

# Settling Commercial Disputes with the KLRCA *i*-Arbitration Rules

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**i-ARBITRATION RULES**  
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# Who is the KLRCA

- KLRCA was established in 1978 under the auspices of the Asian-African Legal Consultative Organisation, originally known as Asian Legal Consultative Committee.
- KLRCA undertakes various roles relating to ADR. Concerning Arbitration specifically, our functions include:
  - promoting and developing international commercial arbitration in the region;
  - providing facilities for holding arbitration proceedings;
  - assisting in the enforcement of arbitral awards;
  - providing for arbitration under its own auspices;

# WHAT CAN ARBITRATION OFFER ISLAMIC BANKING?

# Advantages of Arbitrating at KLRCA

## SPEED AND CONTROL

- Arbitration is a consensual dispute resolution mechanism, parties can agree on everything from the identity and number of arbitrators to the procedure and law to be applied.
- Administration of proceedings by KLRCA allows for swift resolution of disputes.

## INTERNATIONAL ENFORCEMENT

- Is a signatory of the New York Convention – Awards are recognised and enforced in 149 countries.
- Has a panel of over 500 domestic and international arbitrators.
- Incorporates the UNCITRAL Rules of Arbitration.
- No restrictions on the nationality of arbitrator.

## COSTS

- Applies a fixed schedule of fees.
- Low cost of living and services in Malaysia allows for competitive costing – 20% cheaper than other regional ADR centres.

# KLIRCA's Model *i*-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 KLIRCA *i*-Arbitration Rules”.





## i-ARBITRATION RULES

# KLRC i-Arbitration Rules

## Rule 8: Procedure for Reference to Shariah Advisory Council (SAC) or Shariah Expert

- Whenever a point related to Shariah principles is raised, the arbitral tribunal shall refer the point to the SAC.
- The arbitrator may decide other areas of the dispute.



## i-ARBITRATION RULES

# KLRC i-Arbitration Rules

### **Rule 8: Procedure for Reference to Shariah Advisory Council (SAC) or Shariah Expert**

- If a point in dispute falls beyond the purview of the relevant SAC, the arbitrator may refer the matter to a Shariah expert/council agreed upon by the parties.
- The ruling is not determinative of the dispute as the arbitral tribunal is to treat the ruling as an expert opinion.



## i-ARBITRATION RULES

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# KLRC i-Arbitration Rules – Future Developments

**Revised *i*-Arbitration Rules to be launched on  
24<sup>th</sup> October 2013**

- Removal of any reference to a specific jurisdiction, making the Rules more compatible with agreements of any national origin and thus more attractive to international parties.
- Introduction of late payment charges to allow for comprehensive award of compensation.
- The release of the *i*-Arbitration Rules in multiple languages (Arabic, Bahasa Indonesia, Bahasa Malaysia, Spanish, Korean, Chinese) further emphasizing internationalisation.





# Going Global - Leveraging Malaysia's Expertise

- According to the Malaysia International Financial Centre, as of mid 2013 Malaysia accounts for:
  - 31% of the global market share for Islamic funds;
  - 68% of total global sukuk issuance; and
  - 17% of global takaful contributions.
- Reflected in industry expertise, governmental support and legal infrastructure.
- KLRCA working together with established foundations to offer dispute resolution services domestically and internationally:
  - Bank Negara Blueprint
  - Two Shariah Advisory Councils established by law, one attached to Bank Negara and one to Securities Commission
  - Specialist Muamalat Division of the High Court of KL, designed to hear Islamic Banking cases.

# Bridging the gap – commercial arbitration and Islamic banking

- International arbitration is already the dispute resolution mechanism of choice for cross border commercial transactions.
- This is now becoming the trend in financial services:
  - KLRCA MOU with Labuan FSA
  - ISDA Arbitration Guide and Model Clauses released 2013
  - Evolution of PRIME Finance in the Hague
- By utilising the *i*-Arbitration Rules, parties can take advantage of the myriad benefits of arbitration: KRLCA's own expertise, a wide panel of arbitrators and the most up to date processes and standards.

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