



EAST AFRICAN COMMUNITY
EAST AFRICAN COURT OF JUSTICE



**ARBITRATION RULES OF THE EAST AFRICAN
COURT OF JUSTICE**

EAC
Arusha, Tanzania
November, 2004

**THE EAST AFRICAN COURT OF JUSTICE
ARBITRATION RULES**

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THE EAST AFRICAN COURT OF JUSTICE ARBITRATION RULES, 2004

RULES

In exercise of the powers conferred on the East African Court of Justice by Article 42 of the Treaty for the Establishment of the East African Community, the Court hereby makes the following Rules of Arbitration:

PART 1 – PRELIMINARY

Rule 1

Citation, application and interpretation

- (1) These Rules may be cited as the East African Court of Justice Arbitration Rules, 2002, and shall come into force on such date as the President may appoint by notice in the Gazette.
- (2)
 - (a) Unless the parties to an arbitration agree otherwise these rules, shall apply to every arbitration under Article 32 of the Treaty.
 - (b) The parties to any arbitration may agree in writing to modify or wave the application of any of these rules
 - (c) Where any of these Rules is in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.
- (3) Unless otherwise agreed by the parties, if without showing sufficient cause, any party fails to do any act required to be done under these rules, the tribunal may make such order as it shall deem appropriate in the circumstances of the case.
- (4) In these rules, unless the context otherwise requires-

“Arbitration” means any proceedings instituted under Article 32 of the Treaty;

“Arbitration agreement” means an agreement in terms of Article 32 of the Treaty to submit to arbitration by the Court;

“Arbitrator” means a judge or judges of the Court constituting the Tribunal;

“Arbitral award” means any award of the Tribunal and includes an interim award;

“Claimant” means the party initiating recourse to arbitration;

“Court” means the East African Court of Justice;

“Party” means a party to an arbitration proceedings and includes a duly appointed representative of the party;

“President” means President of the East African Court of Justice;

“Respondent” means the party against which the recourse to arbitration is made.

“Registrar” means the Registrar of the Court

“Tribunal” means the Court when exercising the jurisdiction under Article 32 of the Treaty and includes a judge of the Court acting as a sole arbitrator.

“Treaty” means the Treaty for the Establishment of the East African Community.

“Vice President” means Vice President of the East African Court of Justice

PART II – GENERAL PROVISIONS

Rule 2 Computation of time

Any period of time prescribed by these Rules shall be reckoned as follows;

- (1) where a period expressed in days, weeks, months or years is to be calculated from the moment at which an event occurs or an action takes place, the day during which that event occurs or that action takes place shall not be counted as falling within the period in question; and the period shall end with the expiry of the last day of the week, month or year;
- (2) periods shall include official holidays, Sundays and Saturdays;
- (3) periods shall not be suspended during the Court vacations;
- (4) if a period would otherwise end on a Saturday, Sunday or an official holiday, it shall be extended until the end of the first following working day;
- (5) For purposes of this rule a declared public holiday in the Partner State shall be an official holiday in respect of that Partner State.

Rule 3 Initiation of Arbitration

- (1) A Party wishing to have recourse to arbitration of a particular dispute by the Tribunal shall notify the respondent in writing of its request for that dispute to be referred for arbitration and shall thereafter submit the request to the Registrar.

- (2) The date when the request is received by the Registrar shall, for all purposes, be deemed to be the date of commencement of the arbitral proceedings.
- (3) The request for arbitration shall contain names, description and addresses of the Parties and a statement of the claimant's case, and shall be accompanied by:
 - (a) copy of the notice to the respondent under sub rule (1) of this rule
 - (b) copy of the arbitration agreement; and
 - (c) any other relevant agreements, documentation or information as will clearly establish the circumstances of the case;
- (4) The claimant shall pay the prescribed fee at the time of submitting the request.
- (5) The claimant shall within seven days serve the respondent with:
 - (a) a copy of the request and claim;
 - (b) copies of annexures to the claim;
 - (c) evidence of payment of prescribed fee;and shall provide the Registrar with evidence of service

Rule 4
Answer to claim and Counter Claim

- (1) The respondent shall within 15 days from the receipt of the documents referred to in sub-rule (5) of rule 3 submit an answer to the Registrar and to the claimant together with any relevant documents.
- (2) A respondent may file a counter-claim, at the time of filing the answer.
- (3) The claimant may file a reply to the counter claim within 15 days from the date of being served with the counter-claim.
- (4) The Registrar may with consent of both parties or for good cause shown to his satisfaction after hearing both parties extend time for the filing of any document under this rule
- (5) If a party fails to file its pleading in time as prescribed or extended, the Tribunal in absence of such a pleading may proceed with the arbitration in accordance with these Rules.

Rule 5
Mode of Submitting and Service

- (1) All pleadings and other communication required in these rules to be submitted to the Registrar shall be submitted in quadruplicate.
- (2) A pleading or other written communication under these rules shall be validly submitted or only served if delivered against a signed receipt.
- (3) If the parties have so agreed, a party may in order to comply with any time limit, submit or serve a pleading or other communication by electronic transmission.

Provided that a signed original is submitted or served within 7 days from the date of such transmission.

- (4) A pleading shall be deemed to have been received, in the case of that forwarded by registered post, after a reasonable time taking into account the circumstances, and in the case of electronic transmission on the day when it is sent.

Rule 6
Rules Applicable to substance of dispute

- (1) The Tribunal shall decide the dispute in accordance with the law chosen by the parties. But if the parties expressly authorise it to do so, the Tribunal shall decide on the substance of the dispute according to considerations of justice and fairness without being bound by the rules of law.
- (2) The choice of the law or legal system of a designated state shall be construed, unless otherwise agreed by the parties, as directly referring to the substantive law of that state and not its rules of conflict of laws.
- (3) Failing a choice of the law by the parties, the Tribunal shall apply the rules of law it considers to be appropriate given all the circumstances of the dispute.
- (4) In all cases, the Tribunal shall decide in accordance with the terms of the particular contract and shall take into account the usages of the trade applicable to the particular transaction.

Rule 7
Preliminary Conference

- (1) Before proceeding with arbitration, the Tribunal shall hold a preliminary conference with the parties to draw up the document defining the Terms of Reference, which shall include the following:
 - (a) the full names, addresses and description of the parties,
 - (b) the issues to be determined,
 - (c) the composition of the Tribunal,
 - (d) the place of arbitration,
 - (e) particulars of the substantive law chosen by the parties or, if applicable, reference to the power conferred on the Tribunal to act without being bound by the rules of law.
 - (f) Reference to any agreement by the parties if any, under rule 1 (2) (b) relating to the procedural rules
 - (g) such other particulars as may be required to make the arbitral award enforceable in law, or as may be regarded as helpful by the Tribunal.
- (2) The document mentioned in sub-rule (1) shall be signed by the parties and the Tribunal.
- (3) The Tribunal may, if it considers it appropriate, require a party to deliver to the Tribunal and to the other party within such a period of time as the Tribunal shall decide, a summary of other documents and the evidence and a list of authorities which that party intends to present in support of the facts in issue set out in the document under sub rule (2).
- (4) The Tribunal and the parties shall agree on the date of the initial hearing.
- (5) At least 15 days before a hearing, each party shall state in writing to the Tribunal and the other parties the names and addresses of any witnesses it intends to call, the subject of their testimony and the languages in which such witnesses will give their testimony.

Rule 8
Waiver of right to object

A party which knows or should have known that a provision of these Rules, or any other Rules or agreement applicable to the proceeding, or an order of the Tribunal has not been complied with, and which fails to state promptly its objections to such non compliance, shall be deemed to have waived its right to object.

Rule 9
Interim measures by Tribunal

- (1) At the request of either party, the Tribunal may at any time during the proceedings take any interim measure it deems necessary in respect of the subject matter of the dispute, including measures for the conservation of the goods forming the subject matter in dispute, such as ordering their deposit with a third person or the sale of perishable goods.
- (2) An interim measure under sub-rule (1) may be made in the form of an interim award. The Tribunal may require security for the costs of such measures.

Rule 10
Death of a party

- (1) Subject to any law by which any right or cause of action is extinguished by the death of a person an arbitration agreement is not discharged by the death of any party, but in such event the agreement is enforceable by or against the legal representative of the deceased.
- (2) Where the death of a party occurs during the continuance of arbitration, the legal representative shall take over the proceedings.
- (3) Where no legal representative is appointed within a reasonable time, the surviving party may, with leave of the Tribunal, proceed ex parte.

**PART III – COMPOSITION OF THE
TRIBUNAL AND CONDUCT OF PROCEEDINGS**

Rule 11
Composition of the Tribunal

- (1) The parties are free to agree on the number of arbitrators to form the tribunal and whether there is to be a Chairman.
- (2) Unless otherwise agreed by the parties, an agreement that a number of arbitrators shall be two or any other even number shall be understood as requiring the appointment of an additional arbitrator as Chairman of the tribunal.
- (3) If there is no agreement as to the number of arbitrators, the tribunal shall consist of a sole arbitrator. Provided that the President may either on application or on his own having regard to the nature of the dispute appoint more than one arbitrator.

Rule 12
Conduct of Proceedings

- (1) The parties are free to agree on the procedure to be followed by the tribunal in conducting the proceedings.
- (2) Failing such agreement, the tribunal may, subject to the provisions of these rules, conduct the arbitration in such manner, as it considers appropriate. The powers conferred upon the tribunal include the power to determine the admissibility, relevance, materiality and weight of any evidence.
- (3) The parties shall be treated with equality and each party shall be given full opportunity of presenting its case.

Rule 13
Place of arbitration

- (1) Arbitration shall be held at a place agreed upon by the parties or in the absence of such agreement, shall be determined by the Tribunal.
Provided that the Tribunal may hear witnesses or hold meetings for consultation among its members at any place it deems appropriate, having regard to the circumstances of the arbitration.
- (2) The Tribunal may visit any place it deems necessary for the inspection of goods, documents or other property. The parties shall be given sufficient notice to enable them to be present at such inspection.

Rule 14
Language

- (1) The language of the Tribunal shall be English.
- (2) A document drawn up in a language other than English shall be accompanied by its certified translation into the English language.

Rule 15
Objection as to jurisdiction

- (1) The Tribunal shall have jurisdiction to hear and determine any matter;

- (a) arising from an arbitration clause contained in a contract or agreement which confers such jurisdiction to which the Community or any of its institutions is a party; or
 - (b) arising from a dispute between the Partner States regarding the Treaty if the dispute is submitted to it under a special agreement between the Partner States concerned; or
 - (c) arising from an arbitration clause contained in a commercial contract or agreement in which the parties have conferred jurisdiction on the Court.
- (2) The Tribunal shall have power to decide on an objection that it has no jurisdiction, including any objection with respect to the existence or validity of the arbitration agreement, and its decision shall be final.
 - (3) An objection that the Tribunal does not have jurisdiction shall be raised not later than the time of submission of the answer to the claim.
 - (4) An objection that the Tribunal is exceeding the scope of its jurisdiction shall be raised as soon as the matter alleged to be beyond the scope of its jurisdiction is raised during the arbitral proceedings.
 - (5) The Tribunal may, in either of the cases referred to in sub-rule (3) or (4) admit a late objection if it considers the delay justified.
 - (6) Where an objection is duly taken to the Tribunal's substantive jurisdiction, it may;
 - (a) rule on the matter in an award as to jurisdiction; or
 - (b) deal with the objection in its award on the merits

Rule 16 Hearing

- (1) Subject to any agreement by the parties on the arbitral procedure if any, under Rule 1 sub rule (2), the Tribunal shall have discretion allowed under such law as may be applicable to ensure the just, expeditious, economical and final determination of the dispute.
- (2) Each party shall have the burden of proving the facts relied on to support its case.
- (3) At any time during the proceedings, the Tribunal may order any party to produce additional evidence as it deems fit.

- (4) The Tribunal may determine the manner in which evidence of witnesses is presented.
- (5) The Tribunal may adjourn hearings to a subsequent date.
- (6) If a party fails to appear at a hearing or to produce evidence, the Tribunal may continue the proceedings and make an award on the evidence on record.
- (7) Hearings shall be private unless the parties agree otherwise.

Rule 17
Taking and recording of evidence

The evidence before the Tribunal shall be recorded by the official recorder. The record of each hearing shall be signed by the Chairman or the sole arbitrator as the case may be and shall be kept and maintained by the Registrar.

Rule 18
Experts

- (1) The Tribunal may-
 - (a) appoint one or more experts to report to it on any specific issue to be determined by the Tribunal; and
 - (b) require a party to give, produce or provide to such expert any relevant information, documents, goods or other property for inspection.
- (2) Upon receipt of the expert's report the Tribunal shall communicate a copy of the report to each party which shall be given opportunity to express in writing its opinion on the report.
- (3) The expert shall, upon the request of a party at that party's cost, make available to that party for examination all documents, goods or other property in the expert's possession, which were provided to the expert for the preparation of the report.
- (4) If a party so requests or if the Tribunal considers it necessary, the expert shall participate in a hearing where each party shall have the opportunity to put questions to the expert. At such hearing a party may present an expert witness to testify on the point at issue.

Rule 19
Assistance in taking evidence

- 18 The Tribunal may, on its own motion or on an application of a party, request assistance of any court or tribunal to take the evidence of a witness and transmit it to the Tribunal.

**PART IV – ARBITRAL AWARD AND TERMINATION OF
ARBITRAL PROCEEDINGS**

Rule 20
Decision making

In arbitral proceedings with more than one arbitrator, any decision of the Tribunal shall be made by a majority.

Rule 21
Settlement

- (1) If the parties settle the dispute during arbitral proceedings, the Tribunal shall terminate the proceedings.
- (2) The Tribunal if requested by the parties may record the terms of settlement in the form of an arbitral award.
- (3) An arbitral award on agreed terms shall have the same status and effect as any other arbitral award on the substance of the dispute.

Rule 22
Form and contents of arbitral award

- (1) An arbitral award shall be made in writing and shall be signed by the arbitrator or the arbitrators.
- (2) The arbitral award shall state the reasons upon which it is based, unless-
 - (a) the parties have agreed that no reasons are to be given; or
 - (b) the award is an arbitral award on agreed terms under rule 21.
- (3) The arbitral award shall be made and dated at the place of arbitration, and the award shall be deemed to have been made at that place.

- (4) The Registrar shall give to the parties reasonable notice of the date and place on which the award is to be made.

Rule 23
Termination of arbitral proceedings

- (1) The Tribunal shall issue an order for the termination of the arbitral proceedings where-
 - (a) the Tribunal decides that it has no jurisdiction;
 - (b) the claimant withdraws the claim, unless the respondent objects to the withdrawal and the Tribunal recognises a legitimate interest in obtaining a final determination of the dispute;
 - (c) the parties agree on the termination of the arbitral proceedings; or
 - (d) the Tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.
- (2) Subject to rule 24, 25 and 26 the mandate of the Tribunal shall cease upon the Tribunal making award or an order of termination of the arbitral proceedings.

Rule 24
Interpretation of the award

- (1) Within 30 days after the award is made, either party may request the Tribunal to give an interpretation of the award or part thereof.
- (2) The Tribunal may in its discretion allow the parties to address it on the request for interpretation.
- (3) The interpretation shall be given in writing within 45 days after the parties have addressed the Tribunal, if applicable, or after receipt of the request and the interpretation shall form part of the award.

Rule 25
Correction of the award

- (1) Within 30 days after the award is made, either party, with notice to the other party may request the Tribunal to correct computational, clerical or typographical errors, or any other errors of similar nature.

- (2) The Tribunal may in its discretion allow the parties to address it on the request for correction. The correction if any shall be made within 30 days after the parties have addressed the Tribunal, if applicable, or after receipt of the request for correction.
- (3) The Tribunal may on its own initiative within 30 days after the award is made make any such corrections.
- (4) Such corrections shall be in writing and shall form part of the award.

Rule 26
Additional award

- (1) Within 30 days after the receipt of the award, either party, with notice to the other party may request the Tribunal:
 - (a) to make additional award as to any claim presented in the arbitral proceeding but not determined; or
 - (b) to review the award on any of the following grounds; namely that:
 - (i) a party to the arbitration agreement was under some incapacity
 - (ii) the arbitration agreement is not valid under the law to which the parties have subjected it or failing any indication under the law of the State where the agreement was made
 - (iii) the party making the application was not given notice of the arbitral proceedings
 - (iv) a new and important matter or evidence discovered after the award could not after exercise of due diligence be produced in the arbitral proceedings.
 - (v) There is an error apparent on the face of the record which has occasioned injustice
 - (vi) The award was obtained through fraud
 - (vii) The award deals with a dispute not contemplated in the terms of the submission to arbitration.
- (2) If the Tribunal considers the request for the additional award to be justified and that the omission can be rectified without any further hearings or evidence, it shall make the additional award within 45 days after the receipt of the request.
- (3) If the tribunal considers the request for review justified, it may hear such matter or evidence, as it deems necessary and shall review the award accordingly within 45 days.

PART V – FINALITY AND ENFORCEABILITY OF AWARD

Rule 27

Finality and enforceability of award

- (1) The arbitral award shall be final.
- (2) By submitting the dispute to arbitration under Article 32 of the Treaty, the parties shall be deemed to have undertaken to carry out the resulting award without delay.
- (3) Enforcement of arbitral awards shall be in accordance with the enforcement procedures of the country in which enforcement is sought.

PART VI – COSTS

Rule 28

Costs and fees

- (1) The Tribunal shall fix costs of arbitration in its award.
- (2) The term “costs” includes:
 - (a) filing fees;
 - (b) the expenses incurred by the Tribunal to obtain expert advice and other assistance;
 - (c) travel and other expenses of witnesses;
 - (d) the costs for legal representation.
- (3) The filing fees shall be calculated in accordance with the scale of fees prescribed in the Schedule.
- (4) A successful party shall be allowed only such costs as the Tribunal considers reasonable and which shall have been claimed during the arbitral proceedings.

Rule 29
Security for Costs

- (1) The Tribunal shall have the power to order any party to provide security for the legal or other costs of any other party by way of deposit or bank guarantee or in any other manner as the Tribunal deems fit.
- (2) In the event that any order under sub-rule 1 is not complied with, the Tribunal may disregard a claim or counter-claim by the non-complying party, and it may proceed to determine a claim or counter-claim by a complying party.

Dated at Arusha, Tanzania on this day of 2004.

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President

**SCHEDULE OF ARBITRATION COSTS UNDER RULE 28 OF
THE RULES OF ARBITRATION**

A. Administrative Expenses

	Amount in dispute In US Dollars	Amount of fee In US Dollars
(i)	Where the total amount in dispute does not exceed 10,000	100
(ii)	Where the total amount in dispute exceeds 10,000 but does not exceed 50,000	100 plus 1 per cent of the amount by which the total amount in dispute exceeds 10,000
(iii)	Where the total amount in dispute exceeds 50,000 but does not exceed 100,000	500 plus 0.75 per cent of the amount by which the total amount in dispute exceeds 50,000
(iv)	Where the total amount in dispute exceeds 100,000 but does not exceed 250,000	875 plus 0.5 per cent of the amount by which the total amount in dispute exceeds 250,000
(v)	Where the total amount in dispute exceeds 250,000	1,575 plus 0.125 per cent of the amount by which the total amount in dispute exceeds 250,000 subject to the maximum 10,000.