



rules for arbitration

ISLAMIC BANKING
AND FINANCIAL SERVICES
2007

KUALA LUMPUR
REGIONAL CENTRE
FOR ARBITRATION

REGIONAL RESOLUTION GLOBAL SOLUTION



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RULES FOR ARBITRATION OF KUALA LUMPUR REGIONAL CENTRE FOR ARBITRATION (ISLAMIC BANKING AND FINANCIAL SERVICES)

These Rules may be cited as the “Rules for Arbitration of Kuala Lumpur Regional Centre for Arbitration (Islamic Banking and Financial Services)” or “KLRC Rules for Islamic Banking and Financial Services Arbitration”.

SCOPE OF APPLICATION

RULE 1

1. Where the parties to any contract, business arrangement or transaction which are premised on the principles of Shariah have agreed in writing* that disputes arising or clarifications required therefrom shall be settled by arbitration in accordance with the Rules for Arbitration of the Kuala Lumpur Regional Centre for Arbitration (Islamic Banking and Financial Services) (hereinafter referred to as “Rules”) then such disputes shall be settled in accordance with these Rules.
2. The Rules applicable to the arbitration shall be those in force at the time of the commencement of the arbitration unless the parties have agreed otherwise.
3. These Rules shall be applicable for the purposes of arbitrating any commercial contract, business arrangement or transaction which is based on Shariah principles.

DEFINITION AND INTERPRETATION

RULE 2

1. In these Rules, unless the context otherwise requires -
“Arbitration Agreement” means a written agreement or a written contract containing a written provision to submit to arbitration, whether an arbitrator is named therein or not;

***MODEL ARBITRATION CLAUSE**

ANY DISPUTE, CONTROVERSY OR CLAIM ARISING FROM ISLAMIC BANKING BUSINESS, TAKAFUL BUSINESS, ISLAMIC FINANCIAL BUSINESS, ISLAMIC DEVELOPMENT FINANCIAL BUSINESS, ISLAMIC CAPITAL MARKET PRODUCTS OR SERVICES OR ANY OTHER TRANSACTION BUSINESS WHICH IS BASED ON SHARIAH PRINCIPLES OUT OF THIS AGREEMENT/CONTRACT SHALL BE DECIDED BY ARBITRATION IN ACCORDANCE WITH THE RULES FOR ARBITRATION OF KUALA LUMPUR REGIONAL CENTRE FOR ARBITRATION (ISLAMIC BANKING AND FINANCIAL SERVICES).

- NOTE: Parties may wish to consider adding;
- (a) The appointing authority shall be the Kuala Lumpur Regional Centre for Arbitration;
 - (b) The number of arbitrators shall be (one or three);
 - (c) The place of arbitration shall be (town or country);
 - (d) The language(s) to be used in the arbitration proceedings shall be; or
 - (e) The law applicable to this agreement/contract shall be that of

“Central Bank”	means the Central Bank of Malaysia established by the Central Bank of Malaysia Act, 1958;
“Centre”	means Kuala Lumpur Regional Centre for Arbitration;
“Claimant”	means the party initiating arbitration by service of the requisite Notice of Arbitration prepared and served in accordance with Rule 4;
“Council”	means the Shariah Advisory Council so established by the Central Bank under Section 16B of the Central Bank of Malaysia Act 1958 for sectors under the purview of Bank Negara Malaysia or the Shariah Advisory Council established by the Securities Commission under section 18 of the Securities Commission Act 1993 for the Islamic capital market sectors under the purview of the Securities Commission;
“Director”	means the Director of the Centre;
“Respondent”	means the party receiving a Notice of Arbitration from the Claimant prepared and served in accordance with Rule 4;
“Questionable Circumstances”	mean any circumstances likely to give rise to justifiable doubts as to an arbitrator’s impartiality or independence in accordance with Rule 10; and
“Rules”	mean these Rules for Arbitration of Kuala Lumpur Regional Centre for Arbitration (Islamic Banking and Financial Services) and “Rule” means any one of the provisions of these “Rules”.

2. In these Rules, unless there is something in the subject or context inconsistent herewith-
 - (a) words denoting the singular or the masculine gender shall include the plural number or the feminine/neuter genders or vice versa;
 - (b) references to persons shall be deemed to include bodies corporate or unincorporated;
 - (c) headings in these Rules are inserted for convenience only and shall have no effect in the interpretation thereof; and

- (d) all references to provisions of statutes include such provisions as modified or re-enacted.

NOTICE, CALCULATION OF PERIODS OF TIME

RULE 3

1. Any notice or other communication to or by a party including but not limited to a Notice of Arbitration prepared pursuant to Rule 4, any request, demand, consent or approval, concerning the proceedings contemplated or commenced in accordance with these Rules:
 - (a) must be legible and in the language as agreed between the parties or in the absence thereof, in English language;
 - (b) must be sent to the last known address or number as communicated to the sender by the recipient;
 - (c) may be sent by hand, facsimile transmission or prepaid registered mail; and
 - (d) shall be deemed to have been duly received -
 - (i) if hand delivered, when left at the recipient's last known address as determined pursuant to Rule 3, paragraph 1(b); or
 - (ii) if by facsimile transmission, when transmitted to the recipient and the sender receives a successful transmission confirmation report from the despatching facsimile machine showing the relevant number of pages successfully transmitted, the correct facsimile number and the result of transmission as "OK", "Successful" or any other words or expressions denoting successful transmission; or
 - (iii) if by prepaid registered mail, three (3) clear business days from the date of posting.
2. For the purpose of this Rule 3, a business day is any day on which banks in the state or locality at which the Notice of Arbitration is served are open for business.
3. A copy of all notices or other communication served hereunder shall be copied to the Director at the same time as the same is served on the recipient in the like manner.
4. Unless otherwise agreed by the parties, a written communication sent electronically is deemed to have been received if it is sent to the electronic mailing address of the addressee.

NOTICE OF ARBITRATION

RULE 4

1. The Claimant shall give to the Respondent a Notice of Arbitration prepared in accordance with this Rule 4 and served in accordance with Rule 3.
2. Arbitral proceedings shall be deemed to commence on the date on which the Notice of Arbitration is deemed received by the Respondent in the manner provided in Rule 3.
3. The parties shall also file with the Director a copy of any other notice, including a notification, communication or proposal concerning the arbitral proceedings.
4. The Notice of Arbitration shall set out at least the following:
 - (a) a demand that the dispute be referred to arbitration;
 - (b) the names and addresses of the parties;
 - (c) a reference to the arbitration clause or the separate Arbitration Agreement that is invoked;
 - (d) a reference to the contract out of or in relation to which the dispute arises;
 - (e) the general nature of the claim and an indication of the amount involved, if any;
 - (f) the relief or remedy sought; and
 - (g) a proposal as to the number of arbitrators (i.e. one or three), if the parties have not previously agreed thereon.
5. The Notice of Arbitration may also include any one or more of the following:
 - (a) the proposals for the appointment of a sole arbitrator referred to in Rule 7, paragraph 1;
 - (b) the notification of the appointment of an arbitrator referred to in Rule 8;
 - (c) the statement of claim referred to in Rule 22; or
 - (d) the notification, communication or proposal concerning the arbitral proceedings.

REPRESENTATION AND ASSISTANCE

RULE 5

1. The parties may be represented or assisted by persons of their choice.
2. The names and addresses of such persons must be communicated in writing to the other party and such communication must specify whether the appointment is being made for purposes of representation or assistance.

PART II

COMPOSITION OF THE ARBITRAL TRIBUNAL

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NUMBER OF ARBITRATORS

RULE 6

1. The parties are free to determine the number of arbitrators.
2. Where the parties fail to determine the numbers of arbitrators, the arbitral tribunal shall :-
 - (a) in the case of an international arbitration, consist of three (3) arbitrators but the Centre may, at the request of the parties, fix a lesser number of arbitrators upon consideration of the nature of the dispute and the complexity of the subject. In any event the number of arbitrators who may preside over any proceeding shall be in odd number; or
 - (b) in the case of a domestic arbitration, consist of a single arbitrator.

APPOINTMENT OF ARBITRATORS

RULE 7

1. If a sole arbitrator is to be appointed, either party may propose to the other:
 - (a) the names of one or more persons, one of whom would serve as the sole arbitrator; and
 - (b) if no appointing authority has been agreed upon by the parties, the Centre would serve as appointing authority.
2. If within thirty (30) days after receipt by the other party of a proposal made in accordance with Rule 7, paragraph 1, the parties have not reached agreement on the choice of a sole arbitrator, the sole arbitrator shall be appointed by the Centre.

3. The Centre shall then appoint the sole arbitrator as promptly as possible. In making the appointment the Centre shall have the sole discretion to determine whether the following list procedure is appropriate unless otherwise agreed by the parties:
 - (a) at the request of one of the parties the Director shall communicate to both parties an identical list containing at least three (3) names;
 - (b) within fifteen (15) days after the receipt of this list, each party may return the list to the Director after having deleted the name or names to which he objects and numbered the remaining names on the list in the order of his preference;
 - (c) after the expiration of the above period of time, the Director shall appoint the sole arbitrator from among the names approved on the lists returned to it and in accordance with the order of preference indicated by the parties; and
 - (d) if for any reason the appointment cannot be made according to this procedure, the Director may exercise its discretion in appointing the sole arbitrator.
4. In making the appointment, the Director shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and shall take into account as well the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties.

PROCEDURE FOR APPOINTMENT OF THREE (3) ARBITRATORS

RULE 8

1. If three (3) arbitrators are to be appointed, each party shall appoint one (1) arbitrator. The two (2) arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the arbitral proceedings.
2. If within thirty (30) days after the receipt of a party's notification of the appointment of an arbitrator the other party has not notified the first party of the arbitrator he has appointed the first party may request the Centre to appoint the second arbitrator. The Centre may exercise its discretion in appointing the arbitrator.
3. If within thirty (30) days after the appointment of the second arbitrator the two arbitrators have not agreed on the choice of the presiding arbitrator, the presiding arbitrator shall be appointed by the Centre in the same way as a sole arbitrator would be appointed under Rule 7.

THE CENTRE AS THE APPOINTING AUTHORITY

RULE 9

1. When the Centre is requested to appoint an arbitrator pursuant to Rule 7 or Rule 8, the party which makes the request shall send to the Centre a copy of the Notice of Arbitration, a copy of the relevant document, agreement or contract which is the subject matter of the dispute or difference, or which clarification by arbitration is being sought and a copy of the Arbitration Agreement. The Centre may require from either party such further information as it deems necessary to fulfil its function.
2. Where the names of one or more persons are proposed by the parties for appointment as arbitrators, their full names, addresses and nationalities shall be indicated, together with a description of their qualifications.
3. If no arbitrator is selected or if selected, the selected arbitrator is deemed unsuitable by the Centre, the Centre shall draw the name of the proposed arbitrator following which Rule 14 shall apply.
4. Where, pursuant to Rule 8, paragraph 3 and Rule 9, paragraph 1, the Centre is to appoint the second arbitrator, the Director shall be the appointing authority.

QUESTIONABLE CIRCUMSTANCES

RULE 10

1. A person who is approached in connection with his possible appointment as an arbitrator shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence (hereinafter referred to as "Questionable Circumstances") to the party who has approached him for nomination as arbitrator.
2. If after disclosure of the Questionable Circumstances, the person is nevertheless appointed or chosen, the appointed or chosen arbitrator, as the case may be, shall disclose such circumstances to the parties to the arbitral proceedings, unless they have been previously informed by him of the said circumstances and the parties have unanimously agreed to proceed with the appointment. The parties to the arbitral proceedings shall then indicate in writing whether the existence of the Questionable Circumstances would invalidate the appointment of the arbitrator or otherwise failing which the affected party to the arbitral proceedings may resort to Rule 11. Such written indications by the parties shall be recorded in the note of proceeding by the arbitrator.

CHALLENGING THE APPOINTMENT OF ARBITRATORS

RULE 11

1. The appointment of any arbitrator may be challenged if Questionable Circumstances exist and the same is not made known to the parties in accordance with Rule 10.
2. A party to an arbitral proceeding may challenge the appointment of an arbitrator -
 - (a) if the arbitrator for any reason omits, fails, neglects or refuses to disclose the Questionable Circumstances prior to accepting his appointment as an arbitrator or if such disclosure is made, he fails to obtain the consent of the relevant party to the arbitral proceedings; or
 - (b) if the Questionable Circumstances arises or exists during the course of the arbitral proceedings, the arbitrator for any reason omits, fails, neglects or refuses to disclose the same as soon as practicable and fails to obtain the consent of the relevant party to the arbitral proceedings.

PROCEDURES FOR CHALLENGING THE APPOINTMENT OF ARBITRATOR

RULE 12

1. A party (hereinafter referred to as “Challenging Party”) who intends to challenge the appointment or selection of an arbitrator (hereinafter referred to as “Challenge”) shall send a written notice to that effect (hereinafter referred to as “Notice of Challenge”) within fifteen (15) days after he has been notified of the appointment or within fifteen (15) days after the circumstances mentioned in Rules 10 and 11 became known to that party, setting out the grounds which he believes the Questionable Circumstances would prejudice him or the arbitration which he is a party generally.
2. The Notice of Challenge shall be served on the other party to the arbitration with a copy served on the arbitrator whose appointment is being challenged (hereinafter referred to as “Questioned Arbitrator”) and to the other members of the arbitral tribunal, if any and the Centre.
3. Upon receipt of a Notice of Challenge, the Questioned Arbitrator whose appointment is being challenged may be removed from office -
 - (a) by mutual agreement of the parties to the arbitration; or

- (b) on his own volition, by submitting a notice of resignation to the Director with a copy each served on the parties to arbitration and other members of the arbitral tribunal, if any; or
 - (c) at the Director's sole discretion after due consideration in accordance with Rule 12, paragraph 1.
- 4. Once removed from his appointment, the Questioned Arbitrator cannot be re-appointed for the same arbitral proceedings. The vacancy shall be filled by another arbitrator in accordance with these Rules on appointment of arbitrators.
- 5. The removal of the Questioned Arbitrator does not imply the acceptance of the validity of the grounds for the challenge and nothing in these Rules shall entitle the Questioned Arbitrator who has been removed from office to make any claim of any nature from the Centre, the Director or the arbitral parties.

REPLACEMENT OF AN ARBITRATOR

RULE 13

In the event of any vacancy or incapacity arising from the death, resignation or any other reason which will result in *de jure* or *de facto* impossibility of performing his functions of an arbitrator before or during the course of arbitral proceedings, a replacement arbitrator shall be appointed or chosen pursuant to the procedure provided in these Rules for appointment of arbitrators.

RE-HEARING IN THE EVENT OF REPLACEMENT OF ONE OR MORE ARBITRATOR

RULE 14

- 1. If a sole and presiding arbitrator, or if it is an arbitral tribunal comprising more than one (1) arbitrator, all or a majority of the arbitrators are replaced pursuant to Rules 12 to 13, there shall be a fresh recommencement of arbitral proceedings.
- 2. In a tribunal comprising more than one (1) arbitrator, and at least one (1) but not a majority or all arbitrators is/are replaced pursuant to Rules 12 to 13, hearing of proceedings prior to the appointment of the replacement arbitrator(s) may be recommenced at the option and discretion of the replacement arbitrator(s).

In the event that the replacement arbitrators cannot agree on whether to recommence the proceedings or otherwise, the Director shall decide on the same whereupon his decision shall be final and conclusive.

3. Unless otherwise agreed by the parties, any order or ruling of the arbitral tribunal made prior to the replacement of an arbitrator under this Rule 14 shall not be invalid solely on the ground there has been a change to the composition of the arbitral tribunal.

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DETERMINATION OF COST OF ARBITRATION

RULE 15

1. The Director shall fix the cost of arbitration in its award. The term “cost” includes:
 - (a) the fees of the arbitral tribunal to be stated separately as to each arbitrator and to be fixed by the tribunal itself in accordance with Rule 16;
 - (b) the travel and other expenses incurred by the arbitrators;
 - (c) the costs of expert advice and of other assistance required by the arbitral tribunal;
 - (d) the travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;
 - (e) the costs for legal representation and assistance of the successful party if such costs were claimed during the arbitral proceedings, and only to the extent that the arbitral tribunal determines that the amount of such costs is reasonable; and
 - (f) any fees and expenses of the Centre as well as the expenses reasonably incurred by the Centre in connection with the arbitration as well as its administrative charges.

2. The facilities made available by the Centre itself may be charged for on the basis of comparable costs.

3. The administrative charges of the centre shall be fixed by the Director according to Appendix A for international arbitration or Appendix B for domestic arbitration, annexed hereto and in accordance with Rule 16.

BASIS FOR DETERMINATION OF FEES, CHARGES & EXPENSES

RULE 16

1. The fees of the arbitral tribunal shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject-matter, the time spent by the arbitrator(s) and any other relevant circumstances of the case.
2. In fixing its fees, the arbitral tribunal shall consult with the Director. The Director may undertake consultations with the parties before giving advice to the arbitral tribunal.
3. The Director, in consultation with the arbitrator(s) and the parties, shall settle the basis of computation of fees and expenses in accordance with Appendix A for international arbitration or Appendix B for domestic arbitration annexed hereto before the arbitrator(s) take up their duties.
4. The fees of the arbitrator(s) and the Centre's administrative charges may, in exceptional cases, be fixed at a higher figure than that provided in Appendices A or B as annexed.
5. For the purpose of calculating the amount in dispute, the value of any counter-claim and/or set-off will be added to the amount of the claim.
6. Where a claim or counter-claim does not state a monetary amount, an appropriate value for the claim or counter-claim shall be determined by the Centre in consultation with the arbitrator(s) and the parties for the purpose of computing the arbitrator's fees and the Centre's administrative charges.

PARTY TO BEAR ARBITRATION COSTS

RULE 17

1. Except as provided in Rule 17, paragraph 2, the costs of arbitration shall in principle be borne by the unsuccessful party. However, the Director may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.
2. With respect to the costs of legal representation and assistance referred to in Rule 15, paragraph 1(e), the arbitral tribunal, taking into account the circumstances of the case, shall be free to determine which party shall bear such costs or may apportion such costs between the parties if it determines that apportionment is reasonable.
3. When the arbitral tribunal issues an order for the termination of the arbitral proceedings or makes an award on agreed terms, it shall fix the costs of arbitration referred to in Rules 15 and 16, paragraph 1, in the text of that order or award.
4. No additional fees may be charged by an arbitral tribunal for interpretation or correction or completion of its award under Rules 41 to 43.

DEPOSIT OF COSTS

RULE 18

1. The Director shall prepare an estimate of the cost of arbitration and may request each party to deposit an equal amount as advance for the costs.
2. During the course of the arbitral proceedings, the Centre may request additional deposits in equal proportion from the parties. Any request for deposit or additional deposit shall be made in writing signed by the Director and delivered in accordance with Rule 3.
3. The deposit so paid shall be maintained by the Centre in a non-interest bearing bank account of a financial institution.
4. If the required deposits are not paid in full within thirty (30) days after the receipt of the written request, the Centre shall so inform the other party of the same in order that the required payment is made. If, after informing the other party, such payment is not made, the arbitral tribunal, after consultation with the Centre, may order suspension or termination of the arbitral proceedings.
5. The Centre shall account for the deposits so requested and paid by preparing a statement signed by the Director. After a decision has been made and the arbitral award has been determined and unless otherwise agreed, the Director shall arrange for the deposit to be refunded in full free from interest to the party in whose favour the arbitration has been decided and utilize the deposit paid by the party against whom the arbitral award was made, in accordance with Rules 15 and 16.

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GENERAL PROVISIONS

RULE 19

1. Subject to these Rules, the arbitral tribunal may conduct the arbitration proceedings in such a manner as it considers appropriate provided that the parties are treated with equality and that at any stage of the proceedings each party is given a full opportunity of presenting his case.
2. If either party so requests at any stage of the proceedings, the arbitral tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral arguments to be heard. In the absence of such a request, the arbitral tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of written submissions of documents and other materials.
3. All documents or information supplied to the arbitral tribunal by one party shall at the same time be communicated and supplied by that party to the other party and the Centre.

PLACE OF ARBITRATION

RULE 20

1. Unless the parties have agreed upon the place where the arbitration is to be held, such place shall be determined by the arbitral tribunal, having regard to the circumstances of the case, including the convenience of the parties and jurisdiction where the arbitration is related to.
2. The arbitral tribunal may determine the locale of the arbitration within the country agreed upon by the parties. It may hear witnesses and hold meetings for consultation among its members at any place it deems appropriate, having regard to the circumstances of the arbitration.
3. The arbitral tribunal may meet at any place it deems appropriate and convenient for inspection of goods, other property or documents. The parties shall be given sufficient notice to enable them to be present at such inspection.

4. Where arbitral proceedings have been held in more than one place, the arbitration shall be deemed to have been conducted at the place as shall be determined by the arbitral tribunal having regard to the circumstances and jurisdiction where the arbitration is related to.
5. Unless otherwise agreed by the parties, the arbitration award shall be made at the place of arbitration in the currency specified by the arbitrator.

SELECTION OF ARBITRATION LANGUAGE

RULE 21

1. Unless otherwise agreed between the parties, the arbitral tribunal shall, promptly after its appointment, determine the language or languages to be used in the proceedings after having regard to the respective parties' nationality and subject matter of the arbitration as well as exhibits and documents tendered as evidence for the arbitration.
2. Once selected, the language(s) of the arbitration shall apply to all written statement, documents and submissions including the statement of claim and the statement of defence and any award, decision, notice or other communication issued by the arbitral tribunal, the Centre or the parties, as well as in giving oral evidence in hearings. Where more than one language has been selected as the language of the arbitration, the arbitral tribunal shall specify whether either or both languages shall be used in a proceeding in default of which both language shall be used with the assistance of an interpreter, if required.
3. The arbitral tribunal may order that any documents in a language other than the language selected for the arbitration which has been annexed to any written submissions or exhibits submitted in the course of proceedings be accompanied by a translation into the language selected by the arbitration tribunal. Such translation shall be made by a certified translator approved by the arbitral tribunal.

STATEMENT OF CLAIM OR STATEMENT OF ISSUES TO BE CLARIFIED

RULE 22

1. Unless the Notice of Arbitration has included the statement of claim, the Claimant shall communicate his statement of claim in writing to the Respondent and to each of the arbitrators and the Centre within such time as the arbitral tribunal shall determine, together with a copy of the Arbitration Agreement.

2. The statement of claim shall include at least the following particulars:
 - (a) the names and addresses of the parties;
 - (b) a statement of the facts supporting the claim;
 - (c) the point at issue; and
 - (d) the relief or remedy sought.
3. In addition to the Arbitration Agreement, the Claimant may annex to his statement of claim, such documents referred to in his statement of claim or as he deems relevant and necessary to support his claims.

STATEMENT OF DEFENCE

RULE 23

1. Within a period of time to be determined by the arbitral tribunal, the Respondent shall communicate his statement of defence in writing to the Claimant with a copy served on each of the arbitrators and the Centre.
2. The statement of defence shall reply to the particulars set out in Rule 2, paragraphs 2(b), (c) and (d) of the statement of claim and if the Respondent intends to counterclaim or claim for set-off, shall set the same out in his statement of defence in the same manner provided in Rule 22, paragraph 2. The Respondent may annex to his statement the documents on which he relies on for his defence or may add a reference to the documents or other evidence he will submit in defending the claim made against him.
3. The provisions of Rule 22, paragraph 2 shall apply to the counter-claim and a claim relied on for the purpose of a set-off.

AMENDMENTS TO THE CLAIM OR DEFENCE

RULE 24

During the course of the arbitral proceedings, either party may amend or supplement his claim or defence unless the arbitral tribunal considers it inappropriate to allow such amendment, having regard to the delay in making it or prejudice to the other party or any other circumstances. However, a claim may not be amended in such a manner that the amended claim falls outside the scope of the Arbitration Agreement.

FULL RECORDS OF ARBITRATION TO BE PROVIDED TO THE CENTRE

RULE 25

Unless the parties agree otherwise, the sole arbitrator or the presiding arbitrator shall, at the conclusion of the proceedings, furnish to the Centre a complete set of records of the arbitral proceedings.

PLEAS AS TO THE JURISDICTION OF THE ARBITRAL TRIBUNAL

RULE 26

1. The arbitral tribunal shall have the power to rule on objections that it has no jurisdiction, including any objections with respect to the existence or validity of the Arbitration Agreement.
2. The arbitral tribunal shall have the power to determine the existence or the validity of the contract of which an arbitration clause forms a part. For the purposes of Rule 26, an arbitration clause which forms part of a contract and which provides for arbitration under these Rules shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.
3. A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than in the statement of defence or, with respect to a counter-claim, in the reply to the counter-claim.
4. A party is not precluded from raising a plea under paragraph 3 by reason of that party having appointed or participated in the appointment of the arbitrator.
5. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.
6. In general, the arbitral tribunal should rule on a plea concerning its jurisdiction as a preliminary question and any party may, within thirty (30) days after having received notice of that ruling appeal to the High Court to decide the matter. However, the arbitral tribunal may proceed with the arbitration and rule on such a plea in their final award while the appeal is pending and no appeal shall lie against the decision of the High Court.

FURTHER WRITTEN STATEMENTS

RULE 27

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

PERIODS OF TIME

RULE 28

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

EVIDENCE AND HEARINGS

RULE 29

1. Each party shall have the burden of proving the facts relied on to support his claim or defence.
2. The arbitral tribunal may, if it considers it appropriate, require a party to deliver to the tribunal and to the other party, within such a period of time as the arbitral tribunal shall decide, a summary of the documents and other evidence which that party intends to present in support of the facts in issue set out in his statement of claim or statement of defence.
3. At any time during the arbitral proceedings the arbitral tribunal may require the parties to produce documents, exhibits or other evidence within such a period of time as the tribunal shall determine.

ORAL EVIDENCE

RULE 30

1. In the event of an oral hearing, the arbitral tribunal shall give the parties adequate advance notice of the date, time and place thereof.

2. If witnesses are to be heard, at least fifteen (15) days before the hearing each party shall communicate to the arbitral tribunal and to the other party the names and addresses of the witnesses he intends to present, the subject upon and the languages in which such witnesses will give their testimony.
3. The arbitral tribunal shall make arrangements for the translation of oral statements made at a hearing and for a record of the hearing if either is deemed necessary by the tribunal under the circumstances of the case, or if the parties have agreed thereto and have communicated such agreement to the tribunal at least fifteen (15) days before the hearing.
4. Hearings shall be held in camera unless the parties agree otherwise. The arbitral tribunal may require the retirement of any witness or witnesses during the testimony of other witnesses. The arbitral tribunal is free to determine the manner in which witnesses are examined.
5. Evidence of witnesses may also be presented in the form of written statements signed by them.
6. The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

INTERIM MEASURES OF PROTECTION

RULE 31

1. At the request of either party, the arbitral tribunal may take any interim measures it deems necessary in respect of the subject-matter of the dispute, including measures for the conservation of the goods forming the subject-matter in dispute, such as ordering their deposit with a third person or the sale of perishable goods.
2. Such interim measures may be established in the form of an interim award. The arbitral tribunal shall be entitled to require security for the costs of such measures.
3. A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.
4. Where a party applies to a judicial authority for any interim measure and an arbitral tribunal has already ruled on any matter which is relevant to the application, the judicial authority shall treat any findings of fact made in the course of such ruling by the arbitral tribunal as conclusive for the purposes of the application.

EXPERTS

RULE 32

1. The arbitral tribunal may appoint one or more experts to report to it, in writing, on specific issues to be determined by the tribunal. A copy of the expert's terms of reference, established by the arbitral tribunal, shall be communicated to the parties.
2. The parties shall give the expert any relevant information or produce for inspection any relevant documents or goods that he may require of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.
3. Upon receipt of the expert's report, the tribunal shall communicate a copy of the report to the parties who shall be given the opportunity to express, in writing, their opinion of the report. A party shall be entitled to examine any document on which the expert has relied in his report.
4. At the request of either party the expert, after delivery of the report, may be heard at a hearing where the parties shall have the opportunity to be present and to interrogate the expert. At this hearing either party may present expert witnesses in order to testify on the points at issue. The provisions of Rule 29 shall be applicable to such proceedings.

PROCEDURE FOR REFERENCE

RULE 33

1. Subject to paragraph 2, whenever the arbitrator has to -
 - (i) form an opinion on a point related to Shariah principles; and
 - (ii) decide on a dispute arising from the Shariah aspect of an Islamic banking business, takaful business, Islamic financial business, Islamic development financial business, Islamic capital market products or services or any other transaction business which is based on Shariah principles,

the arbitrator shall refer the matter to the relevant Council for its decision, setting out the relevant information as the relevant Council may require to form its opinion including the question or issue so referred, the relevant facts, issues and the question to be answered by the relevant Council.

2. Whenever the arbitration relates to a dispute arising from the Shariah aspect of an Islamic banking business, takaful business, Islamic financial business, Islamic development financial business, Islamic capital market products or services or any other transaction business which is based on Shariah principles that is beyond the purview of the relevant Council and the arbitrator has to form an opinion on a point related to Shariah principles and decide on a dispute arising from the Shariah aspect, the arbitrator shall refer the matter to a Shariah expert or council to be agreed between the parties, setting out the relevant information as the Shariah expert may require to form its opinion including the question or issue so referred, the relevant facts, issues and the question to be answered by the Shariah expert for his/their opinion in accordance with Rule 32.
3. The arbitrator shall then adjourn the arbitration proceedings until the ruling has been given by the relevant Council or Shariah expert, as the case may be, or if there are any other areas of dispute which are independent of the said ruling, shall proceed to deliberate on such other areas which are independent of the said ruling.
4. The relevant Council or Shariah expert, as the case may be, shall then deliberate and make its ruling on the issue or question so submitted and the ruling of the relevant Council or Shariah expert, as the case may be, shall be final and binding and shall not be subject to appeal.
5. Within fifteen (15) days upon receiving the ruling, the arbitrator shall apply the ruling when deciding the dispute and giving the award.
6. If the arbitrator fails or refuses to refer the matter to the relevant Council or Shariah expert, as the case may be and any of the parties finds that such reference is fundamental to the settlement of the dispute, such party or parties may refer the arbitral tribunal's refusal to the Director not later than twenty one (21) days from such refusal.
7. The Director shall thereafter, upon consideration of the necessity of such reference, within thirty (30) days from reference by the party(s) in accordance to paragraph 6, communicate to the arbitrator(s) of such reference made by the party(s), who would also thereafter communicate to the other party(s) of such reference made by that party to the Director.

8. The arbitrator(s) shall thereafter make reference to the relevant Council or Shariah expert, as the case may be within a period of time to be fixed by the Director, failing which the Director shall proceed to make such reference.
9. Paragraphs 4, 5 and 6 would be equally applicable for reference made by the arbitrator(s) or by the Director.

TERMINATION OF PROCEEDINGS BY DEFAULT

RULE 34

1. If, within the period of time fixed by the arbitral tribunal, the Claimant has failed to communicate his claim without showing sufficient cause for such failure, the arbitral tribunal shall issue an order for the termination of the arbitral proceedings. If, within the period of time fixed by the arbitral tribunal, the Respondent has failed to communicate his statement of defence without showing sufficient cause for such failure, the arbitral tribunal shall order that the proceedings continue without treating such default in itself as an admission of the Claimant's allegations.
2. If one of the parties, duly notified under these Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the proceeding.
3. If one of the parties, duly invited to produce documentary evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the arbitral tribunal may make the award on the evidence before it.
4. If the Claimant fails to proceed with the claim, the arbitral tribunal may make an award dismissing the claim or give directions, with or without conditions, for the speedy determination of the claim.

CLOSURE OF HEARINGS

RULE 35

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

WAIVER OF RULES

RULE 36

A party who knows that any provision of, or requirement under, these Rules has not been complied with and yet proceeds with the arbitration without promptly stating his objection to such non-compliance, shall be deemed to have waived his right to object.

PART V

THE AWARD

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DECISIONS

RULE 37

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

FORM AND EFFECT OF THE AWARD

RULE 38

1. The arbitral tribunal shall render its final award within a period, which is limited to three (3) months from the completion of the hearing.
2. The award shall be made in writing and shall be final and binding on the parties. The parties undertake to carry out the award without delay.
3. The arbitral tribunal shall not vary, amend, correct, review, add to or revoke an award which has been made except as specifically provided for under Rules 41, 42 and 43.
4. The award may be relied upon by any party by way of defence, set-off otherwise in any proceedings in any court.
5. In addition to making a final award, the arbitral tribunal shall be entitled to make interim, interlocutory, or partial awards.
6. 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.
7. An award shall be signed by the arbitrators and it shall contain the date on which and the place where the award was made. Where there are three (3) arbitrators and one of them fails to sign, the award shall state the reason for absence of the signature.
8. The award may be made public only with the consent of both parties.
9. Copies of the award signed by the arbitrators shall be submitted to the Centre and the Centre shall inform the parties that the award is available for collection subject to settlement of fees and charges to be determined by the Centre.

10. If the arbitration law of the country where the award is made requires that the award be filed or registered by the arbitral tribunal, the tribunal shall comply with this requirement within the period of time required by the law.
11. The arbitral tribunal shall furnish to the Director signed copy of the award made by it, whether interim, interlocutory, partial or final. The Director shall render all assistance in the filing or registration of the award when the same is required by the law of the country where the award is made.

APPLICABLE LAW, AMIABLE COMPOSITEUR

RULE 39

1. The arbitral tribunal shall apply Shariah principles and the law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall apply Shariah principles as determined by the Council, pursuant to Rule 33 and the law determined by the conflict of laws rules which it considers applicable.
2. The arbitral tribunal shall decide as amiable compositeur or *ex aequo et bono* only if the parties have expressly authorised the arbitral tribunal to do so and if the law applicable to the arbitral procedure permits such arbitration.
3. In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

SETTLEMENT OR OTHER GROUNDS FOR TERMINATION

RULE 40

1. If, before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by both parties and accepted by the tribunal, record the settlement in the form of an arbitral award on agreed terms. The arbitral tribunal is not obliged to give reasons for such an award.
2. If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in Rule 40, paragraph 1, the arbitral tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The arbitral tribunal shall have the power to issue such an order unless a party raises justifiable grounds for objection.

3. If, before the award is made, the Claimant withdraws the claim, unless the Respondent objects to the withdrawal and the arbitral tribunal recognises the Respondents legitimate interest in obtaining a final settlement of the dispute, the arbitral tribunal shall issue an order for the termination of the arbitral proceedings.
4. Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated by the arbitral tribunal to the parties. Where an arbitral award on agreed terms is made, the provisions of Rule 38, paragraphs 6 and 8 to 11, shall apply.
5. Subject to Rules 41, 42 and 43, the mandate of the arbitral tribunal shall terminate with the termination of the arbitral proceedings.

INTERPRETATION OF THE AWARD

RULE 41

1. Within thirty (30) days after the receipt of the award, either party, with notice to the other party, may request that the arbitral tribunal give an interpretation of the award.
2. The interpretation shall be given in writing within forty-five (45) days after the receipt of the request. The interpretation shall form part of the award and the provisions of Rule 38, paragraphs 6 to 11, shall apply.

CORRECTION OF THE AWARD

RULE 42

1. Within thirty (30) days after the receipt of the award, either party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature. The arbitral tribunal may within thirty (30) days after the communication of the award make such corrections on its own initiative.
2. Such corrections shall be in writing, and the provisions of Rule 38, paragraphs 6 to 11, shall apply.

ADDITIONAL AWARD

RULE 43

1. Within thirty (30) days after the receipt of the award, either party, with notice to the other party, may request the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.

2. If the arbitral tribunal considers the request for an additional award to be justified and considers that the omission can be rectified without any further hearings or evidence, it shall complete its award within sixty (60) days after the receipt of the request.
3. When an additional award is made, the provisions of Rule 38, paragraphs 6 to 11, shall apply.

COURT INTERVENTION

RULE 44

In matters governed by these Rules, the Court should not intervene except as provided by these Rules.

CONFIDENTIALITY OF PROCEEDINGS

RULE 45

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

LIMITATION OF LIABILITY

RULE 46

Neither the Centre nor the arbitrator shall be liable to any party for any act or omission related to the conduct of the arbitration proceedings.

STATEMENTS & COMMENTS IMMUNE FROM ACTIONS

RULE 47

The parties and the arbitrator agree that statements or comments whether written or oral made in the course of the arbitration proceedings shall not be relied upon to found or maintain any action for defamation, libel, slander or any related complaint.

UNCITRAL ARBITRATION RULES TO APPLY

RULE 48

Where these Rules are silent on any matter, the provisions under the UNCITRAL Arbitration Rules shall be applicable throughout provided the same is consistent with the Shariah.

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APPENDIX A

SCHEDULE OF ARBITRATOR’S FEES AND ADMINISTRATIVE COSTS IN INTERNATIONAL ARBITRATORS (USD)

RULES FOR ARBITRATION (ISLAMIC BANKING & FINANCIAL SERVICES)

			Arbitrator’s Fees		KLRCAs Administrative Fees		
	%		USD		%	USD	
	Min	Max	Min	Max			
Registration Fee						250.00	
Amount in Dispute (USD)	Min	Max	Min	Max			
Next 50,000.00		7.00	1,000.00	3,500.00	1.50	750.00	Min 750.00
Next 50,000.00	1.00	4.00	500.00	2,000.00	1.00	500.00	
Next 100,000.00		2.00	1,500.00	5,500.00		1,250.00	
Next 400,000.00	0.50	2.00	2,000.00	8,000.00	0.50	2,000.00	
Next 500,000.00		1.00	3,500.00	13,500.00		3,250.00	
Next 500,000.00	0.40	1.00	2,000.00	5,000.00	0.15	750.00	
Next 1,000,000.00		0.80	5,500.00	18,500.00		4,000.00	
Next 1,000,000.00	0.30	0.80	3,000.00	8,000.00	0.10	1,000.00	
Next 2,000,000.00		0.50	8,500.00	26,500.00		5,000.00	
Next 3,000,000.00	0.20	0.50	6,000.00	15,000.00	0.075	2,250.00	
Next 5,000,000.00		0.30	14,500.00	41,500.00		7,250.00	
Next 5,000,000.00	0.10	0.30	5,000.00	15,000.00		Up to the limit of USD20,000.00	
Next 10,000,000.00		0.15	19,500.00	56,500.00		7,250.00	
Next 40,000,000.00	0.05	0.15	20,000.00	60,000.00		Up to the limit of USD20,000.00	
Next 50,000,000.00		0.08	39,500.00	116,500.00		7,250.00	
Next 50,000,000.00	0.02	0.08	10,000.00	40,000.00		Up to the limit of USD20,000.00	
Over 100,000,000.00		0.05	49,500.00	156,500.00		7,250.00	
Over 100,000,000.00	0.01	0.05				Up to the limit of USD20,000.00	

Remarks: With the minimum of USD1,000 for the sole arbitrator, or each member of the arbitral tribunal.

APPENDIX B

SCHEDULE OF ARBITRATOR'S FEES AND ADMINISTRATIVE COSTS IN DOMESTIC ARBITRATIONS (RM)

RULES FOR ARBITRATION (ISLAMIC BANKING & FINANCIAL SERVICES)

			Arbitrator's Fees		KLRC's Administrative Fees		
	%		RM		%	RM	
Registration Fee						250.00	
Amount in Dispute (RM)	Min	Max	Min	Max			
125,000.00		7.00	2,500.00	8,750.00	1.50	375.00	**
Next 125,000.00	1.00	4.00	1,250.00	5,000.00	1.00	1,250.00	
250,000.00			3,750.00	13,750.00		1,625.00	
Next 1,000,000.00	0.50	2.00	5,000.00	20,000.00	0.50	5,000.00	
1,250,000.00			8,750.00	33,750.00		6,625.00	
Next 1,250,000.00	0.40	1.00	5,000.00	12,500.00	0.40	5,000.00	
2,500,000.00			13,750.00	46,250.00		11,625.00	
Next 2,500,000.00	0.30	0.80	7,500.00	20,000.00	0.20	5,000.00	
5,000,000.00			21,250.00	66,250.00		16,625.00	
Next 7,500,000.00	0.20	0.50	15,000.00	37,500.00	0.075	5,625.00	
12,500,000.00			36,250.00	103,750.00		22,250.00	
Next 12,500,000.00	0.10	0.30	12,500.00	37,500.00	0.05	6,250.00	
25,000,000.00			48,750.00	141,250.00		28,500.00	
Next 100,000,000.00	0.05	0.15	50,000.00	150,000.00		Up to the limit of RM40,000.00	
125,000,000.00			98,750.00	291,250.00		28,500.00	
Next 125,000,000.00	0.02	0.08	25,000.00	100,000.00		Up to the limit of RM40,000.00	
250,000,000.00			123,750.00	391,250.00		28,500.00	
Over 250,000,000.00	0.01	0.05				Up to the limit of RM40,000.00	

Remarks:

- With the minimum of USD1,000 for the sole arbitrator, or each member of the arbitral tribunal.
- *This schedule is applicable for the amount in dispute in excess of RM100,000.00.
- **This schedule is arrived by 1.5% x RM25,000.00 (after deducting the amount in dispute of RM100,000.00)

APPENDIX C

MODEL ARBITRATION CLAUSE

Any dispute, controversy or claim arising from Islamic banking business, takaful business, Islamic financial business, Islamic development financial business, Islamic capital market products or services or any other transaction business which is based on Shariah principles out of this agreement/contract shall be decided by arbitration in accordance with the Rules for Arbitration of Kuala Lumpur Regional Centre for Arbitration (Islamic Banking and Financial Services).

Note: Parties may wish to consider adding:

- (a) The appointing authority shall be(name of institution or person);
- (b) The number of arbitrators shall be(one or three);
- (c) The place of arbitration shall be(town or country);
- (d) The language(s) to be used in the arbitral proceedings shall be.....; or
- (e) The law applicable to this agreement/contract shall be that of

APPENDIX D

Parties wishing to substitute an existing arbitration clause for one referring the dispute to arbitration under the Rules for Arbitration of Kuala Lumpur Regional Centre for Arbitration (Islamic Banking and Financial Services) may adopt the following form of agreement:

“The parties hereby agree that the dispute arising from Islamic banking business, takaful business, Islamic financial business, Islamic development financial business, Islamic capital market products or services or any other transaction business which is based on Shariah principles out of an agreement/contract dated _____ shall be settled by arbitration under the Rules for Arbitration of Kuala Lumpur Regional Centre for Arbitration (Islamic Banking and Financial Services).”

This form may also be applicable where an agreement/contract does not contain an arbitration clause.



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