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# **LAGOS CHAMBER OF COMMERCE INTERNATIONAL ARBITRATION CENTRE**

## **RULES OF EXPERT DETERMINATION 2020**



LACIAC assists local and international businesses  
by creating cost-effective and efficient dispute  
management and resolution solutions

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

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## Article 1: Interpretation

In these Rules, unless it is otherwise expressly provided, or the context otherwise requires -

**“Determination”** means the decision issued by the Expert in accordance with the LACIAC Rules on the matter referred to expert determination;

**“Date of commencement of Expert Determination”** means the date on which the Request for expert determination is received by the Centre;

**“Expert”** means a Sole Expert, or all the Experts where more than one is required;

**“Expert Determination Agreement”** means an agreement by the parties to submit to expert determination all or certain matters which have arisen, or which may arise between them. An Expert Determination Agreement may be in the form of an expert determination clause in a contract or in the form of a separate contract;

**“LACIAC”/ “The Centre”/ “the LACIAC Secretariat”** mean the Secretariat of the Lagos Chamber of Commerce International Arbitration Centre whose administrative office is Commerce House, 1 Idowu Taylor Street, Victoria Island, Lagos.

**“LACIAC Rules”** means the rules for expert determination set out in these Rules;

References to the “procedure” are references to an expert determination conducted in accordance with these Rules.

## Article 2: Scope

Where an Expert Determination Agreement provides for expert determination under LACIAC’s Rules, the LACIAC Rules on expert determination that are in force at the time the

parties made the Expert Determination Agreement are deemed to be incorporated into the agreement.

## Article 3: Notices, Communication and Time Calculation

- (a) Unless the parties have agreed otherwise, or the Expert directs otherwise, any notice or other communication that may be or is required to be given under these Rules shall be
  - (i) in writing and delivered by courier service or transmitted by email or other method of communication that provides a record and
  - (ii) copied to the other party, the Expert and the LACIAC Secretariat.
- (b) Email communications to the LACIAC Secretariat should be addressed to [info@laciac.org](mailto:info@laciac.org)
- (c) Delivery by courier or by other physical method of delivery should be addressed to: “the Secretariat of the Lagos Chamber of Commerce International Arbitration Centre (LACIAC), Commerce House, 1 Idowu Taylor Street, Victoria Island, Lagos”.
- (d) For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice or other communication is received. If the last day of such period is a public holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows.



- (e) A reference to “days” in these Rules means business days and does not include weekends or public holidays.
- (f) A notice or other communication shall be deemed to have been received on the day it is delivered in accordance with Article 3(a).
- (g) The Expert may, at the request of a party or on his or her own motion, extend any period of time fixed by these Rules.

**Article 4: Request for Expert Determination**

- (a) A party to an Expert Determination Agreement who wishes to commence an expert determination shall submit a request for expert determination (the “**Request**”) to the LACIAC Secretariat and shall at the same time send a copy of the Request to the other party.
- (b) The Request shall state:
  - (i) the names, addresses and telephone, e-mail or other communication references of the parties to the expert determination and of any representative of the party filing the Request;
  - (ii) a description of the matter referred to expert determination
  - (iii) observations on the scope and time frame of the expert determination;
  - (iv) if the parties have agreed on the appointment of a particular Expert, the name, address and telephone, e-mail or other communication references of the Expert; if the parties have not agreed on the appointment of a particular Expert, observations on the expected qualifications of the Expert;
- (c) The Request shall also be accompanied with:
  - (i) a copy of the Expert Determination Agreement;
  - (ii) any documents or other information which the party deems relevant to the Determination;
  - (iii) payment of the administration fee in accordance with Article 16.
- (d) In the absence of an Expert Determination Agreement, a party who wishes to propose submitting a dispute to expert determination shall submit a Request to the other party. The Request shall include the particulars set out in Article 4(b). If the other party accepts the proposal to submit the dispute to expert determination, the proposing party shall submit to the LACIAC Secretariat a copy of the Request and the documents referred to in Article 4(c), with copy to the other party, and shall also make the payment referred to in Article 4(c), and the other provisions of these Rules shall have effect.
- (e) The expert determination shall commence upon receipt by the LACIAC Secretariat of the Request, and the LACIAC Secretariat shall inform the parties in writing of the receipt by it of the Request and of the commencement of the expert determination.

- (f) Within fourteen (14) days after the commencement of the expert determination, the other party or parties shall submit an Answer to the Request.
- (g) The Answer to the Request shall reply to the particulars of the Request and shall be accompanied by any additional documents or other information, which the party deems relevant to the determination.
- (h) If the parties have not previously agreed on the number of Experts (i.e. one or three), and if within fourteen (14) days after the commencement of the expert determination, the parties have not agreed that there shall be more than one Expert, only one Expert shall be appointed.
- (i) If the parties are unable to agree on an Expert after eighteen (18) days of the receipt of the Request by the LACIAC Secretariat, the LACIAC Court shall appoint the Expert. In making the appointment, the LACIAC Court shall have regard to, without limitation, such considerations as are likely to secure the appointment of an independent and impartial Expert and:
  - (i) any views expressed by the parties;
  - (ii) the matter on which the Determination is sought;
  - (iii) the Expert's relevant expertise;
  - (iv) the ability of the Expert to complete the expert determination with due expedition;
  - (v) the language of the expert determination;
- (vi) the place and nationality of the Expert and the parties
- (vii) any firms or individuals whom the Centre is asked not to appoint
- (viii) any conflicts of interest which may be reported to the Centre by the expert whom the LACIAC Court proposes to appoint.
- (j) Either party may object to the LACIAC Court's first nomination by sending the reasons for his or her objection to the LACIAC Secretariat in writing within seven (7) days of receipt of the notice of nomination. The LACIAC Court shall consider the reasons for the objection and may exercise its discretion to nominate another Expert. The parties shall accept the second appointment of the LACIAC Court or the LACIAC Court's decision not to appoint a further Expert as final.
- (k) The prospective Expert shall, before accepting appointment, disclose to the parties and the LACIAC Secretariat any circumstances that might give rise to justifiable doubt as to the Expert's impartiality or independence, or confirm in writing that no such circumstances exist.
- (l) The Expert shall, by accepting appointment, be deemed to have undertaken to make available sufficient time to enable the expert determination to be completed with due expedition.

#### **Article 5: Capacity**

Unless authorized by the parties, the Expert shall not act in any other capacity than as an Expert, in any pending or future proceedings,

whether judicial, arbitral or otherwise, relating to the matter referred to expert determination. The parties agree that the expert determination process is not an arbitration.

The Expert shall adopt procedures suitable to the circumstances of the particular case in order to provide an expeditious, cost-effective and fair means of determining the dispute between the parties.

### **Article 6: Impartiality of Expert**

The Expert shall be independent and impartial. He must have no vested interest in the outcome of the dispute and must not be biased in any way towards or against either party. If the Expert becomes aware of any circumstance which might reasonably be considered to affect his ability to act impartially or disinterestedly, he must inform the parties and the LACIAC Secretariat immediately. The parties must then inform the Expert and the LACIAC Secretariat within fourteen (14) days whether or not they agree that the expert should continue the determination. If either party considers that the Expert should withdraw, the LACIAC Court will decide whether the Expert is to withdraw. The LACIAC Court's decision will be binding. A new Expert will be appointed under Article 4.

### **Article 7: Challenge of Expert**

- (a) The Expert may be challenged by a party (the "challenging party") if circumstances exist that give rise to justifiable doubt as to the Expert's impartiality or independence.
- (b) The challenging party shall send notice of the challenge, stating the reasons for the challenge, within seven (7) days after being notified of the Expert's appointment or after becoming aware of

the circumstances underlying such challenge.

- (c) The LACIAC Court may, in its discretion, suspend the expert determination during the pendency of the challenge.
- (d) If a party challenges the appointment of an Expert under Article 7(a), and the other party does not agree to the challenge and the Expert does not withdraw his or her appointment, the LACIAC Court shall, in accordance with its internal procedures, make a decision on the challenge and the LACIAC Secretariat shall communicate the decision to the Expert and the parties.

### **Article 8: Substitute Expert**

- (a) Whenever necessary, a substitute Expert shall be appointed and the procedure provided for in Article 4 shall apply.
- (b) The expert determination shall be suspended pending the period of replacement.

### **Article 9: Expert not bound by Rules of Evidence**

The Expert is not bound by the rules of evidence and may at his or her discretion receive and take into consideration any information submitted to him or her by either party in such manner as he or she thinks fit and may give such weight to the same as he or she considers appropriate.

### **Article 10: Award of Interest**

Unless otherwise agreed in writing by the parties, the Expert has discretion to award simple interest at such a rate and for such period as he or she thinks fit on any amount in dispute or any part of it and he or she may also award interest for late payment of the award.

### **Article 11: Payment**

Notwithstanding anything to the contrary contained in these Rules, unless otherwise agreed in writing by the parties, the Expert and/or the Center, any amount payable under the expert determination shall be paid within fourteen (14) days of the Determination.

### **Article 12: Disclosure**

- (a) The Expert shall not voluntarily (i) provide oral evidence or (ii) divulge, produce or disseminate or provide details (in whole or in part) of any documents or information arising from the expert determination to any person or body other than the parties.
- (b) The Expert will only be released from the requirements of Article 12(a) where he or she is under a legal obligation to provide oral evidence or other details, including where he or she has been ordered to do so by a court of competent jurisdiction.

### **Article 13: Release from appointment**

- (a) The parties may jointly release the Expert from appointment as Expert. The parties shall promptly notify the LACIAC Secretariat of such release.
- (b) If the Expert is unable to make a Determination in accordance with these Rules for any reason, the Expert shall withdraw from the determination. In such event, the Expert shall retain any interim payments that have been made in the course of the procedure and forego the rest of his or her fee.
- (c) If the Expert is unwilling to reach a Determination, he or she shall resign from the expert determination process, forego

his or her fee and repay any interim payments already made in the course of the procedure.

- (d) If the expert does not withdraw or resign as mentioned in (b) and (c) above, the LACIAC Court may release the expert, having first had due regard to any views expressed by the Expert and the parties.
- (e) If the Expert dies, withdraws or resigns during the course of the Determination, the Centre shall ensure that the parties' documents are returned.

### **Article 14: Discretion of Expert**

At the request in writing of either party, and either with the agreement of all parties or of his or her own motion, the Expert shall have discretion (a) to amend the time limits set out in these Rules and/or (b) to amend any of the procedural rules in these Rules. The Expert's decision as to his or her exercise of this discretion shall be final.

### **Article 15: Consultation**

Unless otherwise determined by the Expert and agreed with the parties, no one party or anyone acting on one party's behalf shall communicate with the Expert in the absence of the other party. The Expert shall not consult with a party other than in the presence of the other party except where a party, having received a notice under Article 26(b), has failed to make a written submission or appear at a meeting.

### **Article 16: Fees**

- (a) The Request for Expert Determination shall be subject to the payment of an administration fee to the LACIAC Secretariat, the amount of which shall be fixed in accordance with the Schedule of

Fees applicable on the commencement of the Expert Determination.

- (b) The administration fee shall not be refundable.
- (c) The LACIAC Secretariat is not required to take any action on a Request for Expert Determination until it has received the administration fee in full.
- (d) The amount and currency of fees payable to the Expert and the modalities and timing of their payment shall be fixed by the LACIAC Court.
- (e) The fees shall, unless the parties and the Expert agree otherwise, be calculated on the basis of the hourly or daily indicative rates set out in the Schedule of Fees applicable on the date on the commencement of the Expert Determination, taking into account any amount concerned, the complexity of the matter referred to expert determination, any comparable rates for an expert in the relevant area of expertise and any other relevant circumstances of the case.

#### **Article 17: Deposit**

- (a) The LACIAC Secretariat may, at the time of appointment of the Expert, require each party to deposit an equal amount as an advance for the costs of the expert determination, including, in particular, the estimated fees payable to the Expert and other expenses of the expert determination. The amount of deposit shall be determined by the LACIAC Court.
- (b) The LACIAC Secretariat may require that the parties make supplemental deposits as may be determined by the LACIAC

Court in the course of the expert determination.

- (c) If a party fails, within fourteen (14) days after a reminder in writing from the LACIAC Secretariat, to pay the required deposit, the LACIAC Secretariat shall inform the parties in order that any one of them may make the required payment. If the deposit is not made as required, the LACIAC Secretariat may, at the direction of the LACIAC Court, terminate the expert determination.
- (d) After the completion or termination of the expert determination, the LACIAC Secretariat shall render an account to the parties of any deposits made and return any unexpended balance to the parties or require the payment of any amount owing from the parties

#### **Article 18: Equal shares of Fees**

Unless the parties agree otherwise, the administration fee, the fees payable to the Expert, and such other expenses as are necessary for the conduct of the expert determination shall be borne in equal shares by the parties.

#### **Article 19: Liability**

Except in respect of deliberate wrongdoings, the Expert, the LACIAC Court and Secretariat and their officers, employees, agents and authorised representatives shall not be liable for any act or omission in connection with the expert determination.

#### **Article 20: Applicable law**

Nigerian law shall apply to the expert determination conducted in accordance with the provisions of these Rules.



### **Article 21: Language**

The expert determination shall be conducted in the English language and the parties will provide to the Expert, at their own expense, translations into English of any documents and communications in a foreign language, if requested by the Expert.

### **Article 22: Slip rule**

Where the Expert's determination contains a clerical mistake, an error arising from an accidental slip or omission, a miscalculation of figures or a mistake in the description of any person, thing or matter, or a defect of form, the Expert may correct the determination.

### **Article 23: Procedure**

- (a) The procedures set out in these Rules may only be varied by the written agreement of all the parties to the dispute and the Expert.
- (b) A party who becomes aware of any non-compliance with these Rules must object in writing within fourteen (14) days of the time at which he became aware or should have been aware of the non-compliance, or he will be deemed to have waived his right to object.

### **Article 24: Timetable**

- (a) The timetable enumerated below can be varied at the discretion of the Expert.
- (b) Within fourteen (14) days of the date on which the Expert accepts appointment, the claimant shall provide the following to any other party and to the Expert: (a) a written document setting out the nature of the dispute, the legal and factual issues

involved, his submissions in relation to those issues and the quantum of his or her claim; and (b) all documents and other evidentiary material on which he or she relies ('the **Claim**').

- (c) Within fourteen (14) days after receipt of the claim, all parties shall provide any other party and the expert with: (a) a written document indicating whether or not he or she agrees with the claimant's description of the dispute and, if not, his or her statement of the nature of the dispute (including any cross claim), the legal and factual issues involved in the claim and any cross claim, his or her submissions in relation to those issues, and the quantum of any cross claim and (b) all documents and other evidentiary material on which he or she relies ('the **Response**').
- (d) Within seven (7) days after receipt of the response, any party may provide to the expert and the other party: (a) a written document indicating whether he or she agrees with the response and, if not, why he or she disagrees; and (b) any documents or other evidentiary material in relation to the response and/or the cross claim ('the **Reply**').
- (e) If a cross claim is made under (c), the cross claimant may serve a Reply to the written material served in response to such a cross claim under (c). Such Reply shall be served within seven (7) days of receipt of the reply under (d).

### **Article 25: Conduct of Expert Determination**

- (a) Subject to these Rules, the Expert shall conduct the expert determination as he or she considers appropriate.

- (b) The Expert shall ensure that the parties are treated with equality and that all parties are given adequate opportunity to present information which they consider relevant to the Determination.
- (c) Unless otherwise determined by the Expert in consultation with the parties or provided by these Rules, no party or anyone acting on its behalf shall have any ex parte communication with the Expert, it being understood that nothing in this paragraph shall prohibit ex parte communications that concern matters of a purely organizational nature, such as the physical facilities, place, date or time of meetings, or in case of a candidate for appointment to discuss the candidate's qualifications, availability or independence in relation to the parties.
- (d) The Expert shall ensure that the expert determination takes place with due expedition. Each party shall cooperate in good faith with the Expert for this purpose.
- (e) If, before the Determination is made, the parties agree on a settlement of the matter referred to expert determination, the Expert shall terminate the expert determination.
- (f) If, before the Determination is made, the continuation of the expert determination becomes unnecessary or impossible for any reason, the Expert shall terminate the expert determination.

#### **Article 26: Meetings/Hearings**

- (a) If he or she considers it necessary, the Expert may at any stage hold a meeting or teleconference/web conference with both

parties, but not with one in the absence of the other, to clarify the issues in dispute and make such orders as he or she considers necessary for the fair and expeditious determination of the dispute.

- (b) Parties shall be given at least three (3) days notice (or such shorter period as the parties and the Expert agree) that such a meeting/teleconference/web conference is to be held.
- (c) At least two (2) days (or such shorter period as the parties and the Expert agree) before such a meeting or teleconference/web conference the Expert must inform the parties in writing of any specific matters to be addressed at the meeting.
- (d) The Expert may also hold a substantive hearing if he or she considers it necessary for the expert determination.
- (e) Parties shall be given at least seven (7) days notice that such a substantive hearing is to be held.
- (f) At least five (5) days before such a substantive hearing the Expert must inform the parties in writing of any specific matters to be addressed at the hearing.

#### **Article 27: Expert Evidence**

- (a) Where in exceptional cases, a party or both parties consider it desirable to engage their own expert, the Expert may, if he considers it appropriate, direct that the party's or parties' expert(s) attend a meeting with him so as to narrow the issues in dispute; or direct that the parties' experts shall meet and discuss matters relevant to their expertise, and produce a joint statement of experts, setting out those matters on which they are agreed,

and those matters on which they do not agree, with reasons for such disagreement.

- (b) Where the Expert attends a meeting of parties' experts, the Expert shall have total discretion over the procedure adopted and the recording of any decisions made at such a meeting.

#### **Article 28: Powers to seek further evidence**

The Expert may at any time, on his own motion or at the request of a party:

- (a) allow or require further evidence, including the submission of documents or other information in a party's possession or control.
- (b) ask a question of a party and/or require statements or appearances by witnesses for either party.
- (c) inspect or require the inspection of any site, property, product or process as he or she deems appropriate.
- (d) carry out such non-destructive tests as he or she deems appropriate.
- (e) seek assistance from an expert (or experts) in the field appropriate to the matter being addressed, provided that the Expert first informs all parties of his or her intention to seek such assistance.

Provided the Expert informs the parties of the likely cost of such assistance, neither party may prevent the expert from seeking such assistance if he or she considers it appropriate to seek it. The Expert has discretion to order that either party should pay the cost of such assistance. In the absence of such order, the cost of such assistance is to be borne equally by the parties.

#### **Article 29: Confidentiality**

- (a) Each person involved in the expert determination, including, in particular, the parties and their representatives and advisors, the Expert and the LACIAC Court and Secretariat, shall maintain the confidentiality of the expert determination and may not use or disclose to any outside party the determination or any information concerning, or obtained exclusively in the course of, the expert determination, including its existence, except to the extent that:
  - (i) the parties have agreed otherwise; or
  - (ii) the information is already in the public domain; or
  - (iii) disclosure is necessary in connection with legal proceedings relating to the expert determination; or
  - (iv) disclosure is otherwise required by law.
- (b) A party may invoke the confidentiality of information it wishes or is required to submit for expert determination. The party shall submit the information to the Expert stating the reasons for which it considers the information to be confidential. If the Expert determines that the information is to be classified as confidential, he or she shall decide under which conditions and to whom the confidential information should be disclosed and shall require any person to whom the confidential information is to be disclosed to sign an appropriate confidentiality undertaking.

### **Article 30: Power to impose sanctions**

- (a) Where a party has failed to provide the Expert with information which the Expert has requested or where a party has failed to attend a meeting, the Expert may serve on the party a notice stating that unless the information is served within seven (7) days or the party attends a meeting on a set date he will proceed to determine the matter in the absence of the information/the meeting.
- (b) The Expert is entitled to draw adverse inferences, where appropriate, from the non-production of information or non-attendance at a meeting.
- (c) The Expert is also entitled to draw adverse inferences, where appropriate, if a party, without showing good cause, fails to comply with any provision of, or requirement under, these Rules or any direction given by the Expert.

### **Article 31: The Determination**

- (a) As soon as reasonably practicable after receiving the submissions and evidentiary material from the parties, the Expert shall determine the dispute between the parties and notify such determination in writing to the parties.
- (b) The Expert may make the determination on the basis of (without limitation):
  - (i) any information presented by the parties;
  - (ii) the Expert's expertise;
  - (iii) any other information which the Expert considers to be relevant.

- (c) The Expert may, after consultation with the parties, make interim or partial determinations.
- (d) The Determination shall, unless otherwise agreed by the parties:
  - (i) be in writing;
  - (ii) include a description of the matter referred to expert determination;
  - (iii) state the reasons on which it is based;
  - (iv) indicate the date on which it was made; and
  - (v) be signed by the Expert.
- (e) The determination shall be delivered to the parties upon payment in full of the Expert's outstanding fees and expenses. If one party pays the Expert's fees and expenses when the other party should have paid all or part of that sum, then such amount shall be recoverable forthwith by the paying party from the other party, unless otherwise agreed in writing by all the parties.
- (f) A Determination shall be signed by the Expert and it shall contain the date on which Determination was made and shall become effective as from the aforesaid date. Where there are three experts and any of them fails to sign, the Determination shall state the reason for the absence of the signature.
- (g) The Determination shall be final and binding on the parties unless otherwise agreed by the parties.