

# **RULES**

**&**

# **PROCEDURES**

**BADAN ARBITRASE NASIONAL INDONESIA**

**( BANI ARBITRATION CENTER )**

## **Seat and Location, Objectives, Cooperation Agreement, Advisor and Governing Board**

### **I. Seat and Location**

BANI Arbitration Center has its Headquarter in Jakarta with several offices in other cities in Indonesia.

### **II. Objectives and Scope of Activities**

BANI was established for the following purposes :

- a. To participate in the law enforcement process in Indonesia through the application of arbitration and alternative dispute resolution for resolving disputes in the various sectors of trade, industry and finance, such as concerning corporate matters, insurance, financial institution matters, aviation, telecommunication, mining, sea and air transportation, manufacturing, intellectual property rights, licensing, franchise, construction, shipping/maritime issues, environmental issues, remote sensing and others within the scope as set forth by laws and regulations and international practices.
- b. To provide services for the dispute settlement through arbitration or other forms of alternative dispute resolution, such as negotiation, mediation, conciliation and binding opinion in accordance with the Rules of Procedures of BANI or other rules as opted by the parties concerned.
- c. To act autonomously and independently in regard of upholding law and justice.
- d. To carry our studies and research and trading/education programs pertaining to arbitration and alternative dispute resolution.

### **III. Cooperation Agreement**

BANI has cooperation agreements, with arbitration associations and centres in other countries for the purpose of promoting international commercial arbitration and other forms of ADR amongst companies, business persons and other parties in those countries. These other arbitration associations and centres include the following institutions :

- The Japan Commercial Arbitration Association;
- The Netherlands Arbitration Institute;
- The Korean Commercial Arbitration Board;
- Australian Centre for International Commercial Arbitration;
- The Philippines Dispute Resolution Centre;
- Hong Kong International Arbitration Centre;
- The Foundation for International Commercial Arbitration dan Alternative Dispute Resolution (SICA-FICA)

Furthermore, BANI is one of the founder and member of Asia Pacific Regional Arbitration Group. (APRAG).

#### **IV. Advisor**

1. Prof. Dr. Mochtar Kusuma Atmadja, S.H., LL.M.
2. Prof. Dr. Karl-Heinz Bockstiegel
3. Prof. Dr. Colin Yee Cheng Ong

#### **V. Governing Board**

The GOVERNING BOARD of BANI consists of :

Chairman : M. Husseyn Umar  
Vice-Chairman : Harianto Sunidja  
Vice-Chairman : Huala Adolf  
Secretary General : N. Krisnawenda

## Procedural Regulation

### CHAPTER I Scope

#### Article 1. Arbitration Agreement

If the parties to a commercial agreement or transaction have agreed in writing that disputes in relation to that agreement or transaction shall be referred to arbitration before the Indonesian National Board of Arbitration (“**BANI**”), or under the Rules of BANI, then such dispute shall be settled under the administration of BANI in accordance with these Rules, subject to such modifications as the parties may agree in writing, so long as such modifications do not contradict mandatory provisions of law nor the policies of BANI. Amicable resolution of dispute through arbitration at BANI shall be based on goodwill of the parties based on cooperative and non-confrontational procedures.

#### Article 2. Prevailing Procedure

These Procedural Rules shall apply to arbitrations conducted by BANI. By designating BANI and/or choosing the BANI Procedural Rules for resolution of a dispute, the parties to the agreement or dispute shall be deemed to have agreed to waive the process of case examination through the District Court in connection with the agreement or dispute, and to execute any award made by the Arbitration Tribunal based on the BANI Procedural Rules.

### CHAPTER II General Stipulations

#### Article 3. Definitions

Unless specifically stipulated otherwise, the terms below shall have the following definitions when referred to herein:

- a. “**BANI Arbitration Tribunal**” or “**Tribunal**”, in capital letters or small letters, shall be the Tribunal formed according to the BANI Procedure and comprising one or three or more arbitrators;
- b. “**Award**”, in capital letters or small letters, shall be any award rendered by the Tribunal either interim or final;
- c. “**BANI**” shall be the Indonesian National Arbitration Board;

- d. **"Board"** shall be the governing board of BANI;
- e. **"Chairman"** shall be the Chairman of the Board of BANI, unless and if it is clearly stated that what is meant is the Chairman of the Arbitration Tribunal. The BANI Chairman may appoint a Vice Chairman or other Member of the Board to perform the duties of the Chairman, as set forth in these Rules, for one or more specific arbitral references, in which case reference to the Chairman in these Rules will mean that the Vice Chairman or other member of the Board designated;
- f. **"Claimant"** shall mean and refer to one or more claimants, or parties bringing the arbitral reference;
- g. **"Law"** shall mean and refer to Law of the Republic of Indonesia No. 30 of 1999 regarding Arbitration and Alternative Dispute Resolution;
- h. **"Respondent"** shall mean and shall refer to one or more Respondents or the parties to whom the petition for arbitration is addressed or against whom the arbitral reference is brought.
- i. **"Parties"** shall mean the Claimant and the Respondent;
- j. **"Procedural Rules"** or **"Rules"** shall mean and refer to the stipulations of these BANI Procedural Rules prevailing at the time of commencement of the arbitration, with due regard to the certain agreements that may have been made by the parties concerned, one and or another by observing the provision of Article 1;
- k. **"Secretariat"** shall mean and refer to the administrative facility of BANI which shall be responsible for registration of the arbitral reference and other matters of an administrative nature in furtherance of the arbitration process.
- l. **"Secretary of the Tribunal"** shall mean and refer to the secretary designated by BANI to assist in the administration of the arbitration proceeding in question; and
- m. **"Writing"**, in capital letters or small letters, shall include not only documents written or printed on paper but also electronically created and/or transmitted documentation; such writings to include not only agreements but also exchange of correspondence, minutes of meetings, telex, telefax, e-mail and other such communications; and no agreement, document,

correspondence, notice or other instrument which is required to be in writing shall be denied legal effect solely for the reason that it is contained in an electronically created or transmitted message.

#### **Article 4. Submission, Written Notice, and Deadline**

1. **Submission of written communication and number of copies**  
All written communication submissions to each party, together with each and every supporting document, must be handed over to the BANI Secretariat to be registered with adequate number of copies to enable BANI to give a copy of each communication to each party, to each of the arbitrators, and for filing at the BANI Secretariat. For this purpose, the parties and/or their attorneys must guarantee that BANI at any time shall have the latest address and telephone number, fax, e-mail that are relevant to the communication required. Each communication sent directly by the Tribunal to the parties shall be copied to the Secretariat and each communication sent by the parties to the Tribunal must be copied to the other party and to the Secretariat.
2. **Communication with the Tribunal**  
Once the Arbitral Tribunal has been constituted, no communication shall be made by any party with any one or more of the arbitrators in any way relating to the arbitral reference except: (i) in the presence and/or with participation of the other party (if verbal); or (ii) with a copy sent simultaneously to the other party or parties, and to the Secretariat (if written).
3. **Notice**  
Each notice that has to be given based on these Rules, unless the Tribunal instructs otherwise, must be given directly, through courier, facsimile or e-mail and shall be considered effective on the date of receipt or if the date of receipt cannot be determined, on the day after the delivery in question.
4. **Time Calculation**  
Any period of time specified in or fixed under these Rules or under any applicable agreement to arbitrate, shall commence on the day following the date the notice or communication is deemed to be effective, as provided in Rule 4, paragraph (3), above. Where the expiration date of any notice or time limit falls upon a Sunday or Indonesian national holiday, such time limit shall expire on the next business day following such

Sunday or holiday.

5. Calendar Days  
Reference to numbers of days in these Rules shall refer to calendar days.
6. Quick Resolution  
By referring resolution of dispute to BANI in accordance with these Rules, all parties agree to pursue resolution of such dispute in good faith, endeavoring at all times to effect resolution of such dispute as quickly and efficiently as possible, not to take any unnecessary delaying action nor other step to impede the smooth and just arbitral process.
7. Proceeding Deadline  
Unless specifically agreed upon by the parties, the proceeding shall be completed within a period of not longer than 180 (one hundred eighty) days from the date of composition of the full Tribunal. In special conditions where the dispute is of a highly complex nature, the Tribunal shall be empowered to extend the deadline upon notice to the parties.

#### **Article 5. Representatives of Parties**

1. The Parties may be represented in the arbitration by an individual or individuals chosen by them. In the first submission, namely in the Petition for Arbitration from the Claimant and likewise in the Reply of the Respondent on the Petition, each party must state the name, address data, and information as well as the position of each individual representing the party in the arbitration and such designation must be supported by a special power of attorney special duly stamped with enough copies as stipulated in Article 4 paragraph (1) above] giving the right to the individual to represent the party in question.
2. However, if a party is represented by a foreign advisor or a foreign legal advisor in an arbitration case relating to dispute that abides by the Indonesian law, the foreign advisor or the foreign legal advisor may attend only if he is accompanied by an Indonesian advisor or legal advisor.

### **CHAPTER III Commencement of Arbitration**

#### **Article 6. Petition for Arbitration**

1. The arbitral procedure commences with the registration and filing the Petition for Arbitration by the party initiating recourse to arbitration (the “**Claimant**”).
2. Designation of Arbitrator  
In the petition for arbitration, the Claimant and in its reply on the petition the Respondent may designate an arbitrator or hand over the designation to the BANI Chairman.
3. Fees/Expenses  
Petition for Arbitration must be accompanied by payment of the registration fee and the administrative fee in accordance with the BANI regulation.  
The administrative fee shall include the administrative fee of the Secretariat, proceedings expenses and arbitrators fee.  
If a third party beyond the arbitration agreement participates and joins in the process of dispute resolution through arbitration as referred to by article 30 of Law No. 30 of 1999, then the third party shall be obliged to pay the administrative fee and other fees in connection with the participation.
4. Examination of arbitration case shall not be commenced before the administrative fee has been settled by the parties in accordance with the BANI regulation.

#### **Article 7. Registration**

1. After receiving the Petition for Arbitration and documents as well as the registration fee required, the Secretariat shall register the Petition in the BANI register.
2. The Board of BANI shall review the petition to determine whether or not the arbitration agreement or arbitration clause in the contract is adequate to provide a basis of authority for BANI to examine the dispute.

#### **Article 8. Response of Respondent**

1. If the Board determines that BANI is authorized to adjudicate the dispute, then after registration of the Petition, one or more Secretaries of the Tribunal must be designated to assist in the administration of the arbitration case.
2. The Secretariat shall give a copy of the Petition for Arbitration and the attached documents to the Respondent, and request



the Respondent to submit its written response within a period of not longer than 30 (thirty) days.

3. Response  
Within a period of not longer than 30 (thirty) days after receiving the submission of Petition for Arbitration, the Respondent shall be obliged to submit its Reply. In the Reply, the Respondent may designate an arbitrator or hand over the designation to the BANI Chairman. If, in the reply, the Respondent does not designate an arbitrator, then it shall be considered that the designation has absolutely been handed over to the BANI Chairman.
4. Extension of Period  
The BANI Chairman shall be authorized, at the request of the Respondent, to extend the period for submission of reply and or the designation of an arbitrator by the Respondent with legitimate reasons, on the condition that the extension of period may not exceed 14 (fourteen) days.

## **CHAPTER IV Arbitration Panel**

### **Article 9. Individuals empowered to be Arbitrators**

1. Arbitration Panel  
Except in special situations as referred to in Article 9 paragraph (2) below, only those who are recognized included in the list of arbitrators provided by BANI and/or having ADR/Arbitration certificate recognized by BANI may act as arbitrators based on these Rules that may be chosen by the parties.

The BANI list of arbitrators shall comprise arbitrators meeting the requirements, residing in Indonesia and in various jurisdictions throughout the world, either legal experts or non-legal practitioners and experts such as engineers, architects, and other individuals meeting the requirements. The list of arbitrators from time to time may be reviewed, added or amended by the Board.

2. External Arbitrator  
In the event that the nature of the dispute requires an arbitrator possessing special expertise to properly adjudicate the dispute referred to BANI, a petition may be filed with the Chairman of BANI to designate an arbitrator who is not listed in the BANI list of arbitrators on the condition that the arbitrator

concerned meets the requirements referred to in paragraphs 1 above and 3, below. Each petition must clearly state the reason for the need for such an external arbitrator together with a complete curriculum vitae of the arbitrator being proposed. If the Chairman of BANI considers that there is no arbitrator in the BANI list of arbitrators with the required professional qualification, whilst the arbitrator requested does possess such qualification, is neutral and independent, then the Chairman of BANI may, based on his own consideration, approve the designation of the arbitrator.

If the Chairman of BANI does not approve the designation of the external arbitrator, the Chairman must recommend, or designate, with his own choice, an arbitrator alternative chosen from the BANI list of arbitrators or an expert meeting the requirements in the required field but is not registered in the BANI list of arbitrators. The Board may consider the designation of a foreign arbitrator who is recognized on the condition that the foreign arbitrator meets the qualification requirements and is prepared to comply with the BANI Procedural Regulation, including the stipulation regarding arbitrator fee, whereby the designating party shall be obliged to bear the travel, accommodation and other extraordinary expenses related to the designation of the foreign arbitrator.

### 3. Qualifications

Besides possessing ADR/Arbitration certificate as referred to in paragraph 1 above and/or other qualification recognized by BANI, all arbitrators must possess requirements as follows:

- a. authorized or qualified to take legal actions;
- b. being at least 35 years of age;
- c. not having familial relationship based on descent and marriage down to the third generation, with any of the parties in dispute;
- d. not possessing financial interest or anything whatsoever on the result of arbitration resolution;
- e. experienced for at least 15 years and mastering actively the relevant field;
- f. not serving or acting as judge, prosecutor, clerk of court, or other government official.

4. Statement of Independence  
Arbitrators who have been appointed in accordance to BANI Rules to handle the case, shall be obliged to sign a Statement of Independence as provided by BANI Secretariat.
5. Indonesian Law  
If according to the arbitration agreement the dispute is governed by Indonesian law, at least one arbitrator, preferably but not necessarily the Chair, shall be a law graduate or practitioner who knows Indonesian law well and resides in Indonesia.

## **Article 10. Composition of Tribunal**

1. Sole Arbitrator  
If the Tribunal is to comprise only one sole arbitrator, the Claimant may, in the petition for arbitration, propose to the Chairman one or more individuals meeting the requirements as a recommendation to act as sole arbitrator. If the Respondent accepts one of the candidates nominated by the Claimant, with the approval of the Chairman, the individual may be designated as sole arbitrator. However, if there is no candidate nominated by the Claimant that is acceptable to the Respondent, unless both parties agree on a Tribunal comprising three arbitrators, the Chairman of BANI shall be obliged to immediately designate an individual who shall act as sole arbitrator, which designation may not be rejected or objection may not be lodged by either party except on demonstrable grounds of lack of independence or impartiality. If the parties do not accept a sole arbitrator, and/or the Chairman considers that the dispute in question is of a complex nature and/or the scale of the dispute in question or the quantum in dispute is such that a Tribunal comprising three arbitrators is clearly warranted, then the Chairman shall inform the parties of the matter and a period of 7 (seven) days shall be given to them each to designate an arbitrator chosen by them and if this is not complied with then the stipulation in Article 10 paragraph (3) below shall apply.
2. Designation Failure  
In any case in which either party shall fail to designate or appoint an arbitrator within the time limitation as set out herein within not more than 14 (fourteen) days from notice or request to do so, taking into consideration the provision in Article 8 (3), the Chairman shall be authorised to make such appointment on behalf of that party.
3. In Case of Three Arbitrators

If the Tribunal is to consist of three arbitrators, in case both parties have appointed their respective arbitrators, the Chairman of BANI will appoint an arbitrator to preside the Tribunal.

The appointment of the arbitrator who will preside the Tribunal shall take place after taking into consideration the proposals from the respective arbitrators of both parties which choice can be made from the list of BANI arbitrators.

4. If Number is not Fixed

If the parties have not agreed earlier regarding the number of arbitrators (such as one or three arbitrators), the Chairman shall be empowered to rule, based on the nature, complexity, and scale of the dispute in question, whether the case in question requires one or three arbitrators and, in such case, the stipulations in the previous paragraphs of Article 10 shall apply.

5. Multiple Parties

In case there are more than two parties in the dispute, then all of the parties acting as Claimant(s) shall be considered as a single party Claimant with regard to designation of arbitrator, and all parties being claimed against shall be considered as a single party Respondent for purposes of designation of an arbitrator. In the event that such multiple parties cannot agree upon the designation of an arbitrator within the allotted time frame, the selection of an arbitrator shall be deemed to have been left to the Chairman of BANI, who shall make the selection on their collective behalf.. In special situations, if requested by a majority of the parties in dispute, the Chairman of BANI may approve the formation of a Tribunal comprising more than 3 arbitrators. Additional third parties may join in an arbitration case only insofar as this is allowed based on the stipulation of Article 30 of Law No. 30/1999.

6. Authority of Chairman of BANI

Final decision or approval regarding the designation of all arbitrators shall be in the hands of the Chairman of BANI. In giving such approval, the Chairman may request additional information in connection with the independence, neutrality and/or criteria of the arbitrators being nominated. The Chairman may also consider the citizenship of the arbitrator nominated in connection with the citizenship of the parties in dispute by observing the standard requirements prevailing at BANI.

The Chairman shall make an effort to ensure that the decision with regards the arbitrator designation is made or approved

within a period of not longer than 7 (seven) days from the time the matter is submitted to him.

7. **Acceptance of Arbitrators**  
An arbitrator candidate, within a period of 7 (seven) days from his or her designation, shall submit to BANI curriculum vitae and a written statement of willingness to act as arbitrator, in which statement he or she shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence.

## **Article 11. Challenge/Recusal of an Arbitrator**

1. **Challenge**  
Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence. A party wishing to make such challenge shall so notify BANI in writing within 14 (fourteen) days from the time it is advised of the identity of such arbitrator, attaching documentation establishing the basis for such challenge. Or, if the information which forms the basis of the challenge becomes known to the challenging party thereafter, such challenge must be submitted within 14 (fourteen) days after such information becomes known to the challenging party.
2. **Replacement**  
BANI shall be obliged to review the exhibits through a special team and convey the result to the arbitrator being challenged and the other parties regarding the challenge. If the arbitrator being challenged agrees to resign, or another party agrees with the challenge, a replacement arbitrator shall be designated in the same manner as in the case of designation of the recused arbitrator, based on the stipulations in article 10 above. Otherwise BANI may, but not required to, approve the recusal, in which case the Chairman of BANI shall designate a replacement arbitrator.
3. **Recusal Failure**  
If the other party or arbitrator does not agree to the challenge, and the Chairman of BANI also considers that the challenge is groundless, then the arbitrator being challenged shall continue his duties as arbitrator.
4. **Recusal of Designating Party**  
A party may challenge the arbitrator designated by itself only for reasons of which such party becomes aware after the appointment has been made.

## **Article 12. Replacement of an Arbitrator**

1. **Death or Disability**  
In the event, during the course of the arbitral proceedings, of the death or incapacitation of an arbitrator, a substitute arbitrator shall be appointed pursuant to the same paragraph of article 10 as was applicable to the appointment or choice of the arbitrator being replaced.
2. **Resignation of Arbitrator**  
The candidate or the arbitrator having conflict of interests with the case or the parties in dispute shall be obliged to resign. Otherwise, once the Tribunal has been constituted, no arbitrator may resign from his/her post, except in the event he is challenged in accordance with the stipulations of this Rules of Procedures and laws and regulations.
3. **Failure to Act**  
In case an arbitrator fails in performing his duties, on a de jure or de facto basis, to the extent that it becomes impossible for him to perform his function, as determined by the Chairman of BANI, then the procedure related to recusal and replacement of an arbitrator in accordance with the stipulations in Article 11 shall apply.
4. **Repetition of Proceedings**  
If based n Articles 11, 12(1), or 12(3), a sole arbitrator is replaced, then proceedings, including the hearings conducted earlier must be repeated. If the Chairman of the Tribunal is replaced, each testimony hearing session earlier may be repeated if deemed necessary by the other arbitrators. If any other arbitrator is replaced, the other arbitrators shall brief the new arbitrator and no prior hearings shall be repeated except in extraordinary circumstances where, and to the extent that, the Tribunal, in its sole discretion, deems necessary in the interests of natural justice. The repetition of any hearings for above reasons may be taken into account and, if the Tribunal deems it appropriate, the deadline for completion of case examination in the proceeding referred to in Article 4 paragraph (7) may be extended.

## **CHAPTER V Arbitration Proceedings**

### **Article 13. General Stipulations/Proceedings**

1. **Authority of Tribunal**

After the formation or designation based on the stipulations in Chapter III above, the Arbitration Tribunal shall examine and rule on the dispute between the parties on behalf of BANI and therefore may exercise all of the authority possessed by BANI in connection with examination and passing of resolutions on the dispute in question. Before and during the proceeding period the Tribunal may make an effort to encourage amicable resolution between the parties. The effort to achieve amicable resolution shall not affect the deadline for examination in the proceeding referred to in Article 4 paragraph (7).
2. **Confidentiality**

All proceedings shall be conducted closed to the public, and all matters related to the arbitral reference, including documents, reports/notes on sessions, testimonies of witnesses and awards, shall be kept in strict confidence among the parties, the arbitrators and BANI, except to the extent required by law or otherwise as may be agreed by all parties to the dispute.
3. **Natural Justice**

Subject to these Rules and applicable law, the Arbitral Tribunal may conduct the arbitration in any such 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 fair and equal opportunity of presenting its case.
4. **Venue of Hearings**

Hearings shall be conducted at a venue designated by BANI, and the agreement of the parties but may also be at another venue if deemed necessary by the Tribunal with the agreement of the Parties. The Arbitration Tribunal may request that meetings be held to examine assets, other goods, or documents at any time and at the required place, with notice as required to the parties, to allow them to be able to attend the examination. Internal meetings and sessions of the Tribunal may be held at any time and venue, including over the internet, if the Tribunal deems this appropriate.

## **Article 14. Language**

1. **Language of Proceedings**

If the parties have not agreed otherwise, the process of case examination shall be conducted in the Indonesian language,

unless the Tribunal, taking into consideration the situation (such as existence of foreign parties and/or foreign arbitrators who cannot speak Indonesian, and/or where the transaction arising from the dispute is conducted in another language), deems it appropriate to use the English language or another language.

2. Document Language

If the original documentation submitted or relied upon by the parties in the submission of the case in question in a language other than the Indonesian language, then the Tribunal shall be empowered to determine whether or not the original documents must be accompanied by translation into the Indonesian language, or from the Indonesian language to another language. However, if the parties agree, or the Tribunal designates, that the language used in the case shall be a language other than the Indonesian language, then the Tribunal may request that the documents be submitted in the Indonesian language accompanied with translation by a sworn translator in the English language or the other language to be used.

3. Interpreter

If the Tribunal and/or any party requires the assistance of an interpreter during the proceeding, such interpreter shall be provided by BANI at the request of the Tribunal, and the fee of the interpreter shall be borne by the parties as deemed appropriate by the Tribunal.

4. Award Language

The Award shall be prepared in the Indonesian language, and if requested by one party or otherwise deemed appropriate by the Tribunal, in the English language or another language. In case the original Award document is prepared in the English language or another language, an official translation shall be provided by BANI for registration purposes, and the cost for this shall be borne by the parties as instructed by the Tribunal.

## **Article 15. Applicable Law**

1. Governing Law

The law that shall govern the substance of the dispute shall be the law that has been designated so to govern in the underlying commercial agreement between or among the parties in connection with which the dispute has arisen. In the absence of any such prior agreement by the parties as to the law that shall govern, the parties shall be free to designate the governing law on their mutual agreement. In the absence



of any such agreement, the Tribunal shall have the authority to apply such rules of law as it deems appropriate, considering the circumstances of the matter.

2. Contract Stipulations

In applying the governing law, the Tribunal shall take into account the provisions of the underlying agreement as well as relevant trade practices and usage.

3. Ex Aequo et Bono

The Tribunal may assume the powers of an amiable compositeur and or decide ex aequo et bono where, and to the extent that, the parties have so agreed.

### **Article 16. Petition for Arbitration**

1. Submission

The petition for arbitration which includes Statement of Claim submitted to BANI will be distributed to each member of the Tribunal and to the other party (or parties).

2. Conditions

The Petition for Arbitration must contain at least:

- a. Name and address of each of the parties;
- b. Information regarding facts supporting Petition for Arbitration;
- c. Points at issue; and
- d. The amount of relief or other remedy sought.

3. Documentation

The Claimant shall annex to the Statement of Claim a copy of the underlying agreement or agreements between or among the parties in connection with which the dispute has arisen and a copy of the agreement to arbitrate (if not included in the aforesaid underlying agreement), and may also annex all other documents deemed by the Claimant to be relevant. If additional documents or other evidence are intended to be submitted at a subsequent time, the Claimant should make reference to these in the Statement of Claim.

### **Article 17. Statement of Defense**

1. Submission

Within a period of not longer than 30 (thirty) days the Respondent must submit its Statement of Defense to BANI to be conveyed to the Tribunal and the Claimant.

2. Conditions

The Respondent shall, in its Statement of Defense, address the matters enumerated under (b) and (c) of Article 16 paragraph (2) above. The Respondent may also annex to its Statement the documents on which it relies for its defense or shall make reference to any additional documents or other evidence intended to be submitted at a subsequent time.

3. Counterclaim

a. If the Respondent wishes to assert against the Claimant a counter-claim or set-off arising in connection with the dispute or in relation to the Claimant's claim, Respondent may submit such counter-claim or set-off together with its Statement of Defense or as the latest as the first hearing. The Tribunal shall have the authority, on application by the Respondent, to allow such counter-claim or set-off to be submitted at a later date if Respondent can establish that such delay is justified in accordance with the stipulations of Article 6 paragraphs (1) and (2) and Article 16 paragraphs (2) and (3).

b. Separate costs and fees shall be assessed with respect to such counter-claim or set-off in the same manner as for the primary claim, as provided in these Rules and the current schedule of fees as promulgated by BANI from time to time. Provided such additional fees and costs have been paid by the parties, the counter-claim or set-off will be heard, considered, and decided simultaneously and jointly with the original claim

c. Failure of the parties, or either of them, to pay the fees and costs assessed with respect to any counter-claim or set-off will not prevent nor delay continuation of the arbitral reference with respect to the main claim, which, provided the fees and costs have been paid with respect to such main claim, shall proceed as though no counter-claim or set-off had been asserted.

4. Response to Counter-claim

In the event that the Respondent has submitted a counter-claim or set-off, the Claimant (being a respondent thereunder) shall be afforded a period of thirty (30) days, or such other time limit as the Tribunal may deem appropriate, to submit its

Answer to the counter-claim or claim for set-off, following the provisions of Article 17 paragraph (2) above.

### **Article 18. Jurisdiction**

1. **Competenz Kompetenz**  
The Tribunal shall have the power to rule on any objection that it does not have jurisdiction, including any objection with respect to the existence or validity of the agreement to arbitrate.
2. **Independent Arbitration Clause**  
The Tribunal shall be empowered to determine the existence of validity of an agreement in which the arbitration clause constitutes a part. For the purposes of this Rule 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 determination by the Tribunal that a contract is annulled by law shall not automatically annul the validity of the arbitration clause.
3. **Denial Deadline**  
A contention that the Tribunal does not have jurisdiction shall be raised not later than in the Statement of Defense or, with respect to a counter-claim or set off arising in connection with the dispute in the Answer to the counter-claim or set off.
4. **Interim Award**  
Normally, the Tribunal should rule on a plea concerning its jurisdiction as a preliminary question. However, if it deems appropriate, the Tribunal may proceed with the arbitration and rule on such a contention in their final Award.

### **Article 19. Documents and Other Rulings**

1. **Procedural Hearing**  
After receipt of the submissions, the Tribunal must determine, on its sole discretion, whether or not the dispute can be resolved based on the documents alone, or it is necessary to call the parties to appear at a hearing. For such purpose the Tribunal may call for an initial procedural hearing, at which the schedule for other submissions, if any, and for hearings, if any, as well as other procedural matters shall be discussed with and/or communicated to the parties, either directly or through the BANI Secretariat.
2. **Procedural rulings**

The Tribunal shall, subject to these Rules, have full authority to determine the procedure and to make such rulings as it deems appropriate, which rulings shall be binding upon the parties. If the Tribunal deems it necessary, it may draw up Terms of Reference to be signed by the Tribunal and the parties. In any case the Secretary of the Tribunal shall take minutes of the proceedings and rulings of the Tribunal, which minutes, when signed by the Tribunal, shall constitute conclusive documentation of the proceedings.

3. Transcript

Should either of the parties wish to make a record of the proceedings, or any part thereof, upon approval of the Tribunal such party may engage the services of an independent reporter or secretary who shall deliver each transcript to the Tribunal for distribution to all parties. The costs of any such transcript shall be borne by the party or parties requesting same, such costs to be paid in advance to BANI for remittance by BANI to the reporter upon receipt of proper invoicing therefor.

4. Payable Fee

The examination of a case and/or session shall not be conducted before all of the arbitration fees, as notified by the Secretariat to the parties based on the extent of the scale of the demand and the list of expenses that from time to time are announced by BANI, have been settled by one of or both parties.

5. Interlocutory Award

The Tribunal shall have the authority to make any provisional award or other interlocutory decision it may deem appropriate to regulate the manner of running the dispute, including decreeing a security attachment, ordering the deposit of goods with third parties, or the sale of perishable goods. The Tribunal shall be entitled to require security for the costs of any such measures.

6. Sanctions

The Tribunal shall have authority to impose sanctions on any party which fails or refuses to comply with any ruling made by the Tribunal or otherwise engages in conduct which impedes the smooth adjudication of the dispute by the Tribunal.

## **Article 20. Effort to Seek Amicable Resolution**

1. Amicable Resolution

The Tribunal shall first endeavor to encourage the parties to make an amicable settlement either on their own or with assistance of an independent third party mediator or facilitator or with the assistance of the Tribunal if it is agreed upon by the parties.

2. Award on Amicable Agreement

If such a settlement can be reached, the Tribunal will prepare a written memorandum of such settlement, which memorandum shall have the force of a consent Award and shall be binding upon both parties and enforceable in the same manner as an Award of the Tribunal.

3. Failure to Resolve Amicably

If no settlement can be reached, the Tribunal will continue the arbitral procedure in accordance with these Rules.

### **Article 21. Default in Appearance**

1. Failure of Claimant

In case the Claimant fails and/or does not come to the first session conducted by the Tribunal without a legitimate reason, then the Tribunal may declare the Petition for Arbitration annulled.

2. Failure of Respondent

In the event that the Respondent fails to submit its Response and/or its Statement of Defense, the Tribunal shall send written notice to the Respondent and allow a further time period of not more than fourteen (14) days in which to submit its Defense and/or appear at a hearing. In the event that the Respondent neither appears at a hearing, if properly called, nor submits its written Defense, the Tribunal shall send a second notice to the Respondent to appear or submit its Defense. If the Respondent fails to respond for the second time without any valid reason, the Tribunal may decide and make its award based upon the documents and evidence which have been submitted by the Claimant.

### **Article 22. Amendments and Subsequent Submissions**

1. Amendments

Once the submissions, as aforesaid, have been completed, and once the initial hearing has been held, the parties shall not have the right to amend their Claims and/or Responses in any material manner, unless the Tribunal and all parties agree to such amendments. No claim may, however, be amended in

such a manner that the amended claim falls outside the scope of the agreement to arbitrate.

2. **Subsequent Submissions**  
The Tribunal shall decide which further evidences and/or written statements, in addition to the Statement of Claim and the Statement of Defense, shall be required from the parties or may be presented by them and shall fix the periods of time for submitting such statements. The Tribunal shall not be required to consider any additional submissions other than those which it has ruled to be appropriate.

### **Article 23. Evidence and Hearings**

1. **Burden of Proof**  
Each of the parties has the burden to explain its respective position, to submit evidence substantiating such position and to prove the facts relied upon it in support of its claim or defense.
2. **Summary of Exhibits**  
The Tribunal may, if it considers it appropriate, require the parties either to address any enquiry or present any documentation the Tribunal deems necessary, and/or to present a summary of all documents and other evidence which that party has presented and/or intends to present in support of the facts in issue set out in its Statement of Claim or Statement of Defense, within such time limits as the Tribunal shall deem appropriate
3. **Weight of evidences**  
The Tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered
4. **Witnesses**  
If the Tribunal considers it necessary, and/or at the request of either party, expert witnesses or witnesses as to facts may be summoned. Such witnesses may be required by the Tribunal to present their testimony in a written statement first, on the basis of which the Tribunal shall determine, on its own or upon request of either party, whether oral testimony of any such witness shall be required
5. **Expenses of Witnesses**  
The party requesting the summons of a witness or expert witness must pay in advance all of the cost related to the presence of the witness. For this purpose the Tribunal may request that on the payment a deposit be made first to BANI.

6. Oath  
Before giving their testimonies, the witnesses or expert witnesses may be requested to take an oath.
7. Conclusion of Proceeding  
If the submission of exhibits, testimonies and proceedings are considered adequate by the Tribunal, the proceeding on the dispute shall be closed by the Chairman of the Tribunal who subsequently may designate a session for the final award announcement.

#### **Article 24. Revocation of Arbitration**

- o Revocation  
So long as the Tribunal has not issued an Award, the Claimant shall have the right to revoke its claim upon written notice to the Tribunal, the other party and BANI. However if the Respondent has already submitted its Statement of Defense, and/or counterclaim, the claim can only be revoked with the consent of the Respondent.. If both parties agree to revoke the arbitration after the proceeding has been started, then such revocation shall be carried out with through the issuance of a consent award by the Tribunal.
- o Refund of Payment of Expenses  
In case of such revocation, if the proceeding has not been started yet, all of the cost paid, except registration fee, shall be returned to the Claimant and the administrative expenses of the BANI Secretariat that have been incurred shall be taken into account. If the proceeding or consultative meetings have been started, the administrative expenses including the expenses constituting the entitlement of the arbitrators deemed reasonable by the BANI Chairman, after consulting with the Tribunal, shall be taken into account in the refund.

### **CHAPTER VI The Award**

#### **Article 25. Final Award**

Unless otherwise agreed by the parties, the Tribunal shall issue its final Award within 30 (thirty) days of the conclusion of the hearings, except in such case in which the Tribunal considers that the period must be extended adequately.

## **Article 26. Other Awards**

Besides making a final Award, the Tribunal shall be entitled to make interim, interlocutory, or partial Awards.

## **Article 27. Majority**

Where the Tribunal consists of three (or more) arbitrators, any award or other of the Tribunal shall be made based upon a decision of the majority of the arbitrators.

Any difference of opinion of the arbitrators regarding certain parts of the award may be stated in the award.

In the event that there is no majority accord upon the award, or any part thereof, the decision on such point or points shall be made by the Chairman of the Tribunal.

## **Article 28. Procedural Rulings**

For matters of procedure, when there is no majority or when the Tribunal so authorises, the Chairman of the Tribunal may decide on his/her own, subject always to revision, if any, by the Tribunal.

## **Article 29. Reasoned Award**

The Award shall be made in writing and shall state the reasons upon which the Award is based, unless the parties have agreed that no reasons are to be given.

Award of the Tribunal shall be passed based on the legal stipulations or based on justice and propriety.

## **Article 30. Signing of Award**

The Award shall be signed by the arbitrators and it shall contain the date and place in which it was rendered. If there are three arbitrators and one of them fails to sign, the Award shall state the reason for the absence of the signature

## **Article 31. Conveyance**

Within a period of 14 (fourteen) days, the award that has been signed by the arbitrators must be given to each party, together with 2 (two) copies for BANI, and one of the copies shall be registered by BANI with the District Court concerned.



### **Article 32. Final and Binding**

The award shall be final and binding on the parties. The parties undertake to carry out the Award without delay. In the Award the Tribunal may fix a time limit for the losing party to comply with the Award and impose penalty and/or interest at commercial rates for failure so to do.

### **Article 33. Registration**

The confidentiality of the arbitral process shall not be interpreted to prevent registration of the Award with the appropriate District Court nor submission to any other court in any jurisdiction in which the successful party may wish to seek enforcement and/or execution thereof

### **Article 34. Correction of Errors**

Within not more than fourteen (14) days after receipt of the Award, the parties may submit a request to BANI for the Tribunal to correct any administrative errors and/or to make additions or deletions to the Award if a matter claimed has not been dealt with in such Award.

### **Article 35. List of Expenses**

The costs of arbitration shall be fixed in a separate schedule annexed to these Rules. Such schedule may be revised or amended from time to time as deemed appropriate by BANI.

### **Article 36. Payment of Expenses**

BANI shall invoice each of the parties for one half of the approximated costs, giving a time limit for payment thereof. If one party fails to pay its portion of the costs, the same may be paid in the first instance by the other party, and shall be subsequently taken into account in the award with the obligation of the party failing to pay.

BANI may, at the request of the Tribunal, increase the required costs, from time to time during the course of the arbitral reference where the Tribunal deems that the subject matter being considered or quantum claimed has increased above that which was first anticipated.

### **Article 37. Allocation**

The Tribunal shall have authority to determine which party or parties shall be responsible for payment, or reimbursement to the other party, for the whole or any part of the costs, which allocation shall be made a part of the Award.

In general, where one party is fully successful, the other party shall bear the costs; and where each party is partially successful the costs will be allocated in accordance with the proportion of success of the claim of each party.

### **Article 38. Legal Service Fees**

Except in extraordinary circumstances, the costs of legal representation of each party shall be borne by the party contracting such legal representation and will not normally be assessed against the other party. Where the Tribunal determines that a claim is frivolous or that one party has caused innumerable difficulties or delays in the progress of the arbitral reference, legal costs may be awarded to the adversely affected party.

### **Article 39. Execution Expenses**

Costs of execution of the Award shall be borne by the losing party who fails voluntarily to comply with the terms of the Award.

## **BINDING OPINION & ARBITRATION CLAUSE**

In the absence of any dispute, both parties in a contract can ask the BANI for a binding opinion regarding questions arising from that contract.

They can ask the BANI for instance to give a binding opinion with regard to: the interpretation of ambiguous provisions on the contract, the formulation of new provisions or the revisions of the old provisions to meet changing circumstances, etc.

Once the BANI has given its opinion, the parties are bound to it and whoever acts in contravention to it, will be considered as having committed a breach of contract.

## **ARBITRATION CLAUSE**

The BANI recommends all parties wishing to make reference to BANI arbitration, to use the following standard clause in their contracts:

“All disputes arising from this contract shall be binding and be finally settled under the administrative and procedural Rules of Arbitration of Badan Arbitrase Nasional Indonesia (BANI) by arbitrators appointed in accordance with said rules”.