



— Nairobi Centre for —
International Arbitration



**NCIA PRACTICE NOTES
FOR PARTIES AND
ARBITRATORS**

2018

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1. INTRODUCTION

The purpose of this note is to provide guidance to parties, and their representatives, on the conduct of arbitration under the NCIA Arbitration Rules. It addresses, amongst other things, commencement of an arbitration, filing of a Response, appointment of an Arbitral Tribunal (including applications for expedited formation and the appointment of an emergency arbitrator), presentation of evidence, confidentiality and determination of the costs of an arbitration.

This note is NOT supplementary to the NCIA Rules nor does it form part of the Rules. It is merely a guide to the processes described within the Rules. For further information about NCIA and its services please visit the website www.ncia.or.ke or email info@ncia.or.ke.

The NCIA Arbitration Rules presently in force are the NCIA Arbitration Rules 2015, which came into effect on 24th December, 2015. The Rules, whenever adopted by parties in an agreement, provide a framework for dispute resolution through Arbitration.

1.2 IMPORTANT NOTE

The purpose of these notes is to facilitate diligent and timely conduct of arbitrations under the NCIA Rules. The notes may be amended from time to time at the sole discretion of NCIA.



2. THE NCIA RULES

2.1. SCOPE OF APPLICATION

For Parties to rely on Arbitration as a dispute settlement mechanism, they must incorporate a clause within the agreement referring any dispute that may arise to Arbitration. The agreement to refer a dispute to arbitration can be drafted before a dispute arises when preparing the contract or later, once a dispute has arisen.

NCIA recommends adoption of its arbitration clauses contained in the Notes to the Rules and re-stated below;

A. ARBITRATION CLAUSE:

Any dispute, controversy or claim arising out of in or in connection to this contract or breach, termination or invalidity thereof shall be referred to and finally resolved by arbitration administered by the Nairobi Centre for International Arbitration (NCIA) under the NCIA Arbitration Rules.

In drafting the arbitration clause, parties are requested to ensure that the clause provides the following relevant information:

The language of the Arbitration (e.g. shall be English/Swahili).

The applicable law/ governing law of the contract.

The clause should identify juridical law for the Arbitral Process, commonly referred to as the seat of arbitration. This should, if different, be clearly distinguished from the governing law of the contract.

The size of the tribunal: will it be comprised of a sole arbitrator or more than one arbitrators

Where the Arbitration shall be held, i.e. its venue.



B. MED-ARB CLAUSE:

In the event of a dispute, controversy or claim arising out of or in connection to this contract or breach, termination or invalidity thereof shall first refer the dispute to mediation under the Nairobi Centre for International Arbitration (Mediation) Rules. If the dispute has not been settled pursuant to the said Rules within thirty days following the filing of the request for mediation or within such other period as the parties may agree in writing. Such dispute will be referred to and finally resolved by arbitration administered by the Nairobi Centre for International Arbitration (NCIA) under the NCIA Arbitration Rules in force.



C. CAJAC CLAUSE

Any dispute, controversy or claim arising out of or in connection to this contract, or breach, termination or invalidity thereof shall be settled by arbitration in accordance with the NCIA Arbitration Rules. The Arbitration shall be held in China-Africa Joint Arbitration Centre Nairobi.

2.2 COMMENCING AN NCIA ARBITRATION

2.2.1 To commence an arbitration under the Rules, a party should file with the NCIA a Request for Arbitration (a Request).

2.2.2 A party should address its Request to the NCIA Registrar, and ensure that it includes or encloses all of the information and documentation required by Rule 5(2) of the Rules, including:

- the full name, address, nature and principal address of the business;
- the name and contact details of the representative for the claimant
- a copy of the contract containing the arbitration clause or where necessary a separate agreement referring the dispute for arbitration.
- a statement briefly summarizing the nature and circumstances of the dispute, its estimated monetary amount or value, and the claim advanced by the Claimant against any other party to the arbitration;
- a statement specifying the seat, language and venue of the arbitration as agreed in writing by the parties or as proposed by the claimant
- if the arbitration agreement calls for any form of party nomination of Arbitrators , the full name, contact details , nationality and qualification of the Claimant's nominee;
- Confirmation that copies of the Request (and all accompanying documents) have been with details of the means by which delivery was effected and proof of actual delivery.
- Be accompanied with proof of payment of the non- refundable fee.

- 2.2.3 There is no standard form for a Request. The format of any Request is therefore for a Claimant to decide, although it should be careful to ensure that all of the documentation and information required by Rule 5 has been provided. The Claimant can opt to use the request for Arbitration as its statement of claim if appropriate.
- 2.2.4 The Request for Arbitration can be filed online through a link on the website <http://cportal.ncia.or.ke/Login.aspx> or through emailing a copy to counsel@ncia.or.ke where the request for arbitration is filed before the Registrar, the claimant shall file 4 copies of the Request save where the arbitral tribunal is composed of three panel members the claimant shall file 7 copies of the request.
- 2.2.5 The Claimant shall file the request for arbitration together with the return of service confirming the mode of service and proof of delivery of the request for arbitration.
- 2.2.6 The request should also be accompanied with evidence of payment of the registration fees paid by bank transfer.
- 2.2.7 The Registrar will confirm whether a request is complete before registering the same and issuing a notice of registration of the dispute to the parties.

2.3 FILING A RESPONSE

- 2.3.1 The respondent shall upon receipt of the request for arbitration, file a response within 30 days or within the timeframe set by the Registrar to file the response together with the contact details of the nominated arbitrators as well as details of any third parties to be included in the claim.
- 2.3.2 The response shall contain a brief statement describing the nature and circumstances of any counterclaim advanced by the respondent.
- 2.3.3 Failure to file a response does not preclude a respondent from denying any claim or advancing a counterclaim however, where the respondent is required to nominate an arbitrator, failing to submit details of the nominated arbitrator(s) shall constitute an irrevocable waiver of that party's opportunity to nominate an arbitrator.

2.4 APPOINTMENT OF TRIBUNALS

- 2.4.1 Unless otherwise agreed by parties a dispute shall be decided by a sole tribunal.
- 2.4.2 Parties may jointly nominate an arbitrator for confirmation by the Registrar.
- 2.4.3 Where parties are unable to agree on a joint nomination, the Registrar shall appoint the arbitrator.
- 2.4.4 Where the parties dispute is to be decided by a tribunal comprised of 3 panel members, each party shall nominate one member for confirmation by the Registrar with the umpire being appointed by the Registrar.

2.4.5 Where there are multiple claimants and multiple respondents the multiple claimants shall be deemed as a single class of claimants jointly nominating an arbitrator and the multiple respondents shall also nominate an arbitrator jointly as the second class.

2.4.6 Where parties are unable to agree on the candidates proposed for nomination, the Registrar shall appoint the tribunal.

2.4.7 In confirming an appointment, the centre shall take into consideration the qualifications of the nominee, their availability, independence, impartiality, and agreement to the maximum fee rate set by the Centre. The centre in determining independence of the arbitrator will consider:

2.4.7.1 Arbitrator's relationship with the parties or counsel

2.4.7.2 Relationship of the arbitrator to the dispute

2.4.7.3 Arbitrator's direct or indirect interest in the dispute

2.4.7.4 Relationship between an arbitrator and another arbitrator or counsel/party representative.

2.4.7.5 Relationship between arbitrator and party and others involved in the arbitration

2.4.7.6 Other circumstances that exist as the Registrar and the Arbitral Court may determine.

2.5 CHALLENGE PROCEDURE (RULE 11 OF THE RULES)

- 2.5.1 Parties may challenge an Arbitrator in accordance with rule 11 of the Rules within 15 days of the formation of the tribunal.
- 2.5.2 The statement of challenge shall be addressed to the President, Arbitral Court and shall be delivered to the Registrar, the arbitral tribunal and parties to the dispute.
- 2.5.3 The statement of challenge shall state the reasons for the challenge and specify the date of notice of the existence of circumstances necessitating the challenge.
- 2.5.4 The statement shall be delivered to the Registrar together with proof of evidence of delivery upon other parties to the dispute and the tribunal.
- 2.5.5 The other party may consent to the challenge or dispute the challenge in writing within 5 days of receipt of challenge.
- 2.5.6 An Arbitrator may choose to accept the challenge and resign or dispute the challenge and prepare a response to the statement of challenge within 3 days of receipt of the challenge.
- 2.5.7 Where the challenge is contested, the Arbitral Court shall make its decision within 15 days of the receipt of the challenge.
- 2.5.8 Where the Arbitrator is removed, the Centre shall prepare a statement of account and pay the Arbitrator its relevant costs and expenses as the Centre may consider appropriate in the circumstances.
- 2.5.9 Upon removal of an arbitrator, the Centre shall initiate the appointment process set out in the parties' contract or as agreed in writing by the parties.

2.6 EXPEDITED FORMATION OF THE TRIBUNAL:

- 2.6.1 An application, in accordance with Rule 10 on expedited formation of a tribunal shall be made in writing to the Registrar and copied to all parties to the dispute.
- 2.6.2 The application shall set out the grounds for urgency including but not limited to the nature of the subject matter requiring redacted timeframes for compliance as set under the Rules.
- 2.6.3 The Registrar should receive a response to the application for expedited formation of the tribunal, not later than 5 days of receipt of the application for the expedited formation.
- 2.6.4 The Registrar shall decide the application within 3 working days of receipt of the response or upon the lapse of the period within which the response ought to have been delivered.
- 2.6.5 The Registrar can only reduce time relevant for the formation of a tribunal including service of the response and of any matters or documents adjudged to be missing from the request for Arbitration but shall not be entitled to reduce any other time-limit.

2.7 SETTING A TIMETABLE FOR THE ARBITRATION

- 2.7.1 The tribunal shall within 21 days of appointment set a date for a preconference hearing for the parties to agree on the timetable and conduct of the arbitration.

- 2.7.2 Where the parties and the tribunal do not set the timetable for the dispute the timetable set by rule 15 of the Rules will apply.
- 2.7.3 Parties are at liberty to make written submissions or supplement them with oral arguments during the hearing.
- 2.7.4 Parties are at liberty to choose their representative whether qualified in law or not.
- 2.7.5 The maximum Costs of the tribunal are as set out in the schedule and as agreed by the Arbitrator in the letter of appointment.
- 2.7.6 The Tribunal is at liberty to and has the discretion of establishing the cost for the parties.

2.8 PUBLICATION OF AWARDS

- 2.8.1 NCIA shall not publish any arbitral awards unless authorised in writing by both parties waiving absolute confidentiality.
- 2.8.2 The parties will be requested for approval to have the award published with or without conditions at the pre-conferencing stage and at the close of the hearing.
- 2.8.3 All awards will be stored and circulated only to the parties in a confidential manner.
- 2.8.4 Decisions of the Arbitral Court shall be published in a redacted form.



— Nairobi Centre for —
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Co-operative Bank House
8th Floor, Haile Selassie Ave
P.O. Box 548-00200 Nairobi, Kenya
Tel: +254 20 222 4029
Mobile: +254 771 293 055
info@ncia.or.ke
www.ncia.or.ke