



MEMORANDUM CIRCULAR NO. 01-2020

TO : ALL CIAC ARBITRATORS AND MEDIATORS, CONCERNED PARTIES
AND THEIR COUNSELS/AUTHORIZED REPRESENTATIVES

SUBJECT : **GUIDELINES ON THE CONDUCT OF ON-LINE OR VIRTUAL
PROCEEDINGS FOR CIAC CASES**

DATE : June 10, 2020

Since the declaration of a national emergency due to COVID-19, placing the entire Luzon under Enhanced Community Quarantine (ECQ), work in the CIAC has remained suspended and case proceedings cancelled or put on hold. Some arbitrators, however, pursuant to the authority granted to them ***under Section 21.2 of the CIAC Rules to “exercise complete control over all proceedings to ensure a speedy, adequate and justifiable disposition”*** of the cases being handled by them, conducted online or virtual preliminary conferences, hearings and executive meetings through various teleconferencing platforms. Final awards in five (5) cases during ECQ were finalized, submitted to the Secretariat with scanned signatures attached, and copies sent to the parties, all through electronic means.

Recognizing that virtual case proceedings will most likely characterize the “new normal” in CIAC arbitration and mediation until a cure or vaccine against COVID-19 is available, the Commission deems it imperative to issue the following pertinent guidelines:

1. AUTHORITY TO CONDUCT ON-LINE/VIRTUAL CASE PROCEEDINGS

The Arbitral Tribunal or Sole Arbitrator shall have full authority to decide on, and conduct, on-line or virtual preliminary conferences, hearings, meetings and other case proceedings in accordance with these Guidelines. Failure or refusal of any of the parties to participate in on-line or virtual case proceedings ordered by the Arbitral Tribunal/Sole Arbitrator shall not stay the proceedings. Failure or refusal of all of the parties to participate in on-line or virtual case proceedings ordered by the Arbitral Tribunal/Sole Arbitrator shall be deemed a submission of the case for decision without an oral hearing and on the basis of documentary evidence already submitted.

The non-submission by any or all of the parties of “e bundle” documents required by the Arbitral Tribunal/Sole Arbitrator shall also be deemed a failure or refusal to participate in on-line/virtual case proceedings which shall not stay the proceedings.

2. RESTRICTED USE OF CIAC OFFICE PREMISES FOR CASE PROCEEDINGS

Due to limited facilities and inadequate space to allow for social/physical distancing, the use of CIAC office premises for in-person case proceedings shall be limited to the following, provided that a maximum of three (3) persons (for the small conference room) and five (5) persons (for the big conference room) will be participating and subject to the strict observance of social distancing (6 feet apart) and the wearing of face masks/shields at all times:

- a) Executive meetings of the Arbitral Tribunal; and
- b) Mediation meetings between the mediator and one or both of the parties;
and
- c) Conferences and Hearings before a Sole Arbitrator.

When the number of participants in the above case proceedings shall exceed the maximum stated above or when ordered by the Tribunal, and in all other case proceedings not falling within the above enumeration, the case proceedings may be conducted wholly or partially via telephone conference, video conference, or other electronic means, or in-person elsewhere in an appropriately large venue outside of the CIAC premises.

If the case proceedings shall be conducted only partially via telephone conference, video conference, or other electronic means, the Tribunal may use the CIAC office premises, including the CIAC internet, computer, telephone facilities and equipment, to be able to effectively conduct such telephone conference, video conference, or other electronic means.

Any additional costs and expenses that may be incurred to hold the case proceedings in venues other than the CIAC office premises shall be for the account of the parties who shall share in the advance on such costs equally. This is without prejudice to the Tribunal determining who shall ultimately bear such costs in its final award.

The deadlines for the holding of hearings and the issuance of the Final Award under the CIAC Rules shall remain, and shall not be extended by the Commission except in meritorious cases.

3. WHEN HEARINGS NOT NECESSARY

The Tribunal and the parties shall seriously consider dispensing with hearings pursuant to, or in accordance with, among others, the following provisions of the CIAC Rules:

“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.”

“Section 13.17 *Award or decision on the Pleadings*. Instead of a formal hearing, the parties may agree to submit the issues for resolution after the filing of the pleadings, evidence, memoranda or draft decisions.”

4. HOSTING/ORGANIZING OF TELEPHONE/VIDEO/OTHER ELECTRONIC CASE PROCEEDINGS

The Mediator, Sole Arbitrator, Tribunal Chair, or any member of the Tribunal or the CIAC staff-in-charge of the case as may be appointed by the Tribunal Chair, shall act as host/organizer for the case proceedings to be conducted wholly or partially via telephone conference, video conference, or other electronic means. Such case proceedings may be conducted using Microsoft Teams, Zoom ICloud Meetings, Skype, Messenger, Viber, or any other publicly-available platform chosen by the Mediator/Sole Arbitrator/Arbitral Tribunal after consultation with the parties.

The Tribunal shall arrange for an alternative means to conduct private caucuses, during the case proceedings, in case the platform used does not provide for break-out rooms or similar features. The parties and their counsel shall make similar arrangements for their own private caucuses, and inform the Mediator/Sole Arbitrator/Tribunal of the same.

The Tribunal shall adopt a back-up arrangement, in case of problems with the agreed platform, to ensure that the case hearing/conference/meeting proceeds as scheduled.

The host shall notify all participants of the case proceedings with the dial-in number, the link, meeting ID and password, at least three (3) days before the event.

The parties and the Mediator, Sole Arbitrator, or any member of the Tribunal, and the CIAC staff-in-charge of the case, shall conduct a trial run of the telephone, video, or other electronic conference at least one week prior to the case proceedings to ensure, to the extent possible, that the event shall proceed accordingly. At the trial run, the parties and the Mediator/Sole Arbitrator/Tribunal shall discuss and finalize, among others, the sequence of events, and the rules of engagement among the participants during the case proceedings.

The telephone, video, or other electronic conference shall be of sufficient quality so as to allow for clear video and/or audio transmission of the Tribunal, the parties, and the witnesses, and there shall be compatibility between the hardware and the software used at the different locations from where each of the participants is joining the telephone, video, or other electronic conference.

The Tribunal may terminate the telephone, video, or other electronic conference at any time if the Tribunal deems the telephone, video, or other electronic conference so unsatisfactory that it is unfair to any of the parties to continue.

5. DOCUMENTARY EVIDENCE

Each of the parties shall prepare and provide the Sole Arbitrator/Tribunal, the counterparty, and the pertinent witness, with a hard copy bundle and an e-bundle of documentary evidence to be used in the examination, or cross-examination, of the witnesses who may be presented during the hearing. The documentary evidence shall be pre-marked, must be clearly identified and paginated, and shall correspond with the hard copies of the documentary evidence that may have been submitted. The documentary evidence must also be without any annotations, notes and mark-ups.

The parties may agree on utilizing a shared virtual document repository to be available via computers at all locations of the participants of the telephone, video, or electronic conference, provided that the parties exert best efforts to ensure the security of all the documents.

6. SECURITY AND CONFIDENTIALITY OF PROCEEDINGS

The Mediator/Sole Arbitrator/Arbitral Tribunal shall ensure confidentiality and security of the case proceedings conducted wholly or partially via telephone conference, video conference, or other electronic means, by the adoption of the following measures, among others, as may be applicable:

- a) Set up the event as private. Participants should be warned not to share the dial-in number, the link, the meeting ID and password to any third persons;
- b) Require passwords or meeting codes to enter the meeting;
- c) Require the host to allow only authorized participants to join the proceeding/meeting via the use of a waiting room or similar security feature;
- d) The Mediator/Sole Arbitrator/Tribunal should be notified when people join and the list of participants should be carefully inspected periodically;
- e) The host shall lock the meeting after all the authorized participants have joined to prevent third parties from joining the meeting;
- f) The Tribunal, through the host, should carefully control who may share screens, and when screen sharing will be allowed;
- g) The Mediator/Sole Arbitrator/Tribunal shall authorize the host and/or the CIAC staff-in-charge to record the proceedings using the platform recorder and/or any other recording device. The recording of proceedings shall be in accordance with the following provision of the CIAC rules:

Section 21.1 Recording of proceedings - Proceedings before an Arbitral Tribunal may be recorded by means of any audio and/or audio visual recording equipment such as, but not limited to, tape recorders and video cameras, or if a stenographer is available, either through stenographic notes or minutes taken of the proceedings. All recordings on tapes, films, cassettes, disks, or diskettes shall be done by CIAC and shall remain in its custody for safekeeping and eventual disposal after the resolution of the case. Copies of such recordings including transcripts and minutes of the proceedings shall be made available to the parties upon request for a nominal fee.

The Arbitral Tribunal may opt to dispense with the use of recording devices or stenographic services and take down notes of the proceedings. Such notes taken shall be filed with CIAC and shall be part of the records of the case. Copies of the notes filed shall be made available to the parties, upon request, at reproduction cost.

- h) No person shall be allowed to record the proceedings without the express authority of the Mediator/Sole Arbitrator/Tribunal;
- i) Third parties, or persons not authorized to participate in the case proceedings, shall not be in the same room as the authorized participants. The Mediator/Sole Arbitrator/Tribunal shall ensure this, among others, by requiring all participants to show to the Mediator/Sole Arbitrator/Tribunal a 360-degree view of the room where the participant is joining the telephone/video/electronic conference at the start of the case proceedings, and, from time to time, during the case proceedings;
- j) Each party shall provide the identities of all individuals who shall be in the same room as the authorized participants, to the other parties and to the Tribunal prior to the telephone, video, or electronic conference, and the Tribunal shall take steps to verify the identity of each individual present at the start of the telephone, video, or electronic conference;
- k) If there are more than one participant in a location, or if there are individuals other than the participant in a location, all individuals in the same room shall be seated in a way to allow each participant to be able to see all such participants and individuals during the video or electronic conference;
- l) Only the main participants, as determined by the Mediator/Sole Arbitrator/Tribunal, may have his camera and microphone on during the case proceedings. Even then, the main participants are encouraged to turn off their microphones unless one is actually speaking;
- m) All participants should use browser extensions that block tracking activities of applications (e.g Chrome's Adblock Plus, Firefox Ad Hacker, among others);
- n) All participants should use firewall software from trusted firewall security companies;

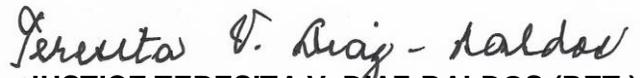
- o) The witness shall give his/her evidence while sitting on an empty desk, or standing at a lectern, with the witness' face clearly visible, without any device, laptop or computer, except that which is being used to participate in the video or other electronic conference; and
- p) Other available security measures deemed appropriate by the Tribunal.

7. EFFECTIVITY

These Guidelines shall take effect on June 15, 2020 and remain in effect unless modified or revoked.

For implementation.

THE COMMISSION:


JUSTICE TERESITA V. DIAZ-BALDOS (RET.)
Chairperson


ANTONIO A. ABOLA
Member


EMILIO LOLITO J. TUMBOCON
Member