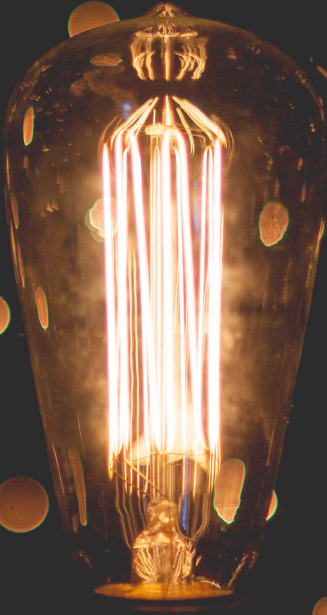




Nairobi Centre  
for International  
Arbitration

where disputes meet resolution



# Frequently Asked Questions

[www.ncia.or.ke](http://www.ncia.or.ke)



Co-operative Bank House,  
8th Floor, Haile Selassie Ave  
P.O Box 548-00200, Nairobi, Kenya  
Tel: +254 020-222 4029  
Mob: +254 771 293 055  
Email: [info@ncia.co.ke](mailto:info@ncia.co.ke)  
[www.ncia.or.ke](http://www.ncia.or.ke)

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## **1. What are the NCIA Arbitration Rules and for which type of disputes can they apply?**

The NCIA Arbitration Rules are procedural rules for conduct of arbitration proceedings in arbitrations administered by the NCIA. The NCIA Arbitration Rules are available for use in a wide range of contracts including construction, shipping, insurance, manufacturing, purchasing, and service provision etc. (NCIA is an independent and neutral arbitral institution established by statute governed by a professional Board of Directors supported by a Centre secretariat led by a Registrar).

## **2. How can you make the NCIA Rules apply to a contract/agreement?**

The NCIA Rules can be applied to a contract/agreement by incorporating the NCIA Model Clause set out in the Notes to the published Rules or a modification of the Clause with an appropriate clause to cater for the specific requirements of a party. It is recommended that a party obtain legal advice before modification of the Model Clause.

The NCIA secretariat will be at hand to advise parties on the Clauses.

## **3. Where can you find the NCIA Arbitration Rules?**

The NCIA Arbitration Rules will be published in the Kenya Gazette from time to time. However the published version will be available on the official website of NCIA [www.ncia.or.ke](http://www.ncia.or.ke).

The NCIA secretariat will be at hand to provide copies of the NCIA Arbitration Rules on request.

## **4. Do you have a model clause for the NCIA Rules?**

**YES:** The NCIA Arbitration Model Clause is set out in the Notes to the published Rules. The Model Clause is reproduced here

*“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.”*

## **5. Are parties to a dispute free to appoint arbitrators or must an arbitrator be appointed by NCIA?**

Under the NCIA Rules parties are free to nominate arbitrators from the NCIA list of arbitrators or outside of the NCIA list of arbitrators. However NCIA arbitrations are institute administered hence all appointments of arbitrators are done by the NCIA. Any appointment of an arbitrator by the parties is deemed to be a nomination.

The NCIA list of accredited arbitrators will be available on the official web-site of NCIA [www.ncia.or.ke](http://www.ncia.or.ke)

## **6. Can a party object/challenge the appointment of an arbitrator, if so what is the procedure?**

**YES:** The grounds and procedure for challenge of an arbitrator is provided under Article 10 & 11 respectively of the NCIA Arbitration Rules. A challenged arbitrator may withdraw or the parties may consent to the challenge. Where the challenge is not agreed by the parties or the arbitrator does not withdraw the application for challenge shall be determined by the NCIA Arbitral Court.

## **7. How does a party commence arbitration under the NCIA Rules?**

Arbitration proceedings are deemed to have commenced upon receipt by the Registrar of a request by the party claiming with the requisite registration fee. The procedure for commencement of arbitration is set out in Article 1 of the NCIA Arbitration Rules.

## **8. How long are proceedings under the NCIA Rules likely to take from commencement?**

Where the parties respect and support the choice to arbitrate disputes the NCIA Arbitration Rules provide for various actions to be undertaken “within” a maximum stipulated time frame. This upper limit can be greatly reduced by the parties prompt action. On an average should there be agreement on appointment of arbitrator, no challenge of arbitrator or request to correct the award NCIA arbitration should last up to 300 days.

## **9. What are the costs of arbitrating under the NCIA Rules?**

The offers a highly competitive fee structure for domestic and international arbitrations comparable to other international arbitral institutions. The deposits on fees and the Arbitration Costs are provided in Article 25 and 30 of the NCIA Arbitration Rules. Schedule 2 will enable a party to estimate fees and costs of arbitration.

## **10. Who influences costs in arbitration?**

Costs in arbitration are driven by the parties because of the contractual relationship and other factors such as the nature of the dispute, the value of the subject matter, the time that will be spent on the dispute and other factors such as witnesses.

Approximately 74% of the party costs in arbitration is spent on external legal costs (including where applicable- barristers/Advocates' fees). The remaining 26% is ordinarily spread across other headings such as external fees, expert fees and management costs.

In addition to the party costs, common costs will also be incurred by both parties. 60% of these costs are spent on arbitral fees, with the remaining 40% divided amongst the cost of producing transcripts of the proceedings, hiring the hearing venue, paying certain arbitral expenses and covering other miscellaneous costs

## **11. Is an award in NCIA arbitration enforceable in Kenya and other foreign Countries?**

**YES:** An award made under the NCIA Arbitration Rules is enforceable in Kenya and other foreign countries. Domestic arbitral awards can be enforced subject to the provisions of Section 36 of the Arbitration Act. Awards made in Kenya can be enforced under the regime of the Convention on Recognition and Enforcement of Foreign Awards which came into force in Kenya on 11th May 1989.

## **12. What is the language and seat of arbitration under the NCIA Rules?**

The initial language of arbitration shall be the language of the arbitration agreement with English as a default language. The seat of arbitration under the NCIA Arbitration Rules is Nairobi, Kenya.

## **13. What is the role of in-house counsel?**

The main role is to advise the organization on legal issues and ensure disputes arising that are of a legal nature are addressed. The in-house counsel has an understanding of the organization's structure, business and operations and ensures that there is an arbitration clause where the organization enters into contracts and wording the clause in a way that does not prejudice the organization.

## **14. Why should I select the NCIA Rules for arbitrating a dispute?**

NCIA is an independent and neutral arbitral institution established by statute governed by a professional Board of Directors supported by a Centre secretariat. NCIA Arbitration Rules offer a predictable procedure for the conduct of arbitration at favourable terms of costs and fees compared to other arbitral institutions.

Nairobi as a seat of arbitration is supported by a unique Constitution which recognizes alternative dispute resolution (ADR) and a judiciary that encourages use of ADR mechanisms. Kenya adopted the UNCITRAL Model law with the Arbitration Act modeled on the law. Kenya is also signatory to the Convention on Recognition and Enforcement of Foreign Awards. This means you can have your award recognized and enforced in a country other than Kenya.

If you choose Nairobi as the geographical place of arbitration you choose a regional air transport hub with connectivity across the Continent to the rest of the world, world class hospitality, banking and communication services and more. Nairobi also enjoys exceptional weather all year round.

The competent staff at NCIA secretariat is at hand to offer administrative support and advice on request.



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