

ICAMEK | International Centre
for Arbitration and
Mediation in Kampala

ADJUDICATION RULES

2026

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PART I

ICAMEK ADJUDICATION RULES & PROCEDURE

Rule 1 – General

The International Centre for Arbitration and Mediation in Kampala (ICAMEK) Adjudication Rules & Procedure. The Rules are set out in Part A.

- (1) All adjudication commenced under these rules shall be conducted and administered by the International Centre for Arbitration and Mediation in Kampala (ICAMEK).
- (2) The Rules & Procedure applicable to the adjudication shall be those in force at the time of commencement of the adjudication unless the parties have agreed otherwise.

Rule 2 – Commencement & Registration of Adjudication

- (1) The Claimant shall upon serving a Request / Notice for adjudication on the Respondent register the adjudication matter at ICAMEK by serving a notice on the Registrar containing the following particulars and enclosing a copy of the Payment Claim and Payment Response (if any) and the Request / Notice for Adjudication:
 - (a) the names and service addresses of the claimant and the respondent;
 - (b) the date of service of the Request / Notice for Adjudication;
 - (c) the date of service of the Payment Claim;
 - (d) the date of service of the Payment Response (if any);
 - (e) the particulars of the relevant contract,
comprising –
 - I. the project title or reference, or a brief description of the project;
 - II. the contract number or a brief description of the contract;
 - III. the date the contract was made;

- (f) the claimed amount;
 - (g) the response amount (if any);
 - (h) a brief description of the dispute;
 - (i) the remedy sought
- (2).The notice in sub-Rule 2(1) must be accompanied with a non-refundable registration fee payable to ICAMEK in the amount of that prescribed in Schedule II herein.

Rule 3 – Appointment of Adjudicator

- (1) Where the parties have agreed upon the identity of an adjudicator who confirms his readiness and willingness to embark upon the adjudication and has either:
- (a) reached an agreement with the parties on the terms of his appointment including fees chargeable, or
 - (b) failing which, agreed to the ICAMEK’s standard terms of appointment in Schedule I hereto, and the default fees for adjudicator provided there under;
- then that person shall be the Adjudicator.
- (2) Where the parties have not so agreed upon an adjudicator within ten (10) working days from the service of Request / Notice for Adjudication by the claimant, or where such person has not so confirmed his willingness to act within ten (10) working days from the date he was notified of his appointment, then any party or both parties jointly may apply to the Centre for appointment of an adjudicator upon expiry of ten (10) working days from the service of Request / Notice for Adjudication. The following procedure shall apply:
- (a) The request made to the Centre shall be in writing and accompanied with such administrative fees as prescribed in Schedule II herein.

- (b) The request to appoint an adjudicator shall be preceded by a notice to the Centre to register the adjudication as in sub-Rule 2(1).
- (c) The request to appoint an adjudicator shall be made in writing to the Centre and delivered by email, hand, post or courier at its business address.
- (d) The request shall be lodged with ICAMEK at any time from 8.30 am to 4.00 pm from Monday to Friday (except public holidays) and 9.00am to 12.00 noon on the eves of public holidays. Any documents lodged to ICAMEK after the operation hours shall be considered to have been lodged the next working day.
- (e) Upon receiving the receipt of request of either party, Centre shall appoint an adjudicator within five (5) working days and notify the parties and the adjudicator in writing.
- (f) The adjudicator shall abide by the Adjudicator Code of Conduct in Schedule III.

Rule 4 – Notification of Adjudication Claim

- (1) The claimant shall within seven (7) working days after serving a written adjudication claim, deliver a copy of the adjudication claim to ICAMEK. Unless otherwise directed by the Registrar, the claimant is not required to deliver the supporting documents to ICAMEK.

Rule 5 – Notification of Adjudication Response

- (1) The respondent shall within seven (7) working days after serving a written adjudication response, deliver a copy of the adjudication response to ICAMEK. Unless otherwise directed by the Registrar, the respondent is not required to deliver the supporting documents to ICAMEK.

Rule 6 – Notification of Adjudication Reply, if any

- (1) The claimant shall within seven (7) working days after serving a written reply to the adjudication response, deliver a copy of the adjudication reply to ICAMEK. Unless otherwise directed by the Registrar, the claimant is not required to deliver the supporting documents to ICAMEK.

Rule 7 – The Purpose of the Adjudication and The Role of the Adjudicator

- (1) The underlying purpose of the adjudication is to decide dispute between the Parties that are within the scope of the adjudication as rapidly and economically as is reasonably possible.
- (2) The adjudicator shall act fairly and impartially.
- (3) Unless the parties agree that any decisions of the adjudicator shall be final and binding, any decision of the adjudicator shall be binding until the decision is set aside by the High Court or an Arbitral Tribunal, or the dispute is finally determined by court, by arbitration or by written agreement between the parties.

Rule 8 – Connduct of the Adjudication

- (1) The adjudicator shall conduct the adjudication in the manner as the adjudicator considers appropriate.
- (2) The adjudicator shall exercise such powers with a view of fairness and impartiality, giving each party a reasonable opportunity, in light of the timetable, of putting his case and dealing with that of his opponents.
- (3) The adjudicator may not:
 - (a) receive any submissions from one party that are not also made available to the others;

- (b) except in the event of misconduct by that representative, refuse any party the right at any hearing or meeting to be represented by any representative of that party's choosing who is present;
- (c) act or continue to act if he has a conflict of interest.

Rule 9 – Fees and Expenses

- (1) The adjudicator, shall within seven (7) days upon his acceptance of his appointment send a copy of his terms of appointment and fees to be paid to the adjudicator to ICAMEK.
- (2) The adjudicator shall not later than fourteen (14) days after his acceptance of the appointment issue a direction ordering the parties to deposit with ICAMEK the following fees and expenses in advance as security:
 - (a) the full adjudicator 's fees and expenses as estimated by the adjudicator, and any taxes as may be imposed by the Government; and
 - (b) all administrative fee payable to ICAMEK as provided in Schedule II of the ICAMEK Adjudication Rules & Procedure.
- (3) The adjudicator shall upon issuing a direction under sub-rule 9(2) above furnish a copy of his direction to ICAMEK indicating the full payment of fees and expenses payable by the parties to be deposited with ICAMEK and the date by which such fees and expenses are to be paid.
- (4) If any parties fails to make payment within the time ordered by the adjudicator, the adjudicator shall within seven (7) days thereafter issue such direction as he thinks fit including inviting another party or parties to make such payment and notify ICAMEK accordingly.
- (5) In the event full payment of the fees and expenses, including ICAMEK's administrative fee and any taxes as may be imposed by the Government, are

not deposited with ICAMEK, the adjudicator shall not release the adjudication decision to the parties.

- a. In the event that the Claimant withdraws its adjudication claim before the delivery of the adjudication decision by the adjudicator, the adjudicator may, after consultation with the Registrar, order the Claimant to pay reasonable costs arising out of the withdrawal of the adjudication proceedings.
- b. In determining the quantum of costs payable by the Claimant, the adjudicator shall have regard to all relevant circumstances including the terms of the appointment of the adjudicator, the stage of the proceedings at the time of the withdrawal, the administrative fee payable to ICAMEK, and the reasonable costs incurred by the Respondent.

(6) The adjudicator shall from time to time, as requested by ICAMEK, furnish other documents and information as may be required by ICAMEK indicate the fees and expenses payable, including ICAMEK's administrative fee, and the timeline of such payment.

(1) Subject to Rule 9(8), any fees and expenses due to the adjudicator as deposited with ICAMEK shall –

- (a) be paid to the adjudicator:
 - i. upon the Registrar having received a copy of the notice of withdrawal of the adjudication claim and the adjudicator's order for the costs payable pursuant to sub-rule 9(5A) above; or
 - ii. upon ICAMEK having received a copy of the adjudication decision within the time specified and a written confirmation from the adjudicator that the requirements and obligations of the Adjudicator under these Rules have been complied with;

and

(b) be refunded to the parties in the share contributed by the parties in the event the adjudicator fails to decide the dispute within the time agreed by the parties or in the contract

(2) ICAMEK is entitled to retain from any fees and expenses deposited with ICAMEK its administrative fee as stipulated in Schedule II herein.

(3) ICAMEK shall account for all payments deposited with ICAMEK and any interest earned thereon shall be retained by ICAMEK.

(4) Any deposit made to ICAMEK shall be subjected to any and all applicable taxes, administrative charges and financing costs including but not limited to foreign exchange losses.

(5) If a party shall request adjudication, and it is subsequently established that s/he was not entitled to do so, that party shall be solely responsible for the adjudicator's fees and expenses and all administrative fees as may be chargeable by ICAMEK.

(6) The adjudicator shall be entitled to his fees and expenses notwithstanding that his adjudication decision is subsequently set aside by the Court or by Arbitration provided that he has acted in good faith in the performance of his duties under these Rules.

Rule 10 – Adjudication Decision

(1) The adjudicator shall decide the dispute and deliver the adjudication decision within –

(a) forty-five (45) working days from the service of the adjudication response or reply to the adjudication response, whichever is later;

(b) forty-five (45) working days from the expiry of the period prescribed for the service of the adjudication response if no adjudication response is received; or

(c) such further time as agreed to by the parties.

(2) Any decision shall be in writing. The adjudicator shall provide written reasons for his decision unless the requirement for reasons is dispensed with by the parties.

(3) The adjudicator may, on his own initiative or on the application of a party, correct his decision so as to remove any computational or typographical mistake and/or error.

(4) Any correction of a decision shall be made as soon as practicable after the date that the application was received by the adjudicator or, where the correction is made by the adjudicator on his own initiative as soon as possible after he becomes aware of the need to make a correction.

Rule 11 – Confidentiality

(1) Subject to Rule 12, all persons involved in the adjudication shall keep all matters and/ or documents related to the adjudication confidential in accordance with these Rules

Rule 12 – Permission To Publish Redacted Adjudication Decision

(1) Unless otherwise informed to the Registrar ICAMEK in writing by any of the parties or the adjudicator before adjudication decision is made, the parties and the adjudicator in an adjudication shall be deemed to have consented to ICAMEK disclosing, producing or publishing the adjudication decision in any means as ICAMEK deems fit provided that the following confidential information and details as determined by ICAMEK are deleted before its disclosure, production or publication:

(a) the names of the parties in the adjudication;

(b) the name of the adjudicator;

- (c) the name and details of the subject project;
- (d) the payment claim amount;
- (e) the payment response amount;
- (f) the adjudicated amount.

PART 2 - PROCEDURE

Schedule I – ICAMEK Standard Terms of Appointment.

1. The adjudicator is to be impartial and independent of the parties and shall inform the parties immediately of anything of which could affect his impartiality or independence.
2. The adjudicator shall treat all matters which have been referred to him for adjudication as confidential and shall not disclose such matters without the prior written consent of the parties.
3. The adjudicator shall explain and ensure that the parties to the adjudication proceedings are reasonably informed as to the procedural requirements and expectations of them in the adjudication proceedings.
4. The adjudicator may not be called as a witness by either party to give evidence concerning the matter referred or adjudicated by him in any proceedings. The Adjudicator shall not be appointed as Arbitrator in any subsequent arbitration between the Parties under the Contract.
5. The adjudicator shall not assign, delegate or obtain legal or technical assistance related to his work under these rules without the approval of the parties.
6. No suit or other legal proceedings shall lie against the adjudicator in respect of anything done or omitted to be done provided the adjudicator acts in good

faith in the discharge of the duties and functions as an adjudicator under the Act.

7. The adjudicator shall be entitled to:
 - (a) Be paid the agreed fee and expenses;
 - (b) Be reimbursed by the parties for expenses reasonably incurred in carrying out his duties;
 - (c) Direct the parties to contribute and deposit with ICAMEK, anticipated fees and expenses in equal shares in advance as security;
 - (d) Exercise a lien on his decision until any outstanding fees and expenses, including ICAMEK' s administrative fee and any taxes as may be imposed by the Government including, inter alia, goods and services tax, have been paid in full.

The adjudicator shall be entitled to his fees and expenses notwithstanding that his adjudication decision is subsequently set aside by the Court or Arbitral Tribunal provided that he has acted in good faith in the performance of his duties under the Act.

8. Where a party fails to comply with a request for payment within the stipulated period, the other party may make the payment and recover such payment from the defaulting party.
9. The adjudicator's fees and expenses incurred shall be paid in full prior to the delivery of the adjudication decision and the parties are, and shall remain jointly and severally liable to the adjudicator for payment of the fees and expenses in accordance with these terms.
10. The appointment of the adjudicator may be terminated by:
 - (a) The mutual agreement in writing by the parties; or
 - (b) The withdrawal of the Adjudication Claim by the Claimant;

- (c) The final determination of the dispute referred to him by arbitration or the court;
 - (d) The death, resignation or incapacity of the adjudicator to complete the adjudication proceedings.
11. The adjudicator shall be entitled to collect reasonable fees and expenses incurred up to the date of the service of notice of termination of the adjudication proceedings or the date of settlement, if:
- (a) the parties settle the dispute before the making of the adjudicator's decision; or
 - (b) the adjudicator 's appointment is terminated pursuant to Clause 10 above.
12. The adjudicator shall determine the matter and serve his decision to the parties within the time period stipulated in the contract referring the dispute to adjudication. The decision shall be made in writing and shall, subject to the settlement of all outstanding fees and expenses, be served on the parties and ICAMEK.

Schedule II – Administrative Fee Schedule

Administrative Fee of ICAMEK

- (1) The list of administrative fees chargeable (where applicable)—
- a. Non refundable registration fee of UGX.550,000 to register the adjudication matter;
 - b. Adjudicator Appointment fee of UGX.750,000 to request the Centre to appoint the adjudicator;
 - c. Administrative fee calculated at 20% of the adjudicator's fee. This fee is in addition to the adjudicator's fee and expenses payable by the parties.

d. All taxes as may be imposed by the Government including, VAT.

(2) The administrative fees referred to in sub- paragraph 1.1 (where applicable) is payable even though the proceedings are prematurely ended, withdrawn, settled or the adjudication decision is void.

(3) All administrative fee to be payable upon registration and/or in accordance to the adjudicator' s direction, and are non-refundable.

(4) Amendments to Administrative Fee of ICAMEK

ICAMEK reserves the right to amend and/or vary the Administrative Fee from time to time at its discretion without prior notification.

Schedule III – Adjudicator Code of Conduct

This Code of Conduct (“this Code”) applies to all persons appointed by the parties in dispute or appointed by ICAMEK to act as Adjudicators pursuant to these Rules.

1. Acceptance of Assignment

a) An Adjudicator will, before accepting an appointment to a case, ensure that he is able to conduct the adjudication independently, impartially and expeditiously.

2. Impartiality

2.1 An Adjudicator will be impartial and fair to the parties, and be seen to be so.

2.1 An adjudicator must seek to disclose any information which may lead to the impression that he may not be impartial or fair, including, that:

a. He (or any member of his firm or company) has acted in any capacity for any of the parties;

- b. He has a financial or any other interest (direct or indirect) in any of the parties or the outcome of the adjudication; or
- c. He has any confidential information about the parties or the matter which is the subject of the adjudication derived from sources outside the adjudication proceedings.

2.3 If there is an actual, potential or apparent conflict of interest between the Adjudicator and any of the parties, the Adjudicator shall highlight this to all the relevant parties.

2.4 If, at any stage during the adjudication proceedings, new circumstances arise that could give rise to doubt as to the impartiality or independence of the Adjudicator, he shall promptly disclose such circumstances to the relevant parties.

2.5 An Adjudicator shall not accept an appointment if he is ineligible by virtue of these Rules.

An Adjudicator (or any member of his firm or company) shall not act for any of the parties subsequently in any matter related to or arising out of the subject matter of the adjudication without the written informed consent of all the parties.

3. Confidentiality

3.1 Any document or information supplied for and/ or disclosed in the course of the adjudication will be kept confidential. An Adjudicator will only disclose the same if required to do so by law, or pursuant to an order of a court, or with the consent of all the relevant parties.

4. Preparation and Diligence

4.1 The Adjudicator will prepare himself appropriately before the commencement of the adjudication.

4.2 An Adjudicator should carry out his role in a conscientious and diligent manner.

5. Withdrawal

5.1 An Adjudicator shall withdraw from a case:

- (a) When he realises that he has committed a breach of any of the terms of this Code; or
- (b) When he is required by any of the parties to do anything in breach of the terms of this Code, or these Rules.

The Adjudicator shall, on the occurrence of (a) or (b) above, immediately inform the parties and or, ICAMEK of his withdrawal.

5.2 In the event that an Adjudicator is requested to withdraw because of prejudice or bias, the Adjudicator should withdraw unless, the Adjudicator after carefully considering the matter and in consultation with the parties determine that:

- (a) The reason for the challenge is not substantial;
- (b) The Adjudicator can act and decide the case impartially and fairly; and
- (c) The withdrawal would cause unfair delay or expense or would be contrary to the ends of justice.

6 Fees

6.1 Where the Adjudicator has expressly agreed to the fees as agreed with the parties in dispute or to the adjudicator's standard fees provided in these rules, as the case may be, s/he shall not subsequently make any unilateral arrangements with any of the parties for additional fees.

6.2 Where the Adjudicator's has expressly agreed to the standard fees for adjudicator provided under these Rules or the ICAMEK's recommended schedule of fees, as the case may be, the fees calculated shall be based on the claimed amount under the Payment Claim.

6.3 ICAMEK is not liable to the Adjudicator for any or any part of the Adjudicator Fee due to the Adjudicator under these rules.

6.4 The Adjudicator will only be paid the Adjudicator Fee when ICAMEK has obtained full payment of the Fees and expenses from the parties.

ICAMEK’S RECOMMENDED SCHEDULE OF FEES

ICAMEK recommends an alternative adjudicator fee schedule – the ICAMEK Recommended Schedule of Fees. The adjudicator and parties can agree to adopt ICAMEK’s Recommended Schedule of Fees at any time during the negotiations of the adjudicator’s terms of appointment and fees chargeable.

1. ICAMEK’s Recommended Adjudicator Fee Schedule is set out below:-

1.1 ICAMEK’s recommended adjudicator fee schedule-

Item	Amount In Dispute (USD)	Fees (USD)
1.	50,000 and below	2,000
2.	50,001 to 150,000	3,000
3.	150,001 to 300,000	4,000
4.	300,001 to 800,000	5,000
5.	800,001 to 1,300,000	6,500
6.	1,300,001 to 1,800,000	8,500
7.	1,800,001 to 2,300,000	12,000
8.	2,300,001 to 2,800,000	16,000
9.	2,800,001 to 3,300,000	18,000
10.	3,300,001 to 5,000,000	22,000
11.	5,000,001 and above	25,000

Adjudicator fees to be paid by the parties as directed by the adjudicator.

6.5 Adjudicator fees prescribed above exclude the administrative support fee prescribed in Schedule II of the ICAMEK Adjudication Rules & Procedure and all taxes as may be imposed by the Government of Uganda on the fee earned by the adjudicator.

2. Expenses

2.1 An adjudicator who is required to travel outside his place of residence to conduct a site visit and the like will be reimbursed with an economy class airfare, reasonable mileage claim (as agreed by both parties) or as prescribed by ICAMEK or any other reasonable fare for mode of transportation (as agreed by both parties), whichever is applicable, subject to the submission of invoice, receipt or in original or such evidence acceptable to ICAMEK.

2.2 The expenses covered by the per diem above shall include the following items –

- Hotel Accomodation
- Meals and Beverages
- Transportation
- Communication cost/Internet usage

2.4 Expenses to be paid by the parties as directed by the adjudicator.

PROCESS FLOW

What are the main steps involved in adjudication?

The adjudication process can be summarised as follows:

Step 1: Making & Responding to a Payment Claim

The unpaid party must serve a Payment Claim on the non-paying party. The non-paying party may then respond within 10 working days by serving a Payment Response admitting the whole or party of the claim and making payment thereof, or disputing the entire claim. If there is a failure to respond within the prescribed 10 working days period, it is deemed that the entire payment claim is disputed. Either party may then refer the dispute to adjudication.

Step 2: Initiation of Adjudication

A reference to adjudication may be initiated by serving a written Request / Notice for Adjudication on the other party. The referring party is called the Claimant, and the party served with the notice is called the Respondent.

Pursuant to Rule 2 of the ICAMEK Adjudication Rules & Procedure, the Claimant shall no later than 7 days after serving a Request / Notice for Adjudication register the adjudication matter at ICAMEK by serving a notice on the Registrar of ICAMEK containing the particulars and documents prescribed therein. The notice must be accompanied with a non- refundable registration fee to ICAMEK in the amount as prescribed in Schedule II to the ICAMEK Adjudication Rules and Procedures.

Step 3: Nomination of Adjudicator

Appointment of adjudicator should only take place after, and not before, a valid Request / Notice for Adjudication has been effectively served on the Respondent by the Claimant. The parties may agree to a particular competent and qualified person being appointed as adjudicator within 10 working days from the service of the Request / Notice for Adjudication. If the parties are unable to reach an agreement on an adjudicator, then either or both parties may make a written request to the Registrar ICAMEK to appoint an adjudicator to adjudicate the dispute. The Registrar ICAMEK shall appoint an adjudicator within 5 working days from the date of receipt of the request and notify the parties and adjudicator in writing.

Step 4: Appointment of Adjudicator

Upon being notified of the intended appointment, the selected adjudicator is free to either accept or refuse the appointment. If the selected adjudicator accepts the appointment, S/he shall submit a written declaration in writing to ICAMEK, and deliver a copy of his terms of appointment and fees to be paid by the parties. Pursuant to Rule 9(2) of ICAMEK Adjudication Rules & Procedure, the adjudicator must within 14 days of his acceptance of the appointment issue a direction ordering the parties to deposit with ICAMEK the following fees and expenses in advance as security:

- a. the reasonable proportion of the adjudicator's fees and expenses, and any taxes as may be imposed by the Government; and
- b. all administrative fee payable to ICAMEK as provided in Schedule II of the ICAMEK Adjudication Rules & Procedure.

Step 5: Adjudication Claim & Response

The Claimant is required to serve an Adjudication Claim together with supporting documents on the Respondent and the adjudicator within 10 working days from the date of receipt of the acceptance appointment by the adjudicator. Pursuant to Rule 4 of the ICAMEK Adjudication Rules & Procedure, the Claimant shall within 7 working days after serving the Adjudication Claim deliver a copy of the Adjudication Claim to ICAMEK. Unless otherwise directed by ICAMEK, the Claimant is not required to deliver the supporting documents to ICAMEK.

Upon being served with the Adjudication Claim, Respondent is required to serve on the Claimant and the adjudicator a Adjudication Response within 10 working days answering the Adjudication Claim together with any supporting documents. Pursuant to Rule 5 of ICAMEK Adjudication Rules & Procedure, the Respondent shall within 7 working days after serving the Adjudication Response deliver a copy of the Adjudication Response to ICAMEK. Unless otherwise directed by the A ICAMEK, the Claimant is not required to deliver the supporting documents to ICAMEK

Upon receipt of the Adjudication Response, the Claimant may then serve an Adjudication Reply within 5 working days. Similarly, a copy of the Adjudication Response must be served on ICAMEK within 7 working days after serving the Adjudication Reply as required by Rule 6 of ICAMEK Adjudication Rules & Procedure.

Step 6: Conduct of the Adjudication Proceedings.

An adjudicator has wide powers under the ICAMEK Adjudication Rules & Procedure to conduct adjudication. He may call for meetings, require interrogatories to be answered by the parties, call for clarifications and further documents, if necessary to help him with his task. In doing so, the adjudicator has to abide by the rules of "natural justice"

as well as the Adjudicator's Code of Conduct under Adjudication Rules & Procedure Adjudication Rules & Procedure.

Step 7: Adjudication Decision

The Adjudicator is required to decide on the dispute and deliver his decision to the parties and ICAMEK no later than 45 working days from the service of the Adjudication Response or Adjudication Reply, whichever is later, or 45 working days from the expiry of the period prescribed for the service of the Adjudication Response (if no Adjudication Response is received), or the extended period agreed by the parties. An adjudication decision which is not made within the specified period is void.

The decision must be in writing. It must also be a reasoned decision unless otherwise agreed by the parties. The adjudicator must state in his decision the adjudicated amount, and the time and manner it is payable, and order the costs to follow the event. In relation to costs, he must fix the quantum to be paid. The costs should include, amongst others, the fees and expenses to the adjudicator, and the administrative fees paid to ICAMEK.

The adjudicator ought to ensure that payment of the fees and expenses have been deposited with ICAMEK prior to the release of the adjudication decision to the parties.