

Dispute Settlement Mechanism for YDand SAATM

YD Capacity Building, Kigali

AGENDA: Consideration of the Dispute Settlement Mechanism

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Content

- Section One – The Scope
- Section Two - The Draft Protocol
- Section Three – Annex to the Draft Protocol
- Section Four – Proposed Way forward



SCOPE

- **OBJECT: to elaborate instruments** to establish the **dispute settlement mechanism** and its institutions **in accordance with AU best practices, meet the requirement of YD Article 8.2** , and provide a criteria for selection of arbitrators, as appropriate
- **RES PERSONAM:** The regulatory structure should cover disputes between:
 - two or more service providers
 - service providers and State Parties to the relevant regulatory instruments
 - two or more State Parties to the relevant regulatory instruments
 - service providers, service users and States Parties and the regulators; and
 - service users and service providers
- **LEX SPATIALIS:** Africa wide and of cross boundary nature only
- **STAKEHOLDER CONSULTATIONS:** States, AU (Trade, Infrastructure, Legal) AFCAC, AFRAA, The African Court, RECS Courts



Process and Outcome

- Formal Stakeholder Consultation to Date:
 - AUC (OLC, DIE, Trade)
 - ECOWAS
 - Air Transport Unit
 - Community Court of Justice
- Informal Consultation
 - The African Court (Legal Dept)
 - A State (Attorney General Staff)
- Documentary Review and Draft Legal Instruments
 - Draft Protocol on Dispute Settlement
 - Draft Rules on Arbitration (Annex 1 to Protocol)



THE PROTOCOL ESTABLISHING THE AFRICAN COURT OF [CENTRE FOR] ARBITRATION



Content

- **PART I- DEFINITIONS, ESTABLISHMENT AND PURPOSE OF THE COURT/[THE CENTRE]**
- **PART II-ADMINISTRATION AND GOVERNANCE OF THE COURT/[THE CENTRE]**
- **PART- III THE PANEL OF ARBITRATORS**
- **PART- IV FINANCES, IMMUNITIES AND ASSETS OF THE COURT/[THE CENTRE]**
- **PART V-JURISDICTION OF THE COURT/[THE CENTRE]**
- **PART-VI FINAL PROVISIONS**



PART I- DEFINITIONS, ESTABLISHMENT AND PURPOSE OF THE COURT/[THE CENTRE]

- **Article 1 - Definitions**
- **Article 2 - Purpose**
- **Article 3 - Scope of Application**
- **Article 4 - Establishment of the ACA**



PART II-ADMINISTRATION AND GOVERNANCE OF THE COURT/[THE CENTRE]

- Article 5 - **Administration and Governance**
- Article 6- **Functions of the Administrative Council**
- Article 7 - Decision of the Administrative Council
- Article 8 - Committees of the Administrative Council
- Article 9 - Powers of the Administrative Council
- Article 10 - Meetings of the Administrative Council
- Article 11 - Term of Office of the Council
- Article 12 - Remuneration of members of the Council
- Article 13 - **The Secretariat**
- Article 14 - Functions of the Court/[the Centre]
- Article 15 - Staff of the Court/[the Centre]



PART- III THE PANEL OF ARBITRATORS

- **Article 16 - Panel of arbitrators**
- **Article 17 - Term of office**



PART- IV FINANCES, IMMUNITIES AND ASSETS OF THE COURT/[THE CENTRE]

- **Article 18 - Finances the Court/[the Centre]**
- **Article 19 - Status, Immunities and Privileges**
- **Article 20 - Archives of the Court/[the Centre]**
- **Article 21 - Assets of the Court/[the Centre]**



PART V-JURISDICTION OF THE COURT/[THE CENTRE]

- **Article 22 - Jurisdiction of the Court/[the Centre]**
- **Article 23 - Disputes before the Court/[the Centre]**
- **Article 24 - Rules of Arbitration**
- **Article 25 - No Diplomatic Protection**




PART-VI FINAL PROVISIONS

- **Article 26 - Amendment**
- **Article 27 - Signature Ratification and accession**
- **Article 28 - Withdrawal**
- **Article 29 - Depository**



RULES FOR THE AFRICAN COURT/CENTRE FOR ARBITRATION AND DISPUTE RESOLUTION

Annex to the Draft Protocol



Content of the Annex

- **PART 1 – DISPUTE RESOLUTION MEASURES**
- **PART II- FORMATION AND APPOINTMENT OF ARBITRAL TRIBUNAL**
- **PART III-ARBITRAL PROCEEDINGS**
- **PART IV- THE AWARD**
- **PART V - COSTS OF THE ARBITRATION**



PART 1 – DISPUTE RESOLUTION MEASURES

- **Rule 2 - General Principles on Alternative Dispute Resolution**
- **Rule 3 - Consultations**
- **Rule 4 - Good Offices, Conciliation and Mediation**
- **Rule 5 - Request for Arbitration**



PART II- FORMATION AND APPOINTMENT OF ARBITRAL TRIBUNAL

- Rule 6 - **Constitution of the Tribunal**
- Rule 7 - Appointment of arbitrators outside the panel
- Rule 8 - The Arbitral Tribunal
- Rule 9 - Procedure for appointment of arbitrators
- Rule 10 - Failure of appointment procedure
- Rule 11 - Grounds for challenging an arbitrator
- Rule 12 - Procedure for challenging an arbitrator
- Rule 13 - Chairperson
- Rule 14 - Umpire
- Rule 15 - Decision-making where no chairman or umpire
- Rule 16 - Revocation of arbitrator's authority
- Rule 17 - Resignation of arbitrator
- Rule 18 - Death of arbitrator or person appointing the arbitrator
- Rule 19 - Filling of vacancy
- Rule 20 - **Powers and Functions of the Tribunal**
- Rule 21 - Place of Arbitration
- Rule 23 - Evidence



PART III-ARBITRAL PROCEEDINGS

- Rule 24 - Procedure for conducting the arbitration
- Rule 25 - Language
- Rule 26 - Place of arbitration
- Rule 27 - Equal treatment of parties
- Rule 28 - Determination of rules of procedure
- Rule 29 - Statements of claim and defence
- Rule 30 - Hearing and written submissions
- Rule 31 - Default of a party
- Rule 32 - Experts
- Rule 33 - Arbitrators' fees and expenses
- Rule 34 - Immunity of arbitrator



PART IV- THE AWARD

- R35 - Rules applicable to substance of dispute
- R36 - Awards on different issues
- R37 - Remedies of the tribunal
- R38 - Interest
- R39 - Extension of time for making award
- R40 - Settlement
- R41 - **Form of award**
- R42 - Place where award treated as made
- R43 - Date of award
- R44 - Notification of award
- R45 - Power to withhold award in case of non-payment
- R46 - Correction of award or additional award
- R47 - **Effect of award**
- R48 - **Enforcement of the award**
- R49 - Interpretation, Revision and Annulment of the Award



PART V - COSTS OF THE ARBITRATION

- Rule 50 - **Costs of the arbitration**
- Rule 51 - Agreement to pay costs in any event
- Rule 52 - Award of costs
- Rule 53 - Effect of agreement or award about costs
- Rule 54 - The recoverable costs of the arbitration
- Rule 55 - Recoverable fees and expenses of arbitrators
- Rule 56 - Power to limit recoverable costs



The Way Forward

Instructions of STC Cairo



Instructions of STC Cairo

- Send the Draft to Office of Legal Counsel - OLC) – Done
- OLC to review draft and decide whether to call for further draft or submit it to States for Comment -
- AUC Consultation with stakeholders



- Asante saana
- Thanks
- Merci
- Ameseagnallehu

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Join the SAATM Informal Discussion group