

# CPAM - CADEV:

## *A new place for arbitration and mediation in Africa*

### ORGANISATION, RULES AND VALUES

#### **I. Introduction**

*The rapid growth of international trade and investment as well as the globalization of commerce has led to the increase in the amount of commercial disputes. Unfortunately, courts of law have been slow to adapt to this global economic context. For this reason, alternative dispute resolution (ADR) methods have been generally accepted as the preferred medium for commercial conflicts resolution. It is believed that ADR enables a resolution of commercial disputes in accordance with procedures aimed at avoiding the “inherent costs” and delays as well as protecting business secrets. ADR places the disputing parties at the centre of proceedings in line with the French concept of *autonomie de la volonté*. In the English case of *Hurst v Leeming* (2002), the judge described ADR as being “**at the heart of today's justice system.**”*

*In Africa, the need to create an atmosphere conducive for business ventures can explain the adoption of arbitration by the OHADA legislator. Today, ADR is becoming more and more an established method of settlement of commercial disputes in OHADA Member States with the existence of several private arbitration and/or mediation institutions. The Permanent Centre of Arbitration and Mediation of CADEV (CPAM) is a case in point.*

#### **II. What is CPAM ?**

*CPAM is a project of the African Centre for Law and Development (CADEV) which seeks to develop and promote the practice of arbitration and mediation in the settlement of commercial disputes. CPAM is empowered to administer arbitration and mediation proceedings regardless of the status of the disputing parties (moral entities registered under public law, companies, and private individuals), the financial stakes, the technical complexity of the dispute, the country to which the disputed contract is linked or the domicile of the parties. Therefore, business operators, regardless of their legal or linguistic backgrounds, will find at CPAM innovative and efficient methods of resolving commercial disputes within the framework of arbitration and/or mediation.*

*In order to properly carry out its mission, CPAM has adopted several basic laws which are tailored to meet the challenges of the globalised economy and to offer adequate guarantee of efficiency and security in commercial dispute management. The CPAM's basic laws are simple, modern and adapted to the economic realities of the continent and should normally find favour in the business and legal communities. The main aim of the CPAM's*

Basic Laws is therefore the quest for security and efficiency through rapid and cost effective arbitration/mediation proceedings, the promotion of time-tested norms and standards in arbitration/mediation practice, the high quality of its awards, the professionalism of its arbitrators and mediators and the prompt enforcement of its awards.

### **III. CPAM's Basic Laws**

The Basic Laws of CPAM include the Rules of Arbitration and Mediation with a cost scale annexed thereto, the Organic Law and the Code of Ethics. I will now proceed to examine these laws seriatim.

#### **(1) The Organic Law**

CPAM also has the organic law which describes the organisation and functioning of the various services within the institution. The Organic Law provides for six (06) organs, namely, the Administrative and Monitoring Board, the General Advisers, the Supervisory Committee, the Ethics Committee, the Secretariat-Registry, the Mediators and Arbitrators. These various organs are tailored to adequately manage arbitration and/or mediation proceedings and to avoid any obstruction of proceedings by a party. They also ensure that each actor plays its role effectively and efficiently.

In order to contribute to the development of a justice that enhances the economical and social development and peace, a Fund called the CADEV's Fund for the Development of Alternativ Justice in Africa has also been set up by CPAM. The CPAM's justice development fund seeks to support actions which are geared towards the establishment of good quality justice in Africa.

#### **(2) The CPAM's Rules of Arbitration and Mediation**

The CPAM's Rules of Arbitration and Mediation are divided into two main parts with some 50 articles. Part I deals with the Rules of Arbitration and part II deals with the Rules of Mediation. These arbitration and mediation rules are based on modern and simple rules which draw inspiration mainly from the OHADA Treaty and the OHADA Uniform Act on Arbitration.

The CPAM's Rules of Arbitration and Mediation have some essential features making the Centre to be unique in the ADR landscape:

##### **- Constitution of the Arbitral Tribunal**

Starting with the composition of the arbitral tribunal, the parties are accorded greater possible freedom. Article 10 of the CPAM's Rules of Arbitration stipulates that the parties freely decide as to whether their dispute will be settled by a sole arbitrator or by a panel of three arbitrators. The parties can nominate the arbitrators subject to their approval and confirmation by the Centre. They may chose from the CPAM's list or propose other arbitrators not registered therein, subject to their acceptance and confirmation.

**- Monitoring of the arbitration process**

In order to ensure that arbitration proceedings are conducted hitch free in accordance with the required norms and standards, the Centre plays a main role in monitoring the arbitration process. To this effect, an Administrative and Monitoring Board composed of the General Advisers, the Supervisory Committee and the Ethics Committee has been set up.<sup>1</sup> The combined action of these organs can be an undeniable source of enhanced security and efficiency.

**- Drafting of the terms of reference**

The Rules of Arbitration of CPAM ensure that the award ultimately addresses all the issues in dispute. This is done by providing for the drafting of a document called the Terms of Reference between the parties and the arbitrators before the start of proceedings. Article 18(1) stipulates:

*“Upon accepting his mission by the sole arbitrator or the third arbitrator, the Secretariat-registry, in agreement with the Arbitral Tribunal, shall convene a meeting with the parties in view of drafting the Terms of Reference.”*

The Terms of Reference delimits the scope of the dispute, provides a time table for the various stages of the proceedings, determines the powers of the arbitrators, the language and the applicable law or any other issue which was not agreed upon by the parties in their arbitration agreement. As designed by the CPAM legislator, the Terms of Reference can be a decisive tool for the efficiency of arbitration within the framework of CPAM.

**- Time limit and costs of proceedings**

The Rules of Arbitration and mediation of CPAM also seek to render arbitration and mediation proceedings as speediest and cost-effective as possible. With respect to the time, the parties are given a relatively shorter time to reply to the request for arbitration and to file their various submissions. As to arbitrators, they are required to submit at the Secretariat-registry a provisional timetable that it intends to follow. This time table indicates the date on which respective submissions shall be filed, as well as the dates of closing of hearings and start of deliberations. Article 25(1) requests the arbitral tribunal to submit a draft award within thirty (30) days from the start of deliberations. Although this time table may subsequently be modified, it increases the pressure on arbitrators to complete the arbitration within the shortest time possible.

The costs of arbitration are provided in a published costs scale appended to the Rules of Arbitration. They include:

- a) The costs for seising the Centre ;
- b) Administrative costs payable to the Centre for the expenses incurred to organize and administer the proceedings ;

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<sup>1</sup>See Articles 3, 4, 5, 6 of the CPAM's Organic Laws.

- c) Fees and expenses of the members of the Arbitral Tribunal indicated separately for each arbitrator, in accordance with the scale in force ;
- d) Administrative costs upon requests for conservatory measures, application for challenge, request for correction/interpretation of award ;
- e) The fees and expenses of experts or any other expenses incurred by the Arbitral Tribunal for the interest of the parties ;
- f) Costs of transportation and other allowances payable to witnesses, where such expenses were approved by the Supervisory Committee.

**- Guarantee of confidentiality, impartiality and independence**

The Permanent Centre of Arbitration and Mediation provides for strict rules relating to the protection of business secrets. Article 19(4) stipulates:

*Arbitration proceedings shall be confidential. Insofar as it has not been provided otherwise in writing, the parties, their counsels, arbitrators, experts, and all other persons involved in the arbitration proceedings shall be bound by professional secrecy. They shall keep information and documents produced during the arbitral proceedings confidential. Professional secrecy and confidentiality shall, under the same conditions, be extended to works started as well as meetings which are scheduled within the framework of the arbitration proceedings.*

*With regard to the requirement of impartiality and independence, Article 11(1) imposes on any arbitrator and/or mediator who accepts to perform within the framework of a dispute referred to CPAM the duty to carry on his mission until its completion in strict compliance with the rules of ethics and deontology. He is expected to be and to remain independent and impartial vis-à-vis the parties and their counsels. Every arbitrator whose nomination or confirmation is envisaged submits to the Centre a statement of acceptance, independence and availability. In this statement, the prospective arbitrator discloses any facts or circumstances which might be of such nature as to call into question his independence and impartiality in the eyes of the parties.*

*Similarly, during the arbitration, an arbitrator shall immediately disclose to the Secretariat-registry any new facts or circumstances which might be of such nature as to affect his neutrality and impartiality.*

**- Guarantees relating to the respect for the cardinal principles of justice**

*It is truism that no decision, whether arbitral or judicial can be reliable if it is made in violation of the cardinal principles of natural justice. Within the framework of the CPAM's Rules of Arbitration, the parties are given the opportunity to present their case before a regularly constituted arbitral tribunal and to adduce evidence in support of the facts alleged (Article 21(1)) or to call witnesses. They may also be represented by a counsel or a legal representative (Article 20(2)). An award that violates this principle will be nullified under Article 31(1)(d).*

- **Res judicata and enforcement of the CPAM's awards**

Regardless of the sophistication of an arbitration system, it cannot be reliable if it does not provide for adequate mechanisms to ensure prompt enforcement of its awards. The CPAM's awards are binding on the parties (Article 29(1)). The Rules of Arbitration and Mediation encourages a greater involvement of the parties in the conduct of proceedings in view of facilitating acceptance of any award that can be made subsequently and its enforcement. In addition, the Centre may propose or the parties may choose conciliation as a first stage for arbitration (Article 37). This possibility enables the Centre to ease the enforcement of awards and to avoid unnecessary delay.

- **Bilingualism at CPAM**

Another added value of CPAM is that the Centre operates in both English and French. CPAM is therefore, to the best of my knowledge, the only African Centre which offers arbitration and mediation in both English and French. All documents are systematically and adequately translated and arbitrators as well as mediators are bilingual and can handle proceedings in French and English as well. This specificity should therefore encourage the active involvement of the business community regardless of their linguistic background. This multilingualism reflects the linguistic composition of Africa countries as well as their trading partners. Such as the United States of America, the United Kingdom, etc.

**(3) The Code of Ethics**

The specificity of CPAM is also the adoption of a Code of Ethics which is a reference document for arbitrators and mediators. The CPAM's Code of Ethics imposes on arbitrators and mediators appointed to resolve disputes referred to CPAM the obligation to comply with the cardinal principles of alternative justice and the rules of ethics, namely, independence, impartiality and availability. The Code of Ethics also regulates the communication between the parties and the arbitrators. Any arbitrator who carries on his duties in violation of the provisions of the Code of Ethics may be suspended or dismissed without prejudice to legal actions against him for any prejudice suffered.

**Conclusion**

There is no gainsaying that the Permanent Centre of Arbitration and Mediation (CPAM) is already a giant even before its birth. It has successfully faced the first challenge of drafting high quality laws for the efficient management of commercial conflicts. It is hoped that the business and the legal communities as well as other relevant actors will give to this Centre the necessary impetus for adequate growth and maturity.

If this condition is fulfilled, there will no doubt that CPAM is soon becoming a reference centre of arbitration and mediation in Africa.