



**THE REPUBLIC OF KENYA**

LAWS OF KENYA

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**NAIROBI CENTRE FOR INTERNATIONAL ARBITRATION ACT**

NO. 26 OF 2013

Revised Edition 2018 [2013]

Published by the National Council for Law Reporting  
with the Authority of the Attorney-General

[www.kenyalaw.org](http://www.kenyalaw.org)



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**NO. 26 OF 2013**

**NAIROBI CENTRE FOR INTERNATIONAL ARBITRATION ACT**

[Date of assent: 14th January, 2013.]

[Date of commencement: 25th January, 2013.]

**An Act of Parliament to provide for the establishment of regional center for international commercial arbitration and the Arbitral Court and to provide for mechanisms for alternative dispute resolution and for connected purposes**

[Act No. 26 of 2013, Act No. 18 of 2018.]

**PART I – PRELIMINARY**

**1. Short title**

This Act may be cited as the Nairobi Centre for International Arbitration Act, 2013.

**2. Interpretation**

(1) In this Act, unless the context otherwise requires—

“**Board**” means the Board of Directors constituted under section 6;

“**Cabinet Secretary**” means the Attorney-General;

“**Centre**” means the Nairobi Centre for International Arbitration established under section 4;

“**chairperson**” means the chairperson of the Board appointed under section 6;

“**Court**” means the Arbitral Court established under section 21;

“**Fund**” means the General Fund established by section 17;

“**Registrar**” means the chief executive officer of the Centre appointed under section 9; and

“**Rules**” means the rules made under section 25.

(2) Despite subsection (1), until after the first election under the Constitution, references in this Act to the expressions “**Cabinet Secretary**” and “**Principal Secretary**” shall be construed to mean “Minister” and “Permanent Secretary”, respectively.

**3. Act to prevail**

Where there is any conflict or inconsistency between this Act and the provisions of any other Act in matters relating to the purpose of this Act, this Act shall prevail.

**PART II – THE NAIROBI CENTRE FOR INTERNATIONAL ARBITRATION**

**4. Establishment of the Centre**

(1) There is established a centre to be known as the Nairobi Centre for International Arbitration.

(2) The Centre shall be a body corporate with perpetual succession and a common seal and shall in its corporate name, be capable of —

(a) suing and being sued;

- (b) taking, purchasing or otherwise acquiring, holding, charging, leasing or disposing of moveable or immovable property;
- (c) borrowing money;
- (d) doing or performing all such other acts necessary for the proper performance of its functions under this Act which may lawfully be done or performed by a body corporate.

(3) The headquarters of the Centre shall be in Nairobi.

## 5. Functions of the Centre

The functions of the Centre shall be to—

- (a) promote, facilitate and encourage the conduct of international commercial arbitration in accordance with this Act;
- (b) administer domestic and international arbitrations as well as alternative dispute resolution techniques under its auspices;
- (c) ensure that arbitration is reserved as the dispute resolution process of choice;
- (d) develop rules encompassing conciliation and mediation processes;
- (e) organize international conferences, seminars and training programs for arbitrators and scholars;
- (f) coordinate and facilitate, in collaboration with other lead agencies and non-State actors, the formulation of national policies, laws and plans of action on alternative dispute resolution and facilitate their implementation, enforcement, continuous review, monitoring and evaluation;
- (g) maintain proactive co-operation with other regional and international institutions in areas relevant to achieving the Centre's objectives;
- (h) in collaboration with other public and private agencies, facilitate, conduct, promote and coordinate research and dissemination of findings on data on arbitration and serve as repository of such data;
- (i) establish a comprehensive library specializing in arbitration and alternative dispute resolution;
- (j) provide *ad hoc* arbitration by facilitating the parties with necessary technical and administrative assistance at the behest of the parties;
- (k) provide advice and assistance for the enforcement and translation of arbitral awards;
- (l) provide procedural and technical advice to disputants;
- (m) provide training and accreditation for mediators and arbitrators;
- (n) educate the public on arbitration as well as other alternative dispute resolution mechanisms;
- (o) enter into strategic agreements with other regional and international bodies for purposes of securing technical assistance to enable the Centre to achieve its objectives;
- (p) provide facilities for hearing, transcription and other technological services;
- (q) hold, manage and apply the Fund in accordance with the provisions of this Act; and

- (r) perform such other functions as may be conferred on it by this Act or any other written law.

## **6. Board of Directors**

(1) The Centre shall be administered by a Board of Directors which shall consist of—

- (a) a non-executive chairperson appointed by the President on the recommendation of the Cabinet Secretary from amongst the members appointed under paragraph (e);
- (b) the Attorney-General or his representative;
- (c) the Principal Secretary in the ministry for the time being responsible for matters relating to finance or his representative;
- (d) the Chief Registrar of the High Court or his representative;
- (e) three members, not being public officers, nominated by domestic arbitration bodies within the East African region, appointed by the Cabinet Secretary;
- (f) one person each nominated by the following bodies respectively —
  - (i) the Kenya National Chamber of Commerce and Industry;
  - (ii) Law Society of Kenya;
  - (iii) the Kenya Association of manufacturers, and
  - (iv) Chartered Institute of Arbitrators Kenya Branch; and
- (g) the Registrar.

(2) All the appointments in subsection (1)(e) shall reflect a regional balance.

[Act No. 18 of 2018, Sch.]

## **7. Conduct of business and affairs of the Board**

(1) The conduct and regulation of the business and affairs of the Board shall be as provided in the Schedule.

(2) Except as provided in the Schedule, the Board may regulate its own procedure.

## **8. Remuneration of Board members**

The Board shall pay its members such remuneration, fees or allowances as it may determine in consultation with the Cabinet Secretary.

## **9. Registrar**

(1) There shall be a Registrar of the Centre who shall be competitively recruited and appointed by the Centre and whose terms and conditions of service shall be determined by the Centre in the instrument of appointment or otherwise in writing from time to time.

(2) No person shall qualify for appointment under this section unless such person—

- (a) has at least a degree from a recognized institution in the field of either law, finance, arbitration, economics, or insurance; and
- (b) has at least ten years' experience in the relevant field of practice.

(3) The Registrar shall be the chief executive officer of the Centre and responsible for the day-to-day management of the Centre and shall be the Secretary to the Board.

(4) The Registrar shall hold office for four years and shall be eligible for reappointment for one further term of four years.

[Act No. 18 of 2018, Sch.]

#### **10. Other functions of the Registrar**

In relation to the proceedings before the Court, the Registrar shall act in accordance with the instructions of the Court and shall, in particular, be responsible for—

- (a) the establishment and maintenance of the Register;
- (b) the acceptance, transmission, service and custody of documents in accordance with the Rules;
- (c) the enforcement of decisions of the Court;
- (d) certifying that any order, direction or decision is an order, direction or decision of the Court;
- (e) causing to be kept records of the proceedings and minutes of the meetings of the Court and such other records as the Court may direct; and
- (f) undertaking any other duties, in relation to proceedings before the Court, assigned by the Court for the benefit of the Court.

#### **11. Staff of the Board**

The Board may appoint such officers and other staff as are necessary for the proper discharge of its functions under this Act, upon such terms and conditions of service as it may determine and on advice of the Salaries and Remuneration Commission.

#### **12. Delegation by the Board**

(1) The Board may, by resolution either generally or in any particular case, delegate to any committee or to any member, officer, employee or agent of the Centre, the exercise of any of the powers or the performance of any of the functions or duties of the Board under this Act or under any other written law.

(2) The Centre may, by instrument under its common seal, appoint a person, whether in Kenya or in a place outside Kenya, to be its attorney and the person so appointed may, subject to the terms stipulated in the instrument, do any act or execute any power or function which he is authorized by the instrument to do or execute.

(3) The Centre may, in or outside Kenya, appoint any agent as it considers necessary or expedient, to perform any act on behalf of the Centre.

#### **13. Protection from personal liability**

(1) No act or omission by any member of the Board or by any officer, employee, agent or servant of the Centre shall, if the act or omission was done *bona fide* for the purposes of executing a function, power or duty under the Act render such member, officer, employee, agent or servant personally liable to any action, claim or demand whatsoever.

(2) The provisions of subsection (1) shall not relieve the Centre of the liability to pay compensation to any person for any injury to him, his property or to any of his interests caused by the exercise of any power conferred by this Act or by failure, whether wholly or partially, of any works.



**14. Common seal**

(1) The common seal of the Centre shall be kept in such custody as the Board may direct and shall not be used except on the order of the Board.

(2) The affixing of the common seal of the Centre shall be authenticated by the signature of the chairperson and the Registrar and any document not required by law to be made under seal and all decisions of the Board may be authenticated by the signatures of both the chairperson and the Registrar.

(3) Notwithstanding the provisions of subsection (2) the Board shall, in the absence of either the chairperson or the Registrar in a particular matter, nominate one member to authenticate the seal on behalf of either the chairperson or the Registrar.

(4) The common seal of the Centre when affixed to a document and duly authenticated shall be judicially and officially noticed and unless and until the contrary is proved, any necessary order or authorization by the Board under this section shall be presumed to have been duly given.

**15. Confidentiality**

(1) No director, officer, employee or agent of the Centre or any person who for any reason has access to any record, document, material or information relating to the business and affairs of the Centre which he has acquired in the performance of his duties or the exercise of his functions, shall divulge, publish, or otherwise disclose, to any person such document, material or information unless the disclosure is required—

- (a) under any law;
- (b) for the performance of his duties or the exercise of his functions under this Act; or
- (c) when lawfully required to do so by a court of law.

(2) This section shall not apply to any document, material or information which at the time of the disclosure is, or has already been made, lawfully available to the public from any source.

(3) No person who has any document, material or information which to his knowledge has been disclosed in contravention of subsection (1) shall in any manner whatsoever disclose the same to any other person.

(4) Any person who contravenes subsection (1) or (3) commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding three years or to both.

**PART III – FINANCIAL PROVISIONS****16. Funds of the Centre**

(1) The funds of the Centre shall comprise of—

- (a) such sums as may be granted to the Centre by the Cabinet Secretary pursuant to subsection (2);
- (b) all monies from any other source provided for or donated or lent to the Centre including contributions, gifts or grants from or by way of testamentary bequest by any person; and
- (c) such fees, monies or assets as may accrue to or vest in the Centre in the course of the exercise of its powers or the performance of its functions under this Act or under any written law.

(2) There shall be made to the Centre, out of monies provided by Parliament for that purpose, grants towards the expenditure incurred by the Centre in the exercise of its powers or the performance of its functions under this Act.

(3) The receipts, earnings or accruals of the Fund and its balances at the close of each financial year shall not be paid into the Consolidated Fund, but retained for the purposes of the Fund.

#### **17. Establishment of the Fund**

(1) There is established a Fund of the Centre to be known as the General Fund.

(2) The Fund shall vest in the Centre and shall be administered by the Board.

(3) The Fund shall consist of—

- (a) all monies received as subventions, grants or donations to the Fund;
- (b) such sums as may be appropriated by Parliament for that purpose;
- (c) monies earned or arising from any investment of the Fund;
- (d) foreign aid and assistance from bilateral and multilateral agencies;
- (e) all other sums which may in any manner become lawfully payable to, received by or vested in the Centre relating to any matter incidental to its duties and functions under this Act.

(4) The Fund shall be used for meeting the capital and current expenditure relating to—

- (a) educating the public on arbitration as well as on other alternative dispute resolution mechanisms;
- (b) provision of procedural and technical advice to disputants;
- (c) training for mediators and arbitrators;
- (d) research, documentation and dissemination of data on arbitration; and
- (e) any other matter incidental to the functions of the Centre.

#### **18. Financial year**

The financial year of the Centre shall be the period of twelve months ending on the thirtieth June in each year.

#### **19. Annual estimates**

(1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Centre for that year.

(2) The annual estimates shall make provision for all estimated expenditure of the Centre for the financial year and in particular, the estimates shall provide for—

- (a) the payment of the salaries, allowances and other charges in respect of members and staff of the Centre;
- (b) the payment of pensions, gratuities and other charges in respect of staff of the Centre;
- (c) the proper maintenance of the buildings and grounds of the Centre;
- (d) the maintenance, repair and replacement of the equipment and other property of the Centre; and

- (e) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matter as the Centre may deem appropriate.

(3) The annual estimates of the Centre shall be approved by the Board before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for tabling in the National Assembly.

## **20. Accounts and audit**

(1) The Board shall cause to be kept all proper books and records of accounts of the income, expenditure and assets of the Centre.

(2) Within a period of three months from the end of each financial year, the Board shall submit to the Auditor-General or to an auditor appointed under this section, the accounts of the Centre together with—

- (a) a statement of the income and expenditure of the Centre during that year; and
- (b) a balance sheet of the Centre on the last day of that year.

(3) The accounts of the Centre shall be audited and reported upon in accordance with the Public Audit Act, 2003 (No. 12 of 2003).

## **PART IV – THE COMPOSITION AND JURISDICTION OF THE ARBITRAL COURT**

### **21. Establishment of the Arbitral Court**

(1) There is hereby established a Court to be known as the Arbitral Court.

(2) The Court shall consist of—

- (a) a President;
- (b) a Deputy President;
- (c) not more than fifteen other members all of whom shall be leading international arbitrators; and
- (d) the Registrar.

(3) All the members of the Court under subsection (2)(c) shall be appointed competitively by the Board for a period of five years but shall be eligible for re-appointment for one further term of five years.

(4) The President and his deputy shall be appointed by the Board and shall —

- (a) hold office for a term five years;
- (b) be eligible for re-appointment for one further term of five years;
- (c) serve on a part-time basis.

(5) The President shall have supervisory powers over the Court and shall be answerable to the Board.

(6) The Second Schedule shall apply in respect of the conduct of the affairs of the Arbitral Court.

[Act No. 18 of 2018, Sch.]

### **22. Jurisdiction of the Court**

(1) The Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with this Act or any other written law.

(2) A decision of the Court in respect of a matter referred to it shall be final.

23. Deleted by Act No. 18 of 2018, Sch.

#### 24. Alternative dispute resolution

Nothing in this Act shall be construed as precluding the Court from adopting and implementing, on its own motion or at the request of the parties, any other appropriate means of dispute resolution.

[Act No. 18 of 2018, Sch.]

### PART V – MISCELLANEOUS PROVISIONS

#### 25. Rules

The Board may make rules for—

- (a) the dispute resolution techniques and processes to be administered by the Court;
- (b) the matters reserved for the Court in the Act or any other law;
- (c) the general procedure of the Court; and
- (d) any other matter to give effect to this Act.

#### 26. Government to be bound

This Act shall bind the Government.

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### FIRST SCHEDULE

[Section 7, Act No. 18 of 2018, Sch.]

#### PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

##### 1. Tenure of office

(1) Other than the chairperson, a member of the Board other than *ex officio* members shall, subject to the provisions of this Schedule, hold office for a period of four years, on such terms and conditions as may be specified in the instrument of appointment, but shall be eligible for re-appointment for one further term.

(2) The members of the Board shall be appointed at different times so that the respective expiry dates of the members' terms of office shall fall at different times.

(3) The chairperson shall hold office for the period of his appointment as a member of the Board or for the term specified in the instrument of appointment as such, and shall be eligible for reappointment for one further term.

[Act No. 18 of 2018, Sch.]

##### 2. Vacation of office

(1) A member other than an *ex officio* member may—

- (a) at any time resign from office by notice in writing to the Cabinet Secretary;
- (b) be removed from office by the Cabinet Secretary on recommendation of the Board if the member —
  - (i) has been absent from three consecutive meetings of the Board without its permission;

- (ii) is adjudged bankrupt or enters into a composition or scheme of arrangement with his creditors;
- (iii) is convicted of a corruption or economic crime or other criminal offence involving dishonesty, fraud or moral turpitude or any other criminal offence under any law punishable with imprisonment that amounts to a felony under the Laws of Kenya;
- (iv) is of unsound mind or is incapacitated by prolonged physical or mental illness for a period exceeding six months; or
- (v) is otherwise unable or unfit to discharge his functions.

### **3. Meetings**

(1) The Board shall meet at least once in every three months.

(2) Notwithstanding subparagraph (1), the chairperson may, and upon requisition in writing by at least five members, convene a special meeting of the Board at any time for the transaction of the business of the Board.

(3) Unless three quarters of the total members of the Board otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.

(4) The quorum for the conduct of the business of the Board shall be five members, at least two of whom shall be the members referred to in section 6(1)(e).

(5) The chairperson shall preside at every meeting of the Board and in his absence, the members present shall elect one of their number, from among the directors appointed under the section 6(1)(e), to preside and the person so elected shall have all the powers of the chairperson with respect to that meeting and the business transacted thereat.

(6) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the members present and voting, and in case of an equality of votes, the chairperson or the person presiding shall have a casting vote.

(7) Subject to subparagraph (4), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

(8) Nothing in this paragraph shall prevent the chairperson from authorizing a director to use live telephone conferencing or other appropriate communication or multimedia facilities to participate in any meeting of the Board where, prior to the meeting, the director, by notification to the chairperson, has requested for such authorization.

(9) Subject to the provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board and for the attendance of other persons at its meetings and may make standing orders in respect thereof.

### **4. Committees of the Board**

(1) The Board may establish such committees as it may deem appropriate to perform such functions and responsibilities as it may determine.

(2) The Board shall appoint the chairperson of a committee established under subparagraph (1) from amongst its members.

(3) The Board may where it deems appropriate, co-opt any person to attend the deliberations of any of its committees.

(4) All decisions by the committees appointed under subparagraph (1) shall be ratified by the Board.

#### **5. Disclosure of interest**

(1) A member who has an interest in any contract, or other matter present at a meeting shall at the meeting and as soon as reasonably practicable after the commencement, disclose the fact thereof and shall not take part in the consideration or discussion of or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.

(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A member of the Board who contravenes subparagraph (1) commits an offence and is liable to a fine not exceeding two hundred thousand shillings.

#### **6. Contracts and instruments**

Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal may be entered into or executed on behalf of the Board by any person generally or specially authorized by the Board for that purpose.

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### SECOND SCHEDULE

[Section 21(6), Act No. 18 of 2018, Sch.]

#### CONDUCT OF THE AFFAIRS OF THE ARBITRAL COURT

1. The President of the Court shall coordinate and supervise the management of the affairs of the Court.
  2. The President shall constitute panels consisting of an odd number of members and allocate matters to such panels for the better performance of the functions of the Court.
  3. A matter referred to the Court may be heard and determined by one member or a panel of not less than three members in accordance with the court rules of procedure made under section 25 of this Act.
  4. The President of the Court shall submit quarterly progress reports to the Board setting out the activities of the Court during the period covered by the report.
  5. The President of the Court may delegate any of his duties to the Deputy President.
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