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An introduction: Settling commercial disputes with the KLRCA *i*-Arbitration Rules

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- ❖ KLIRCA was established in 1978 under the auspices of the Asian-African Legal Consultative Organisation (AALCO).
- ❖ KLIRCA's **main functions** are:
 - To promote international commercial arbitration in Asia-Pacific;
 - To render assistance in the conduct of arbitration;
 - To provide other alternative options for the settlement of disputes
 - To appoint arbitrators when requested under the KLIRCA Rules and the Malaysian Arbitration Act 2005.

KLIRCA's Growth, Focus and Direction

- ❖ At the moment, KLIRCA's focus is on developing international commercial arbitration domestically and regionally.
- ❖ Between 2006-2012 KLIRCA's case load has doubled from 25 to 54 in 2012.
- ❖ KLIRCA intends to provide ADR which is fine-tuned to the cultural and economic needs of Regional users.
- ❖ The i-Arbitration Rules is one such product.

Concept

The KLRCA i-Arbitration Rules will apply when parties to an agreement specifically agree to a dispute resolution clause which states



‘Any dispute, controversy or claim arising out of a commercial agreement which is based on Shariah principles or the breach, termination or invalidity thereof shall be settled by arbitration in accordance with the KLRCA i-Arbitration Rules’.

The Need

- ❖ There is an expansion globally in terms of commercial transactions based on Islamic/Shariah principles.
- ❖ Expansion in Islamic finance services results in various financial product innovation commercially and more businessmen internationally are receptive to transactions based on Islamic principles.
- ❖ However, Shariah law is not exactly a law that one can neatly codify or find in a textbook. It is based on various religious texts and principles.
- ❖ There are four main schools of differing Islamic thoughts and the application heavily depend on the interpretation of the principles by an Islamic scholar or expert in the Islamic field.

The Need

- ❖ To be a successful instrument and survive the thriving commercial arbitration platform internationally, the KLRCA i-Arbitration Rules has to assure that awards produced or delivered with the application of the rules will be recognised and enforceable internationally.
- ❖ For international recognition and enforceability, the KLRCA i-Arbitration Rules follows closely the UNCITRAL Arbitration Rules which effectively complies with the requirements of New York Convention.

The convention on the recognition and enforcement of Foreign Arbitral Awards (10 June 1958), is one of the key instruments in international arbitration. It applies to the recognition and enforcement of foreign arbitral awards and the referral by a court to arbitration.



Malaysia became a signatory to the New York Convention in 1985 which means that Malaysia recognises arbitral awards made in the other member states and that arbitral awards made in Malaysia are also recognised and can be enforced in the other member states.



There are currently 146 member states to the New York Convention.



KLIRCA i-Arbitration Rules

It is a set of procedures to cater for both domestic and international commercial arbitration that relates to commercial transactions premised on Shariah principles.

It is presented in 2 parts:-

Part 1: is based on Part 1 of the current KLIRCA Arbitration Rules (2nd edn. 2012) with modification to provide for specific procedure for reference to Shariah Advisory Council or Shariah expert including necessary changes to provide for clarity and definitions of Shariah related terminologies.

Part 2: adopts the most current UNCITRAL Arbitration Rules 2010. [when conflicted, the Part 1 will supersede part 2]

Rule 8:

Procedure for reference

When an arbitrator needs to:-

Form an opinion on a point related to Shariah Principles;
and

Decide on a dispute arising from the Shariah aspect of
any commercial agreement based on Shariah principles.

The arbitrator will refer to the relevant Council for its decision.

Council : Shariah Advisory Council of either the Central Bank or
Securities Commission established under the respective Central Bank
Act 2009 and Capital Market and Services Act 2007

The arbitrator will set out information relevant to Council in order to form opinion which includes

[procedure for reference produced by the respective to SAC will be observed]

Questions or issue so referred;

Relevant facts;

Issues and question to be answered by Council.

Upon reference, the arbitrator will adjourn the proceedings until the ruling is given and may proceed to deliberate the other areas of dispute which is independent of the said ruling.



The Council or Shariah expert may only rule on the issue or question submitted by the arbitral tribunal and have no jurisdiction in making discovery of facts or in applying the ruling or formulating decision on the facts of the case.



It is solely for the arbitrator to apply the ruling on the facts.



The ruling of the Council or Shariah expert, will be final and binding and not subject to appeal.

Benefits of arbitrating under the KLRCA i- Arbitration Rules

Cases are heard in privacy and confidentiality is maintained.

Avoid distraction and litigation related hassle.

Award is final and binding.

Award is enforceable in the 146 countries who had ratified the New York Convention

Arbitrator is appointed within 48 hours and confirmation of appointment within 7 days.

Fees and costs are capped and the scale is reasonable.

Parties will benefit from the facilities and services provided by the KLRCA.



Thank you

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