

[CIAC RESOLUTION NO. 10-2005, November 19, 2005]

APPROVING THE REVISED RULES OF PROCEDURE GOVERNING CONSTRUCTION ARBITRATION

WHEREAS, the Construction Industry Arbitration Commission (CIAC), pursuant to its rule-making power granted by Executive Order No. 1008, promulgated the first Rules of Procedures Governing Construction (the "Rules") in August 1988;

WHEREAS, over the years, the Rules have been amended several times to address on an *ad hoc* basis the particular problems which the CIAC had during those times encountered in the administration of construction arbitration, the last amendments of which were made in August 2002;

WHEREAS, the previous amendments covered a vast range of concerns, from the filing of a case to the appointment of arbitrators, conduct of hearings, rendition of arbitral award, and execution/enforcement of arbitral awards, and other interim matters occurring in between the entire gamut of the arbitration process down to post award procedures were also considered;

WHEREAS, the Rules have been in effect for about 17 years and certain developments have occurred since then in the field of alternative dispute resolution such as the passage of the Republic Act No. 9285 or the Alternative Dispute Resolution Act of 2004 which affirmed CIACs jurisdiction over disputes arising from construction contracts entered into by the parties in the Philippines, and the need to align with international practices, as far as practicable;

WHEREAS, the CIAC, responding to these developments, has created a Committee on the Revision of the CIAC Rules (the "Committee") composed of distinguished personalities in the field of ADR, headed by Prof. Alfredo F. Tadiar, incumbent legal counsel of CIAC and Chairman of the Philippine Judicial Academy's ADR Department, with the following members: Dean Custodio O. Parlade, Of counsel to Parlade, Hildawa, Parlade and Eco Law Office and former legal counsel also of CIAC; Atty. Victor P. Lazatin, incumbent President of PICA and a Senior Partner of the ACCRA Law Offices; Mr. Joven B. Joaquin, CEO of Adrian Wilson International Associates and President of ADR Management, Inc.; and Engr. Joel J. Marciano, President of Telecommunications and Computer Technologies, Inc.;

WHEREAS, the Committee, after meeting and deliberating on the revisions from August to November 2005, in close consultation with the CIAC, has finally completed the Revised Rules of Procedures Governing Construction Arbitration (the "Revised Rules") attached as Annex "A" hereof which shall form part of this Resolution;

WHEREAS, the Committee has recommended to CIAC the Revised Rules for its consideration and approval;

WHEREAS, the CIAC, during its Special Meeting held on November 19, 2005 has thoroughly reviewed the Revised Rules and finds the same to be in conformity with the direction it has provided to the Committee;

WHEREAS, Sections 6 and 21 of Executive Order No. 1008 empowers the Construction Industry Arbitration Commission (CIAC) " to enunciate policies and prescribe rules and procedures for construction arbitration" and "to formulate necessary rules and procedures for construction arbitration"

NOW, THEREFORE, we the undersigned Commissioners by virtue of the powers vested in us by law do hereby resolve as it is hereby resolved to APPROVE the REVISED RULES OF PROCEDURES GOVERNING CONSTRUCTION ARBITRATION which shall govern all arbitration proceedings conducted under the auspices of CIAC upon its effectivity.

UNANIMOUSLY APPROVED.

Adopted: 19 Nov. 2005

THE COMMISSION

(SGD.) SEDFREY A. ORDONEZ
Chairman

(SGD.) ISAAC S. DAVID
Member

(SGD.) SAMSON C. LAZO
Member

REVISED RULES OF PROCEDURE
GOVERNING CONSTRUCTION ARBITRATION

RULE 1
POLICY AND OBJECTIVES

SECTION 1.1. Statement of Policy and Objectives - It is the policy and objective of these Rules to provide a fair and expeditious resolution of construction disputes as an alternative to judicial proceedings, which may restore the disrupted harmonious and friendly relationships between or among the parties.

SECTION 1.2 Applicability of rules - These Rules are applicable to proceedings in arbitration before an Arbitral Tribunal of one or more Arbitrator/s.

SECTION 1.3 Judicial rules not controlling - In any arbitration proceedings under these Rules, the judicial rules of evidence need not be controlling, and it is the spirit and intention of these Rules to ascertain the facts in each case by every and all reasonable means without regard to technicalities of law or procedure.

RULE 2
JURISDICTION

SECTION 2.1 Jurisdiction - The CIAC shall have original and exclusive jurisdiction over construction disputes, which arose from, or is connected with contracts entered into by parties involved in construction in the Philippines whether the dispute arose before or after the completion of the contract, or after the abandonment or breach thereof. These disputes may involve government or private contracts.^[1]

2.1.1 The jurisdiction of the CIAC may include but is not limited to violation of specifications for materials and workmanship; violation of the terms of agreement; interpretation and/or application of contractual provisions; amount of damages and penalties; commencement time and delays; maintenance and defects; payment default or employer or contractor and changes in contract cost.^[2]

SECTION 2.2 Coverage - Construction dispute shall include those between or among parties to, or who are otherwise bound by, an arbitration agreement, directly or by reference, whether such parties are project owner, contractor, subcontractor, fabricator, project manager, design professional, consultant, quantity surveyor, bondsman or issuer of an insurance policy in a construction project. ^[3]

2.2.1 The CIAC shall continue to exercise original and exclusive jurisdiction over construction disputes although the arbitration is commercial pursuant to Section 21 of R.A. 9285 or the Alternative Dispute Resolution Act of 2004.

2.2.2 Excluded from the coverage of this Rules are disputes arising from employer-employee relationships, which shall continue to be covered by the Labor Code of the Philippines.

SECTION 2.3 Condition for exercise of jurisdiction - For the CIAC to acquire jurisdiction, the parties to a dispute must be bound by an arbitration agreement in their contract or subsequently agree to submit the same to voluntary arbitration.

SECTION 2.4 Jurisdictional challenge - A motion to dismiss based on lack of jurisdiction shall be resolved by the appointed arbitral tribunal.

SECTION 2.5 Non-Waiver of jurisdictional challenge - A party does not waive its right to challenge the jurisdiction of CIAC by any of the following acts:

- a. participating in the nomination process including challenging the qualifications of a nominee;
- b. praying for extension of time to file appropriate pleading/motion to dismiss;
- c. opposing an application for interim relief;
- d. filing of motion to dismiss/suspend;

RULE 3

REQUEST FOR ARBITRATION/COMPLAINT

SECTION 3.1 Filing - Any party to a construction contract desiring to avail of arbitration shall file its Request for Arbitration in the prescribed form and number of copies to the Secretariat of the CIAC.

SECTION 3.2 Preconditions - The claimant against the government, in a government construction contract, shall state in the complaint/request for arbitration that (1) all administrative remedies have been exhausted, or (2) there is unreasonable delay in acting upon the claim by the government office or officer to whom appeal is made, or (3) due to the application for interim relief, exhaustion of administrative remedies is not practicable.

3.2.1 The Claimant in a private construction contract has the same obligation as the above to show similar good faith compliance will all preconditions imposed therein or exemptions therefrom.

3.2.2 In case of non-compliance with the precondition contractually imposed, absent a showing of justifiable reasons, exemption, or a waiver thereof, the tribunal shall suspend arbitration proceedings pending compliance therewith within a reasonable period directed by the Tribunal.

SECTION 3.3 Request to answer - The CIAC Secretariat shall within three (3) days from filing, transmit to the Respondent a request for his Answer, attaching thereto a copy of the complaint and the Request for Arbitration together with the annexed documents

SECTION 3.4 Commencement of Arbitral Proceedings - The date when the Request for Arbitration is filed with CIAC shall, for all intents and purposes, be deemed to be the date of commencement of the proceedings.

RULE 4

EFFECT OF AGREEMENT TO ARBITRATE

SECTION 4.1 Submission to CIAC jurisdiction - An arbitration clause in a construction contract or a submission to arbitration of a construction dispute shall be deemed an agreement to submit an existing or future controversy to CIAC jurisdiction, notwithstanding the reference to a different arbitration institution or arbitral body in such contract or submission.^[4]

4.1.1. When a contract contains a clause for the submission of a future controversy to arbitration, it is not necessary for the parties to enter into a submission agreement before the Claimant may invoke the jurisdiction of CIAC.

4.1.2 An arbitration agreement or a submission to arbitration shall be in writing, but it need not be signed by the parties, as long as the intent is clear that the parties agree to submit a present or future controversy arising from a construction contract to arbitration.

It may be in the form of exchange of letters sent by post or by telefax, telexes, telegrams, electronic mail or any other mode of communication.

SECTION 4.2 Failure or refusal to arbitrate - Where the jurisdiction of CIAC is properly invoked by the filing of a Request for Arbitration in accordance with these Rules, the failure despite due notice which amounts to a refusal of the Respondent to arbitrate, shall not stay the proceedings notwithstanding the absence or lack of participation of the Respondent. In such case, CIAC shall appoint the arbitrator/s in accordance with these Rules. Arbitration proceedings shall continue, and the award shall be made after receiving the evidence of the Claimant.

4.2.1 In the event that, before award, the Respondent who had not earlier questioned the jurisdiction of the Tribunal, appears and offers to present his evidence, the Arbitral Tribunal may, for reasons that justifies the failure to appear, reopen the

proceedings, require him to file his answer with or without counterclaims, pay the fees, where required under these Rules, and allow him to present his evidence, with limited right to cross examine witnesses already presented in the discretion of the Tribunal. Evidence already admitted shall remain. The Tribunal shall decide the effect of such controverting evidence presented by the Respondent on evidence already admitted prior to such belated appearance.

SECTION 4.3 When Arbitration cannot proceed - Where the contract between the parties does not provide for arbitration and the parties cannot agree to submit the dispute(s) to arbitration, the arbitration cannot proceed and the Claimant/s shall be informed of that fact.

RULE 5 ANSWER/COUNTERCLAIMS

SECTION 5.1 Time to Answer - The Respondent shall, within fifteen (15) days from receipt of the Request for Arbitration/Complaint, file its answer thereto including such counterclaim/s as it may assert. For justifiable reason/s, Respondent may apply to CIAC for an extension of time to file its answer. If Respondent fails to do so, the arbitration shall proceed in accordance with these Rules.

SECTION 5.2 Transmittal of answer - A copy of the answer shall be transmitted in sufficient copies to the Claimant and to CIAC.

SECTION 5.3 Reply to counterclaim - The Claimant shall file a reply to the counterclaim with CIAC and shall furnish the Respondent a copy thereof within fifteen (15) days from date of receipt of the answer with counterclaim.

RULE 6 SUBMISSION AND COMMUNICATIONS/NOTICES

SECTION 6.1 Number of copies - All pleadings and written statements submitted by the parties, as well as all documents attached thereto, shall be in sufficient copies to provide one copy for each party, plus one for each Arbitrator, and one for the Secretariat.

SECTION 6.2 Notices - Notifications or communications from the Secretariat and/or the Arbitrator(s) shall be validly made if they are delivered against receipt or forwarded by registered mail to the address or last known address of the party/ies for whom the same are intended as notified by the party/ies in question or by the other party/ies as appropriate.

6.2.1 Notification or communication shall be deemed to have been effected on the date when actually or constructively received.

RULE 7 CONFIDENTIALITY

SECTION 7.1 Confidentiality of proceedings - The arbitration proceedings shall be considered confidential and shall not be published except (i) with the consent of the parties, or (ii) when necessary in case resort to the Court is made under the Rules of Court. The term "arbitration proceedings" shall include communications to or from CIAC, the pleadings, applications and other papers filed with CIAC, sworn statements, documentary and testimonial evidence, reports and minutes taken of the proceedings, and other orders, decision, award or resolution issued by the Arbitrator(s).

SECTION 7.2 Violation of confidentiality - Any person who violates the immediately preceding confidentiality provision shall be subject to the following sanctions:

7.2.1 If the violator is a lawyer, administrative action or proceeding to be conducted by CIAC, with proper notice and hearing, for inhibition or prohibition from appearing as counsel for any party in any arbitration case before CIAC for a period not exceeding six (6) months; without prejudice to suspension or disbarment action before the Integrated Bar of the Philippines (IBP), at the instance of CIAC.

7.2.2 If the violator is a duly licensed and registered professional, administrative/disciplinary action before the Professional Regulation Commission (PRC), at the instance of CIAC.

RULE 8 QUALIFICATIONS OF ARBITRATORS

SECTION 8.1 General Qualification of arbitrators - The Arbitrators shall be men of distinction in whom the business sector and the government can have confidence. They shall be technically qualified to resolve any construction dispute expeditiously and equitably. The Arbitrators shall come from different professions. They may include engineers, architects, construction managers, engineering consultants, and businessmen familiar with the construction industry and lawyers who are experienced in construction disputes.

SECTION 8.2 The Arbitrators must be CIAC-accredited - Except as otherwise provided under Section 9.1.2 below, only CIAC-accredited arbitrators may be nominated by parties or by the first two arbitrators appointed as the third arbitrator of a Tribunal and appointed by CIAC as arbitrator. A replacement arbitrator shall likewise be a CIAC-accredited arbitrator.

SECTION 8.3 Arbitrators not permanent employees of CIAC - The Arbitrators shall render service only when called upon to arbitrate a construction dispute.

SECTION 8.4 Exemptions from civil liability for official acts - Arbitrators shall not be civilly liable for acts done in the performance of their official duties except in clear case of bad faith, malice or gross negligence as provided in Section 38 (1), Chapter 9, Book 1 of the Administrative Code of 1987.

Rule 9 NOMINATION AND APPOINTMENT OF ARBITRATORS

SECTION 9.1 Number of arbitrators - A Tribunal of one or three Arbitrators may be appointed to settle a dispute in accordance with the provisions hereunder.

9.1.1 The parties shall submit the name/s of not more than six (6) nominees from CIAC-accredited arbitrators in the order of their preference for appointment as arbitrators. The common nominee/s of the parties shall be appointed, subject to their availability and other considerations. Should there be no common nominee, CIAC shall return the lists of nominees to the parties and ask them to make an agreement on a common nominee/s within 48 hours.

9.1.2 If there is no such agreement on a common nominee, CIAC shall appoint one arbitrator from among the respective nominee/s of each party giving due consideration to their desired order of preference in so far as it may be accord with applicable CIAC policies. However, as an exception to this rule, CIAC may appoint to an Arbitral Tribunal, an arbitrator who is not CIAC accredited PROVIDED that the nominee: 1) is the parties' common nominee; 2) possesses the technical/legal competence to handle the construction dispute involved; and 3) has signified his availability/acceptance of his possible appointment.

9.1.3 In the absence of an agreement on the number of arbitrators, CIAC taking into consideration the complexities and intricacies of the dispute/s or the sum involved, has the option to appoint a Sole Arbitrator or an Arbitral Tribunal.

9.1.4 In case of multiple parties, whether as Claimant or as Respondent, including three (3) or more parties in the arbitration, where all parties are unable to agree to a method for constitution of the Tribunal within ten (10) days from notice, CIAC shall appoint the arbitrator/s.

SECTION 9.2 Sole Arbitrator - Where the parties have agreed that the dispute(s) shall be settled by a Sole Arbitrator, each party shall have the right to nominate six arbitrators. If any or both of the parties fail to submit the names of their nominees within the period/s prescribed by CIAC, a Sole Arbitrator shall be appointed by CIAC.

9.2.1 CIAC shall appoint as Sole Arbitrator the common nominee of the parties who is available and not be disqualified. In the absence of a common nominee or in cases where the common nominee is disqualified or is not available, CIAC may appoint a Sole Arbitrator or an Arbitral Tribunal. If CIAC decides to appoint a Sole Arbitrator, it may select an arbitrator who is not a nominee of any one of the parties and who is not disqualified and is available for appointment.

SECTION 9.3 Arbitral Tribunal - Where the parties agree that the dispute shall be resolved by an Arbitral Tribunal, each party shall have the right to nominate six arbitrators from the list of CIAC-accredited arbitrators. If there is no common nominee, CIAC shall choose and appoint, as members of the Tribunal, one arbitrator from the claimant's nominees and another arbitrator from respondent's nominees. The Third Arbitrator shall be selected by the two Arbitrators first chosen within fifteen (15) days from acceptance of their appointment. The three arbitrators shall decide from among themselves who will be the Chairman. In case of failure to agree on the third member within such period, CIAC shall, within fifteen (15) days thereafter, appoint the third member from its list of accredited arbitrators.

9.3.1 If there is a common nominee, CIAC shall appoint the nominee and one from each list submitted by the parties. The three arbitrators appointed shall designate their Chairman. If there are two common nominees, CIAC shall appoint them and the third member who shall be selected by the first two appointees within the period prescribed above. If there are three common nominees, all of them shall be appointed. The appointees shall designate their Chairman.

SECTION 9.4 Conditions for appointment of foreign arbitrator ^[5]. A foreign arbitrator not accredited by CIAC may be appointed as a co-arbitrator or chairperson of an arbitral tribunal for a construction dispute under the following conditions:

a. the dispute is a construction dispute in which one party is an international party^[6] , i.e. one whose place of business is outside the Philippines. For this purpose, the term international party shall not include a domestic subsidiary of such international party or a co-venturer in a joint venture with a party which has its place of business in the Philippines.

b. the foreign arbitrator to be appointed is not a national of the Philippines and is not of the same nationality as the international party in the dispute;

9.4.1 *Procedure for appointment of foreign arbitrator* - The foreign arbitrator must be nominated by the international party or is the common choice of the two CIAC-accredited arbitrators one of whom was nominated by the international party. The nomination must be accompanied by a resume or bio-data of the nominee relevant to qualifications as a construction arbitrator and a signed undertaking of the nominee to abide by CIAC arbitration rules and policies.

SECTION 9.5 Disqualification of or non-acceptance by nominees - If the nominee(s) of a party shall be disqualified or fail or refuse to accept the appointment, CIAC shall choose and appoint any qualified arbitrator who is willing to be so appointed.

SECTION 9.6 Challenge - An Arbitrator may be challenged by a party at any time after his appointment but before award upon the following grounds:

a. relationship by blood or marriage within the sixth degree of either party to the controversy, or to counsel within the fourth degree, computed according to the rules of civil law.

b. financial, fiduciary or other interest in the controversy.

c. partiality or bias,

d. incompetence, or professional misconduct.

A party may also request the inhibition of an arbitrator upon other just and valid reasons affecting independence, integrity, impartiality and interest.

9.6.1 A motion for inhibition or a request for the disqualification and replacement of an arbitrator shall be treated as a challenge.

9.6.2 The challenge, motion or request shall be in the form of a complaint under oath, stating distinctly and concisely the facts complained of, supported by affidavits, if any, of persons having personal knowledge of the facts therein alleged and shall be accompanied with copies of such documents as may substantiate said facts.

9.6.3 The arbitrator concerned shall be given by CIAC an opportunity to be heard. He may, without admitting the existence of the ground of the challenge, motion or request, choose to inhibit himself but his decision shall be subject to approval by CIAC.

9.6.4 In case the challenged arbitrator is allowed to inhibit himself or is removed, CIAC shall promptly appoint his replacement. If the arbitrator concerned is the third member of the Arbitral Tribunal, the first two members thereof shall select his replacement.

9.6.5 The decision of CIAC to retain or replace an arbitrator shall be final.

SECTION 9.6 Disqualification of mediator as arbitrator - An Arbitrator who acted as conciliator/mediator in a case previously brought before him for conciliation/mediation cannot act as arbitrator for the same case when brought to arbitration, unless both parties consent to his appointment in writing.

RULE 10 APPOINTMENT AND ACCEPTANCE OF ARBITRATORS

SECTION 10.1 Communication of appointments - The Secretariat shall communicate to the arbitrators their appointment.

SECTION 10.2 Disclosure by arbitrator of disqualification - Upon acceptance of his appointment, the Arbitrator shall disclose in writing to CIAC any circumstance likely to create in either party a presumption of bias or which he believes might disqualify him as an impartial Arbitrator. Such written disclosure shall be communicated to the parties immediately by the Secretariat. The purpose of such disclosure shall be to enable either party to investigate and ascertain whether there is a substantial legal basis to file a motion for inhibition of the arbitrator concerned or seek his replacement.

SECTION 10.3 Acceptance or refusal - The arbitrator must communicate to CIAC the acceptance or refusal of his/her appointment within five (5) days from receipt thereof. If no communication is received within the prescribed period, CIAC shall appoint a replacement.

SECTION 10.4 Vacancies - If any Arbitrator should resign, be incapacitated, refuse or be unable, or be disqualified for any reason to perform the duties of his office, CIAC may, within five (5) days from the occurrence of a vacancy or refusal/inability to accept appointment, appoint a substitute(s) to be chosen.

RULE 11 PRELIMINARY CONFERENCE/TERMS OF REFERENCE

SECTION 11.1 - Notice of Conference - The Arbitrator/Arbitral Tribunal shall set the case for preliminary conference not later than 15 days after appointment of arbitrator(s) and a notice to the parties thereof shall forthwith be sent to finalize the Terms of Reference as provided in RULE IX below, a draft copy of which is attached thereto and to consider the following among others:

- a. possibility of amicable settlement;
- b. necessity or desirability of amendments to pleadings;
- c. obtaining stipulations or admission of facts and/or documents to avoid unnecessary proof;
- d. limitation of the number of witnesses;
- e. suggested formulation of issues by the parties;
- f. application for interim relief, appointment of experts and necessity of site inspection; and
- g. such other matters as may aid in the just and speedy disposition of the case.

SECTION 11.2 Introduction of the arbitrators - At the start of the preliminary conference, the arbitrator/s shall introduce themselves to the parties paying particular attention to matters related to professional training and experience.

SECTION 11.3 Disclosure - During the preliminary conference the Arbitrator who had failed to make his or her written disclosure required in the previous section shall disclose any circumstance likely to give rise to justifiable doubts as to impartiality or independence, including financial or personal interest in the outcome of the arbitration and any existing or past relationships with any individual or corporate party together with their respective relatives or principal stockholders/officers or foreseeable participant in the proceedings. On the basis of such disclosure, either party may ask clarificatory questions thereon that may lead to a decision to move for inhibition or accept the appointment.

SECTION 11.4 Terms of Reference - This document functions like a pre-trial order in judicial proceedings and controls the arbitration proceedings unless corrected for manifest errors by motion filed not later than the hearing date.

11.4.1 *Contents* - The TOR shall include the following particulars:

- a. the full names of the parties, and their respective counsels, if any;
- b. the addresses and contact numbers of the parties/counsels, to which notifications or communications arising in the course of the arbitration may validly be made;
- c. a summary of the parties' respective claims;
- d. full statement of admitted facts and documents;
- e. the issues to be resolved in question form;
- f. the Arbitrators' full names;
- g. the place where arbitration proceedings shall be held;
- h. the breakdown, schedule of payments, and sharing of arbitration fees;
- i. such other particulars as may be required by the Arbitral Tribunal for the proper and speedy adjudication of the case.

11.4.2 *Signing- The Terms of Reference (TOR)* - shall be signed on each and every page thereof, by the parties together with their respective counsel and the Arbitral Tribunal immediately after finalization thereof. In any case, the TOR must be finalized and signed not later than five (5) days from inception.

SECTION 11.5 Arbitration to Proceed Even without TOR - In the exercise of the sound discretion of the Arbitral Tribunal, arbitration shall proceed even without the TOR on the basis of the issues formulated by the pleadings filed by the parties.

SECTION 11.6 Submission for Decision - No factual issue being in dispute, the case may be deemed submitted for decision without an oral hearing and on the basis of documentary evidence already submitted.

RULE 12 VENUE

SECTION 12.1 Venue, Date and Time of Hearing - The venue, date and time of the arbitral proceedings shall be mutually agreed upon by the parties and the Arbitral Tribunal. In the event of disagreement, the choice of venue made by the Arbitral Tribunal shall prevail.

RULE 13 ARBITRATION PROCEEDINGS