

**RULE OF THE INDONESIA CAPITAL MARKET ARBITRATION BOARD**

**NUMBER: PER-01/BAPMI/05.2016**

**CONCERNING**

**FIRST AMENDMENT TO THE RULE OF THE INDONESIA CAPITAL MARKET**

**ARBITRATION BOARD NUMBER: 04/BAPMI/12.2014 ON ARBITRATION**

**RULES AND PROCEDURES DATED 19<sup>TH</sup> DECEMBER 2014**

MANAGEMENT OF THE INDONESIA CAPITAL MARKET ARBITRATION BOARD

- Considering : a. that rules and procedures of the Indonesian Capital Market Arbitration Board (*Badan Arbitrase Pasar Modal Indonesia*, hereinafter referred to as "**BAPMI**") for arbitration services have been regulated under BAPMI's Rule Number 04/BAPMI/12.2014 on Arbitration Rules and Procedures dated 19<sup>th</sup> December 2014 ("**BAPMI's Arbitration Rules of and Procedures**");
- b. that BAPMI's Arbitration Rules and Procedures need to be subject to a legal review to ensure that such Rules and Procedures are in line with the international arbitration principles and practices.

In view of : 1. BAPMI's Articles of Association as set forth in the Deed of Establishment Number 15 dated 9<sup>th</sup> August 2002 drawn up before Mrs. Fathiah Helmi, S.H., Notary Public in Jakarta, as approved by the Minister of Justice and Human Rights of the Republic of Indonesia under the Decree Number C-2620 HT 01.03.TH 2002, dated 29<sup>th</sup> August 2002, and published in the State Gazette of the Republic of Indonesia dated 18<sup>th</sup> October 2002, Number 84/2002, Supplement to the State Gazette Number 5/PN/2002;

2. Deed Number 50 of BAPMI's Articles of Association (Amendment), drawn up before Notary Public Fathiah Helmi, Notary Public in Jakarta dated 19<sup>th</sup> November 2014, particularly Article 9 paragraph (3) item (e);

3. BAPMI's Rule Number 04/BAPMI/12.2014 concerning Arbitration Rules and Procedures dated 19<sup>th</sup> December 2014;

4. Legal review of BAPMI's Arbitration Rules and Procedures made by the legal consultant;

5. Resolution of the Management Meeting dated  
18<sup>th</sup> December 2015.

**DECIDED:**

**To stipulate : First Amendment to Arbitration Rules and  
Procedures of BAPMI.**

**Article 1** : To supplement a new provision in Article 3 of  
BAPMI's Arbitration Rules and Procedures under  
paragraph (8) as follows:

**Article 3**

(8) In the following, a written Arbitration  
Agreement is considered to exist:

(a) if an arbitration agreement is made  
through the electronic system in  
accordance with the provisions of the  
ITE Law;

(b) if the Petitioner argues that there is  
an agreement to have an arbitration  
proceeding in the Petition for  
Arbitration and the Respondent does  
not refute the argument in the Reply.

**Article 2** : To amend Article 11 paragraph (1) of BAPMI's Arbitration Rules and Procedures as follows:

**Article 11**

(1) In the event of any dispute arising to be heard and decided by an Arbitral Tribunal, any of the Parties shall be given an opportunity to appoint an Arbitrator. Furthermore, the Parties are also entitled to reach an agreement on appointment of the third Arbitrator within a maximum period of fourteen (14) days from the appointment of the two (2) Arbitrators. If no agreement is reached, the procedure for appointment of the third Arbitrator as referred to in paragraph (5) shall apply.

**Article 3** : To repeal the provisions of Article 24 paragraph (1) of BAPMI's Arbitration Rules and Procedures.

**Article 4** : To amend Article 29 paragraph (2) of BAPMI's Arbitration Rules and Procedures as follows:

### **Article 29**

(2) If the Respondent submits a Reply with respect to BAPMI's absolute competence, such exception may be submitted separately from the Reply with respect to the merits of the case.

**Article 5** : To amend Article 32 paragraph (8) of BAPMI's Arbitration Rules and Procedures as follows:

### **Article 32**

(8) The Petitioner is given an opportunity to first present witnesses (factual and/or expert witnesses), unless otherwise specified by the Sole Arbitrator/ Arbitral Tribunal, without any objection from the Respondent. In the event that the Respondent submits an exception of competence, the Respondent is given an opportunity to first present witnesses (factual and/or expert witnesses) with regard to the exception of competence, unless otherwise specified by the Sole Arbitrator/ Arbitral Tribunal, without any objection from the Petitioner.

**Article 6** : To supplement a new provision in Article 32 of BAPMI's Arbitration Rules and Procedures under paragraph (13) as follows:

**Article 32**

(13) An Arbitral Tribunal may determine that hearing of witnesses (factual or expert witnesses) may be done through means of telecommunication that does not require physical presence of the witnesses at the hearing, for example via video conferencing.

**Article 7** : To amend Article 33 paragraph (2) of BAPMI's Arbitration Rules and Procedures as follows:

**Article 33**

(2) As is the case with correspondence in an arbitration proceeding, Conclusion of each Party shall be submitted through the Secretary to the Sole Arbitrator/ Arbitral Tribunal and the Opposing Party.

**Article 8** : To change the heading of Article 38 of BAPMI's Arbitration Rules and Procedures as follows:

**Article 38**

**Correction and Interpretation of  
Arbitration Award**

**Article 9** : To amend Article 38 paragraph (2) of BAPMI's Arbitration Rules and Procedures as follows:

**Article 38**

(2) The phrase "corrections of administrative errors" as referred to in paragraph 1 shall be corrections of things such as miscalculation (computation errors), clerical and typographical errors (typo errors) in writing of name, address of the Parties or Arbitrator(s) and other similar errors, which do not change the substance of an Arbitration Award.

**Article 10** : To supplement a new provision in Article 38 of BAPMI's Arbitration Rules and Procedures under paragraph (5) as follows:

**Article 38**

(5) If agreed upon by the Parties, each Party, upon notice to the other, may request the Sole Arbitrator/ Arbitral Tribunal to

provide clarification or interpretation of any specific part of an Arbitration Award. If the Sole Arbitrator/ Arbitral Tribunal considers the request is reasonable, the Sole Arbitrator/ Arbitral Tribunal will provide the interpretation within a maximum period of thirty (30) days from the date of receipt of such request. The interpretation shall constitute part of the Arbitration Award and can be re-pronounced in a proceeding or sufficiently communicated to the Parties by correspondence.

**Article 11 : Transitional Provisions:** If at the time the First Amendment to BAPMI's Arbitration Rules and Procedures comes into force there is an ongoing hearing of Arbitration, the hearing of the case shall be further held according to BAPMI's Arbitration Rules and Procedures as amended by this First Amendment.

**Article 12 : Final Provisions:** The First Amendment to BAPMI's Arbitration Rules and Procedures shall come into force as of the date of stipulation.

Stipulated in Jakarta

On 31<sup>st</sup> May 2016

**MANAGEMENT OF  
THE INDONESIA CAPITAL MARKET ARBITRATION BOARD**

**Bacelius Ruru**

Chairman

**Felix Oentoeng Soebagjo**

Secretary General