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KUALA LUMPUR REGIONAL  
CENTRE FOR ARBITRATION

# i-ARBITRATION RULES

WINNER OF

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AWARD FOR  
INNOVATION  
2012

REGIONAL RESOLUTION  
GLOBAL SOLUTION



KUALA LUMPUR REGIONAL  
CENTRE FOR ARBITRATION



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## MODEL ISLAMIC ARBITRATION CLAUSE

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof shall be settled by arbitration in accordance with the KLRCA i-Arbitration Rules.

### Recommended additions:

- *The seat of arbitration shall be [...].*
- *The language to be used in the arbitral proceedings shall be [...].*
- *This contract shall be governed by the substantive law of [...].*
- *Before referring the dispute to arbitration, the parties shall seek an amicable settlement of that dispute by mediation in accordance with the KLRCA Mediation Rules as in force on the date of the commencement of mediation.*

## MODEL SUBMISSION AGREEMENT

Parties wishing to substitute an existing arbitration clause for one referring the dispute to arbitration under the KLRCA i-Arbitration Rules may adopt the following form of agreement:

*“The parties hereby agree that the dispute arising out of the contract dated \_\_\_\_\_ shall be settled by arbitration under the KLRCA i-Arbitration Rules.”*

This form may also be used where a contract does not contain an arbitration clause.

**i-ARBITRATION RULES OF THE  
KUALA LUMPUR REGIONAL CENTRE  
FOR ARBITRATION IN FORCE AS OF  
9<sup>th</sup> JUNE 2017**

Under any arbitration agreement referring to the KLRCA i-Arbitration Rules the parties shall be deemed to have agreed that the following rules, or such amended rules, in force on the date of the commencement of the arbitration, or the filing of an application for the appointment of an Emergency Arbitrator, shall be applied unless otherwise agreed by the parties.

The English text prevails over other language versions.

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## GUIDE TO THE KLRCA RULES

1. The English text prevails over other language versions.
2. Definitions used in the KLRCA Rules:

**“arbitral tribunal”** means a sole arbitrator or a panel of arbitrators appointed pursuant to the KLRCA Rules;

**“Article”** or **“Articles”** shall refer to the numbered provisions of the UNCITRAL Arbitration Rules as contained in Part II of the KLRCA Rules;

**“award”** means a decision of the arbitral tribunal and includes any final, interim or partial award and any award on costs or interest but does not include interlocutory orders;

**“days”** means calendar days and includes weekends and public holidays;

**“domestic arbitration”** means any arbitration which is not an international arbitration;

**“Director”** means the Director of the Kuala Lumpur Regional Centre for Arbitration;

**“GST”** means Goods and Services Tax as prescribed by law;

**“KLRCA”** means the Kuala Lumpur Regional Centre for Arbitration;

**“international arbitration”** means an arbitration where –

- a. one of the parties to an arbitration agreement, at the time of the conclusion of that agreement, has its place of business in any State other than Malaysia;
- b. one of the following is situated in any State other than Malaysia in which the parties have their places of business:
  - i. the seat of arbitration if determined in, or pursuant to, the arbitration agreement;
  - ii. any place where a substantial part of the obligations of any commercial or other relationship is to be performed or the place with which the subject matter of the dispute is most closely connected; or
- c. the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one State.

**“Party”** means a party to an arbitration agreement or, in any case where an arbitration does not involve all parties to the arbitration agreement, means a party to the arbitration;

**“Rule”** or **“Rules”** shall refer to the numbered provisions of the KLRCA i-Arbitration Rules as contained in Part I of the KLRCA Rules;

**“Shariah Council”** or **“Council”** means a Shariah advisory council of accepted Islamic scholars or experts that are qualified to issue religious rulings;

**“Shariah expert”** means a qualified expert in the field of Shariah.

Part I

# KLIRCA i-ARBITRATION RULES

(As revised in 2017)

## **Introductory Provisions**

1. The KLRCA Rules consist of the following parts: Part I – KLRCA i-Arbitration Rules, Part II – UNCITRAL Arbitration Rules (as revised in 2013), Part III – Schedules and Part IV – Frequently Asked Questions. The KLRCA i-Arbitration Rules are Shariah-compliant.
2. Under any arbitration agreement referring to the KLRCA Rules the parties shall be deemed to have agreed that the following rules, or such amended rules, in force on the date of the commencement of the arbitration, or the filing of an application for the appointment of an emergency arbitrator, shall be applied unless otherwise agreed by the parties.

## **Rule 1 General**

1. Where parties have agreed in writing to arbitrate their disputes in accordance with the KLRCA Rules, then:
  - a. such disputes shall be settled or resolved by arbitration in accordance with the KLRCA Rules;
  - b. the arbitration shall be conducted and administered by the Kuala Lumpur Regional Centre for Arbitration in accordance with the KLRCA Rules; and
  - c. if the seat of arbitration is Malaysia, Section 41, Section 42, Section 43 and Section 46 of the Malaysian Arbitration Act 2005 (as amended in 2011) shall not apply.

2. The KLRCA Rules applicable to the arbitration shall be those in force at the time of commencement of the arbitration unless otherwise agreed by the parties.
3. To the extent that there is a conflict between Part I and Part II of the KLRCA Rules, the provisions in Part I shall prevail.

## **Rule 2**

### **Commencement of Arbitration**

1. The party or parties initiating arbitration under the KLRCA Rules shall submit a request in writing to commence arbitration (hereinafter referred to as the “Commencement Request”) to the Director pursuant to Article 3. The Commencement Request shall be accompanied by the following:
  - a. a copy of the written arbitration clause;
  - b. a copy of the contractual documentation in which the arbitration clause is contained or in respect of which the arbitration arises;
  - c. a copy of the notice of arbitration accompanied by a confirmation that it has been or is being served on all other parties by one or more means of service to be identified in such confirmation; and
  - d. a non-refundable registration fee amounting to USD795.00 in international arbitration and RM1,590.00 in domestic arbitration.<sup>1</sup>

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<sup>1</sup> The amounts are inclusive of 6% GST.

2. The date on which the Director has received the Commencement Request with all accompanying documentation shall be treated as the date on which the arbitration has commenced. The KLRCA will notify the parties of the date of commencement of arbitration.

### **Rule 3**

#### **Notifications**

All documents served on the other party pursuant to Articles 3, 4, 20, 21, 22, 23 and 24 shall be served on the Director at the same time or immediately thereafter.

### **Rule 4**

#### **Appointment**

1. Where the parties have agreed to the KLRCA Rules, the Director shall be the appointing authority.
2. Parties are free to determine the number of arbitrators.
3. If the parties fail to determine the number of arbitrators and the Director does not determine the number having regard to the circumstances of the case, the arbitral tribunal shall:
  - a. in the case of an international arbitration, consist of three arbitrators; and
  - b. in the case of a domestic arbitration, consist of a sole arbitrator.

4. If the parties have agreed that a sole arbitrator is to be appointed, unless the parties have agreed otherwise, the procedure for the appointment shall be:
  - a. the parties are free to agree on the sole arbitrator;  
or
  - b. if within 30 days of the other party's receipt of the notice of arbitration, the parties have not reached an agreement on the appointment of the sole arbitrator, any party may request for the sole arbitrator to be appointed by the Director.
  
5. If the parties have agreed that three arbitrators are to be appointed, unless the parties have agreed otherwise, the procedure for the appointment shall be:
  - a. each party shall appoint one arbitrator, and the two appointed arbitrators shall choose the third arbitrator, who will act as the presiding arbitrator of the arbitral tribunal;
  - b. if within 30 days after the receipt of a party's notification of the appointment of an arbitrator the other party has not notified the first party of the arbitrator it has appointed, the first party may request the Director to appoint the second arbitrator; and
  - c. if within 30 days after the appointment of the second arbitrator the two arbitrators have not agreed on the choice of the presiding arbitrator, the presiding arbitrator shall be appointed by the Director.

6. If the KLRCA upon the request of a party is to appoint a sole arbitrator, a member of the arbitral tribunal or emergency arbitrator, the Director shall appoint the arbitrator in accordance with the KLRCA Rules. In doing so, the Director at the Director's discretion may seek such information from the parties as the Director deems appropriate and exercise other powers as vested in the Director by the KLRCA Rules.
7. Where the parties have agreed that any arbitrator is to be appointed by one or more parties, or by any authority agreed by the parties, including where the arbitrators have already been appointed, that agreement shall be treated as an agreement to nominate an arbitrator under the KLRCA Rules and shall be subject to confirmation by the Director at the Director's discretion.

## **Rule 5**

### **Challenge to the Arbitrators**

1. An arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence, or if the arbitrator does not possess any requisite qualification on which the parties agreed.
2. A party may challenge the arbitrator nominated by that party only for reasons which the party becomes aware of after the appointment has been made.
3. A challenge to an arbitrator shall be made by sending a notice of challenge within 15 days after having received the notice of appointment of the challenged arbitrator or within 15 days after the circumstances mentioned in Rule 5(1) or Rule 5(2) became known to that party.

4. The notice of challenge shall be sent simultaneously to the other Parties, to the arbitrator who is challenged, to the other members of the arbitral tribunal, if any, and copied to the Director. The notice shall be in writing and shall state the grounds for the challenge. The notice of challenge shall be accompanied by a non-refundable fee amounting to USD5,300.00 in international arbitration and RM10,600.00 in domestic arbitration.<sup>2</sup>
5. The Director may order suspension of the arbitration until the challenge is resolved.
6. If an arbitrator is challenged by one party, the other party may agree to the challenge. The challenged arbitrator may also withdraw from office. In neither case does this imply acceptance of the validity of the grounds for the challenge.
7. If within 15 days after having received the notice of challenge, the other party does not agree to the challenge and the arbitrator who is being challenged does not withdraw voluntarily, the Director shall decide on the challenge in writing and state reasons for the decision.
8. If required pursuant to Rule 5(6) or Rule 5(7), the substitute arbitrator shall be appointed in accordance with the procedure provided in Rule 4.

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2 The amounts are inclusive of 6% GST.

## **Rule 6**

### **Powers of the Arbitral Tribunal**

The arbitral tribunal may conduct the arbitration in such manner as it deems appropriate. In particular, the arbitral tribunal may, unless otherwise agreed by the parties:

- a. limit or extend the time available for each party to present its case;
- b. conduct such enquiries as may appear to the arbitral tribunal to be necessary or expedient, including whether and to what extent the arbitral tribunal should itself take the initiative in identifying relevant issues applicable to the dispute;
- c. conduct enquiries by inviting parties to make their respective submissions on such issues;
- d. order the parties to make any property items, goods or sites in their possession or control, which the arbitral tribunal deems relevant to the case, available for inspection;
- e. order any party to produce any documents in its possession or control which the arbitral tribunal deems relevant to the case, and to supply these documents and/or their copies to the arbitral tribunal and to the other parties; and
- f. decide whether or not to apply any rules of evidence as to the admissibility, relevance or weight of any material tendered by a party on any issue of fact or expert opinion, and to decide the time, manner and form in which such material should be exchanged between the parties and presented to the arbitral tribunal.

## **Rule 7**

### **Seat of Arbitration**

1. The parties may agree on the seat of arbitration. Failing such agreement, the seat of arbitration shall be Kuala Lumpur, Malaysia unless the arbitral tribunal determines, having regard to the circumstances of the case, that another seat is more appropriate.
2. Unless otherwise agreed by the parties, the arbitral tribunal may also meet at any location it deems appropriate for any purpose, including hearings.
3. Unless otherwise agreed by the parties, if any hearing, meeting, or deliberation is held elsewhere than at the seat of arbitration, the arbitration shall be deemed to have taken place at the seat of arbitration.

## **Rule 8**

### **Interim Measures**

1. The arbitral tribunal may, at the request of a party, grant interim measures pursuant to Article 26.
2. A party in need of urgent interim measures prior to the constitution of the arbitral tribunal may submit a request to appoint an emergency arbitrator to the Director pursuant to Schedule 3.

## **Rule 9**

### **Joinder of Parties**

1. Any party to an arbitration or any third party (hereinafter the "Additional Party") may request one or more Additional Parties to be joined as a party

to the arbitration (hereinafter referred to as the “Request for Joinder”), provided that all parties to the arbitration and the Additional Party give their consent in writing to the joinder, or provided that such Additional Party is *prima facie* bound by the arbitration agreement. The Request for Joinder will be determined by the arbitral tribunal or, prior to the constitution of the arbitral tribunal, by the Director.

2. If a Request for Joinder is granted, the date on which the complete Request for Joinder is received by the arbitral tribunal or, prior to the constitution of the arbitral tribunal, by the Director, shall be deemed to be the date of the commencement of the arbitration in respect of the Additional Party.
3. A Request for Joinder shall be submitted to the arbitral tribunal or, prior to the constitution of the arbitral tribunal, to the Director. The Request for Joinder shall include:
  - a. the names and contact details of the Additional Party;
  - b. whether the Additional Party is to be joined as a Claimant or a Respondent;
  - c. a copy of any relevant agreements, in particular, of any written arbitration clause;
  - d. a brief description of the legal and factual basis supporting such joinder; and
  - e. a confirmation that the Request for Joinder has been or is being served on all parties to the arbitration and the Additional Party, by one or more means of service to be identified in such confirmation.

4. Any party and any Additional Party that receives a Request for Joinder shall, within 15 days of receipt, submit to the arbitral tribunal or, prior to the constitution of the arbitral tribunal, to the Director, a Response to the Request for Joinder indicating their consent or objection to the Request for Joinder.
5. In deciding whether to grant, in whole or in part, the Request for Joinder, the arbitral tribunal shall consult all parties and any Additional Party, and shall have regard to any relevant circumstances.
6. If the Director receives the Request for Joinder prior to the constitution of the arbitral tribunal, the Director shall decide whether to grant, in whole or in part, the Request for Joinder. In deciding whether to grant the Request for Joinder, the Director shall consult all parties and any Additional Party, and shall have regard to any relevant circumstances.
7. Notwithstanding a decision of the Director pursuant to Rule 9(6), the arbitral tribunal may decide on a Request for Joinder, either on its own initiative or upon the application of any party or Additional Party pursuant to Rule 9(1).
8. If the Additional Party is joined to the arbitration before the date on which the arbitral tribunal is constituted, the Director shall appoint the arbitral tribunal and may release any arbitrators already appointed. In these circumstances, all parties shall be deemed to have waived their right to nominate an arbitrator.
9. The parties irrevocably waive their rights to any form of appeal, review or recourse to any court or other judicial authority, on the basis of any decision to join an Additional Party to the arbitration, to the validity

and/or enforcement of any award made by the arbitral tribunal, insofar as such waiver can validly be made.

## **Rule 10**

### **Consolidation of Proceedings and Concurrent Hearings**

1. Upon the request of any party to an arbitration or, if the Director deems it appropriate, the Director may consolidate two or more arbitrations into one arbitration, if:
  - a. the parties have agreed to consolidation;
  - b. all claims in the arbitrations are made under the same arbitration agreement; or
  - c. the claims are made under more than one arbitration agreement, the dispute arises in connection with the same legal relationships, and the Director deems the arbitration agreements to be compatible.
  
2. In deciding whether to consolidate, the Director shall consult all parties and any appointed arbitrators, and shall have regard to any relevant circumstances including, but not limited to:
  - a. the stage of the pending arbitrations and whether any arbitrators have been nominated or appointed;
  - b. any prejudice that may be caused to any of the parties; and
  - c. the efficiency and expeditiousness of the proceedings.

3. When the arbitrations are consolidated, they shall be consolidated into the arbitration that commenced first, unless otherwise agreed by the parties.
4. Within 15 days of being notified of a decision by the Director to consolidate two or more arbitrations, all parties may agree on the arbitrators to be appointed, if any, to the consolidated arbitration and/or the process of such appointment. Failing such agreement, any party may request the Director to appoint the arbitral tribunal, in which case, the Director may release any arbitrators appointed prior to the consolidation decision. In these circumstances, all parties shall be deemed to have waived their right to nominate an arbitrator.
5. The parties irrevocably waive their rights to any form of appeal, review or recourse to any court or other judicial authority, on the basis of any decision to consolidate arbitrations pursuant to this Rule, to the validity and/or enforcement of any award made by the arbitral tribunal, insofar as such waiver can validly be made.

## **Rule 11**

### **Procedure for Reference to Shariah Advisory Council or Shariah Expert**

1. Whenever the arbitral tribunal has to:
  - a. form an opinion on a point related to Shariah principles; and
  - b. decide on a dispute arising from the Shariah aspect of the contract;

the arbitral tribunal may refer the matter to the relevant Council or Shariah expert for its ruling.

2. For the purposes of paragraph 1 above, the relevant Council or Shariah expert shall be:
  - a. the Shariah Council under whose purview the Shariah aspect to be decided falls, where there is one; or
  - b. where the Shariah aspect to be decided does not fall under the purview of a specific Shariah Council, a Shariah Council or expert is to be agreed between the parties. Where the parties fail to agree to a Shariah Council or expert, the provisions relating to experts appointed by the arbitral tribunal under Article 29 shall apply.
3. Any reference under paragraph 1 above shall include any relevant information as the relevant Council or Shariah expert may require to form its opinion including the question(s) or issue(s) so referred, the relevant facts, issues and the questions to be answered by the relevant Council or Shariah expert.
4. If a reference to the relevant Council or Shariah expert has been made, the arbitrator shall then adjourn the arbitration proceedings until the ruling has been given by the relevant Council or Shariah expert, as the case may be, or if there are any other areas of dispute which are independent of the said ruling, shall proceed to deliberate on such areas which are independent of the said ruling.
5. The relevant Council or Shariah expert, as the case may be, shall then deliberate and make its ruling on the issue or question so submitted.

6. The relevant Council or Shariah expert shall deliver its ruling within the period of 60 days from the date the reference is made.
7. Where the relevant Council or Shariah expert fails to deliver its ruling within 60 days, the arbitral tribunal may proceed to determine the dispute and give its award based on the submissions it has before it. The validity of an award given pursuant to this Rule shall not be affected in any way by the unavailability of the relevant Council or Shariah expert's ruling.
8. For avoidance of doubt, the ruling of the relevant Council or the Shariah expert may only relate to the issue or question so submitted by the arbitral tribunal and the relevant Council or the Shariah expert shall not have any jurisdiction in making discovery of facts or in applying the ruling or formulating any decision relating to any fact of the matter which is solely for the arbitral tribunal to determine.

## **Rule 12**

### **Facilities**

The Director shall, at the request of the arbitral tribunal or either party, make available or arrange for such facilities and assistance for the conduct of the arbitral proceedings as may be required, including suitable accommodation for sittings of the arbitral tribunal, secretarial assistance, transcription services, video or tele conferencing and interpretation facilities. The costs of such additional facilities shall be borne in equal shares by the parties unless otherwise agreed by the parties.

## **Rule 13**

### **Technical Review and Awards**

1. Following the final oral or written submissions, the arbitral tribunal shall declare the proceedings closed. The arbitral tribunal's declaration and the date on which the proceedings are closed shall be communicated in writing to the parties and to the Director. After this date, the parties may not submit any further evidence or make any further submission with respect to the matters to be decided in the award.
2. The arbitral tribunal shall, before signing the award, submit its draft of the final award (hereinafter referred to as the "Draft Final Award"), to the Director within three months for a technical review. The time limit shall start to run from the date when the arbitral tribunal declares the proceedings closed pursuant to Rule 13(1).
3. The time limit may be extended by the arbitral tribunal with the consent of the parties and upon consultation with the Director. The Director may further extend the time limit in the absence of consent between the parties if deemed necessary.
4. The Director may, as soon as practicable and without affecting the arbitral tribunal's liberty of decision, draw the arbitral tribunal's attention to any perceived irregularity as to the form of the award and any errors of calculation.
5. If there are no perceived irregularities pursuant to Rule 13(4), the Director shall notify the arbitral tribunal in writing that the technical review has been completed.

6. If there are perceived irregularities pursuant to Rule 13(4), the arbitral tribunal shall resubmit the Draft Final Award to the Director within 10 days from the date on which the arbitral tribunal is notified of such irregularities. The time limit for the arbitral tribunal to consider any irregularities under Rule 13(4) may be extended by the Director. Upon completion of the technical review, the Director shall notify the arbitral tribunal in writing of the completion of the technical review.
7. The arbitral tribunal shall deliver sufficient copies of the award to the Director. The award shall only be released to the parties by the Director upon full settlement of the costs of arbitration.
8. The Director shall notify the parties of its receipt of the award from the arbitral tribunal. The award shall be deemed to have been received by the parties upon collection by hand by an authorised representative or upon delivery by registered post.
9. If the parties reach a settlement after the arbitration has commenced, the arbitral tribunal shall, if so requested by the parties, record the settlement in the form of an award made by the consent of the parties. If the parties do not require a consent award, the parties shall inform the Director that a settlement has been reached. The arbitration shall only be deemed concluded and the arbitral tribunal discharged upon full settlement of the costs of arbitration.
10. By agreeing to arbitration under the KLRCA Rules, the parties undertake to carry out the award immediately and without delay, and they also irrevocably waive their rights to any form of appeal, review or recourse to any court or other judicial authority insofar as such

waiver may be validly made, and the parties further agree that an award shall be final and binding on the parties from the date it is made.

11. Unless the parties have agreed otherwise, the arbitral tribunal may on any sum of money ordered to be paid by the award on the whole or any part of the period between the date on which the cause of action arose and to the date of realisation of the award:
  - a. award a late payment charge determined by applying the principles of ta'widh and gharamah, where ta'widh refers to compensation on actual loss and gharamah refers to penalty for late payment; or
  - b. in any other way that the arbitral tribunal considers appropriate.

## **Rule 14**

### **Costs**

1. The term "costs" as specified in Article 40 shall also include:
  - a. expenses reasonably incurred by the KLRCA in connection with the arbitration, the administrative costs of the KLRCA as well as the cost of the facilities made available by the KLRCA under Rule 12; and
  - b. Expenses reasonably incurred by the arbitral tribunal in connection with the reference to a relevant Council or Shariah expert under Rule 11.

2. Unless otherwise agreed by the parties and the arbitral tribunal pursuant to Rule 14(4), the fees of the arbitral tribunal shall be fixed by the Director in accordance with Schedule 1.
3. Unless otherwise agreed upon by parties in writing, Schedule 1(A) shall apply to international arbitrations (USD scale) and Schedule 1(B) shall apply to domestic arbitrations (RM scale).
4. Notwithstanding the above, all parties and arbitral tribunal are at liberty to agree on the fees and expenses of the arbitral tribunal within the period of time of 30 days from the appointment of the arbitral tribunal (hereinafter referred to as the "Fee Agreement"). The arbitral tribunal shall inform the Director that the Fee Agreement has been executed. If the Fee Agreement is executed after the 30 day period has expired, the Fee Agreement shall be subject to approval by the Director.
5. The KLRCA administrative fees shall be fixed by the Director in accordance with Schedule 1. Unless otherwise agreed by the parties, Schedule 1(A) shall apply to international arbitrations and Schedule 1(B) shall apply to domestic arbitrations.
6. The costs of arbitration may, in exceptional, unusual or unforeseen circumstances, be adjusted from time to time at the discretion of the Director.
7. The arbitrator's fees and the KLRCA administrative fees under Schedule 1 are determined based on the amount in dispute. For the purpose of calculating the amount in dispute, the value of any counterclaim and/or set-off will be taken into account.

8. Where a claim or counterclaim does not state a monetary amount, an appropriate value for the claim or counterclaim shall be settled by the Director in consultation with the arbitral tribunal and the parties for the purpose of computing the arbitrator's fees and the administrative fees.
9. Notwithstanding Rule 14, the arbitral tribunal may determine the proportion of costs to be borne by the parties.

## **Rule 15**

### **Deposits**

In lieu of the provisions of Article 43, the following provisions shall apply:

1. After the arbitration has commenced in accordance with Rule 2, the Director shall fix a provisional advance deposit in an amount intended to cover the costs of the arbitration. Any such provisional advance deposit shall be paid by the parties in equal shares and will be considered as a partial payment by the parties of any deposits of costs fixed by the Director under Rule 15.
2. Such provisional advance deposit shall be payable within 21 days upon receiving the request from the KLRCA.
3. In the event that any of the parties fails to pay such deposit, the Director shall give the other party an opportunity to make the required payment within a specified period of time. The arbitral tribunal shall not proceed with the arbitral proceedings until such provisional advance deposit is paid in full.

4. Upon fixing of the fees of the arbitral tribunal and administrative costs of arbitration by the Director pursuant to Rule 15, including the fees and expenses of the arbitral tribunal, if any, pursuant to Rule 15(4), the Director shall prepare an estimate of the fees and expenses of the arbitral tribunal and the administrative costs of the arbitration which the parties shall bear in equal shares. Within 21 days of written notification by the Director of such estimate, each party shall deposit its share of the estimate with the KLRCA.
5. During the course of the arbitral proceedings the Director may request further deposits from the parties which shall be paid by the parties in equal shares within 21 days of such request.
6. Notwithstanding Rule 15(4), where counterclaims are submitted by the Respondent, the Director may fix separate advance preliminary deposits on costs for the claims and counterclaims. When the Director has fixed separate advance preliminary deposits on costs, each of the parties shall pay the advance preliminary deposit corresponding to its claims.
7. If the required deposits are not paid in full, the Director shall give the other party an opportunity to make the required payment within a specified period of time. If such payment is not made, the arbitral tribunal may, after consultation with the Director, order the suspension or termination of the arbitral proceedings or any part thereof.
8. Notwithstanding the above, the Director shall have the discretion to determine the proportion of deposits required to be paid by the parties.

9. The Director may apply the deposits towards the administrative costs of the KLRCA, fees of the arbitrator and the arbitrator's out-of-pocket and per diem expenses in such a manner and at such times as the Director deems appropriate.
10. After the award has been made, the Director shall render an accounting of the deposits received to the parties and return any unexpended balance to the parties based on the parties' respective contributions.

## **Rule 16**

### **Mediation to Arbitration**

If the parties have referred their dispute to mediation under the KLRCA Mediation Rules and they have failed to reach a settlement and thereafter proceed to arbitration under the KLRCA Rules, then half of the administrative fees paid to the KLRCA for the mediation shall be credited towards the KLRCA administrative fees.

## **Rule 17**

### **Confidentiality**

1. The arbitral tribunal, the parties, all experts, all witnesses and the KLRCA shall keep confidential all matters relating to the arbitral proceedings, except where disclosure is necessary for implementation and enforcement of the award or to the extent that disclosure may be required of a party by a legal duty, to protect or pursue a legal right or to challenge an award in bona fide legal proceedings before a court or other judicial authority.

2. In this Rule, “matters relating to the arbitral proceedings” means the existence of the proceedings, and the pleadings, evidence and other materials in the arbitration proceedings and all other documents produced by another party in the proceedings or the award arising from the proceedings, but excludes any matter that is otherwise in the public domain.

### **Rule 18**

#### **No Liability**

Neither the KLRCA nor the arbitral tribunal shall be liable for any act or omission related to the conduct of the arbitral proceedings.

### **Rule 19**

#### **Non-reliances**

The parties and the arbitral tribunal agree that statements or comments whether written or oral made in the course of the arbitral proceedings shall not be relied upon to institute or commence or maintain any action for defamation, libel, slander or any other complaint.

**Part II**

# **UNCITRAL ARBITRATION RULES**

**(As revised in 2013)**

## **Section I**

### **INTRODUCTORY RULES**

#### **Article 1**

##### **Scope of Application\***

1. Where parties have agreed that disputes between them in respect of a defined legal relationship, whether contractual or not, shall be referred to arbitration under the UNCITRAL Arbitration Rules, then such disputes shall be settled in accordance with these Rules subject to such modification as the parties may agree.
2. The parties to an arbitration agreement concluded after 15 August 2010 shall be presumed to have referred to the Rules in effect on the date of commencement of the arbitration, unless the parties have agreed to apply a particular version of the Rules. That presumption does not apply where the arbitration agreement has been concluded by accepting after 15 August 2010 an offer made before that date.
3. These Rules shall govern the arbitration except that where any of these Rules is in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.
4. For investor-State arbitration initiated pursuant to a treaty providing for the protection of investments or investors, these Rules include the UNCITRAL Rules on Transparency in Treatybased Investor-State Arbitration (“Rules on Transparency”), subject to article 1 of the Rules on Transparency.

\* A model arbitration clause for contracts can be found in the annex to the Rules.

## Article 2

### Notice and Calculation of Periods of Time

1. A notice, including a notification, communication or proposal, may be transmitted by any means of communication that provides or allows for a record of its transmission.
2. If an address has been designated by a party specifically for this purpose or authorised by the arbitral tribunal, any notice shall be delivered to that party at that address, and if so delivered shall be deemed to have been received. Delivery by electronic means such as facsimile or email may only be made to an address so designated or authorised.
3. In the absence of such designation or authorisation, a notice is:
  - a. Received if it is physically delivered to the addressee; or
  - b. Deemed to have been received if it is delivered at the place of business, habitual residence or mailing address of the addressee.
4. If, after reasonable efforts, delivery cannot be effected in accordance with paragraphs 2 or 3, a notice is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address by registered letter or any other means that provides a record of delivery or of attempted delivery.
5. A notice shall be deemed to have been received on the day it is delivered in accordance with paragraphs 2, 3 or 4, or attempted to be delivered in accordance with

paragraph 4. A notice transmitted by electronic means is deemed to have been received on the day it is sent, except that a notice of arbitration so transmitted is only deemed to have been received on the day when it reaches the addressee's electronic address.

6. 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 is received. If the last day of such period is an official 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. Official holidays or non business days occurring during the running of the period of time are included in calculating the period.

### **Article 3**

#### **Notice of Arbitration**

1. The party or parties initiating recourse to arbitration (hereinafter called the "claimant") shall communicate to the other party or parties (hereinafter called the "respondent") a notice of arbitration.
2. Arbitral proceedings shall be deemed to commence on the date on which the notice of arbitration is received by the respondent.
3. The notice of arbitration shall include the following:
  - a. A demand that the dispute be referred to arbitration;
  - b. The names and contact details of the parties;

- c. Identification of the arbitration agreement that is invoked;
  - d. Identification of any contract or other legal instrument out of or in relation to which the dispute arises or, in the absence of such contract or instrument, a brief description of the relevant relationship;
  - e. A brief description of the claim and an indication of the amount involved, if any;
  - f. The relief or remedy sought;
  - g. A proposal as to the number of arbitrators, language and place of arbitration, if the parties have not previously agreed thereon.
4. The notice of arbitration may also include:
- a. A proposal for the designation of an appointing authority referred to in article 6, paragraph 1;
  - b. A proposal for the appointment of a sole arbitrator referred to in article 8, paragraph 1;
  - c. Notification of the appointment of an arbitrator referred to in articles 9 or 10.
5. The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the sufficiency of the notice of arbitration, which shall be finally resolved by the arbitral tribunal.

## **Article 4**

### **Response to the Notice of Arbitration**

1. Within 30 days of the receipt of the notice of arbitration, the respondent shall communicate to the claimant a response to the notice of arbitration, which shall include:
  - a. The name and contact details of each respondent;
  - b. A response to the information set forth in the notice of arbitration, pursuant to article 3, paragraphs 3 (c) to (g).
2. The response to the notice of arbitration may also include:
  - a. Any plea that an arbitral tribunal to be constituted under these Rules lacks jurisdiction;
  - b. A proposal for the designation of an appointing authority referred to in article 6, paragraph 1;
  - c. A proposal for the appointment of a sole arbitrator referred to in article 8, paragraph 1;
  - d. Notification of the appointment of an arbitrator referred to in articles 9 or 10;
  - e. A brief description of counterclaims or claims for the purpose of a set-off, if any, including where relevant, an indication of the amounts involved, and the relief or remedy sought;

- f. A notice of arbitration in accordance with article 3 in case the respondent formulates a claim against a party to the arbitration agreement other than the claimant.
3. The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the respondent's failure to communicate a response to the notice of arbitration, or an incomplete or late response to the notice of arbitration, which shall be finally resolved by the arbitral tribunal.

## **Article 5**

### **Representation and Assistance**

Each party may be represented or assisted by persons chosen by it. The names and addresses of such persons must be communicated to all parties and to the arbitral tribunal. Such communication must specify whether the appointment is being made for purposes of representation or assistance. Where a person is to act as a representative of a party, the arbitral tribunal, on its own initiative or at the request of any party, may at any time require proof of authority granted to the representative in such a form as the arbitral tribunal may determine.

## **Article 6**

### **Designating and Appointing Authorities**

1. Unless the parties have already agreed on the choice of an appointing authority, a party may at any time propose the name or names of one or more institutions or persons, including the Secretary-General of the Permanent Court of Arbitration at The Hague (hereinafter called the "PCA"), one of whom would serve as appointing authority.
2. If all parties have not agreed on the choice of an appointing authority within 30 days after a proposal made in accordance with paragraph 1 has been received by all other parties, any party may request the Secretary-General of the PCA to designate the appointing authority.
3. Where these Rules provide for a period of time within which a party must refer a matter to an appointing authority and no appointing authority has been agreed on or designated, the period is suspended from the date on which a party initiates the procedure for agreeing on or designating an appointing authority until the date of such agreement or designation.
4. Except as referred to in article 41, paragraph 4, if the appointing authority refuses to act, or if it fails to appoint an arbitrator within 30 days after it receives a party's request to do so, fails to act within any other period provided by these Rules, or fails to decide on a challenge to an arbitrator within a reasonable time after receiving a party's request to do so, any party may request the Secretary-General of the PCA to designate a substitute appointing authority.

5. In exercising their functions under these Rules, the appointing authority and the Secretary-General of the PCA may require from any party and the arbitrators the information they deem necessary and they shall give the parties and, where appropriate, the arbitrators, an opportunity to present their views in any manner they consider appropriate. All such communications to and from the appointing authority and the Secretary-General of the PCA shall also be provided by the sender to all other parties.
6. When the appointing authority is requested to appoint an arbitrator pursuant to articles 8, 9, 10 or 14, the party making the request shall send to the appointing authority copies of the notice of arbitration and, if it exists, any response to the notice of arbitration.
7. The appointing authority shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and shall take into account the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties.

## **Section II**

# **COMPOSITION OF THE ARBITRAL TRIBUNAL**

### **Article 7**

#### **Number of Arbitrators**

1. If the parties have not previously agreed on the number of arbitrators, and if within 30 days after the receipt by the respondent of the notice of arbitration the parties have not agreed that there shall be only one arbitrator, three arbitrators shall be appointed.
2. Notwithstanding paragraph 1, if no other parties have responded to a party's proposal to appoint a sole arbitrator within the time limit provided for in paragraph 1 and the party or parties concerned have failed to appoint a second arbitrator in accordance with articles 9 or 10, the appointing authority may, at the request of a party, appoint a sole arbitrator pursuant to the procedure provided for in article 8, paragraph 2 if it determines that, in view of the circumstances of the case, this is more appropriate.

### **Appointment of Arbitrators**

#### **(Articles 8 to 10)**

### **Article 8**

1. If the parties have agreed that a sole arbitrator is to be appointed and if within 30 days after receipt by all other parties of a proposal for the appointment of a sole arbitrator the parties have not reached agreement thereon, a sole arbitrator shall, at the request of a party, be appointed by the appointing authority.

2. The appointing authority shall appoint the sole arbitrator as promptly as possible. In making the appointment, the appointing authority shall use the following list-procedure, unless the parties agree that the list-procedure should not be used or unless the appointing authority determines in its discretion that the use of the list-procedure is not appropriate for the case:
  - a. The appointing authority shall communicate to each of the parties an identical list containing at least three names;
  - b. Within 15 days after the receipt of this list, each party may return the list to the appointing authority after having deleted the name or names to which it objects and numbered the remaining names on the list in the order of its preference;
  - c. After the expiration of the above period of time the appointing authority shall appoint the sole arbitrator from among the names approved on the lists returned to it and in accordance with the order of preference indicated by the parties;
  - d. If for any reason the appointment cannot be made according to this procedure, the appointing authority may exercise its discretion in appointing the sole arbitrator.

## **Article 9**

1. If three arbitrators are to be appointed, each party shall appoint one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the arbitral tribunal.

2. If within 30 days after the receipt of a party's notification of the appointment of an arbitrator the other party has not notified the first party of the arbitrator it has appointed, the first party may request the appointing authority to appoint the second arbitrator.
3. If within 30 days after the appointment of the second arbitrator the two arbitrators have not agreed on the choice of the presiding arbitrator, the presiding arbitrator shall be appointed by the appointing authority in the same way as a sole arbitrator would be appointed under article 8.

## **Article 10**

1. For the purposes of article 9, paragraph 1, where three arbitrators are to be appointed and there are multiple parties as claimant or as respondent, unless the parties have agreed to another method of appointment of arbitrators, the multiple parties jointly, whether as claimant or as respondent, shall appoint an arbitrator.
2. If the parties have agreed that the arbitral tribunal is to be composed of a number of arbitrators other than one or three, the arbitrators shall be appointed according to the method agreed upon by the parties.
3. In the event of any failure to constitute the arbitral tribunal under these Rules, the appointing authority shall, at the request of any party, constitute the arbitral tribunal and, in doing so, may revoke any appointment already made and appoint or reappoint each of the arbitrators and designate one of them as the presiding arbitrator.

## **Disclosures by and Challenge of Arbitrators\*\* (Articles 11 to 13)**

### **Article 11**

When a person is approached in connection with his or her possible appointment as an arbitrator, he or she shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. An arbitrator, from the time of his or her appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties and the other arbitrators unless they have already been informed by him or her of these circumstances.

\*\* Model statements of independence pursuant to article 11 can be found in the annex to the Rules.

### **Article 12**

1. Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.
2. A party may challenge the arbitrator appointed by it only for reasons of which it becomes aware after the appointment has been made.
3. In the event that an arbitrator fails to act or in the event of the de jure or de facto impossibility of his or her performing his or her functions, the procedure in respect of the challenge of an arbitrator as provided in article 13 shall apply.

## **Article 13**

1. A party that intends to challenge an arbitrator shall send notice of its challenge within 15 days after it has been notified of the appointment of the challenged arbitrator, or within 15 days after the circumstances mentioned in articles 11 and 12 became known to that party.
2. The notice of challenge shall be communicated to all other parties, to the arbitrator who is challenged and to the other arbitrators. The notice of challenge shall state the reasons for the challenge.
3. When an arbitrator has been challenged by a party, all parties may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his or her office. In neither case does this imply acceptance of the validity of the grounds for the challenge.
4. If, within 15 days from the date of the notice of challenge, all parties do not agree to the challenge or the challenged arbitrator does not withdraw, the party making the challenge may elect to pursue it. In that case, within 30 days from the date of the notice of challenge, it shall seek a decision on the challenge by the appointing authority.

## **Article 14**

### **Replacement of An Arbitrator**

1. Subject to paragraph (2), in any event where an arbitrator has to be replaced during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in articles 8 to 11 that was applicable to the appointment or choice of the arbitrator being

replaced. This procedure shall apply even if during the process of appointing the arbitrator to be replaced, a party had failed to exercise its right to appoint or to participate in the appointment.

2. If, at the request of a party, the appointing authority determines that, in view of the exceptional circumstances of the case, it would be justified for a party to be deprived of its right to appoint a substitute arbitrator, the appointing authority may, after giving an opportunity to the parties and the remaining arbitrators to express their views: (a) appoint the substitute arbitrator; or (b) after the closure of the hearings, authorise the other arbitrators to proceed with the arbitration and make any decision or award.

## **Article 15**

### **Repetition of Hearings in the Event of the Replacement of An Arbitrator**

If an arbitrator is replaced, the proceedings shall resume at the stage where the arbitrator who was replaced ceased to perform his or her functions, unless the arbitral tribunal decides otherwise.

## **Article 16**

### **Exclusion of Liability**

Save for intentional wrongdoing, the parties waive, to the fullest extent permitted under the applicable law, any claim against the arbitrators, the appointing authority and any person appointed by the arbitral tribunal based on any act or omission in connection with the arbitration.

## **Section III**

### **ARBITRAL PROCEEDINGS**

#### **Article 17**

##### **General Provisions**

1. Subject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at an appropriate stage of the proceedings each party is given a reasonable opportunity of presenting its case. The arbitral tribunal, in exercising its discretion, shall conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the parties' dispute.
2. As soon as practicable after its constitution and after inviting the parties to express their views, the arbitral tribunal shall establish the provisional timetable of the arbitration. The arbitral tribunal may, at any time, after inviting the parties to express their views, extend or abridge any period of time prescribed under these Rules or agreed by the parties.
3. If at an appropriate stage of the proceedings any party so requests, the arbitral tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the arbitral tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.

4. All communications to the arbitral tribunal by one party shall be communicated by that party to all other parties. Such communications shall be made at the same time, except as otherwise permitted by the arbitral tribunal if it may do so under applicable law.
5. The arbitral tribunal may, at the request of any party, allow one or more third persons to be joined in the arbitration as a party provided such person is a party to the arbitration agreement, unless the arbitral tribunal finds, after giving all parties, including the person or persons to be joined, the opportunity to be heard, that joinder should not be permitted because of prejudice to any of those parties. The arbitral tribunal may make a single award or several awards in respect of all parties so involved in the arbitration.

## **Article 18**

### **Place of Arbitration**

1. If the parties have not previously agreed on the place of arbitration, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case. The award shall be deemed to have been made at the place of arbitration.
2. The arbitral tribunal may meet at any location it considers appropriate for deliberations. Unless otherwise agreed by the parties, the arbitral tribunal may also meet at any location it considers appropriate for any other purpose, including hearings.

## **Article 19**

### **Language**

1. Subject to an agreement by the parties, the arbitral tribunal shall, promptly after its appointment, determine the language or languages to be used in the proceedings. This determination shall apply to the statement of claim, the statement of defence, and any further written statements and, if oral hearings take place, to the language or languages to be used in such hearings.
2. The arbitral tribunal may order that any documents annexed to the statement of claim or statement of defence, and any supplementary documents or exhibits submitted in the course of the proceedings, delivered in their original language, shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

## **Article 20**

### **Statement of Claim**

1. The claimant shall communicate its statement of claim in writing to the respondent and to each of the arbitrators within a period of time to be determined by the arbitral tribunal. The claimant may elect to treat its notice of arbitration referred to in article 3 as a statement of claim, provided that the notice of arbitration also complies with the requirements of paragraphs 2 to 4 of this article.
2. The statement of claim shall include the following particulars:

- a. The names and contact details of the parties;
  - b. A statement of the facts supporting the claim;
  - c. The points at issue;
  - d. The relief or remedy sought;
  - e. The legal grounds or arguments supporting the claim.
3. A copy of any contract or other legal instrument out of or in relation to which the dispute arises and of the arbitration agreement shall be annexed to the statement of claim.
  4. The statement of claim should, as far as possible, be accompanied by all documents and other evidence relied upon by the claimant, or contain references to them.

## **Article 21**

### **Statement of Defence**

1. The respondent shall communicate its statement of defence in writing to the claimant and to each of the arbitrators within a period of time to be determined by the arbitral tribunal. The respondent may elect to treat its response to the notice of arbitration referred to in article 4 as a statement of defence, provided that the response to the notice of arbitration also complies with the requirements of paragraph 2 of this article.
2. The statement of defence shall reply to the particulars (b) to (e) of the statement of claim (article 20, paragraph 2). The statement of defence should, as

far as possible, be accompanied by all documents and other evidence relied upon by the respondent, or contain references to them.

3. In its statement of defence, or at a later stage in the arbitral proceedings if the arbitral tribunal decides that the delay was justified under the circumstances, the respondent may make a counterclaim or rely on a claim for the purpose of a set-off provided that the arbitral tribunal has jurisdiction over it.
4. The provisions of article 20, paragraphs 2 to 4 shall apply to a counterclaim, a claim under article 4, paragraph (2) (f) and a claim relied on for the purpose of a set-off.

## **Article 22**

### **Amendments to the Claim or Defence**

During the course of the arbitral proceedings, a party may amend or supplement its claim or defence, including a counterclaim or a claim for the purpose of a set-off, unless the arbitral tribunal considers it inappropriate to allow such amendment or supplement having regard to the delay in making it or prejudice to other parties or any other circumstances. However, a claim or defence, including a counterclaim or a claim for the purpose of a set-off, may not be amended or supplemented in such a manner that the amended or supplemented claim or defence falls outside the jurisdiction of the arbitral tribunal.

## **Article 23**

### **Pleas as to the Jurisdiction of the Arbitral Tribunal**

1. The arbitral tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause that forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null shall not entail automatically the invalidity of the arbitration clause.
2. A plea that the arbitral tribunal does not have jurisdiction shall be raised no later than in the statement of defence or, with respect to a counterclaim or a claim for the purpose of a set-off, in the reply to the counterclaim or to the claim for the purpose of a set-off. A party is not precluded from raising such a plea by the fact that it has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.
3. The arbitral tribunal may rule on a plea referred to in paragraph 2 either as a preliminary question or in an award on the merits. The arbitral tribunal may continue the arbitral proceedings and make an award, notwithstanding any pending challenge to its jurisdiction before a court.

## **Article 24**

### **Further Written Statements**

The arbitral tribunal shall decide which further written statements, in addition to the statement of claim and the statement of defence, shall be required from the parties or may be presented by them and shall fix the periods of time for communicating such statements.

## **Article 25**

### **Periods of Time**

The periods of time fixed by the arbitral tribunal for the communication of written statements (including the statement of claim and statement of defence) should not exceed 45 days. However, the arbitral tribunal may extend the time limits if it concludes that an extension is justified.

## **Article 26**

### **Interim Measures**

1. The arbitral tribunal may, at the request of a party, grant interim measures.
2. An interim measure is any temporary measure by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party, for example and without limitation, to:
  - a. Maintain or restore the status quo pending determination of the dispute;
  - b. Take action that would prevent, or refrain from taking action that is likely to cause,

- i. current or imminent harm or
    - ii. prejudice to the arbitral process itself;
  - c. Provide a means of preserving assets out of which a subsequent award may be satisfied; or
  - d. Preserve evidence that may be relevant and material to the resolution of the dispute.
3. The party requesting an interim measure under paragraphs 2 (a) to (c) shall satisfy the arbitral tribunal that:
  - a. Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and
  - b. There is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.
4. With regard to a request for an interim measure under paragraph 2 (d), the requirements in paragraphs 3 (a) and (b) shall apply only to the extent the arbitral tribunal considers appropriate.
5. The arbitral tribunal may modify, suspend or terminate an interim measure it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal's own initiative.

6. The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.
7. The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the interim measure was requested or granted.
8. The party requesting an interim measure may be liable for any costs and damages caused by the measure to any party if the arbitral tribunal later determines that, in the circumstances then prevailing, the measure should not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings.
9. A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

## **Article 27**

### **Evidence**

1. Each party shall have the burden of proving the facts relied on to support its claim or defence.
2. Witnesses, including expert witnesses, who are presented by the parties to testify to the arbitral tribunal on any issue of fact or expertise may be any individual, notwithstanding that the individual is a party to the arbitration or in any way related to a party. Unless otherwise directed by the arbitral tribunal, statements by witnesses, including expert witnesses, may be presented in writing and signed by them.

3. At any time during the arbitral proceedings the arbitral tribunal may require the parties to produce documents exhibits or other evidence within such a period of time as the arbitral tribunal shall determine.
4. The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

## **Article 28**

### **Hearings**

1. In the event of an oral hearing, the arbitral tribunal shall give the parties adequate advance notice of the date, time and place thereof.
2. Witnesses, including expert witnesses, may be heard under the conditions and examined in the manner set by the arbitral tribunal.
3. Hearings shall be held in camera unless the parties agree otherwise. The arbitral tribunal may require the retirement of any witness or witnesses, including expert witnesses, during the testimony of such other witnesses, except that a witness, including an expert witness, who is a party to the arbitration shall not, in principle, be asked to retire.
4. The arbitral tribunal may direct that witnesses, including expert witnesses, be examined through means of telecommunication that do not require their physical presence at the hearing (such as video conferencing).

## **Article 29**

### **Experts Appointed by the Arbitral Tribunal**

1. After consultation with the parties, the arbitral tribunal may appoint one or more independent experts to report to it, in writing, on specific issues to be determined by the arbitral tribunal. A copy of the expert's terms of reference, established by the arbitral tribunal, shall be communicated to the parties.
2. The expert shall, in principle before accepting appointment, submit to the arbitral tribunal and to the parties a description of his or her qualifications and a statement of his or her impartiality and independence. Within the time ordered by the arbitral tribunal, the parties shall inform the arbitral tribunal whether they have any objections as to the expert's qualifications, impartiality or independence. The arbitral tribunal shall decide promptly whether to accept any such objections. After an expert's appointment, a party may object to the expert's qualifications, impartiality or independence only if the objection is for reasons of which the party becomes aware after the appointment has been made. The arbitral tribunal shall decide promptly what, if any, action to take.
3. The parties shall give the expert any relevant information or produce for his or her inspection any relevant documents or goods that he or she may require of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.
4. Upon receipt of the expert's report, the arbitral tribunal shall communicate a copy of the report to the parties, which shall be given the opportunity to express, in

writing, their opinion on the report. A party shall be entitled to examine any document on which the expert has relied in his or her report.

5. At the request of any party, the expert, after delivery of the report, may be heard at a hearing where the parties shall have the opportunity to be present and to interrogate the expert. At this hearing, any party may present expert witnesses in order to testify on the points at issue. The provisions of article 28 shall be applicable to such proceedings.

### **Article 30**

#### **Default**

1. If, within the period of time fixed by these Rules or the arbitral tribunal, without showing sufficient cause:
  - a. The claimant has failed to communicate its statement of claim, the arbitral tribunal shall issue an order for the termination of the arbitral proceedings, unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so;
  - b. The respondent has failed to communicate its response to the notice of arbitration or its statement of defence, the arbitral tribunal shall order that the proceedings continue, without treating such failure in itself as an admission of the claimant's allegations; the provisions of this subparagraph also apply to a claimant's failure to submit a defence to a counterclaim or to a claim for the purpose of a set-off.

2. If a party, duly notified under these Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration.
3. If a party, duly invited by the arbitral tribunal to produce documents, exhibits or other evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the arbitral tribunal may make the award on the evidence before it.

### **Article 31**

#### **Closure of Hearings**

1. The arbitral tribunal may enquire of the parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the hearings closed.
2. The arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own initiative or upon application of a party, to reopen the hearings at any time before the award is made.

### **Article 32**

#### **Waiver of Right to Object**

A failure by any party to object promptly to any non-compliance with these Rules or with any requirement of the arbitration agreement shall be deemed to be a waiver of the right of such party to make such an objection, unless such party can show that, under the circumstances, its failure to object was justified.

## **Section IV**

### **THE AWARD**

#### **Article 33**

##### **Decisions**

1. When there is more than one arbitrator, any award or other decision of the arbitral tribunal shall be made by a majority of the arbitrators.
2. In the case of questions of procedure, when there is no majority or when the arbitral tribunal so authorises, the presiding arbitrator may decide alone, subject to revision, if any, by the arbitral tribunal.

#### **Article 34**

##### **Form and Effect of the Award**

1. The arbitral tribunal may make separate awards on different issues at different times.
2. All awards shall be made in writing and shall be final and binding on the parties. The parties shall carry out all awards without delay.
3. The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.
4. An award shall be signed by the arbitrators and it shall contain the date on which the award was made and indicate the place of arbitration. Where there is more than one arbitrator and any of them fails to sign, the award shall state the reason for the absence of the signature.

5. An award may be made public with the consent of all parties or where and to the extent disclosure is required of a party by legal duty, to protect or pursue a legal right or in relation to legal proceedings before a court or other competent authority.
6. Copies of the award signed by the arbitrators shall be communicated to the parties by the arbitral tribunal.

### **Article 35**

#### **Applicable Law, Amiable Compositeur**

1. The arbitral tribunal shall apply the rules of law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall apply the law which it determines to be appropriate.
2. The arbitral tribunal shall decide as amiable compositeur or ex aequo et bono only if the parties have expressly authorised the arbitral tribunal to do so.
3. In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract, if any, and shall take into account any usage of trade applicable to the transaction.

### **Article 36**

#### **Settlement or Other Grounds for Termination**

1. If, before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by the parties and

accepted by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms. The arbitral tribunal is not obliged to give reasons for such an award.

2. If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in paragraph 1, the arbitral tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The arbitral tribunal shall have the power to issue such an order unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so.
3. Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated by the arbitral tribunal to the parties. Where an arbitral award on agreed terms is made, the provisions of article 34, paragraphs 2, 4 and 5 shall apply.

### **Article 37**

#### **Interpretation of the Award**

1. Within 30 days after the receipt of the award, a party, with notice to the other parties, may request that the arbitral tribunal give an interpretation of the award.
2. The interpretation shall be given in writing within 45 days after the receipt of the request. The interpretation shall form part of the award and the provisions of article 34, paragraphs 2 to 6, shall apply.

## **Article 38**

### **Correction of the Award**

1. Within 30 days after the receipt of the award, a party, with notice to the other parties, may request the arbitral tribunal to correct in the award any error in computation, any clerical or typographical error, or any error or omission of a similar nature. If the arbitral tribunal considers that the request is justified, it shall make the correction within 45 days of receipt of the request.
2. The arbitral tribunal may within 30 days after the communication of the award make such corrections on its own initiative.
3. Such corrections shall be in writing and shall form part of the award. The provisions of article 34, paragraphs 2 to 6, shall apply.

## **Article 39**

### **Additional Award**

1. Within 30 days after the receipt of the termination order or the award, a party, with notice to the other parties, may request the arbitral tribunal to make an award or an additional award as to claims presented in the arbitral proceedings but not decided by the arbitral tribunal.
2. If the arbitral tribunal considers the request for an award or additional award to be justified, it shall render or complete its award within 60 days after the receipt of the request. The arbitral tribunal may extend, if necessary, the period of time within which it shall make the award.

3. When such an award or additional award is made, the provisions of article 34, paragraph 2 to 6, shall apply.

## **Article 40**

### **Definition of Costs**

1. The arbitral tribunal shall fix the costs of arbitration in the final award and, if it deems appropriate, in another decision.
2. The term “costs” includes only:
  - a. The fees of the arbitral tribunal to be stated separately as to each arbitrator and to be fixed by the tribunal itself in accordance with article 41;
  - b. The reasonable travel and other expenses incurred by the arbitrators;
  - c. The reasonable costs of expert advice and of other assistance required by the arbitral tribunal;
  - d. The reasonable travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;
  - e. The legal and other costs incurred by the parties in relation to the arbitration to the extent that the arbitral tribunal determines that the amount of such costs is reasonable;
  - f. Any fees and expenses of the appointing authority as well as the fees and expenses of the Secretary-General of the PCA.

3. In relation to interpretation, correction or completion of any award under articles 37 to 39, the arbitral tribunal may charge the costs referred to in paragraphs 2 (b) to (f), but no additional fees.

## **Article 41**

### **Fees and Expenses of Arbitrators**

1. The fees and expenses of the arbitrators shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject matter, the time spent by the arbitrators and any other relevant circumstances of the case.
2. If there is an appointing authority and it applies or has stated that it will apply a schedule or particular method for determining the fees for arbitrators in international cases, the arbitral tribunal in fixing its fees shall take that schedule or method into account to the extent that it considers appropriate in the circumstances of the case.
3. Promptly after its constitution, the arbitral tribunal shall inform the parties as to how it proposes to determine its fees and expenses, including any rates it intends to apply. Within 15 days of receiving that proposal, any party may refer the proposal to the appointing authority for review. If, within 45 days of receipt of such a referral, the appointing authority finds that the proposal of the arbitral tribunal is inconsistent with paragraph 1, it shall make any necessary adjustments thereto, which shall be binding upon the arbitral tribunal.

4.
  - a. When informing the parties of the arbitrators' fees and expenses that have been fixed pursuant to article 40, paragraphs 2 (a) and (b), the arbitral tribunal shall also explain the manner in which the corresponding amounts have been calculated.
  - b. Within 15 days of receiving the arbitral tribunal's determination of fees and expenses, any party may refer for review such determination to the appointing authority. If no appointing authority has been agreed upon or designated, or if the appointing authority fails to act within the time specified in these Rules, then the review shall be made by the Secretary-General of the PCA.
  - c. If the appointing authority or the Secretary-General of the PCA finds that the arbitral tribunal's determination is inconsistent with the arbitral tribunal's proposal (and any adjustment thereto) under paragraph 3 or is otherwise manifestly excessive, it shall, within 45 days of receiving such a referral, make any adjustments to the arbitral tribunal's determination that are necessary to satisfy the criteria in paragraph 1. Any such adjustments shall be binding upon the arbitral tribunal.
  - d. Any such adjustments shall either be included by the arbitral tribunal in its award or, if the award has already been issued, be implemented in a correction to the award, to which the procedure of article 38, paragraph 3 shall apply.
5. Throughout the procedure under paragraphs 3 and 4, the arbitral tribunal shall proceed with the arbitration, in accordance with article 17, paragraph 1.

6. A referral under paragraph 4 shall not affect any determination in the award other than the arbitral tribunal's fees and expenses; nor shall it delay the recognition and enforcement of all parts of the award other than those relating to the determination of the arbitral tribunal's fees and expenses.

## **Article 42**

### **Allocation of Costs**

1. The costs of the arbitration shall in principle be borne by the unsuccessful party or parties. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.
2. The arbitral tribunal shall in the final award or, if it deems appropriate, in any other award, determine any amount that a party may have to pay to another party as a result of the decision on allocation of costs.

## **Article 43**

### **Deposit of Costs**

1. The arbitral tribunal, on its establishment, may request the parties to deposit an equal amount as an advance for the costs referred to in article 40, paragraphs 2 (a) to (c).
2. During the course of the arbitral proceedings the arbitral tribunal may request supplementary deposits from the parties.

3. If an appointing authority has been agreed upon or designated, and when a party so requests and the appointing authority consents to perform the function, the arbitral tribunal shall fix the amounts of any deposits or supplementary deposits only after consultation with the appointing authority, which may make any comments to the arbitral tribunal that it deems appropriate concerning the amount of such deposits and supplementary deposits.
4. If the required deposits are not paid in full within 30 days after the receipt of the request, the arbitral tribunal shall so inform the parties in order that one or more of them may make the required payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.
5. After a termination order or final award has been made, the arbitral tribunal shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.



**Part III**

# SCHEDULES

**Schedule 1**

**Arbitrator’s Fees and KLRC A Administrative Fees<sup>1</sup>**

**A. INTERNATIONAL ARBITRATION**

Amount In Dispute (USD)	Arbitrator’s Fees (USD)	KLRC A Administrative Fees (USD)
Up to 50,000	3,500	2,050
From 50,001 to 100,000	3,500 + 8.2% excess over 50,000	2,050 + 1.26% excess over 50,000
From 100,001 to 500,000	7,600 + 3.6% excess over 100,000	2,680 + 0.705% excess over 100,000
From 500,001 to 1,000,000	22,000 + 3.02% excess over 500,000	5,500 + 0.5% excess over 500,000
From 1,000,001 to 2,000,000	37,100 + 1.39% excess over 1,000,000	8,000 + 0.35% excess over 1,000,000
From 2,000,001 to 5,000,000	51,000 + 0.6125% excess over 2,000,000	11,500 + 0.13% excess over 2,000,000
From 5,000,001 to 10,000,000	75,500 + 0.35% excess over 5,000,000	16,700 + 0.088% excess over 5,000,000
From 10,000,001 to 50,000,000	93,000 + 0.181% excess over 10,000,000	21,100 + 0.052% excess over 10,000,000
From 50,000,001 to 80,000,000	165,300 + 0.0713% excess over 50,000,000	Above 50,000,001: 41,900 (maximum)
From 80,000,001 to 100,000,000	186,700 + 0.0535% excess over 80,000,000	
From 100,000,001 to 500,000,000	197,400 + 0.0386% excess over 100,000,000	
Above 500,000,001	351,800 + 0.03% excess over 500,000,000 up to a maximum of 2,000,000	

<sup>1</sup> GST is not included.

**B. DOMESTIC ARBITRATION**

Amount In Dispute (RM)	Arbitrator's Fees (RM)	KLRCAs Administrative Fees (RM)
Up to 150,000	11,200	6,600
From 150,001 to 300,000	11,200 + 7.2667% of excess over 150,000	6,600 + 1.0667% excess over 150,000
From 300,001 to 1,500,000	24,300 + 3.1667% of excess over 300,000	8,600 + 0.625% excess over 300,000
From 1,500,001 to 3,000,000	70,300 + 2.66% of excess over 1,500,000	17,600 + 0.44% excess over 1,500,000
From 3,000,001 to 6,000,000	118,600 + 1.2233% of excess over 3,000,000	25,500 + 0.3067% excess over 3,000,000
From 6,000,001 to 15,000,000	163,000 + 0.7189% of excess over 6,000,000	36,500 + 0.1522% excess over 6,000,000
From 15,000,001 to 30,000,000	241,300 + 0.3080% of excess over 15,000,000	52,900 + 0.0773% excess over 15,000,000
From 30,000,001 to 150,000,000	297,200 + 0.159% of excess over 30,000,000	66,800 + 0.0458% excess over 30,000,000
From 150,000,001 to 240,000,000	528,100 + 0.0628% of excess over 150,000,000	Above 150,000,001: 132,800 (maximum)
From 240,000,001 to 300,000,000	596,500 + 0.0472% of excess over 240,000,000	
From 300,000,001 to 1,500,000,000	630,700 + 0.034% of excess over 300,000,000	
Above 1,500,000,000	1,123,900 + 0.03% of excess over 1,500,000,000 up to a maximum of 6,000,000	

## **Schedule 2**

### **Note on Fees, Expenses and Deposits**

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#### **Section 1**

#### **Arbitrator's Fees and Expenses**

##### **1.1 Arbitrator's Fees**

- a. The fees payable to the arbitrator do not include any taxes such as the GST, withholding tax or other applicable taxes or charges. Parties have a duty to pay any such taxes or charges; however the recovery of any such taxes or charges is a matter solely between the arbitrator and the parties.
- b. The arbitrator's fees shall only be payable upon the delivery of the award to the Director in accordance with Rule 13.
- c. The arbitrator shall not be entitled to any interim fees.
- d. Where the arbitral tribunal is constituted of more than one arbitrator, the presiding arbitrator shall receive 40% of the total arbitrators' fee and the co-arbitrators shall receive the remaining 60% in equal shares.
- e. Where an arbitration matter is settled or disposed of before the issuance of the final award, the costs of the arbitration shall be determined by the Director.

## 1.2 Arbitrator's Expenses

- a. An arbitrator shall be entitled to claim reasonable out-of-pocket expenses relating to reasonable travel, accommodation and other miscellaneous expenses related to the arbitration proceedings.
- b. The arbitral tribunal's reasonable out-of-pocket expenses necessarily incurred shall be borne by the parties and reimbursed upon submission and verification by the KLRCA of the supporting invoices and receipts in original.
- c. An arbitrator who is required to travel outside of the arbitrator's place of residence will be reimbursed with the cost of business class airfare, subject to the submission of the invoice or receipt in original to the KLRCA for verification.
- d. In addition to the out-of-pocket expenses, a per diem of RM1800.00 shall be paid to an arbitrator who is required to travel outside of the arbitrator's place of residence whenever overnight accommodation is required. If no overnight accommodation is required, a per diem of RM900.00 shall be paid.
- e. The expenses covered by the per diem above shall include the following items which are not claimable as out-of-pocket expenses:
  - Hotel accommodation;
  - Meals/beverages;
  - Laundry/dry cleaning/ironing;
  - City transportation (excluding airport transfers);

- Communication costs (telephone, faxes, internet usage etc.); and
  - Tips.
- f. Any disbursement towards the arbitrator's out-of-pocket and per diem expenses shall be additional to the arbitrator's fees and do not form part of the advance preliminary deposits. Parties shall bear these costs separately in equal shares upon request from the KLRCA.

## **Section 2**

### **KLRCA Administrative Fees**

- 2.1 The KLRCA administrative fees shall be calculated in accordance with Schedule 1.
- 2.2 The KLRCA administrative fees shall be payable by the parties in equal shares and shall form a part of the advance preliminary deposit.
- 2.3 The KLRCA administrative fees are not inclusive of other services such as rental of facilities, refreshments, secretarial assistance, transcription services, videoconferencing and interpretation services, which shall be chargeable on the requesting party separately.

### Section 3 Deposits

3.1 The advance preliminary deposit and/or additional deposits shall include the following:

- a. Arbitrator's fees [for an arbitral panel comprising out of more than one arbitrator, the total arbitrators' fee shall be derived by multiplying the amount of an arbitrator's fees by the number of the arbitrators];
- b. KLRCA administrative fees (as per Schedule 1);
- c. Bank charges required by the bank in the following amounts:

International arbitration	Domestic arbitration
USD150.00	RM150.00

- d. Any applicable taxes including GST.

3.2 The advance preliminary deposit and additional deposits, if any, shall be payable by the parties in equal shares pursuant to Rule 15.

## Section 4 Registration Fee

- 4.1 The registration fee includes the Goods and Services Tax.
- 4.2 The registration fee is non-refundable, and does not constitute a part of the KLRCA's administrative fees.
- 4.3 The registration fee shall be payable by the Claimant in full and shall not be subjected to any deductions.

## Section 5 Emergency Arbitrator

- 5.1 The following application fee<sup>1</sup> shall be payable upon making an application to appoint an emergency arbitrator to the Director under Rule 8(2) and Schedule 3 "Emergency Arbitrator":

International Arbitration	Domestic Arbitration
USD2,120.00	RM5,300.00

- 5.2 The application fee is non-refundable and does not constitute a part of the KLRCA's administrative fees.
- 5.3 The emergency arbitrator's fees<sup>2</sup> shall be payable in full upon making an application to appoint an emergency arbitrator to the Director:

International Arbitration	Domestic Arbitration
USD10,600.00	RM31,800.00

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1 The amounts are inclusive of 6% GST.

2 The amounts are inclusive of 6% GST.

### **Schedule 3**

#### **Emergency Arbitrator**

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1. A party in need of emergency interim measures may, concurrent with or following the filing of a Commencement Request pursuant to Rule 2, but prior to the constitution of the arbitral tribunal, make an application for emergency interim measures.
2. The application for emergency interim measures shall be made in writing and shall be sent simultaneously to the Director and all parties to the arbitration.
3. The application for emergency interim measures shall include:
  - a. the names and contact details of the applicant;
  - b. a copy of any relevant agreements, in particular, of any written arbitration clause;
  - c. a brief description of the legal and factual basis supporting the application;
  - d. a statement certifying that all other parties have been notified or an explanation of the steps taken in good faith to notify the other parties; and
  - e. KLRCA administrative fee pursuant to Schedule 1.
4. If the Director grants the application, the Director shall seek to appoint an emergency arbitrator within 2 days after the KLRCA has received the completed set of application documents pursuant to paragraph 3 of Schedule 3.

5. Prior to accepting appointment, a prospective emergency arbitrator shall disclose to the Director any circumstance that may give rise to justifiable doubts as to his impartiality or independence.
6. An emergency arbitrator may not act as an arbitrator in any future arbitration relating to the dispute unless agreed by the parties.
7. Once the emergency arbitrator has been appointed, the KLRC A shall so notify the parties. Thereafter, all written communications from the parties shall be submitted directly to the emergency arbitrator with a copy to the other party and the KLRC A.
8. In the event there is any challenge to the appointment of the emergency arbitrator, such challenge application must be made within one day of the notification by the Director to the parties of the appointment of the emergency arbitrator or the date on which the relevant circumstances were disclosed. Rule 5 shall apply to the emergency arbitrator, except that the time limits set out in Rules 5(3) and 5(7) are reduced to one day.
9. If the parties have agreed on the seat of arbitration, such seat shall be the seat of the emergency interim relief proceedings. Where the parties have not agreed on the seat of arbitration, and without prejudice to the arbitral tribunal's determination of the seat of arbitration pursuant to Rule 7, the seat of the emergency interim relief proceedings shall be Kuala Lumpur, Malaysia.

10. The emergency arbitrator shall, as soon as possible but in any event within 2 days of appointment, establish a schedule for consideration of the application for emergency interim relief. Such schedule shall provide a reasonable opportunity for all parties to be heard, but may provide for proceedings by telephone conference or on written submissions as alternatives to a formal hearing. The emergency arbitrator shall have the powers vested in the arbitral tribunal pursuant to the legislation in force and the KLRCA Rules, including the authority to rule on the emergency arbitrator's own jurisdiction, and shall resolve any disputes over the application of this Schedule.
11. The emergency arbitrator shall have the power to order or award any interim measures that the emergency arbitrator deems necessary. The emergency arbitrator shall give reasons for the emergency arbitrator's decision in writing.
12. Any order or award of the emergency arbitrator shall be made within 15 days from the date of notification of the appointment to the parties and this period of time may be extended by agreement of the parties, or by the Director if the Director deems it appropriate.
13. The emergency arbitrator shall deliver sufficient copies of the order or award to the Director.
14. The KLRCA shall notify the parties of their receipt of the order or award from the emergency arbitrator. The order or award shall be deemed to have been received by the parties upon collection by hand by an authorised representative or upon delivery by registered mail.

15. Upon constitution of the arbitral tribunal:
  - a. the emergency arbitrator shall have no further power to act;
  - b. the arbitral tribunal may reconsider, modify or vacate the interim award or order issued by the emergency arbitrator; and
  - c. the arbitral tribunal is not bound by the reasons given by the emergency arbitrator.
16. Any order or award issued by the emergency arbitrator shall cease to be binding:
  - a. if the arbitral tribunal is not constituted within 90 days of such order or award;
  - b. when the arbitral tribunal makes a final award; or
  - c. if the claim is withdrawn.
17. Any interim award or order of emergency interim measures may be conditional upon the provision of appropriate security by the party seeking such relief.
18. An order or award pursuant to this Schedule shall be binding on the parties when rendered. By agreeing to arbitration under the KLRCA Rules, the parties undertake to comply with such an order or award without delay.
19. The costs associated with any application pursuant to this Schedule shall initially be apportioned by the emergency arbitrator, subject to the power of the arbitral tribunal to determine the final apportionment of such costs.



Part IV

# FREQUENTLY ASKED QUESTIONS

## 1. What are the KLRC A i-Arbitration Rules?

The KLRC A i-Arbitration Rules are a set of procedural rules covering all aspects of the arbitration process, which parties may agree to in whole or in part in order to help resolve their domestic or international disputes. The KLRC A i-Arbitration Rules adopt UNCITRAL Arbitration Rules 2013 in its second part, which provide, among other things:

- a. a model arbitration clause for contracts;
- b. procedures for the appointment and challenge of arbitrators;
- c. procedures for the conduct of arbitration proceedings; and
- d. requirements about the form, effect and interpretation of an arbitration award.

The KLRC A i-Arbitration Rules are Shariah-compliant and suitable for arbitration of disputes arising from commercial transactions premised on Islamic principles. The Rules take into account and allow for the reference process to a Shariah Advisory Council or Shariah expert whenever the arbitral tribunal has to form an opinion on a point related to Shariah principles.

**2. Are the arbitration proceedings confidential in nature?**

Yes, arbitration under the KLRCA i-Arbitration Rules is private and confidential in nature as provided under Article 28 and Rule 17. The arbitral tribunal, the parties and the KLRCA shall keep confidential all matters relating to the arbitral proceedings. Confidentiality also extends to any award, except where its disclosure is necessary for purposes of implementation and enforcement. Article 28 of the KLRCA i-Arbitration Rules specifies that hearings shall be held in camera unless the parties agree otherwise.

**3. Why does the rule have Part I and Part II? Which part is applicable to the arbitration?**

KLRCA i-Arbitration Rules has two Parts. Part I specifies the KLRCA Rules and Part II specifies the UNCITRAL Rules. Part II incorporates the UNCITRAL Arbitration Rules 2013 without any modifications. Modifications to the UNCITRAL Rules however appear under Part I of the Rules. Thus, Part II of the Rules shall be read in conjunction with Part I of the Rules.

**4. What type of disputes can be resolved by arbitration under the KLRCA Rules?**

Any dispute which arises out of an agreement which is premised on the principles of Shariah.

## **5. What are the advantages in using the KLRCA Rules?**

The KLRCA i-Arbitration Rules incorporates the UNCITRAL Arbitration Rules which is comprehensive, time tested and internationally accepted. KLRCA provides administrative assistance to the tribunal and parties with available facilities, appointment of arbitrator, challenge of arbitrator, reasonable schedule of fees and accounting of the fees and costs applied to the proceedings. KLRCA's roles and functions are identified in Part I of the Rules.

## **6. What is the effect of exclusion of Part III of the Malaysian Arbitration Act 2005?**

The Rules (Rule 1(1)(c)) precludes the application of Section 41, 42, 43, and 46 of the Malaysian Arbitration Act 2005 where the seat of arbitration is in Malaysia, bringing domestic arbitrations in line with international standards.

By agreeing to arbitrate under the Rules, parties therefore agree to waive their rights to apply to the High Court of Malaya for the reference and appeal of points of law.

This brings the arbitration under the Rules in line with the UNCITRAL Model Law and the prevailing trends of minimal intervention by the curial courts. It ensures finality in respect of domestic arbitral awards.

## **7. How is the seat of arbitration determined?**

Where parties have not clearly stipulated the seat of the arbitration, then pursuant to Rule 7(1), the seat of arbitration shall be Kuala Lumpur, Malaysia unless the arbitral tribunal determines, having regard to all the circumstances of the case, that another seat is more appropriate.

The Rules provide for certainty and smooth progression of arbitral proceedings.

## **8. What is the KLRCA i-Arbitration Rules model clause?**

“Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof shall be settled by arbitration in accordance with the KLRCA i-Arbitration Rules.”

## **9. What do I do if I do not have a model arbitration clause in my agreement?**

If both parties are agreeable that the dispute must be resolved according to KLRCA i-Arbitration Rules, however there is no arbitration clause in their original agreement, then they may enter into an arbitration agreement adopting the following form:

“The parties hereby agree that the dispute arising out of the contract dated \_\_\_\_\_ shall be settled by arbitration under the KLRCA i-Arbitration Rules.”

## **10. How do I begin a matter under the KLRCA i-Arbitration Rules?**

A party initiating the dispute shall be required to submit a written request to the Director of the KLRCA together with the copy of the notice of arbitration served on the Respondent in the form and manner required under Article 3 of Part II, a non-refundable registration fee of USD795.00 for international arbitration and RM1,590.00 in domestic arbitration, and the following documentation:

- a. a copy of the written arbitration clause;
- b. a copy of the contractual documentation in which the arbitration clause is contained or in respect of which the arbitration arises; and
- c. confirmation and proof of service of the notice of arbitration.

## **11. When is the arbitration deemed commenced under the KLRCA i-Arbitration Rules?**

Arbitration under the auspices of KLRCA shall be deemed to commence on the date the Director of the KLRCA receives a written request from the party initiating the arbitration complete with the documentation and registration fee.

## **12. How are arbitrators appointed under the KLRCA Rules?**

The arbitrator's appointment shall be made by the Director of the KLRCA. The Director of the KLRCA will confirm the appointment of arbitrators appointed by the parties or any appointing authority agreed by them. An agreement between the parties to appoint an arbitrator by them or any appointing authority agreed by them shall be treated as an agreement to nominate an arbitrator and not an agreement to appoint an arbitrator.

## **13. Can an appointed arbitrator be challenged under the Rules?**

Yes, the arbitrator's appointment can be challenged by the parties under Rule 5. Upon receipt of the notice of challenge, if the other party does not agree and if an arbitrator refuses to withdraw, the party challenging may apply to the Director of the KLRCA to decide on the challenge.

## **14. Are parties restricted to appointing arbitrators from KLRCA's panels of arbitrators when arbitrating under the KLRCA Rules?**

No, there are no restrictions imposed, parties are free to appoint arbitrators of their choice. The parties' appointments of arbitrator shall be deemed as nomination only and subject to confirmation of appointment by the Director of the KLRCA.

**15. Must the appointed arbitrator be a Muslim or a Shariah scholar?**

No, there are no requirements for an arbitrator to be a Muslim or a Shariah scholar to be appointed as an arbitrator in arbitration under the KLRCA i-Arbitration Rules.

**16. How would I determine if a matter falls under the purview of a particular Shariah Council?**

It is important to know the law applicable at your place(s) of business. Due to Government regulation of the banking sector in relation to Islamic financial instruments and capital requirements, some Shariah aspects may come under national laws. In Malaysia, for example, Islamic banking is regulated by the Central Bank of Malaysia and the Islamic Capital Market is regulated by the Securities Commission. Both maintain Shariah Advisory Councils.

**17. What if the matter is not regulated by a specific Shariah Council?**

Not all countries will have legal regimes regulating the Islamic banking industry. In this case, it is important for parties to be clear of the law that will apply to any Shariah issues, given the many interpretations and schools of thought available. Selecting the right Council or expert, whether through a bank or otherwise, is an effective way of specifying the Shariah law governing a party's agreement.

## **18. What is the late payment charge?**

The late payment charge represents an optional mechanism to compensate a successful party for late payment of damages under an award and dissuade unsuccessful parties from deliberately delaying payment. This recognizes the inability of the tribunal to award interest on these damages, given the prohibition on interest under Shariah law, and ensures all parties under the Rules can be adequately compensated.

## **19. What is the basis of the late payment charge as defined under the Rules, and are parties bound by the same?**

It is premised upon the circular published by the Shariah Advisory Councils of both the Central Bank of Malaysia and the Securities Commission and as outlined in their Guidelines titled 'Shariah Resolutions in Islamic Finance'. It is available on their website and provides the formula for how the late payment charge is calculated. This is in the absence of parties' agreement to a different scheme.

## **20. Does the arbitral tribunal have to award the late payment charge?**

The late payment charge is optional. It is merely a tool sanctioned by the Shariah Advisory Council that is available to the tribunal if it is considered appropriate.

## **21. How much will it cost to arbitrate under the KLRCA i-Arbitration Rules?**

The KLRCA Schedule of Fees will be applicable to arbitration unless the arbitral tribunal and parties agree otherwise, and such agreement is reached within the period of 30 days from the appointment of the arbitral tribunal.

The cost to arbitrate would include the payment of a non-refundable registration fee by the Claimant amounting to USD795.00 for an international matter or RM1,590.00 for a domestic matter.

The arbitral tribunal fees and KLRCA's administrative costs shall be calculated on an ad valorem basis depending on the amount of dispute. The scale for the determination of fees appears in Schedule 1 Part III of the KLRCA i-Arbitration Rules. A note to the Schedule of Fees has been included in Appendix D of Schedule 1 Part III to regulate the payment of disbursements to the arbitral tribunal and KLRCA's administrative costs and expenses.

## **22. What happens if the parties fail to pay the required provisional or additional deposits?**

The payments of deposits are regulated under Rule 15. If the parties fail to pay the required deposits, the Director of the KLRCA shall ask the other party to pay on behalf of the defaulting party. The arbitral tribunal shall not proceed with the arbitral proceedings unless the provisional deposits are paid in full by one of more of the parties. In instances where the Claimant pays on behalf of the Respondent, the Director of the KLRCA may advise the arbitral tribunal to proceed with the

matter without consideration to the counterclaim raised by the Respondent. However, if the Claimant defaults to pay its share, the arbitral tribunal has the authority under the rules to suspend until the required payments are made or terminate the proceedings or any part thereof.

### **23. How long would the entire proceedings take?**

There is no restriction as to time to complete arbitration under the KLRCA i-Arbitration Rules. However, there are certain mechanisms to ensure that arbitration proceeds in a time efficient manner. For instance, under Rule 6 the arbitral tribunal is accorded with powers to conduct the matter in such manner as it considers appropriate and may limit the time available for each party to present its case. Under Rule 13 the arbitral tribunal is required to render its final award within a period of 3 months from the date that the proceedings are closed. There are extensions of time allowed which is subject to the approval of the Director of the KLRCA. Another provision dealing with time under Part II, Article 25, is where the periods of time fixed by the arbitral tribunal for the communication of written statements (including the statement of claim and statement of defence) shall not exceed 45 days.

### **24. How does a party apply for an emergency arbitrator?**

The provision for the appointment of emergency arbitrators is found under Schedule 3. Rule 8 and Schedule 3 allow the party in need of emergency interim measures to make such an application and the

application must be made concurrently with or after the filing of a Notice of Arbitration, but not after the constitution of the arbitral tribunal.

**25. What are the types of interim measures a party may apply for?**

The interim measures are as found under Article 26.

**26. What are the powers of the emergency arbitrator?**

The emergency arbitrator shall act to determine all applications for emergency interim measures until the constitution of the proper arbitral tribunal.

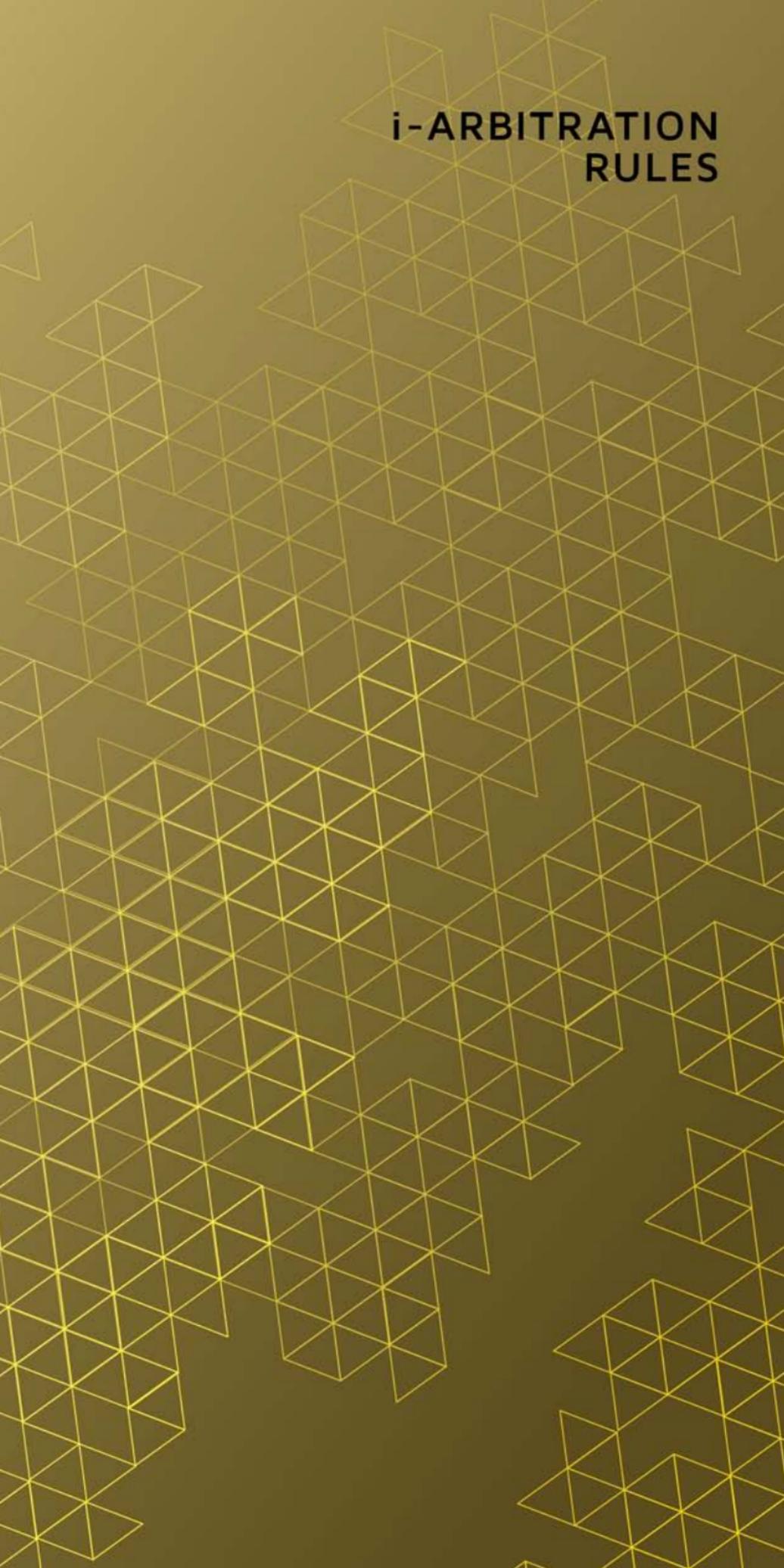
Emergency interim relief granted by an emergency arbitrator shall have the same effect as an interim measure and shall be binding on the parties (refer to Schedule 3 and Rule 13).

**27. Are the decisions of the emergency arbitrator appealable?**

The decisions of the emergency arbitrator are not appealable (Schedule 3 and Rule 13). It may, however, be modified, varied or vacated by the subsequent arbitral tribunal upon review (refer to Schedule 3 and Rule 8).



# i-ARBITRATION RULES



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AWARD FOR  
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2012

## KUALA LUMPUR REGIONAL CENTRE FOR ARBITRATION

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