

**CONSTITUTION OF THE AFRICAN ARBITRATION ASSOCIATION**  
**(As amended on 28 September 2018 and 29 April 2021)**

**PREAMBLE**

**WE**, the founding members of the African Arbitration Association (hereinafter referred to as the AfAA), a non-profit association that does not administer arbitrations, founded for the purpose of promoting international arbitration and other forms of international dispute resolution on the African continent, do hereby adopt and establish this Constitution as the guiding instrument of our initiative,

**NOTING** the growth in the use of international arbitration on the African continent;

**NOTING** the increasing number of capacity-building initiatives in this field conducted by a wide range of international, governmental and non-governmental organizations, regional economic organizations, academic institutions and arbitral institutions;

**RECOGNIZING** the need to improve coordination among such initiatives and to enhance cooperation among the relevant entities;

**CONSCIOUS** of the desirability of strengthening the legislative framework for arbitration and other means of dispute resolution in all African jurisdictions in line with widely-accepted international standards, as well as of promoting the use of Africa-based arbitral institutions, African seats and venues;

**COMMITTED** to principles of diversity and inclusion, and **REJECTING** all forms of discrimination, including inter alia, discrimination based on age, race, disability, ethnicity, national origin, religion, gender, or any other characteristic prohibited by international law;

**CONSIDERING** calls by African dispute resolution specialists to work towards the creation of an association to promote the use of African arbitration institutions, practitioners and arbitrators; and

**ACKNOWLEDGING** the positive momentum created by the series of annual Arbitration in Africa conferences hosted by SOAS 2015-2018 and the International Council for Commercial Arbitration (ICCA) Congress held in Mauritius in May 2016, as well as the support and preparatory work done by the ICCA Working Group on African Arbitral Practice and other individuals and stakeholders in facilitating the establishment of the AfAA;

**HAVE AGREED AS FOLLOWS:**

**ARTICLE 1**  
**AIMS AND OBJECTIVES**

1. The aims and objectives of the AfAA shall be:
  - a. to act as the platform for African international arbitration practitioners and African arbitration institutions within the African continent to enhance the capacity of African parties, institutions and practitioners;
  - b. to act as a reference point for information concerning activities in international arbitration and alternative dispute resolution within the African continent;
  - c. to increase coordination amongst its members in respect of Africa-related international arbitration and alternative dispute resolution activities;
  - d. to provide greater access to information about international arbitration and alternative dispute resolution in Africa;
  - e. to promote African international arbitration practitioners and African arbitration institutions within and outside the African continent;
  - f. to facilitate and encourage the appointment of African international arbitration practitioners and the use of African arbitration institutions;
  - g. to advance the use of international arbitration and alternative dispute resolution as effective methods of dispute resolution of Africa-related transactions and disputes;
  - h. to support the provision of technical assistance, awareness-raising and capacity-building activities to African governments in order to assist them in their task of strengthening the legislative and judicial frameworks in the field of arbitration and other means of dispute resolution; and
  - i. to enhance awareness of existing capacity-building initiatives, to increase coordination in delivering technical assistance and capacity-building activities, and to enhance cooperation among international and regional organizations, arbitral institutions, academic institutions and professional associations throughout the African continent.
  
2. To that end, the AfAA shall:
  - a. establish and maintain a membership directory of AfAA members;
  - b. offer membership for individuals and institutions;
  - c. provide information on its members' activities in international arbitration and alternative dispute resolution;

- d. publish and maintain an events calendar of international arbitration and alternative dispute resolution activities pertinent to Africa;
- e. provide an open-source on-line resource containing African States' key legislative and judicial instruments pertaining to arbitration and alternative dispute resolution;
- f. organize and run conferences and other similar knowledge-sharing events on international arbitration and alternative dispute resolution across the African continent either directly or in association with other international arbitration and alternative dispute resolution institutions;
- g. publish scholarly and non-scholarly publications and journals on various aspects of the practice of international arbitration and alternative dispute resolution pertinent to the African continent; and
- h. develop and publish Africa-related international arbitration and alternative dispute resolution standards and guidelines consistent with best practices.

**ARTICLE 2  
CORPORATE STRUCTURE, PRESENCE  
AND INTERPRETATION**

1. The AfAA is a non-profit entity with the capacity to contract, established in Kigali, Rwanda.
2. The AfAA shall have physical offices and a Secretariat at the place of establishment, as well as an on-line presence through a dedicated website.
3. This Constitution shall be interpreted in accordance with the substantive laws of Rwanda.
4. Any reference in this Constitution to days shall be construed as a reference to calendar days. Where the last day of any period under this Constitution falls on a Friday, Saturday or Sunday, the period shall be deemed to terminate on the Monday following the said Friday, Saturday or Sunday.

**ARTICLE 3  
ORGANS OF THE AfAA**

1. The organs of the AfAA shall be:
  - 1.1 A General Assembly;
  - 1.2 A Board of Directors; and
  - 1.3 A Secretariat.

2. Subject to the availability of relevant expertise and qualifications, the composition of all organs of the AfAA will reflect the diversity of the African continent, and appointments will ensure that:
  - 2.1 There are not more than 60% of members of either gender on the Board of Directors;
  - 2.2 The President and two Vice-Presidents will have at least one member of each gender; and
  - 2.3 The maximum possible representation from all the regions of the African continent.

### ***The General Assembly***

3. The General Assembly comprises all members of the AfAA, as defined in Article 7 below.
4. The role of the General Assembly shall be to:
  - 4.1 Review the annual report(s) of the Board of Directors;
  - 4.2 Select and appoint the members of the Board of Directors;
  - 4.3 Approve and/or review regulations as requested by the Board of Directors; and
  - 4.4 Decide on the winding up of AfAA in light of a recommendation made by the Board of Directors pursuant to Article 9 below.
5. The General Assembly shall meet in person (which shall include live meetings using, in whole or in part, telephonic, audio-visual, electronic or other forms of communication) once per year, and the date and place of the meeting shall be notified to all AfAA members at least ninety (90) days in advance of the meeting.
6. The meeting(s) of the General Assembly shall be valid if a quorum of twenty (20) members, or one third of the membership, whichever is the lesser number, is present. If any part of the meeting is held physically in-person, it shall be held in an African State.
7. Meetings of the General Assembly shall be chaired by the President or a Vice President of the Board of Directors (if the President is unable to attend).
8. Decisions of the General Assembly shall be taken by a simple majority provided that, in the event of deadlock, the chairperson of the meeting shall have a casting vote. Decisions of the General Assembly regarding amendments to this Constitution are governed by Article 11 below. The chairperson of the meeting shall decide the procedure for casting votes during the meeting.

### ***Board of Directors***

9. The Board of Directors shall be constituted of no less than 11 individuals and no more than 15 individuals.
10. The Board of Directors shall be made up of people of integrity, qualified international arbitration scholars, practitioners and representatives of arbitral institutions, who shall serve in their personal capacities.
11. All members of the Board of Directors must be African nationals, who may have additional non-African nationalities, and be members of AfAA.
12. The first Board of Directors of the AfAA shall be constituted of the individuals listed in Annex (1) to this Constitution.
13. Subsequently, members of the Board of Directors shall be elected and appointed by the General Assembly.
14. Once appointed, the Board of Directors shall nominate and appoint its own President and two Vice-Presidents.
15. An interim vacancy in the Board of Directors may be filled only upon the approval of two-thirds of the remaining members of the Board of Directors. An interim appointment shall lapse at the date of the next General Assembly. At that General Assembly, the interim appointee shall stand for election as a Board member in accordance with the usual election procedure set forth below, subject to any applicable term limits, unless he or she chooses not to be elected permanently to the Board.
16. The role of the Board of Directors is to:
  - 16.1 Determine the overall strategic direction of the AfAA;
  - 16.2 Issue any by-laws, rules and regulations of the AfAA;
  - 16.3 Approve the annual budget of the AfAA;
  - 16.4 Determine the annual membership fees of the AfAA;
  - 16.5 Appoint a Secretary General of the AfAA;
  - 16.6 Approve the logo of the AfAA and any changes thereto; and
  - 16.7 Conduct such other business as needed for the proper functioning of the AfAA.
17. The first term for Board of Directors membership shall be two or three years, the duration of which shall be determined in accordance with the election procedure set forth below.
18. The President of the Board of Directors shall serve for one term only, except where at least

75% of the remaining directors on the Board of Directors decide that there are exceptional circumstances warranting the reappointment of the President for a second term.

19. Other members of the Board of Directors shall, once appointed, serve for a maximum period of two consecutive (fully or partially completed) terms. A director shall have a second term at his/her election and such second term shall be three years. A term shall include any interim appointment in excess of one year's duration pursuant to sub-article (15), except that an interim appointee may be appointed to a second term only in accordance with the election procedure set forth below.
20. A director shall hold office until the General Assembly meets in the calendar year in which their term is due to expire (unless renewed pursuant to sub-article (19)), irrespective of the date of his or her appointment by the General Assembly.
21. Whenever the General Assembly conducts an election for only one seat on the Board of Directors, the term of office of that seat shall be three years. Whenever the General Assembly conducts an election in respect of more than one seat on the Board of Directors, every even numbered seat shall have a term of office of two years, and every odd numbered seat a term of office of three years. Following every election:
  - 21.1 every elected candidate who wishes to serve a two year term shall be appointed to such term, subject to sub-article (21.2);
  - 21.2 where there are more elected candidates preferring two year terms than there are such positions available, then the identity of the elected candidate who will be appointed to a two year term shall be determined by a random draw among those elected candidates wishing to be appointed for a two year term;
  - 21.3 where there are fewer elected candidates preferring two year terms than there are such positions available, then who will be appointed to a three year term shall be determined by a random draw among all the elected candidates remaining after the implementation of sub-article (21.1).
22. The office of a director is vacated if a director:
  - 22.1 resigns his office by notice in writing to the General Secretary of AfAA;
  - 22.2 dies;
  - 22.3 is removed by a two thirds majority vote at a General Assembly, pursuant to being given at least thirty (30) days' notice of the motion for removal and being afforded an opportunity to make written representations to the members of the General Assembly;
  - 22.4 fails to attend 3 consecutive meetings of the Board of Directors, unless a majority of the Board of Directors decides there are extenuating circumstances justifying the absence;

- 22.5 fails to remain a member of AfAA, except that each member of the Board of Directors shall remain a member of the Board of Directors provided that his or her membership is renewed and paid for within two months of the expiry of membership;
- 22.6 in the view of two thirds of the remaining directors on the Board of Directors, becomes incapable of fulfilling his or her functions;
- 22.7 in the view of two thirds of the remaining directors on the Board of Directors, is no longer fit and proper to fulfil his or her functions as director. Relevant factors to be taken into account may include (but are in no way limited to) a failure or refusal to fulfil directorial functions, criminal conviction, censure by a professional body or organisation, removal or barring from other positions of trust, insolvency, conducting him or herself in such a manner as to bring or to be likely to bring AfAA into disrepute.
23. The Board of Directors shall meet in person (which shall include live meetings using, in whole or in part, telephonic, audio-visual, electronic or other forms of communication) once per year, and the date and place of the meeting shall be notified to all Board members at least ninety (90) days in advance of the meeting, except where a majority of the Board of Directors agree in writing that a shorter notice period is necessary and reasonable in respect of a particular meeting.
24. The meeting(s) of the Board of Directors shall be valid if a quorum of seven (7) members, or one third of the Board members, whichever is the lesser number, is present. If any part of the meeting is held physically in-person, it shall be held in an African State.
25. Meetings of the Board of Directors shall be chaired by the President or a Vice President of the Board of Directors (if the President is unable to attend).
26. Decisions of the Board of Directors shall, unless otherwise provided in this Constitution, be taken by simple majority; in the event of deadlock, the President shall have a casting vote.
27. Any decisions by the Board of Directors may be taken by way of a written resolution signed by the relevant majority of directors required under this Constitution, provided that the draft proposed resolution is circulated to every member of the Board of Directors and each such member is afforded a reasonable opportunity to provide comments on such resolution to the other members of the Board before the resolution is voted on, approved or signed by any member of the Board.
28. The President, Vice-Presidents and members of the Board of Directors shall receive no remuneration for membership of the Board of Directors. However, they are entitled to the following benefits, for the duration of their term:
- 28.1 Exemption from registration fees for AfAA events, symposia and conferences;
- 28.2 Receipt of all AfAA publications at no cost; and
- 28.3 Complimentary access to any AfAA databases.

29. The President of the Board of Directors is also the Legal Representative of the Association. He shall appoint a Deputy Legal Representative who is a Board Member and a citizen of the host country of the Association. The Legal and Deputy legal Representatives have the power to represent the Association in all legal matters as required by the national legislation.

### ***The Secretariat***

30. The Secretariat is composed of the administrative staff and shall be headed by the Secretary General and shall be appointed by the Board of Directors.
31. The role of the Secretariat shall be to undertake the day-to-day activities of the AfAA including to accept applications for membership of the General Assembly;
32. The Secretary General shall be an *ex-officio* member of the Board of Directors, but shall have no vote. He or she shall serve for an initial term of five (5) years and may be reappointed only once.
33. The First Secretary General of the AfAA shall be appointed by the Board of Directors before the end of 2018. Subsequently, the Secretary General shall be appointed by the Board of Directors subject to approval of the General Assembly.
34. The Secretary General shall be accountable to the Board of Directors for the management and operations of the AfAA, in accordance with the provisions of this Constitution, and in accordance with the decisions and regulations rendered or approved by the Board of Directors.
35. The role of the Secretary General shall be to:
  - 35.1 Oversee the work of the Secretariat and shall be responsible for the day-to-day administrative and financial management of the AfAA;
  - 35.2 Prepare the AfAA's annual meetings and programmes and submit them to the Board of Directors for approval;
  - 35.3 Prepare the AfAA's annual budget for approval by the Board of Directors;
  - 35.4 Appoint the members of the Secretariat and administrative staff after consultation with and subject to the approval of the Board of Directors;
  - 35.5 Conclude or authorize the conclusion of such agreements and contracts as may be necessary for the operation of the AfAA, subject to the regulations and rules of the AfAA and after approval by the Board of Directors; and
  - 35.6 Perform any other task necessary to implement the decisions of the Board of Directors.



36. The AfAA shall bear the costs of economy class travel, accommodation and incidental expenses of the Secretary General when undertaking his/her professional activities for the benefit of the AfAA.

#### **ARTICLE 4 FUNDING**

1. The income of the AfAA shall consist of:
  - a. Such subventions, endowments, gifts and bequests as are allocated to it by notable and legitimate international organizations, foundations or other entities, to the extent approved by the Board of Directors for purposes consistent with the policies, programmes and activities of the AfAA;
  - b. Registrations fees collected for conferences, symposia and events hosted by the AfAA; and
  - c. Membership fees.
2. Income of the AfAA shall be paid into an account held by the AfAA and managed in accordance with the financial rules and regulations of the AfAA as issued by the Board of Directors.

#### **ARTICLE 5 AUDITING**

1. An auditor shall be appointed annually under a two-year contract by the Board of Directors to conduct an annual audit of the financial statements and the status of the AfAA assets. The auditor shall not be a member of AfAA and shall be independent from the AfAA.
2. The annual audit is an external audit carried out by an independent firm registered with the Institute of Certified Public Accountants of Rwanda (ICPAR) and engaged in public practice of accountancy in Rwanda. The objective of the external audit is to express a professional opinion on the financial statements of the AfAA.
3. The Board of Directors shall, within three (3) months of the end of each financial year, submit the financial and asset management report of the AfAA to the auditor for auditing purposes.
4. The auditor to whom the financial and asset management report of the AfAA is submitted in accordance with the provisions of this article shall, within three (3) months of submission of the report, do the following:
  - a. Audit the finance and assets of the AfAA;
  - b. Transmit to the Board of Directors and to the Secretariat, the finance and asset audit report of the AfAA as well as a management letter, which reviews the

accounting and internal control systems. The report as well as the management letter shall be submitted to the General Assembly for approval.

5. The audit shall be carried out in accordance with International Standards of Auditing issued by the International Federation of Accountants (IFAC).

#### **ARTICLE 6 LANGUAGE**

The official languages of the AfAA shall be Arabic, English, French and Portuguese, with English and French being the working languages.

#### **ARTICLE 7 MEMBERSHIP OF AfAA**

1. Membership of the AfAA is open to African and Africa-related arbitral institutions, initiatives, and dispute-resolution specialists, both individual and corporate.
2. Members should in any event be:
  - a. Arbitral institutions or initiatives registered, operating or resident in Africa; or
  - b. Initiatives or individuals with a bona fide interest in the promotion of international arbitration in Africa (regardless of where they are registered or resident).
3. Admission to membership shall be as follows:
  - a. The Secretary General shall review applications and admit new Members taking into account the provisions of this Constitution and any guidelines issued by the Board of Directors;
  - b. Application for membership shall be via an on-line application form.
4. Membership term:
  - a. The term for membership shall be one year.
  - b. Membership shall run according to the calendar year (i.e., commencing or renewing on 1 January each year).
5. Members shall pay an annual membership subscription:
  - a. The initial membership fee shall be determined by the Board of Directors after consultation with the institutions and individuals engaged in the work of the Consultative Workshops at the time of drafting the initial Constitution.
  - b. The membership fee shall be reviewed by the Board of Directors once every two

years, and amended by the Board of Directors after consultation with the General Assembly.

6. Members who fail to timely settle an invoice for their annual subscription shall be removed from the list of Members, provided that they may be re-admitted upon payment both of the subscription for the year in which they apply to be re-admitted and of the arrears that led to their removal, subject to the approval of the Board of Directors.
7. Membership benefits and obligations shall be published on AfAA's website. By applying for membership, a Member is deemed to have accepted the obligations associated with membership.
8. Membership may be suspended by the Board of Directors if, in its complete discretion, it considers that a Member no longer meets the criteria for membership, or fails to support the aims and objectives of AfAA. Where there is a suspension, the Board of Directors shall state the length of the suspension and what requirements the suspended member will need to satisfy to regain admission.
9. Any Member of AfAA may cancel membership by written notification (including email) to the Secretary General; the cancellation being effective on the date of receipt of such written notification by the Secretariat. Such cancellation will not entail the refund of any fees already paid.

#### **ARTICLE 8 AfAA LOGO**

1. AfAA owns and enjoys all the rights associated with its logo.
2. The use of the logo shall be regulated by the AfAA Board of Directors in its complete discretion, and Members and non-members may use the logo only when authorized in writing (including via email) by the Board of Directors.

#### **ARTICLE 9 WINDING UP**

1. The Board of Directors may recommend the winding up of AfAA to the General Assembly, if it is determined that:
  - a. the aims and purposes set forth in Article 1(1) can no longer be achieved or implemented by AfAA; or
  - b. it would be more likely that those aims and purposes would be best achieved or implemented if activities herein provided for or referred to, were to be carried out by another institution, or by other means.
2. The Board of Directors shall, in the event of winding up, arrange for compliance with applicable legal and financial procedures, and shall ensure that any assets of AfAA are transferred, in the circumstances referred to in paragraph 1(a) to an institution with aims

and purposes similar to those of AfAA; and in the circumstances referred to in paragraph 1(b), to the institution referred to therein.

## **ARTICLE 10 CONFLICT RESOLUTION**

1. Any dispute or conflict arising out of or connected with the interpretation or application of this Constitution which cannot be amicably settled between the parties within thirty (30) days of the dispute or conflict arising, shall be finally settled by arbitration in accordance with the arbitration rules of the Administering Institution, as defined in sub-article (2) below, failing which the United Nations Commission on International Trade Law Arbitration Rules (collectively, "**the Rules**"). A dispute or conflict shall be referred to arbitration by delivery of a notice of arbitration as provided in the Rules ("**the notice of arbitration**") to the respondent(s) in the arbitration, the AfAA, through its Secretary General and the Administering Institution as defined in sub-article (2) below.
2. The arbitration shall be administered by an arbitral institution of the claimant's choice, which is headquartered in a country which is a member of the African Union as at the date of the notice of arbitration and which, as at the date of the delivery of the notice of arbitration, is a member of the AfAA and has been a member of the AfAA for a continuous period of at least six months immediately prior to such date ("**the Administering Institution**"). The Administering Institution shall not, however, be headquartered in a State whose national is a claimant in the arbitration.
3. The arbitration shall be conducted by a single (1) arbitrator appointed by agreement between the parties to the arbitration, failing which by the Administering Institution in terms of the Rules, as modified by this Article 10. The arbitrator shall not be a national of any State whose national is a party to the arbitration.
4. The legal seat of the arbitration shall be in an African jurisdiction agreed to by the parties to the arbitration, failing which designated by the Administering Institution. The legal seat shall not be in a State where any claimant or respondent (other than AfAA) is headquartered. The *lex arbitri* of the arbitration shall be the law of the State in which the legal seat of the arbitration is situated.
5. Failing agreement between the parties to the arbitration, the language to be used in the arbitration shall be English.
6. In the context of this Article 10, the nationality of a juristic person shall be the State(s) where such person is incorporated or has its principal place of business or, in the case of unincorporated juristic entities, the State(s) where such entity has its principal place of business.
7. The AfAA shall, by written notice to the Administering Institution, and the claimant(s) and respondent(s) in the arbitration delivered within ten (10) days of the delivery of the notice of arbitration, be entitled to join as a respondent to any arbitration initiated in terms of this Article 10 and shall have all the rights of a party or a respondent under the Rules and this Article 10 if so electing to join. In this regard, any decisions which require agreement between the parties under this Article 10 or the Rules shall not be made until the earlier of:

the AfAA joining as a respondent, the AfAA expressly electing not to join as a respondent, or the aforesaid 10 calendar day period expiring.

8. The arbitration proceedings and arbitral award shall be confidential, except insofar as disclosure is required by law or to challenge, recognise or enforce an award. Any arbitral award made in the arbitration under this Article 10 shall be final and binding as between the parties to the arbitration, but shall not bind any person who was not a party to the arbitration. The parties to an arbitration where an award has been rendered under this Article 10 shall submit a copy of the award to the Secretary General of AfAA, together with an anonymised summary of the legal findings in the award, which summary may, in the discretion of the Board of Directors, be published by AfAA.
9. The Board of Directors of the AfAA is entitled to act on behalf of the AfAA in any arbitral proceedings contemplated in this Article 10.

#### **ARTICLE 11 AMENDMENTS**

1. The provisions of this Constitution may be amended by a decision of the General Assembly taken by a two-thirds majority of its members present and voting, provided that at least 50% of the members of the General Assembly are present.
2. Notice of any proposed changes to the Constitution must be delivered to Members of the General Assembly no less than forty-five (45) days in advance of a meeting of the General Assembly. Any notice proposing amendments may only be delivered by the Secretary General and may be sent by email.
3. Any organ of AfAA, or any two members of AfAA acting jointly, may propose amendments to the Constitution. Any proposed amendments shall be submitted to the Secretary General at least fifty (50) days in advance of a meeting of the General Assembly.

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Annex (1)

Members of the Board of Directors (18 June 2018 – 17 June 2021)

1. **Christopher Adebayo Ojo (Nigeria)**
2. **Doyin Rhodes-Vivour (Nigeria)**
3. **Emilia Onyema (Nigeria)**
4. **Fidele Masengo (Rwanda)**
5. **Fui Tsikata (Ghana)**
6. **Gaston Kenfack (Cameroon)**
7. **Ismail Selim (Egypt)**
8. **Julius Nkafu (Cameroon)**
9. **Leyou Tameru (Ethiopia)**
10. **Lise Bosman (South Africa)**
11. **Narcisse Aka (Côte d'Ivoire)**
12. **Njeri Kariuki (Kenya)**
13. **Rukia Baruti (Tanzania)**
14. **Thierry Ngoga (Rwanda)**
15. **Vlad Movshovich (South Africa)**