

TRIBUNAL PROCEDURAL DIRECTION

TPD 16/2026

Transitional Practice Direction on Professional Fees for Adjudication Highway Proceedings

Issued by the Chief Adjudicator and President of Independent Tribunals

Issued: 22 May 2026

Governing Instruments: AITAR 2026 (Fourth Edition, 26 April 2026); First Schedule Parts 4 and 5; Rules 33.7, 49.11.

PART 1 – PURPOSE AND AUTHORITY

1.1 Purpose

AITAR 2026, Fourth Edition, establishes two co-equal procedural pathways: the Adjudication Highway (Part IV) and the Arbitration Highway (Part V). Rule 33.7(i) and Rule 49.11(i) each direct that the professional fee of the Tribunal member shall be determined under the First Schedule. However, the First Schedule currently labels its ad valorem tables as “Arbitrator’s Fees” (Parts 4 and 5) without an explicit parallel reference to “Adjudicator” or “Determination”.

This Practice Direction clarifies that the same ad valorem tables in the First Schedule apply equally to Adjudication Highway proceedings, and prescribes the applicable fee track based on the internationality tests in AITAR Rule 4.

1.2 Authority

This Direction is issued by the Chief Adjudicator and President of Independent Tribunals under the institutional authority vested in that office by AITAR 2026 Rule 68. It is binding on all Tribunal members and parties in proceedings administered under AITAR 2026. It

takes effect on the date of issue and remains in force until the First Schedule is formally amended in a future edition of AITAR 2026.

1.3 Scope

This Direction applies to all Adjudication Highway proceedings commenced on or after the date of issue. For proceedings commenced before this date, the Tribunal may, with the agreement of all parties, apply this Direction prospectively.

PART 2 – CLARIFICATION OF APPLICABLE FEE TRACK

2.1 Default Application of Domestic Arbitration Fee Table (First Schedule Part 5)

For Adjudication Highway proceedings that are **not international** within the meaning of AITAR Rule 4 (i.e., none of the four internationality tests is satisfied), the professional fee of the Tribunal member shall be calculated using **First Schedule Part 5** (domestic arbitration fee table), as follows:

- For matters up to KES 250,000,000, apply the ad valorem bands in Part 5A.
- For matters above KES 250,000,000, apply the applicable percentage as set out in Part 5A.
- Where the value of the subject matter cannot be ascertained, the fee shall be reasonable but not less than the minimum prescribed in Part 5.

2.2 Application of International Arbitration Fee Table (First Schedule Part 4)

For Adjudication Highway proceedings that **satisfy any one of the four internationality tests in AITAR Rule 4** (different countries, one party outside Kenya, foreign connection, or express agreement), the professional fee of the Tribunal member shall be calculated using **First Schedule Part 4** (international arbitration fee table in USD), as follows:

- The amount in dispute shall be converted into US Dollars at the prevailing exchange rate as at the date of commencement.
- The fee shall be calculated according to the ad valorem bands in Part 4A.
- The resulting fee shall be stated in the payment direction in USD, with an optional equivalent in Kenya Shillings at the exchange rate applicable at the time of the payment direction.

2.3 Rationale

This clarification gives effect to the constitutional principle of equal treatment (Article 27) while recognising the different cost structures of domestic and international proceedings. The same objective criteria – the Rule 4 internationality tests – apply to both Adjudication and Arbitration Highways, ensuring consistency across the institution.

PART 3 – APPLICATION OF THE 50% EX PARTE / CONSENT RATE

3.1 Ex Parte or Consent Rate

The note in First Schedule Part 5 (domestic arbitration) and the equivalent principle in Part 4 (international arbitration) apply equally to Adjudication Highway proceedings. Where a dispute is disposed of:

- ex parte (the respondent does not participate after proper notice);
- by consent of all parties (including by Settlement Application under Rule 24.7); or
- on a preliminary question of law not dependent on fact,

the professional fee shall be **50% of the fee that would otherwise be payable** under the applicable ad valorem table.

3.2 Application in Practice

The Tribunal shall, at the Case Management Meeting (CMM) under Rule 22, ascertain whether the matter is likely to proceed ex parte or by consent. If so, the fee calculation in the payment direction shall reflect the 50% rate. Where the matter proceeds as contested but later settles, the fee shall be adjusted in the final Determination to the 50% consent rate.

PART 4 – OTHER FEE COMPONENTS

4.1 Administrative and Institutional Fees

Administrative and institutional fees shall continue to be calculated as **20% of the professional fee** (the constant formula) in accordance with First Schedule Part 3.2 and Part 8. This applies regardless of whether the matter is domestic or international, contested or ex parte/consent.

4.2 VAT and Withholding Tax

Value Added Tax at the prevailing rate (currently 16%) shall be charged on the total of the professional fee and the administrative/institutional fees. Withholding tax shall be deducted at source as required by Kenyan tax law, with treaty relief available for non-resident Tribunal members.

4.3 Quality Assurance Retention (QAR)

Twenty percent (20%) of the professional fee shall be retained in the AQAF as the Quality Assurance Retention, pending the 42-day internal review period, in accordance with Rule 14 and First Schedule Part 8.2.

PART 5 – DURATION AND TRANSITION

5.1 Effective Date

This Practice Direction takes effect on **22 May 2026**.

5.2 Duration

This Direction shall remain in force until the First Schedule of AITAR 2026 is formally amended to include explicit references to “Adjudication” or “Determination” in Parts 4 and 5, or until superseded by a subsequent Practice Direction or rule amendment.

5.3 Transition for Pending Proceedings

For Adjudication proceedings commenced before 22 May 2026 but not yet concluded, the Tribunal may, with the written consent of all parties, apply this Direction prospectively from the date of consent. In the absence of such consent, the fee calculation method in use at the commencement of the proceeding shall continue to apply.

5.4 Record Keeping

Tribunal members shall include a brief note in the Determination or in the case file confirming which fee track (domestic or international) was applied and, where the 50% ex parte/consent rate was used, the basis for that application.

PART 6 – PUBLICATION

This Practice Direction is published in the AITAR Digital Gazette on 22 May 2026.

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End of TPD 16/2026