



Republic of the Philippines
Department of Trade and Industry
Construction Industry Authority of the Philippines

CONSTRUCTION INDUSTRY ARBITRATION COMMISSION

2/F Executive Bldg. Center, 369 Gil J. Puyat Ave. cor. Makati Ave., Makati City

Telephone No. 897-0853 / Telefax: 897-9313

E-mail / Facebook: ciac_ciap@yahoo.com

CIAC MEDIATION RULES

FOREWORD

As early as its formative years, the Construction Industry Arbitration Commission (CIAC) already adopted, on May 12, 1998, the simplified rules of mediation and conciliation as well as the schedule of fees for such to encourage the use of alternative dispute resolution (ADR). On December 15, 1998, CIAC promulgated the Rules of Conciliation through Resolution 09-1998. This was amended further on August 12, 2002 by Resolution 08-2002.

Over the years, certain developments have occurred in the local construction industry necessitating a thorough revision of the present Conciliation Rules, notable among which is the Resolution passed by the Southern Philippines Construction Core Group (SPCCG) in 2001 advocating the adoption of mediation as a way of resolving construction conflicts in the Philippines, which Resolution was 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.

With the ADR Law already in place, the CIAC and PICAM jointly trained the first batch of CIAC mediators consisting of 17 accredited arbitrators. The 40-hours training lasted for a month. **Atty. Alfredo F. Tadiar** (CIAC Legal Counsel, incumbent chairman of the ADR Department of PHILJA and a member of the ADR IRR committee) headed the training faculty. The other members of the faculty include: **Engr. Salvador P. Castro, Jr.** [Chairman and Managing Director of SPCastro and Associates, Inc. and an internationally recognized mediator having been listed as the only Filipino in the panel of General Mediators of the Mediation Council Hong Kong International Arbitration Centre (HKIAC), and accredited mediator and trainer of the Supreme Court-Philippine Judicial Academy], **Atty. Beda G. Fajardo** (Managing Partner, Fajardo Law Offices and Court of Appeals mediator and PHILJA trainer on mediation), and **Atty. Ma. Clara Tankeh-Asuncion** (Head of Asuncion Law Office and also an accredited mediator of the Court of Appeals, Philippine Judicial Academy).

In view of the emerging developments in the ADR field, and cognizant of the expertise of its members in the field of ADR, some of which are recognized, locally and internationally, the CIAC endorsed to the Philippine Institute of Construction Arbitrators and Mediators, Inc. (PICAM), the task of proposing a new set of rules for mediation and a schedule of fees therefor which are attuned to the present times, shortly after the conclusion of the mediation training for CIAC-mediators.

Responding thereto, the PICAM created a special committee for this purpose headed by **Engr. Salvador P. Castro, Jr.** The members of said committee were as follows: [1] **Engr. Eliseo I. Evangelista** (President and CEO of Heuristics Technology and Management Consultants and immediate past president of the PICAM); [2] **Atty. Victor P. Lazatin** (Senior Partner of ACCRA and a member of the committee which drafted the IRR of R.A. 9285 of the ADR Law [ADR IRR Committee and now the incumbent President of PICAM]); [3] **Engr. Joel J.**

Marciano (President of Telecommunications and Computer Technologies); [4]
Atty. Ma. Clara Tankeh-Asuncion.

To start the task at hand, the Committee, through its Chairman, tied-up with several mediation centers in Asia and officially requested their permission to use their materials thereon which could be used as models in the drafting of the mediation rules and policies for the local construction industry, The Malaysian Construction Industry Development Board (MCIDB), Singapore Mediation Centre (SMC) and the HKMC-HKIAC responded positively to such request. Some materials from the Philippine Mediation Center and Philippine Judicial Academy (PHILJA) of the Supreme Court of the Philippines were also used as reference.

With the foregoing ready materials at hand, **Engr. Roger G. Antonio**, the CIAC Officer-In-Charge, prepared the comprehensive initial draft of the mediation rules and policies which served as the working papers of the Committee during its deliberations.

A refinement to the initial draft was completed sometime in the third quarter of 2004 and was submitted to the PICAM's main committee on ADR for review. Said committee was then headed by **Atty. Alfredo F. Tadiar**, with the following as members, namely: **Mr. Joven B. Joaquin**, (Chairman of the Board of Adrian Wilson International and Associates); **Arch. Edilberto F. Florentino** (EFFlorentino and Associates); **Engr. Romeo C. David** (Vice-President, Proconsult, Inc.); and **Engr. Wenfredo A. Firme** (former AVP, TGCI Engineers) – all of whom are members of PICAM. Upon the recommendation of Atty. Tadiar's Committee, some of the mediation forms to be used by the CIAC-Trained mediators were approved by CIAC so that the same could be used during the Settlement Month. However, the task of reviewing was not completed before the year 2004 ended due to the tight schedules of the ADR Committee members.

In 2005, with the new set of PICAM officers and committee members in place, work on the refinements to the draft mediation rules and policies and formulation of mediation fees resumed. **Engr. Salvador P. Castro, Jr.** was re-appointed as Chairman of the PICAM Mediation Committee with the following as members: **Atty. Beda G. Fajardo** (now the Vice President of PICAM); **Atty. Ma. Clara Tankeh-Asuncion**, **Engr. Joel J. Marciano**, **Engr. Eliseo I. Evangelista**, and **Atty. Victor P. Lazatin** (now the incumbent President of PICAM).

After several meetings, the new committee finally completed the refinements to the former draft of the Mediation Rules along the proposed Table of Mediation Fees. The comments of the lawyer members of PICAM were likewise solicited and incorporated in the final draft, after which was endorsed to CIAC for its consideration/approval.

During its Special Meeting held on November 19, 2005, after thoroughly reviewing the proposed Mediation Rules and the Table of Mediation Fees and finding the same to be in accord with the framework it has provided thereon, the CIAC approved the same for adoption in its Resolution No. 11-2005.

While the committee has exerted so much effort to make the mediation rules responsive to the needs of the industry, such is not by itself perfect so as to address all possible problems which could arise in the entire course of the mediation process. The rules are intended to be dynamic, hence amendments could be made thereon as the need for such should arise.

City of Makati, Philippines, this 19th day of November 2005.

THE COMMITTEE ON MEDIATION

(sgd.) SALVADOR P. CASTRO, JR.
Chairman

MEMBERS

(sgd.) ATTY. VICTOR P. LAZATIN

(sgd.) ATTY. BEDA G. FAJARDO

(sgd.) ENGR. JOEL J. MARCIANO

(sgd.) ENGR. ELISEO I. EVANGELISTA

(sgd.) ATTY. MA. CLARA TANKEH-ASUNCION

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 Regulation of the 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 Dispute 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 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 as 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.

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. The accreditation process shall be subject to CIAC Standards and Procedures for Accreditation of Mediator.

Certification of Accredited Mediators shall be made in a duly prescribed form.

Section 5. Registration of Foreign Mediators

Foreign Mediators shall register with the CIAC using the prescribed form 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.

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], 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 contact 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. 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. 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 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 inquires. 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.

The Mediator so appointed under this provision shall agree to be bound to all of the provisions of CIAC Mediation Rules and the prescribed Code of Conduct for Mediators.

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 qualifications 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:

- (a) the signing of Settlement Agreement by the Parties; or
- (b) the written advice of the Mediator after consultation with the Parties that in his/her opinion, further attempts at mediation are no longer justified; or
- (c) written notification by either Party after consultation with the Mediator at any time to the other Party and the Mediator (if appointed) that the mediation is terminated; or
- (d) the time limit specified in Section 14 has expired and the Parties have not agreed in writing to extend that time limit.

Section 19. Settlement Agreement

No Settlement Agreement reached in mediation shall be binding until it has been reduced to writing and signed by or on behalf of the Parties.

The Parties may include in their Settlement Agreement that in case of default by one of the Parties to comply with any of the terms thereof, the CIAC shall appoint the Mediator as Sole Arbitrator for the purpose of enforcing the Settlement Agreement as an Arbitral Award, which shall be subject to execution in the accordance with the pertinent provision of the CIAC Arbitration Rules. However, if the Mediator is not a CIAC-accredited Arbitrator, the parties, or the CIAC if the parties cannot jointly agree on a common nominee, must appoint a duly accredited CIAC Arbitrator to render the Award based on the Settlement Agreement.

Section 20. Confidentiality and Legal Privilege

- (a) All mediation sessions shall be private and shall only be attended by the Mediator, the Parties and any individuals identified in Section 17.
- (b) The mediation process and all negotiations and statements and documents prepared for the purposes of mediation shall be confidential and covered by legal privilege attendant to a Settlement Agreement. There shall be no formal record of the mediation save any Settlement Agreement produced under Sections 18 (a) and 19. The Mediator will destroy all notes or other documents produced in the mediation.
- (c) The mediation shall be confidential to the extent permitted by law. Unless agreed by the Parties, neither the Mediator nor the Parties nor any individual identified in Section 17 shall disclose to any person any information regarding the mediation or any settlement terms or the outcome of the mediation save as provided for in Section 24.
- (d) All documents and other information produced for, or arising from, the mediation shall be privileged. Such documents and information shall not be admissible as evidence or otherwise discoverable in any arbitration or litigation in connection with the dispute referred to mediation, save for any documents or other information which would in any event be admissible or discoverable in any such arbitration or litigation.
- (e) The Parties shall not rely on, or introduce as, evidence in any arbitral or judicial proceedings any admission, proposals or views expressed by the Mediator or the Parties during the course of the mediation.

Section 21. Costs

- (a) Unless otherwise agreed, each Party shall bear its own cost regardless of the outcome of the mediation. The expenses of witnesses for either side shall be paid by the Party producing such witness.
- (b) All other expenses of the mediation including Mediator's fees and other expenses of the Mediator and representatives of the CIAC, the cost of any expert witness

produce at the direct request of the Mediator, the CIAC administrative fees and other related charges shall be borne equally by the Parties, unless they agree otherwise.

The Mediation fees shall be computed and paid in accordance with the CIAC Schedule of Fees.

Section 22. Mediator's Role in Subsequent Proceedings

- (a) The Parties undertake that the Mediator shall not be appointed without the consent of the Parties to act as an arbitrator, an adjudicator, representative, counsel or witness of either Party in any subsequent adjudication, arbitral tribunal or judicial proceedings. This restriction applies in respect of the dispute that was the subject of the mediation or to any other disputes connected with the same contract.
- (b) Neither Party shall be entitled to call the Mediator as a witness in any legal or other proceedings arising out of the mediation or the same contract.

Section 23. Exclusion of Liability

The Mediators shall not be civilly liable for acts done in the performance of their official duties except in a clear showing of bad faith, malice or gross negligence as provided in Sec. 38(1), Chapter 9, Book 1 of the Administrative Code.

Section 24. Records of Mediation

For statistical purposes, the Mediator shall inform CIAC whether that mediation resulted in the settlement of the dispute in whole or in part or otherwise. The information given shall be kept under strict confidence.