

**[ CIAC RESOLUTION NO. 11-2005, November 19, 2005 ]**

**APPROVING THE CIAC MEDIATION RULES**

WHEREAS, the Construction Industry Arbitration Commission (CIAC), encouraging the use of alternative modes of dispute resolution (ADR) has adopted a simplified rules of mediation and conciliation on May 12, 1988 as well as the schedule of fees for mediation; WHEREAS, on December 15, 1998 the Rules of Conciliation was promulgated by CIAC through Resolution 09-1998, which was amended on August 12, 2002 by Resolution 08-2002;

WHEREAS, over the years, certain developments have occurred in the local construction industry necessitating a revision of the present Conciliation Rules, notable among which is the Resolution passed by the Southern Philippine Construction Core Group (SPCCG) in 2001 advocating the adoption of mediation as a way of resolving construction conflicts in the Philippines, which Resolution had been endorsed by the Department of Trade and Industry to CIAC for its appropriate action, and the passage of Republic Act No. 9285, otherwise known as the Alternative Dispute Resolution Act of 2004 which provided the legal framework for the development and growth of ADR in the country;

WHEREAS, cognizant of these developments, the CIAC has endorsed to the Philippines Institute of Construction Arbitrators, Inc. (PICA) the formulation of a new set of rules for mediation and a schedule of fees therefor which are attuned to these emerging trends;

WHEREAS, responding thereto, the PICA created a Special Committee for this purpose, which deliberated thereon for a span of two years from 2004 to 2005 using the mediation Rules of Malaysia, Singapore and Hong Kong as models therefor;

WHEREAS, the Committee has finally completed the final draft of the Mediation Rules and the proposed Table of Mediation Fees, attached as annexes A and B, respectively, hereon and shall form part of this Resolution, and has recommended the same to CIAC for approval and adoption;

WHEREAS, the CIAC, during its Special Meeting held on November 19, 2005 has thoroughly reviewed the proposed Mediation Rules and the Table of Mediation Fees and finds the same to be in accord with the framework it has provided thereon;

WHEREAS, Section 2(i) of P.D 1746, the law establishing the Construction Industry Authority of the Philippines (CIAP), among others, empowers the CIAP *"To establish procedures, guidelines and criteria for fair and expeditious adjudication and settlement of claims and disputes in contract implementation"*;

WHEREAS, Section 9.10 of the Implementing Rules and Regulations (IRR) of P.D. 1746, the CIAP acting as a policy making body, through its implementing agencies, shall, among others, adopt *"... different alternative modes of dispute resolution in the implementation of public and private construction contracts"*;

WHEREAS, Section 16 of the CIAP IRR, specifically confers upon the CIAC the authority to to *"[E]stablish rules of procedures to provide a fair and expeditious settlement of construction disputes through a non-judicial process which ensures harmonious and friendly relationship between or among the parties"....*

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 proposed

MEDIATION RULES and TABLE OF MEDIATION FEES which shall govern all mediation proceedings conducted under the auspices of CIAC upon its effectivity.

BE IT RESOLVED FURTHER that the old Conciliation Rules of CIAC, its amendments thereto and all policies issued in connection therewith or inconsistent with the Mediation Rules as well as the old mediation fees are hereby deemed repealed.

UNANIMOUSLY APPROVED.

Adopted: 19 Nov. 2005

THE COMMISSION

(SGD.) SEDFREY A. ORDONEZ  
*Chairman*

(SGD.) ISAAC S. DAVID  
*Member*

(SGD.) SAMSON C. LAZO  
*Member*

CIAC Mediation Rules

**SECTION 1. Scope of Application** - These Mediation Rules are promulgated by the Construction Industry Arbitration Commission (CIAC) pursuant to the provision of Sections 9.01 and 16 (a) of the Implementing Rules and Regulations of P.D. 1746, the law creating Construction Industry Authority of the Philippines (CIAP).

These Rules shall apply to mediation of construction disputes. The term construction disputes shall have the same meaning as defined in Executive Order No. 1008, otherwise known as the Construction Industry Arbitration Law, as amended by Republic Act No. 9285, or the Alternative Disputes Resolution Act of 2004.

These Rules shall also be applied to a construction dispute which does not have a mediation clause in the contract but the Parties wish to submit their dispute to mediation, either in an attempt to avoid arbitration or litigation or during the course of such arbitration or litigation.

**SECTION 2. Mediation Clause** - For Parties entering into a contract who wish to have future disputes referred to mediation in accordance with the CIAC Mediation Rules, the following dispute resolution clause may be included in such contract:

*"Any dispute or conflict arising out of or in connection with this contract shall first be referred to CIAC for settlement by mediation in accordance with its Mediation Rules in effect at the commencement of the mediation.*

*Failure of such mediation shall give rise to the right of either party to resort to arbitration pursuant to Executive Order No. 1008, as amended by R.A. 9285 or the ADR Act of 2004"*

**SECTION 3. Mediators** - The parties to a dispute are free to choose any person accredited by the CIAC Mediator in whom they have trust and confidence to act as such. The CIAC maintains a roster of accredited Mediators which could be obtained from its Secretariat (Annex A)\*

In the event that the Parties cannot agree on a common Mediator from the roster of CIAC-accredited mediators, or if the proposed Mediator is unwilling to mediate the case, the Parties are not, precluded from agreeing to a common Mediator outside of the roster provided by the CIAC provided that such mediator agree to be bound to the provisions of these Rules.

In the event that the Parties cannot agree on a Mediator, then CIAC shall appoint the Mediator.

**SECTION 4. Accreditation of Local Mediators** - Potential Mediators who wish to be accredited by the CIAC may apply using the prescribed form (Annex B)\*. The accreditation process shall be subject to CIAC Standards and Procedures for Accreditation of Mediator (Annex C)\*

Certification of Accredited Mediators shall be made in a duly prescribed form (Annex D)\*

**SECTION 5. Registration of Foreign Mediators** - Foreign Mediators shall register with the CIAC using the prescribed form (Annex E)\* on a case-to-case basis before undertaking any mediation service under the auspices of the CIAC. Qualified foreign mediators shall be issued a Certificate of Registration (Annex F)\*

Registration fee shall be in an amount to be prescribed by CIAC from time to time.

**SECTION 6. Mediation Defined** - Mediation shall mean a voluntary process in which a mediator, selected by the disputing parties, facilitates communication and negotiation, and assists the parties in reaching a voluntary agreement regarding a dispute. The mediation process conducted under the auspices of the CIAC shall be governed by these Mediation Rules.

**SECTION 7. Initiation of Mediation Process** - If a dispute arises, a Party may initiate the mediation by delivering a written Request for Mediation [RFM] (Annex G)\*, to the other party. Such RFM shall contain a brief self-explanatory statement of the nature of the dispute, the amount in dispute (if any) and the relief and/or remedy sought. The RFM should also nominate a Mediator or Mediators, together with contract details, and any other conditions of appointment of such mediator or Mediators.

The RFM should contain the names, addresses, telephone, facsimile and e-mail address (if known) of both Parties to the mediation and those who will represent them (if known).

A copy of the RFM shall be sent to CIAC

**SECTION 8. Answer to the Request for Mediation** - The party who receives the RFM shall notify the other Party and CIAC within (five) 5 calendar days after receipt of the request, if it consents to settle the dispute by mediation and if any of the Mediators nominated by the initiating Party is acceptable. If such Mediator or Mediators are not acceptable to the Party who receives the RFM, the Parties shall endeavor to reach agreement on the name of an acceptable Mediator within another period of five (5) calendar days.

If the Party who receives the RFM objects to the settlement of the dispute by mediation under the CIAC Mediation Rules or fails to notify the CIAC of its consent to mediate within the prescribed period, the party initiating the mediation shall be notified by CIAC that the mediation cannot proceed.

**SECTION 9. Appointment of a Common Mediator Nominated by Both Parties** - Where the Parties agree on a common Mediator from the roster of CIAC-accredited Mediators and the proposed Mediator is willing to serve, and is not disqualified under Section 12, they will notify CIAC thereof and CIAC shall appoint such Mediator. The parties and the Mediator shall sign the Agreement to proceed with the Mediation (Annex I)\*. The Mediation shall then proceed in accordance with these Rules.

**SECTION 10. Appointment of a Mediator, if there is No Common Nominee** - If the Parties fail to agree on an acceptable Mediator within the time stipulated in Section 8, they will notify CIAC thereof (see Annex J)\* CIAC shall appoint a Mediator who is prepared to serve as mediator and is not disqualified under Section 12, as follows:

(a) Mediators shall only be appointed from the roster of CIAC-accredited Mediators.

(b) The parties shall complete the Application Form (see Annex J)\* for the appointment of the Mediator by the CIAC containing the following information:

- i. the names and contact details of the Parties and their counsel, if any;
- ii. the nature of the dispute; and
- iii. the Parties' suggestion as to areas of expertise and/or primary profession of Mediator.

(c) Upon receipt of the Application for Appointment, the CIAC shall consider the Parties' suggestions as to the areas of expertise and/or primary profession and shall select the name of a Mediator who appears to fulfill these requirements.

(d) CIAC shall inform the Mediator in writing within (five) 5 calendar days of his proposed appointment together with the names of the Parties and their counsel (if any) and the abstract of the dispute. CIAC shall ask the proposed mediator.

i. if there is any conflict of interest should the proposed Mediator be appointed.

ii. If they have sufficient time to mediate in the dispute; and

iii. If they are willing to mediate in the dispute.

(e) The Mediator shall forward the information to CIAC within three (3) calendar days from receipt of the above inquiries. Upon receipt thereof, CIAC shall inform the Parties in writing that it intends to appoint the proposed Mediator within five (5) calendar days from receipt of the information required of him/her by the CIAC, unless one or both of the Parties have reasonable ground to object to the choice. Any objection (if any) shall be made in writing to CIAC.

(f) If the proposed Mediator has a conflict of interest, or has insufficient time to mediate the dispute, or is unwilling to act on the dispute, or there is a valid objection being raised by one of the Parties or both of them, or the proposed Mediator being unsuitable or unavailable, CIAC will repeat the selection process set out in section 10 (d) above. In the event that the second proposed Mediator is also either unsuitable or unavailable or is the subject of a valid objection under Section 11 (e) above, the process will be repeated for a third and final time.

(g) If the third proposed Mediator is still, either unsuitable or is not accepted by the Parties, then CIAC shall write to the Parties informing them that they should either proceed to arbitration or re-examine the names and details of previously rejected Mediators or appoint a Mediator outside of the roster of CIAC-accredited Mediators.

(h) If no communication is received by the CIAC within five (5) calendar days from receipt by the parties of the above notification, the CIAC shall declare the mediation as a failure.

**SECTION 11. Appointment of a Non-Accredited Mediator** - If the Parties opt to avail of the provision of Section 10 (g) in case of failure to agree on a common nominee from the list of CIAC-accredited Mediators, the Parties shall inform CIAC thereof (see Annex K) \*

The Mediator so appointed under this provision shall agree to be bound to all the provisions of CIAC Mediation Rules and the prescribed Code of Conduct for Mediators (Annex L) \*

**SECTION 12. Mediator's Disclosure and Conflict of Interest** - The mediator shall be guided by the following operative principles:

(a) Before accepting a mediation, a person who is requested to serve as a Mediator shall:

(1) make an inquiry that is reasonable under the circumstances to determine whether there are any known facts that a reasonable individual would consider likely to affect the impartiality of the mediator, including financial or personal interest in the outcome of the mediation and any existing or past relationship with a party or foreseeable participant in the mediation; and

(2) disclose to the Parties any such fact known or learned as soon as is practical before accepting a mediation.

(b) If a Mediator learns any fact described in paragraph (a) (1) of this Section after accepting a mediation, the Mediator shall disclose it as soon as practicable.

At the request of a Party, a person who is requested to serve as Mediator shall disclose his/her qualification to mediate a dispute.

**SECTION 13. Appointment of Co-Mediator** - Subject to agreement by the Parties, and if deemed necessary and appropriate as the case may be, a co-Mediator from the roster of CIAC-accredited Mediator may be appointed by the CIAC, upon the request of the Parties and the Mediator.

**SECTION 14. The Mediation Process** - The Mediator shall commence the mediation proceedings as soon as possible after his/her acceptance of the appointment and shall use his or her best efforts to conclude the mediation within thirty (30) calendar days of his/her appointment. The appointment shall not extend beyond said period without the written consent of the Parties.

**SECTION 15. The Roles of the Mediator** - The Mediator shall prepare himself/herself appropriately before the commencement of the mediation; abide by the terms of the Mediation Agreement, the CIAC Mediation Rules and the CIAC Code of Conduct for Mediators. He may conduct the mediation in such manner, as he/she sees fit, taking into account the circumstance of the case, the wishes of the Parties and the need for a speedy settlement of the dispute. He/she shall also assist the Parties in the drawing up of any written settlement agreement.

**SECTION 16. The Roles of the Parties and Identification of the Matters in Dispute**

(a) The Mediator may communicate during the mediation with the Parties together or with any Party separately, including private meetings and each party shall cooperate with the Mediator. A Party may request a private meeting with the Mediator at any time. The Parties shall give full assistance to enable the mediation to proceed and be concluded with the time stipulated.

(b) The Parties are free to agree on how and in what form, they will inform the Mediator of their respective cases. Unless otherwise agreed, the Parties will provide the Mediator with a brief written statement setting out their respective positions with regard to the issues in dispute. With the permission of the Parties but at the Mediator's discretion, such written statements may be exchanged. The parties are required to bring with them to the mediation meeting all information reasonably required for the Mediator to understand the matter in dispute.

**SECTION 17. Representation and Authority to Settle** - Each Party may be represented or assisted by person of their choice. They shall notify in advance the name/s and the role of such person/s to the Mediator and the other Party. Each Party shall identify a person who has full authority to settle the dispute on behalf of that Party and shall confirm such authority in writing.

Except as otherwise provided by law, a Party may designate a lawyer (or any other person) to provide assistance in the mediation. A waiver of this right shall be made in writing by the Party waiving it. A waiver of participation or legal representation may be rescinded at any time.

**SECTION 18. Termination of Mediation** - The mediation shall come to an end upon one of the following events occurring, whichever is earlier: