



RESOLUTION NO. 07 - 2016

Amending Rule 4 (Effect of Agreement to Arbitrate), Rule 8 (Qualifications of Arbitrators) and Rule 9 (Nomination and Appointment of Arbitrators) of the CIAC Revised Rules of Procedure Governing Construction Arbitration

WHEREAS, Sections 6 and 21 of Executive Order No. 1008 of the Construction Industry Arbitration Law 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", respectively;

WHEREAS, in its 159th Regular Meeting held on 17 January 2014, the Commission, at the instance of its Chairman, Atty. Manuel M. Cosico, agreed to pursue, as one of its objectives, the alignment of CIAC practices in arbitration with international standards but within the intent and spirit of the Construction Industry Arbitration Law or Executive Order No. 1008;

WHEREAS, as an initial step towards this objective, the Commission started a review of the CIAC Rules of Procedure Governing Construction Arbitration (CIAC Rules) with the end in view of making its provisions conform to E.O. No. 1008;

WHEREAS, consultation meetings and dialogues were conducted by the Commission with its accredited arbitrators. Proposed amendments from the Philippine Institute of Construction Arbitrators and Mediators, Inc. were also sought and considered;

WHEREAS, in the course of its review of its policies and rules, the Commission identified and agreed on the following initial amendments to the CIAC Rules:

- a.) reinstatement of the provision in Section 1, Article III of the original CIAC Arbitration Rules dated 13 August 1988 on the submission by the parties to the CIAC Rules;
- b.) vesting the Commission with the authority to select and appoint the 3rd member and Chairman of the Arbitral Tribunal, consistent with Section 14 of E.O. No. 1008; and
- c.) deleting the rule on automatic appointment of "common nominees" to the Arbitral Tribunal to be more in accord with the party autonomy rule by applying the order of preference of the parties as signified in their lists of nominees;

NOW, THEREFORE, THE COMMISSION, by virtue of the powers vested in it by law and after due deliberations in its 188th Regular meeting, **RESOLVES** as it is hereby **RESOLVED**, to amend Rules 4, 8 and 9 of the Revised CIAC Rules, as follows:

1. Insertion of a new Section 4.1.1 to provide for the submission of the parties to the CIAC Rules, to read as follows:

"Section 4.1.1 Submission to CIAC Rules – When the parties have agreed to submit the dispute/s to arbitration by CIAC, they shall be deemed thereby to have submitted ipso facto to these Rules and any amendments hereto.";

2. Renumbering of Sections 4.1.1 and 4.1.2 to 4.1.2 and 4.1.3, respectively;
3. Deletion of the phrase "shall be men of distinction in whom the business sector and the government can have confidence" from the 1st sentence, and the phrase "be technically qualified" from the 2nd sentence of Section 8.1, to read as follows:

"Section 8.1 General qualification of arbitrators – The Arbitrators shall be persons in whom the business sector, particularly the stake holders of the construction industry and the government have confidence. They shall possess the competence, integrity, and leadership qualities 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.";

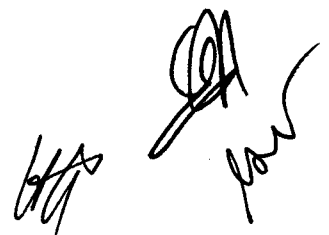
4. Deletion of the phrase "or by the first two arbitrators appointed as the third member of a Tribunal" from the 1st sentence of Section 8.2, to read as follows:

"Section 8.2 The Arbitrators must be CIAC-accredited – Only CIAC-accredited arbitrators may be nominated by the parties and appointed by CIAC as arbitrators. A replacement arbitrator shall likewise be a CIAC-accredited arbitrators. 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.";

5. Insertion of a new Section 8.3 (Undertaking of arbitrator upon the acceptance of appointment), to wit:

"Section 8.3 Undertaking of arbitrator upon the acceptance of appointment – An arbitrator who accepts an appointment as arbitrator undertakes to:

- a.) Make himself/herself available at all stages of the arbitration proceedings;
- b.) Remain independent of the parties and their counsel or representatives;
- c.) Maintain impartiality on all matters relating to the dispute;



- d.) *Have a continuing duty to disclose any fact or circumstance that, may arouse justifiable doubts as to independence or impartiality; and*
e.) *Contribute to the fair, expeditious and timely resolution of the dispute.”;*
6. Renumbering of Sections 8.3 and 8.4 to 8.4 and 8.5, respectively;
 7. Deletion of Section 9.1.1 because the submission of nominees by the parties is already captured in Sections 9.2 (Sole Arbitrator) and 9.3 (Arbitration Tribunal);
 8. Renumbering of Sections 9.1.2 and 9.1.3 to 9.1.1 and 9.1.2, respectively;
 9. Deletion of the phrase “*have the right to nominate not more than six arbitrators*” and replacing it with the phrase “*name not more than six (6) nominees from CIAC-accredited arbitrators in the order of preference for appointment as Sole Arbitrator*” from the 1st sentence of Section 9.2, to read as follows:

“Section 9.2 Sole Arbitrator – Where the parties have agreed that the dispute(s) shall be settled by a Sole Arbitrator, each party shall name not more than six (6) nominees from the CIAC-accredited arbitrators in the order of their preference for appointment as Sole Arbitrator. If any or both of the parties shall fail to submit the names of their nominees within the period/s prescribed by CIAC, a Sole Arbitrator shall be appointed by CIAC.”; and

10. Insertion of the word “*have*” between “*parties*” and “*agreed*” and deletion of the phrase “*have the right to nominate six arbitrators from the list of CIAC-accredited arbitrators*” and replacing it with the phrase “*name not more than six (6) nominees from CIAC-accredited arbitrators in the order of preference for appointment as Arbitrators*” from the 1st sentence of Section 9.3. Deletion of the 2nd sentence of Section 9.3 and replacing it with “*CIAC shall choose and appoint as members of the Tribunal one Arbitrator from the claimant’s nominees and another from respondent’s nominees*”. Deletion of the remaining portion of Section 9.3 to provide for the appointment by CIAC of the Third Arbitrator and Chairmen of the Tribunal, to read as follows:

“Section 9.3 Arbitral Tribunal – Where the parties have agreed that the dispute(s) shall be settled by an Arbitral Tribunal, each party shall name not more than six (6) nominees from the CIAC-accredited arbitrators in the order of their preference for appointment as Arbitrators. CIAC shall choose and appoint as members of the Tribunal one Arbitrator from the claimant’s nominees and another from respondent’s nominees. CIAC shall also choose and appoint the Third Arbitrator and notify the parties thereof for their confirmation in writing within five (5) working days from receipt of the notice. If no confirmation is received within such period, the Third Arbitrator appointed by CIAC shall be deemed accepted by the parties. The Third Arbitrator chosen and appointed by CIAC shall be the Chairman of the Tribunal.”

The foregoing amendments shall take effect fifteen (15) days from receipt by the National Administrative Register, U.P. Law Center, pursuant to Memorandum Circular No. 11 from the Office of the President.


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UNANIMOUSLY APPROVED.

Done in the City of Makati this 3rd day of November 2016.

THE COMMISSION:



MANUEL M. COSICO
Chairman



ANTONIO A. ABOLA
Member



EMILIO LOUITO J. TUMBOCON
Member

