

# ARBITRATION RULES AND PROCEDURES



**BADAN ARBITRASE NASIONAL INDONESIA  
(BANI ARBITRATION CENTER)**

*Effective as per 1 January 2018*

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# **Seat and Location, Objectives, Cooperation Agreements, Board of Advisors and Governing Board**

## **I. Seat and Location**

Badan Arbitrase Nasional Indonesia (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 out studies and research and trading/education programs pertaining to arbitration and alternative dispute resolution.

### **III. Cooperation Agreements**

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 Japan Commercial Arbitration Association (JCAA);
- The Netherlands Arbitration Institute (NAI);
- The Korean Commercial Arbitration Board (KCAB);
- Australian Centre for International Commercial Arbitration (ACICA);
- The Philippines Dispute Resolution Centre(PDRCI);
- Hong Kong International Arbitration Centre(HKSIAC);
- The Foundation for International Commercial Arbitration dan Alternative Dispute Resolution (SICA-FICA);
- The Singapore Institute of Arbitrators (SI Arb);
- Arbitration of Association of Brunei Darussalam (AABD);
- Kuala Lumpur Regional Centre for Arbitration (KLRCA);
- The Belgian Centre for Arbitration and Mediation (CEPANI);

Furthermore, BANI is one of the founder and member of Asia Pacific Regional Arbitration Group (APRAG) and Regional Arbitrator Institute Forum (RAIF). BANI is also a member of International Council for Commercial Arbitration (ICCA).

#### **IV. Board of Advisors**

1. Rosan Perkasa Roeslani, MBA, M.A.,  
(Chairman of the KADIN Indonesia [Indonesian Chamber of Commerce] – *ex officio*.)
2. Prof. Dr. Mochtar Kusuma Atmadja, S.H., LL.M.
3. Prof. Dr. Karl-Heinz Böckstiegel
4. Prof. Dr. Colin Yee Cheng Ong

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

The GOVERNING BOARD of BANI consists of:

Chairman	: M. Husseyn Umar, S.H., FCB., FCIArb.
Vice-Chairman	: Anangga W. Roosdiono, S.H., LL.M., FCBArb.
Vice-Chairman	: Prof. Huala Adolf, S.H., LL.M., Ph.D., FCBArb.
Secretary General	: Dr. N. Krisnawenda, M.Si., M.H., FCBArb.

**ARBITRATION RULES AND PROCEDURES<sup>1</sup>**  
**BADAN ARBITRASE NASIONAL INDONESIA**  
**(BANI ARBITRATION CENTER)**

**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 **Badan Arbitrase Nasional Indonesia (“BANI Arbitration Center”)**, 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**

1. 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 shall execute any award made by the Arbitration Tribunal or the sole arbitrator based on the BANI Procedural Rules.

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<sup>1</sup> These Rules are the English version of the Arbitration Rules of BANI. In the event of any discrepancy or inconsistency between the Indonesian language version and the English version, the Indonesian language version shall prevail.

2. Where these Rules are silent on regulating certain issues of arbitration, the proceedings shall be determined by the Arbitration Tribunal or the sole arbitrator examining the dispute.

## **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**" shall be the Badan Arbitrase Nasional Indonesia (BANI Arbitration Centre) established on the basis of the KADIN's Number: SKEP/152/DPH/1977, dated 30 November 1977;
- b. "**Board**" shall be the Governing Board of BANI;
- c. "**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;
- d. "**Arbitration Tribunal**" or "**Tribunal**" printed in capital or small letters, is the tribunal established in accordance with these Rules and consisting of three or more arbitrators.
- e. "**Sole Arbitrator**" either printed in capital or small letters, is the arbitrator appointed in accordance with these BANI Rules.
- f. "**Parties**" shall mean the Claimant and the Respondent;
- g. "**Claimant**" shall mean and refer to one or more claimants, or parties bringing the arbitral reference;
- 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. "**Request for Arbitration**" shall mean the request of the Claimant to BANI for arbitration;
- j. "**Statement of Claim**" shall mean the request of the Claimant concerning the claim requested in the arbitration.

- k. **“Revocation of Request of Arbitration”** is the request of the Claimant to stop the arbitration proceedings.
- l. **“Deletion of the Request of Arbitration”** is the stop of the arbitration proceedings by the Board of Arbitration.
- m. **“Award”**, in capital letters or small letters, shall be any award rendered by the Tribunal or the sole arbitrator either interim or final award;
- n. **“Law”** shall mean and refer to Law of the Republic of Indonesia No. 30 of 1999 regarding Arbitration and Alternative Dispute Resolution;
- o. **“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;
- p. **“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.
- q. **“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
- r. **“Document”**, in capital letters or small letters, shall include not only documents written or printed on paper but also electronically created and/or other electronically transmitted messages;
- s. **“Days”** shall mean calendar days.

#### **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 Arbitration 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. When the address of the Respondent is not known, the notice may be delivered through the Regency ("*Kelurahan*") where the Respondent's latest domicile is known on the basis of the Claimant's information.

## 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. 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.

6. 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 Tribunal or the sole arbitrator. In special conditions where the dispute is of a highly complex nature, the Tribunal or the sole arbitrator 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 Request for Arbitration from the Claimant and likewise in the Reply of the Respondent on the Request, each party must state the name, address, 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 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

subject to Indonesian law, the foreign advisor or the foreign legal advisor may attend the arbitration proceedings only if he is accompanied by an Indonesian advisor or legal advisor.

### **CHAPTER III**

#### **The Process of Arbitration**

#### **Article 6. The Commencement of Arbitration Process**

##### 1. Registration

The arbitral procedure commences with the registration and filing the Request for Arbitration to the BANI Secretariat by the party initiating recourse to arbitration (the "Claimant").

##### 2. The Request for Arbitration

The Request for arbitration shall contain:

- a. the names and addresses of the parties;
- b. the arbitration clause or the arbitration agreement;
- c. Information regarding facts of the dispute and the legal basis of arbitration;
- d. the detail of the dispute; and
- e. the claim and/or the requested amount of claim.

##### 3. Documentation

The Claimant shall annex to the Request for Arbitration 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 Request for Arbitration.

#### 4. Designation of Arbitrator

a. In the request for arbitration, the Claimant may designate an arbitrator within 30 (thirty) days since the request for arbitration is filed with the BANI Secretariat or hand over the designation to the BANI's Chairman. When within the 30 (thirty) days time limit the Claimant does not designate an arbitrator, the designation shall be handed over to the BANI's Chairman.

b. The BANI's Chairman is authorised, at the request of the Claimant, to extend the time limit for the designation of the arbitrator by the Claimant upon the legitimate grounds. The extension of time shall not more than 14 (fourteen) days.

#### 5. Fees/Expenses

Petition for Arbitration shall be accompanied by payment of the registration and the administrative fees in accordance with the BANI's regulation.

If a third party beyond the arbitration agreement participates and joins in the arbitration proceedings, then the third party shall be obliged to pay the administrative and other fees in connection with the participation.

### **Article 7. Registration**

1. After receiving the Request 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 request for arbitration 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 examine the dispute, then after registration of the Request for Arbitration, one or more Secretaries of the Tribunal shall be designated to assist in the administration of the arbitration case.
2. The Secretariat shall give a copy of the Request 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. Reply

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
  - a. 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 grounds, on the condition that the extension of period may not exceed 14 (fourteen) days.
  - b. The BANI Chairman shall be authorised at the request of the Respondent, to extend the time limit of the Reply of the Respondent at the latest at the first arbitration hearing.

## **Article 9. Consolidation of Arbitrations**

The Chairman of BANI may, at the request of a party, consolidate two or more arbitrations under the Rules into a single arbitration, where:

- a) The parties have agreed to consolidation and the arbitration dispute arises from the same legal relationships; or

- b) The request of arbitrations are made under a number of agreements whose parties are the same and the choice of arbitration institution is BANI ; or
- c) The request of arbitrations are made under a number of agreements where one of parties are the same and the choice of arbitration institution is BANI.

## **CHAPTER IV Arbitration Panel**

### **Article 10. Individuals empowered to be Arbitrators**

#### **1. Arbitration Panel**

Except in special situations as referred to in Article 10 paragraph (2) below, only those who are recognized included in the list of arbitrators provided by BANI may act as arbitrators based on these Rules that may be chosen by the parties.

The BANI list of arbitrators shall comprise of 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.

The arbitrators chosen by the parties shall be subject to the consideration and approval of the Board.

#### **2. External Arbitrator**

In the event that the nature of the dispute requires an arbitrator possessing special expertise to properly examine the dispute referred to BANI, a request 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 request 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 alternative arbitrator 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 these BANI Rules, including the stipulation regarding arbitrator fee, whereby the designating party shall bear the travel, accommodation and other extraordinary expenses related to the designation of the foreign arbitrator.

### 3. Qualifications

Besides possessing ADR/Arbitration qualifications as referred to in paragraph 1 above, all arbitrators shall possess the following requirements:

- 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 examine the case, shall 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 11. Composition of Tribunal**

### **1. Sole Arbitrator**

If the Tribunal is to comprise only one sole arbitrator, the Claimant may, in the request 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 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 11 paragraph (3) below shall apply.

## 2. Designation Failure

In any case in which either party fails 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 6 (4) and 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 11 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 authority 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 12. 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 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 11 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**

Subject to paragraphs 1, 2 and 3 above, a party may challenge the arbitrator designated by itself only for reasons of which such party becomes aware after the appointment has been made.

## 5. The Postponement of the Arbitration Process due to Recusal

In the event the recusal made by a party is not agreed by the other party and the arbitrator concerned does not resign so that the respective party files a recusal claim to the Chairman of Domestic Court, the Arbitration Tribunal may postpone the arbitration proceedings.

## **Article 13. Replacement of an Arbitrator**

### 1. Death or Disability

In the event of the death or the disability of an arbitrator, during the course of the arbitral proceedings, a substitute arbitrator shall be appointed pursuant to the procedure stated in article 11 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 functions, 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 12 shall apply.

### 4. Repetition of Proceedings

If based on Articles 12, 13 (1), or 13 (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 it 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 (6) may be extended.

## **CHAPTER V**

### **Arbitration Proceedings**

#### **Article 14. 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 the examination and passing of resolutions on the dispute in question. Before and during the proceeding period the Tribunal may make a legitimate effort to encourage amicable resolution of dispute 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 (6).

##### **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 Arbitration Tribunal or the sole arbitrator may conduct the arbitration in any such manner as it considers appropriate, provided that the parties are treated equally and that at any stage of the proceedings each party is given a fair and equal opportunity of presenting its case.

### 4. Place of Hearings

Hearings shall be conducted at a place determined by BANI and the agreement of the parties but may also be at another place if the Tribunal deems necessary 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 place, including over the internet, if the Tribunal deems appropriate.

## **Article 15. 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 Arbitration Tribunal or the sole arbitrator, taking into consideration the situation (such as the existence of foreign parties and/or foreign arbitrators who cannot speak the Indonesian language, 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 entitled 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 determines, 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 Arbitration Tribunal or the sole arbitrator.

## 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 Arbitration Tribunal or the sole arbitrator.

## **Article 16. Applicable Law**

### **1. Governing Law**

The law governing 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 governing law, the parties shall be free to choose 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 17. Statement of Claim**

1. Except if the Claimant has made its statement of claim in its request for arbitration as referred to in article 6, the request for arbitration which includes Statement of Claim submitted to BANI shall be distributed to each member of the Tribunal and to the other party (or parties) within 14 (fourteen) days since the establishment of the composition of the Arbitration Tribunal or the sole arbitrator or any other time determined by the Arbitration Tribunal or the sole arbitrator.

### **2. Conditions**

The Statement of Claim shall contain at least:

a. A statement of the facts supporting the claim;

- b. Legal basis or arguments supporting the claim; and
  - c. The relief or remedy sought.
3. Either party may amend or supplement his claim or counterclaim unless the Arbitration Tribunal or the sole arbitrator 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.
4. Documentation

The Claimant shall attach 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 attach 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 18. Statement of Defense**

### **1. Submission**

Where the Claimant submitted its statement of claim after the establishment of the composition of the Arbitration Tribunal as referred to Article 17 paragraph (1), the statement of defence of the Respondent shall be submitted to the Arbitration Tribunal within a period of not longer than 14 (fourteen) days since the Respondent received the statement of claim.

### **2. Conditions**

The Respondent shall, in its Statement of Defence, address the matters enumerated under (b) and (c) of Article 17 paragraph (2) (b) and (c) above. The Respondent may also attach to its Statement the documents on which it relies for its defence 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 Defence or at the latest at 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 17 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 determined 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 main 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 arbitration proceedings 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 response to the

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

## **Article 19. 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 Arbitration Tribunal or the sole arbitrator shall have the power to determine the existence or validity of an agreement in which the arbitration clause constitutes a part. For the purposes of these Rules, 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 Defence or, with respect to a counter-claim or set off arising in connection with the dispute in the response to the counter-claim or set off.

### 4. Interim Award

Normally, the Arbitration Tribunal or the sole arbitrator 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 20. Process of Proceedings**

### 1. Procedural Hearing

After receipt of the submissions, the Arbitration Tribunal or the sole arbitrator 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. The Arbitration Tribunal or the sole arbitrator shall draw up Terms of Reference to be signed by the Arbitration Tribunal or the sole arbitrator 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 Arbitration Tribunal or the sole arbitrator, 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 arbitration

claim 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 Arbitration Tribunal or the sole arbitrator shall have the authority to make any provisional award or other interlocutory decisions 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 Arbitration Tribunal or the sole arbitrator shall be entitled to require security for the costs of any such measures.

6. Sanctions

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

## **Article 21. Effort to Seek Amicable Resolution**

1. Amicable Resolution

The Arbitration Tribunal or the sole arbitrator shall first endeavor to encourage the parties to reach an amicable settlement either on their own or with assistance of an independent third party mediators/conciliators or with the assistance of the Arbitration Tribunal or the sole arbitrator if it is agreed upon by the parties.

2. Award on Amicable Agreement

If such a settlement can be reached, the Arbitration Tribunal or the sole arbitrator shall prepare an arbitration decision of such settlement, which decision 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 Arbitration Tribunal or the sole arbitrator.

3. Failure to Resolve Amicably

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

**Article 22. Default in Appearance**

1. Failure of Claimant

In case the Claimant fails and/or does not come to the first session conducted by the Arbitration Tribunal or the sole arbitrator without a legitimate reason, then the Arbitration Tribunal or the sole arbitrator 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 Arbitration Tribunal or the sole arbitrator 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 Arbitration Tribunal or the sole arbitrator 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 legitimate reason, the Tribunal may decide and make its award based upon the documents and evidence which have been submitted by the Claimant.

## **Article 23. 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 Arbitration Tribunal or the sole arbitrator 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 Arbitration Tribunal or the sole arbitrator 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 Arbitration Tribunal or the sole arbitrator shall not be required to consider any additional submissions other than those which it has ruled to be appropriate.

## **Article 24. 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 Arbitration Tribunal or the sole arbitrator may, if it considers it appropriate, require the parties either to address any enquiry or present any documentation The Arbitration Tribunal or the sole arbitrator 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 Arbitration Tribunal or the sole arbitrator shall deem appropriate

3. Weight of Evidences

The Arbitration Tribunal or the sole arbitrator shall determine the admissibility, relevance, materiality and weight of the evidence offered

4. Witnesses and/or Experts

If the Arbitration Tribunal or the sole arbitrator considers it necessary, and/or at the request of either party, the expert or witnesses as to facts may be summoned. Before any hearing, the Arbitration Tribunal or the sole arbitrator may require any party to give notice of the identity of witnesses, including the expert, whom it intends to produce, the subject matter of their testimony and its relevance to the issues in writing.

The Arbitration Tribunal or the sole arbitrator 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 and/or Experts

The party requesting the summons of a witness or the expert must pay in advance all of the cost related to the presence of the witness or the expert. For this purpose, the Arbitration Tribunal or the sole arbitrator may request such payment to be deposited to BANI.

6. Oath

Before giving their testimonies, the witnesses or expert witnesses may be requested to take an oath.

7. Conclusion of Proceedings

If the submission of exhibits, testimonies and proceedings are considered adequate by the Arbitration Tribunal or the sole arbitrator, the proceeding on the dispute shall be closed by the Chairman of the Arbitration Tribunal or by the sole arbitrator

who subsequently may designate a session for the final award announcement.

8. Reopening of Proceedings.

The Arbitration Tribunal or the sole arbitrator may, if it considers it necessary owing to exceptional circumstances, decide, on its own motion or upon application of a party, to reopen the proceedings at any time before the award is made.

## **Article 25. Revocation of Arbitration**

1. Revocation of Arbitration

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 Arbitration Tribunal or the sole arbitrator, 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 an award by the Arbitration Tribunal or the sole arbitrator.

2. Deletion of Arbitration

The Board is entitled to delete the request for arbitration if the administrative fee, the arbitration cost and the arbitrator's fee have not been paid. Such deletion shall be notified to the parties.

3. Refund of Administrative Fee, the Arbitration Cost and the Arbitrators' Fee

The refund of payment of administrative fee, the arbitration cost and the arbitrators' fee is subject to the provisions of article 36 of these Rules.

## **CHAPTER VI**

### **The Award**

#### **Article 26. Final Award**

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

#### **Article 27. Other Awards**

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

#### **Article 28. 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 29. 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 30. 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 31. 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 32. 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 33. 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 Arbitration Tribunal or the sole arbitrator, 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 34. 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 35. Correction of Errors**

1. Within not more than 14 (fourteen) days after receipt of the Award, the parties may submit a request to BANI for the Arbitration Tribunal or the sole arbitrator, 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.
2. The Arbitration Tribunal or the sole arbitrator, may correct any administrative errors in the award on its own initiative within 14 (fourteen) days of the date of the award is read.
3. The administrative errors are any clerical or typographical error or any error of a similar nature and/or arithmetic errors.

### **Article 36. The Costs of Arbitration**

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

### **Article 38. Allocation of Arbitration Costs**

The Arbitration Tribunal or the sole arbitrator 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 39. 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.

### **Article 40. Exclusion of Liability**

1. BANI, including the Board, the Secretariat, including the Board of BANI's Representatives and BANI's arbitrators, shall not be liable to any person for any negligence, act or omission in connection with any arbitration governed by these Rules.
2. BANI, including the Board, the Secretariat, including the Board of BANI's Representatives and BANI's arbitrators, shall not be under any obligation to make any statement in connection with any arbitration governed by these Rules.

### **Article 41 Exemption to Act As Witness or Expert at BANI Arbitration**

1. No party shall seek to make the Chairman, vice-chairmen, the Secretary-General, officers, employees or any arbitrator act as a

witness or expert in any legal proceedings in connection with any BANI arbitration governed by these Rules.

2. No party, the arbitration tribunal or the sole arbitrator shall seek to make any BANI arbitrator act as a witness or expert in any legal proceedings in connection with any BANI arbitration governed by these Rules.

#### **Article 42. Decisions of the Board**

The decisions of the Board with respect to all matters relating to an arbitration shall be binding upon the parties.

# BINDING OPINION & ARBITRATION CLAUSE

## Binding Opinion

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

They can ask 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 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

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 finally settled by arbitration under the administrative and procedural Rules of Badan Arbitrase Nasional Indonesia (BANI) by arbitrators appointed in accordance with said Rules, which decision shall bind the parties and serve as a decision in the first and final instance”.***