



# EFFECTIVE WAYS TO CREATE AN ARBITRATION CENTRE: CHALLENGES AND OPPORTUNITIES FOR COOPERATION

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# THE DICHOTOMIC ROLE OF ARBITRAL INSTITUTIONS

- Mainstream view: arbitration services provider
- Modern view: serving the public interests

# ARBITRATION INSTITUTE AS SERVICES PROVIDER: KEY ELEMENTS

- Location and facilities
- Time and cost-efficiency
- Up-to-date and efficient Rules
- Independence

# ARBITRATION INSTITUTE: PUBLIC ROLE

- Capacity building
- Education
- Collaboration between institutions

# COMPETITION V COOPERATION

- ❑ **Competition** is inevitable, but **should be limited** to a 'services provider market'
- ❑ **Public role** performance requires **collective efforts**

# EFFECTIVE ARBITRAL INSTITUTION

- ❑ **At the equilibrium point:** being a services provider and serving the public
- ❑ Operating in a **flexible legislative framework**
- ❑ **Supported by judiciary**

# BUILDING AN EFFECTIVE ARBITRAL INSTITUTION: MALAYSIAN PERSPECTIVE

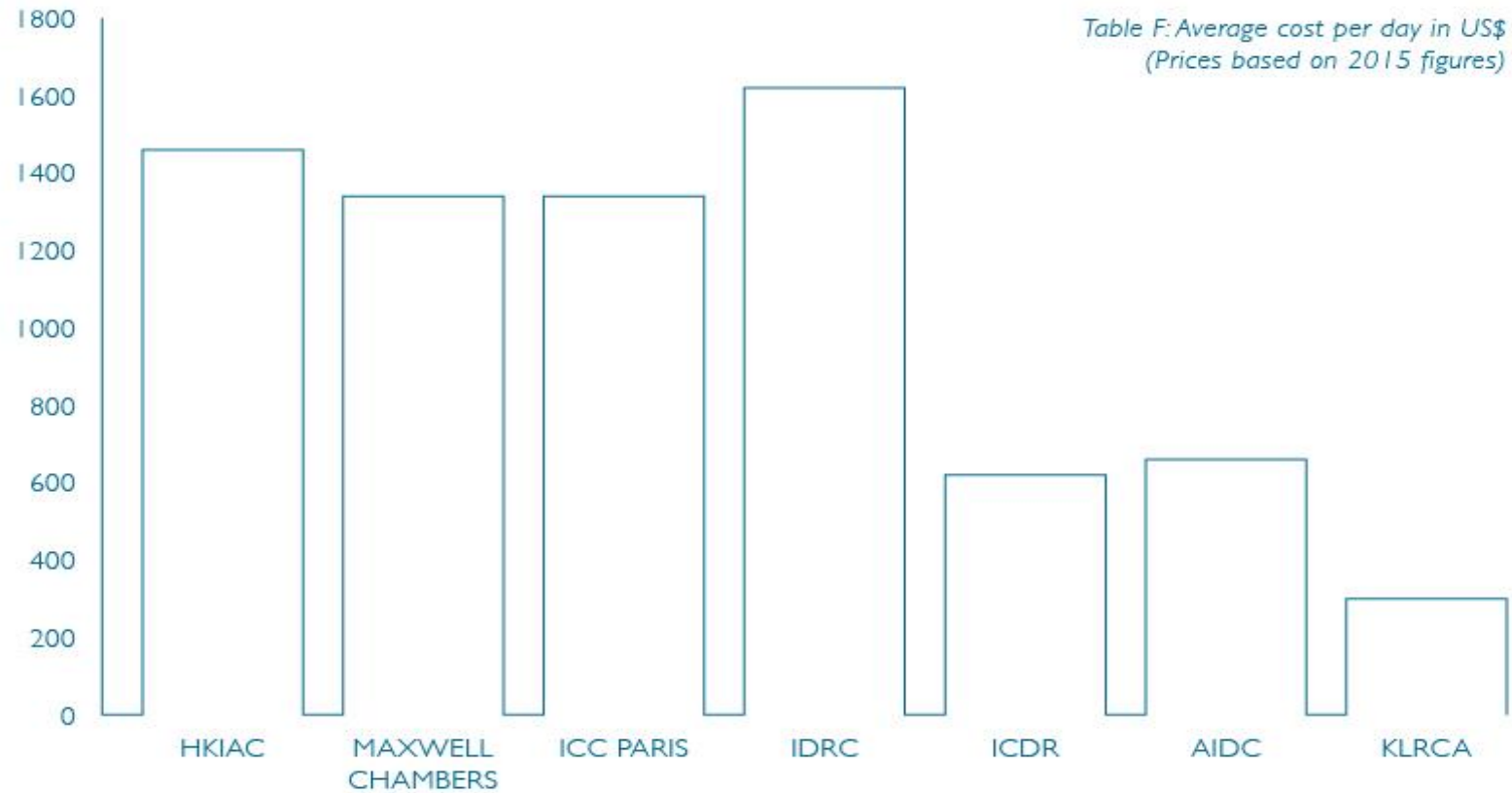
- ❑ KLRCA is focused not only on administration of arbitration proceedings, but, more importantly, on capacity building, dispute avoidance and holistic dispute management
- ❑ Arbitration Act 2005 is based on the UNCITRAL Model Law and is currently undergoing amendment process to implement the latest revision of the UNCITRAL Model Law and the regional best practices (e.g. confidentiality)
- ❑ Malaysian judiciary shows support to arbitration as such and the KLRCA is often asked to provide *amicus curiae* in the arbitration-related proceedings
- ❑ A dedicated training on application of the UNCITRAL Model Law will be organised for Malaysian judiciary in 2018

# KLIRCA AS SERVICES PROVIDER

- ❑ KLIRCA is strategically located and offers state-of-the art facilities at the best rates in the region
- ❑ KLIRCA is the most time and cost-efficient arbitration institute in the region
- ❑ In 2017, the KLIRCA Arbitration Rules were revised and tailored to the needs of the market, currently KLIRCA Fast-Track Arbitration Rules and Mediation Rules are undergoing revision process
- ❑ KLIRCA is a non-for-profit non-governmental organisation established in 1978 under the auspices of the Asian-African Legal Consultative Organization (AALCO), originally known as Asian-African Legal Consultative Committee, pursuant to the host country agreement



# KLRCA'S FACILITIES: A SURVEY BY GAR

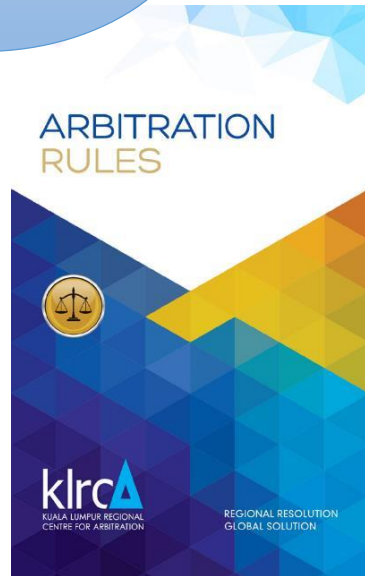


## THE MOST TIME AND COST-EFFICIENT ARBITRATION CENTRE IN THE REGION

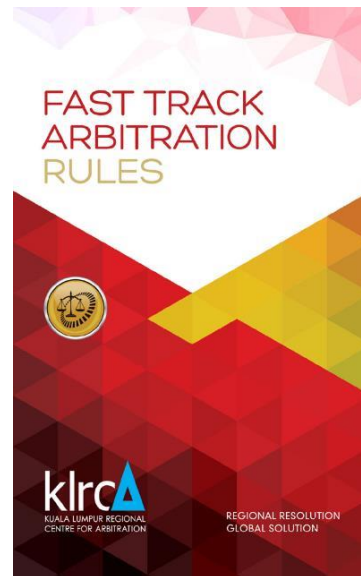
- Average time for completion of arbitration proceedings is **10.24 months**, making it one of the most time efficient arbitral institutions in the world. Fast Track Arbitrations provide for arbitrations more expedient (180 days). Average time for completion of adjudication is **3 months**.
- The average total cost for international arbitrations registered and concluded during the Analysis period (both sole arbitrator and 3 member tribunals) was **USD53,059.96**.
- Broken down, Arbitrators' fees on average (per arbitrator) was **USD42,708.94**, while the KLRCA's average administration fees was **USD10,351.02**. (This is **considerably cheaper** than the average costs of the 3 leading institutions in the world).
- The 2017 Rules contain a Schedule for both Administration and Arbitrators fees (by scale), dependent on the total value of the claim.
- Administration fees are only dependent on the total claim, and not the number of arbitrators appointed.

The Rules will soon be known as the **AIAC Rules**

# KLRCCA's RULES



KLRCCA Arbitration Rules  
(as revised in 2017)



KLRCCA Fast Track Arbitration  
Rules  
(undergoing revision)



KLRCCA  
Mediation Rules 2013  
(undergoing revision)



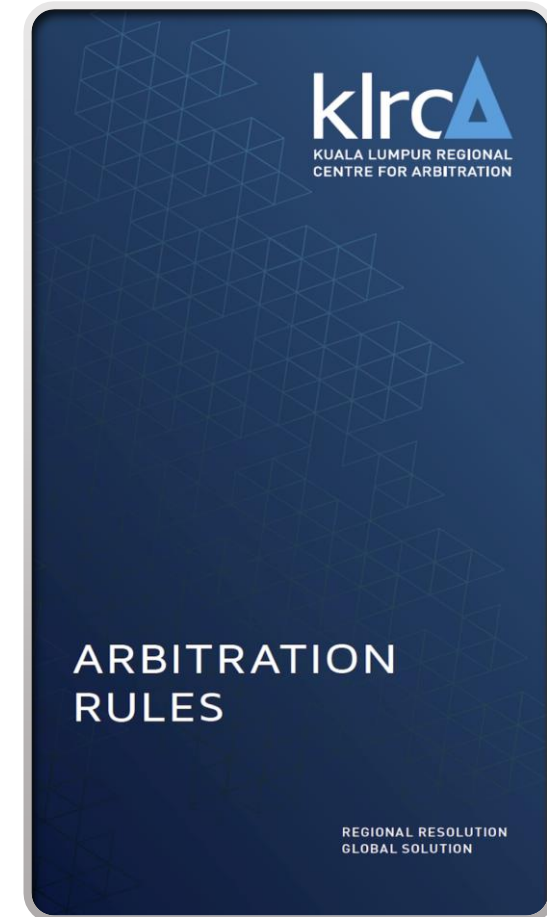
KLRCCA i-Arbitration  
Rules  
(as revised in 2017)



The rules are translated and available in **8 languages**: English, Bahasa Malay, Bahasa Indonesia, Arabic, Spanish, Korean, Russian and Mandarin

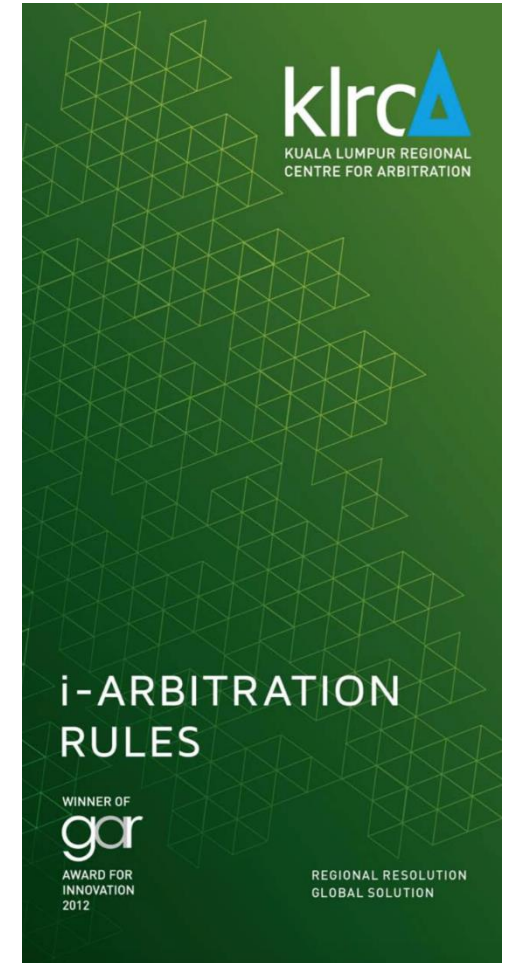
# 2017 KLRCA ARBITRATION RULES

- ❑ Innovation and improvements
- ❑ Effective, efficient and fair process
- ❑ Model arbitration clause
- ❑ Model submission agreement
- ❑ Commencement of arbitration
- ❑ Joinder of parties
- ❑ Director's power to consolidate
- ❑ Technical review of awards

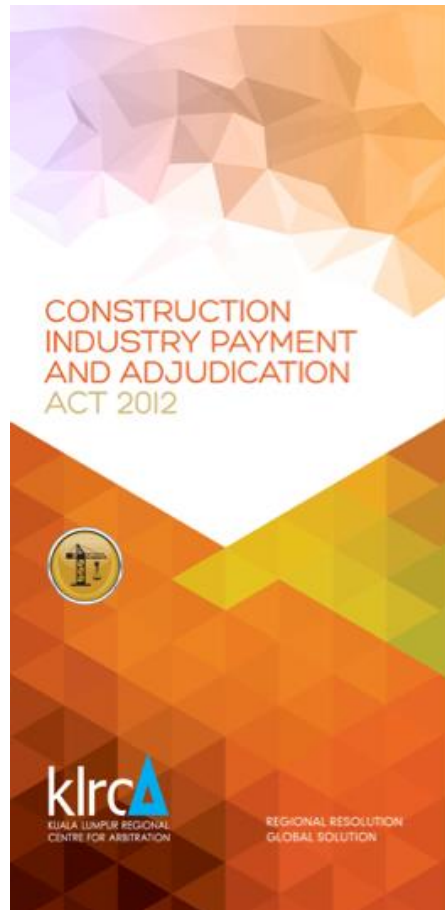


# 2017 KLRCA I-ARBITRATION RULES

- Innovation and improvements
- Effective, efficient and fair process
- Model arbitration clause
- Model submission agreement
- Commencement of arbitration
- Joinder of parties
- Director's power to consolidate
- Technical review of awards
- For commercial transactions premised on Islamic principles
- Reference procedure to a Shariah Advisory Council expert



## KLIRCA AND CONSTRUCTION INDUSTRY PAYMENT AND ADJUDICATION ACT (CIPAA) 2012



- ❑ KLIRCA played an instrumental role in CIPAA 2012 to establish an advanced mechanism for resolution of payment disputes arising out of construction contracts
- ❑ KLIRCA is designated as the adjudication authority responsible for appointment, setting competency standards, determination of fees and complete administrative support for conduct of adjudication
- ❑ Adjudication provides a fast and effective remedy for domestic and international parties for payment related disputes in the construction industry where the site is located in Malaysia

# SPORTS ARBITRATION & DEVELOPMENTS IN KLRCA

**KLRCA is a CAS recognised alternative hearing venue, which is the only one of its kind in South East Asia**

**The KLRCA was the official dispute resolution body for all sporting disputes arising out of the South East Asian Games 2017**

**Two training courses have been conducted since 2016. Qualifying persons were considered as potential arbitrators for the South East Asian Games**

**KLRCA is undertaking initiatives to amend the Sports Development Act to establish an independent Malaysian Sports Tribunal for the resolutions of sporting disputes  
Sports Law Association of Malaysia has been set up to promote this initiative**

# PUBLIC ROLE OF KLRCA

- Holistic dispute management: Standard Form of Contracts
- Capacity building and collaboration with a particular focus on the 'Belt and Road' Region
- Education
  - Young Practitioners Group
  - Asian Institute of ADR



# KLIRCA'S STANDARD FORM OF BUILDING CONTRACTS

- ❑ KLIRCA is the first arbitral institution in the world to launch its own suite of standard form contracts that are customizable and freely available for print and download
- ❑ It was inspired by the prevalent issues plaguing the Malaysian construction industry, aimed at filling the gaps of existing standard form building contracts in governing relationships, rights and duties of parties to a building construction project
- ❑ It is user-friendly, incorporates Plain English Drafting, and includes clearer provisions to guide users in interpreting the contract
- ❑ KLIRCA's SFC is Malaysia's first ever CIPAA-compliant suite of building contracts and contains more mechanisms for parties to resolve disputes and deadlocks including mediation, encouraging parties to continue work despite disputes, while preserving parties' rights till completion
- ❑ The hallmark of KLIRCA's SFC is continuity of works and working relationships
- ❑ New suite of SFCs will be launched in 2018



# REVIVAL, REBRANDING AND TRANSFORMATION OF KLRCA

- In 2018, the Centre will officially be rebranded from the Kuala Lumpur Regional Centre for Arbitration (KLRCA) to the **Asian International Arbitration Centre (AIAC)**
- The new name, AIAC, was recently tabled in Parliament, after obtaining approval from the Asian African Legal Consultative Organisation (AALCO) and conducting a series of thorough consultation with key stakeholders and authorities
- The change of name is driven by the Centre's plans to enhance its positioning on the market and strengthen its cooperation with other jurisdictions such as the Bahamas



KUALA LUMPUR REGIONAL  
CENTRE FOR ARBITRATION

# MAJOR INITIATIVES UNDERTAKEN - BELT AND ROAD FOCUS

- ❑ Malaysia positioned as a strategic and geographic ally to play a crucial role in Belt and Road
- ❑ KLRCA has collaborated with various institutions across the world including leading arbitral institutions in China to provide dispute resolution to stakeholders
- ❑ Collaboration with institutions in key regions including Beijing, Shanghai, Hainan and other provinces in China (BAC, CIETAC, Hainan)
- ❑ Facility sharing agreement and capacity building initiatives to disseminate education, specialist education with courses
- ❑ Signing ceremony for strategic alliance between BAC, Cairo Arbitration Centre and KLRCA held on 9th May 2017
- ❑ KLIAW 2017 – KLRCA's event of the year with focus on OBOR disputes, arbitration developments in Asia, dedicated sessions for business stakeholders (simultaneous translation in Mandarin) all with a focus on facilitating ADR for the region

# NURTURING THE FUTURE LEADERS IN ADR: INITIATIVES FOR STUDENT AND YOUNG PRACTITIONERS

- ❑ Launched the Young Practitioners Group with a focus on building capacity for young students and practitioners
- ❑ Entered into an agreement with University of Malaya for capacity building and other internship opportunities
- ❑ Many talks and workshops held for YPG members with **over 650** members already enrolled
- ❑ Proposal to hold the first ever international arbitration conference for students in the year 2018 in line with 40 years celebration
- ❑ Willem C Vis Pre Moot: more than **60 teams registered** for the second edition

## ASIAN INSTITUTE OF ADR

- To provide affordable and accessible ADR education for all stakeholders of the economy in resolving disputes and seeing projects and investments through;
- A wide range of educational and training courses aimed at equipping practitioners and non-practitioners alike for the Asian and African ways of conducting business and resolving consequential disputes
- Career counselling for our younger members
- Anticipated exposure to emerging markets such as the Bahamas via branches and chapters arrangements

# CLOSER LOOK AT THE BAHAMAS

- ❑ Highly competitive market
- ❑ The Bahamas advantages:
  - ❑ Strategic location;
  - ❑ Legislation based on the UNCITRAL Model Law and supported by judiciary
  - ❑ Major initiatives undertaken to promote arbitration in the region and globally

# CONCLUSION AND TAKE-AWAYS

- ❑ Development of a successful arbitral institution is never a homogenous process
- ❑ The regional needs and niche businesses should be identified
- ❑ To succeed the arbitral institution should effectively perform both roles that of a services provider and that of a public institution
- ❑ Focus on capacity building and collaboration instead of taking a “one versus all” stance



# THANK YOU



ASIAN INTERNATIONAL ARBITRATION CENTRE  
*(Formerly known as KLRCA)*



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