

SECTION 2

RULES OF ARBITRATION

I. General Provisions

1. Subject to these Rules, the Sole Arbitrator/ Panel of Arbitrators/ Appeal Board may conduct the proceedings in such a manner as they consider appropriate provided that the parties are treated with equality and that at any stage of the proceedings each party is given full opportunity to present its case.
2. If either party so requests at any stage of the proceedings, the Sole Arbitrator/ Panel of Arbitrators/ Appeal Board shall hold hearings for the presentation of evidence by witnesses including expert witnesses or for oral argument. In the absence of such a request the Sole Arbitrator/ Panel of Arbitrators/ Appeal Board shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.
3. All documents or information to be submitted by either party shall be submitted by the respective parties to PORAM in quintuplicate whereupon PORAM shall despatch one copy each to the other party, Sole Arbitrator/each member of the Panel of Arbitrators or Appeal Board, as the case may be.
4. Documents dispatched by PORAM are deemed to have been delivered if they are delivered to the addressee personally or if delivered at the party's place of business, habitual residence or mailing address/ office. If these places referred cannot be found after making a reasonable inquiry, a written communication is deemed to have been received if they are sent to the addressee's last known place of business, habitual residence or mailing address or registered address/ office by way of registered post or any other means which provides a record of the attempt to deliver it.

II. Language

1. Unless otherwise agreed the language to be used in all proceedings shall be English.
2. The Sole Arbitrator/ Panel of Arbitrators/ Appeal Board may order that any documents submitted in the course of the proceedings in their original language, shall be accompanied by a certified translation into English, the language of the proceedings.

III. Time

Where an act is required to be done within or not less than a specified period after or from a specified date, the period begins the day immediately after that date.

IV. Procedure

1. i) Upon receipt of notice from PORAM on the appointment of the Sole Arbitrator/ Panel of Arbitrators/Appeal Board, the Claimant shall, within fourteen (14) calendar days, submit to PORAM a statement of claim, along with a copy of the contract and of the arbitration agreement if not contained in the contract.
- ii) The statement of claim shall include the following:-
 - a) The names and addresses of the parties to the dispute,
 - b) In the event of a String Arbitration, the names and addresses of all parties involved in the String Arbitration,
 - c) A statement of the facts supporting the claim,
 - d) The points at issue, and
 - e) The relief or remedy sought.

The Claimant may annex to their statement of claim all documents they deem relevant or may add a reference to the documents or other evidence they will submit.

- iii) At the same time the Claimant shall indicate whether they require an oral hearing. If an oral hearing is required they shall also submit a provisional list of witnesses/experts they intend to call and a summary of the evidence to be adduced from the testimony of such witnesses/experts. The parties shall be given a notice of twenty one (21) days upon receipt of notice by the parties.
2. i) The Respondent shall, within fourteen (14) calendar days of the receipt from PORAM of the statement of claim, submit, in writing, their statement of defence.
- ii) The Respondent may annex to their statement of defence the documents on which they rely for their defence or may add a reference to the documents or other evidence they will submit.
- iii) In their statement of defence the Respondent may make a counter-claim arising out of the same contract or rely on a claim arising out of the same contract for the purpose of a set-off.
- iv) The provisions relating to the information to be included in the statement of claim shall also apply to such counter-claim, if any.
- v) At the same time the Respondent shall indicate whether they require an oral hearing. If an oral hearing is required, they shall also submit a provisional list of witnesses/ experts they intend to call and a summary of the evidence to be adduced from the testimony of such witnesses/ experts.

3.
 - i) Upon receipt of the statement of defence from the Respondent, PORAM shall forward a copy to the Claimant immediately. The Claimant may, within seven (7) calendar days of receipt of the statement of defence, submit a reply to PORAM. If such a reply is received, PORAM shall forward a copy to the Respondent who shall have another seven (7) calendar days from the receipt of such reply to submit their own further reply, if any. If the Respondent chooses to submit such further reply, a copy shall also be forwarded by PORAM to the Claimant, but further submissions shall be at the discretion of the Sole Arbitrator/Panel of Arbitrators/Appeal Board.
 - ii) During the course of the arbitral proceedings either party may amend or supplement its claim or defence unless the Sole Arbitrator/Panel of Arbitrators/ Appeal Board considers it inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other party or any other circumstances. However, a claim may not be amended in such a manner that the amended claim falls outside the scope of the arbitration clause of the contract or separate arbitration agreement, as the case may be.
4.
 - i) If the Claimant and/or the Respondent have indicated that they require an oral hearing, the Sole Arbitrator/Panel of Arbitrators/ Appeal Board shall fix the date and place for the hearing.
 - ii) It shall be the responsibility of the Claimant and Respondent to arrange for the appearance of their witnesses/ experts during the oral hearing.
 - iii) The parties shall be given a notice of the oral hearing by PORAM, and such a date shall be a minimum twenty one (21) days upon receipt of notice by the parties.
5. If oral hearing is not required by any of the parties, the Sole Arbitrator/Panel of Arbitrators/Appeal Board may take appropriate action for an oral hearing or proceed without one as they deem fit. If the Sole Arbitrator/Panel of Arbitrators/Appeal Board decide that an oral hearing is not warranted they shall proceed to deliberate as they deem fit.
6. **Disclosure and Challenge Procedure**
 - i) An arbitrator, once appointed or nominated, shall immediately in writing disclose circumstances likely to give rise to justifiable doubts as to his/her impartiality or independence, unless he/she has already informed in writing of these circumstances in the Acceptance Form (Appendix II of PORAM Rules of Arbitration and Appeal).
 - ii) An Arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the Arbitrator's impartiality or independence. A party may challenge the Arbitrator nominated by him/her only for reasons of which he/she becomes aware after the appointment has been made.

- iii) A party who intends to challenge an Arbitrator shall send a notice giving reasons for the challenge to the Tribunal, if it has been fully constituted, and to PORAM within fifteen (15) days after being notified of the appointment of the Arbitrator, or within fifteen (15) days after the circumstances giving rise to the challenge became known to that party.
- iv) Upon receipt of a challenge, PORAM shall notify the other party/parties and the Arbitral Tribunal of the challenge. When an Arbitrator has been challenged by one party, the other party may agree to the challenge and if there is agreement, the Arbitrator shall withdraw. The challenged Arbitrator may also withdraw in the absence of such agreement. In neither case does this imply acceptance of the validity of the grounds for the challenge.
- v) If the party does not agree to the challenge or the challenged Arbitrator does not withdraw, the Arbitral Tribunal, shall decide on the merits of the challenge after the PORAM Secretariat has afforded the opportunity for the parties to comment in writing within a suitable period of time. Such Comments shall be communicated to all parties including the Tribunal.
- vi) If a challenge before the Arbitral Tribunal is unsuccessful, the aggrieved party may, within thirty (30) days after receiving notice of the decision rejecting the challenge, apply to the High Court to decide on the challenge. No appeal shall lie against the decision of the Court.
- vii) While an application to the High Court in Malaysia is pending, arbitral proceeding should not be stayed until the Court decides on the challenge.

V. Hearing

1. The parties to the dispute shall not have present or be represented by legal counsel or solicitors or any members of the legal profession principally engaged in private practice at the hearing as the objective of these Rules is to settle trade disputes by people who are in some ways directly connected with the respective trades or related matters.
2. The hearing of the arbitration shall be opened by the recording of the oaths by the parties, witnesses/experts, and the recording of the place, time and date of hearing, the presence of the Arbitrator(s), the parties, witnesses and other persons, if any. If any witnesses/experts are introduced at a later stage of the hearing their oaths shall be recorded before their evidence is heard.
3. i) The Claimant shall present their case and the Respondent shall present their defence at times indicated by the Sole Arbitrator/Panel of Arbitrators/Appeal Board. The witnesses/ experts may be introduced by the parties, as they deem fit, with the permission of the Sole Arbitrator or the Chairman of the meeting.

- ii) The Sole Arbitrator/Panel of Arbitrators/Appeal Board may examine or cross-examine the parties and any of their witnesses/experts at any time during the proceedings.
4. The Sole Arbitrator/Panel of Arbitrators/Appeal Board may receive and consider the evidence of witnesses/experts by affidavit and may give it such weight as they deem fit after considering any objections made to its submission.
 5. The Sole Arbitrator/Panel of Arbitrators/Appeal Board shall decide what further written statements or other evidence shall be required from the parties or may be presented by them and shall fix the periods of time for communicating such information.
 6. The Claimant shall have the right to request for termination of the arbitration proceedings at any time before the issuance of an Award subject to the payment of such costs/fees as may be awarded by the Sole Arbitrator/Panel of Arbitrators/Appeal Board as actually incurred upto the date of notice of termination.
 7. At the request of any party, the Sole Arbitrator/Panel of Arbitrators/Appeal Board may take any interim measures they deem necessary in respect of the subject matter of the dispute including measures for the conservation, preservation, detention and inspection of the goods forming the subject matter of the dispute, such as ordering their deposit with a third person or the sale of perishable goods. Such interim measures may be established in the form of an interim Award. The Sole Arbitrator/Panel of Arbitrators/Appeal Board shall be entitled to require security for the costs of such measures. A request for interim measure by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate or as a waiver of that agreement.
 8. The Sole Arbitrator/Panel of Arbitrators/Appeal Board may, if they consider it necessary owing to exceptional circumstances, decide on their own or upon application of any party to conduct further hearings at any time before the Award is made.
 9. The String Respondents may opt to attend the hearing and may make submissions at the hearing.

VI. Failure to Comply

1. If, within the period of time fixed by the Sole Arbitrator/Panel of Arbitrators/Appeal Board, the Claimant have failed to communicate their claim without showing sufficient cause for such failure, the Sole Arbitrator/Panel of Arbitrators/Appeal Board shall issue an order for the termination of the arbitral proceedings. If within the period of time fixed by the Sole Arbitrator/Panel of Arbitrators/Appeal Board, the Respondent have failed to communicate their statement of defence without showing sufficient cause for such failure, the Sole Arbitrator/Panel of Arbitrators/Appeal Board shall order the proceedings continue.

2. If one of the parties, duly notified under these Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the Sole Arbitrator/Panel of Arbitrators/ Appeal Board may proceed with the hearing and the arbitration proceedings.

If one of the parties, duly requested to produce documentary evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the Sole Arbitrator/Panel of Arbitrators/Appeal Board may make the Award on the evidence before them.

VII. String Arbitrations

In the event of a String Arbitration:

1. PORAM shall forward to the String Respondents copies of the statement of claim, statement of defence and other submissions and communications received from or sent to the Claimant and Respondent.
2. The String Respondents shall, within seven (7) calendar days of receiving from PORAM the notice of commencement of arbitration proceedings, submit to PORAM copies of their purchase and sale contracts relating to the dispute.
3. Upon receiving any documents or other communications from PORAM, the String Respondents may make their own submissions for consideration by the Arbitrators.
4. All the String Respondents shall be deemed to be parties to the dispute and the Award.

VIII. Waiver of Rights

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

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