

Appendix 1

<u>Subject matter</u>	<u>ICC Rules</u>	<u>MIA Rules</u>	<u>PAM Rules</u>	<u>UNCITRAL Rules (To be Read with KLRCA Rules)</u>	<u>LCIA Arbitration Rules</u>	<u>Arbitration Act 2005</u>
<p>A. Governing the Arbitration and the Arbitrator</p> <p>1. The Regulatory, Administrative and Enforcement authority.</p>	International Court of Arbitration of ICC, a well recognized international body (“International Court”)	President of the Malaysian Institute of Arbitrators, but much is still to be referred to the Malaysia High Court.	Institute of Architects, but much is still to be referred to the Malaysia High Court.	Kuala Lumpur Regional Centre for Arbitration	Court of the LCIA	The High Court (with the exception of Section 10)
<p>2. Appointing Authority if parties fail to agree or do not nominate</p>	International Court decides using list of well recognised and reputable international arbitrators	President decides using list of local arbitrators but with recognized qualifications and training.	President of the Institute decides but choice is limited and level of experience may be doubtful.	Parties to agree on the Appointing Authority. If no agreement, KLRCA will act as appointing Authority who will appoint the arbitrator from KLRCA’s Panel of Arbitrators.	Parties to agree on arbitrator or appointing body (subject to LCIA Court’s refusal). LCIA Court as Appointing Authority if no/late nomination.	Either party may apply to Director of the KLRCA for the appointment of an arbitrator
<p>3. Challenges on the arbitrator(s)</p>	International Court, but reference to Malaysian High Court is possible.	Malaysia High Court, only on issues of misconduct or lack of impartiality gauged by	Malaysian High Court, only on issues of misconduct or lack of impartiality. gauged by	The Appointing Authority	LCIA Court	Before the Arbitral Tribunal itself, followed by a right to appeal to HC if

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		standards placed by Court.	the extremely high standards contained in 2 sets of guidelines attached to the Rules.			unsuccessful. Only on 3 specific grounds, i.e. doubts as to impartiality, independence and missing qualifications.
4. Seat of Arbitration (if not determined)	-	-	-	-	Subject to parties' agreement, failing which the seat shall be London.	The Arbitral Tribunal to decide having regard to the circumstance of the case, including convenience of parties
5. If agreement silent on number of arbitrators.	International Court can determined if its to be a sole arbitrator or a 3 man Arbitral Tribunal depending on complexity of the dispute.	Deemed Sole Arbitrator.	Deemed Sole Arbitrator.	Deemed 3 arbitrators.	Deemed Sole Arbitrator	Deemed 3 arbitrators in an international arbitration. (1 in domestic arbitration)
6. The Independence criteria for Arbitrator appointed by Appointing Authority.	Normal independence requirements but extends to independence from nationality or residence of parties in dispute.	Normal Independence requirement.	Extensive independence requirements by virtue of 2 sets of guidelines attached to the Rules but not extending to independence of nationality or residence.	Normal independence requirements.	Normal independence requirement	Normal independence requirement.
7. Supply of vacancy due	International Court	Original appointment procedures used for	Malaysian High Court .	Original appointment procedures used for	LCIA Court. Complete	Original Appointment Procedure used For

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to death or non fulfillment of duties by arbitrator.		supply of vacancy.		supply of vacancy.	discretion whether to use original process	Supply of Vacancy
B. Arbitrator's Powers						
8. Challenge on jurisdiction by way of challenge on arbitration agreement or clause.	International Court - but doubtful under Malaysian Law	Arbitrator(s) - but doubtful under Malaysian Law.	Arbitrator(s) - but doubtful under Malaysian Law	Arbitral Tribunal	Arbitral Tribunal	Arbitral Tribunal
9. Challenge on validity, legality or existence of contract.	Arbitral Tribunal - applying principle that arbitration clause is collateral to contract.	Arbitrator(s)	Arbitrator(s)	Arbitral Tribunal	Arbitral Tribunal	Arbitral Tribunal
10. No choice of substantive law.	Arbitral Tribunal (No method prescribed)	Malaysian High Court .	Malaysian High Court	Arbitral Tribunal	Arbitral Tribunal	Arbitral Tribunal (shall apply the law determined by the conflict of laws rules)
11. Interim Preservation Orders such as Mareva Orders, etc.	i. Arbitral Tribunal ii. Malaysian High Court (parties' option although for	i. Arbitral Tribunal (including directing payment into Court or MIA if dispute is on fund) ii. Malaysian High	Malaysian High Court.	Arbitral Tribunal	Arbitral Tribunal	- High Court (wider options including Mareva injunction) - Arbitral Tribunal

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	enforcement, High Court is more effective)	Court				(more limited options available)
12. Security for cost.	i. Arbitral Tribunal (but effective only if peremptory order is made). ii. Malaysian High Court	i. Arbitral Tribunal ii. Malaysian High Court	Malaysian High Court	Arbitral Tribunal	Arbitral Tribunal	i. High Court ii. Arbitral Tribunal
13. Peremptory orders to ensure adherence to directions.	Arbitral Tribunal	Arbitral Tribunal	Arbitral Tribunal	Arbitral Tribunal	Arbitral Tribunal	Arbitral Tribunal
14. Other specified powers (if not specified some of these powers do not exist).	<ul style="list-style-type: none"> Protective orders for confidential information and trade secrets. Proceeding ex-parte. 'Documents only' determination if sufficient and parties do not ask 	<ul style="list-style-type: none"> Striking out/dismissal for want of prosecution. Summary judgment or security of entire sum claimed where defense is suspect or doubtful. Joinder of parties with 	<ul style="list-style-type: none"> Striking out/dismissal for want of prosecution Rectification of contract. Open up and revise any binding certificate opinion, decision, requirement or notice. 	<ul style="list-style-type: none"> Interim measures of protection for preservation of goods. To decide as amiable compositeur (i.e. dispense with strict law and decide in accordance with natural 	<ul style="list-style-type: none"> To allow amendment of cause papers. To extend or abbreviate any time limit to conduct enquiries as appear necessary to order 	<ul style="list-style-type: none"> Determine the admissibility, relevance, materiality and weight of any evidence Draw on its own knowledge and expertise Order the provision of further particulars

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	for hearing.	<p>consent of all parties</p> <ul style="list-style-type: none"> • Determination of preliminary issues or points of law • Declaratory Orders • Rectification of Contract. • Power to determine res judicata or sub judice. • Proceeding ex-parte. • Can rely on own knowledge and expertise. 	<ul style="list-style-type: none"> • Proceeding ex-parte • ‘Documents only’ • Determination if sufficient and parties do not ask for hearing. 	<p>equity.)</p> <ul style="list-style-type: none"> • Proceeding ex-parte 	<p>inspection of property, site or thing</p> <ul style="list-style-type: none"> • to order production of documents etc • to decide whether to apply any strict rule of evidence • to order rectification of contract which is deemed necessary • to order joinder of party 	<ul style="list-style-type: none"> • Security of costs • Fix and amend time limits within which various steps must be completed • Order discovery and production of documents • Interrogatories • Order evidence be given on oath or affirmation • Make such other orders as the arbitral tribunal considers appropriate
<p>C. Pre-Award Procedure</p> <p>15. Flexibility.</p>	Only where ICC Rules do not cover procedures or Arbitral	Parties’ agreement on procedure takes precedence.	Parties’ agreement on procedure takes precedence.	Parties to agree otherwise presiding arbitrator decides.	Parties’ agreement take precedence, provided it is	Parties’ agreement on procedure takes precedence subject to

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	Tribunal fixes.				consistent with the Arbitral Tribunal's general duties at all times	the fundamental principles of fairness
16. Place of Arbitration.	If contract silent and parties do not agree, country determined by International Court and exact location by Arbitral Tribunal.	If contract silent and parties do not agree, then Arbitral Tribunal determines country and exact location with preference to Arbitration Centre of the Institute.	(i) Deemed Malaysia (ii) PAM Arbitration Centre unless parties agree not convenient	Parties to agree, failing which Arbitral Tribunal will decide.	Arbitral Tribunal to decide.	Parties to agree, failing which Arbitral Tribunal will decide
17. Pleadings	I. Lodged along with initial notice on arbitration and responses lodged before appointment of Arbitral Tribunal. II. Arbitral Tribunal can ask for more details if necessary	Lodged after Arbitral tribunal's directions at preliminary meeting or direction by written notice.	Lodged after Arbitral Tribunal's direction at preliminary meeting.	Lodged after Arbitral Tribunal's directions.		-
18. Lodging of Written Submissions and Legal case before hearing.	Normally done unless decided not necessary.	Only done at the end of hearing	Arbitral Tribunal can decide but normally done at the end of hearing.	Arbitral Tribunal can decide just before hearing is closed.	-	-

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19. External Adviser to Arbitrator.	Arbitral Tribunal can appoint expert without consent of parties.	Arbitral Tribunal can appoint:- i. expert and /or legal adviser without consent of parties. ii. Assessor with consent of parties (parties to have right to comment or challenge).	Arbitral Tribunal can appoint experts with consent of the parties. (parties to have right to comment or challenge).	Arbitral Tribunal can appoint expert without consent of parties	Arbitral Tribunal can appoint expert unless objected to by parties	Arbitral Tribunal can appoint one or more experts unless objected to by parties
20. Other unusual procedures adoptable by Arbitral Tribunal as part of procedure.		<ul style="list-style-type: none"> • Arbitral Tribunal can limit the number of experts produced. • Can order sample or experiment to be carried out. • Can split the issues and hear them separately. • Can have inquisitorial proceedings or any modified procedure • Discovery-not to apply limits 		<ul style="list-style-type: none"> • Post-award, parties can request Arbitral Tribunal to make additional award on claims presented on the proceedings but omitted from the award. 	-	-

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		based on relevancy or admissibility except for legal privilege.				
D. <u>Award and Finality</u>						
21. Type of Award	Reasoned Award	Reasoned Award	Unless agreed otherwise by parties, reasoned award.	Unless agreed otherwise by parties, reasoned award.	Unless agreed by parties, must be reasoned award.	Unless agreed by parties, must be reasoned award.
22. Scrutiny of Award Before Published	International Court <ul style="list-style-type: none"> Determine appropriate form. Draw attention of Arbitral Tribunal on points of substance. 	-	-	-	-	-
23. Internal Challenge Procedure	<ul style="list-style-type: none"> Correction of clerical, computation or typographical errors (to be approved by International Court). Interpretation 	<ul style="list-style-type: none"> Correction of clerical, computation or typographical errors Interpretation of award Additional matters referred but 	<ul style="list-style-type: none"> Correction of clerical, computation or typographical errors Interpretation of award Additional matters referred but 	<ul style="list-style-type: none"> Correction of clerical, computation or typographical errors Interpretation of award 	<ul style="list-style-type: none"> Correction of computational error, clerical or typographical errors make additional award as to claims 	<ul style="list-style-type: none"> Correction of computational error, clerical or typographical errors or any errors of similar nature Interpretation of award

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	of award (to be approved by International Court).	not covered by Award.	not covered by Award.		presented but not determined in arbitration	<ul style="list-style-type: none"> To make an additional award as to the claims
24. Finality	<p>Waiver of Recourse on the Award</p> <ul style="list-style-type: none"> doubtful whether enforceable in Malaysia Malaysian High Court can remit or set aside for errors of law on face of award or technical misconduct. 	Malaysian High Court can remit or set aside for errors of law on face of award or technical misconduct.	Malaysian High Court can remit or set aside for errors of law on face of award or technical misconduct.	Right to seek setting aside of award by Court is very limited.	Subject to right to appeal or review due to mandatory provisions of any applicable law	<ul style="list-style-type: none"> Limited right to challenge the arbitral award for international arbitration (if they do not opt in) Greater right to challenge the arbitral award for domestic arbitration (if parties do not opt out)
E. <u>Time Prescribed</u>						
25. Time Frame Prescribed for Pleadings.	<ul style="list-style-type: none"> Statement of claim forwarded with notice for arbitration. 30 days for 	<ul style="list-style-type: none"> Only after Preliminary Meeting (no fixed time frame for meeting) 30 day from 	<ul style="list-style-type: none"> Only after Preliminary Meeting (no fixed time frame for meeting) 6 weeks from 	<ul style="list-style-type: none"> Statement of claim forwarded with notice for arbitration or after 	<ul style="list-style-type: none"> Statement of Case to be forwarded to the Registrar within 30 days of receipt of 	-

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	<p>Response with Statement of Defence and Counterclaim</p> <ul style="list-style-type: none"> • 30 days for Replies or Defence if necessary. <p>(secretariat of International Court can extend time)</p>	<p>Preliminary Meeting for Statement of Claim.</p> <ul style="list-style-type: none"> • 30 days for Statement of Defence/ Counterclaim. • 30 days for Statement of Defence or Replies 	<p>Preliminary Meeting for Statement of Claim.</p> <ul style="list-style-type: none"> • 6 weeks for Statement of Defence and Counterclaim. • 4 weeks for statement of Defence or Replies 	<p>directions.</p> <ul style="list-style-type: none"> • Defence after directions. • Reply – Arbitral Tribunal can decide if required and timeframe for lodgment but must complete all within 45 days. • Tribunal may extend time. 	<p>written notification from the Registrar of the formation of Arbitral Tribunal</p> <ul style="list-style-type: none"> • Statement of Defence to be forwarded to Registrar within 30 days of receipt of the Statement of Case • If there is counterclaim, Statement of Reply to Counterclaim to be forwarded to Registrar within 30 days of receipt of the Statement of Defence. • Tribunal may extend time 	
26. Appointment of Arbitral	<ul style="list-style-type: none"> • Done at same time as 24 	<ul style="list-style-type: none"> • Done before Preliminary 	<ul style="list-style-type: none"> • Done before Preliminary 	<ul style="list-style-type: none"> • Done before Preliminary 	-	-

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Tribunal	above	Meeting <ul style="list-style-type: none"> • 21 days from nomination by one party (or failure to nominate), if not agreed, refer to President. 	Meeting	Meeting		
27. Challenge on Arbitrators	<ul style="list-style-type: none"> • Within 30 days of notification of appointment. 	<ul style="list-style-type: none"> • Within 7 days of notification of appointment 	<ul style="list-style-type: none"> • No time limits 	<ul style="list-style-type: none"> • Within 15 days of notification of appointment. 	<ul style="list-style-type: none"> • Within 15 days of the formation of the Arbitral Tribunal 	<ul style="list-style-type: none"> • Within 15 days after becoming aware of the constitution of the arbitral tribunal or grounds of challenge
28. Time to conclude all matters and render Award After Arbitral Tribunal Appointed.	<ul style="list-style-type: none"> • 2 months for terms of reference to be drawn up, agreed and executed. • 6 months from execution of terms of reference for the award. • International Court to decide on extending the 	<ul style="list-style-type: none"> • No time frames. 	<ul style="list-style-type: none"> • No time frames 	<ul style="list-style-type: none"> • No time frames 	<ul style="list-style-type: none"> • No Time Frames 	<ul style="list-style-type: none"> • No Time Frames

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	<ul style="list-style-type: none"> time. Malaysian High Court can enlarge time as well. 					
F. Cost. 29. Initial Deposit	<ul style="list-style-type: none"> Claimant to forward US\$2,500.00 with request or reference. Secretary General of ICC can require Claimant to pay provisional sum. 	<ul style="list-style-type: none"> Claimant to deposit RM5,000.00 with reference or request. Respondent has 2 weeks to deposit RM5,000.00 or Claimant must deposit this portion as well. 	<ul style="list-style-type: none"> Initial deposit by each party of RM5,000.00. 	<ul style="list-style-type: none"> To be fixed by Arbitral Tribunal (Scale provided). 	<ul style="list-style-type: none"> To be fixed by Arbitral Tribunal 	-
30. Cost	<ul style="list-style-type: none"> Sum in dispute is to take into account, Claimed sum and Counterclaim sum as if they were 2 separate claims. 	<ul style="list-style-type: none"> Time Cost. 	<ul style="list-style-type: none"> RM300.00 per hour time cost. 	<ul style="list-style-type: none"> Exhaustive list of costs to be included within the costs order is set out. Arbitral Tribunal must consult Appointing Authority for scheduled of fees. 	<ul style="list-style-type: none"> The fee rates shall be within the range of £150 to £350 per hour (in exceptional case, may be higher or lower) The Tribunal shall agree in writing upon fee rates 	<ul style="list-style-type: none"> Unless otherwise agreed by parties, costs and expenses shall in at the discretion of arbitral tribunal arbitral tribunal to specify the amount of costs and

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					<p>conforming to this Schedule of Fees and Costs.</p> <ul style="list-style-type: none"> The rates will be advised by the Registrar to the parties at the time of the appointment. 	<p>expenses within 30 days of having been requested to do so, failing which the party can apply to High Court for the costs to be taxed.</p>
	<ul style="list-style-type: none"> Very high because in US\$ If general damages the International Court determines the sum for fee Depends on Sum in dispute for Arbitrator's Fees and for Administration Cost. Scale enclosed. 	<ul style="list-style-type: none"> Administration Levy Out of Pocket expenses and traveling. Within a range of Fees the President to decide. 	<ul style="list-style-type: none"> Meetings are charged at 4 hour rate. Hearings are charges at 8 hour rate. Administrative Fees is 7.5% Arbitrator's Fees. 			