

**CONSULTATION DRAFT  
AIAC ARBITRATION RULES 2021**

Effective from \_\_\_\_\_ 2021

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## Introduction

The Asian International Arbitration Centre (“AIAC”) Arbitration Rules 2021 (“AIAC Arbitration Rules”) take effect from \_\_\_\_\_ 2021. Any reference to the AIAC Fast Track Arbitration Rules after this date shall be taken as a reference to the Fast Track Procedure in the AIAC Arbitration Rules.

Upon the coming into effect of the AIAC Arbitration Rules, all previous editions of the AIAC Arbitration Rules shall no longer be applicable to arbitral proceedings commenced after this date.

Under any arbitration agreement referring to the AIAC Arbitration Rules, the Parties shall be deemed to have agreed that the AIAC Arbitration Rules in force on the date of the commencement of the arbitration shall apply.

Any reference to the Kuala Lumpur Regional Centre for Arbitration (“KLRCA”) in any written law or in any instrument, deed, title, document, bond, agreement or working arrangement shall be construed as a reference to the AIAC.<sup>1</sup>

All approvals, directions, notices, guidelines, circulars, guidance notes, practice notes, rulings, decision, notifications, exemptions and other executive acts, howsoever called, given or made by the AIAC on or before \_\_\_\_\_ 2021, shall continue to remain in full force and effect unless amended, replaced, rescinded or revoked.

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<sup>1</sup> Arbitration (Amendment) (No. 1) Act 2018.

## Model Arbitration Clause and Submission Agreement

The following Model Arbitration Clause may be adopted by the Parties:

*“Any dispute, controversy, difference or claim arising out of or relating to this contract, including the breach, termination or invalidity thereof, as well as any non-contractual claims, shall be finally determined by arbitration, administered by the AIAC, in accordance with the AIAC Arbitration Rules in force at the time of the commencement of the arbitration.”*

If the contract does not contain an existing agreement between the Parties to arbitrate, and the Parties have agreed to arbitrate in accordance with the AIAC Arbitration Rules by way of a submission agreement, or wish to substitute an existing arbitration clause for one referring the dispute to arbitration under the AIAC Arbitration Rules, the Parties may adopt the following Model Submission Agreement:

*“The Parties hereby agree to refer any dispute, controversy, difference or claim arising out of or relating to the Contract dated \_\_\_\_\_, including the breach, termination or invalidity thereof, as well as any non-contractual claims, to be finally determined by arbitration. Such arbitration shall be administered by the AIAC in accordance with the AIAC Arbitration Rules in force at the time of the commencement of the arbitration.”*

The following are recommended for inclusion in the Model Arbitration Clause and the Submission Agreement:

- *The seat of arbitration shall be [City, Country].*
- *The number of arbitrators shall be [...].*
- *The language to be used in the arbitral proceedings shall be [...].*
- *The law governing the arbitration clause / agreement shall be [...].*

Where the Parties agree to the expedited conduct of the arbitral proceedings, the Parties may also consider including the following in the Model Arbitration Clause or the Submission Agreement:

- *The Parties agree to have the arbitration conducted in accordance with the Fast Track Procedure set out in Rule 8 of the AIAC Arbitration Rules.*

## PART I – AIAC ARBITRATION RULES 2021

### Rule 1 – General

- 1.1. Where the Parties have agreed to refer their dispute to the AIAC for arbitration, or to arbitration in accordance with the AIAC Arbitration Rules, then:
  - (a) the arbitration shall be conducted and administered by the AIAC in accordance with the AIAC Arbitration Rules; and
  - (b) if the seat of arbitration is in Malaysia, Section 41 and Section 46 of the Malaysian Arbitration Act 2005 shall not apply.
- 1.2. The AIAC Arbitration Rules shall take effect from \_\_\_\_ 2021 and shall apply to any arbitration in which a Commencement Request pursuant to Rule 7 is submitted to the AIAC on or after that date.
- 1.3. The AIAC Arbitration Rules consist of the following parts: Part I – AIAC Arbitration Rules and Part II – Schedules.
- 1.4. The use of third-party funding to finance a Party's share of the costs of the arbitration does not preclude the adoption of the AIAC Arbitration Rules in an arbitration, unless provided otherwise by a relevant law or an order of any court of competent jurisdiction.
- 1.5. In all matters that are not expressly provided for in the AIAC Arbitration Rules, the AIAC, the Arbitral Tribunal, and the Parties shall act in the spirit of the AIAC Arbitration Rules and shall make every reasonable effort to ensure that all Awards are legally enforceable.

### Rule 2 – Guide and Definitions

- 2.1. The English text of the AIAC Arbitration Rules prevails over other language versions.
- 2.2. All references in the AIAC Arbitration Rules to the singular shall include the plural, where applicable, and vice versa.
- 2.3. All personal pronouns in the AIAC Arbitration Rules, whether used in the masculine, feminine, or neutral gender, shall include all other genders.
- 2.4. Definitions used in the AIAC Arbitration Rules:

“**AIAC**” means the Asian International Arbitration Centre (Malaysia);

“**AIAC Arbitration Rules**” means the AIAC Arbitration Rules 2021;

“**Arbitral Tribunal**” means a sole arbitrator, or a panel of arbitrators appointed in accordance with the AIAC Arbitration Rules, including an Emergency Arbitrator, save where explicitly distinguished;

**“Award”** means a decision made by the Arbitral Tribunal and includes any Final Award, interim award, partial award, Consent Award, Emergency Award, and any award on costs or interest but does not include interlocutory orders;

**“Claimant”** means the Party who initiates the arbitration by delivering the notice of arbitration;

**“Clause”** shall refer to the numbered provisions of the Schedule II as contained in Part II of the AIAC Arbitration Rules;

**“Communication”** means any written notice, correspondence, pleading, witness statement, expert report, submission or other document delivered during the course of the arbitral proceedings, including a Procedural Order;

**“Consent Award”** means an award made by the Arbitral Tribunal, upon the request of the Parties, to record the Parties’ agreement to settle the arbitration pursuant to Rule 36.1;

**“days”** means calendar days by 11:59 p.m. on any given day and includes weekends and public holidays;

**“Director”** means the Director of the AIAC;

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

**“Emergency Arbitrator”** means the arbitrator appointed by the Director pursuant to an Emergency Arbitrator Request submitted pursuant to Rule 17;

**“Emergency Arbitration”** means the arbitral proceedings conducted by an Emergency Arbitrator pursuant to Rule 17 and Rule 18;

**“Emergency Award”** means an award issued by an Emergency Arbitrator pursuant to Rule 18;

**“Final Award”** means an award made by the Arbitral Tribunal, including a partial or additional award, which finally determines an issue in dispute in the proceedings;

**“international arbitration”** means

(1) 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 notwithstanding the Parties having their place of business in Malaysia:
  - (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;

- (c) the seat is outside of Malaysia and neither Party has its place of business at the seat; or
- (d) the Parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one State.

(2) For the purposes of determining the “place of business” –

- (a) if a Party has more than one place of business, the place of business is that which has the closest relationship to the arbitration agreement; or
- (b) if a Party does not have a place of business, reference is made to its habitual residence;

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

“**Procedural Order**” means a direction from the Arbitral Tribunal that relates to the conduct of the proceedings, including the setting out of any procedural timelines or any extensions thereof;

“**Respondent**” means the Party upon whom the notice of arbitration is delivered;

“**Rule**” shall refer to the numbered provisions of the AIAC Arbitration Rules as contained in Part I of the AIAC Arbitration Rules;

“**State**” means a sovereign State and not a component state of Malaysia, unless stated otherwise; and

“**virtually**” means the use of technology to remotely participate in the arbitral proceedings, including attending or appearing at meetings, conferences, deliberations or hearings by using a video conferencing platform, telephone or any other appropriate means.

### **Rule 3 – Communications and Calculation of Time Limits**

- 3.1. For the purposes of the AIAC Arbitration Rules, any Communication may be delivered by hand, registered post or courier service, or transmitted by any form of electronic means, including electronic mail and facsimile, or delivered by any other appropriate means that provides a record of its delivery, unless otherwise agreed to by the Parties or directed by the Arbitral Tribunal.
- 3.2. Any Communication shall be deemed received on the day it is delivered, either physically or electronically:
  - (a) to the recipient personally or to its authorised representative;

- (b) to the recipient's place of business, habitual residence or other designated address;
  - (c) to any address, including an email address, as agreed to by the Parties;
  - (d) according to the practice of the Parties in prior dealings; or
  - (e) if, after reasonable efforts, none of these can be found, then at the recipient's last-known residence or place of business.
- 3.3. Where multiple modes of delivery are used, the Communication shall be deemed received on the earliest day it is delivered pursuant to Rule 3.2, with such day to be determined with reference to the recipient's time zone.
- 3.4. Where a Communication is to be delivered upon multiple Claimants or Respondents, delivery shall be deemed effected upon receipt of the Communication by the last Claimant or Respondent.
- 3.5. If the last day of any time limit under the AIAC Arbitration Rules is not a business day at the place of receipt of a Communication, the time limit is extended until the first business day which follows.
- 3.6. Any Communication exchanged between the Arbitral Tribunal and a Party shall be delivered by that Party to all other Parties and the AIAC at the same time or as soon as practicable.
- 3.7. The Director and the AIAC, in exercising functions pursuant to the AIAC Arbitration Rules, may use electronic signatures in any Communication made by them, including the execution of appointment documents, without affecting the validity of the Communication, unless a relevant law provides otherwise.

#### **Rule 4 – Representation**

- 4.1. A Party to the arbitral proceedings may be represented in the proceedings by any representative appointed by the Party, unless a relevant law provides otherwise.

#### **Rule 5 - Notice of Arbitration**

- 5.1. To initiate an arbitration, the Claimant shall deliver upon the Respondent a notice of arbitration that shall include:
- (a) a demand that the dispute be referred to arbitration;
  - (b) the names and contact details of the Parties and their representatives;
  - (c) identification of the arbitration or submission 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 claimed, if any;
- (f) the relief or remedy sought; and
- (g) a proposal as to the number of arbitrators, applicable rules and law, language and seat of arbitration, if the Parties have not previously agreed on such.

5.2. The notice of arbitration may also include:

- (a) a proposal that the arbitration shall be administered by the AIAC in accordance with the AIAC Arbitration Rules, where such has not previously been agreed to;
- (b) the identification of a proposed sole arbitrator as referred to in Rule 9.4 and Rule 9.7(a); and
- (c) the identification of a proposed Party-nominated arbitrator as referred to in Rule 9.5, Rule 9.6 or Rule 9.7(b).

5.3. Where claims arise out of multiple contracts, a Party may file a single notice of arbitration with payment of a single non-refundable registration fee pursuant to Rule 7, provided that a Consolidation Request is also submitted to the AIAC pursuant to Rule 22.4.

5.4. Any controversy with respect to the sufficiency of the notice of arbitration shall not affect the AIAC's commencement of an arbitration and the constitution of the Arbitral Tribunal, who shall have the power to determine such claim.

## **Rule 6 – Response to the Notice of Arbitration**

6.1. Within 30 days of the receipt of the notice of arbitration, the Respondent shall deliver upon the Claimant a response to the notice of arbitration, which shall include:

- (a) the name and contact details of the Respondent and its representatives;
- (b) a response to the statements and claims made in the notice of arbitration; and
- (c) a brief statement describing the nature and circumstances of any counterclaim or set-off, specifying the relief or remedy sought and, where possible, an indication of the amount of any counterclaim or set-off.

- 6.2. The response to the notice of arbitration may also include:
- (a) any plea that an Arbitral Tribunal to be constituted under the AIAC Arbitration Rules lacks jurisdiction;
  - (b) a proposal that the arbitration shall be administered by the AIAC in accordance with the AIAC Arbitration Rules, where such has not previously been agreed to;
  - (c) the identification of a proposed sole arbitrator as referred to in Rule 9.4 and Rule 9.7(a); and
  - (d) the identification of a proposed Party-nominated arbitrator as referred to in Rule 9.5, Rule 9.6 or Rule 9.7(b).
- 6.3. The constitution of the Arbitral Tribunal shall not be hindered by any controversy with respect to the Respondent's failure to deliver a response to the notice of arbitration, or any delay or deficiencies in the response to the notice of arbitration, which shall be finally resolved by the Arbitral Tribunal.

### **Rule 7 – Registration and Commencement of Arbitration with the AIAC**

- 7.1. The commencement of an arbitration under the AIAC Arbitration Rules shall be effected by a Party's submission to the AIAC of a request to register and commence the arbitration ("**Commencement Request**").
- 7.2. The Commencement Request shall include:
- (a) a statement for reference of the dispute to arbitration under the AIAC Arbitration Rules;
  - (b) a copy of the written arbitration agreement or the submission agreement;
  - (c) a copy of the documentation in which the arbitration agreement is contained in or in respect of which the dispute referred to arbitration arises from;
  - (d) a copy of the notice of arbitration, as described in Rule 5, accompanied by a confirmation that it has been delivered upon the Respondent by one or more means of delivery to be identified;
  - (e) a copy of the response to the notice of arbitration, as described in Rule 6, if any;
  - (f) where applicable, a request for the conduct of the arbitration in accordance with the Fast Track Procedure in Rule 8;
  - (g) a statement confirming that any pre-condition to arbitration has been satisfied or waived by the Parties;

- (h) any Communication between the Parties relating to the intended arbitration that the Party commencing the arbitration deems relevant for the Commencement Request; and
- (i) proof of payment of the non-refundable registration fee, as prescribed in Schedule 2, Clause 4.1.

7.3. A Commencement Request may be submitted to the AIAC at any time after the notice of arbitration has been delivered upon the Respondent.

7.4. The date on which the AIAC receives the Commencement Request shall be treated as the date on which the arbitration was commenced.

7.5. The AIAC shall notify the Parties of the date of commencement of the arbitration.

### **Rule 8 – Fast Track Procedure**

8.1. The Fast Track Procedure under Rule 8 shall govern the expedited conduct of arbitral proceedings in arbitrations administered by the AIAC.

8.2. A Party may submit a request to the AIAC for the operation of the Fast Track Procedure (“**Fast Track Request**”) where:

- (a) the Parties have agreed to adopt the Fast Track Procedure, or any edition of the AIAC Fast Track Arbitration Rules;
- (b) the amount in dispute, at the time of the commencement of the arbitration pursuant to Rule 7, is quantified at less than USD500,000.00 for an international arbitration or less than RM2,000,000.00 for a domestic arbitration; or
- (c) there is exceptional urgency.

8.3. A Fast Track Request submitted pursuant to Rule 8.2(b) or Rule 8.2(c) shall be determined by the Director after having regard to all relevant circumstances considered appropriate.

8.4. The AIAC shall notify the Parties of the operation of the Fast Track Procedure in respect of a Fast Track Request submitted pursuant to Rule 8.2, including any determination made by the Director pursuant to Rule 8.3.

8.5. An arbitration under the Fast Track Procedure shall:

- (a) be heard before a sole arbitrator to be appointed pursuant to Rule 9.4 or Rule 9.7(a), unless otherwise agreed to by the Parties; and
- (b) proceed as a documents-only arbitration unless otherwise determined by the Arbitral Tribunal, after consulting the Parties.

- 8.6. The Director shall fix the fees of the Arbitral Tribunal and the AIAC Administrative Fee in a Fast Track Procedure pursuant to Schedule 1(C) for international arbitrations (USD scale) and Schedule 1(D) for domestic arbitrations (RM scale), unless the Parties and the Arbitral Tribunal have executed a Fee Agreement pursuant to Rule 40.5.
- 8.7. In lieu of Rules 41.1 – 41.9, the following shall apply with respect to the collection of deposits under the Fast Track Procedure:
- (a) following the AIAC’s notification of the operation of the Fast Track Procedure pursuant to Rule 8.4, the AIAC shall request a deposit (“FTD”) to cover 100% of the estimated costs of the arbitration conducted in accordance with the Fast Track Procedure;
  - (b) where counterclaims are submitted by the Respondent, separate FTDs corresponding to the claims and counterclaims may be fixed by the Director in his discretion;
  - (c) if the amount in dispute is unquantified at the time of the AIAC’s notification of the operation of the Fast Track Procedure pursuant to Rule 8.4, the FTD shall be fixed at RMXXX for a domestic arbitration or USDXXX for an international arbitration, as the case may be;
  - (d) the FTD shall be borne by the Parties in equal shares, unless otherwise determined by the Director pursuant to Rule 8.7(b);
  - (e) the FTD shall be payable by the Parties to the AIAC within 10 days upon receiving the request from the AIAC and where the FTD remains unpaid, the AIAC shall give the other Party an opportunity to make the required payment within 10 days;
  - (f) in the event the FTD remains outstanding after 40 days of the AIAC’s request pursuant to Rule 8.7(a) or Rule 8.7(b) and:
    - (i) if the Arbitral Tribunal is yet to be constituted, the AIAC may treat the claims for which the FTD remains outstanding as withdrawn without prejudice; or
    - (ii) if the Arbitral Tribunal has been constituted, without affecting the liberty of the Parties and the Arbitral Tribunal to execute any Fee Agreement pursuant to Rule 40.5, the arbitral proceedings shall not proceed until the FTD is paid in full;
  - (g) during the course of the arbitral proceedings the AIAC may request additional FTD from the Parties which shall be payable within 10 days upon receiving the request from the AIAC; and
  - (h) in the event any additional FTD requested pursuant to Rule 8.7(g) remains outstanding after 20 days of the AIAC’s final reminder for

payment, the Arbitral Tribunal may, after consulting the Director, suspend or terminate the proceedings or any part thereof, until the outstanding payment has been made.

- 8.8. An arbitration under the Fast Track Procedure shall be conducted in the following manner:
- (a) the Respondent shall file its response to the notice of arbitration within 10 days from the date when the notice of arbitration was received by the Respondent or within 10 days from the AIAC's notification of the operation of the Fast Track Procedure pursuant to Rule 8.4, whichever is later;
  - (b) if the Parties are unable to agree on the sole arbitrator within the time limit specified in Rule 8.8(a), any Party may submit a request to the Director to appoint the sole arbitrator pursuant to Rule 9.4 or Rule 9.7(a);
  - (c) where the Parties have agreed to appoint two or more arbitrators, the relevant provision in Rule 9 shall apply, save that the time limit to nominate an arbitrator shall be reduced to 10 days;
  - (d) where a Party intends to challenge an arbitrator pursuant to Rule 11, the time limits specified in Rule 11.2 and Rule 11.4 shall be reduced to 5 days;
  - (e) where an Arbitral Tribunal is required to be replaced pursuant to Rule 12:
    - (i) the Director shall appoint the replacement Arbitral Tribunal pursuant to Rule 9 with all Parties deemed as having waived their right to nominate the Arbitral Tribunal, without prejudice to their right to challenge any appointed arbitrator pursuant to Rule 11.1; and
    - (ii) the arbitral proceedings shall resume at the stage where the Arbitral Tribunal that was replaced ceased to perform its functions, unless the Arbitral Tribunal decides otherwise;
  - (f) the Arbitral Tribunal shall convene a case management meeting, deliver the first Procedural Order for the conduct of the arbitration and execute any Fee Agreement pursuant to Rule 40.5, within 10 days from the date when the AIAC notifies the Parties of the constitution of the Arbitral Tribunal;
  - (g) the Claimant shall deliver its statement of claim within 14 days from the Arbitral Tribunal's delivery of the first Procedural Order on the Parties and the AIAC;
  - (h) the Respondent shall deliver its statement of defence and counterclaim, if any, within 14 days from the date the Respondent receives the statement of claim;



- (i) the Claimant shall deliver its reply to the statement of defence and counterclaim, if any, within 7 days from the date the Claimant receives the statement of defence and counterclaim;
  - (j) any further written statements or submissions, if allowed or requested by the Arbitral Tribunal, shall be delivered by the relevant Party to the other Party, the Arbitral Tribunal and the AIAC, within such time limit set out by the Arbitral Tribunal;
  - (k) the Arbitral Tribunal shall declare the closure of proceedings no later than 90 days from the Arbitral Tribunal's delivery of the first Procedural Order on the Parties and the AIAC;
  - (l) where the conduct of oral hearings is allowed by the Arbitral Tribunal, such is to be held within the 90-day time limit specified in Rule 8.8(k) and shall not exceed 5 days; and
  - (m) the Arbitral Tribunal shall submit its draft Final Award to the AIAC for technical review pursuant to Rule 34 within 90 days from the date when the proceedings were declared closed.
- 8.9. By adopting the Fast Track Procedure, the Parties agree that the time limits specified in Rule 8.8 supersede any time limits prescribed in the arbitration agreement.
- 8.10. Upon the request of a Party or where there is repeated non-compliance of the Fast Track Procedure in the arbitral proceedings, the Arbitral Tribunal may, after consulting the Parties and the AIAC, order that the arbitral proceedings shall no longer be conducted in accordance with the Fast Track Procedure.
- 8.11. An order terminating the operation of the Fast Track Procedure pursuant to Rule 8.10 shall not affect the validity of the appointment of the Arbitral Tribunal, who may continue to preside over the arbitral proceedings, save that any Fee Agreement executed under the Fast Track Procedure shall no longer be effective, unless otherwise determined by the Director.
- 8.12. Save for the matters governed under Rule 8, the remainder of the AIAC Arbitration Rules shall remain applicable to any arbitration conducted in accordance with the Fast Track Procedure.

## **Rule 9 – Appointment**

- 9.1. Where the Parties have agreed to arbitration under the AIAC Arbitration Rules, the Director shall be the appointing authority.
- 9.2. The Parties may agree on the number of arbitrators in the arbitration agreement.



- 9.3. Where the number of arbitrators has not been agreed to by the Parties in the arbitration agreement, unless the Director determines otherwise, 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.
- 9.4. Where a sole arbitrator is to be appointed, the procedure for the appointment, unless the Parties have agreed otherwise, shall be that:
- (a) the Parties are at liberty to agree on the sole arbitrator; or
  - (b) if the Parties are unable to agree on the sole arbitrator within 30 days of the Respondent's receipt of the notice of arbitration, then any Party may request the Director to appoint the sole arbitrator.
- 9.5. Where three arbitrators are to be appointed, the procedure for the appointment, unless the Parties have agreed otherwise, shall be that:
- (a) each Party shall nominate one arbitrator, and both Party-nominated arbitrators shall thereafter nominate the third arbitrator, who shall act as the presiding arbitrator of the Arbitral Tribunal;
  - (b) if the Claimant fails to nominate the first arbitrator within 30 days after the delivery of the notice of arbitration upon the Respondent, then either Party may request the Director to appoint the first arbitrator;
  - (c) if within 30 days after the receipt of the Claimant's notification of the nomination of the first arbitrator, the Respondent has not notified the Claimant of its nominated second arbitrator, then either Party may request the Director to appoint the second arbitrator; and
  - (d) if within 30 days after the appointment of the second arbitrator, both Party-nominated arbitrators have not agreed on the nomination of the presiding arbitrator, then either Party may request the Director to appoint the presiding arbitrator.
- 9.6. If the Parties have agreed that two, or any other even number of arbitrators are to be appointed, the procedure for the appointment, unless the Parties have agreed otherwise, shall be that each Party nominates half the required number of arbitrators within 30 days after the delivery of the notice of arbitration upon the Respondent, failing which either Party may request the Director to appoint either that Party's arbitrator or the entire Arbitral Tribunal, as the case may be.
- 9.7. Where there are multiple Parties as Claimant or Respondent, the procedure for the appointment of the Arbitral Tribunal shall be that:
- (a) if a sole arbitrator is to be appointed, then Rule 9.4 shall apply; or

- (b) if two or more arbitrators are to be appointed, and multiple Claimants or Respondents expressly agree in, or pursuant to, the arbitration agreement, to act collectively and jointly nominate an arbitrator, then, within 30 days of the delivery of the notice of arbitration upon the last Respondent:
    - (i) in the case of an even numbered Arbitral Tribunal, each Claimant, or group of Claimants, and each Respondent, or group of Respondents, shall nominate half the number of arbitrators as may be required for the Director's confirmation pursuant to Rule 9(10); or
    - (ii) in the case of an odd numbered Arbitral Tribunal, each Claimant, or group of Claimants, and each Respondent, or group of Respondents, shall nominate an equal number of arbitrators who shall, within 30 days of their appointment, nominate a presiding arbitrator for the Director's confirmation pursuant to Rule 9.10, failing which, the presiding arbitrator shall be appointed by the Director; or
  - (c) if two or more arbitrators are to be appointed, and a joint nomination pursuant to Rule 9.7(b) fails by reason of the absence of an agreement between the Parties to jointly nominate or otherwise, then:
    - (i) the entire Arbitral Tribunal shall be constituted by the Director; and
    - (ii) any nominated arbitrators shall be excluded from consideration and any appointed arbitrators shall be released unless the Parties agree to retain such nominations or appointments.
- 9.8. Save when the Fast Track Procedure applies, where the Director is requested to appoint an arbitrator under Rule 9, unless otherwise agreed to by the Parties or determined by the Director, the following list procedure shall apply:
- (a) the AIAC shall provide to each of the Parties an identical list containing at least three nominees;
  - (b) within 15 days after receipt of the list, each Party may return the list to the AIAC after deleting the nominees it objects to and numbering the remaining nominees on the list in its order of preference;
  - (c) upon receipt of the Parties' responses or after the expiration of the above time limit, whichever is earlier, the Director shall appoint the relevant arbitrator from among the nominees approved on the lists returned to the AIAC and in accordance with the order of preference indicated by the Parties; and

- (d) if for any reason the appointment cannot be made according to this list procedure, the Director may exercise his discretion in appointing a suitable arbitrator.
- 9.9. In exercising the power to appoint the Arbitral Tribunal under the AIAC Arbitration Rules, the Director may, in his discretion, seek such information from the Parties as he deems appropriate and exercise such other powers as vested in the Director by the AIAC Arbitration Rules.
- 9.10. Any nomination or agreement by the Parties to nominate or appoint the Arbitral Tribunal under the AIAC Arbitration Rules shall be subject to confirmation of the appointment by the Director at his discretion.

### **Rule 10 – Impartiality, Independence and Availability of the Arbitral Tribunal**

- 10.1. The Arbitral Tribunal conducting the arbitral proceedings under the AIAC Arbitration Rules shall be and remain at all times impartial and independent of the Parties, and conduct itself in accordance with the AIAC Code of Conduct for Arbitrators.<sup>2</sup>
- 10.2. When a person is approached in connection with a possible appointment as arbitrator, they shall disclose any circumstances likely to give rise to justifiable doubts as to their impartiality or independence.
- 10.3. The obligation to disclose in Rule 10.2 is a continuing one to be undertaken without delay, from the time of the arbitrator's appointment.
- 10.4. Prior to accepting an appointment or a nomination, a prospective arbitrator shall consider whether they have the capacity, including sufficient competency and availability, to determine the case in a prompt and efficient manner.
- 10.5. Where the Parties are of different nationalities, a sole or presiding arbitrator shall not be of the same nationality as any Party, unless otherwise agreed to by the Parties or determined by the Director after taking into account all relevant circumstances considered appropriate.

### **Rule 11 – Challenge of an Arbitrator**

- 11.1. A Party may challenge an arbitrator, including an arbitrator nominated by that Party, if a Party is aware of existing circumstances, or later becomes aware of a change in circumstances, that:
- (a) gives rise to justifiable doubts as to the arbitrator's impartiality or independence; or
  - (b) indicates that the arbitrator does not possess any of the requisite qualifications which the Parties agreed to.

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<sup>2</sup> The AIAC Code of Conduct for Arbitrators is furnished to all empaneled arbitrators and to any arbitrator appointed in an AIAC administered arbitral proceeding.

- 11.2. To initiate the challenge of an arbitrator, a Party shall deliver a written notice to the challenged arbitrator specifying the reasons and grounds for the challenge within 15 days from when the circumstances specified in Rule 11.1 became known to that Party (“**Challenge Notice**”).
- 11.3. A copy of the Challenge Notice shall be delivered to the AIAC, the other Parties and any other members of the Arbitral Tribunal as soon as practicable.
- 11.4. Within 15 days of the delivery of the Challenge Notice on the challenged arbitrator:
- (a) the other Party may agree to the challenge; or
  - (b) the challenged arbitrator may resign from office,
- neither of which shall amount to the acceptance of the validity of the grounds for the challenge.
- 11.5. In the event the Challenge Notice cannot be resolved pursuant to Rule 11.4, any Party may submit a request to the AIAC for the Director to determine the challenge (“**Challenge Request**”).
- 11.6. The Challenge Request shall include:
- (a) a brief description of the legal and factual basis supporting the Challenge Request;
  - (b) any Communication between the challenged arbitrator, the Arbitral Tribunal and the Parties that the requesting Party deems relevant for the Challenge Request;
  - (c) proof of payment of the non-refundable Challenge Request fee, as prescribed in Schedule 2, Clause 5.1; and
  - (d) a statement confirming that a copy of the Challenge Request has been delivered to the challenged arbitrator, the other Parties and any other members of the Arbitral Tribunal.
- 11.7. The Arbitral Tribunal may continue the arbitral proceedings pending the determination of the Challenge Request unless otherwise determined by the Director after consulting the Parties.
- 11.8. The AIAC may request additional information or submissions from the challenged arbitrator, any of the Parties, or the other members of the Arbitral Tribunal for the purpose of the Director’s determination of the Challenge Request, which shall be provided to the AIAC within a stipulated time limit.

- 11.9. The Director shall decide on the Challenge Request in writing and state reasons for the decision as soon as practicable.
- 11.10. Where a Challenge Request is allowed, the Director shall determine a reasonable sum for any fees and expenses payable to the challenged arbitrator, including the apportionment of the costs of the challenge, unless the Director considers it appropriate to defer the matter of apportionment for determination by the re-constituted Arbitral Tribunal.
- 11.11. Where an arbitrator is removed or resigns pursuant to Rule 11, the replacement arbitrator shall be appointed pursuant to Rule 12.4, and any time limit to nominate a replacement arbitrator shall commence from the date the event in Rule 11.4 or Rule 11.9 occurred.

## **Rule 12 – Replacement of the Arbitral Tribunal**

- 12.1. An arbitrator shall be replaced by the Director as soon as practicable where:
- (a) the arbitrator is deceased;
  - (b) the arbitrator resigns;
  - (c) the Parties agree; or
  - (d) the arbitrator is removed by the Director pursuant to a Challenge Request in Rule 11.
- 12.2. The Director may on his own initiative, and after consulting the Parties and the Arbitral Tribunal, determine that an arbitrator shall be removed and replaced where:
- (a) the arbitrator is prevented or inhibited from discharging their functions;
  - (b) there exist exceptional circumstances, including any violation of the AIAC Code of Conduct for Arbitrators or the improper discharge of functions under the AIAC Arbitration Rules;
- 12.3. Where an arbitrator is to be replaced pursuant to Rule 12.1 or Rule 12.2, the Director shall determine a reasonable sum for any fees and expenses payable to the replaced arbitrator.
- 12.4. Any replacement arbitrator shall be appointed in accordance with the procedure in Rule 9 that was applicable to the appointment of the arbitrator being replaced, unless otherwise agreed to by the Parties.
- 12.5. The reconstituted Arbitral Tribunal and the Parties shall, as soon as practicable, arrive at an agreement on an appropriate remuneration for the fees and expenses of the reconstituted Arbitral Tribunal.

- 12.6. Save where a Final Award has been rendered, the reconstituted Arbitral Tribunal shall, after consulting the Parties, determine whether and to what extent, any previous hearings or other procedural steps in the arbitration remain effective.
- 12.7. Where a member of the Arbitral Tribunal other than a sole arbitrator is required to be replaced, the Director may, after consulting the Parties and the remaining arbitrators, dispense with the appointment of a replacement arbitrator and decide that the remaining arbitrators shall continue with the arbitration, provided that such replacement of an arbitrator is sought following the declaration of the closure of the proceedings pursuant to Rule 32.

### **Rule 13 – Conduct of Proceedings and Powers of the Arbitral Tribunal**

- 13.1. The Arbitral Tribunal shall, after consulting the Parties, conduct the arbitration in such manner as it deems appropriate to ensure the fair, expeditious, economical and final resolution of the dispute, provided always that the Parties are treated with equality and are given a reasonable opportunity to present their case.
- 13.2. The Arbitral Tribunal shall, after consulting the Parties, establish a Procedural Order for the arbitral proceedings as soon as practicable after its constitution.
- 13.3. The Arbitral Tribunal may, at any time, after consulting the Parties, vary existing Procedural Orders including extending or abridging any time limits prescribed and issue further Procedural Orders.
- 13.4. In conducting the arbitral proceedings, the powers that may be exercised by the Arbitral Tribunal include but are not limited to:
- (a) determining the rules or law applicable to the substance of the dispute and the law governing the arbitration agreement absent any agreement by the Parties;
  - (b) determining the language of the arbitral proceedings absent any agreement by the Parties;
  - (c) conducting case management meetings with the Parties, in person or virtually, to discuss the procedures to be most appropriate and efficient for the case;
  - (d) directing the order of proceedings, including, but not limited to, setting the timetable for submissions, determining the number of written submissions, bifurcating proceedings, limiting or excluding irrelevant testimony or other evidence or materials, and directing the Parties to focus their submissions on issues in respect of which a decision may dispose of all or part of the case;
  - (e) making necessary enquiries on the existence of third-party funding arrangements and directing the Parties to disclose the existence of such

arrangements, as well as any change in circumstances, throughout the course of the arbitral proceedings;

- (f) limiting or extending the time available for each Party to present its case;
- (g) conducting such enquiries as may appear to the Arbitral Tribunal to be necessary or expedient, including whether and to what extent the Arbitral Tribunal shall itself take the initiative in identifying relevant issues applicable to the dispute;
- (h) conducting enquiries by inviting the Parties to make their respective submissions on such issues;
- (i) ordering the Parties to make any property, goods or sites in their possession or control, which the Arbitral Tribunal deems relevant to the case, available for inspection;
- (j) ordering any Party to produce any documents in its possession or control which the Arbitral Tribunal deems relevant and material to the case, and to supply these documents or their copies to the Arbitral Tribunal and to the other Parties;
- (k) deciding whether or not to apply any rules of evidence or otherwise determine the admissibility, relevance, materiality and weight of any evidence or material tendered by a Party on any issue of fact or expert opinion, and to decide the time, manner and form in which such evidence or material shall be exchanged between the Parties and presented in the arbitral proceedings;
- (l) ordering and awarding the costs of the arbitration and any legal costs, including the proportion of costs to be borne by each of the Parties; and
- (m) awarding simple or compound interest from such date, at such rate and with such rest as the Arbitral Tribunal considers appropriate, for any period ending no later than the date of payment on the whole or any part of:
  - (i) any sum which is awarded by the Arbitral Tribunal in the arbitral proceedings;
  - (ii) any sum which is in issue in the arbitral proceedings but is paid before the date of the Award; or
  - (iii) costs awarded or ordered by the Arbitral Tribunal in the arbitral proceedings.



## **Rule 14 – Seat of Arbitration**

- 14.1. The Parties are at liberty to agree on the seat of arbitration.
- 14.2. Where the seat of arbitration has not been agreed to by the Parties, 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.
- 14.3. Without affecting the choice of the seat, the Parties and the Arbitral Tribunal are at liberty to agree to have meetings, conferences, deliberations, and hearings take place in person or virtually at a place or venue other than the seat of arbitration.

## **Rule 15 – Language**

- 15.1. The Parties are at liberty to agree on the language of the arbitral proceedings.
- 15.2. Where the language of the arbitral proceedings has not been agreed to by the Parties, the language shall be English, unless the Arbitral Tribunal determines, having regard to the circumstances of the case, that another language is more appropriate.

## **Rule 16 – Interim Measures**

- 16.1. The Arbitral Tribunal may, at the request of a Party, grant interim measures.
- 16.2. Where the Arbitral Tribunal is yet to be constituted and a Party is in need of urgent interim measures, a Party may submit a request to the Director to appoint an Emergency Arbitrator pursuant to Rule 17, to grant interim measures.
- 16.3. An interim measure is any temporary measure by which, at any time prior to the issuance of the Final Award, the Arbitral Tribunal, or an Emergency Arbitrator, orders a Party to, amongst others:
  - (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.



- 16.4. The Party requesting an interim measure under Rules 16.3(a) – (c) shall satisfy the Arbitral Tribunal or Emergency Arbitrator 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 of the requesting Party succeeding on the merits of the claim, although such finding shall not affect the discretion of the Arbitral Tribunal in making any subsequent determination on the merits.
- 16.5. The Arbitral Tribunal or the Emergency Arbitrator shall, in respect of a request for an interim measure under Rule 16.3(d), apply the requirements in Rule 16.4, only to an extent considered appropriate.
- 16.6. Any interim measure granted shall take the form of an order, with reasons given, or an Award, as the Arbitral Tribunal or Emergency Arbitrator considers appropriate.
- 16.7. The Arbitral Tribunal, or the Emergency Arbitrator, may require the Party requesting an interim measure to provide appropriate security in connection with the measure.
- 16.8. The Arbitral Tribunal may require any Party to promptly disclose any material change in the circumstances upon which the interim measure was requested or granted.
- 16.9. The Arbitral Tribunal may modify, suspend or terminate an interim measure that has been granted, upon the application of any Party or, in exceptional circumstances on the Arbitral Tribunal's own initiative, with prior notice to the Parties.
- 16.10. 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 the measure should not have been granted, in the circumstances then prevailing. The Arbitral Tribunal may award such costs and damages at any point during the proceedings.
- 16.11. A request for interim measures addressed by any Party to a court or other judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

## Rule 17 – Emergency Arbitrator Request

- 17.1. A Party may request for the appointment of an Emergency Arbitrator where urgent interim measures are sought prior to the constitution of the Arbitral Tribunal (“**Emergency Arbitrator Request**”).
- 17.2. The Emergency Arbitrator Request shall be submitted to the AIAC, together with or following the submission of a Commencement Request pursuant to Rule 7.
- 17.3. The Emergency Arbitrator Request shall include:
- (a) a brief description of the legal and factual basis supporting the Emergency Arbitrator Request, including identifying the interim measure urgently sought and the grounds for requiring the appointment of an Emergency Arbitrator;
  - (b) proof of payment of the Emergency Arbitrator Request fee and the Emergency Arbitrator’s fee, as prescribed in Schedule 2, Clause 6.1; and
  - (c) a statement confirming that a copy of the Emergency Arbitrator Request has been delivered to all other Parties or an explanation of the steps taken to notify the other Parties.
- 17.4. If the Director allows the Emergency Arbitrator Request, the Director shall seek to appoint an Emergency Arbitrator and notify the Parties of the appointment within 2 days from receipt of the Emergency Arbitrator Request pursuant to Rule 17.2.
- 17.5. Prior to accepting the appointment, a prospective Emergency Arbitrator shall disclose to the Director any circumstance that may give rise to justifiable doubts as to their impartiality or independence.
- 17.6. An Emergency Arbitrator may not act as an arbitrator in any future arbitration relating to the dispute, unless otherwise agreed to by the Parties.
- 17.7. In the event of a challenge to the appointment of the Emergency Arbitrator, Rule 11 shall apply to the Emergency Arbitrator, save that:
- (a) any challenge to the appointment of an Emergency Arbitrator shall be made no later than 2 days from the date the Party is or becomes aware of the circumstances giving rise to the challenge pursuant to Rule 11.1; and
  - (b) the time limits specified in Rule 11.2 and Rule 11.4 shall be reduced to 2 days.
- 17.8. Where an Emergency Arbitrator Request is submitted, a Party may also submit a Fast Track Request pursuant to Rule 8.2 for the Fast Track Procedure to

apply to the arbitral proceedings ensuing from the delivery of the Emergency Award.

### **Rule 18 – Emergency Arbitration Proceedings**

- 18.1. Where the Parties have agreed on the seat of arbitration, such seat shall be the seat of the Emergency Arbitration proceedings.
- 18.2. Where the seat of arbitration has not been agreed to by the Parties, and without prejudice to the Arbitral Tribunal's determination of the seat of arbitration pursuant to Rule 14, the seat of the Emergency Arbitration proceedings shall be Kuala Lumpur, Malaysia.
- 18.3. The Emergency Arbitrator shall conduct the Emergency Arbitration in such manner as it deems appropriate and provide a reasonable opportunity for all Parties to be present their case.
- 18.4. The Emergency Arbitrator shall, after consulting the Parties and no later than 3 days from their appointment, deliver the first Procedural Order for the conduct of the Emergency Arbitration proceedings, and in lieu of an in-person hearing, may provide that the Emergency Arbitration proceedings be conducted virtually or on a documents-only basis.
- 18.5. In the event a Party does not participate in the Emergency Arbitration proceedings, the Emergency Arbitrator may conduct the proceedings *in absentia*.
- 18.6. The Emergency Arbitrator shall have the powers vested in the Arbitral Tribunal in accordance with the relevant law and the AIAC Arbitration Rules, including the authority to rule on the Emergency Arbitrator's own jurisdiction in respect of any application pursuant to Rule 17 and Rule 18.
- 18.7. The Emergency Arbitrator may make any order or Award that an Arbitral Tribunal can make, including adjourning all or any part of the claim for emergency interim measures for determination by the Arbitral Tribunal when so constituted.
- 18.8. The Emergency Award shall be in writing and signed by the Emergency Arbitrator, and shall state the date on which the Emergency Award was made, the seat of arbitration and the reasons upon which it is based.
- 18.9. The Emergency Arbitrator shall deliver the Emergency Award within 15 days of the delivery of the first Procedural Order pursuant to Rule 18.4, subject to any extension granted by the Director after consulting the Parties, upon the request of the Emergency Arbitrator.
- 18.10. The Emergency Arbitrator shall deliver sufficient original copies of the Emergency Award to the AIAC for authentication.

- 18.11. The AIAC shall notify the Parties of its receipt of the Emergency Award from the Emergency Arbitrator which shall only be released to the Parties by the AIAC upon full settlement of the costs of the arbitration, including any government or statutory imposed taxes or other charges where applicable.
- 18.12. The Emergency Award shall be delivered by the AIAC to the Parties and shall be deemed to have been delivered on the day of the Parties' earliest receipt by email, collection by hand or registered mail.
- 18.13. Upon the 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 Emergency Award issued by the Emergency Arbitrator; and
  - (c) the Arbitral Tribunal is not bound by the reasons given by the Emergency Arbitrator.
- 18.14. An Emergency Award pursuant to Rule 17 and Rule 18 shall be binding on the Parties when rendered.
- 18.15. By agreeing to arbitration under the AIAC Arbitration Rules, the Parties undertake to comply with such Emergency Award without delay.
- 18.16. Any Emergency Award issued by the Emergency Arbitrator shall cease to be binding:
- (a) if the Arbitral Tribunal is not constituted within 90 days of the Emergency Award;
  - (b) when the Arbitral Tribunal makes a Final Award; or
  - (c) if the claim which the Emergency Arbitrator Request is based upon is withdrawn.
- 18.17. The costs associated with any application pursuant to Rule 17 and Rule 18 shall be apportioned by the Emergency Arbitrator, subject to the power of the Arbitral Tribunal to determine the final apportionment of such costs.

## **Rule 19 – Summary Determination**

- 19.1. Any Party to an arbitration may submit a request for a summary determination ("**Summary Determination Request**") to dismiss, in whole or in part, a claim, counterclaim or defence where:
- (a) the claim or counterclaim or defence is manifestly without merit; or
  - (b) the claim or counterclaim or defence manifestly falls outside the Arbitral Tribunal's jurisdiction.

- 19.2. A Summary Determination Request shall be submitted to the Arbitral Tribunal, with a copy delivered to the AIAC and the other Party, no later than 30 days after the filing of the statement of defence and counterclaim.
- 19.3. A Summary Determination Request shall include:
- (a) a statement of case setting out the legal and factual basis for the Summary Determination Request; and
  - (b) a statement confirming that a copy of the Summary Determination Request has been delivered to the AIAC and the other Party.
- 19.4. Upon receiving the Summary Determination Request, the other Party may respond to such application within 15 days from the date of receipt of the Summary Determination Request.
- 19.5. Where the Arbitral Tribunal is satisfied that the Parties have no further submissions to present in respect of the Summary Determination Request, the Arbitral Tribunal shall, within 45 days of its receipt of the final submission decide whether to allow or dismiss the request, in whole or in part.
- 19.6. The time limit specified in Rule 19.5 may be extended by the Director after consulting the Parties, if requested by the Arbitral Tribunal.
- 19.7. The Arbitral Tribunal may, after consulting the Parties, decide whether and to what extent the arbitral proceedings are to continue, pending the determination of the Summary Determination Request.
- 19.8. A decision made by the Arbitral Tribunal pursuant to Rule 19.5 to allow the Summary Determination Request shall take the form of an Award, in respect of which Rules 34.4 – 34.7 and Rule 35 shall apply.

## **Rule 20 – Pleas as to the Jurisdiction of the Arbitral Tribunal**

- 20.1. 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 having regard to the following principles:
- (a) an arbitration agreement that forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and
  - (b) a decision by the Arbitral Tribunal that the contract is null shall not automatically invalidate the arbitration agreement.
- 20.2. A plea that the Arbitral Tribunal does not have jurisdiction shall be raised no later than in the statement of defence or, where a counterclaim or a set-off have been raised, in the defence to the counterclaim or in the defence to the set-off.

- 20.3. A plea that the Arbitral Tribunal is acting in excess of its authority shall be raised as soon as practicable, without prejudice to the Arbitral Tribunal's liberty to admit a later plea if it considers the delay justified in the circumstances.
- 20.4. A Party is not precluded from raising a jurisdictional plea by reason of it having nominated an arbitrator or requesting the Director to appoint or confirm the Arbitral Tribunal.
- 20.5. The Arbitral Tribunal may rule on a plea referred to in Rule 20.2 or Rule 20.3 either as a preliminary question or in an Award.
- 20.6. The Arbitral Tribunal may continue the arbitral proceedings and make an Award, notwithstanding any pending challenge to its jurisdiction before a court or other judicial authority.

### **Rule 21 – Joinder of Parties**

- 21.1. Any Party to an arbitration or an additional party ("**Additional Party**") may, prior to the filing of the statement of defence and counterclaim, request one or more Additional Parties to be joined as a Party to the arbitration ("**Joinder Request**") where:
  - (a) all Parties to the arbitration and the Additional Party consent in writing to the joinder; or
  - (b) such Additional Party is *prima facie* bound by the arbitration agreement that gives rise to the arbitral proceedings.
- 21.2. If the Arbitral Tribunal is yet to be constituted, the Joinder Request shall be submitted to the AIAC, with a copy delivered to the other Party and the Additional Party.
- 21.3. If the Arbitral Tribunal has been constituted, the Joinder Request shall be submitted to the Arbitral Tribunal, with a copy delivered to the AIAC, the other Party and the Additional Party.
- 21.4. A Joinder Request shall include:
  - (a) the case reference number of the arbitration matter;
  - (b) the full names and complete contact details of all Parties, including the Additional Party;
  - (c) information as to whether the Additional Party is to be joined as a Claimant or a Respondent to the arbitration, and any relief or remedy sought by or against the Additional Party;

- (d) a copy of the documentation in which the arbitration agreement is contained in or in respect of which the nexus to the Additional Party arises from;
  - (e) a brief description of the legal and factual basis in support of the Joinder Request including the relief or remedy sought;
  - (f) a statement confirming that a copy of the Joinder Request has been delivered to all Parties including the Additional Party; and
  - (g) any Communication between the Parties relating to the intended joinder that the requesting Party deems relevant to the Joinder Request.
- 21.5. Any Party, including the Additional Party, shall within 15 days of receipt of a Joinder Request, submit to the Arbitral Tribunal or, prior to the constitution of the Arbitral Tribunal, to the AIAC, a response to the Joinder Request indicating its consent or objection to the Joinder Request.
- 21.6. In deciding whether to allow the Joinder Request, in whole or in part, the Director or the Arbitral Tribunal, as the case may be, shall consult all the Parties, including the Additional Party, and have regard to all relevant circumstances considered appropriate including:
- (a) whether all Parties to the arbitration and the Additional Party have given their consent in writing to the joinder; or
  - (b) or whether such Additional Party is *prima facie* bound by the arbitration agreement.
- 21.7. Any decision by the Director pursuant to Rule 21.6 to allow the Joinder Request is without prejudice to the Arbitral Tribunal's power to decide any question as to its jurisdiction arising from such a decision.
- 21.8. If a Joinder Request is allowed, the date on which the Joinder Request is allowed by the AIAC or the Arbitral Tribunal, as the case may be, shall be deemed the date of the commencement of the arbitration in respect of the Additional Party.
- 21.9. If the Additional Party is joined to the arbitration prior to the Arbitral Tribunal's constitution, the Director may release any arbitrator already confirmed or appointed, and thereafter appoint the Arbitral Tribunal in accordance with the procedure in Rule 9.7.



## Rule 22 – Consolidation of Proceedings

- 22.1. At the request of a Party, the Director has the power to consolidate two or more arbitral proceedings where:
- (a) all Parties agree in writing to consolidate;
  - (b) the claims and counterclaims in the arbitrations are made under the same arbitration agreement; or
  - (c) the claims and counterclaims are made under different arbitration agreements, provided that the dispute arises from the same legal relationship and the arbitration agreements are compatible.
- 22.2. A Party seeking consolidation shall submit a request (“**Consolidation Request**”) to the AIAC, with a copy delivered to the other Party and the Arbitral Tribunal, if so constituted.
- 22.3. The Consolidation Request shall include:
- (a) the case reference number of the arbitrations sought to be consolidated;
  - (b) a copy of the documentation in which the arbitration agreement is contained in or in respect of which the dispute referred to arbitration arises from;
  - (c) a copy of any separate arbitration or submission agreement;
  - (d) a brief description of the legal and factual basis for the Consolidation Request;
  - (e) any Communication between the Parties relating to the intended consolidation that the requesting Party deems relevant to the Consolidation Request; and
  - (f) a statement confirming that a copy of the Consolidation Request has been delivered to all Parties and the Arbitral Tribunal.
- 22.4. A Consolidation Request shall also be submitted to the AIAC pursuant to Rule 22.2 where a single notice of arbitration is delivered upon the Respondent in respect of claims arising out of multiple contracts between the same Parties, as provided for in Rule 5.3.
- 22.5. In deciding whether to allow the Consolidation Request, the Director shall consult all Parties and the Arbitral Tribunal, and have regard to all relevant circumstances considered appropriate including:
- (a) the stage of the pending arbitrations and whether any arbitrator has been nominated or appointed, where applicable;



- (b) whether the disputes under each arbitration concern the same legal relationship;
- (c) whether the rights or reliefs claimed are in respect of, or arise out of, the same transaction or a series of related transactions;
- (d) the compatibility of the arbitration agreements;
- (e) any prejudice that may be caused to any of the Parties; and
- (f) the efficiency and expeditiousness of the proceedings.

22.6. Where the Director dismisses a Consolidation Request, then:

- (a) any arbitrations that are not consolidated shall continue as separate arbitral proceedings; and
- (b) in the event of claims arising out of multiple contracts, the Claimant shall be required to issue separate notices of arbitration pursuant to each contract and submit separate Commencement Requests, including the proof of payment of the non-refundable registration fee, in respect of each arbitration.

22.7. When two or more arbitrations are consolidated, they shall be consolidated into the arbitration that commenced first, unless otherwise agreed by the Parties.

22.8. Within 15 days of being notified of the Director's decision to allow the Consolidation Request, all Parties may agree on the arbitrators to be appointed to the consolidated arbitration and the process for such appointment, failing which, any Party may request the Director to appoint the Arbitral Tribunal pursuant to Rule 9, whereby:

- (a) the entire Arbitral Tribunal shall be reconstituted by the Director to the exclusion and release of any arbitrators nominated or appointed as at the date of the decision to allow the Consolidation Request; and
- (b) all Parties shall be deemed to have waived their right to nominate an arbitrator, without prejudice to their right to challenge any appointed arbitrator pursuant to Rule 11.1.

22.9. Where a Consolidation Request is allowed, the Director shall determine a reasonable sum for any fees and expenses payable to any arbitrator who is released from the arbitral proceedings.

22.10. The Director's decision to allow a Consolidation Request shall not affect the validity of any act done or order made by any arbitrator who is released from the arbitral proceedings pursuant to Rule 22.8.

### **Rule 23 – Statement of Claim**

- 23.1. The Claimant shall deliver its statement of claim in writing to the Respondent and the Arbitral Tribunal in accordance with the Procedural Order, with a copy to be delivered to the AIAC as soon as practicable.
- 23.2. The statement of claim shall include:
- (a) the names and contact details of the Parties and their representatives, if any;
  - (b) a statement of the facts supporting the claim;
  - (c) the points in issue;
  - (d) the relief or remedy sought; and
  - (e) the legal grounds or arguments supporting the claim.
- 23.3. The statement of claim shall, where possible, be accompanied by all documents and other evidence relied upon by the Claimant in support of its claim.

### **Rule 24 – Statement of Defence and Counterclaim**

- 24.1. The Respondent shall deliver its statement of defence and any counterclaim in writing to the Claimant and the Arbitral Tribunal in accordance with the Procedural Order, with a copy to be delivered to the AIAC as soon as practicable.
- 24.2. The statement of defence shall reply to the particulars of the statement of claim set out in Rules 23.2(b) – (e), and shall, where possible, be accompanied by all documents and other evidence relied upon by the Respondent in support of its defence.
- 24.3. In its statement of defence, or at a later stage in the arbitral proceedings if the Arbitral Tribunal decides that the delay was justified in the circumstances, the Respondent may make a counterclaim or rely on a set-off.
- 24.4. The provisions in Rule 23.2 and Rule 23.3 shall apply to a counterclaim and any set-off.

### **Rule 25 – Amendments to the Claim or Defence**

- 25.1. During the course of the arbitral proceedings, a Party may amend or supplement its claim or defence, including a counterclaim or a set-off, provided that the Arbitral Tribunal considers it appropriate to allow such amendment or

supplement having regard to the delay in making it or any prejudice to other Parties or any other circumstances.

## **Rule 26 – Further Written Statements or Submissions**

- 26.1 The Arbitral Tribunal shall decide whether any further written statements or submissions, in addition to the statement of claim and the statement of defence, shall be required from the Parties or may be presented by them.

## **Rule 27 – Evidence**

- 27.1. Each Party shall have the burden of proving the facts relied on to support its claim or defence.
- 27.2. Witnesses, including expert witnesses, who are presented by the Parties to testify on any issue of fact or expertise in the arbitral proceedings may be called, notwithstanding the witness being a Party to the arbitration or in any way related to a Party, subject to any requirements of independence for expert witnesses that the Parties may agree to or the Arbitral Tribunal may impose.
- 27.3. Unless otherwise directed by the Arbitral Tribunal, statements by witnesses, including expert witnesses, may be presented in writing and signed by them.
- 27.4. Unless otherwise provided in a relevant law or where ordered by the Arbitral Tribunal, a Party or its representative may conduct interviews of actual or potential witnesses prior to such witnesses presenting oral evidence at any hearing.

## **Rule 28 – Hearings**

- 28.1. Upon the request of a Party and at an appropriate stage of the proceedings, the Arbitral Tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument.
- 28.2. In the absence of a request pursuant to Rule 28.1, the Arbitral Tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on a documents-only basis.
- 28.3. In the event of a hearing, the Arbitral Tribunal shall accord the Parties adequate advance notice of the date, time and place or medium thereof.
- 28.4. Witnesses, including expert witnesses, may be heard and examined under the conditions set by the Arbitral Tribunal.
- 28.5. Hearings shall be held in private unless the Parties agree otherwise.
- 28.6. The Arbitral Tribunal may require the retirement of any witness, including an expert witness, during the testimony of such other witnesses.

28.7. The Arbitral Tribunal may direct that any witness, including an expert witness, be examined virtually or that the entire hearing be conducted virtually.

### **Rule 29 – Experts Appointed by the Arbitral Tribunal**

- 29.1. The Arbitral Tribunal may, after consulting the Parties, appoint one or more independent experts to report to it, in writing, on specific issues to be determined by the Arbitral Tribunal.
- 29.2. The Arbitral Tribunal shall establish the expert's terms of reference, setting out the specific issues that the expert is to determine, with a copy to be delivered to the Parties and the AIAC.
- 29.3. Before accepting an appointment, the expert shall submit to the Arbitral Tribunal and to the Parties their qualifications and a statement of their impartiality and independence.
- 29.4. Any objection by a Party to the expert's qualifications, impartiality or independence shall be made within a time limit specified by the Arbitral Tribunal, save that where the appointment of an expert has been concluded, the objection shall only be made for reasons which the Party becomes aware of after the appointment.
- 29.5. An objection made pursuant to Rule 29.4 shall be promptly determined by the Arbitral Tribunal.
- 29.6. The Parties shall produce any relevant information, documents or materials to the expert for inspection as may be required.
- 29.7. Any dispute between a Party and the expert as to the relevance or production of any information, documents or materials requested pursuant to Rule 29.6, shall be referred to the Arbitral Tribunal for decision.
- 29.8. Upon receipt of the expert's report, the Arbitral Tribunal shall deliver a copy of the report to the Parties and the AIAC.
- 29.9. The Parties shall be given the opportunity to express their opinion on the report, in writing, and shall be entitled to examine any document which the expert has relied upon in their report.
- 29.10. At the request of any Party, the expert, after delivery of the report, may be called at a hearing where the Parties shall have the opportunity to examine the expert and call any expert of their own to testify on the points in issue.

### **Rule 30 – Default**

- 30.1. If, within the time limit specified in the AIAC Arbitration Rules or by the Arbitral Tribunal and without showing sufficient cause:
- (a) the Claimant has failed to deliver its statement of claim, the Arbitral Tribunal shall issue an order for the termination of the arbitral proceedings if it considers such termination appropriate, unless there are remaining matters that require determination; or
  - (b) the Respondent has failed to deliver its response to the notice of arbitration or its statement of defence, or the Claimant has failed to submit a defence to a counterclaim or a defence to a set-off, the Arbitral Tribunal shall order that the proceedings continue, without treating such failure in itself as an admission of the allegations contained therein.
- 30.2. If a Party, duly notified under the AIAC Arbitration Rules, fails to appear at a hearing without showing sufficient cause, the Arbitral Tribunal may proceed with the arbitration.
- 30.3. If a Party, duly invited by the Arbitral Tribunal to produce documents, exhibits or other evidence, fails to do so in accordance with the Procedural Order without showing sufficient cause, the Arbitral Tribunal may make the award on the evidence before it.

### **Rule 31 – Waiver of Right to Object**

- 31.1. A failure by any Party to promptly object to any non-compliance with the AIAC Arbitration Rules or any requirement of the arbitration agreement shall be deemed to be a waiver of the right of that Party to make such an objection, unless the Party can demonstrate that its failure to object was justified in the circumstances.

### **Rule 32 – Closure of Proceedings**

- 32.1. Following the delivery of the final submissions, the Arbitral Tribunal shall promptly declare the closure of proceedings, provided that it is satisfied that the Parties have no further relevant and material evidence to produce or submissions to present.
- 32.2. Where the arbitral proceedings are bifurcated and the Arbitral Tribunal intends to issue separate Final Awards by which each issue subject to bifurcation is to be finally decided, the Arbitral Tribunal shall declare the closure of proceedings in respect of each Final Award.
- 32.3. Where multiple Parties are involved and the Arbitral Tribunal intends to issue several Final Awards with respect to the Parties, the Arbitral Tribunal shall declare the closure of proceedings in respect of each Final Award.

- 32.4. The Arbitral Tribunal's declaration of the closure of proceedings and the date on which the proceedings are closed shall be notified in writing to the Parties and to the AIAC, following which, no further evidence or submissions in respect of the matters to be decided in the relevant Final Award shall be allowed.
- 32.5. Notwithstanding the above, the Arbitral Tribunal may on its own initiative or upon the application of a Party, following a consultation with the Director, decide to re-open the arbitral proceedings at any time before the Final Award is made, provided that exceptional circumstances exist.
- 32.6. Where the arbitral proceedings are re-opened pursuant to Rule 32.5, the Arbitral Tribunal shall re-declare the closure of proceedings.

### **Rule 33 – Decision-Making and Form of Awards**

- 33.1. The Arbitral Tribunal may make separate Awards on different issues at different times.
- 33.2. Where the Arbitral Tribunal consists of more than one arbitrator, any Award or decision of the Arbitral Tribunal shall be arrived at by a majority.
- 33.3. All Awards shall be in writing and shall be final and binding on the Parties.
- 33.4. By agreeing to arbitration under the AIAC Arbitration Rules, the Parties undertake to comply with any Award without delay.
- 33.5. 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.
- 33.6. An Award shall be signed by the arbitrators and shall state the date on which the Award was made and the seat of arbitration.
- 33.7. Where the Arbitral Tribunal consists of more than one arbitrator and any of them fails to sign, the Award shall state the reason for the absence of the signature.

### **Rule 34 – Technical Review**

- 34.1. The Arbitral Tribunal shall, within 90 days from the date of the closure of proceedings pursuant to Rule 32, and before signing the Final Award, submit its draft Final Award to the AIAC for a technical review by the Director.
- 34.2. The time limit specified in Rule 34.1 may be extended by the Director after consulting the Parties, if requested by the Arbitral Tribunal.
- 34.3. Where the Arbitral Tribunal re-opens the arbitral proceedings pursuant to Rule 32.5, the time limit for submitting the draft Final Award to the AIAC for technical review shall recommence.

- 34.4. The technical review shall entail the Director drawing the Arbitral Tribunal's attention to any perceived irregularity as to the form of the draft Final Award, including any matters relating to the procedural history, general content issues, and any clerical, typographical or computational errors, without affecting the Arbitral Tribunal's liberty of decision on merits.
- 34.5. If there are no perceived irregularities pursuant to Rule 34.4, the Director shall, as soon as practicable, notify the Arbitral Tribunal in writing that the technical review has been completed.
- 34.6. If there are any perceived irregularities pursuant to Rule 34.4, the Arbitral Tribunal shall resubmit the draft Final Award to the AIAC within 10 days from the date on which the Arbitral Tribunal is notified of such irregularities, subject to any extension granted by the Director, if requested by the Arbitral Tribunal.
- 34.7. Upon completion of the technical review, the AIAC shall notify the Arbitral Tribunal and the Parties in writing that the technical review has been completed.
- 34.8. Rule 34 does not apply to an Emergency Award, nor to any interpretation or correction made to an Award pursuant to Rule 37 or Rule 38.

### **Rule 35 – Delivery of Awards**

- 35.1. The Arbitral Tribunal shall deliver sufficient originals of the Award to the AIAC for authentication.
- 35.2. The AIAC shall notify the Parties of its receipt of the Award from the Arbitral Tribunal which shall only be released to the Parties by the AIAC upon full settlement of the costs of the arbitration, including any government or statutory imposed taxes or other charges where applicable.
- 35.3. The Award shall be delivered by the AIAC to the Parties and shall be deemed to have been delivered on the day of the Parties' earliest receipt by email, collection by hand or registered mail.

### **Rule 36 – Settlement or Other Grounds for Termination**

- 36.1. If the Parties reach a settlement after the arbitration has commenced, the Arbitral Tribunal shall, if requested by the Parties, record the settlement in the form of a Consent Award, provided always that the Arbitral Tribunal finds the dispute arbitrable and the settlement genuine and within its jurisdiction.
- 36.2. The Arbitral Tribunal is not obliged to give reasons for a Consent Award.
- 36.3. Within 60 days of the notification of the settlement and prior to the delivery of the Consent Award upon the Parties, the Arbitral Tribunal shall submit the draft Consent Award to the AIAC for technical review, in respect of which Rules 34.4 – 34.7 and Rule 35 shall apply.



- 36.4. If the Parties do not request a Consent Award, the parties shall inform the AIAC that a settlement has been reached and the Arbitral Tribunal shall issue an order for the termination of the proceedings.
- 36.5. If, prior to the delivery of the Final Award, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason other than the Parties' agreement to settle the dispute, the Arbitral Tribunal shall, after consulting the Parties, issue an order for the termination of the arbitral proceedings, in whole or in part, if it considers such termination appropriate.
- 36.6. Notwithstanding that a settlement has been reached or that the Arbitral Tribunal has otherwise terminated the arbitral proceedings, the arbitration shall only be deemed concluded and the Arbitral Tribunal discharged upon full settlement of the costs of the arbitration as determined by the Director pursuant to Schedule 2, Clause 1.1(i).
- 36.7. Copies of the order for the termination of the arbitral proceedings shall be signed by the Arbitral Tribunal and delivered to the Parties and the AIAC by the Arbitral Tribunal as soon as practicable.

### **Rule 37 – Interpretation of the Award**

- 37.1. Within 30 days after receipt of the Award, a Party, with notice to the other Parties and the AIAC, may request the Arbitral Tribunal to provide an interpretation of the Award.
- 37.2. The interpretation shall be in writing and shall form part of the Award.
- 37.3. The Arbitral Tribunal shall deliver the interpretation to the Parties and the AIAC within 45 days of the Arbitral Tribunal's receipt of the request in Rule 37.1.

### **Rule 38 – Correction of the Award**

- 38.1. The Arbitral Tribunal may make any correction to the Award in respect of any clerical, typographical or computational error, or any error or omission of a similar nature:
  - (a) on its own initiative within 30 days after delivery of the Award to the Parties and the AIAC; or
  - (b) upon the request of any Party within 30 days of the Party's receipt of the Award if it considers such request justified,
- 38.2. Any corrections made by the Arbitral Tribunal shall be in writing and, where set out in a separate document, shall form part of the Award and be delivered to the Parties and the AIAC as soon as practicable.



- 38.3. Where the corrections by the Arbitral Tribunal are made directly to the Award, then the Arbitral Tribunal shall deliver the corrected Award to the AIAC as soon as practicable pursuant to Rule 35.

### **Rule 39 – Additional Award**

- 39.1. The Arbitral Tribunal may, on its own initiative, make an additional Award if it considers it appropriate following the interpretation of an Award pursuant to Rule 37 or the correction of an Award pursuant to Rule 38.
- 39.2. A Party, with notice to the other Parties and the AIAC, may request the Arbitral Tribunal to make an Award or an additional Award in respect of claims presented in the arbitral proceedings but not decided by the Arbitral Tribunal, provided that:
- (a) such request is made within 30 days after the receipt of an order for the termination of the proceedings or receipt of the Final Award, as the case may be; and
  - (b) the Arbitral Tribunal considers the request justified and is able to determine the claim without re-opening the arbitral proceedings.
- 39.3. The Arbitral Tribunal shall submit its draft Award or draft additional Award to the AIAC for technical review pursuant to Rule 34 within 60 days from:
- (a) the date the Arbitral Tribunal delivered the interpretation or the correction of the Award, where Rule 39.1 applies; or
  - (b) the date of the request pursuant to Rule 39.2.
- 39.4. The time limit specified in Rule 39.3 may be extended by the Director after consulting the Parties, if requested by the Arbitral Tribunal.
- 39.5. The provisions in Rule 33, Rules 34.4 – 34.7 and Rule 35 shall apply to any Award or additional Award.

### **Rule 40 – Costs**

- 40.1. The costs of the arbitration shall include:
- (a) the fees of the Arbitral Tribunal;
  - (b) the AIAC Administrative Fee;
  - (c) reasonable expenses incurred by the Arbitral Tribunal;
  - (d) any costs incurred in using the AIAC's facilities and additional services throughout the course of arbitral proceedings under Rule 43; and

- (e) any other costs as directed by the Arbitral Tribunal.
- 40.2. Where Rules 37 – 39 apply, neither the Arbitral Tribunal nor the AIAC shall be entitled to any additional fees.
  - 40.3. The Director shall fix the fees of the Arbitral Tribunal and the AIAC Administrative Fee pursuant to Schedule 1(A) for international arbitrations (USD scale) and Schedule 1(B) for domestic arbitrations (RM scale), based on the amount in dispute comprising of the value of any claims, counterclaims, and any set-offs.
  - 40.4. Where claims and counterclaims are unquantified, the Director shall determine the amount in dispute, after consulting the Arbitral Tribunal and the Parties, for the purpose of the deposit calculation.
  - 40.5. Notwithstanding the above, all Parties and the Arbitral Tribunal are at liberty to agree on the fees and expenses of the Arbitral Tribunal within 30 days from the constitution of the Arbitral Tribunal ("**Fee Agreement**"), the scope of which shall be limited to:
    - (a) to the quantum and method of calculation of the Arbitral Tribunal's fees and expenses; and
    - (b) the scheduling of any interim release of fees and the amounts permitted thereunder pursuant to Schedule 2, Clause 1.1(h);
  - 40.6. The Arbitral Tribunal shall, as soon as practicable, inform the Director that the Fee Agreement has been executed, and where it is executed after the 30-day time limit has expired, the Fee Agreement shall be subject to approval by the Director.
  - 40.7. The deposits towards the costs of the arbitration, irrespective of the existence of a Fee Agreement, shall be remitted to and held by the AIAC, and any interest earned on the deposits shall be retained by the AIAC.

#### **Rule 41 – Deposits**

- 41.1. Following the AIAC's confirmation of the commencement of the arbitration pursuant to Rule 7, the AIAC shall request a provisional advance deposit ("**PAD**") to cover approximately 30% of the estimated costs of the arbitration.
- 41.2. If the amount in dispute is unquantified at the time the Commencement Request is submitted to the AIAC, the PAD shall be fixed at RMXXX for a domestic arbitration and USDXXX for an international arbitration.
- 41.3. In the event the PAD has not been paid in full:

- (a) the AIAC shall give the other Party an opportunity to make the required payment within a specified time limit;
  - (b) if the Arbitral Tribunal has yet to be constituted, after 30 days of the AIAC's final reminder for the PAD, the AIAC may treat the claims for which the PAD remains outstanding, as withdrawn without prejudice; or
  - (c) if the Arbitral Tribunal has been constituted, without affecting the liberty of the Parties and the Arbitral Tribunal to execute any Fee Agreement pursuant to Rule 40.5, the arbitral proceedings shall not proceed until the PAD is paid in full.
- 41.4. Following the first preliminary meeting or the delivery of the first Procedural Order, the AIAC shall request an advance preliminary deposit ("**APD**") to cover the remainder of the estimated costs of the arbitration.
- 41.5. If the claims and counterclaims are unquantified at the time the first Procedural Order is delivered, the Director shall determine the amount in dispute, after consulting the Arbitral Tribunal and the Parties, for the purpose of fixing the APD.
- 41.6. During the course of the arbitral proceedings, the AIAC may request additional deposits ("**AD**") from the Parties, subject to changes to the amount in dispute, the estimated expenses of the arbitrators or any other factors.
- 41.7. The PAD, APD and AD shall be borne by the Parties in equal shares and shall be payable by the Parties to the AIAC within 21 days upon receiving the request from the AIAC.
- 41.8. Notwithstanding the above, where counterclaims are submitted by the Respondent, the Director may fix separate deposits on costs for the claims and counterclaims. When the Director has fixed separate deposits on costs, each of the Parties shall pay the deposit corresponding to its claims.
- 41.9. In the event that either the APD or the AD has not been paid in full:
- (a) the AIAC shall give the other Party an opportunity to make the required payment within a specified time limit; and
  - (b) after 30 days of the AIAC's final reminder, if the requested deposits remain outstanding, the Arbitral Tribunal may, after consultation with the Director, suspend or terminate the arbitral proceedings, or any part thereof.
- 41.10. Notwithstanding the above, the Director shall have the discretion to determine the proportion of deposits required to be paid by the Parties, including such instances where the Director has fixed separate deposits on costs for the claims and counterclaims.

- 41.11. The AIAC shall have the discretion to extend any deadline for payment of the deposits.
- 41.12. The AIAC may apply the deposits towards the AIAC Administrative Fee, the Arbitral Tribunal's fees and the Arbitral Tribunal's out-of-pocket and per diem expenses in such manner and at such times as the Director deems appropriate.
- 41.13. Following the closure of proceedings pursuant to Rule 32, where there is a change in the amount in dispute, the AIAC shall undertake an adjustment of the deposits to reflect the correct amount in dispute.
- 41.14. After the Final Award has been delivered, or following the settlement or termination of the arbitral proceedings pursuant to Rule 36, the AIAC 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 42 – Mediation to Arbitration**

- 42.1. Prior to commencing any arbitral proceedings under the AIAC Arbitration Rules, the Parties may attempt to amicably settle their dispute pursuant to the AIAC Mediation Rules.
- 42.2. Where a mediation pursuant to Rule 42.1. is unsuccessful, the Parties may proceed to refer such dispute to arbitration under the AIAC Arbitration Rules whereupon, half of the AIAC Administrative Fee for the mediation shall be credited towards the AIAC Administrative Fee in respect of the arbitration.

#### **Rule 43 – Facilities and Additional Services**

- 43.1. The AIAC may, at the request of the Arbitral Tribunal or either Party, make available or arrange for facilities and additional services in the conduct of the arbitral proceedings as required.
- 43.2. The facilities and additional services may include: suitable accommodation, catering or refreshments for sittings of the Arbitral Tribunal, tribunal secretary services, transcription services, in-person hearing facilities, interpretation services, and virtual hearing facilities.
- 43.3. The costs of such additional facilities and services shall be borne in equal shares by the Parties, unless otherwise agreed to by the Parties or ordered by the Arbitral Tribunal.

#### **Rule 44 – Confidentiality**

- 44.1. Unless otherwise agreed to by the Parties, all matters relating to the arbitral proceedings shall be kept confidential, save where disclosure is necessary for the 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 legal proceedings before a court or other judicial authority.

- 44.2. In Rule 44.1., “*matters relating to the arbitral proceedings*” means the existence of the proceedings, the deliberations of the Arbitral Tribunal, the pleadings, evidence, and other materials and documents produced in the arbitral proceedings, as well as any Award, save where such is in the public domain.
- 44.3. The provision in Rule 44.1. equally applies to the Arbitral Tribunal, the Director, the AIAC, any tribunal secretary and any witness or expert appointed by the Arbitral Tribunal.
- 44.4. The Parties shall seek the same undertaking of confidentiality in Rule 44.1. from all those that they involve in the arbitration, including any authorised representative, witness of fact, expert or service provider.
- 44.5. The Arbitral Tribunal has the power to take appropriate measures, including issuing an order or Award for costs or damages, for any breaches by a Party of the provisions in Rule 44.1.
- 44.6. An Award may be published by the AIAC with the express written consent of the Parties, whether in its entirety or in the form of excerpts or a summary, subject to the redaction of all references to the Parties’ names and other identifying information.

#### **Rule 45 – No Liability**

- 45.1. Neither the AIAC, its employees, the Director, the Arbitral Tribunal nor any tribunal secretary shall be liable for any act or omission related to the conduct of the arbitral proceedings governed under the AIAC Arbitration Rules.
- 45.2. Neither the AIAC, its employees nor the Director can be compelled to give evidence in any arbitration or court proceedings relating to any arbitral proceedings administered by the AIAC or in the AIAC’s records.

#### **Rule 46 – Non-Reliance**

- 46.1. All statements or comments, whether written or oral, made in the course of the arbitral proceedings shall not be relied upon to institute, commence or maintain any action for defamation, libel or slander.

#### **Rule 47 – Decisions of the AIAC**

- 47.1. Save where provided for in the AIAC Arbitration Rules, the decisions of the Director and of the AIAC, with respect to all matters relating to an arbitration shall be conclusive and binding upon the Parties and the Arbitral Tribunal. The Director and the AIAC shall not be required to provide reasons for such decisions, unless required by an order of the court or by the AIAC Arbitration Rules.

**SCHEDULE 1 – ARBITRATOR’S FEE AND AIAC ADMINISTRATIVE FEE**

[TO BE INSERTED – 1A FOR INTERNATIONAL ARBITRATION AND 1B FOR DOMESTIC ARBITRATION]

[TO BE INSERTED – 1C FOR INTERNATIONAL FAST TRACK ARBITRATION AND 1D FOR DOMESTIC FAST TRACK ARBITRATION]

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## SCHEDULE 2 – GENERAL PROVISIONS ON FEES, EXPENSES AND DEPOSITS

### Clause 1 – Arbitrator’s Fees and Expenses

#### 1.1. Arbitrator’s Fees

- (a) The arbitrator’s fees shall be payable by the Parties in equal shares, unless otherwise determined by the Director, and shall form a part of the deposits.
- (b) Save where a Fee Agreement has been executed pursuant to Rule 40.5, the arbitrator’s fees shall be calculated pursuant to Schedule 1.
- (c) The fees payable to the arbitrator in Schedule 1 are exclusive of any applicable taxes or charges.
- (d) The Parties have a duty to pay and are liable for any government or statutory imposed taxes or other charges which amounts shall be included in the final calculation of the deposits, should the AIAC be requested by the arbitrator to collect such taxes or charges.
- (e) Any government or statutory imposed taxes or other charges not included in the final calculation of the deposits, may be recoverable by the arbitrator as against the Parties directly.
- (f) Where the Arbitral Tribunal consists of more than one arbitrator and Schedule 1 applies, the total arbitrators’ fee shall be derived by multiplying the amount of an arbitrator’s fees by the number of the arbitrators, with the presiding arbitrator receiving 40% of the total arbitrators’ fee and the co-arbitrators receiving the remaining 60% in equal shares, unless otherwise agreed by the Arbitral Tribunal.
- (g) The arbitrator’s fees shall only be payable upon the delivery to the AIAC of the Final Award pursuant to Rule 35 or the Emergency Award pursuant to Rule 18, unless otherwise agreed by the Parties and the Arbitral Tribunal.
- (h) An arbitrator shall not be entitled to any interim fees, unless a Fee Agreement executed pursuant to Rule 40.5 permits such interim release, and provided always that the total proportion of fees subject to interim release throughout the arbitral proceedings does not exceed 50% of the Arbitral Tribunal’s fees and expenses.
- (i) Where an arbitration is settled or disposed of before the issuance of the Final Award, the costs of the arbitration shall be determined by the Director, including the proportion of the costs of the arbitration to be borne by the Parties.

## 1.2. Arbitrator's Expenses

- (a) An arbitrator shall be entitled to claim reasonable out-of-pocket expenses and any per diem or other miscellaneous expenses incurred during the arbitral proceedings.
- (b) As part of the deposits, the AIAC may collect an amount towards the Arbitral Tribunal's estimated expenses including out-of-pocket and per diem expenses, which shall be borne by the Parties in equal shares.
- (c) Out-of-pocket expenses reasonably incurred by the Arbitral Tribunal shall be reimbursed upon submission and verification by the AIAC of the supporting invoices and receipts, in original or electronic copy, at the conclusion of the arbitral proceedings.
- (d) An arbitrator who is required to travel outside of the arbitrator's place of residence shall be reimbursed with the cost of business class airfares, subject to the submission of the invoice or receipt in original or electronic copy to the AIAC for verification.
- (e) In addition to the out-of-pocket expenses, unless otherwise agreed by the Parties and the Arbitral Tribunal in the Fee Agreement, a per diem of RMXXX 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 RMXXX shall be paid.
- (f) Per diem shall include:
  - (i) hotel accommodation;
  - (ii) meals/beverages;
  - (iii) laundry/dry cleaning/ironing;
  - (iv) city transportation (excluding airport transfers);
  - (v) correspondence costs (telephone, faxes, internet usage etc.); and
  - (vi) tips.
- (g) The Arbitral Tribunal shall provide the AIAC with a reasonable estimation of its expenses prior to the hearing, or at the latest, prior to the closure of the proceedings pursuant to Rule 32.



## Clause 2 – AIAC Administrative Fee

- 2.1. The AIAC Administrative Fee shall be payable by the Parties in equal shares, unless otherwise determined by the Director, and shall form a part of the deposits.
- 2.2. The AIAC Administrative Fee shall be calculated pursuant to Schedule 1.
- 2.3. The AIAC Administrative Fee payable in Schedule 1 is exclusive of any applicable taxes or charges.
- 2.4. The Parties have a duty to pay and are liable for any government or statutory imposed taxes or other charges which amounts shall be included in the final calculation of the deposits, recoverable by the AIAC as against the Parties directly.
- 2.5. The AIAC Administrative Fee is not inclusive of other services such as suitable accommodation, catering or refreshments for sittings of the Arbitral Tribunal, tribunal secretary services, transcription services, in-person hearing facilities, interpretation services and virtual hearing facilities, which shall be chargeable to the requesting Party separately.

## Clause 3 – Deposits

- 3.1. The PAD, APD and AD pursuant to Rule 41, or the FTD pursuant to Rule 8.7 where applicable, shall include:
  - (a) the Arbitral Tribunal’s fees and estimated expenses;
  - (b) the AIAC Administrative Fee;
  - (c) any government or statutory imposed taxes or other charges; and
  - (d) bank charges required by the bank in the following amounts

International arbitration	Domestic arbitration
USDXXX	RMXXX

- 3.2. The PAD, APD and AD, or the FTD where applicable, shall be payable by the Parties in equal shares, unless otherwise determined by the Director.

## Clause 4 – Registration Fee

- 4.1. A registration fee of RMXXX for domestic arbitrations and USDXXX for international arbitrations shall be payable to the AIAC upon the submission of a Commencement Request pursuant to Rule 7.
- 4.2. The registration fee is inclusive of any government or statutory imposed taxes or other charges.

- 4.3. The registration fee is non-refundable and, save where expressly stated otherwise in the AIAC Arbitration Rules, is inclusive of the services rendered by the AIAC and the Director thereunder.
- 4.4. The registration fee does not constitute a part of the AIAC Administrative Fee, and shall be payable notwithstanding the operation of the Fast Track Procedure in Rule 8.
- 4.5. The registration fee shall be payable in full by the Party submitting the Commencement Request and shall not be subject to any deductions.

**Clause 5 – Challenge Request Fee**

- 5.1. The following fee shall be payable upon submitting a Challenge Request to the AIAC pursuant to Rule 11.5:

International Arbitration	Domestic Arbitration
USDXXX	RMXXX

- 5.2. The Challenge Request Fee is inclusive of any government or statutory imposed taxes or other charges.
- 5.3. The Challenge Request fee is non-refundable, unless otherwise determined by the Director, and does not constitute a part of the registration fee or the AIAC Administrative Fee.

**Clause 6 – Emergency Arbitration Fees**

- 6.1. The following fees shall be payable upon submitting an Emergency Arbitrator Request to the AIAC pursuant to Rule 17:

	International Arbitration (USD)	Domestic Arbitration (RM)
Request Fee	XXX	XXX
Emergency Arbitrator's Fee	XXX	XXX

- 6.2. The Emergency Arbitrator Request Fee is inclusive of any government or statutory imposed taxes or other charges.
- 6.3. The Emergency Arbitrator's Fee is exclusive of any applicable taxes or charges and the Parties have a duty to pay and are liable for any government or statutory imposed taxes or other charges which shall be collected by the AIAC if requested by the arbitrator, or otherwise recoverable by the arbitrator as against the Parties directly.
- 6.4. The Emergency Arbitrator Request fee is non-refundable and does not constitute a part of the registration fee or the AIAC Administrative Fee.