TRANSITIONAL PRACTICE DIRECTION TPD 19/2026

ALUOCHIER DISPUTE RESOLUTION
APEX GOVERNANCE OFFICE — OFFICE OF THE CHIEF ADJUDICATOR
AISTAR TRANSITIONAL PRACTICE DIRECTIONS SERIES

REGULATORY CASE REF: AISTAR-GENERAL-PRACTICE-DIRECTIONS
SUBJECT: SEQUENTIAL PRIORITY ROUTING, TRUST CORPORATION EQUALITY, AND NEUTRAL REMEDIAL FIDUCIARY APPOINTMENTS IN PARALYZED OR DORMANT ESTATES

ISSUED BY: ISAAC ALUOCH POLO ALUOCHIER, CHIEF ADJUDICATOR AND PRESIDENT OF INDEPENDENT TRIBUNALS
DATE OF EFFECT: 18th August, 2026

I. LEGAL FOUNDATION AND CONSTITUTIONAL ANCHOR

1. **Sovereign Delegation and Public Mandate**: In accordance with Article 1(3)(c)(ii) of the Constitution of Kenya, sovereign power is delegated to independent tribunals as recognised channels of the people's mandate in dispute resolution. When an ad hoc Tribunal is constituted under the Aluochier Independent Succession Tribunals Administrative Rules, 2026 (AISTAR 2026), it exercises public, delegated sovereign power in the public interest to settle estates and resolve succession disputes.
2. **The Right to Substantive and Expeditious Justice**: Under Article 159(2) of the Constitution, tribunals shall be guided by the principles that justice shall be done to all irrespective of status, justice shall not be delayed, and justice shall be administered without undue regard to procedural technicalities. Under Article 47 and Section 4 of the Fair Administrative Action Act, 2015 (FAAA), administrative action must be expeditious, efficient, lawful, reasonable, and procedurally fair. Leaving estates dormant, unadministered, or frozen due to family hostility violates these constitutional imperatives.
3. **Substantive Adjudication vs. Ministerial Execution (Article 50(1) Boundary)**: Article 50(1) of the Constitution guarantees every person the right to have any dispute that can be resolved by the application of law determined in a fair and public hearing before a court or another independent and impartial tribunal or body.
   - **The Adjudicative Boundary**: The "dispute" under Article 50(1) is fully and finally resolved when the Tribunal applies the law to determine the preliminary objections to jurisdiction, nullify fraudulent prior court proceedings, and certify the legal shares of the beneficiaries.
   - **The Ministerial Boundary**: Once the substantive legal rights are declared, the subsequent selection and appointment of an estate administrator under Section 66 of the Law of Succession Act (LSA) is a remedial, ministerial, and post-resolution administrative action taken to give physical effect to the certified distribution. The administrator is a fiduciary with zero adjudicative discretion and is strictly bound to execute the exact orders set out in the certified Registry-Ready Determination.
4. **Purpose of this Practice Direction**: This Practice Direction is issued pursuant to AISTAR Rule 75(2) and Rule 76 to establish a uniform, statutory, and constitutionally compliant framework for the sequential priority routing and appointment of administrators. It provides clear guidance for activating dormant estates and resolving administrative paralysis while preserving the absolute independence of the adjudicating Tribunal.

II. APPLICATION OF LSA SECTION 66 PRIORITY ROUTING

5. **Mandatory Application of Substantive Law**: Every AISTAR Tribunal shall apply Section 66 of the Law of Succession Act when constituting personal representation for an estate, adapted in accordance with the constitutional imperatives of gender equity, child protection, and administrative efficiency under Articles 27, 47, 53, and 232.
6. **The Descending Priority Sequence**: The statutory routing of priority for the grant of letters of administration shall proceed strictly in the following descending order:
   - **Category A**: Surviving spouses, children, and other biological family beneficiaries, subject to suitability under Section III.
   - **Category B**: The Public Trustee, or a registered private Trust Corporation qualifying under Section 3 of the LSA, subject to Section IV.
   - **Category C**: Creditors of the deceased or of the estate (including priority administration creditors), subject to Section V.
7. **The Priority Compliance Undertaking in Non-Contested Estates**: In non-contested estates where family members are eligible for appointment under Category A, the Tribunal shall prioritise family appointment. However, to prevent post-grant intermeddling and procedural obstruction, any family member proposed for appointment must execute a formal written undertaking to comply strictly with the Tribunal's final, certified adjudicative decisions, AISTAR Rules, and the supervisory jurisdiction of the High Court under Article 165(6) as a mandatory condition precedent to the issuance of the Certificate of Appointment.

III. EQUALITY OF CAPACITY: PUBLIC TRUSTEE AND TRUST CORPORATIONS

8. **Constitutional Equality (Article 27)**: Under Article 27 of the Constitution, every person is equal before the law and has the right to equal protection and equal benefit of the law, which includes the right to freedom from state-sponsored or regulatory discrimination.
9. **Equal Capacity of Trust Corporations**: Although Section 66 of the LSA specifically mentions the Public Trustee, private trust corporations are registered legal persons. Under AISTAR Rule 57(1), for the purposes of invoking and executing lawful estate administration processes, a registered private trust corporation qualifying under Section 3 of the LSA and the Public Trustee stand in co-equal constitutional and statutory capacity.
10. **Non-Discrimination Standard**: No Tribunal shall discriminate in favour of the Public Trustee over a qualified private trust corporation (or vice versa) when all circumstances are equal. A qualified private trust corporation—having been established under the Companies Act and meeting the statutory shareholding requirements—possesses identical fiduciary capacity to administer estates under Section 66.

IV. NEUTRAL REMEDIAL APPOINTMENTS IN PARALYZED OR CONTESTED ESTATES

11. **Disqualification of Family Candidates for Administrative Viability**: Where an estate is highly contested, and the evidence reveals extreme animosity, documented fraud, or systemic gender-based exclusion by the current occupants, appointing joint family administrators is administratively unviable and guarantees immediate paralysis. In such cases, the Tribunal owes a non-delegable duty of care to the estate and its beneficiaries under AISTAR Rule 27(7) and (8) to bypass Category A family candidates.
12. **Appointment of Trust Corporations (Category B)**: Upon bypassing the family, the Tribunal shall propose the appointment of the Public Trustee or a qualified private Trust Corporation.

13. **Neutrality of ADR-Group Trust Corporations**: Where a private trust corporation is considered for appointment under the priority routing, it shall make no difference whatsoever whether that trust corporation is a member of the same corporate group as Aluochier Dispute Resolution (ADR) or shares ultimate ownership with the registry secretariat.
    - **The Independence Standard Satisfied**: The ad hoc Tribunal (the Adjudicator) is a completely independent constitutional actor under Article 1(3)(c)(ii) and remains entirely separate from both the secretariat (ADR) and the appointed administrator. The Tribunal cannot appoint itself as the administrator, which would violate the principle of *nemo judex in sua causa* (judge in one's own cause). However, the appointment of an affiliated corporate trust entity is fully lawful, as the adjudicating member holds no personal interest in the fiduciary administration.
    - **Substantive Finality**: Because the substantive dispute has already been fully adjudicated and resolved by the Tribunal under Article 50(1) before the administrator is appointed, and because the administrator holds purely ministerial powers to execute that certified final distribution, there is no conflict of interest or contravention of Article 50(1).
14. **Enhanced Standards of Corporate Accountability**: Unlike individual family administrators, a private trust corporation (whether ADR-affiliated or otherwise) is subject to a significantly higher standard of care and supervision under AISTAR Rule 27:
    - It must maintain current professional indemnity insurance with a minimum coverage level of KES 5,000,000 per claim [Schedule C].
    - It is subject to strict sector-specific regulatory and prudential oversight [Rule 210].
    - It is bound to file annual reports with the Registry to confirm that the inheritance remains intact and properly administered [Rule 180, Rule 220].

V. DEFAULT APPOINTMENT OF INITIATING CREDITORS

15. **Status of Administrative Creditors (Section 83(c) LSA)**: Under AISTAR Rule 71(2)(e), the professional adjudication fees of the Tribunal and the institutional fees of ADR are formally classified as administration expenses of the estate within the meaning of Section 83(c) of the Law of Succession Act. These fees constitute a statutory lien and rank as super-priority charges on the estate assets, establishing ADR as a priority administration creditor.
16. **Appointment of Initiating Creditors (Category C)**: Where an estate has lain dormant for decades, family members have refused to petition, and the Public Trustee declines or remains silent within the 14-day show-cause window:
    - **The Initiating Creditor Gateway**: Any creditor who has initiated succession proceedings to recover their debt or clear estate liabilities—including ADR acting on behalf of the Tribunal and the secretariat—is fully eligible for appointment as the administrator of last resort under Section 66 of the LSA.
    - **The Non-Disqualification Standard**: Just as an ordinary commercial creditor may be appointed to administer an estate to recover a debt under Section 66, the initiating administration-expense creditor (ADR or its nominated group company) shall be appointed as administrator, irrespective of its role as the administrative registry secretariat.
    - **The Substantive Rationale**: The substance of ensuring that the succession is undertaken, assets are secured, and dispossessed heirs receive their entitlements takes absolute precedence over the artificial prolongation of the process.

17. **Strict Fiduciary Safeguards for Creditor Administrators**: To ensure absolute integrity, any creditor appointed as administrator under this section shall operate under the following strict limits:
    - Their recovery of administrative fees or debts is strictly capped to the verified sums certified in the final Determination and Invoice, in line with legislation.
    - They possess zero administrative discretion to alter, adjust, or delay any transmission or distribution ordered by the Tribunal.
    - They shall remain under the direct supervisory control of the Tribunal and the High Court, and any breach of their fiduciary duty shall trigger personal surcharge liability under AISTAR Schedule D Item 8 and professional disciplinary referral.

VI. IMPLEMENTATION AND CERTIFICATION STATUS

18. **AISTAR Registry Compliance**: All AISTAR Registrars, Verifiers, and appointed ad hoc Tribunals shall give full and immediate effect to this Practice Direction in all pending and future estate settlement proceedings.
19. **Gazette Publication**: This Practice Direction shall be published in the AITAR Digital Gazette and shall be digitally certified with a unique Sovereign Hash under Schedule F to form an integral and permanent part of the AISTAR regulatory framework.

DATED, SIGNED, AND ISSUED BY THE CHIEF ADJUDICATOR AT THE APEX GOVERNANCE OFFICE, RONGO, THIS 18TH DAY OF AUGUST, 2026.

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