

RULES FOR ARBITRATION OF THE KUALA LUMPUR REGIONAL CENTRE FOR ARBITRATION

The Rules for Arbitration of the Kuala Lumpur Regional Centre for Arbitration (hereinafter referred to as "the KLRCA") comprises two parts; Part I being the Specific Arbitration Rules and Part II being the UNCITRAL Arbitration Rules.

PART I – SPECIFIC ARBITRATION RULES

Rule 1 - GENERAL

- (1) Where the parties to a contract have agreed in writing that disputes in relation to that contract shall be settled or resolved by arbitration in accordance with the Rules for Arbitration of the KLRCA, then such disputes shall be settled or resolved by arbitration in accordance with the UNCITRAL Arbitration Rules (attached herein as Part II) subject to the modifications and alterations set forth in this Part I: Specific Arbitration Rules.
- (2) Part I: Specific Arbitration Rules and Part II: UNCITRAL Arbitration Rules shall hereinafter be referred to collectively as "these Rules".
- (3) Where the parties have agreed to refer their disputes to the Rules for Arbitration of the KLRCA for arbitration, the parties shall be deemed to have agreed that the arbitration shall be conducted and administered by the KLRCA in accordance with these Rules.
- (4) The rules applicable to the arbitration shall be those in force at the time of commencement of the arbitration unless the parties have agreed otherwise.
- (5) In administering these Rules, the arbitral tribunal or the Director of the KLRCA, as the case may be, must have regard to the justice of the particular case in dispute and not only to the technical compliance or otherwise of these Rules.

Rule 2 - NOTIFICATION

- (1) The claimant shall prior to the appointment of the arbitral tribunal file with the Director of the KLRCA a copy of the Notice of Arbitration served on the respondent.
- (2) The parties shall also prior to the appointment of the arbitral tribunal file with the Director of the KLRCA a copy of any other notice, including notification, communication or proposal concerning the arbitral proceedings.
- (3) If the parties have agreed on an appointing authority other than the KLRCA, they shall inform the Director of the KLRCA of the name of that authority.
- (4) The administrative requirements in sub-rules (1) and (2) of this Rule shall not affect the date of commencement of the arbitration. The date of commencement of the arbitration shall be deemed to be the date of commencement in accordance with the agreement of the parties or in accordance with the applicable law of arbitration.

Rule 3 - APPOINTMENT

- (1) Unless the parties have agreed otherwise or if the appointing authority designated refuses to act or fails to appoint the arbitrator, the KLRCA shall be the appointing authority.
- (2) Where, pursuant to Article 6 or 7 (3) of the UNCITRAL Arbitration Rules and sub-rule (1) of this Rule, the KLRCA is to appoint a sole arbitrator or the presiding arbitrator, the list of names to be communicated by the KLRCA to the parties shall be determined by the Director of the KLRCA.
- (3) Where, pursuant to Article 7(2) (a) of the UNCITRAL Arbitration Rules and sub-rule (1) of this Rule, the KLRCA is to appoint the second arbitrator, the Director of the KLRCA shall appoint the second arbitrator.

- (4) Where pursuant to Article 7(1) of the UNCITRAL Arbitration Rules, 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. The chosen presiding arbitrator shall not be deemed appointed until confirmed by the Director of the KLRCA.

Rule 4 - FACILITIES

The Director of the KLRCA 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 and interpretation facilities.

Rule 5 - STATEMENTS, RECORDS AND SUMMARY PROCEDURE

- (1) The parties shall furnish to the Director of the KLRCA copies of the statement of claim, the statement of defence, the counter-claim and defence to counter-claim (if any) and any amendments thereto which they file with the arbitral tribunal. If a counterclaim is filed, then the relevant provisions of the UNCITRAL Arbitration Rules shall apply to the counterclaim and defence to counterclaim with necessary modifications as if the counterclaim were a statement of claim and the defence to counterclaim were a statement of defence.
- (2) Within twenty one days after the filing of the statement of defence or the defence to the counterclaim, as the case may be, with the arbitral tribunal, if any party considers that there is no valid defence to the claim or counterclaim or any part thereof, the party may file with the arbitral tribunal and serve on the other party an application for summary award. The application must be supported by affidavit verifying the facts on which the claim or counterclaim is made and stating that in the deponent's belief there is no valid defence to the claim or counterclaim or any part thereof.
- (3) The other party must within twenty one days from the service of the application and affidavit file with the arbitral tribunal and serve on the other party an affidavit in opposition if it wishes to contest the application. The party making the application may thereafter within fourteen days file with the arbitral tribunal and serve on the other party an affidavit in reply. The parties may not file and serve any further affidavits without leave of the arbitral tribunal.
- (4) The arbitral tribunal may conduct the hearing of the application in any manner it deems fit (including but not limited to allowing cross-examination of deponents of affidavits) and upon hearing the application, the arbitral tribunal may make a summary award or dismiss the application and may also make an order requiring security to be furnished for the claim or counterclaim or any part thereof. The summary award may take the form of a final, interim or partial award.
- (5) The arbitral tribunal may extend or abridge the period within which a party is required by this Rule to file and serve an affidavit.
- (6) Unless the parties agree otherwise, the sole arbitrator or the presiding arbitrator shall, at the conclusion of the arbitral proceedings, furnish to the Director of the KLRCA a complete set of records of all correspondences between the parties and the arbitral tribunal, without prejudice to any other express provision of these Rules.

Rule 6 - AWARDS

- (1) The arbitral tribunal shall render its final award within a period which is limited to six months. Such period shall start to run from the day when the arbitral tribunal receives the respondent's statement of defence in accordance with Article 19 of the UNCITRAL Arbitration Rules or, in the case of default by the respondent, from the date that the arbitral tribunal orders the continuation of the proceedings under Article 28(1) of the UNCITRAL Arbitration Rules. If in accordance with Article 20 of the UNCITRAL Arbitration Rules, amendments are allowed by the arbitral tribunal, the time limit shall commence from the date the amendments are allowed. Such time limit may be extended by the arbitral tribunal with the consent of the parties or, in the absence of consent, in consultation with the Director of the KLRCA.
- (2) The arbitral tribunal shall furnish to the Director of the KLRCA a signed copy of the award made by it, whether interim, interlocutory, partial or final. The Director of the KLRCA shall render all assistance in the filing or registration of the award when the same is required by the law of the country where the award is made.

Rule 7 - COSTS

- (1) The term "costs" as specified in Article 38 of the UNCITRAL Arbitration Rules shall also include the expenses reasonably incurred by the KLRCA in connection with the arbitration as well as its administrative charges.
- (2) The facilities made available by the KLRCA itself may be charged for on the basis of comparable costs.
- (3) The administrative charges of KLRCA shall be fixed by the Director of the KLRCA in accordance with the Costs of Arbitration in Appendix B (USD scale) or Appendix B1 (Ringgit scale).
- (4) In fixing its fees the arbitral tribunal shall consult with the Director of the KLRCA. The Director of the KLRCA may undertake consultations with the parties before giving advice to the arbitral tribunal. The Director of the KLRCA, in consultation with the arbitral tribunal and the parties, shall settle the basis of computation of fees and expenses in accordance with the schedule of fees in Appendix A (USD scale) or Appendix A1 (Ringgit scale) either before the arbitral tribunal take up their duties or as soon as practicable after the appointment of the arbitral tribunal. As a general rule, the USD scale in Appendix A is intended to apply to arbitrations which involve cross-border transactions or where a party or an arbitrator is ordinarily resident outside Malaysia or where the arbitration is generally or commonly considered by the arbitration community as an arbitration involving an international element, whereas the Ringgit scale in Appendix A1 is intended to apply to all other types or categories of arbitrations. The Director of the KLRCA is to determine which of the schedule of fees is applicable to the arbitration. Such determination shall be final and conclusive and shall be binding upon the parties and the arbitral tribunal.
- (5) The fees of the arbitral tribunal and the KLRCA's administrative charges may, in exceptional or unusual or unforeseen circumstances, be adjusted at the discretion of the Director of the KLRCA.
- (6) For the purpose of calculating the amount in dispute, the value of any counter-claim and/or set-off will be added to the amount of the claim.
- (7) Where a claim or counter-claim does not state a monetary amount, an appropriate value for the claim or counter-claim shall be settled by the KLRCA in consultation with the arbitral tribunal and the parties for the purpose of computing the arbitral tribunal's fees and the KLRCA's administrative charges.
- (8) If the parties have designated an appointing authority other than the KLRCA, the fees and expenses of the appointing authority shall be fixed by the Director of the KLRCA in consultation with the appointing authority.

Rule 8 - DEPOSITS

In lieu of the provisions of Article 41 of the UNCITRAL Arbitration Rules the following provisions shall apply:

- (1) The Director of the KLRCA shall prepare an estimate of the cost of arbitration and may request each party to deposit an equal amount as an advance for those costs.
- (2) During the course of the arbitral proceedings the Director of the KLRCA may request supplementary deposits from the parties.
- (3) If the required deposits are not paid in full within thirty days after the receipt of the request, the Director of the KLRCA shall so inform the parties in order that one or another of them may make the required payment. If such payment is not made, the arbitral tribunal, after consultation with the KLRCA, may order the suspension or termination of the arbitral proceedings.
- (4) The Director of the KLRCA may progressively in the course of the arbitral proceedings or upon the publication of the award or a combination of both applies the deposits towards disbursements for the costs of arbitration including the fees of the arbitral tribunal.
- (5) After the award has been made, the Director of the KLRCA shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

Rule 9 - CONCILIATION/MEDIATION TO ARBITRATION

Where the parties have referred their dispute to conciliation/mediation under KLRCA's Conciliation/Mediation Rules and they have failed to reach a settlement and thereafter proceed to arbitration under these Rules, then one-half of the administrative costs paid to KLRCA for the conciliation or mediation shall be credited towards the administrative costs of the arbitration.

Rule 10 - CONFIDENTIALITY

The arbitral tribunal and the parties must keep confidential all matters relating to the arbitral proceedings. Confidentiality extends also to the award, except where its disclosure is necessary for purposes of implementation and enforcement.

Rule 11 - NO LIABILITY

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

Rule 12 - NON-RELIANCE

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.

Rule 13 - NON-COMPLIANCE

Without prejudice to the provisions in Article 30 of the UNCITRAL Arbitration Rules, non-compliance with Rules 2, 4, 5, 6 or 7 of Part I of these Rules shall not affect the validity or legality of the arbitral proceedings or the award unless such non-compliance has occasioned a substantial miscarriage of justice.