

CONSTRUCTION ARBITRATION



Mode for Settling Construction
Disputes

A PRIMER

The Construction Industry Arbitration Commission (CIAC), created by E.O. No. 1008 (the Construction Industry Arbitration Law), is tasked to provide the industry with the necessary alternative dispute resolution facilities for the speedy and equitable settlement of claims and disputes arising from, or connected with, construction contracts in the Philippines. The CIAC offers mediation and arbitration as ways of reconciling differences between disputants with the help of people who are familiar/knowledgeable with the nuances of the construction industry.

This primer intends to inform the public of the significance, advantages and procedures of construction arbitration as an effective way for resolving construction disputes.

ARBITRATION : A Machinery for Construction Disputes

What is arbitration?

Arbitration is defined as the investigation and determination of matters of differences between contending parties by one or more unofficial persons, called arbitrators or referees, chosen by the parties (*Bouvier's Law Dictionary 225*). It is intended to avoid the formalities, the delay, the expense and vexation of ordinary litigation (*Curtis-Castle Arbitration, 42 Am. St., Rep. 200*).

In simple terms, arbitration is a way of settling dispute(s) between parties who agree to submit such dispute(s) for resolution by their chosen judges or arbitrators. Arbitration is a simple, speedy and less expensive alternative to court action.

What is the basis of construction arbitration?

Construction arbitration is based on the consent of the disputing parties, unless made compulsory by law.

Consent can be manifested in three ways:

1. Contracting parties provide for an arbitration clause in the construction contract;

2. If there is no arbitration clause in the contract, disputing parties may sign a joint statement of issues of the dispute(s) and/or a voluntary agreement to undertake construction arbitration.
3. Any written agreement or submission to arbitration in the form of exchange of letters (by post or telefax), telexes, telegrams, emails, or any other mode of communication, even if unsigned by the parties, as long as the intent is clear that the parties agree to submit to arbitration.

R.A. 9184 (the Government Procurement Reform Act) provides that disputes that are within the competence of the CIAC shall be referred thereto.

What is the significance of arbitration in the construction industry?

Arbitration is considered a more reasonable alternative to court action. Persons who are knowledgeable of the construction business shall be appointed as arbitrators to act upon the cases. Hence, a prompt decision can be easily reached.

What body shall exercise jurisdiction over disputes?

The Construction Industry Arbitration Commission (CIAC) shall have original and exclusive jurisdiction over disputes arising from, or connected with contracts entered into by parties involved in construction in the Philippines, whether the disputes arise before or after the contracts are completed or after they are breached.

R.A. 9285 (the Alternative Dispute Resolution Act of 2004) provides for the dismissal by a Regional Trial Court, of a construction dispute filed before it upon becoming aware that the parties had entered into an arbitration agreement. The court shall then refer the parties to arbitration by CIAC.

What are the salient features of the Construction Industry Arbitration Law?

1. Construction arbitration cases are decided by a single arbitrator or an arbitral tribunal nominated by the parties from the roster of CIAC-accredited arbitrators.
2. The prevailing rules of evidence in the courts of law need not be controlling as the arbitrators will use all reasonable means to ascertain the facts in each case speedily and objectively in the interest of substantive due process.
3. Arbitral awards are final and binding upon the parties and are not subject to judicial confirmation. They are enforced by writ of execution issued by the arbitrator/s as soon as the awards become executory.

Who can be accredited as arbitrators?

People from the government and the private sectors who meet the technical requirements set by the CIAC shall be accredited and appointed by the CIAC as arbitrators.

How many arbitrators may settle a dispute?

A single arbitrator or an arbitral tribunal of three (3) arbitrators may settle a dispute.

What is the procedure in choosing or appointing the arbitrators?

1. **Sole Arbitrator** - where the parties have agreed that the dispute(s) shall be settled by a sole arbitrator, each shall nominate at least six (6) from the list of CIAC-accredited arbitrators. The CIAC shall appoint the common nominee of the parties. If there is no common nominee, the parties shall be asked to agree on a common nominee within forty-eight (48) hours otherwise, the CIAC shall appoint either a Sole Arbitrator who is not a nominee of any of the parties or, if it deems it necessary, the members of the Arbitral Tribunal.
2. **Arbitral Tribunal** - where the parties have agreed that the dispute(s)

shall be settled by an arbitral tribunal, each party nominates at least six (6) arbitrators from the list of arbitrators accredited by the CIAC. The CIAC then appoints one arbitrator from the claimant's nominees and another from the respondent's list. The third arbitrator shall be agreed upon by the two arbitrators first appointed. The three shall decide from among themselves who shall be the chairman. Common nominees shall be appointed.

What are the specific cases under which arbitration may be conducted?

Construction arbitration shall cover, among others, dispute(s) arising from:

1. Violations of specifications for materials and workmanship;
2. Violations of terms of agreement;
3. Interpretation and/or application of contractual provisions;
4. Commencement time and delays;
5. Maintenance and defects;
6. Payment defaults of employer or contractor; and
7. Changes in contract costs.

What cases are excluded from the coverage of E.O. 1008?

Disputes arising from employer-employee relationships shall be covered by the Labor Code of the Philippines.

What are the fees to be paid in arbitration cases?

Arbitration fees consist of the filing fee, administrative charges, arbitrator's fees, Arbitration Development Fund (ADF) special assessment fee, expenses of an expert (if needed) on any aspect of the case, and other fees as may be imposed by the CIAC. The fees and charges shall be computed on the basis of percentages of the sum in dispute in accordance

with the CIAC Table of Fees.

The claimant, or where a counterclaim is filed, the respondent, shall pay 100% of the filing fee and a deposit of 25% percent of the arbitrator's fees and 25% of the administrative fees upon filing of the claim/counterclaim. If the claim/counterclaim exceeds 1 million, a special fee for the Arbitration Development Fund (ADF) equivalent to one-tenth (1/10) of 1% of the sum in dispute shall be imposed upon the parties in addition to the existing fees in the CIAC Table of Fees.

What are the documents required and the procedures to follow to avail of construction arbitration?

1. The interested party shall submit to the CIAC a request for arbitration which shall include the following:
 - a. The names and addresses of the parties;
 - b. A statement of the case/narration of the facts;
 - c. The issues of the case;
 - d. The list of nominees for arbitrator(s) in order of preference;
 - e. Construction contract;
 - f. Agreement to arbitrate;
 - g. Documents establishing the circumstances of the case; and
 - h. In case of government contracts, communications made with the highest authority for exhaustion of administrative remedies.
2. The CIAC shall evaluate the documents submitted to determine if there is a sufficient ground for arbitration.
3. If the contract does not contain an arbitration clause, the parties shall be required to submit a duly accomplished "Agreement to Arbitrate".

4. After the complaint has been filed together with the payment of the required deposits, CIAC shall notify the respondent and give him fifteen (15) days from receipt to file his answer with or without a counterclaim.
5. CIAC shall appoint the Sole Arbitrator or the members of the Arbitral Tribunal, as the case may be, pursuant to the Rules.
7. The appointed arbitrator(s) shall call the parties to a Preliminary Conference to make the Terms of Reference (TOR) based on the documents and/or personal accounts of the parties. The TOR shall include the following:
 - a. A summary of the parties' respective claims;
 - b. The issues involved; and
 - c. Other particulars as may be relevant to make the arbitral award enforceable.
8. The Terms of Reference shall be signed by the parties and the arbitrator(s).

How soon should the award be rendered by the arbitrator(s)?

The award shall be rendered promptly by the arbitrator/arbitral tribunal as agreed upon by the parties, but in no case beyond thirty (30) days from the time the case is submitted for resolution or six (6) months from the date of signing of the TOR (or in cases where a TOR is absent, not more than 6 months from date of the last preliminary conference). Extensions of time shall be approved by the CIAC.

How shall the award be issued?

The award shall be in writing and signed by the arbitrator(s). If decided by an arbitral tribunal, the decision of the majority shall prevail.

Generally, the award shall contain the issues involved, a brief statement and discussion of the facts, and the authority relied upon to resolve the issues.

When does the award become final?

The arbitral award is final and binding upon the parties.

When is appeal on the award possible?

A petition for review from a final award may be taken by any of the parties within fifteen (15) days from receipt thereof in accordance with the provisions of Rule 43 of the Rules of Court.

Who executes and enforces the award?

The award shall become executory upon the lapse of fifteen (15) days from receipt thereof by the parties even if it has been elevated on appeal. The arbitral tribunal or the sole arbitrator, with the concurrence of the CIAC shall, automatically, or upon motion of any of the parties, issue a writ of execution ordering any sheriff or proper officer to carry out said award.

What are the advantages of construction arbitration?

1. Arbitrators have technical expertise

Since disputes in the construction industry involve technical matters, the arbitrator(s) with the requisite technical knowledge can settle disputes as efficiently and equitably as possible.

2. Parties choose the arbitrators

Since the parties are given the opportunity to choose the arbitrator(s), they can designate those whom they deem to be

qualified to conduct the proceedings.

3. Parties choose the terms of reference

Parties to a contract may specify the scope or nature of the dispute. They can choose from either broad or limited arbitration and stipulate the terms under which proceedings shall be conducted.

4. Proceedings are simple, faster and less expensive

Disputes can be resolved through arbitration much faster, simpler and less expensive than it would take if the parties resort to court action.

Being contractual in nature, arbitration permits the parties to specify the time and place for hearings. No special form is required in presenting a demand for arbitration or in responding thereto.

5. Proceedings are confidential

Arbitration is held in private. Pleadings are confidential except to the parties themselves. Awards are unpublished.

6. Arbitrator's decision is binding

The arbitrator or arbitral tribunal is vested with the authority to decide, and such decision is binding on the parties. No appeal may be made from an award or a decision handed down by the arbitrator except on questions of law which are appealable to the Supreme Court.*

7. A single forum may be convened for all parties

One attractive feature of arbitration is the possibility of bringing together in one proceeding all the parties that may be involved.

8. ***Choice of counsel is not limited to lawyers***

License to practice law is not required for counsel to appear before an arbitrator or arbitral tribunal. The parties, consequently, are not limited in the range of choice of who should represent them in arbitration.

9. ***Work on a contract may continue as arbitration proceeds***

Since some construction projects cover large expenses and employ many people, it is often important to add in the contract a provision that work shall continue while arbitration proceeds. Such stipulation may not be effective when the parties resort to regular court hearings.

10. ***Arbitration preserves friendly relations***

Arbitration proceedings are less formal, less adversarial and more speedy than court proceedings, thus helping to preserve a friendly relationship between disputants.

The Commission:

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* The 1997 Rules of Civil Procedure (as amended) provides for appeal from the decisions of the CIAC, among others, to the Court of Appeals.

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