been rendered necessary, the arbitrator shall suspend his work until the supplementary deposit has been paid to the Secretary general.

### **ARTICLE 12 Notification, communication and time limit**

12.1 Memoranda, correspondences and written communications by the parties, as well as all appended exhibits, shall be furnished in as many copies as there are other parties plus one for each arbitrator and one for the Secretary general of the Court. It is not necessary to forward exhibits to the Secretary general unless he specifically asks for them.

12.2 Memoranda, correspondences and communications from the Secretariat, arbitrator or parties are validly made:

- . if they are handed against a receipt, or
- . dispatched by registered letter to the address or last known address of the addressee, as given by him or the other party. depending on the case, or
- . by any means of communication with written proof the original document considered as proof, iii case of dispute.

12.3 Notification or communication validly made is considered as done when it has been received by the interested party or his representative.

12.4 The time limit prescribed by these arbitration rules or by the Court in application of these arbitration rules or its internal rules starts running from the day following that which the notification or communication is considered as made, in accordance with the preceding paragraph.

When in the country where the notification or communication has been considered as made at a certain date, the day following is a public holiday or a non-working day, time shall start running on the following first working day.

Public holidays and non-working days are included in the calculation of time limit and do not prolong them. If the last day of the time limit given, in the country where the notification or communication has been considered as made, is a public holiday or a non-working day, the time limit shall expire at the end of the following first working day.

### **ARTICLE 13 Seat of the arbitration**

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

Where this is not done, it shall be determined by a Court ruling taken before the handing of the file to the arbitrator.

After consultation with the parties, the arbitrator may decide to hold bearing in any other

place. In case of disagreement. the Court shall rule on the matter.

Where circumstances make it possible or difficult to hold the arbitral hearings at the place where it was to hold, the Court may, at the request of the parties or any of them or the arbitrator, choose another seat.

#### **ARTICLE 14 Confidentiality of arbitral proceedings**

The arbitral proceedings shall be confidential. The works of the Court concerning the arbitral proceedings are subject to this confidentiality as well as the meeting of the Court for administering the arbitration. Confidentiality also concerns documents submitted to the Court or established by the Court during the proceedings it initiates.

Subject to any agreement to the contrary by all the parties, the parties and their legal advisers, arbitrators, experts and any person implicated in the arbitral proceedings are under the duty to respect the confidentiality of the information and documents produced during these proceedings. Confidentiality shall extend, under the same conditions, to awards.

#### **ARTICLE 15 Report establishing the subject matter of arbitration and determining the progress of arbitral proceedings**

15.1 After receipt of the dossier by the arbitrator, he shall convene the parties or their duly authorized representatives and legal advisers, to a meeting which shall be held as soon as it is possible and latest, within sixty (60) days of receipt of the file.

This meeting shall aim at:

a) establishing that the arbitrator has been seised and the claim on which he shall have to rule. A list of the claims as they appear in the memoranda submitted respectively by the parties on that date shall be made, with a summary indication of the reasons for the claims and the arguments invoked in their support, to establish their right.

b) Establishing whether or not the parties agree on the issue enumerated in articles 5(e) and 6(b) and d) above.

In the absence of such an agreement the arbitrator shall establish that the award shall have to rule on the issue.

The language to be used during the arbitration shall be decided immediately by the arbitrator following the statements of the parties on the issue and, taking into consideration the circumstances.

Where there is need, the arbitrator shall interrogate the parties to know whether they intend to confer upon him, the power of amiable compositeur. The reply of the parties shall be taken down.

c) making arrangements which appear appropriate for the conduct of the arbitral proceedings which the arbitrator intends to apply, as well as the modalities for their application.

d) fixing the projected calendar of the arbitral proceedings, precisising the dates for handing of respective memoranda deemed necessary, as well as the date of bearing during which the debates shall be declared closed.

e) The date of bearing shall be determined by the arbitrator for not later than six months after the meeting except with the consent of the parties.

15.2 The arbitrator shall establish a report of the meeting provided in article 15.1 above. This report shall be signed by the arbitrator.

The parties or their representatives shall equally be invited to sign the report. If one of the parties refuses to sign the report or gives his reservations about it, the said report shall be sub-

mitted to the Court for approval.

A copy of the report shall be sent to the parties and their legal advisers, as well as to the Secretary general of the Court.

15.3 The projected provisional calendar for arbitration appearing in the report provided in article 15.2 may, in case of necessity, be modified by the arbitrator, at his initiative after the parties have made their remarks, or in their request.

15.4 This modified calendar shall be sent to the Secretary general of the Court, for him to communicate to the Court.

15.5 The arbitrator shall draw up and sign the award within 90 days latest following the closure of the debate. This time limit may be extended by the Court at the request of the arbitrator if he is unable to respect it.

15.6 When the award made does not terminate the arbitral proceedings, a meeting shall be arranged soon thereafter, to determine, in the same conditions, a new calendar for an award which shall terminate completely the dispute.

#### **ARTICLE 16 Rules applicable to the proceedings**

The rules applicable to the proceedings before the arbitrator are those contained in these arbitration rules and where the latter are silent, those which the parties or failing which, the arbitrator, determines either by referring or not referring to an internal procedural law applicable to the arbitration.

#### **ARTICLE 17 Law applicable to the substance**

The parties are free to determine the rules of law which the arbitrator shall apply to the substance of their dispute. Failing an indication by the parties of the applicable rules of law, the arbitrator shall apply the law designated by the conflict of laws rule which he sees appropriate in the circumstance.

In any case, the arbitrator shall take into account the stipulations of the contract and the trade usages.

The arbitrator shall have the powers of amiable compositeur if the parties have consented to it in their arbitration agreement or later.

#### **ARTICLE 18 New claims**

In the course of the proceedings the parties shall be free to make new arguments to support claims they have made.

They may also present new claims, counter-claims or not, if these claims remain within the framework of the arbitration agreement and, unless the arbitrator considers that he must not authorize such an extension of his assignment by reason, notably, of the fact that the extension has been requested late.

#### **ARTICLE 19 Establishing the facts of the case**

19.1: The arbitrator shall establish the facts of the case within the earliest possible time by every means appropriate.

After examining the written documents of the parties and exhibits submitted by them for the debates, the arbitrator shall hear both parties in an adversary procedure if any party requests for it; failing which, he may on his own, decide to hear them.

The parties shall appear either in person or by their duly authorized representatives. They may be assisted by legal advisers.

The arbitrator may decide to hear the parties separately if he thinks it necessary. In this

case, the hearing of each party shall take place in the presence of the legal advisers of the two parties.

The hearing of the parties shall take place on a day and place determined by the arbitrator.

If one of the parties, although regularly summoned does not appear, the arbitrator, after assuring himself that the summons was duly received by him, has the power, where there is no valid excuse, to nevertheless proceed with his assignment, the debate being considered as one with arguments from both parties.

A copy of the report of the hearing of the parties, duly signed, shall be sent to the Secretary general of the Court.

19.2 The arbitrator may rule on documents if the parties request or so accept.

19.3: The arbitrator may appoint one or several experts, define their assignment, receive their reports and hear them in the presence of the parties or their legal advisers.

19.4 The arbitrator shall regulate the progress of the hearings. The arguments from both sides shall be heard.

Except with the consent of the arbitrator and the parties, they shall not be open to persons not concerned with the proceedings.

#### **ARTICLE 20: Awards by consent**

If the parties reach a settlement during the arbitral proceedings, they may request the arbitrator that this agreement be established in the form of an award made by consent of the parties.

#### **ARTICLE 21: Plea of lack of jurisdiction**

21.1 If one of the parties intends to challenge the jurisdiction of the arbitrator to hear all or part of the claim, for whatever reason, he shall raise the challenge in the memoranda provided in articles 6 and 7 above, and latest, during the meeting prescribed in article 15.1 above.

21.2 At any time during the hearing the arbitrator may on his own, examine his jurisdiction for reasons of public policy on which the parties shall be invited to make their remarks.

21.3 The arbitrator may rule on the challenge for lack of jurisdiction either by a preliminary award or in a final or partial award after examination on the substance.

When the Court is seised on the jurisdictional plea in conformity with the provisions of chapter III below, to rule on jurisdiction or lack of jurisdiction of an arbitrator making a preliminary award, the

arbitrator may nevertheless continue with the proceedings without waiting for the Court to decide on the matter.

#### **ARTICLE 22 Arbitral award**

22.1 Except otherwise agreed upon by the parties, and subject to such agreement being admissible with regard to the applicable law, reasons shall be given for all awards.

22.2 They shall be considered to have been made at the seat of the arbitration and on the day of their signature after scrutiny of the Court;

22.3 They shall be signed by the arbitrator, with regard to, where necessary, the provisions of articles 4.3 and 4.4 above.

If three arbitrators have been appointed, the award shall be made by majority vote. Where there is no majority, the President of the arbitral Tribunal shall rule 'alone.

The award shall be signed, depending on the case, by the three members of the arbitral

Tribunal, or by the President alone.

In the case where the award is made by majority vote, the refusal to sign of the arbitrator in the minority shall not affect the validity of the award.

22.4 Any member of the arbitral Tribunal may give his individual opinion to the President of the Tribunal, to be attached to the award.

### **ARTICLE 23 Scrutiny of award by the Court**

23.1 The draft awards projects on jurisdiction, partial awards terminating certain claims of the parties, and final awards, shall be submitted to the scrutiny of the Court before signature.

Other awards shall not be submitted for scrutiny but shall only be forwarded to the Court for information.

23.2 The Court may only propose purely modifications of form.

It shall, in addition give the arbitration indications necessary for the assessment of costs of arbitration notably, it shall determine the fees of the arbitrator.

Other awards are not submitted for scrutiny but only forwarded to the Court for information.

### **ARTICLE 24 Ruling on costs of arbitration**

24.1 : Beside a ruling on the substance, the final award by the arbitrator shall determine the costs of the arbitration and shall decide which of the parties shall bear the costs or, in what proportions it shall be shared between them.

24.2 The costs of arbitration shall include:

a) the fees of the arbitrator and administrative expenses determined by the Court, possible expenses of the arbitrator, costs of the functioning of the Tribunal, fees and expenses of experts in case of expert evidence.

The fees of arbitrators and administrative expenses, the Court shall be fixed in accordance with the rate established by the general meeting of the Court and approved by the Council of Ministers of OHBLA, ruling under the conditions provided in article 4 of the Treaty.

b) Normal costs incurred by the parties for their defence as determined by the arbitrator to whom the claim of the parties are forwarded.

24.3 Where the circumstances of the case make it exceptionally necessary, the Court may fix the fees of the arbitrator at an amount more or less than that of the normal rate.

### **ARTICLE 25 Notification of award**

25.1 The award made, the Secretary general shall notify the parties of the text signed by the arbitrator after the costs of arbitration provided in article 24.2(a) above have been fully paid to the Secretary general by the parties or any of them.

25.2 Supplementary copies certified true by the Secretary general of the Court shall at any time, be delivered to parties who request for it and to them only.

25.3 Through the notification thus made, the parties waive any other notification or deposit at the initiative of the arbitrator.

### **ARTICLE 26 Correction and interpretation of award**

Any application for correction of clerical errors affecting the award, or for interpretation of the award, or to complement the award for which there had been an omission to rule on the claim submitted to the arbitrator, shall be addressed to the Secretary general of the Court within 45 days of notification of the award.

The Secretary general shall communicate, on receipt, the request to the arbitrator and the

opposite party and grant them a time limit of 30 days to forward their remarks to the claimant and the arbitrator.

In cases where the Secretary general, for any reason, is unable to transmit the request to the arbitrator who ruled on it, the Court shall appoint another arbitrator, after the remarks of the parties.

After examining the arguments of both parties and exhibits they have possibly submitted, the draft award shall be forwarded for the scrutiny provided for in article 23 within 30 days from the date the arbitrator is seised.

Except in the case provided in subsection 3, no fees shall be paid for the preceding procedure. As for costs, where there are any, they shall be borne by the party making the request, if the request is rejected in its entirety. Where the contrary is true, costs shall be shared between the parties in proportions fixed for costs of arbitration in the award, object of the request.

#### **ARTICLE 27 Res judicata**

Awards made in conformity with the provisions of these arbitration rules are binding in respect of the claim on the territory of each member state, as if they were ruling, made by Courts in the state.

They may be the object of compulsory enforcement on the territory of any one of the member states.

#### **ARTICLE 28 Others**

The original copy of any award made in conformity with these arbitration rules shall be deposited with the Secretary general of the Court.

In all other cases not expressly mentioned in these arbitration rules, the Court and arbitrator shall act in the spirit of these arbitration rules and shall endeavour to make sure that the award is enforceable at law.

### **CHAPTER III**

#### **RECOGNITION AND COMPULSORY ENFORCEMENT OF AWARDS**

#### **ARTICLE 29 Challenge of validity**

29.1 If one party intends to challenge the recognition of the award and its res judicata effect pursuant to article 27 above, he shall seise the Court of the matter by petition which he shall serve the opposing party.

29.2: The challenge of the validity of the award is only admissible if the parties have not excluded it in the arbitration agreement.

It may only be based on one or several grounds enumerated hereafter in article 30.6 authorizing opposition to exequatur.

29.3: The petition may be lodged as soon as the award is made. It shall not be admissible if it is not lodged within two months from the notification of the award provided for in article 25 above.

29.4 : The Court shall inquire on the petition and rule under the conditions prescribed by its rules of procedure.

29.5 : If the Court rejects the recognition and res judicata of the award referred to it, it shall annul the award. It shall evocate and rule on the substance if the parties request for it.

If the parties have not requested the evocation, the proceedings shall be taken all over at the request of the earliest party as from, where necessary, the last act of arbitral proceedings

recognised as valid by the Court.

### **ARTICLE 30 Exequatur**

30.1 The exequatur is requested by petition addressed to the Court.

30.2 The exequatur is granted by order of the President of the Court or judge delegated for this purpose and shall confer on the award an enforceable character in all the members States. This procedure is not adversarial.

30.3 : The exequatur shall not be granted if the Court had already been seised, for the same award, by a petition made in pursuance of article 29 above. In such case, the two petitions shall be consolidated.

30.4: Where the exequatur is refused for another reason the petitioner may seise the Court with its application, within fifteen days from the refusal of such application.

30.5: When the order of the President of the Court or judge delegated has granted the exequatur, the applicant shall notify the opposing party of this order.

The opposing party may, within fifteen days from such notification make an opposition which shall be heard at one of the jurisdictional ordinary sessions of the Court in an adversary procedure in accordance with its rules of procedure.

30.6 The exequatur may only be refused and opposition to the exequatur may only be initiated in the following cases:

i .if the arbitrator ruled without an arbitration agreement or on an agreement which is void or has expired;

2 .if the arbitrator ruled without conforming to the assignment he had been conferred;

3 .when the principle of adversary procedure has not been respected;

4 .if the award is contrary to international public policy.

### **ARTICLE 31 Executory clause**

31 .1 The Secretary general of the Court shall deliver to the party who requests it, a copy of the award certified true to the original deposited in conformity with article 28, on which shall figure the exequatur attestation.

The application shall state that the exequatur has been granted to the award, as the case may be, either by an order of the President of the Court regularly served and which has become final in the absence of opposition made within the time limit of fifteen days mentioned above or by a Court judgment rejecting such an opposition, or by a Court judgment invalidating a refusal of exequatur.

The national authority appointed by the State for which the exequatur was requested may, relying himself on the true copy of the award covered by the attestation of the Secretary general of the Court, attach an executory clause such as is in force in the said State.

### **ARTICLE 32 Recourse to revision**

Recourse to revision against awards and Court judgments when the Court has ruled on the substance in accordance with article 29.5 (1) above, shall be initiated in the cases and under the conditions provided in article 49 of the rules of procedure of the Court.

### **ARTICLE 33 Opposition by third party**

Third party opposition against awards and Court judgments when the Court has ruled on the substance in accordance with article 29.5 subsection I above, shall be, in the cases and under

the conditions provided in article 47 of the rules of procedure.

**ARTICLE 34 Final provisions**

These arbitration rules shall enter into force thirty (30) days after its signature. It shall be published in the Official Gazette of OHBLA. It shall equally be published in the Official Gazette of the member states or by any other appropriate means.

Done at Ouagadougou, on 11 march 1999