PDRCI

PHILIPPINE DISPUTE RESOLUTION CENTER, INC.

Handbook on Commercial Mediation

Handbook on Commercial Mediation

Dedicated to the memory of

Mr. Gregorio S. Navarro
President, 2013-2017
Philippine Dispute Resolution Center, Inc.

INTRODUCTION

Eduardo R. Ceniza

PDRCI President
2002-2009

This Handbook has its genesis in the proposal of Engr. Salvador P. Castro, Jr. for the Philippine Dispute Resolution Center, Inc. (PDRCI) to formulate and produce its Rules on Mediation following the lead of the Hong Kong International Arbitration Center (HKIAC).

Sometime in January 2002, with the approval of the PDRCI Board of Trustees, I, as then President (2002-2009), and Engr. Castro went to Hong Kong to meet with then HKIAC Secretary General Christopher To, with whom we discussed PDRCI's plan to adopt HKIAC's Mediation Rules on Procedures and Accreditation. Mr. To was supportive of the idea and committed to consult with the HKIAC Board about it.

In April 2002, HKIAC approved PDRCI's request to adopt HKIAC's Mediation Rules on Procedures and Accreditation and offered that PDRCI adopt and use HKIAC's Mediation Training Program. On August 19, 2002, the PDRCI Board of Trustees approved the Mediation Rules and Procedures based on the HKIAC/Hong Kong Mediation Council's Mediation Rules on Procedures and Accreditation. With the passage of the Republic Act No. 9285 ("ADR Act of 2004") on April 2, 2004, however, PDRCI decided to put on hold mediation as an ADR service.

In 2010, then PDRCI President Victor Lazatin (2009-2013) initiated the move to revive mediation as an additional ADR service to be provided by PDRCI.

In 2016, the late Mr. Gregorio Navarro (President, 2013-2017), requested the Mediation Committee to reexamine the PDRCI Mediation Rules and Procedures with the revised draft PDRCI Mediation Rules prepared by PDRCI Assistant Secretary General Francisco Pabilla, Jr. The review resulted in a consolidated draft PDRCI Mediation Rules, which was edited by PDRCI Secretary General Roberto Dio. The PDRCI Mediation Rules was finally approved and formally adopted by the PDRCI Board of Trustees on April 17, 2017.

On September 17, 2018, upon the recommendation of the Mediation Committee, the PDRCI Board of Trustees approved the preparation of the PDRCI Handbook on Commercial Mediation. This Handbook is envisioned to serve the need of parties and mediators to have a comprehensive guide on how mediation should be conducted throughout its various stages. The Mediation Committee - Engr. Salvador P. Castro, Jr., Chairman; and Atty. Shirley Alinea, Dr. Eduardo Ong, and Atty. Salvador Panga, Jr., members - deserve to be congratulated for their accomplishment in bringing to final fruition an initiative that was envisioned 17 years ago.

Makati City, June 20, 2019.

Eduardo R. Ceniza

FOREWORD

Victor P. Lazatin

PDRCI President
2009-2013

Since its inception in 1996, PDRCI and its officers have been in the forefront of the development and growth of alternative dispute resolution (ADR) in the Philippines. Initially, its focus was primarily on arbitration. As a result of this focus and effort, PDRCI has built a reputation as the leading center for commercial arbitration in the Philippines.

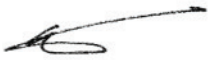
Then in the early 2010s, PDRCI also focused its attention on mediation. Thus, effective on November 1, 2012, PDRCI adopted its Mediation Rules, which was published and included in the third Edition of PDRCI Handbook on Commercial Arbitration (2012). Since then, the PDRCI Mediation Committee, composed of Engr. Salvador P. Castro, Jr. as Chairman, and Atty. Salvador S. Panga, Jr., Atty. Shirley F. Alinea, and Dr. Eduardo G. Ong as members, recommended the adoption of a new set of Mediation Rules effective May 15, 2017. It also advocated the publication of a separate Handbook on Commercial Mediation to give mediation the appropriate importance and sharp focus that it deserves as an effective ADR tool.

This Handbook on Commercial Mediation presents itself as a comprehensive reference and instructional material. It is designed for the use of lawyers, businessmen, and lay persons who are interested in mediation. It provides general guidelines to would-be disputants and their lawyers on the mediation process administered by PDRCI.

The publication of this Handbook on Commercial Mediation is a testament to PDRCI's commitment to disseminate knowledge and promote ADR, particularly mediation, in settling disputes in a cost-effective, expeditious, and non-adversarial manner.

I congratulate and express gratitude to the entire Mediation Committee for this laudable publication.

Taguig City, June 21, 2019.



Victor P. Lazatin

PREFACE

Edmundo L. Tan

PDRCI President
2017-present

Due to the cost and slow process of litigation, mediation as an alternative mode of dispute resolution became a favored means of settling commercial disputes in the Philippines. Being the leading provider of ADR services, PDRCI remained in step with the changes and development in mediation practice and procedure, as shown by its adoption of the new Mediation Rules in March 2017.

This Handbook on Commercial Mediation is a compilation of the Mediation Rules of the PDRCI and substantive laws governing voluntary mediation in the country, including the Special ADR Rules.

This Handbook will assist all those interested to have a better understanding of the PDRCI Mediation Rules and give assurance to parties that the mediation of their dispute by PDRCI is consistent with substantive mediation laws, Republic Act 9285, and its Implementing Rules and Regulations.

Taguig City, July 2, 2019.

Edmundo L. Tan

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MEDIATION RULES

(Effective May 15, 2017)

INTRODUCTION

1. Mediation Rules

These Rules shall apply to any dispute, controversy or claim referred to voluntary mediation, whether *ad hoc* or institutional, under these Rules.

2. Statement of Policy

The Philippine Dispute Resolution Center, Inc. (PDRCI) recognizes and supports party autonomy or the freedom of the parties to make their own arrangements to resolve their disputes. It actively promotes the use of alternative dispute resolution (ADR) as an important means to achieve the speedy and impartial resolution of disputes and to de-clog court dockets.

3. Model Mediation Clause

"The parties shall resolve any dispute, controversy or claim under this contract by mediation pursuant to the Mediation Rules of the Philippine Dispute Resolution Center, Inc. (PDRCI). If there is no settlement within 60 calendar days from commencement of the mediation, or such other period agreed in writing by the parties, the dispute shall be finally resolved by arbitration under the PDRCI Arbitration Rules then in force."

4. Mediation

Mediation under these Rules is a voluntary, confidential and non-binding private dispute resolution process in which a mediator, who shall be a neutral person selected by the disputing parties or appointed under these Rules, facilitates communication and negotiation, and assists the parties in reaching a voluntary agreement regarding a dispute.

5. Application of Rules

The agreement to submit a dispute, controversy or claim to mediation under PDRCI includes an agreement to be bound by these Rules and the administrative policies and guidelines of PDRCI now or hereafter issued.

MEDIATION PROCESS

6. Initiation of the Mediation Process

(a) Any party or parties to a dispute may initiate a mediation under these Rules by sending a written request for mediation to PDRCI and to the other party or parties, which shall include:

i. a description of the dispute, including an assessment of its value, the names and contact details of the parties to the dispute, including lawyers, representatives and other persons providing assistance to the parties;

ii. a reference to and a copy of the mediation clause or the mediation agreement; and

iii. the name and contact details of the proposed mediator or the qualifications of the mediator.

(b) Upon receipt of the non-refundable filing fee of PhP75,000, PDRCI will notify the other party or parties and set a 10-day period for the other party to accept the request for mediation and confirm the appointment of a mediator.

(c) If there is an agreement between the parties to refer their dispute to mediation but such agreement does not provide for mediation at PDRCI or under these Rules, or there is no agreement by the parties to refer their dispute to mediation, the initiating party or parties may request PDRCI to invite the other party to agree to mediation under these Rules.

(d) If the other party does not reply to such request or invitation within the 10-day period, or if the other party rejects the invitation to mediate, PDRCI shall promptly inform the requesting party in writing and close the file.

7. Number and Appointment of Mediators

(a) There shall be one mediator for a dispute. The parties, however, may agree to have a co-mediator.

The parties shall jointly nominate a mediator from the PDRCI's Panel of Mediators. Failing their agreement within 10 days from notice of the request to mediate, PDRCI may appoint such mediator.

(b) The parties may request PDRCI to recommend suitable individuals or entities to act as a mediator. In making its recommendation, PDRCI shall give regard to the qualifications desired by the parties and to other considerations likely to secure the appointment of a competent, independent and impartial mediator.

(c) Promptly after the parties have agreed to a mediator, PDRCI shall contact the mediator to confirm his/her availability and acceptance of the mediation. The mediator shall promptly submit a statement of acceptance and independence to PDRCI and the parties.

(d) The statement of acceptance and independence shall disclose any actual or potential conflict of interest or any circumstance likely to give rise to justifiable doubts as to the mediator's impartiality or independence, if any. If, despite such disclosure, the parties agree to accept the mediator, PDRCI shall confirm the appointment of the mediator, unless the circumstance shall give rise to justifiable doubts as to the integrity of the mediation process.

(e) When a person is approached for possible appointment as mediator, he/she shall immediately disclose any circumstance likely to give rise to justifiable doubts as to his/her impartiality or independence. A mediator, from the time of the appointment and throughout the mediation, shall without delay disclose any such circumstance to the parties.

(f) If the mediator nominated by the parties declines the appointment, PDRCI shall appoint the mediator.

(g) If a mediator withdraws, dies, or becomes absent, seriously ill, or incapacitated for more than 10 days during the mediation, the parties may appoint a replacement within 20 days of the withdrawal or notice of death, absence or serious illness or incapacity. If the parties are unable to agree on a replacement, PDRCI shall appoint a replacement mediator.

8. Fee and Deposit for Mediation Expenses

(a) Upon acceptance by the mediator of the appointment, PDRCI shall issue an assessment for the full mediation fee and deposit for mediation expenses, which shall be paid by the parties in equal shares, unless one party requests that the fee and deposit for expenses shall be paid proportionately.

(b) The minimum mediation fee shall be PhP100,000 and the minimum deposit for mediation expenses shall be PhP50,000. The mediation fee and deposit for mediation expenses shall be adjusted by PDRCI based on the sums in dispute, the number of parties, complexity of the issues, number of meetings estimated or required, venue, and other similar circumstances.

(c) Promptly upon receipt in full of the mediation fee and deposit for mediation expenses, PDRCI shall transmit the case file to the mediator, who shall set the first mediation session. The mediator shall not act on the dispute until the mediation fee and deposit for mediation expenses are paid in full.

(d) The date of payment in full of the mediation fee and the deposit for mediation expenses shall be considered the date of commencement of the mediation.

9. Conduct of Mediation

(a) At the first mediation session, the mediator shall explain the mediation process and the roles and responsibilities of the mediator, each party, and each representative, if any, who will take part in the mediation. The parties shall sign an Agreement to Mediate under these Rules if they have not signed one prior to referring the dispute to PDRCI.

(b) The mediator may conduct the mediation in such a manner as he/she considers appropriate, taking into account the nature of the dispute, the circumstances and interests of the parties, and the benefit to the parties of settling the dispute within 90 days from commencement of the mediation.

(c) In the absence of agreement by the parties, the mediator may observe the following general procedure:

i. Introduction of the parties, their representatives, and the mediator;

ii. Introduction to the mediation procedure and the ground rules;

iii. Opening statement of the parties;

iv. Exchange of comments by the parties and clarification by the mediator;

v. Facilitation and/or evaluation by the mediator;

vi. Private caucuses with the parties and their representatives;

vii. Clarification and resolution of issues;

viii. Agreement on the terms of settlement;

ix. Preparation of the settlement agreement; and

x. Review and signing of the settlement agreement

(d) The ground rules may include an agreement on the time, place and frequency of meetings, communications between the parties and the mediator, conduct of the parties and the mediator, including minimum appropriate language and behavior, confidentiality of the process, adjournments, suspension of the proceeding, and termination of the mediation.

(e) During the first mediation session, but not earlier, the mediator may meet with or communicate separately with each of the parties in private. He/she may propose alternatives for the settlement of the dispute, but not the settlement itself.

(f) Upon the request of both parties, the mediator may make a non-binding evaluation of the proposals for settlement, but not on the merits of the parties' respective positions.

(g) Whenever necessary and provided the parties agree and assume the cost, the mediator may seek expert advice to facilitate the settlement or evaluate the proposals for settlement.

(h) At any stage of the mediation process, the mediator may request the parties to submit written statements or proposals for settlement and such additional information as may be appropriate to facilitate the settlement. The refusal to provide any written statement or proposals for settlement or information shall not be construed adversely against any party and shall not prejudice the right of the other party to withdraw any statement or information it may have submitted pursuant to the mediator's request.

(i) Unless the parties have agreed on the time and place of the mediation, it shall be determined by the mediator upon consultation with the parties.

10. Role of Mediator

The mediator shall:

(a) Assist the parties amicably settle their dispute upon their own terms. The mediator has no authority to impose a settlement on the parties or to comment on their respective claims, statements or positions.

(b) Comply with the Code of Conduct for Mediators, any applicable law, and these Rules, and such administrative policies and guidelines of PDRCI, now or hereafter issued.

(c) Be guided by principles of fairness, transparency, and mutual respect. The mediator shall remain independent and impartial throughout the mediation process.

(d) Immediately disclose any actual or potential conflict of interest or any circumstance likely to give rise to justifiable doubts as to the mediator's impartiality or independence. This duty shall continue throughout the mediation process.

(e) Withdraw from acting as an arbitrator or as a representative or counsel of a party in any dispute involving the subject of the mediation or from testifying as a witness in any such dispute.

(f) Keep in confidence all information acquired or received by reason of the mediation.

(g) Refrain from taking advantage of any confidential or proprietary information received by reason of the mediation.

11. Role of the Parties

The parties shall cooperate with and support the mediator to enable the mediation process to proceed and be concluded within the time stipulated.

12. Confidentiality

(a) The mediation process is by nature confidential. PDRCI, the mediator and the parties shall keep confidential all matters relating to the mediation. Confidentiality extends to the settlement agreement and the record of the mediation, except where its disclosure by

PDRCI is necessary for purposes of implementation or enforcement of the settlement agreement, or to comply with a lawful order. In any other case, a party shall not disclose the settlement agreement without the prior written consent of the other party or parties.

(b) A mediator shall have no authority to disclose the settlement agreement under any circumstance.

(c) When the mediator receives information concerning the dispute from a party, he/she shall disclose the fact of such receipt and the substance of the information to the other party and give it an opportunity to comment. However, when a party gives information to the mediator subject to a specific condition that it be kept confidential, the mediator shall not disclose that information to the other party.

(d) The following information created for purposes of mediation shall not be admissible in any form as evidence in any arbitral, judicial or administrative proceeding:

i. an invitation by a party to mediate or a party's willingness or refusal to mediate;

ii. a dispute, any information exchanged between the parties before a mediation commences, and any agreement to mediate;

iii. a document prepared solely for purposes of a mediation;

iv. views expressed or suggestions made by a party during a mediation;

v. statements, proposals or admissions made by a party during a mediation;

vi. opinions, statements or proposals for settlement made by the mediator;

vii. the fact that a party indicated its willingness to accept a proposal for settlement made by the mediator; or

viii. the fact that a party terminated the mediation.

(e) Notwithstanding Section (d) above, the information may be admitted in evidence, to the extent required,

i. under the law,

a. for purposes of carrying out or enforcing a settlement agreement; or

b. for a mediator to respond to a claim of misconduct.

(f) Except for the limitations set out in Section (d), any information created for purposes other than a mediation does not become inadmissible because it was used in a mediation.

(g) Sections (d) and (e) apply whether or not the arbitral, judicial or administrative proceeding relates to a dispute that is or was the subject of a mediation.

13. Conflict of interest and Challenges

(a) Unless the parties agree in writing, a mediator shall not act: (1) both as a mediator and an arbitrator; or (2) as an arbitrator after acting as the mediator, for the dispute that is the subject of the mediation or for another dispute that arises from the same contract or legal relationship or a related contract or legal relationship between the parties.

(b) A mediator selected by the parties or appointed by PDRCI shall immediately withdraw if challenged by a party upon any ground provided by law or these Rules. However, such withdrawal shall not imply acceptance by the mediator of the validity of any ground asserted in the challenge. A new mediator shall be appointed by PDRCI within five (5) days from written notice of a request by a party or the withdrawal by the mediator.

14. Mediator's Fee

The mediator's fee, following the PDRCI's Schedule of Fees existing at the commencement of the arbitration, shall be paid as follows:

- 25% upon acceptance of the case record
- 25% upon conclusion of the last mediation session
- 50% upon signing of the settlement agreement

The mediator's fee shall be exclusive of taxes, if any.

15. Termination of Mediation

(a) The mediation is terminated by:

i. the signing of the settlement agreement by the parties, their counsel, if any, and the mediator, on the date of the agreement;

ii. a written declaration of the mediator, after consultation with the parties, to the effect that further efforts at mediation are no longer justified, on the date of the declaration;

iii. a written declaration of the parties to the mediator to the effect that the mediation is terminated, on the date notice of such declaration is received by the mediator;

iv. a written declaration of one party to the other party or parties and the mediator, to the effect that the mediation is terminated, on the date notice of such declaration is received by the other party and the mediator; or

v. a lawful order terminating the mediation.

(b) Upon termination of the mediation, the mediator shall prepare a Mediator's Report for submission to PDRCI, which shall indicate the date of termination and the reason/s for termination as provided in Section (a) above.

16. Enforceability of settlement agreement

(a) An agreement of the parties settling a dispute is final and binding upon them, their successors and assigns. The settlement agreement shall be complied with in good faith without need of court action.

(b) The parties may agree in the settlement agreement that the mediator shall act as sole arbitrator of the dispute and shall treat the settlement agreement as an arbitral award, which shall be subject to enforcement under the ADR Act of 2004 or any other applicable law.

(c) The parties may deposit the settlement agreement with the proper court or office for purposes of enforcement, in which case it shall cease to be confidential.

17. Stay of Arbitral, Judicial or Administrative Proceedings

(a) During the mediation, the parties shall not initiate any arbitral, judicial or administrative proceeding involving a dispute that is the subject of the mediation, except only when necessary to preserve the rights or interests of a party.

(b) If in the course of an arbitration, the parties decide to pursue mediation under these Rules, the arbitrator or the parties shall inform PDRCI of such decision.

(c) The dispute subject of the mediation shall be removed from arbitration effective upon the commencement of the mediation, without prejudice to the return of the dispute to arbitration in case mediation fails. The mediation shall not suspend the arbitration, unless the dispute subject of the arbitration is the same dispute involved in the mediation.

18. Exclusion of Liability

The mediator shall not be liable for any claims related to the mediation, the failure of mediation, or any of the terms of the settlement agreement, unless he/she is found to have acted in bad faith.

May 15, 2017.

CODE OF CONDUCT FOR MEDIATORS

A mediator appointed by the PDRCI shall be guided by this Code of Conduct for Mediators ("Code").

1. Mediator impartiality

The mediator shall be independent and impartial at all times. He shall remain free from any improper relationship or bias either by word or by action and shall commit to serve all mediation participants, as opposed to a single party.

The mediator shall not accept an appointment where, in his opinion, there exists an actual or potential conflict of interest. If he/she accepts the appointment, the mediator shall disclose such conflict as well as all information that may lead anyone to doubt the mediator's impartiality.

2. Challenge to mediator

The mediator may decline to mediate if challenged for cause by one of the parties.

3. Confidentiality of mediation

The mediator shall ensure that all information supplied and/or obtained in the course of the mediation process remains confidential. He/she shall enjoin the parties to maintain the confidentiality of the mediation at all times.

4. Suspension or termination of mediation

The mediator shall inform the parties of their right to withdraw from mediation at any time and for whatever reason. However, if the mediator believes that the parties or any of the parties to the mediation are unable or unwilling to participate in the process, or are participating in bad faith, the mediator may suspend or terminate the mediation with or without the concurrence of the parties.

5. Withdrawal of mediator

A mediator may withdraw his acceptance of the appointment at any time and for good cause, by written notice to PDRCI and the parties.

6. Mediator's fees

The mediator shall not accept any fees, compensation, cost or charges other than those authorized by PDRCI. The mediator shall not charge contingent fees.

Before withdrawing, the mediator shall return to PDRCI all unearned fees and unused deposits.

7. Gifts to mediator

A mediator shall not directly or indirectly solicit, receive or accept any gifts from the parties during the mediation.

8. Responsibility of mediator

The mediator shall:

(a) have full control of the mediation process;

(b) create an environment conducive to mutual respect by the parties, including their authorized representatives and/or respective counsel;

(c) shall not have any *ex-parte* communication with any party, without the presence of the other party, outside the course of the mediation procedure;

(d) employ his/her skills to facilitate communication and negotiation towards a settlement;

(e) assist the parties, to the best of his/her ability, to obtain a mutually acceptable resolution of their dispute;

(f) not disclose any proprietary or confidential information involved in the dispute at all times;

(g) refrain from giving assessments, evaluations or opinions, unless requested by the parties and only in their presence on any of the issues and/or concerns raised by any of the parties;

(h) remain available to the parties at all times until the mediation is terminated;

(i) treat the parties fairly and equally;

(j) not delegate or assign the control of the mediation or any of these responsibilities; and

(k) avoid any reputational risk to PDRCI or the parties.

9. Consequences of breach and confidentiality of PDRCI determination

Any breach of this Code shall not affect the settlement or resolution of the dispute, unless the consent of one or both parties was vitiated as a result of any mediator misconduct. The PDRCI Board of Trustees may impose any appropriate sanction such as, but not limited to, reprimand, suspension, temporary or permanent disqualification, and return of earned or received fees, compensation or gifts. The action by the PDRCI Board of Trustees and any sanction imposed by it shall be final and shall not be disclosed to any party other than the mediator.

10. Acceptance of Code of Ethics

By accepting the appointment, the mediator agrees to be bound by and to comply fully and in good faith with this Code and any determination by the PDRCI Board of Trustees.

REPUBLIC ACT NO. 9285

AN ACT TO INSTITUTIONALIZE THE USE OF AN ALTERNATIVE DISPUTE RESOLUTION SYSTEM IN THE PHILIPPINES AND TO ESTABLISH THE OFFICE FOR ALTERNATIVE DISPUTE RESOLUTION AND FOR OTHER PURPOSES.

CHAPTER 1- GENERAL PROVISIONS

SEC. 1. Title. – This Act shall be known as the "Alternative Dispute Resolution Act of 2004."

SEC. 2. Declaration of Policy. – It is hereby declared the policy of the State to actively promote party autonomy in the resolution of disputes or the freedom of the party to make their own arrangements to resolve their disputes. Towards this end, the State shall encourage and actively promote the use of Alternative Dispute Resolution (ADR) as an important means to achieve speedy and impartial justice and de-clog court dockets. As such, the State shall provide means for the use of ADR as an efficient tool and an alternative procedure for the resolution of appropriate cases. Likewise, the State shall enlist active private sector participation in the settlement of disputes through ADR. This Act shall be without prejudice to the adoption by the Supreme Court of any ADR system, such as mediation, conciliation, arbitration, or any combination thereof as a means of achieving speedy and efficient means of resolving cases pending before all courts in the Philippines, which shall be governed by such rules as the Supreme Court may approve from time to time.

SEC. 3. Definition of Terms. – For purposes of this Act, the term:

(a) **"Alternative Dispute Resolution System"** means any process of procedure used to resolve a dispute or controversy, other than by adjudication of a presiding judge of a court or an officer of a government agency, as defined in this Act, in which a neutral third party participates to assist in the resolution of issues, which includes arbitration, mediation, conciliation, early neutral evaluation, mini-trial, or any combination thereof;

(b) **"ADR Provider"** means institutions or persons accredited as mediator, conciliator, arbitrator, neutral evaluator, or any person exercising similar functions in any Alternative Dispute Resolution system. This is without prejudice to the rights of the parties to

choose non-accredited individuals to act as mediator, conciliator, arbitrator, or neutral evaluator of their dispute;

Whenever referred to in this Act, the term **"ADR practitioners"** shall refer to individuals acting as mediator, conciliator, arbitrator, or neutral evaluator;

(c) **"Authenticate"** means to sign, execute or adopt a symbol, or encrypt a record in whole or in part, intended to identify the authenticating party and to adopt, accept or establish the authenticity of a record or term;

(d) **"Arbitration"** means a voluntary dispute resolution process in which one or more arbitrators, appointed in accordance with the agreement of the parties, or rules promulgated pursuant to this Act, resolve a dispute by rendering an award;

(e) **"Arbitrator"** means the person appointed to render an award, alone or with others, in a dispute that is the subject of an arbitration agreement;

(f) **"Award"** means any partial or final decision by an arbitrator in resolving the issue in a controversy;

(g) **"Commercial Arbitration"** – An arbitration is "commercial" if it covers matter arising from all relationships of a commercial nature, whether contractual or not;

(h) **"Confidential information"** means any information, relative to the subject of mediation or arbitration, expressly intended by the source not to be disclosed, or obtained under circumstances that would create a reasonable expectation on behalf of the source that the information shall not be disclosed. It shall include (1) communication, oral or written, made in a dispute resolution proceedings, including any memoranda, notes or work product of the neutral party or non-party participant, as defined in this Act; (2) an oral or written statement made or which occurs during mediation or for purposes of considering, conducting, participating, initiating, continuing of reconvening mediation or retaining a mediator; and (3) pleadings, motions, manifestations, witness statements, reports filed or submitted in an arbitration or for expert evaluation;

(i) **"Convention Award"** means a foreign arbitral award made in a Convention State;

(j) **"Convention State"** means a State that is a member of the New York Convention;

(k) **"Court"** as referred to in Article 6 of the Model Law shall mean a Regional Trial Court;

(l) **"Court-Annexed Mediation"** means any mediation process conducted under the auspices of the court, after such court has acquired jurisdiction of the dispute;

(m) **"Court-Referred Mediation"** means mediation ordered by a court to be conducted in accordance with the Agreement of the Parties when an action is prematurely commenced in violation of such agreement;

(n) **"Early Neutral Evaluation"** means an ADR process wherein parties and their lawyers are brought together early in a pre-trial phase to present summaries of their cases and receive a nonbinding assessment by an experienced, neutral person, with expertise in the subject in the substance of the dispute;

(o) **"Government Agency"** means any governmental entity, office or officer, other than a court, that is vested by law with quasi-judicial power or the power to resolve or adjudicate disputes involving the government, its agencies and instrumentalities or private persons;

(p) **"International Party"** shall mean an entity whose place of business is outside the Philippines. It shall not include a domestic subsidiary of such international party or a co-venturer in a joint venture with a party, which has its place of business in the Philippines. The term foreign arbitrator shall mean a person who is not a national of the Philippines;

(q) **"Mediation"** means 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;

(r) **"Mediator"** means a person who conducts mediation;

(s) **"Mediation Party"** means a person who participates in a mediation and whose consent is necessary to resolve the dispute;

(t) **"Mediation-Arbitration"** or Med-Arb is a two-step dispute resolution process involving both mediation and arbitration;

(u) **"Mini-trial"** means a structured dispute resolution method in which the merits of a case are argued before a panel comprising senior decision makers with or without the presence of a neutral third person after which the parties seek a negotiated settlement;

(v) **"Model Law"** means the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law on 21 June 1985;

(w) **"New York Convention"** means the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards approved in 1958 and ratified by the Philippine Senate under Senate Resolution No. 71;

(x) **"Non-Convention Award"** means a foreign arbitral award made in a State, which is not a Convention State;

(y) **"Non-Convention State"** means a State that is not a member of the New York Convention;

(z) **"Non-Party Participant"** means a person, other than a party or mediator, who participates in a mediation proceeding as a witness, resource person or expert;

(aa) **"Proceeding"** means a judicial, administrative, or other adjudicative process, including related pre-hearing or post-hearing motions, conferences and discovery;

(bb) **"Record"** means an information written on a tangible medium or stored in an electronic or other similar medium, retrievable in a perceivable form; and

(cc) **"Roster"** means a list of persons qualified to provide ADR services as neutrals or to serve as arbitrators.

SEC. 4. Electronic Signatures in Global and E-Commerce Act. – The provisions of the Electronic Signatures in Global and E-Commerce Act, and its Implementing Rules and Regulations shall apply to proceedings contemplated in this Act.

SEC. 5. Liability of ADR-Providers/Practitioners. – The ADR providers and practitioners shall have the same civil liability for acts done in the performance of their duties as that of public officers as provided in Section 38(1), Chapter 9, Book I of the Administrative Code of 1987.

SEC. 6. Exception to the Application of this Act. – The provisions of this Act shall not apply to resolution or settlement of the following: (a) labor disputes covered by the Presidential Decree No. 442, otherwise known as the Labor Code of the Philippines, as amended and its Implementing Rules and Regulations; (b) the civil status of persons; (c) the validity of a marriage; (d) any ground for legal separation; (e) the jurisdiction of courts; (f) future legitime; (g) criminal liability; and (h) those which by law cannot be compromised.

CHAPTER 2 - MEDIATION

SEC. 7. Scope. – The provisions of this Chapter shall cover voluntary mediation, whether *ad hoc* or institutional, other than court-annexed. The term "mediation" shall include conciliation.

SEC. 8. Application and Interpretation. – In applying and construing the provisions of this Chapter, consideration must be given to the need to promote candor of parties and mediators through confidentiality of the mediation process, the policy of fostering prompt, economical, and amicable resolution of disputes in accordance with principles of integrity of determination by the parties, and the policy that the decision-making authority in the mediation process rests with the parties.

SEC. 9. Confidentiality of Information. – Information obtained through mediation proceedings shall be subject to the following principles and guidelines:

(a) Information obtained through mediation shall be privileged and confidential.

(b) A party, a mediator, or a nonparty participant may refuse to

disclose and may prevent any other person from disclosing a mediation communication.

(c) Confidential Information shall not be subject to discovery and shall be inadmissible in any adversarial proceeding, whether judicial or quasi-judicial. However, evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its use in a mediation.

(d) In such an adversarial proceeding, the following persons involved or previously involved in a mediation may not be compelled to disclose confidential information obtained during the mediation: (1) the parties to the dispute; (2) the mediator or mediators; (3) the counsel for the parties; (4) the nonparty participants; (5) any persons hired or engaged in connection with the mediation as secretary, stenographer, clerk or assistant; and (6) any other person who obtains or possesses confidential information by reason of his/her profession.

(e) The protections of this Act shall continue to apply even if a mediator is found to have failed to act impartially.

(f) A mediator may not be called to testify to provide information gathered in mediation. A mediator who is wrongfully subpoenaed shall be reimbursed the full cost of his attorney's fees and related expenses.

SEC. 10. Waiver of Confidentiality. – A privilege arising from the confidentiality of information may be waived in a record, or orally during a proceeding by the mediator and the mediation parties.

A privilege arising from the confidentiality of information may likewise be waived by a nonparty participant if the information is provided by such nonparty participant.

A person who discloses confidential information shall be precluded from asserting the privilege under Section 9 of this Chapter to bar disclosure of the rest of the information necessary to a complete understanding of the previously disclosed information. If a person suffers loss or damage as a result of the disclosure of the confidential information, he shall be entitled to damages in a judicial proceeding against the person who made the disclosure.

A person who discloses or makes a representation abut a mediation is precluded from asserting the privilege under Section 9, to the extent that the communication prejudices another person in the proceeding and it is necessary for the person prejudiced to respond to the representation of disclosure.

SEC. 11. Exceptions to Privilege. – (a) There is no privilege against disclosure under Section 9 if mediation communication is:

(1) in an agreement evidenced by a record authenticated by all parties to the agreement;

(2) available to the public or that is made during a session of a mediation which is open, or is required by law to be open, to the public;

(3) a threat or statement of a plan to inflict bodily injury or commit a crime of violence;

(4) intentionally used to plan a crime, attempt to commit, or commit a crime, or conceal an ongoing crime or criminal activity;

(5) sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation in a proceeding in which a public agency is protecting the interest of an individual protected by law; but this exception does not apply where a child protection matter is referred to mediation by a court of a public agency participates in the child protection mediation;

(6) sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against mediator in a proceeding; or

(7) sought or offered to prove of disprove a claim or complaint of professional misconduct or malpractice filed against a party, nonparty participant, or representative of a party based on conduct occurring during a mediation.

(b) There is no privilege under Section 9 if a court or administrative agency, finds, after a hearing in camera, that the party seeking discovery of the proponent of the evidence has shown that the evidence is not otherwise available, that there is a need for the evidence that substantially outweighs the interest in protecting

confidentiality, and the mediation communication is sought or offered in:

(1) a court proceeding involving a crime or felony; or

(2) a proceeding to prove a claim or defense that under the law is sufficient to reform or avoid a liability on a contract arising out of the mediation.

(c) A mediator may not be compelled to provide evidence of a mediation communication or testify in such proceeding.

(d) If a mediation communication is not privileged under an exception in subsection (a) or (b), only the portion of the communication necessary for the application of the exception for nondisclosure may be admitted. The admission of particular evidence for the limited purpose of an exception does not render that evidence, or any other mediation communication, admissible for any other purpose.

SEC. 12. Prohibited Mediator Reports. – A mediator may not make a report, assessment, evaluation, recommendation, finding or other communication regarding a mediation to a court or agency or other authority that may make a ruling on a dispute that is the subject of a mediation, except:

(a) where the mediation occurred or has terminated, or where a settlement was reached.

(b) as permitted to be disclosed under Section 13 of this Chapter.

SEC. 13. Mediator's Disclosure and Conflict of Interest. – The mediation shall be guided by the following operative principles:

(a) Before accepting a mediation, an individual 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 mediation 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 mediation party, an individual who is requested to serve as mediator shall disclose his/her qualifications to mediate a dispute.

This Act does not require that a mediator shall have special qualifications by background or profession unless the special qualifications of a mediator are required in the mediation agreement or by the mediation parties.

SEC. 14. Participation in Mediation. – Except as otherwise provided in this Act, 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 maybe rescinded at any time.

SEC. 15. Place of Mediation. – The parties are free to agree on the place of mediation. Failing such agreement, the place of mediation shall be any place convenient and appropriate to all parties.

SEC. 16. Effect of Agreement to Submit Dispute to Mediation Under Institutional Rules. – An agreement to submit a dispute to mediation by an institution shall include an agreement to be bound by the internal mediation and administrative policies of such institution. Further, an agreement to submit a dispute to mediation under institutional mediation rules shall be deemed to include an agreement to have such rules govern the mediation of the dispute and for the mediator, the parties, their respective counsel, and nonparty participants to abide by such rules.

In case of conflict between the institutional mediation rules and the provisions of this Act, the latter shall prevail.

SEC. 17. Enforcement of Mediated Settlement Agreements. – The mediation shall be guided by the following operative principles:

(a) A settlement agreement following successful mediation shall be prepared by the parties with the assistance of their respective counsel, if any, and by the mediator.

The parties and their respective counsels shall endeavor to make the terms and condition thereof complete and make adequate provisions for the contingency of breach to avoid conflicting interpretations of the agreement.

(b) The parties and their respective counsels, if any, shall sign the settlement agreement. The mediator shall certify that he/she explained the contents of the settlement agreement to the parties in a language known to them.

(c) If the parties so desire, they may deposit such settlement agreement with the appropriate Clerk of a Regional Trial Court of the place where one of the parties resides. Where there is a need to enforce the settlement agreement, a petition may be filed by any of the parties with the same court, in which case, the court shall proceed summarily to hear the petition, in accordance with such rules of procedure as may be promulgated by the Supreme Court.

(d) The parties may agree in the settlement agreement that the mediator shall become a sole arbitrator for the dispute and shall treat the settlement agreement as an arbitral award which shall be subject to enforcement under Republic Act. No. 876, otherwise known as the Arbitration Law, notwithstanding the provisions of Executive Order No. 1008 for mediated disputes outside of the CIAC.

CHAPTER 3 - OTHER FORMS OF ADR

SEC. 18. Referral of Dispute to Other ADR Forms. – The parties may agree to refer one or more or all issues arising in a dispute or during its pendency to other forms of ADR such as but not limited to (a) the evaluation of a third person or (b) a mini-trial, (c) mediation-arbitration, or a combination thereof.

For purposes of this Act, the use of other ADR forms shall be governed by Chapter 2 of this Act except where it is combined with arbitration in which case it shall likewise be governed by Chapter 5 of this Act.

CHAPTER 4 –
INTERNATIONAL COMMERCIAL ARBITRATION

SEC. 19. Adoption of the Model Law on International Commercial Arbitration. – International commercial arbitration shall be governed by the Model Law on International Commercial Arbitration (the "Model Law") adopted by the United Nations Commission on International Trade Law on 21 June 1985 (United Nations Document A/40/17) and recommended for enactment by the General Assembly in Resolution No. 40/72 approved on 11 December 1985, copy of which is hereto attached as Appendix "A".

SEC. 20. Interpretation of Model Law. – In interpreting the Model Law, regard shall be had to its international origin and to the need for the uniformity in its interpretation and resort may be made to the *travaux preparatories* and the report of the Secretary General of the United Nations Commission on International Trade Law dated 25 March 1985 entitled, "International Commercial Arbitration: Analytical Commentary on Draft Text identified by reference number A/CN. 9/264."

SEC. 21. Commercial Arbitration. – An arbitration is "commercial" if it covers matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services; distribution of agreements; construction of works; commercial representation or agency; factoring; leasing; consulting; engineering; licensing; investment; financing; banking; insurance; joint venture and other forms of industrial or business cooperation; carriage of goods or passengers by air, sea, rail or road.

SEC. 22. Legal Representation in International Arbitration. – In international arbitration conducted in the Philippines, a party may be represented by any person of his choice: *Provided*, That such representative, unless admitted to the practice of law in the Philippines, shall not be authorized to appear as counsel in any Philippine court, or any other quasi-judicial body whether or not such appearance is in relation to the arbitration in which he appears.

SEC. 23. Confidentiality of Arbitration Proceedings. – The arbitration proceedings, including the records, evidence and the arbitral award,

shall be considered confidential and shall not be published except (1) with the consent of the parties, or (2) for the limited purpose of disclosing to the court of relevant documents in cases where resort to the court is allowed herein: *Provided, however,* That the court in which the action or the appeal is pending may issue a protective order to prevent or prohibit disclosure of documents or information containing secret processes, developments, research and other information where it is shown that the applicant shall be materially prejudiced by an authorized disclosure thereof.

SEC. 24. Referral to Arbitration. – A court before which an action is brought in a matter which is the subject matter of an arbitration agreement shall, if at least one party so requests not later than the pre-trial conference, or upon the request of both parties thereafter, refer the parties to arbitration unless it finds that the arbitration agreement is null and void, inoperative or incapable of being performed.

SEC. 25. Interpretation of the Act. – In interpreting the Act, the court shall have due regard to the policy of the law in favor of arbitration. Where action is commenced by or against multiple parties, one or more of whom are parties to an arbitration agreement, the court shall refer to arbitration those parties who are bound by the arbitration agreement although the civil action may continue as to those who are not bound by such arbitration agreement.

SEC. 26. Meaning of "Appointing Authority." – "Appointing Authority" as used in the Model Law shall mean the person or institution named in the arbitration agreement as the appointing authority; or the regular arbitration institution under whose rules the arbitration is agreed to be conducted. Where the parties have agreed to submit their dispute to institutional arbitration rules, and unless they have agreed to a different procedure, they shall be deemed to have agreed to the procedure under such arbitration rules for the selection and appointment of arbitrators. In *ad hoc* arbitration, the default appointment of an arbitrator shall be made by the National President of the Integrated Bar of the Philippines (IBP) or his duly authorized representative.

SEC. 27. What functions May be Performed by Appointing Authority. – The functions referred to in Articles 11(3), 11(4), 13(3) and 14(1) of the Model Law shall be performed by the Appointing Authority, unless the latter shall fail of refuse to act within thirty (30) days from receipt of the

request in which case the applicant may renew the application with the Court.

SEC. 28. Grant of Interim Measure of Protection. – (a) It is not incompatible with an arbitration agreement for a party to request, before constitution of the tribunal, from a Court an interim measure of protection and for the Court to grant such measure. After constitution of the arbitral tribunal and during arbitral proceedings, a request for an interim measure of protection, or modification thereof, may be made with the arbitral tribunal or to the extent that the arbitral tribunal has no power to act or is unable to act effectively, the request may be made with the Court. The arbitral tribunal is deemed constituted when the sole arbitrator or the third arbitrator, who has been nominated, has accepted the nomination and written communication of said nomination and acceptance has been received by the party making the request.

The following rules on interim or provisional relief shall be observed:

(1) Any party may request that provisional relief be granted against the adverse party.

(2) Such relief may be granted:

(i) to prevent irreparable loss or injury;

(ii) to provide security for the performance of any obligation;

(iii) to produce or preserve any evidence; or

(iv) to compel any other appropriate act or omission.

(3) The order granting provisional relief may be conditioned upon the provision of security or any act or omission specified in the order.

(4) Interim or provisional relief is requested by written application transmitted by reasonable means to the Court or arbitral tribunal as the case may be and the party against whom the relief is sought, describing in appropriate detail the precise relief, the party against whom the relief is requested, the grounds for the relief, and the evidence supporting the request.

(5) The order shall be binding upon the parties.

(6) Either party may apply with the Court for assistance in implementing or enforcing an interim measure ordered by an arbitral tribunal.

(7) A party who does not comply with the order shall be liable for all damages resulting from noncompliance, including all expenses, and reasonable attorney's fees, paid in obtaining the order's judicial enforcement.

SEC. 29. Further Authority for Arbitrator to Grant Interim Measure of Protection. – Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measures of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute following the rules in Section 28, paragraph 2. Such interim measures may include but shall not be limited to preliminary injunction directed against a party, appointment of receivers or detention, preservation, inspection of property that is the subject of the dispute in arbitration. Either party may apply with the Court for assistance in implementing or enforcing an interim measure ordered by an arbitral tribunal.

SEC. 30. Place of Arbitration. – The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be in Metro Manila, unless the arbitral tribunal, having regard to the circumstances of the case, including the convenience of the parties shall decide on a different place of arbitration.

The arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

SEC. 31. Language of the Arbitration. – The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the language to be used shall be English in international arbitration, and English or Filipino for domestic arbitration, unless the arbitral tribunal shall determine a different or another language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined in accordance with paragraph 1 of this Section.

CHAPTER 5 – DOMESTIC ARBITRATION

SEC. 32. Law Governing Domestic Arbitration. – Domestic arbitration shall continue to be governed by Republic Act No. 876, otherwise known as "The Arbitration Law" as amended by this Chapter. The term "domestic arbitration" as used herein shall mean an arbitration that is not international as defined in Article 1 (3) of the Model Law.

SEC. 33. Applicability to Domestic Arbitration. – Articles 8, 10, 11, 12, 13, 14, 18 and 19 and 29 to 32 of the Model Law and Sections 22 to 31 of the preceding Chapter 4 shall apply to domestic arbitration.

CHAPTER 6 – ARBITRATION OF CONSTRUCTION DISPUTES

SEC. 34. Arbitration of Construction Disputes: Governing Law. – The arbitration of construction disputes shall be governed by Executive Order No. 1008, otherwise known as the Construction Industry Arbitration Law.

SEC. 35. Coverage of the Law. – Construction disputes which fall within the original and exclusive jurisdiction of the Construction Industry Arbitration Commission (the "Commission") shall include those between or among parties to, or who are otherwise bound by, an arbitration agreement, directly or by reference whether such parties are project owner, contractor, subcontractor, fabricator, project manager, design professional, consultant, quantity surveyor, bondsman or issuer of an insurance policy in a construction project.

The Commission shall continue to exercise original and exclusive jurisdiction over construction disputes although the arbitration is "commercial" pursuant to Section 21 of this Act.

SEC. 36. Authority to Act as Mediator or Arbitrator. – By written agreement of the parties to a dispute, an arbitrator may act as mediator

and a mediator may act as arbitrator. The parties may also agree in writing that, following a successful mediation, the mediator shall issue the settlement agreement in the form of an arbitral award.

SEC. 37. Appointment of Foreign Arbitrator. – The Construction Industry Arbitration Commission (CIAC) shall promulgate rules to allow for the appointment of a foreign arbitrator as co-arbitrator or chairman of a tribunal a person who has not been previously accredited by CIAC: Provided, That:

(a) the dispute is a construction dispute in which one party is an international party;

(b) the person to be appointed agreed to abide by the arbitration rules and policies of CIAC;

(c) he/she is either co-arbitrator upon the nomination of the international party; or he/she is the common choice of the two CIAC-accredited arbitrators first appointed, one of whom was nominated by the international party; and

(d) the foreign arbitrator shall be of different nationality from the international party.

SEC. 38. Applicability to Construction Arbitration. – The provisions of Sections 17 (d) of Chapter 2, and Sections 28 and 29 of this Act shall apply to arbitration of construction disputes covered by this Chapter.

SEC. 39. Court to Dismiss Case Involving a Construction Dispute. – A Regional Trial Court before which a construction dispute is filed shall, upon becoming aware, not later than the pre-trial conference, that the parties had entered into an arbitration agreement, dismiss the case and refer the parties to arbitration to be conducted by the CIAC, unless both parties, assisted by their respective counsel, shall submit to the Regional Trial Court a written agreement exclusively for the Court, rather than the CIAC, to resolve the dispute.

CHAPTER 7 – JUDICIAL REVIEW OF ARBITRAL AWARDS

A. DOMESTIC AWARDS

SEC. 40. Confirmation of Award. – The confirmation of a domestic arbitral award shall be governed by Section 23 of R. A. No. 876.

A domestic arbitral award when confirmed shall be enforced in the same manner as final and executory decisions of the Regional Trial Court.

The recognition and enforcement of an award in an international commercial arbitration shall be governed by Article 35 of the Model Law.

The confirmation of a domestic award shall be made by the Regional Trial Court in accordance with the Rules of Procedure to be promulgated by the Supreme Court.

A CIAC Arbitral award need not be confirmed by the Regional Trial Court to be executory as provided under E.O. No. 1008.

SEC. 41. Vacation Award. – A party to a domestic arbitration may question the arbitral award with the appropriate Regional Trial Court in accordance with rules of procedure to be promulgated by the Supreme Court only on those grounds enumerated in Section 25 of Republic Act. No. 876. Any other ground raised against a domestic arbitral award shall be disregarded by the Regional Trial Court.

B. FOREIGN ARBITRAL AWARDS

SEC. 42. Application of the New York Convention – The New York Convention shall govern the recognition and enforcement of arbitral awards covered by said Convention.

The recognition and enforcement of such arbitral awards shall be filed with the Regional Trial Court in accordance with the rules of procedure to be promulgated by the Supreme Court. Said procedural rules shall provide that the party relying on the award or applying for its enforcement shall file with the court the original or authenticated copy of the award and the arbitration agreement. If the award or agreement is not made in any of the official languages, the party shall supply a duly certified translation thereof into any of such languages.

The applicant shall establish that the country in which foreign arbitration award was made is a party to the New York Convention.

If the application for rejection or suspension of enforcement of an award has been made, the Regional Trial Court may, if considers it proper, vacate its decision and may also, on the application of the party

claiming recognition or enforcement of the award, order the party to provide appropriate security.

SEC. 43. Recognition and Enforcement of Foreign Arbitral Awards Not Covered by the New York Convention. – The recognition and enforcement of foreign arbitral awards not covered by the New York Convention shall be done in accordance with procedural rules to be promulgated by the Supreme Court. The Court may, on grounds, of comity and reciprocity, recognize and enforce a non-convention award as a convention award.

SEC. 44. Foreign Arbitral Award Not Foreign Judgment. – A foreign arbitral award when confirmed by a court of a foreign country, shall be recognized and enforced as a foreign arbitral award and not as a judgment of a foreign court.

A foreign arbitral award, when confirmed by the regional trial court, shall be enforced as a foreign arbitral award and not as a judgment of a foreign court.

A foreign arbitral award, when confirmed by the Regional Trial Court, shall be enforced in the same manner as final and executory decisions of courts of law of the Philippines.

SEC. 45. Rejection of a Foreign Arbitral Awards. – A party to a foreign arbitration proceeding may oppose an application for recognition and enforcement of the arbitral award in accordance with the procedural rules to be promulgated by the Supreme Court only on those grounds enumerated under Article V of the New York Convention. Any other ground raised shall be disregarded by the regional trial court.

SEC. 46. Appeal from Court Decisions on Arbitral Awards. – A decision of the Regional Trial Court confirming, vacating, setting aside, modifying or correcting an arbitral award may be appealed to the Court of Appeals in accordance with the rules of procedure to be promulgated by the Supreme Court.

The losing party who appeals from the judgment of the court confirming an arbitral award shall be required by the appellate court to post a counter-bond executed in favor of the prevailing party equal to the amount of the award in accordance with the rules to be promulgated by the Supreme Court.

SEC. 47. Venue and Jurisdiction. – Proceedings for recognition and enforcement of an arbitration agreement or for vacation, setting aside, correction or modification of an arbitral award, and any application with a court for arbitration assistance and supervision shall be deemed as special proceedings and shall be filed with the Regional Trial Court (i) where arbitration proceedings area conducted; (ii) where the asset to be attached or levied upon, or the act to be enjoined is located; (iii) where any of the parties to the dispute resides or has his place of business; or (iv) in the National Judicial Capital Region, at the option of the applicant.

SEC. 48. Notice of Proceeding to Parties. – In a special proceeding for recognition and enforcement of an arbitral award, the Court shall send notice to the parties at their address of record in the arbitration, or if any party cannot be served notice at such address at such party's last known address. The notice shall be sent at least fifteen (15) days before the date set for the initial hearing of the application.

CHAPTER 8 – MISCELLANEOUS PROVISIONS

SEC. 49. Office for Alternative Dispute Resolution. – There is hereby established the Office for Alternative Dispute Resolution as an attached agency to the Department of Justice (DOJ) which shall have a Secretariat to be headed by an Executive Director. The Executive Director shall be appointed by the President of the Philippines.

The objectives of the Office are:

(a) to promote, develop and expand the use of ADR in the private and public sectors; and

(b) to assist the government to monitor, study and evaluate the use by the public and the private sector of ADR, and recommend to Congress needful statutory changes to develop, strengthen and improve ADR practices in accordance with world standards.

SEC. 50. Powers and Functions of the Office for Alternative Dispute Resolution. – The Office for Alternative Dispute Resolution shall have the following powers and functions:

(a) To formulate standards for the training of the ADR practitioners and service providers;

(b) To certify that such ADR practitioners and ADR service providers have undergone the professional training provided by the Office;

(c) To coordinate the development, implementation, monitoring and evaluation of government ADR programs;

(d) To charge fees for their services; and

(e) To perform such acts as may be necessary to carry into effect the provisions of this Act.

SEC. 51. Appropriations. – The amount necessary to carry out the provisions of this Act shall be included in the General Appropriations Act of the year following its enactment into law and thereafter.

SEC. 52. Implementing Rules and Regulations (IRR). – Within one (1) month after the approval of this Act, the Secretary of Justice shall convene a Committee that shall formulate the appropriate rules and regulations necessary for the implementation of this Act. The Committee, composed of representatives from:

(a) the Department of Justice;

(b) the Department of Trade and Industry;

(c) the Department of the Interior and Local Government;

(d) the President of the Integrated Bar of the Philippines;

(e) a representative from the arbitration profession;

(f) a representative from the mediation profession; and

(g) a representative from the ADR organizations

shall, within three (3) months after convening, submit the IRR to the Joint Congressional Oversight Committee for review and approval. The Oversight Committee shall be composed of the Chairman of the Senate Committee on Justice and Human Rights, Chairman of the House Committee on Justice, and one (1) member each from the Majority and Minority of both Houses.

The Joint Oversight Committee shall become functus officio upon approval of the IRR.

SEC. 53. Applicability of the Katarungang Pambaranggay. – This Act shall not be interpreted to repeal, amend or modify the jurisdiction of the Katarungang Pambarangay under Republic Act No. 7160, otherwise known as the Local Government Code of 1991.

SEC. 54. Repealing Clause. – All laws, decrees, executive orders, rules and regulations which are inconsistent with the provisions of this Act are hereby repealed, amended or modified accordingly.

SEC. 55. Separability Clause. – If for any reason or reasons, any portion or provision of this Act shall be held unconstitutional or invalid, all other parts or provisions not affected shall thereby continue to remain in full force and effect.

SEC. 56. Effectivity. – This Act shall take effect fifteen (15) days after its publication in at least two (2) national newspapers of general circulation.

Approved,

(Sgd.) JOSE DE VENECIA JR.
Speaker of the House
of Representatives

(Sgd.) FRANKLIN M. DRILON
President of the Senate

This Act which is a consolidation of Senate Bill No. 2671 and House Bill No. 5654 was finally passed by the Senate and the House of Representatives on February 4, 2004.

(Sgd) **ROBERTO P. NAZARENO**
Secretary General
House of Representatives

(Sgd) **OSCAR G. YABES**
Secretary of the Senate

Approved: **April 02, 2004**

(Sgd.) GLORIA MACAPAGAL-ARROYO
President of the Philippines

Special Rules of Court on Alternative Dispute Resolution

Republic of the Philippines
SUPREME COURT
Manila

EN BANC

A.M. No. 07-11-08-SC September 1, 2009

Acting on the recommendation of the Chairperson of the Sub-Committee on the Rules on Alternative Dispute Resolution submitting for this Court's consideration and approval the proposed Special Rules of Court on Alternative Dispute Resolution, the Court Resolved to APPROVE the same.

This Rule shall take effect on October 30, 2009 following its publication in three (3) newspapers of general circulation.

September 1, 2009.

REYNATO S. PUNO
Chief Justice

LEONARDO A. QUISUMBING
Associate Justice

CONSUELO YNARES-SANTIAGO
Associate Justice

ANTONIO T. CARPIO
Associate Justice

RENATO C. CORONA
Associate Justice

CONCHITA CARPIO MORALES
Associate Justice

MINITA V. CHICO-NAZARIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

ANTONIO EDUARDO B. NACHURA
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

ARTURO D. BRION
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

ROBERTO A. ABAD
Associate Justice

PART I
GENERAL PROVISIONS AND POLICIES

RULE 1: GENERAL PROVISIONS

Rule 1.1. Subject matter and governing rules. – The Special Rules of Court on Alternative Dispute Resolution (the "Special ADR Rules") shall apply to and govern the following cases:

a. Relief on the issue of Existence, Validity, or Enforceability of the Arbitration Agreement;

b. Referral to Alternative Dispute Resolution ("ADR");

c. Interim Measures of Protection;

d. Appointment of Arbitrator;

e. Challenge to Appointment of Arbitrator;

f. Termination of Mandate of Arbitrator;

g. Assistance in Taking Evidence;

h. Confirmation, Correction or Vacation of Award in Domestic Arbitration;

i. Recognition and Enforcement or Setting Aside of an Award in International Commercial Arbitration;

j. Recognition and Enforcement of a Foreign Arbitral Award;

k. Confidentiality/Protective Orders; and

l. Deposit and Enforcement of Mediated Settlement Agreements.

Rule 1.2. Nature of the proceedings. – All proceedings under the Special ADR Rules are special proceedings.

Rule 1.3. Summary proceedings in certain cases. – The proceedings in the following instances are summary in nature and shall be governed by this provision:

a. Judicial Relief Involving the Issue of Existence, Validity or Enforceability of the Arbitration Agreement;

b. Referral to ADR;

c. Interim Measures of Protection;

d. Appointment of Arbitrator;

e. Challenge to Appointment of Arbitrator;

f. Termination of Mandate of Arbitrator;

g. Assistance in Taking Evidence;

h. Confidentiality/Protective Orders; and

i. Deposit and Enforcement of Mediated Settlement Agreements.

(A) ***Service and filing of petition in summary proceedings.*** – The petitioner shall serve, either by personal service or courier, a copy of the petition upon the respondent before the filing thereof. Proof of service shall be attached to the petition filed in court.

For personal service, proof of service of the petition consists of the affidavit of the person who effected service, stating the time, place and manner of the service on the respondent. For service by courier, proof of service consists of the signed courier proof of delivery. If service is refused or has failed, the affidavit or delivery receipt must state the circumstances of the attempted service and refusal or failure thereof.

(B) ***Notice.*** – Except for cases involving Referral to ADR and Confidentiality/ Protective Orders made through motions, the court shall, if it finds the petition sufficient in form and substance, send notice to the parties directing them to appear at a particular time and date for the hearing thereof which shall be set no later than five (5) days from the lapse of the period for filing the opposition or comment. The notice to the respondent shall contain a statement allowing him to file a comment or opposition to the petition within fifteen (15) days from receipt of the notice.

The motion filed pursuant to the rules on Referral to ADR or Confidentiality/Protective Orders shall be set for hearing by the movant and contain a notice of hearing that complies with the requirements under Rule 15 of the Rules of Court on motions.

(C) ***Summary hearing.*** – In all cases, as far as practicable, the summary hearing shall be conducted in one (1) day and only for purposes of clarifying facts.

Except in cases involving Referral to ADR or Confidentiality/ Protective Orders made through motions, it shall be the court that sets the petition

for hearing within five (5) days from the lapse of the period for filing the opposition or comment.

(D) ***Resolution.*** – The court shall resolve the matter within a period of thirty (30) days from the day of the hearing.

Rule 1.4. Verification and submissions. – Any pleading, motion, opposition, comment, defense or claim filed under the Special ADR Rules by the proper party shall be supported by verified statements that the affiant has read the same and that the factual allegations therein are true and correct of his own personal knowledge or based on authentic records and shall contain as annexes the supporting documents.

The annexes to the pleading, motion, opposition, comment, defense or claim filed by the proper party may include a legal brief, duly verified by the lawyer submitting it, stating the pertinent facts, the applicable law and jurisprudence to justify the necessity for the court to rule upon the issue raised.

Rule 1.5. Certification Against Forum Shopping. – A Certification Against Forum Shopping is one made under oath made by the petitioner or movant: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforementioned petition or motion has been filed.

A Certification Against Forum Shopping shall be appended to all initiatory pleadings except a Motion to Refer the Dispute to Alternative Dispute Resolution.

Rule 1.6. Prohibited submissions. – The following pleadings, motions, or petitions shall not be allowed in the cases governed by the Special ADR Rules and shall not be accepted for filing by the Clerk of Court:

a. Motion to dismiss;

b. Motion for bill of particulars;

c. Motion for new trial or for reopening of trial;

d. Petition for relief from judgment;

e. Motion for extension, except in cases where an *ex-parte* temporary order of protection has been issued;

f. Rejoinder to reply;

g. Motion to declare a party in default; and

h. Any other pleading specifically disallowed under any provision of the Special ADR Rules.

The court shall *motu proprio* order a pleading/motion that it has determined to be dilatory in nature be expunged from the records.

Rule 1.7. Computation of time. – In computing any period of time prescribed or allowed by the Special ADR Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day.

Should an act be done which effectively interrupts the running of the period, the allowable period after such interruption shall start to run on the day after notice of the cessation of the cause thereof.

The day of the act that caused the interruption shall be excluded from the computation of the period.

Rule 1.8. Service and filing of pleadings, motions and other papers in non-summary proceedings. – The initiatory pleadings shall be filed directly with the court. The court will then cause the initiatory pleading to be served upon the respondent by personal service or courier. Where an action is already pending, pleadings, motions and other papers shall be filed and/or served by the concerned party by personal service or courier. Where courier services are not available, resort to registered mail is allowed.

(A) ***Proof of filing.*** **–** The filing of a pleading shall be proved by its existence in the record of the case. If it is not in the record, but is claimed to have been filed personally, the filing shall be proved by the written or stamped acknowledgment of its filing by the clerk of court on a copy of the same; if filed by courier, by the proof of delivery from the courier company.

(B) ***Proof of service.*** – Proof of personal service shall consist of a written admission by the party served, or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place and manner of service. If the service is by courier, proof thereof shall consist of an affidavit of the proper person, stating facts showing that the document was deposited with the courier company in a sealed envelope, plainly addressed to the party at his office, if known, otherwise at his residence, with postage fully pre-paid, and with instructions to the courier to immediately provide proof of delivery.

(C) ***Filing and service by electronic means and proof thereof.*** – Filing and service of pleadings by electronic transmission may be allowed by agreement of the parties approved by the court. If the filing or service of a pleading or motion was done by electronic transmission, proof of filing and service shall be made in accordance with the Rules on Electronic Evidence.

Rule 1.9. No summons. – In cases covered by the Special ADR Rules, a court acquires authority to act on the petition or motion upon proof of jurisdictional facts, i.e., that the respondent was furnished a copy of the petition and the notice of hearing.

(A) ***Proof of service.*** – A proof of service of the petition and notice of hearing upon respondent shall be made in writing by the server and shall set forth the manner, place and date of service.

(B) ***Burden of proof.*** – The burden of showing that a copy of the petition and the notice of hearing were served on the respondent rests on the petitioner.

The technical rules on service of summons do not apply to the proceedings under the Special ADR Rules. In instances where the respondent, whether a natural or a juridical person, was not personally served with a copy of the petition and notice of hearing in the proceedings contemplated in the first paragraph of Rule 1.3 (B), or the motion in proceedings contemplated in the second paragraph of Rule 1.3 (B), the method of service resorted to must be such as to reasonably ensure receipt thereof by the respondent to satisfy the requirement of due process.

Rule 1.10. Contents of petition/motion. – The initiatory pleading in the form of a verified petition or motion, in the appropriate case where

court proceedings have already commenced, shall include the names of the parties, their addresses, the necessary allegations supporting the petition and the relief(s) sought.

Rule 1.11. Definition. – The following terms shall have the following meanings:

a. **"ADR Laws"** refers to the whole body of ADR laws in the Philippines.

b. **"Appointing Authority"** shall mean the person or institution named in the arbitration agreement as the appointing authority; or the regular arbitration institution under whose rule the arbitration is agreed to be conducted. Where the parties have agreed to submit their dispute to institutional arbitration rules, and unless they have agreed to a different procedure, they shall be deemed to have agreed to procedure under such arbitration rules for the selection and appointment of arbitrators. In *ad hoc* arbitration, the default appointment of arbitrators shall be made by the National President of the Integrated Bar of the Philippines or his duly authorized representative.

c. **"Authenticate"** means to sign, execute or use a symbol, or encrypt a record in whole or in part, intended to identify the authenticating party and to adopt, accept or establish the authenticity of a record or term.

d. **"Foreign Arbitral Award"** is one made in a country other than the Philippines.

e. **"Legal Brief"** is a written legal argument submitted to a court, outlining the facts derived from the factual statements in the witness's statements of fact and citing the legal authorities relied upon by a party in a case submitted in connection with petitions, counter-petitions (i.e., petitions to vacate or to set aside and/or to correct/modify in opposition to petitions to confirm or to recognize and enforce, or petitions to confirm or to recognize and enforce in opposition to petitions to vacate or set aside and/or correct/modify), motions, evidentiary issues and other matters that arise during the course of a case. The legal brief shall state the applicable law and the relevant jurisprudence and the legal arguments in support of a party's position in the case.

f. **"Verification"** shall mean a certification under oath by a party or a person who has authority to act for a party that he has read the pleading/motion, and that he certifies to the truth of the facts stated therein on the basis of his own personal knowledge or authentic documents in his possession. When made by a lawyer, verification shall mean a statement under oath by a lawyer signing a pleading/motion for delivery to the Court or to the parties that he personally prepared the pleading/motion, that there is sufficient factual basis for the statements of fact stated therein, that there is sufficient basis in the facts and the law to support the prayer for relief therein, and that the pleading/motion is filed in good faith and is not interposed for delay.

Rule 1.12. Applicability of Part II on Specific Court Relief. – Part II of the Special ADR Rules on Specific Court Relief, insofar as it refers to arbitration, shall also be applicable to other forms of ADR.

Rule 1.13. Spirit and intent of the Special ADR Rules. – In situations where no specific rule is provided under the Special ADR Rules, the court shall resolve such matter summarily and be guided by the spirit and intent of the Special ADR Rules and the ADR Laws.

RULE 2: STATEMENT OF POLICIES

Rule 2.1. General policies. – It is the policy of the State to actively promote the use of various modes of ADR and to respect party autonomy or the freedom of the parties to make their own arrangements in the resolution of disputes with the greatest cooperation of and the least intervention from the courts. To this end, the objectives of the Special ADR Rules are to encourage and promote the use of ADR, particularly arbitration and mediation, as an important means to achieve speedy and efficient resolution of disputes, impartial justice, curb a litigious culture and to de-clog court dockets.

The court shall exercise the power of judicial review as provided by these Special ADR Rules. Courts shall intervene only in the cases allowed by law or these Special ADR Rules.

Rule 2.2. Policy on arbitration. – (A) Where the parties have agreed to submit their dispute to arbitration, courts shall refer the parties to arbitration pursuant to Republic Act No. 9285 bearing in mind that such

arbitration agreement is the law between the parties and that they are expected to abide by it in good faith. Further, the courts shall not refuse to refer parties to arbitration for reasons including, but not limited to, the following:

a. The referral tends to oust a court of its jurisdiction;

b. The court is in a better position to resolve the dispute subject of arbitration;

c. The referral would result in multiplicity of suits;

d. The arbitration proceeding has not commenced;

e. The place of arbitration is in a foreign country;

f. One or more of the issues are legal and one or more of the arbitrators are not lawyers;

g. One or more of the arbitrators are not Philippine nationals; or

h. One or more of the arbitrators are alleged not to possess the required qualification under the arbitration agreement or law.

(B) Where court intervention is allowed under ADR Laws or the Special ADR Rules, courts shall not refuse to grant relief, as provided herein, for any of the following reasons:

a. Prior to the constitution of the arbitral tribunal, the court finds that the principal action is the subject of an arbitration agreement; or

b. The principal action is already pending before an arbitral tribunal.

The Special ADR Rules recognize the principle of *competence-competence,* which means that the arbitral tribunal may initially rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement or any condition precedent to the filing of a request for arbitration.

The Special ADR Rules recognize the principle of separability of the arbitration clause, which means that said clause shall be treated as an agreement independent of the other terms of the contract of which it forms part. A decision that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

Rule 2.3. Rules governing arbitral proceedings. – The parties are free to agree on the procedure to be followed in the conduct of arbitral proceedings. Failing such agreement, the arbitral tribunal may conduct arbitration in the manner it considers appropriate.

Rule 2.4. Policy implementing competence-competence principle. – The arbitral tribunal shall be accorded the first opportunity or competence to rule on the issue of whether or not it has the competence or jurisdiction to decide a dispute submitted to it for decision, including any objection with respect to the existence or validity of the arbitration agreement. When a court is asked to rule upon issue/s affecting the competence or jurisdiction of an arbitral tribunal in a dispute brought before it, either before or after the arbitral tribunal is constituted, the court must exercise judicial restraint and defer to the competence or jurisdiction of the arbitral tribunal by allowing the arbitral tribunal the first opportunity to rule upon such issues.

Where the court is asked to make a determination of whether the arbitration agreement is null and void, inoperative or incapable of being performed, under this policy of judicial restraint, the court must make no more than a *prima facie* determination of that issue.

Unless the court, pursuant to such *prima facie* determination, concludes that the arbitration agreement is null and void, inoperative or incapable of being performed, the court must suspend the action before it and refer the parties to arbitration pursuant to the arbitration agreement.

Rule 2.5. Policy on mediation. – The Special ADR Rules do not apply to Court-Annexed Mediation, which shall be governed by issuances of the Supreme Court.

Where the parties have agreed to submit their dispute to mediation, a court before which that dispute was brought shall suspend the proceedings and direct the parties to submit their dispute to private mediation. If the parties subsequently agree, however, they may opt to have their dispute settled through Court-Annexed Mediation.

Rule 2.6. Policy on Arbitration-Mediation or Mediation-Arbitration. – No arbitrator shall act as a mediator in any proceeding in which he is acting as arbitrator; and all negotiations towards settlement of the dispute must take place without the presence of that arbitrator. Conversely, no mediator shall act as arbitrator in any proceeding in which he acted as mediator.

Rule 2.7. Conversion of a settlement agreement to an arbitral award. – Where the parties to mediation have agreed in the written settlement agreement that the mediator shall become the sole arbitrator for the dispute or that the settlement agreement shall become an arbitral award, the sole arbitrator shall issue the settlement agreement as an arbitral award, which shall be subject to enforcement under the law.

PART II
SPECIFIC COURT RELIEF

RULE 3: JUDICIAL RELIEF INVOLVING THE ISSUE OF EXISTENCE, VALIDITY AND ENFORCEABILITY OF THE ARBITRATION AGREEMENT

Rule 3.1. When judicial relief is available. – The judicial relief provided in Rule 3, whether resorted to before or after commencement of arbitration, shall apply only when the place of arbitration is in the Philippines.

A. Judicial Relief before Commencement of Arbitration

Rule 3.2. Who may file petition. – Any party to an arbitration agreement may petition the appropriate court to determine any question concerning the existence, validity and enforceability of such arbitration agreement serving a copy thereof on the respondent in accordance with Rule 1.4 (A).

Rule 3.3. When the petition may be filed. – The petition for judicial determination of the existence, validity and/or enforceability of an arbitration agreement may be filed at any time prior to the commencement of arbitration.

Despite the pendency of the petition provided herein, arbitral proceedings may nevertheless be commenced and continue to the rendition of an award, while the issue is pending before the court.

Rule 3.4. ***Venue.*** – A petition questioning the existence, validity and enforceability of an arbitration agreement may be filed before the Regional Trial Court of the place where any of the petitioners or respondents has his principal place of business or residence.

Rule 3.5. ***Grounds.*** – A petition may be granted only if it is shown that the arbitration agreement is, under the applicable law, invalid, void, unenforceable or inexistent.

Rule 3.6. ***Contents of petition.*** – The verified petition shall state the following:

a. The facts showing that the persons named as petitioner or respondent have legal capacity to sue or be sued;

b. The nature and substance of the dispute between the parties;

c. The grounds and the circumstances relied upon by the petitioner to establish his position; and

d. The relief/s sought.

Apart from other submissions, the petitioner must attach to the petition an authentic copy of the arbitration agreement.

Rule 3.7. ***Comment/Opposition.*** – The comment/opposition of the respondent must be filed within fifteen (15) days from service of the petition.

Rule 3.8. ***Court action.*** – In resolving the petition, the court must exercise judicial restraint in accordance with the policy set forth in Rule 2.4, deferring to the competence or jurisdiction of the arbitral tribunal to rule on its competence or jurisdiction.

Rule 3.9. ***No forum shopping.*** – A petition for judicial relief under this Rule may not be commenced when the existence, validity or enforceability of an arbitration agreement has been raised as one of the issues in a prior action before the same or another court.

Rule 3.10. ***Application for interim relief.*** – If the petitioner also applies for an interim measure of protection, he must also comply with the requirements of the Special ADR Rules for the application for an interim measure of protection.

Rule 3.11. ***Relief against court action.*** – Where there is a *prima facie* determination upholding the arbitration agreement.-A *prima facie* determination by the court upholding the existence, validity or enforceability of an arbitration agreement shall not be subject to a motion for reconsideration, appeal or certiorari.

Such *prima facie* determination will not, however, prejudice the right of any party to raise the issue of the existence, validity and enforceability of the arbitration agreement before the arbitral tribunal or the court in an action to vacate or set aside the arbitral award. In the latter case, the court's review of the arbitral tribunal's ruling upholding the existence, validity or enforceability of the arbitration agreement shall no longer be limited to a mere *prima facie* determination of such issue or issues as prescribed in this Rule, but shall be a full review of such issue or issues with due regard, however, to the standard for review for arbitral awards prescribed in these Special ADR Rules.

B. Judicial Relief after Arbitration Commences

Rule 3.12. *Who may file petition.* – Any party to arbitration may petition the appropriate court for judicial relief from the ruling of the arbitral tribunal on a preliminary question upholding or declining its jurisdiction. Should the ruling of the arbitral tribunal declining its jurisdiction be reversed by the court, the parties shall be free to replace the arbitrators or any one of them in accordance with the rules that were applicable for the appointment of arbitrator sought to be replaced.

Rule 3.13. *When petition may be filed.* – The petition may be filed within thirty (30) days after having received notice of that ruling by the arbitral tribunal.

Rule 3.14. *Venue.* – The petition may be filed before the Regional Trial Court of the place where arbitration is taking place, or where any of the petitioners or respondents has his principal place of business or residence.

Rule 3.15. *Grounds.* – The petition may be granted when the court finds that the arbitration agreement is invalid, inexistent or unenforceable as a result of which the arbitral tribunal has no jurisdiction to resolve the dispute.

Rule 3.16. *Contents of petition.* – The petition shall state the following:

a. The facts showing that the person named as petitioner or respondent has legal capacity to sue or be sued;

b. The nature and substance of the dispute between the parties;

c. The grounds and the circumstances relied upon by the petitioner; and

d. The relief/s sought.

In addition to the submissions, the petitioner shall attach to the petition a copy of the request for arbitration and the ruling of the arbitral tribunal.

The arbitrators shall be impleaded as nominal parties to the case and shall be notified of the progress of the case.

Rule 3.17. *Comment/Opposition.* – The comment/opposition must be filed within fifteen (15) days from service of the petition.

Rule 3.18. *Court action.* – (A) *Period for resolving the petition*.- The court shall render judgment on the basis of the pleadings filed and the evidence, if any, submitted by the parties, within thirty (30) days from the time the petition is submitted for resolution.

(B) *No injunction of arbitration proceedings.* – The court shall not enjoin the arbitration proceedings during the pendency of the petition.

Judicial recourse to the court shall not prevent the arbitral tribunal from continuing the proceedings and rendering its award.

(C) *When dismissal of petition is appropriate.* – The court shall dismiss the petition if it fails to comply with Rule 3.16 above; or if upon consideration of the grounds alleged and the legal briefs submitted by the parties, the petition does not appear to be *prima facie* meritorious.

Rule 3.19. *Relief against court action.* – The aggrieved party may file a motion for reconsideration of the order of the court. The decision of the court shall, however, not be subject to appeal. The ruling of the court affirming the arbitral tribunal's jurisdiction shall not be subject to a petition for certiorari. The ruling of the court that the arbitral tribunal has no jurisdiction may be the subject of a petition for certiorari.

Rule 3.20. *Where no petition is allowed.* – Where the arbitral tribunal defers its ruling on preliminary question regarding its jurisdiction until its final award, the aggrieved party cannot seek judicial relief to question the deferral and must await the final arbitral award before seeking appropriate judicial recourse.

A ruling by the arbitral tribunal deferring resolution on the issue of its jurisdiction until final award, shall not be subject to a motion for reconsideration, appeal or a petition for certiorari.

Rule 3.21. ***Rendition of arbitral award before court decision on petition from arbitral tribunal's preliminary ruling on jurisdiction.*** – If the arbitral tribunal renders a final arbitral award and the Court has not rendered a decision on the petition from the arbitral tribunal's preliminary ruling affirming its jurisdiction, that petition shall become ipso facto moot and academic and shall be dismissed by the Regional Trial Court. The dismissal shall be without prejudice to the right of the aggrieved party to raise the same issue in a timely petition to vacate or set aside the award.

Rule 3.22. ***Arbitral tribunal a nominal party.*** – The arbitral tribunal is only a nominal party. The court shall not require the arbitral tribunal to submit any pleadings or written submissions but may consider the same should the latter participate in the proceedings, but only as nominal parties thereto.

RULE 4: REFERRAL TO ADR

Rule 4.1. ***Who makes the request.*** – A party to a pending action filed in violation of the arbitration agreement, whether contained in an arbitration clause or in a submission agreement, may request the court to refer the parties to arbitration in accordance with such agreement.

Rule 4.2. ***When to make request.*** – (A) *Where the arbitration agreement exists before the action is filed.* – The request for referral shall be made not later than the pre-trial conference. After the pre-trial conference, the court will only act upon the request for referral if it is made with the agreement of all parties to the case.

(B) *Submission agreement.* – If there is no existing arbitration agreement at the time the case is filed but the parties subsequently enter into an arbitration agreement, they may request the court to refer their dispute to arbitration at any time during the proceedings.

Rule 4.3. ***Contents of request.*** – The request for referral shall be in the form of a motion, which shall state that the dispute is covered by an arbitration agreement.

Apart from other submissions, the movant shall attach to his motion an authentic copy of the arbitration agreement.

The request shall contain a notice of hearing addressed to all parties specifying the date and time when it would be heard. The party

making the request shall serve it upon the respondent to give him the opportunity to file a comment or opposition as provided in the immediately succeeding Rule before the hearing.

Rule 4.4. ***Comment/Opposition.*** – The comment/opposition must be filed within fifteen (15) days from service of the petition. The comment/opposition should show that: (a) there is no agreement to refer the dispute to arbitration; and/or (b) the agreement is null and void; and/or (c) the subject-matter of the dispute is not capable of settlement or resolution by arbitration in accordance with Section 6 of the ADR Act.

Rule 4.5. ***Court action.*** – After hearing, the court shall stay the action and, considering the statement of policy embodied in Rule 2.4, above, refer the parties to arbitration if it finds *prima facie*, based on the pleadings and supporting documents submitted by the parties, that there is an arbitration agreement and that the subject-matter of the dispute is capable of settlement or resolution by arbitration in accordance with Section 6 of the ADR Act. Otherwise, the court shall continue with the judicial proceedings.

Rule 4.6. ***No reconsideration, appeal or certiorari.*** – An order referring the dispute to arbitration shall be immediately executory and shall not be subject to a motion for reconsideration, appeal or petition for certiorari.

An order denying the request to refer the dispute to arbitration shall not be subject to an appeal, but may be the subject of a motion for reconsideration and/or a petition for certiorari.

Rule 4.7. ***Multiple actions and parties.*** – The court shall not decline to refer some or all of the parties to arbitration for any of the following reasons:

a. Not all of the disputes subject of the civil action may be referred to arbitration;

b. Not all of the parties to the civil action are bound by the arbitration agreement and referral to arbitration would result in multiplicity of suits;

c. The issues raised in the civil action could be speedily and efficiently resolved in its entirety by the court rather than in arbitration;

d. Referral to arbitration does not appear to be the most prudent action; or

e. The stay of the action would prejudice the rights of the parties to the civil action who are not bound by the arbitration agreement.

The court may, however, issue an order directing the inclusion in arbitration of those parties who are not bound by the arbitration agreement but who agree to such inclusion provided those originally bound by it do not object to their inclusion.

Rule 4.8. ***Arbitration to proceed.*** – Despite the pendency of the action referred to in Rule 4.1, above, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the action is pending before the court.

RULE 5: INTERIM MEASURES OF PROTECTION

Rule 5.1. ***Who may ask for interim measures of protection.*** – A party to an arbitration agreement may petition the court for interim measures of protection.

Rule 5.2. ***When to petition*****.** – A petition for an interim measure of protection may be made (a) before arbitration is commenced, (b) after arbitration is commenced, but before the constitution of the arbitral tribunal, or (c) after the constitution of the arbitral tribunal and at any time during arbitral proceedings but, at this stage, only to the extent that the arbitral tribunal has no power to act or is unable to act effectively.

Rule 5.3. ***Venue.*** – A petition for an interim measure of protection may be filed with the Regional Trial Court, which has jurisdiction over any of the following places:

a. Where the principal place of business of any of the parties to arbitration is located;

b. Where any of the parties who are individuals resides;

c. Where any of the acts sought to be enjoined are being performed, threatened to be performed or not being performed; or

d. Where the real property subject of arbitration, or a portion thereof is situated.

Rule 5.4. ***Grounds.*** – The following grounds, while not limiting the reasons for the court to grant an interim measure of protection, indicate the nature of the reasons that the court shall consider in granting the relief:

a. The need to prevent irreparable loss or injury;

b. The need to provide security for the performance of any obligation;

c. The need to produce or preserve evidence; or

d. The need to compel any other appropriate act or omission.

Rule 5.5. ***Contents of the petition.*** – The verified petition must state the following:

a. The fact that there is an arbitration agreement;

b. The fact that the arbitral tribunal has not been constituted, or if constituted, is unable to act or would be unable to act effectively;

c. A detailed description of the appropriate relief sought;

d. The grounds relied on for the allowance of the petition

Apart from other submissions, the petitioner must attach to his petition an authentic copy of the arbitration agreement.

Rule 5.6. ***Type of interim measure of protection that a court may grant.*** – The following, among others, are the interim measures of protection that a court may grant:

a. Preliminary injunction directed against a party to arbitration;

b. Preliminary attachment against property or garnishment of funds in the custody of a bank or a third person;

c. Appointment of a receiver;

d. Detention, preservation, delivery or inspection of property; or,

e. Assistance in the enforcement of an interim measure of protection granted by the arbitral tribunal, which the latter cannot enforce effectively.

Rule 5.7. ***Dispensing with prior notice in certain cases.*** – Prior notice to the other party may be dispensed with when the petitioner alleges in the petition that there is an urgent need to either (a) preserve property, (b) prevent the respondent from disposing of, or concealing, the property, or (c) prevent the relief prayed for from becoming illusory because of prior notice, and the court finds that the reason/s given by the petitioner are meritorious.

Rule 5.8. ***Comment/Opposition.*** – The comment/opposition must be filed within fifteen (15) days from service of the petition. The opposition or comment should state the reasons why the interim measure of protection should not be granted.

Rule 5.9. ***Court action.*** – After hearing the petition, the court shall balance the relative interests of the parties and inconveniences that may be caused, and on that basis resolve the matter within thirty (30) days from (a) submission of the opposition, or (b) upon lapse of the period to file the same, or (c) from termination of the hearing that the court may set only if there is a need for clarification or further argument.

If the other parties fail to file their opposition on or before the day of the hearing, the court shall *motu proprio* render judgment only on the basis of the allegations in the petition that are substantiated by supporting documents and limited to what is prayed for therein.

In cases where, based solely on the petition, the court finds that there is an urgent need to either (a) preserve property, (b) prevent the respondent from disposing of, or concealing, the property, or (c) prevent the relief prayed for from becoming illusory because of prior notice, it shall issue an immediately executory temporary order of protection and require the petitioner, within five (5) days from receipt of that order, to post a bond to answer for any damage that respondent may suffer as a result of its order. The *ex-parte* temporary order of protection shall be valid only for a period of twenty (20) days from the service on the party required to comply with the order. Within that period, the court shall:

a. Furnish the respondent a copy of the petition and a notice requiring him to comment thereon on or before the day the petition will be heard; and

b. Notify the parties that the petition shall be heard on a day specified in the notice, which must not be beyond the twenty (20) day period of the effectivity of the *ex-parte* order.

The respondent has the option of having the temporary order of protection lifted by posting an appropriate counter-bond as determined by the court.

If the respondent requests the court for an extension of the period to file his opposition or comment or to reset the hearing to a later date, and such request is granted, the court shall extend the period of validity

of the *ex-parte* temporary order of protection for no more than twenty days from expiration of the original period.

After notice and hearing, the court may either grant or deny the petition for an interim measure of protection. The order granting or denying any application for interim measure of protection in aid of arbitration must indicate that it is issued without prejudice to subsequent grant, modification, amendment, revision or revocation by an arbitral tribunal.

Rule 5.10. ***Relief against court action.*** – If respondent was given an opportunity to be heard on a petition for an interim measure of protection, any order by the court shall be immediately executory, but may be the subject of a motion for reconsideration and/or appeal or, if warranted, a petition for certiorari.

Rule 5.11. ***Duty of the court to refer back.*** – The court shall not deny an application for assistance in implementing or enforcing an interim measure of protection ordered by an arbitral tribunal on any or all of the following grounds:

a. The arbitral tribunal granted the interim relief ex parte; or

b. The party opposing the application found new material evidence, which the arbitral tribunal had not considered in granting in the application, and which, if considered, may produce a different result; or

c. The measure of protection ordered by the arbitral tribunal amends, revokes, modifies or is inconsistent with an earlier measure of protection issued by the court.

If it finds that there is sufficient merit in the opposition to the application based on letter (b) above, the court shall refer the matter back to the arbitral tribunal for appropriate determination.

Rule 5.12. ***Security.*** – The order granting an interim measure of protection may be conditioned upon the provision of security, performance of an act, or omission thereof, specified in the order.

The Court may not change or increase or decrease the security ordered by the arbitral tribunal.

Rule 5.13. ***Modification, amendment, revision or revocation of court's previously issued interim measure of protection.*** – Any court order

granting or denying interim measure/s of protection is issued without prejudice to subsequent grant, modification, amendment, revision or revocation by the arbitral tribunal as may be warranted.

An interim measure of protection issued by the arbitral tribunal shall, upon its issuance be deemed to have *ipso jure* modified, amended, revised or revoked an interim measure of protection previously issued by the court to the extent that it is inconsistent with the subsequent interim measure of protection issued by the arbitral tribunal.

Rule 5.14. ***Conflict or inconsistency between interim measure of protection issued by the court and by the arbitral tribunal.*** – Any question involving a conflict or inconsistency between an interim measure of protection issued by the court and by the arbitral tribunal shall be immediately referred by the court to the arbitral tribunal which shall have the authority to decide such question.

Rule 5.15. ***Court to defer action on petition for an interim measure of protection when informed of constitution of the arbitral tribunal.*** – The court shall defer action on any pending petition for an interim measure of protection filed by a party to an arbitration agreement arising from or in connection with a dispute thereunder upon being informed that an arbitral tribunal has been constituted pursuant to such agreement. The court may act upon such petition only if it is established by the petitioner that the arbitral tribunal has no power to act on any such interim measure of protection or is unable to act thereon effectively.

Rule 5.16. ***Court assistance should arbitral tribunal be unable to effectively enforce interim measure of protection.*** – The court shall assist in the enforcement of an interim measure of protection issued by the arbitral tribunal which it is unable to effectively enforce.

RULE 6: APPOINTMENT OF ARBITRATORS

Rule 6.1. ***When the court may act as Appointing Authority.*** – The court shall act as Appointing Authority only in the following instances:

a. Where any of the parties in an institutional arbitration failed or refused to appoint an arbitrator or when the parties have failed to reach an agreement on the sole arbitrator (in an arbitration before a sole arbitrator) or when the two designated arbitrators have failed to reach an agreement on the third or presiding

arbitrator (in an arbitration before a panel of three arbitrators), and the institution under whose rules arbitration is to be conducted fails or is unable to perform its duty as appointing authority within a reasonable time from receipt of the request for appointment;

b. In all instances where arbitration is *ad hoc* and the parties failed to provide a method for appointing or replacing an arbitrator, or substitute arbitrator, or the method agreed upon is ineffective, and the National President of the Integrated Bar of the Philippines (IBP) or his duly authorized representative fails or refuses to act within such period as may be allowed under the pertinent rules of the IBP or within such period as may be agreed upon by the parties, or in the absence thereof, within thirty (30) days from receipt of such request for appointment;

c. Where the parties agreed that their dispute shall be resolved by three arbitrators but no method of appointing those arbitrators has been agreed upon, each party shall appoint one arbitrator and the two arbitrators thus appointed shall appoint a third arbitrator. If a party fails to appoint his arbitrator within thirty (30) days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within a reasonable time from their appointment, the appointment shall be made by the Appointing Authority. If the latter fails or refuses to act or appoint an arbitrator within a reasonable time from receipt of the request to do so, any party or the appointed arbitrator/s may request the court to appoint an arbitrator or the third arbitrator as the case may be.

Rule 6.2. ***Who may request for appointment.*** – Any party to an arbitration may request the court to act as an Appointing Authority in the instances specified in Rule 6.1 above.

Rule 6.3. ***Venue.*** – The petition for appointment of arbitrator may be filed, at the option of the petitioner, in the Regional Trial Court (a) where the principal place of business of any of the parties is located, (b) if any of the parties are individuals, where those individuals reside, or (c) in the National Capital Region.

Rule 6.4. ***Contents of the petition.*** - The petition shall state the following:

a. The general nature of the dispute;

b. If the parties agreed on an appointment procedure, a description of that procedure with reference to the agreement where such may be found;

c. The number of arbitrators agreed upon or the absence of any agreement as to the number of arbitrators;

d. The special qualifications that the arbitrator/s must possess, if any, that were agreed upon by the parties;

e. The fact that the Appointing Authority, without justifiable cause, has failed or refused to act as such within the time prescribed or in the absence thereof, within a reasonable time, from the date a request is made; and

f. The petitioner is not the cause of the delay in, or failure of, the appointment of the arbitrator.

Apart from other submissions, the petitioner must attach to the petition (a) an authentic copy of the arbitration agreement, and (b) proof that the Appointing Authority has been notified of the filing of the petition for appointment with the court.

Rule 6.5. ***Comment/Opposition.*** – The comment/opposition must be filed within fifteen (15) days from service of the petition.

Rule 6.6. ***Submission of list of arbitrators.*** – The court may, at its option, also require each party to submit a list of not less than three (3) proposed arbitrators together with their *curriculum vitae*.

Rule 6.7. ***Court action.*** – After hearing, if the court finds merit in the petition, it shall appoint an arbitrator; otherwise, it shall dismiss the petition.

In making the appointment, the court shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator.

At any time after the petition is filed and before the court makes an appointment, it shall also dismiss the petition upon being informed that the Appointing Authority has already made the appointment.

Rule 6.8. ***Forum shopping prohibited.*** – When there is a pending petition in another court to declare the arbitration agreement inexistent, invalid,

unenforceable, on account of which the respondent failed or refused to participate in the selection and appointment of a sole arbitrator or to appoint a party-nominated arbitrator, the petition filed under this rule shall be dismissed.

Rule 6.9. ***Relief against court action.*** – If the court appoints an arbitrator, the order appointing an arbitrator shall be immediately executory and shall not be the subject of a motion for reconsideration, appeal or certiorari. An order of the court denying the petition for appointment of an arbitrator may, however, be the subject of a motion for reconsideration, appeal or certiorari.

RULE 7: CHALLENGE TO APPOINTMENT OF ARBITRATOR

Rule 7.1. ***Who may challenge.*** – Any of the parties to an arbitration may challenge an arbitrator.

Rule 7.2. ***When challenge may be raised in court.*** – When an arbitrator is challenged before the arbitral tribunal under the procedure agreed upon by the parties or under the procedure provided for in Article 13 (2) of the Model Law and the challenge is not successful, the aggrieved party may request the Appointing Authority to rule on the challenge, and it is only when such Appointing Authority fails or refuses to act on the challenge within such period as may be allowed under the applicable rule or in the absence thereof, within thirty (30) days from receipt of the request, that the aggrieved party may renew the challenge in court.

Rule 7.3. ***Venue.*** – The challenge shall be filed with the Regional Trial Court (a) where the principal place of business of any of the parties is located, (b) if any of the parties are individuals, where those individuals reside, or (c) in the National Capital Region.

Rule 7.4. ***Grounds.*** – An arbitrator may be challenged on any of the grounds for challenge provided for in Republic Act No. 9285 and its implementing rules, Republic Act No. 876 or the Model Law. The nationality or professional qualification of an arbitrator is not a ground to challenge an arbitrator unless the parties have specified in their arbitration agreement a nationality and/or professional qualification for appointment as arbitrator.

Rule 7.5. ***Contents of the petition.*** – The petition shall state the following:

a. The name/s of the arbitrator/s challenged and his/their address;

b. The grounds for the challenge;

c. The facts showing that the ground for the challenge has been expressly or impliedly rejected by the challenged arbitrator/s; and

d. The facts showing that the Appointing Authority failed or refused to act on the challenge.

The court shall dismiss the petition *motu proprio* unless it is clearly alleged therein that the Appointing Authority charged with deciding the challenge, after the resolution of the arbitral tribunal rejecting the challenge is raised or contested before such Appointing Authority, failed or refused to act on the challenge within thirty (30) days from receipt of the request or within such longer period as may apply or as may have been agreed upon by the parties.

Rule 7.6. ***Comment/Opposition.*** – The challenged arbitrator or other parties may file a comment or opposition within fifteen (15) days from service of the petition.

Rule 7.7. ***Court action.*** – After hearing, the court shall remove the challenged arbitrator if it finds merit in the petition; otherwise, it shall dismiss the petition.

The court shall allow the challenged arbitrator who subsequently agrees to accept the challenge to withdraw as arbitrator.

The court shall accept the challenge and remove the arbitrator in the following cases:

a. The party or parties who named and appointed the challenged arbitrator agree to the challenge and withdraw the appointment.

b. The other arbitrators in the arbitral tribunal agree to the removal of the challenged arbitrator; and

c. The challenged arbitrator fails or refuses to submit his comment on the petition or the brief of legal arguments as directed by the court, or in such comment or legal brief, he fails to object to his removal following the challenge.

The court shall decide the challenge on the basis of evidence submitted by the parties.

The court will decide the challenge on the basis of the evidence submitted by the parties in the following instances:

a. The other arbitrators in the arbitral tribunal agree to the removal of the challenged arbitrator; and

b. If the challenged arbitrator fails or refuses to submit his comment on the petition or the brief of legal arguments as directed by the court, or in such comment or brief of legal arguments, he fails to object to his removal following the challenge.

Rule 7.8. ***No motion for reconsideration, appeal or certiorari.*** – Any order of the court resolving the petition shall be immediately executory and shall not be the subject of a motion for reconsideration, appeal, or certiorari.

Rule 7.9. ***Reimbursement of expenses and reasonable compensation to challenged arbitrator.*** – Unless the bad faith of the challenged arbitrator is established with reasonable certainty by concealing or failing to disclose a ground for his disqualification, the challenged arbitrator shall be entitled to reimbursement of all reasonable expenses he may have incurred in attending to the arbitration and to a reasonable compensation for his work on the arbitration. Such expenses include, but shall not be limited to, transportation and hotel expenses, if any. A reasonable compensation shall be paid to the challenged arbitrator on the basis of the length of time he has devoted to the arbitration and taking into consideration his stature and reputation as an arbitrator. The request for reimbursement of expenses and for payment of a reasonable compensation shall be filed in the same case and in the court where the petition to replace the challenged arbitrator was filed. The court, in determining the amount of the award to the challenged arbitrator, shall receive evidence of expenses to be reimbursed, which may consist of air tickets, hotel bills and expenses, and inland transportation. The court shall direct the challenging party to pay the amount of the award to the court for the account of the challenged arbitrator, in default of which the court may issue a writ of execution to enforce the award.

RULE 8: TERMINATION OF THE MANDATE OF ARBITRATOR

Rule 8.1. ***Who may request termination and on what grounds.*** – Any of the parties to an arbitration may request for the termination of the mandate of an arbitrator where an arbitrator becomes *de jure* or *de facto* unable to perform his function or for other reasons fails to act without undue delay and that arbitrator, upon request of any party, fails or refuses to withdraw from his office.

Rule 8.2. ***When to request.*** – If an arbitrator refuses to withdraw from his office, and subsequently, the Appointing Authority fails or refuses to decide on the termination of the mandate of that arbitrator within such period as may be allowed under the applicable rule or, in the absence thereof, within thirty (30) days from the time the request is brought before him, any party may file with the court a petition to terminate the mandate of that arbitrator.

Rule 8.3. ***Venue.*** – A petition to terminate the mandate of an arbitrator may, at that petitioner's option, be filed with the Regional Trial Court (a) where the principal place of business of any of the parties is located, (b) where any of the parties who are individuals resides, or (c) in the National Capital Region.

Rule 8.4. ***Contents of the petition.*** – The petition shall state the following:

a. The name of the arbitrator whose mandate is sought to be terminated;

b. The ground/s for termination;

c. The fact that one or all of the parties had requested the arbitrator to withdraw but he failed or refused to do so;

d. The fact that one or all of the parties requested the Appointing Authority to act on the request for the termination of the mandate of the arbitrator and failure or inability of the Appointing Authority to act within thirty (30) days from the request of a party or parties or within such period as may have been agreed upon by the parties or allowed under the applicable rule.

The petitioner shall further allege that one or all of the parties had requested the arbitrator to withdraw but he failed or refused to do so.

Rule 8.5. ***Comment/Opposition.*** – The comment/opposition must be filed within fifteen (15) days from service of the petition.

Rule 8.6. ***Court action.*** – After hearing, if the court finds merit in the petition, it shall terminate the mandate of the arbitrator who refuses to withdraw from his office; otherwise, it shall dismiss the petition.

Rule 8.7. ***No motion for reconsideration or appeal.*** – Any order of the court resolving the petition shall be immediately executory and shall not be subject of a motion for reconsideration, appeal or petition for certiorari.

Rule 8.8. ***Appointment of substitute arbitrator.*** – Where the mandate of an arbitrator is terminated, or he withdraws from office for any other reason, or because of his mandate is revoked by agreement of the parties or is terminated for any other reason, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

RULE 9: ASSISTANCE IN TAKING EVIDENCE

Rule 9.1. ***Who may request assistance.*** – Any party to an arbitration, whether domestic or foreign, may request the court to provide assistance in taking evidence.

Rule 9.2. ***When assistance may be sought.*** – Assistance may be sought at any time during the course of the arbitral proceedings when the need arises.

Rule 9.3. ***Venue.*** – A petition for assistance in taking evidence may, at the option of the petitioner, be filed with Regional Trial Court where (a) arbitration proceedings are taking place, (b) the witnesses reside or may be found, or (c) where the evidence may be found.

Rule 9.4. ***Ground.*** – The court may grant or execute the request for assistance in taking evidence within its competence and according to the rules of evidence.

Rule 9.5. ***Type of assistance.*** – A party requiring assistance in the taking of evidence may petition the court to direct any person, including a representative of a corporation, association, partnership or other entity (other than a party to the ADR proceedings or its officers) found in the

Philippines, for any of the following:

a. To comply with a subpoena *ad testificandum* and/or subpoena *duces tecum*;

b. To appear as a witness before an officer for the taking of his deposition upon oral examination or by written interrogatories;

c. To allow the physical examination of the condition of persons, or the inspection of things or premises and, when appropriate, to allow the recording and/or documentation of condition of persons, things or premises (i.e., photographs, video and other means of recording/documentation);

d. To allow the examination and copying of documents; and

e. To perform any similar acts.

Rule 9.6. *Contents of the petition.* – The petition must state the following:

a. The fact that there is an ongoing arbitration proceeding even if such proceeding could not continue due to some legal impediments;

b. The arbitral tribunal ordered the taking of evidence or the party desires to present evidence to the arbitral tribunal;

c. Materiality or relevance of the evidence to be taken; and

d. The names and addresses of the intended witness/es, place where the evidence may be found, the place where the premises to be inspected are located or the place where the acts required are to be done.

Rule 9.7. Comment/Opposition. – The comment/opposition must be filed within fifteen (15) days from service of the petition.

Rule 9.8. *Court action.* – If the evidence sought is not privileged, and is material and relevant, the court shall grant the assistance in taking evidence requested and shall order petitioner to pay costs attendant to such assistance.

Rule 9.9. *Relief against court action.* – The order granting assistance in taking evidence shall be immediately executory and not subject to reconsideration or appeal. If the court declines to grant assistance in taking evidence, the petitioner may file a motion for reconsideration or appeal.

Rule 9.10. ***Perpetuation of testimony before the arbitral tribunal is constituted.*** – At anytime before arbitration is commenced or before the arbitral tribunal is constituted, any person who desires to perpetuate his testimony or that of another person may do so in accordance with Rule 24 of the Rules of Court.

Rule 9.11. ***Consequence of disobedience.*** – The court may impose the appropriate sanction on any person who disobeys its order to testify when required or perform any act required of him.

RULE 10: CONFIDENTIALITY/PROTECTIVE ORDERS

Rule 10.1. ***Who may request confidentiality.*** – A party, counsel or witness who disclosed or who was compelled to disclose information relative to the subject of ADR under circumstances that would create a reasonable expectation, on behalf of the source, that the information shall be kept confidential has the right to prevent such information from being further disclosed without the express written consent of the source or the party who made the disclosure.

Rule 10.2. ***When request made.*** – A party may request a protective order at anytime there is a need to enforce the confidentiality of the information obtained, or to be obtained, in ADR proceedings.

Rule 10.3. ***Venue.*** – A petition for a protective order may be filed with the Regional Trial Court where that order would be implemented.

If there is a pending court proceeding in which the information obtained in an ADR proceeding is required to be divulged or is being divulged, the party seeking to enforce the confidentiality of the information may file a motion with the court where the proceedings are pending to enjoin the confidential information from being divulged or to suppress confidential information.

Rule 10.4. ***Grounds.*** – A protective order may be granted only if it is shown that the applicant would be materially prejudiced by an unauthorized disclosure of the information obtained, or to be obtained, during an ADR proceeding.

Rule 10.5. ***Contents of the motion or petition.*** – The petition or motion must state the following:

a. That the information sought to be protected was obtained, or would be obtained, during an ADR proceeding;

b. The applicant would be materially prejudiced by the disclosure of that information;

c. The person or persons who are being asked to divulge the confidential information participated in an ADR proceedings; and

d. The time, date and place when the ADR proceedings took place.

Apart from the other submissions, the movant must set the motion for hearing and contain a notice of hearing in accordance with Rule 15 of the Rules of Court.

Rule 10.6. *Notice.* – Notice of a request for a protective order made through a motion shall be made to the opposing parties in accordance with Rule 15 of the Rules of Court.

Rule 10.7. *Comment/Opposition.* – The comment/opposition must be filed within fifteen (15) days from service of the petition. The opposition or comment may be accompanied by written proof that (a) the information is not confidential, (b) the information was not obtained during an ADR proceeding, (c) there was a waiver of confidentiality, or (d) the petitioner/movant is precluded from asserting confidentiality.

Rule 10.8. *Court action.* – If the court finds the petition or motion meritorious, it shall issue an order enjoining a person or persons from divulging confidential information.

In resolving the petition or motion, the courts shall be guided by the following principles applicable to all ADR proceedings: Confidential information shall not be subject to discovery and shall be inadmissible in any adversarial proceeding, whether judicial or quasi judicial. However, evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its use therein.

For mediation proceedings, the court shall be further guided by the following principles:

a. Information obtained through mediation shall be privileged and confidential.

b. A party, a mediator, or a nonparty participant may refuse to disclose and may prevent any other person from disclosing a mediation communication.

c. In such an adversarial proceeding, the following persons involved or previously involved in a mediation may not be compelled to disclose confidential information obtained during the mediation: (1) the parties to the dispute; (2) the mediator or mediators; (3) the counsel for the parties: (4) the nonparty participants; (5) any persons hired or engaged in connection with the mediation as secretary, stenographer; clerk or assistant; and (6) any other person who obtains or possesses confidential information by reason of his/ her profession.

d. The protection of the ADR Laws shall continue to apply even if a mediator is found to have failed to act impartially.

e. A mediator may not be called to testify to provide information gathered in mediation. A mediator who is wrongfully subpoenaed shall be reimbursed the full cost of his attorney fees and related expenses.

Rule 10.9. ***Relief against court action.*** – The order enjoining a person or persons from divulging confidential information shall be immediately executory and may not be enjoined while the order is being questioned with the appellate courts.

If the court declines to enjoin a person or persons from divulging confidential information, the petitioner may file a motion for reconsideration or appeal.

Rule 10.10. ***Consequence of disobedience.*** – Any person who disobeys the order of the court to cease from divulging confidential information shall be imposed the proper sanction by the court.

RULE 11: CONFIRMATION, CORRECTION OR VACATION OF AWARD IN DOMESTIC ARBITRATION

Rule 11.1. ***Who may request confirmation, correction or vacation.*** – Any party to a domestic arbitration may petition the court to confirm, correct or vacate a domestic arbitral award.

Rule 11.2. ***When to request confirmation, correction/ modification or vacation.*** –

(A) *Confirmation.* – At any time after the lapse of thirty (30) days from receipt by the petitioner of the arbitral award, he may petition the court to confirm that award.

(B) *Correction/Modification.* – Not later than thirty (30) days from receipt of the arbitral award, a party may petition the court to correct/modify that award.

(C) *Vacation.* – Not later than thirty (30) days from receipt of the arbitral award, a party may petition the court to vacate that award.

(D) A petition to vacate the arbitral award may be filed, in opposition to a petition to confirm the arbitral award, not later than thirty (30) days from receipt of the award by the petitioner. A petition to vacate the arbitral award filed beyond the reglementary period shall be dismissed.

(E) A petition to confirm the arbitral award may be filed, in opposition to a petition to vacate the arbitral award, at any time after the petition to vacate such arbitral award is filed. The dismissal of the petition to vacate the arbitral award for having been filed beyond the reglementary period shall not result in the dismissal of the petition for the confirmation of such arbitral award.

(F) The filing of a petition to confirm an arbitral award shall not authorize the filing of a belated petition to vacate or set aside such award in opposition thereto.

(G) A petition to correct an arbitral award may be included as part of a petition to confirm the arbitral award or as a petition to confirm that award.

Rule 11.3. ***Venue.*** – The petition for confirmation, correction/ modification or vacation of a domestic arbitral award may be filed with Regional Trial Court having jurisdiction over the place in which one of the parties is doing business, where any of the parties reside or where arbitration proceedings were conducted.

Rule 11.4. *Grounds.* – (A) *To vacate an arbitral award.* – The arbitral award may be vacated on the following grounds:

a. The arbitral award was procured through corruption, fraud or other undue means;

b. There was evident partiality or corruption in the arbitral tribunal or any of its members;

c. The arbitral tribunal was guilty of misconduct or any form of misbehavior that has materially prejudiced the rights of any party such as refusing to postpone a hearing upon sufficient cause shown or to hear evidence pertinent and material to the controversy;

d. One or more of the arbitrators was disqualified to act as such under the law and willfully refrained from disclosing such disqualification; or

e. The arbitral tribunal exceeded its powers, or so imperfectly executed them, such that a complete, final and definite award upon the subject matter submitted to them was not made.

The award may also be vacated on any or all of the following grounds:

a. The arbitration agreement did not exist, or is invalid for any ground for the revocation of a contract or is otherwise unenforceable; or

b. A party to arbitration is a minor or a person judicially declared to be incompetent.

The petition to vacate an arbitral award on the ground that the party to arbitration is a minor or a person judicially declared to be incompetent shall be filed only on behalf of the minor or incompetent and shall allege that (a) the other party to arbitration had knowingly entered into a submission or agreement with such minor or incompetent, or (b) the submission to arbitration was made by a guardian or guardian *ad litem* who was not authorized to do so by a competent court.

In deciding the petition to vacate the arbitral award, the court shall disregard any other ground than those enumerated above.

(B) *To correct/modify an arbitral award.* – The Court may correct/modify or order the arbitral tribunal to correct/modify the arbitral award in the following cases:

a. Where there was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award;

b. Where the arbitrators have awarded upon a matter not submitted to them, not affecting the merits of the decision upon the matter submitted;

c. Where the arbitrators have omitted to resolve an issue submitted to them for resolution; or

d. Where the award is imperfect in a matter of form not affecting the merits of the controversy, and if it had been a commissioner's report, the defect could have been amended or disregarded by the Court.

Rule 11.5. ***Form of petition.*** – An application to vacate an arbitral award shall be in the form of a petition to vacate or as a petition to vacate in opposition to a petition to confirm the same award.

An application to correct/modify an arbitral award may be included in a petition to confirm an arbitral award or in a petition to vacate in opposition to confirm the same award.

When a petition to confirm an arbitral award is pending before a court, the party seeking to vacate or correct/modify said award may only apply for those reliefs through a petition to vacate or correct/modify the award in opposition to the petition to confirm the award provided that such petition to vacate or correct/modify is filed within thirty (30) days from his receipt of the award. A petition to vacate or correct/modify an arbitral award filed in another court or in a separate case before the same court shall be dismissed, upon appropriate motion, as a violation of the rule against forum-shopping.

When a petition to vacate or correct/modify an arbitral award is pending before a court, the party seeking to confirm said award may only apply for that relief through a petition to confirm the same award in opposition to the petition to vacate or correct/modify the award. A petition to confirm or correct/modify an arbitral award filed as separate proceeding in another court or in a different case before the same court shall be dismissed, upon appropriate motion, as a violation of the rule against forum shopping.

As an alternative to the dismissal of a second petition for confirmation, vacation or correction/modification of an arbitral award filed in violation of the non-forum shopping rule, the court or courts concerned may allow the consolidation of the two proceedings in one court and in one case.

Where the petition to confirm the award and petition to vacate or correct/modify were simultaneously filed by the parties in the same court or in different courts in the Philippines, upon motion of either party, the court may order the consolidation of the two cases before either court.

In all instances, the petition must be verified by a person who has knowledge of the jurisdictional facts.

Rule 11.6. ***Contents of petition.*** – The petition must state the following:

a. The addresses of the parties and any change thereof;

b. The jurisdictional issues raised by a party during arbitration proceedings;

c. The grounds relied upon by the parties in seeking the vacation of the arbitral award whether the petition is a petition for the vacation or setting aside of the arbitral award or a petition in opposition to a petition to confirm the award; and

d. A statement of the date of receipt of the arbitral award and the circumstances under which it was received by the petitioner.

Apart from other submissions, the petitioner must attach to the petition the following:

a. An authentic copy of the arbitration agreement;

b. An authentic copy of the arbitral award;

c. A certification against forum shopping executed by the applicant in accordance with Section 5 of Rule 7 of the Rules of Court; and

d. An authentic copy or authentic copies of the appointment of an arbitral tribunal.

Rule 11.7. ***Notice.*** – Upon finding that the petition filed under this Rule is sufficient both in form and in substance, the Court shall cause notice and a copy of the petition to be delivered to the respondent allowing

him to file a comment or opposition thereto within fifteen (15) days from receipt of the petition. In lieu of an opposition, the respondent may file a petition in opposition to the petition.

The petitioner may within fifteen (15) days from receipt of the petition in opposition thereto file a reply.

Rule 11.8. ***Hearing.*** – If the Court finds from the petition or petition in opposition thereto that there are issues of fact, it shall require the parties, within a period of not more than fifteen (15) days from receipt of the order, to simultaneously submit the affidavits of all of their witnesses and reply affidavits within ten (10) days from receipt of the affidavits to be replied to. There shall be attached to the affidavits or reply affidavits documents relied upon in support of the statements of fact in such affidavits or reply affidavits.

If the petition or the petition in opposition thereto is one for vacation of an arbitral award, the interested party in arbitration may oppose the petition or the petition in opposition thereto for the reason that the grounds cited in the petition or the petition in opposition thereto, assuming them to be true, do not affect the merits of the case and may be cured or remedied. Moreover, the interested party may request the court to suspend the proceedings for vacation for a period of time and to direct the arbitral tribunal to reopen and conduct a new hearing and take such other action as will eliminate the grounds for vacation of the award. The opposition shall be supported by a brief of legal arguments to show the existence of a sufficient legal basis for the opposition.

If the ground of the petition to vacate an arbitral award is that the arbitration agreement did not exist, is invalid or otherwise unenforceable, and an earlier petition for judicial relief under Rule 3 had been filed, a copy of such petition and of the decision or final order of the court shall be attached thereto. But if the ground was raised before the arbitral tribunal in a motion to dismiss filed not later than the submission of its answer, and the arbitral tribunal ruled in favor of its own jurisdiction as a preliminary question which was appealed by a party to the Regional Trial Court, a copy of the order, ruling or preliminary award or decision of the arbitral tribunal, the appeal therefrom to the Court and the order or decision of the Court shall all be attached to the petition.

If the ground of the petition is that the petitioner is an infant or a person judicially declared to be incompetent, there shall be attached

to the petition certified copies of documents showing such fact. In addition, the petitioner shall show that even if the submission or arbitration agreement was entered into by a guardian or guardian *ad litem*, the latter was not authorized by a competent court to sign such the submission or arbitration agreement.

If on the basis of the petition, the opposition, the affidavits and reply affidavits of the parties, the court finds that there is a need to conduct an oral hearing, the court shall set the case for hearing. This case shall have preference over other cases before the court, except criminal cases. During the hearing, the affidavits of witnesses shall take the place of their direct testimonies and they shall immediately be subject to cross-examination thereon. The Court shall have full control over the proceedings in order to ensure that the case is heard without undue delay.

Rule 11.9. *Court action.* – Unless a ground to vacate an arbitral award under Rule 11.5 above is fully established, the court shall confirm the award.

An arbitral award shall enjoy the presumption that it was made and released in due course of arbitration and is subject to confirmation by the court.

In resolving the petition or petition in opposition thereto in accordance with these Special ADR Rules, the court shall either confirm or vacate the arbitral award. The court shall not disturb the arbitral tribunal's determination of facts and/or interpretation of law.

In a petition to vacate an award or in petition to vacate an award in opposition to a petition to confirm the award, the petitioner may simultaneously apply with the Court to refer the case back to the same arbitral tribunal for the purpose of making a new or revised award or to direct a new hearing, or in the appropriate case, order the new hearing before a new arbitral tribunal, the members of which shall be chosen in the manner provided in the arbitration agreement or submission, or the law. In the latter case, any provision limiting the time in which the arbitral tribunal may make a decision shall be deemed applicable to the new arbitral tribunal.

In referring the case back to the arbitral tribunal or to a new arbitral tribunal pursuant to Rule 24 of Republic Act No. 876, the court may not direct it to revise its award in a particular way, or to revise its findings of

fact or conclusions of law or otherwise encroach upon the independence of an arbitral tribunal in the making of a final award.

RULE 12: RECOGNITION AND ENFORCEMENT OR SETTING ASIDE OF AN INTERNATIONAL COMMERCIAL ARBITRATION AWARD

Rule 12.1. Who may request recognition and enforcement or setting aside. – Any party to an international commercial arbitration in the Philippines may petition the proper court to recognize and enforce or set aside an arbitral award.

Rule 12.2. *When to file petition.* – (A) *Petition to recognize and enforce.* – The petition for enforcement and recognition of an arbitral award may be filed anytime from receipt of the award. If, however, a timely petition to set aside an arbitral award is filed, the opposing party must file therein and in opposition thereto the petition for recognition and enforcement of the same award within the period for filing an opposition.

(B) *Petition to set aside.* – The petition to set aside an arbitral award may only be filed within three (3) months from the time the petitioner receives a copy thereof. If a timely request is made with the arbitral tribunal for correction, interpretation or additional award, the three (3) month period shall be counted from the time the petitioner receives the resolution by the arbitral tribunal of that request.

A petition to set aside can no longer be filed after the lapse of the three (3) month period. The dismissal of a petition to set aside an arbitral award for being time-barred shall not automatically result in the approval of the petition filed therein and in opposition thereto for recognition and enforcement of the same award. Failure to file a petition to set aside shall preclude a party from raising grounds to resist enforcement of the award.

Rule 12.3. *Venue.* – A petition to recognize and enforce or set aside an arbitral award may, at the option of the petitioner, be filed with the Regional Trial Court: (a) where arbitration proceedings were conducted; (b) where any of the assets to be attached or levied upon is located; (c) where the act to be enjoined will be or is being performed; (d) where any of the parties to arbitration resides or has its place of business; or (e) in the National Capital Judicial Region.

Rule 12.4. ***Grounds to set aside or resist enforcement.*** – The court may set aside or refuse the enforcement of the arbitral award only if:

a. The party making the application furnishes proof that:

   (i). A party to the arbitration agreement was under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereof, under Philippine law; or

   (ii). The party making the application to set aside or resist enforcement was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

   (iii). The award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration; provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside or only that part of the award which contains decisions on matters submitted to arbitration may be enforced; or

   (iv). The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of Philippine law from which the parties cannot derogate, or, failing such agreement, was not in accordance with Philippine law;

b. The court finds that:

   (i). The subject-matter of the dispute is not capable of settlement by arbitration under the law of the Philippines; or

   (ii). The recognition or enforcement of the award would be contrary to public policy.

In deciding the petition, the Court shall disregard any other ground to set aside or enforce the arbitral award other than those enumerated above.

The petition to set-aside or a pleading resisting the enforcement of an arbitral award on the ground that a party was a minor or an incompetent shall be filed only on behalf of the minor or incompetent and shall allege that (a) the other party to arbitration had knowingly entered into a submission or agreement with such minor or incompetent, or (b) the submission to arbitration was made by a guardian or guardian *ad litem* who was not authorized to do so by a competent court.

Rule 12.5. ***Exclusive recourse against arbitral award.*** – Recourse to a court against an arbitral award shall be made only through a petition to set aside the arbitral award and on grounds prescribed by the law that governs international commercial arbitration. Any other recourse from the arbitral award, such as by appeal or petition for review or petition for certiorari or otherwise, shall be dismissed by the court.

Rule 12.6. ***Form.*** – The application to recognize and enforce or set aside an arbitral award, whether made through a petition to recognize and enforce or to set aside or as a petition to set aside the award in opposition thereto, or through a petition to set aside or petition to recognize and enforce in opposition thereto, shall be verified by a person who has personal knowledge of the facts stated therein.

When a petition to recognize and enforce an arbitral award is pending, the application to set it aside, if not yet time-barred, shall be made through a petition to set aside the same award in the same proceedings.

When a timely petition to set aside an arbitral award is filed, the opposing party may file a petition for recognition and enforcement of the same award in opposition thereto.

Rule 12.7. ***Contents of petition.*** – (A) *Petition to recognize and enforce.* – The petition to recognize and enforce or petition to set aside in opposition thereto, or petition to set aside or petition to recognize and enforce in opposition thereto, shall state the following:

a. The addresses of record, or any change thereof, of the parties to arbitration;

b. A statement that the arbitration agreement or submission exists;

c. The names of the arbitrators and proof of their appointment;

d. A statement that an arbitral award was issued and when the petitioner received it; and

e. The relief sought.

Apart from other submissions, the petitioner shall attach to the petition the following:

a. An authentic copy of the arbitration agreement;

b. An authentic copy of the arbitral award;

c. A verification and certification against forum shopping executed by the applicant in accordance with Sections 4 and 5 of Rule 7 of the Rules of Court; and

d. An authentic copy or authentic copies of the appointment of an arbitral tribunal.

(B) *Petition to set aside.* – The petition to set aside or petition to set aside in opposition to a petition to recognize and enforce an arbitral award in international commercial arbitration shall have the same contents as a petition to recognize and enforce or petition to recognize and enforce in opposition to a petition to set aside an arbitral award. In addition, the said petitions should state the grounds relied upon to set it aside.

Further, if the ground of the petition to set aside is that the petitioner is a minor or found incompetent by a court, there shall be attached to the petition certified copies of documents showing such fact. In addition, the petitioner shall show that even if the submission or arbitration agreement was entered into by a guardian or guardian *ad litem*, the latter was not authorized by a competent court to sign such the submission or arbitration agreement.

In either case, if another court was previously requested to resolve and/or has resolved, on appeal, the arbitral tribunal's preliminary determination in favor of its own jurisdiction, the petitioner shall apprise the court before which the petition to recognize and enforce or set aside is pending of the status of the appeal or its resolution.

Rule 12.8. *Notice.* – Upon finding that the petition filed under this Rule is sufficient both in form and in substance, the court shall cause notice and a copy of the petition to be delivered to the respondent directing him to file an opposition thereto within fifteen (15) days from receipt of the petition. In lieu of an opposition, the respondent may file a petition to set aside in opposition to a petition to recognize and enforce, or a petition to recognize and enforce in opposition to a petition to set aside.

The petitioner may within fifteen (15) days from receipt of the petition to set aside in opposition to a petition to recognize and enforce, or from receipt of the petition to recognize and enforce in opposition to a petition to set aside, file a reply.

Rule 12.9. ***Submission of documents.*** – If the court finds that the issue between the parties is mainly one of law, the parties may be required to submit briefs of legal arguments, not more than fifteen (15) days from receipt of the order, sufficiently discussing the legal issues and the legal basis for the relief prayed for by each of them.

If the court finds from the petition or petition in opposition thereto that there are issues of fact relating to the ground(s) relied upon for the court to set aside, it shall require the parties within a period of not more than fifteen (15) days from receipt of the order simultaneously to submit the affidavits of all of their witnesses and reply affidavits within ten (10) days from receipt of the affidavits to be replied to. There shall be attached to the affidavits or reply affidavits, all documents relied upon in support of the statements of fact in such affidavits or reply affidavits.

Rule 12.10. ***Hearing.*** – If on the basis of the petition, the opposition, the affidavits and reply affidavits of the parties, the court finds that there is a need to conduct an oral hearing, the court shall set the case for hearing. This case shall have preference over other cases before the court, except criminal cases. During the hearing, the affidavits of witnesses shall take the place of their direct testimonies and they shall immediately be subject to cross-examination thereon. The court shall have full control over the proceedings in order to ensure that the case is heard without undue delay.

Rule 12.11. ***Suspension of proceedings to set aside.*** – The court when asked to set aside an arbitral award may, where appropriate and upon request by a party, suspend the proceedings for a period of time determined by it to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside. The court, in referring the case back to the arbitral tribunal may not direct it to revise its award in a particular way, or to revise its findings of fact or conclusions of law or otherwise encroach upon the independence of an arbitral tribunal in the making of a final award.

The court when asked to set aside an arbitral award may also, when the preliminary ruling of an arbitral tribunal affirming its jurisdiction to act on the matter before it had been appealed by the party aggrieved by such preliminary ruling to the court, suspend the proceedings to set aside to await the ruling of the court on such pending appeal or, in the alternative, consolidate the proceedings to set aside with the earlier appeal.

Rule 12.12. ***Presumption in favor of confirmation.*** – It is presumed that an arbitral award was made and released in due course and is subject to enforcement by the court, unless the adverse party is able to establish a ground for setting aside or not enforcing an arbitral award.

Rule 12.13. ***Judgment of the court.*** – Unless a ground to set aside an arbitral award under Rule 12.4 above is fully established, the court shall dismiss the petition. If, in the same proceedings, there is a petition to recognize and enforce the arbitral award filed in opposition to the petition to set aside, the court shall recognize and enforce the award.

In resolving the petition or petition in opposition thereto in accordance with the Special ADR Rules, the court shall either set aside or enforce the arbitral award. The court shall not disturb the arbitral tribunal's determination of facts and/or interpretation of law.

Rule 12.14. ***Costs.*** – Unless otherwise agreed upon by the parties in writing, at the time the case is submitted to the court for decision, the party praying for recognition and enforcement or setting aside of an arbitral award shall submit a statement under oath confirming the costs he has incurred only in the proceedings for such recognition and enforcement or setting aside. The costs shall include the attorney's fees the party has paid or is committed to pay to his counsel of record.

The prevailing party shall be entitled to an award of costs, which shall include reasonable attorney's fees of the prevailing party against the unsuccessful party. The court shall determine the reasonableness of the claim for attorney's fees.

RULE 13: RECOGNITION AND ENFORCEMENT OF A FOREIGN ARBITRAL AWARD

Rule 13.1. ***Who may request recognition and enforcement.*** – Any party to a foreign arbitration may petition the court to recognize and enforce a foreign arbitral award.

Rule 13.2. ***When to petition.*** – At any time after receipt of a foreign arbitral award, any party to arbitration may petition the proper Regional Trial Court to recognize and enforce such award.

Rule 13.3. ***Venue.*** – The petition to recognize and enforce a foreign arbitral award shall be filed, at the option of the petitioner, with the Regional Trial Court (a) where the assets to be attached or levied upon is located, (b) where the act to be enjoined is being performed, (c) in the principal place of business in the Philippines of any of the parties, (d) if any of the parties is an individual, where any of those individuals resides, or (e) in the National Capital Judicial Region.

Rule 13.4. ***Governing law and grounds to refuse recognition and enforcement.*** – The recognition and enforcement of a foreign arbitral award shall be governed by the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention") and this Rule. The court may, upon grounds of comity and reciprocity, recognize and enforce a foreign arbitral award made in a country that is not a signatory to the New York Convention as if it were a Convention Award.

A Philippine court shall not set aside a foreign arbitral award but may refuse it recognition and enforcement on any or all of the following grounds:

a. The party making the application to refuse recognition and enforcement of the award furnishes proof that:

    (i) A party to the arbitration agreement was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereof, under the law of the country where the award was made; or

(ii) The party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iii). The award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration; provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or

(iv). The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where arbitration took place; or

(v). The award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which that award was made; or

b. The court finds that:

(i). The subject-matter of the dispute is not capable of settlement or resolution by arbitration under Philippine law; or

(ii). The recognition or enforcement of the award would be contrary to public policy.

The court shall disregard any ground for opposing the recognition and enforcement of a foreign arbitral award other than those enumerated above.

Rule 13.5. ***Contents of petition.*** – The petition shall state the following:

a. The addresses of the parties to arbitration;

b. In the absence of any indication in the award, the country where the arbitral award was made and whether such country is a signatory to the New York Convention; and

c. The relief sought.

Apart from other submissions, the petition shall have attached to it the following:

a. An authentic copy of the arbitration agreement; and

b. An authentic copy of the arbitral award.

If the foreign arbitral award or agreement to arbitrate or submission is not made in English, the petitioner shall also attach to the petition a translation of these documents into English. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

Rule 13.6. ***Notice and opposition.*** – Upon finding that the petition filed under this Rule is sufficient both in form and in substance, the court shall cause notice and a copy of the petition to be delivered to the respondent allowing him to file an opposition thereto within thirty (30) days from receipt of the notice and petition.

Rule 13.7. ***Opposition.*** – The opposition shall be verified by a person who has personal knowledge of the facts stated therein.

Rule 13.8. ***Submissions.*** – If the court finds that the issue between the parties is mainly one of law, the parties may be required to submit briefs of legal arguments, not more than thirty (30) days from receipt of the order, sufficiently discussing the legal issues and the legal bases for the relief prayed for by each other.

If, from a review of the petition or opposition, there are issues of fact relating to the ground/s relied upon for the court to refuse enforcement, the court shall, *motu proprio* or upon request of any party, require the parties to simultaneously submit the affidavits of all of their witnesses within a period of not less than fifteen (15) days nor more than thirty (30) days from receipt of the order. The court may, upon the request of any party, allow the submission of reply affidavits within a period of not less than fifteen (15) days nor more than thirty (30) days from receipt of the order granting said request. There shall be attached to the affidavits or reply affidavits all documents relied upon in support of the statements of fact in such affidavits or reply affidavits.

Rule 13.9. ***Hearing.*** – The court shall set the case for hearing if on the basis of the foregoing submissions there is a need to do so. The court shall give due priority to hearings on petitions under this Rule. During

the hearing, the affidavits of witnesses shall take the place of their direct testimonies and they shall immediately be subject to cross-examination. The court shall have full control over the proceedings in order to ensure that the case is heard without undue delay.

Rule 13.10. ***Adjournment/deferment of decision on enforcement of award.*** – The court before which a petition to recognize and enforce a foreign arbitral award is pending, may adjourn or defer rendering a decision thereon if, in the meantime, an application for the setting aside or suspension of the award has been made with a competent authority in the country where the award was made. Upon application of the petitioner, the court may also require the other party to give suitable security.

Rule 13.11. ***Court action.*** – It is presumed that a foreign arbitral award was made and released in due course of arbitration and is subject to enforcement by the court.

The court shall recognize and enforce a foreign arbitral award unless a ground to refuse recognition or enforcement of the foreign arbitral award under this rule is fully established.

The decision of the court recognizing and enforcing a foreign arbitral award is immediately executory.

In resolving the petition for recognition and enforcement of a foreign arbitral award in accordance with these Special ADR Rules, the court shall either [a] recognize and/or enforce or [b] refuse to recognize and enforce the arbitral award. The court shall not disturb the arbitral tribunal's determination of facts and/or interpretation of law.

Rule 13.12. ***Recognition and enforcement of non-convention award.*** – The court shall, only upon grounds provided by these Special ADR Rules, recognize and enforce a foreign arbitral award made in a country not a signatory to the New York Convention when such country extends comity and reciprocity to awards made in the Philippines. If that country does not extend comity and reciprocity to awards made in the Philippines, the court may nevertheless treat such award as a foreign judgment enforceable as such under Rule 39, Section 48, of the Rules of Court.

PART III
PROVISIONS SPECIFIC TO MEDIATION

RULE 14: GENERAL PROVISIONS

Rule 14.1. ***Application of the rules on arbitration.*** – Whenever applicable and appropriate, the pertinent rules on arbitration shall be applied in proceedings before the court relative to a dispute subject to mediation.

RULE 15: DEPOSIT AND ENFORCEMENT OF MEDIATED SETTLEMENT AGREEMENTS

Rule 15.1. ***Who makes a deposit.*** – Any party to a mediation that is not court-annexed may deposit with the court the written settlement agreement, which resulted from that mediation.

Rule 15.2. ***When deposit is made.*** – At any time after an agreement is reached, the written settlement agreement may be deposited.

Rule 15.3. ***Venue.*** – The written settlement agreement may be jointly deposited by the parties or deposited by one party with prior notice to the other party/ies with the Clerk of Court of the Regional Trial Court (a) where the principal place of business in the Philippines of any of the parties is located; (b) if any of the parties is an individual, where any of those individuals resides; or (c) in the National Capital Judicial Region.

Rule 15.4. ***Registry Book.*** – The Clerk of Court of each Regional Trial Court shall keep a Registry Book that shall chronologically list or enroll all the mediated settlement agreements/settlement awards that are deposited with the court as well as the names and address of the parties thereto and the date of enrollment and shall issue a Certificate of Deposit to the party that made the deposit.

Rule 15.5. ***Enforcement of mediated settlement agreement.*** – Any of the parties to a mediated settlement agreement, which was deposited with the Clerk of Court of the Regional Trial Court, may, upon breach thereof, file a verified petition with the same court to enforce said agreement.

Rule 15.6. ***Contents of petition.*** – The verified petition shall:

a. Name and designate, as petitioner or respondent, all parties

to the mediated settlement agreement and those who may be affected by it;

b. State the following:

(i). The addresses of the petitioner and respondents; and

(ii). The ultimate facts that would show that the adverse party has defaulted to perform its obligation under said agreement; and

c. Have attached to it the following:

(i). An authentic copy of the mediated settlement agreement; and

(ii). Certificate of Deposit showing that the mediated settlement agreement was deposited with the Clerk of Court.

Rule 15.7. ***Opposition.*** – The adverse party may file an opposition, within fifteen (15) days from receipt of notice or service of the petition, by submitting written proof of compliance with the mediated settlement agreement or such other affirmative or negative defenses it may have.

Rule 15.8. ***Court action.*** – After a summary hearing, if the court finds that the agreement is a valid mediated settlement agreement, that there is no merit in any of the affirmative or negative defenses raised, and the respondent has breached that agreement, in whole or in part, the court shall order the enforcement thereof; otherwise, it shall dismiss the petition.

PART IV
PROVISIONS SPECIFIC TO CONSTRUCTION ARBITRATION

RULE 16: GENERAL PROVISIONS

Rule 16.1. ***Application of the rules on arbitration.*** – Whenever applicable and appropriate, the rules on arbitration shall be applied in proceedings before the court relative to a dispute subject to construction arbitration.

RULE 17: REFERRAL TO CIAC

Rule 17.1. ***Dismissal of action.*** – A Regional Trial Court before which a construction dispute is filed shall, upon becoming aware that the parties have entered into an arbitration agreement, *motu proprio* or upon

motion made not later than the pre-trial, dismiss the case and refer the parties to arbitration to be conducted by the Construction Industry Arbitration Commission (CIAC), unless all parties to arbitration, assisted by their respective counsel, submit to the court a written agreement making the court, rather than the CIAC, the body that would exclusively resolve the dispute.

Rule 17.2. Form and contents of motion. – The request for dismissal of the civil action and referral to arbitration shall be through a verified motion that shall (a) contain a statement showing that the dispute is a construction dispute; and (b) be accompanied by proof of the existence of the arbitration agreement.

If the arbitration agreement or other document evidencing the existence of that agreement is already part of the record, those documents need not be submitted to the court provided that the movant has cited in the motion particular references to the records where those documents may be found.

The motion shall also contain a notice of hearing addressed to all parties and shall specify the date and time when the motion will be heard, which must not be later than fifteen (15) days after the filing of the motion. The movant shall ensure receipt by all parties of the motion at least three days before the date of the hearing.

Rule 17.3. *Opposition.* – Upon receipt of the motion to refer the dispute to arbitration by CIAC, the other party may file an opposition to the motion on or before the day such motion is to be heard. The opposition shall clearly set forth the reasons why the court should not dismiss the case.

Rule 17.4. *Hearing.* – The court shall hear the motion only once and for the purpose of clarifying relevant factual and legal issues.

Rule 17.5. *Court action.* – If the other parties fail to file their opposition on or before the day of the hearing, the court shall *motu proprio* resolve the motion only on the basis of the facts alleged in the motion.

After hearing, the court shall dismiss the civil action and refer the parties to arbitration if it finds, based on the pleadings and supporting documents submitted by the parties, that there is a valid and enforceable arbitration agreement involving a construction dispute. Otherwise, the court shall proceed to hear the case.

All doubts shall be resolved in favor of the existence of a construction dispute and the arbitration agreement.

Rule 17.6. ***Referral immediately executory.*** – An order dismissing the case and referring the dispute to arbitration by CIAC shall be immediately executory.

Rule 17.7. ***Multiple actions and parties.*** – The court shall not decline to dismiss the civil action and make a referral to arbitration by CIAC for any of the following reasons:

a. Not all of the disputes subject of the civil action may be referred to arbitration;

b. Not all of the parties to the civil action are bound by the arbitration agreement and referral to arbitration would result in multiplicity of suits;

c. The issues raised in the civil action could be speedily and efficiently resolved in its entirety by the Court rather than in arbitration;

d. Referral to arbitration does not appear to be the most prudent action; or

e. Dismissal of the civil action would prejudice the rights of the parties to the civil action who are not bound by the arbitration agreement.

The court may, however, issue an order directing the inclusion in arbitration of those parties who are bound by the arbitration agreement directly or by reference thereto pursuant to Section 34 of Republic Act No. 9285.

Furthermore, the court shall issue an order directing the case to proceed with respect to the parties not bound by the arbitration agreement.

Rule 17.8. ***Referral*** – If the parties manifest that they have agreed to submit all or part of their dispute pending with the court to arbitration by CIAC, the court shall refer them to CIAC for arbitration.

PART V
PROVISIONS SPECIFIC TO OTHER FORMS OF ADR

RULE 18: GENERAL PROVISIONS

Rule 18.1. ***Applicability of rules to other forms of ADR.*** – This rule governs the procedure for matters brought before the court involving the following forms of ADR:

a. Early neutral evaluation;

b. Neutral evaluation;

c. Mini-trial;

d. Mediation-arbitration;

e. A combination thereof; or

f. Any other ADR form.

Rule 18.2. ***Applicability of the rules on mediation.*** – If the other ADR form/process is more akin to mediation (i.e., the neutral third party merely assists the parties in reaching a voluntary agreement), the herein rules on mediation shall apply.

Rule 18.3. ***Applicability of rules on arbitration.*** – If the other ADR form/process is more akin to arbitration (i.e., the neutral third party has the power to make a binding resolution of the dispute), the herein rules on arbitration shall apply.

Rule 18.4. ***Referral.*** – If a dispute is already before a court, either party may before and during pre-trial, file a motion for the court to refer the parties to other ADR forms/processes. At any time during court proceedings, even after pre-trial, the parties may jointly move for suspension of the action pursuant to Article 2030 of the Civil Code of the Philippines where the possibility of compromise is shown.

Rule 18.5. ***Submission of settlement agreement.*** – Either party may submit to the court, before which the case is pending, any settlement agreement following a neutral or an early neutral evaluation, mini-trial or mediation-arbitration.

PART VI
MOTION FOR RECONSIDERATION, APPEAL AND CERTIORARI

RULE 19: MOTION FOR RECONSIDERATION, APPEAL AND CERTIORARI

A. MOTION FOR RECONSIDERATION

Rule 19.1. ***Motion for reconsideration, when allowed.*** – A party may ask the Regional Trial to reconsider its ruling on the following:

a. That the arbitration agreement is inexistent, invalid or unenforceable pursuant to Rule 3.10 (B);

b. Upholding or reversing the arbitral tribunal's jurisdiction pursuant to Rule 3.19;

c. Denying a request to refer the parties to arbitration;

d. Granting or denying a party an interim measure of protection;

e. Denying a petition for the appointment of an arbitrator;

f. Refusing to grant assistance in taking evidence;

g. Enjoining or refusing to enjoin a person from divulging confidential information;

h. Confirming, vacating or correcting a domestic arbitral award;

i. Suspending the proceedings to set aside an international commercial arbitral award and referring the case back to the arbitral tribunal;

j. Setting aside an international commercial arbitral award;

k. Dismissing the petition to set aside an international commercial arbitral award, even if the court does not recognize and/or enforce the same;

l. Recognizing and/or enforcing, or dismissing a petition to recognize and/or enforce an international commercial arbitral award;

m. Declining a request for assistance in taking evidence;

n. Adjourning or deferring a ruling on a petition to set aside, recognize and/or enforce an international commercial arbitral award;

o. Recognizing and/or enforcing a foreign arbitral award, or refusing recognition and/or enforcement of the same; and

p. Granting or dismissing a petition to enforce a deposited mediated settlement agreement.

No motion for reconsideration shall be allowed from the following rulings of the Regional Trial Court:

a. A *prima facie* determination upholding the existence, validity or enforceability of an arbitration agreement pursuant to Rule 3.1 (A);

b. An order referring the dispute to arbitration;

c. An order appointing an arbitrator;

d. Any ruling on the challenge to the appointment of an arbitrator;

e. Any order resolving the issue of the termination of the mandate of an arbitrator; and

f. An order granting assistance in taking evidence.

Rule 19.2. ***When to move for reconsideration.*** – A motion for reconsideration may be filed with the Regional Trial Court within a non-extendible period of fifteen (15) days from receipt of the questioned ruling or order.

Rule 19.3. ***Contents and notice.*** – The motion shall be made in writing stating the ground or grounds therefor and shall be filed with the court and served upon the other party or parties.

Rule 19.4. ***Opposition or comment.*** – Upon receipt of the motion for reconsideration, the other party or parties shall have a non-extendible period of fifteen (15) days to file his opposition or comment.

Rule 19.5. ***Resolution of motion.*** – A motion for reconsideration shall be resolved within thirty (30) days from receipt of the opposition or comment or upon the expiration of the period to file such opposition or comment.

Rule 19.6. ***No second motion for reconsideration.*** – No party shall be allowed a second motion for reconsideration.

B. GENERAL PROVISIONS ON APPEAL AND CERTIORARI

Rule 19.7. ***No appeal or certiorari on the merits of an arbitral award.*** – An agreement to refer a dispute to arbitration shall mean that the arbitral award shall be final and binding. Consequently, a party to an arbitration is precluded from filing an appeal or a petition for certiorari questioning the merits of an arbitral award.

Rule 19.8. ***Subject matter and governing rules.*** – The remedy of an appeal through a petition for review or the remedy of a special civil action of certiorari from a decision of the Regional Trial Court made under the Special ADR Rules shall be allowed in the instances, and instituted only in the manner, provided under this Rule.

Rule 19.9. ***Prohibited alternative remedies.*** – Where the remedies of appeal and certiorari are specifically made available to a party under the Special ADR Rules, recourse to one remedy shall preclude recourse to the other.

Rule 19.10. ***Rule on judicial review on arbitration in the Philippines.*** – As a general rule, the court can only vacate or set aside the decision of an arbitral tribunal upon a clear showing that the award suffers from any of the infirmities or grounds for vacating an arbitral award under Section 24 of Republic Act No. 876 or under Rule 34 of the Model Law in a domestic arbitration, or for setting aside an award in an international arbitration under Article 34 of the Model Law, or for such other grounds provided under these Special Rules.

If the Regional Trial Court is asked to set aside an arbitral award in a domestic or international arbitration on any ground other than those provided in the Special ADR Rules, the court shall entertain such ground for the setting aside or non-recognition of the arbitral award only if the same amounts to a violation of public policy.

The court shall not set aside or vacate the award of the arbitral tribunal merely on the ground that the arbitral tribunal committed errors of fact, or of law, or of fact and law, as the court cannot substitute its judgment for that of the arbitral tribunal.

Rule 19.11. ***Rule on judicial review of foreign arbitral award.*** – The court can deny recognition and enforcement of a foreign arbitral award only upon the grounds provided in Article V of the New York Convention, but shall have no power to vacate or set aside a foreign arbitral award.

C. APPEALS TO THE COURT OF APPEALS

Rule 19.12. ***Appeal to the Court of Appeals.*** – An appeal to the Court of Appeals through a petition for review under this Special Rule shall only be allowed from the following final orders of the Regional Trial Court:

a. Granting or denying an interim measure of protection;

b. Denying a petition for appointment of an arbitrator;

c. Denying a petition for assistance in taking evidence;

d. Enjoining or refusing to enjoin a person from divulging confidential information;

e. Confirming, vacating or correcting/modifying a domestic arbitral award;

f. Setting aside an international commercial arbitration award;

g. Dismissing the petition to set aside an international commercial arbitration award even if the court does not decide to recognize or enforce such award;

h. Recognizing and/or enforcing an international commercial arbitration award;

i. Dismissing a petition to enforce an international commercial arbitration award;

j. Recognizing and/or enforcing a foreign arbitral award;

k. Refusing recognition and/or enforcement of a foreign arbitral award;

l. Granting or dismissing a petition to enforce a deposited mediated settlement agreement; and

m. Reversing the ruling of the arbitral tribunal upholding its jurisdiction.

Rule 19.13. ***Where to appeal.*** – An appeal under this Rule shall be taken to the Court of Appeals within the period and in the manner herein provided.

Rule 19.14. ***When to appeal.*** – The petition for review shall be filed within fifteen (15) days from notice of the decision of the Regional Trial Court or the denial of the petitioner's motion for reconsideration.

Rule 19.15. ***How appeal taken.*** – Appeal shall be taken by filing a verified petition for review in seven (7) legible copies with the Court of Appeals, with proof of service of a copy thereof on the adverse party and on the Regional Trial Court. The original copy of the petition intended for the Court of Appeals shall be marked original by the petitioner.

Upon the filing of the petition and unless otherwise prescribed by the Court of Appeals, the petitioner shall pay to the clerk of court of the Court of Appeals docketing fees and other lawful fees of P3,500.00 and deposit the sum of P500.00 for costs.

Exemption from payment of docket and other lawful fees and the deposit for costs may be granted by the Court of Appeals upon a verified motion setting forth valid grounds therefor. If the Court of Appeals denies the motion, the petitioner shall pay the docketing and other lawful fees and deposit for costs within fifteen days from the notice of the denial.

Rule 19.16. ***Contents of the Petition.*** – The petition for review shall (a) state the full names of the parties to the case, without impleading the court or agencies either as petitioners or respondent, (b) contain a concise statement of the facts and issues involved and the grounds relied upon for the review, (c) be accompanied by a clearly legible duplicate original or a certified true copy of the decision or resolution of the Regional Trial Court appealed from, together with certified true copies of such material portions of the record referred to therein and other supporting papers, and (d) contain a sworn certification against forum shopping as provided in the Rules of Court. The petition shall state the specific material dates showing that it was filed within the period fixed herein.

Rule 19.17. ***Effect of failure to comply with requirements.*** – The court shall dismiss the petition if it fails to comply with the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, the contents and the documents, which should accompany the petition.

Rule 19.18. *Action on the petition.* – The Court of Appeals may require the respondent to file a comment on the petition, not a motion to dismiss, within ten (10) days from notice, or dismiss the petition if it finds, upon consideration of the grounds alleged and the legal briefs submitted by the parties, that the petition does not appear to be *prima facie* meritorious.

Rule 19.19. *Contents of Comment.* – The comment shall be filed within ten (10) days from notice in seven (7) legible copies and accompanied by clearly legible certified true copies of such material portions of the record referred to therein together with other supporting papers. The comment shall (a) point out insufficiencies or inaccuracies in petitioner's statement of facts and issues, and (b) state the reasons why the petition should be denied or dismissed. A copy thereof shall be served on the petitioner, and proof of such service shall be filed with the Court of Appeals.

Rule 19.20. *Due course.* – If upon the filing of a comment or such other pleading or documents as may be required or allowed by the Court of Appeals or upon the expiration of the period for the filing thereof, and on the basis of the petition or the records, the Court of Appeals finds *prima facie* that the Regional Trial Court has committed an error that would warrant reversal or modification of the judgment, final order, or resolution sought to be reviewed, it may give due course to the petition; otherwise, it shall dismiss the same.

Rule 19.21. *Transmittal of records.* – Within fifteen (15) days from notice that the petition has been given due course, the Court of Appeals may require the court or agency concerned to transmit the original or a legible certified true copy of the entire record of the proceeding under review. The record to be transmitted may be abridged by agreement of all parties to the proceeding. The Court of Appeals may require or permit subsequent correction of or addition to the record.

Rule 19.22. *Effect of appeal.* – The appeal shall not stay the award, judgment, final order or resolution sought to be reviewed unless the Court of Appeals directs otherwise upon such terms as it may deem just.

Rule 19.23. *Submission for decision.* – If the petition is given due course, the Court of Appeals may set the case for oral argument or require the parties to submit memoranda within a period of fifteen (15) days from notice. The case shall be deemed submitted for decision upon the filing of the last pleading or memorandum required by the Court of Appeals.

The Court of Appeals shall render judgment within sixty (60) days from the time the case is submitted for decision.

Rule 19.24. ***Subject of appeal restricted in certain instance.*** – If the decision of the Regional Trial Court refusing to recognize and/or enforce, vacating and/or setting aside an arbitral award is premised on a finding of fact, the Court of Appeals may inquire only into such fact to determine the existence or non-existence of the specific ground under the arbitration laws of the Philippines relied upon by the Regional Trial Court to refuse to recognize and/or enforce, vacate and/or set aside an award. Any such inquiry into a question of fact shall not be resorted to for the purpose of substituting the court's judgment for that of the arbitral tribunal as regards the latter's ruling on the merits of the controversy.

Rule 19.25. ***Party appealing decision of court confirming arbitral award required to post bond.*** – The Court of Appeals shall within fifteen (15) days from receipt of the petition require the party appealing from the decision or a final order of the Regional Trial Court, either confirming or enforcing an arbitral award, or denying a petition to set aside or vacate the arbitral award to post a bond executed in favor of the prevailing party equal to the amount of the award.

Failure of the petitioner to post such bond shall be a ground for the Court of Appeals to dismiss the petition.

D. SPECIAL CIVIL ACTION FOR CERTIORARI

Rule 19.26. ***Certiorari to the Court of Appeals.*** – When the Regional Trial Court, in making a ruling under the Special ADR Rules, has acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law, a party may file a special civil action for certiorari to annul or set aside a ruling of the Regional Trial Court.

A special civil action for certiorari may be filed against the following orders of the court.

a. Holding that the arbitration agreement is inexistent, invalid or unenforceable;

b. Reversing the arbitral tribunal's preliminary determination upholding its jurisdiction;

c. Denying the request to refer the dispute to arbitration;

d. Granting or refusing an interim relief;

e. Denying a petition for the appointment of an arbitrator;

f. Confirming, vacating or correcting a domestic arbitral award;

g. Suspending the proceedings to set aside an international commercial arbitral award and referring the case back to the arbitral tribunal;

h. Allowing a party to enforce an international commercial arbitral award pending appeal;

i. Adjourning or deferring a ruling on whether to set aside, recognize and or enforce an international commercial arbitral award;

j. Allowing a party to enforce a foreign arbitral award pending appeal; and

k. Denying a petition for assistance in taking evidence.

Rule 19.27. ***Form.*** – The petition shall be accompanied by a certified true copy of the questioned judgment, order or resolution of the Regional Trial Court, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the Rules of Court.

Upon the filing of the petition and unless otherwise prescribed by the Court of Appeals, the petitioner shall pay to the clerk of court of the Court of Appeals docketing fees and other lawful fees of P3,500.00 and deposit the sum of P500.00 for costs. Exemption from payment of docket and other lawful fees and the deposit for costs may be granted by the Court of Appeals upon a verified motion setting forth valid grounds therefor. If the Court of Appeals denies the motion, the petitioner shall pay the docketing and other lawful fees and deposit for costs within fifteen days from the notice of the denial.

Rule 19.28. ***When to file petition.*** – The petition must be filed with the Court of Appeals within fifteen (15) days from notice of the judgment, order or resolution sought to be annulled or set aside. No extension of time to file the petition shall be allowed.

Rule 19.29. ***Arbitral tribunal a nominal party in the petition.*** – The arbitral tribunal shall only be a nominal party in the petition for certiorari. As nominal party, the arbitral tribunal shall not be required to submit any pleadings or written submissions to the court. The arbitral tribunal or an arbitrator may, however, submit such pleadings or written submissions if the same serves the interest of justice.

In petitions relating to the recognition and enforcement of a foreign arbitral award, the arbitral tribunal shall not be included even as a nominal party. However, the tribunal may be notified of the proceedings and furnished with court processes.

Rule 19.30. ***Court to dismiss petition.*** – The court shall dismiss the petition if it fails to comply with Rules 19.27 and 19.28 above, or upon consideration of the ground alleged and the legal briefs submitted by the parties, the petition does not appear to be *prima facie* meritorious.

Rule 19.31. ***Order to comment.*** – If the petition is sufficient in form and substance to justify such process, the Court of Appeals shall immediately issue an order requiring the respondent or respondents to comment on the petition within a non-extendible period of fifteen (15) days from receipt of a copy thereof. Such order shall be served on the respondents in such manner as the court may direct, together with a copy of the petition and any annexes thereto.

Rule 19.32. ***Arbitration may continue despite petition for certiorari.*** – A petition for certiorari to the court from the action of the appointing authority or the arbitral tribunal allowed under this Rule shall not prevent the arbitral tribunal from continuing the proceedings and rendering its award. Should the arbitral tribunal continue with the proceedings, the arbitral proceedings and any award rendered therein will be subject to the final outcome of the pending petition for certiorari.

Rule 19.33. ***Prohibition against injunctions.*** – The Court of Appeals shall not, during the pendency of the proceedings before it, prohibit or enjoin the commencement of arbitration, the constitution of the arbitral tribunal, or the continuation of arbitration.

Rule 19.34. ***Proceedings after comment is filed.*** – After the comment is filed, or the time for the filing thereof has expired, the court shall render judgment granting the relief prayed for or to which the petitioner is entitled, or denying the same, within a non-extendible period of fifteen (15) days.

Rule 19.35. ***Service and enforcement of order or judgment.*** – A certified copy of the judgment rendered in accordance with the last preceding section shall be served upon the Regional Trial Court concerned in such manner as the Court of Appeals may direct, and disobedience thereto shall be punished as contempt.

E. APPEAL BY CERTIORARI TO THE SUPREME COURT

Rule 19.36. ***Review discretionary.*** – A review by the Supreme Court is not a matter of right, but of sound judicial discretion, which will be granted only for serious and compelling reasons resulting in grave prejudice to the aggrieved party. The following, while neither controlling nor fully measuring the court's discretion, indicate the serious and compelling, and necessarily, restrictive nature of the grounds that will warrant the exercise of the Supreme Court's discretionary powers, when the Court of Appeals:

a. Failed to apply the applicable standard or test for judicial review prescribed in these Special ADR Rules in arriving at its decision resulting in substantial prejudice to the aggrieved party;

b. Erred in upholding a final order or decision despite the lack of jurisdiction of the court that rendered such final order or decision;

c. Failed to apply any provision, principle, policy or rule contained in these Special ADR Rules resulting in substantial prejudice to the aggrieved party; and

d. Committed an error so egregious and harmful to a party as to amount to an undeniable excess of jurisdiction.

The mere fact that the petitioner disagrees with the Court of Appeals' determination of questions of fact, of law or both questions of fact and law, shall not warrant the exercise of the Supreme Court's discretionary power. The error imputed to the Court of Appeals must be grounded upon any of the above prescribed grounds for review or be closely analogous thereto.

A mere general allegation that the Court of Appeals has committed serious and substantial error or that it has acted with grave abuse of discretion resulting in substantial prejudice to the petitioner without indicating with specificity the nature of such error or abuse of discretion and the serious prejudice suffered by the petitioner on account thereof, shall constitute sufficient ground for the Supreme Court to dismiss outright the petition.

Rule 19.37. ***Filing of petition with Supreme Court.*** – A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals issued pursuant to these Special ADR Rules may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law, which must be distinctly set forth.

Rule 19.38. ***Time for filing; extension.*** – The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment.

On motion duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Supreme Court may for justifiable reasons grant an extension of thirty (30) days only within which to file the petition.

Rule 19.39. ***Docket and other lawful fees; proof of service of petition.*** – Unless he has theretofore done so or unless the Supreme Court orders otherwise, the petitioner shall pay docket and other lawful fees to the clerk of court of the Supreme Court of P3,500.00 and deposit the amount of P500.00 for costs at the time of the filing of the petition. Proof of service of a copy thereof on the lower court concerned and on the adverse party shall be submitted together with the petition.

Rule 19.40. ***Contents of petition.*** – The petition shall be filed in eighteen (18) copies, with the original copy intended for the court being indicated as such by the petitioner, and shall (a) state the full name of the appealing party as the petitioner and the adverse party as respondent, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and

when notice of the denial thereof was received; (c) set forth concisely a statement of the matters involved, and the reasons or arguments relied on for the allowance of the petition; (d) be accompanied by a clearly legible duplicate original, or a certified true copy of the judgment or final order or resolution certified by the clerk of court of the court a quo and the requisite number of plain copies thereof, and such material portions of the record as would support the petition; and (e) contain a sworn certification against forum shopping.

Rule 19.41. ***Dismissal or denial of petition.*** – The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

The Supreme Court may on its own initiative deny the petition on the ground that the appeal is without merit, or is prosecuted manifestly for delay, or that the questions raised therein are too insubstantial to require consideration.

Rule 19.42. ***Due course; elevation of records.*** – If the petition is given due course, the Supreme Court may require the elevation of the complete record of the case or specified parts thereof within fifteen (15) days from notice.

PART VII
FINAL PROVISIONS

RULE 20: FILING AND DEPOSIT FEES

Rule 20.1. ***Filing fee in petitions or counter-petitions to confirm or enforce, vacate or set aside arbitral award or for the enforcement of a mediated settlement agreement.*** – The filing fee for filing a petition to confirm or enforce, vacate or set aside an arbitral award in a domestic arbitration or in an international commercial arbitration, or enforce a mediated settlement agreement shall be as follows:

PhP10,000.00 – if the award does not exceed PhP 1,000,000.00

PhP20,000.00 – if the award does not exceed PhP20,000,000.00

PhP30,000.00 – if the award does not exceed PhP50,000,000.00

PhP40,000.00 – if the award does not exceed PhP100,000,000.00

PhP50,000.00 – if the award exceeds PhP100,000,000.00

The minimal filing fee payable in "all other actions not involving property" shall be paid by the petitioner seeking to enforce foreign arbitral awards under the New York Convention in the Philippines.

Rule 20.2. ***Filing fee for action to enforce as a counter-petition.*** – A petition to enforce an arbitral award in a domestic arbitration or in an international commercial arbitration submitted as a petition to enforce and/or recognize an award in opposition to a timely petition to vacate or set aside the arbitral award shall require the payment of the filing fees prescribed in Rule 20.1 above.

Rule 20.3. ***Deposit fee for mediated settlement agreements.*** – Any party to a mediated settlement agreement who deposits it with the clerk of court shall pay a deposit fee of P500.00.

Rule 20.4. ***Filing fee for other proceedings.*** – The filing fee for the filing of any other proceedings, including applications for interim relief, as authorized under these Special Rules not covered under any of the foregoing provisions, shall be P10,000.00.

RULE 21: COSTS

Rule 21.1. ***Costs.*** – The costs of the ADR proceedings shall be borne by the parties equally unless otherwise agreed upon or directed by the arbitrator or arbitral tribunal.

Rule 21.2. ***On the dismissal of a petition against a ruling of the arbitral tribunal on a preliminary question upholding its jurisdiction.*** – If the Regional Trial Court dismisses the petition against the ruling of the arbitral tribunal on a preliminary question upholding its jurisdiction, it shall also order the petitioner to pay the respondent all reasonable costs and expenses incurred in opposing the petition. "Costs" shall include reasonable attorney's fees. The court shall award costs upon application of the respondent after the petition is denied and the court finds, based on proof submitted by respondent, that the amount of costs incurred is reasonable.

Rule 21.3. ***On recognition and enforcement of a foreign arbitral award.*** – At the time the case is submitted to the court for decision, the party praying for recognition and enforcement of a foreign arbitral award shall submit a statement under oath confirming the costs he has incurred only in the proceedings in the Philippines for such recognition and enforcement or setting-aside. The costs shall include attorney's fees the party has paid or is committed to pay to his counsel of record.

The prevailing party shall be entitled to an award of costs which shall include the reasonable attorney's fees of the prevailing party against the unsuccessful party. The court shall determine the reasonableness of the claim for attorney's fees.

Rule 21.4. ***Costs.*** – At the time the case is submitted to the court for decision, the party praying for confirmation or vacation of an arbitral award shall submit a statement under oath confirming the costs he has incurred only in the proceedings for confirmation or vacation of an arbitral award. The costs shall include the attorney's fees the party has paid or is committed to pay to his counsel of record.

The prevailing party shall be entitled to an award of costs with respect to the proceedings before the court, which shall include the reasonable attorney's fees of the prevailing party against the unsuccessful party. The court shall determine the reasonableness of the claim for attorney's fees.

Rule 21.5. ***Bill of Costs.*** – Unless otherwise agreed upon by the parties in writing, at the time the case is submitted to the court for decision, the party praying for recognition and enforcement or for setting aside an arbitral award shall submit a statement under oath confirming the costs he has incurred only in the proceedings for such recognition and enforcement or setting-aside. The costs shall include attorney's fees the party has paid or is committed to pay to his counsel of record.

The prevailing party shall be entitled to an award of costs, which shall include reasonable attorney's fees of the prevailing party against the unsuccessful party. The court shall determine the reasonableness of the claim for attorney's fees.

Rule 21.6. ***Government's exemption from payment of fees.*** – The Republic of the Philippines, its agencies and instrumentalities are

exempt from paying legal fees provided in these Special ADR Rules. Local governments and government controlled corporation with or with or without independent charters are not exempt from paying such fees.

RULE 22: APPLICABILITY OF THE RULES OF COURT

Rule 22.1. ***Applicability of Rules of Court.*** – The provisions of the Rules of Court that are applicable to the proceedings enumerated in Rule 1.1 of these Special ADR Rules have either been included and incorporated in these Special ADR Rules or specifically referred to herein.

In connection with the above proceedings, the Rules of Evidence shall be liberally construed to achieve the objectives of the Special ADR Rules.

RULE 23: SEPARABILITY

Rule 23.1. ***Separability Clause.*** – If, for any reason, any part of the Special ADR Rules shall be held unconstitutional or invalid, other Rules or provisions hereof which are not affected thereby, shall continue to be in full force and effect.

RULE 24: TRANSITORY PROVISIONS

Rule 24.1. ***Transitory Provision.*** – Considering its procedural character, the Special ADR Rules shall be applicable to all pending arbitration, mediation or other ADR forms covered by the ADR Act, unless the parties agree otherwise. The Special ADR Rules, however, may not prejudice or impair vested rights in accordance with law.

RULE 25: ONLINE DISPUTE RESOLUTION

Rule 25.1. ***Applicability of the Special ADR Rules to Online Dispute Resolution.*** – Whenever applicable and appropriate, the Special ADR Rules shall govern the procedure for matters brought before the court involving Online Dispute Resolution.

Rule 25.2. ***Scope of Online Dispute Resolution.*** – Online Dispute Resolution shall refer to all electronic forms of ADR including the use of the internet and other web or computed based technologies for facilitating ADR.

RULE 26: EFFECTIVITY

Rule 26.1. ***Effectivity.*** – The Special ADR Rules shall take effect fifteen (15) days after its complete publication in two (2) newspapers of general circulation.

RULE A: GUIDELINES FOR THE RESOLUTION OF ISSUES RELATED TO ARBITRATION OF LOANS SECURED BY COLLATERAL

Rule A.1. ***Applicability of an arbitration agreement in a contract of loan applies to the accessory contract securing the loan.*** – An arbitration agreement in a contract of loan extends to and covers the accessory contract securing the loan such as a pledge or a mortgage executed by the borrower in favor of the lender under that contract of loan.

Rule A.2. ***Foreclosure of pledge or extra-judicial foreclosure of mortgage not precluded by arbitration.*** – The commencement of the arbitral proceeding under the contract of loan containing an arbitration agreement shall not preclude the lender from availing himself of the right to obtain satisfaction of the loan under the accessory contract by foreclosure of the thing pledged or by extra-judicial foreclosure of the collateral under the real estate mortgage in accordance with Act No. 3135.

The lender may likewise institute foreclosure proceedings against the collateral securing the loan prior to the commencement of the arbitral proceeding.

By agreeing to refer any dispute under the contract of loan to arbitration, the lender who is secured by an accessory contract of real estate mortgage shall be deemed to have waived his right to obtain satisfaction of the loan by judicial foreclosure.

Rule A.3. ***Remedy of the borrower against an action taken by the lender against the collateral before the constitution of the arbitral tribunal.*** – The borrower providing security for the payment of his loan who is aggrieved by the action taken by the lender against the collateral securing the loan may, if such action against the collateral is taken before the arbitral tribunal is constituted, apply with the appropriate court for interim relief against any such action of the lender. Such

interim relief may be obtained only in a special proceeding for that purpose, against the action taken by the lender against the collateral, pending the constitution of the arbitral tribunal. Any determination made by the court in that special proceeding pertaining to the merits of the controversy, including the right of the lender to proceed against the collateral, shall be only provisional in nature.

After the arbitral tribunal is constituted, the court shall stay its proceedings and defer to the jurisdiction of the arbitral tribunal over the entire controversy including any question regarding the right of the lender to proceed against the collateral.

Rule A.4. ***Remedy of borrower against action taken by the lender against the collateral after the arbitral tribunal has been constituted.*** – After the arbitral tribunal is constituted, the borrower providing security for the payment of his loan who is aggrieved by the action taken by the lender against the collateral securing the loan may apply to the arbitral tribunal for relief, including a claim for damages, against such action of the lender. An application to the court may also be made by the borrower against any action taken by the lender against the collateral securing the loan but only if the arbitral tribunal cannot act effectively to prevent an irreparable injury to the rights of such borrower during the pendency of the arbitral proceeding.

An arbitration agreement in a contract of loan precludes the borrower therein providing security for the loan from filing and/or proceeding with any action in court to prevent the lender from foreclosing the pledge or extra-judicially foreclosing the mortgage. If any such action is filed in court, the lender shall have the right provided in the Special ADR Rules to have such action stayed on account of the arbitration agreement.

Rule A.5. ***Relief that may be granted by the arbitral tribunal.*** – The arbitral tribunal, in aid of the arbitral proceeding before it may, upon submission of adequate security, suspend or enjoin the lender from proceeding against the collateral securing the loan pending final determination by the arbitral tribunal of the dispute brought to it for decision under such contract of loan.

The arbitral tribunal shall have the authority to resolve the issue of the validity of the foreclosure of the thing pledged or of the extrajudicial foreclosure of the collateral under the real estate mortgage if the same has not yet been foreclosed or confirm the validity of such foreclosure

if made before the rendition of the arbitral award and had not been enjoined.

Rule A.6. ***Arbitration involving a third-party provider of security.*** – An arbitration agreement contained in a contract of loan between the lender and the borrower extends to and covers an accessory contract securing the loan, such as a pledge, mortgage, guaranty or suretyship, executed by a person other than the borrower only if such third-party securing the loan has agreed in the accessory contract, either directly or by reference, to be bound by such arbitration agreement.

Unless otherwise expressly agreed upon by the third-party securing the loan, his agreement to be bound by the arbitration agreement in the contract of loan shall pertain to disputes arising from or in connection with the relationship between the lender and the borrower as well as the relationship between the lender and such third-party including the right of the lender to proceed against the collateral securing the loan, but shall exclude disputes pertaining to the relationship exclusively between the borrower and the provider of security such as that involving a claim by the provider of security for indemnification against the borrower.

In this multi-party arbitration among the lender, the borrower and the third party securing the loan, the parties may agree to submit to arbitration before a sole arbitrator or a panel of three arbitrators to be appointed either by an Appointing Authority designated by the parties in the arbitration agreement or by a default Appointing Authority under the law.

In default of an agreement on the manner of appointing arbitrators or of constituting the arbitral tribunal in such multi-party arbitration, the dispute shall be resolved by a panel of three arbitrators to be designated by the Appointing Authority under the law. But even in default of an agreement on the manner of appointing an arbitrator or constituting an arbitral tribunal in a multi-party arbitration, if the borrower and the third party securing the loan agree to designate a common arbitrator, arbitration shall be decided by a panel of three arbitrators: one to be designated by the lender; the other to be designated jointly by the borrower and the provider of security who have agreed to designate the same arbitrator; and a third arbitrator who shall serve as the chairperson of the arbitral panel to be designated by the two party-designated arbitrators.

DEPARTMENT CIRCULAR NO. 98 (s. 2009)
IMPLEMENTING RULES AND REGULATIONS OF THE ALTERNATIVE DISPUTE RESOLUTION ACT OF 2004

Whereas, pursuant to Section 52 of Republic Act No. 9285, otherwise known as the "Alternative Dispute Resolution Act of 2004" ("ADR Act"), the Secretary of Justice is directed to convene a Committee for the formulation of the appropriate rules and regulations necessary for the implementation of the ADR Act;

Whereas, the Committee was composed of representatives from the Department of Justice, the Department of Trade and Industry, the Department of the Interior and Local Government, the President of the Integrated Bar of the Philippines, a representative from the arbitration profession, a representative from the mediation profession and a representative from the ADR organizations.

Wherefore, the following rules and regulations are hereby adopted as the Implementing Rules and Regulations of Republic Act No. 9285.

IMPLEMENTING RULES AND REGULATIONS OF THE ALTERNATIVE DISPUTE RESOLUTION ACT OF 2004 (R.A. No. 9285)

Pursuant to Section 52 of Republic Act No. 9285, otherwise known as the "Alternative Dispute Resolution Act of 2004" ("ADR Act"), the following Rules and Regulations (these "Rules") are hereby promulgated to implement the provisions of the ADR Act:

CHAPTER 1
GENERAL PROVISIONS

RULE 1 - Policy and Application

Article 1.1. ***Purpose.*** These Rules are promulgated to prescribe the procedures and guidelines for the implementation of the ADR Act.

Article 1.2. ***Declaration of Policy.*** It is the policy of the State:

(a) To promote party autonomy in the resolution of disputes or

the freedom of the parties to make their own arrangements to resolve their disputes;

(b) To encourage and actively promote the use of Alternative Dispute Resolution ("ADR") as an important means to achieve speedy and impartial justice and to de-clog court dockets;

(c) To provide means for the use of ADR as an efficient tool and an alternative procedure for the resolution of appropriate cases; and

(d) To enlist active private sector participation in the settlement of disputes through ADR.

Article 1.3. ***Exception to the Application of the ADR Act.*** The provisions of the ADR Act shall not apply to the resolution or settlement of the following:

(a) labor disputes covered by Presidential Decree No. 442, otherwise known as the "Labor Code of the Philippines, as amended", and its Implementing Rules and Regulations;

(b) the civil status of persons;

(c) the validity of marriage;

(d) any ground for legal separation;

(e) the jurisdiction of courts;

(f) future legitime;

(g) criminal liability;

(h) those disputes which by law cannot be compromised; and

(i) disputes referred to court-annexed mediation.

Article 1.4. ***Electronic Signatures in Global and E-Commerce Act.*** The provisions of the Electronic Signatures in Global and E-Commerce Act, and its Implementing Rules and Regulations shall apply to proceedings contemplated in the ADR Act.

Article 1.5. ***Liability of ADR Providers/Practitioners.*** The ADR providers/practitioners shall have the same civil liability for acts done in the performance of their official duties as that of public officers as provided in Section 38(1), Chapter 9, Book I of the Administrative Code of 1987, upon a clear showing of bad faith, malice or gross negligence.

RULE 2 – Definition of Terms

Article 1.6. ***Definition of Terms.*** For purposes of these Rules, the terms shall be defined as follows:

A. Terms Applicable to all Chapters

1. **ADR Provider** means the institutions or persons accredited as mediators, conciliators, arbitrators, neutral evaluators or any person exercising similar functions in any Alternative Dispute Resolution system. This is without prejudice to the rights of the parties to choose non-accredited individuals to act as mediator, conciliator, arbitrator or neutral evaluator of their dispute.

2. **Alternative Dispute Resolution System** means any process or procedure used to resolve a dispute or controversy, other than by adjudication of a presiding judge of a court or an officer of a government agency, as defined in the ADR Act, in which a neutral third person participates to assist in the resolution of issues, including arbitration, mediation, conciliation, early neutral evaluation, mini-trial or any combination thereof.

3. **Arbitration** means a voluntary dispute resolution process in which one or more arbitrators, appointed in accordance with the agreement of the parties or these Rules, resolve a dispute by rendering an award.

4. **Arbitration Agreement** means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

5. **Authenticate** means to sign, execute, adopt a symbol or encrypt a record in whole or in part, intended to identify the authenticating party and to adopt, accept or establish the authenticity of a record or term.

6. **Award** means any partial or final decision by an arbitrator in resolving the issue or controversy.

7. **Confidential Information** means any information, relative to the subject of mediation or arbitration, expressly intended

by the source not to be disclosed, or obtained under circumstances that would create a reasonable expectation on behalf of the source that the information shall not be disclosed. It shall include:

[a] communication, oral or written, made in a dispute resolution proceeding, including any memoranda, notes or work product of the neutral party or non-party participant;

[b] an oral or written statement made or which occurs during mediation or for purposes of considering, conducting, participating, initiating, continuing or reconvening mediation or retaining a mediator; and

[c] pleadings, motions, manifestations, witness statements, reports filed or submitted in arbitration or for expert evaluation.

8. **Counsel** means a lawyer duly admitted to the practice of law in the Philippines

9. **Court** means Regional Trial Court except insofar as otherwise defined under the Model Law.

10. **Government Agency** means any governmental entity, office or officer, other than a court, that is vested by law with quasi-judicial power or the power to resolve or adjudicate disputes involving the government, its agencies and instrumentalities or private persons.

11. **Model Law** means the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law on 21 June 1985.

12. **Proceedings** means a judicial, administrative or other adjudicative process, including related pre-hearing or post hearing motions, conferences and discovery.

13. **Record** means information written on a tangible medium or stored in an electronic or other similar medium, retrievable in a perceivable form.

14. **Roster** means a list of persons qualified to provide ADR services as neutrals or to serve as arbitrators.

15. **Special ADR Rules** means the Special Rules of Court on Alternative Dispute Resolution issued by the Supreme Court on September 1, 2009.

B. Terms Applicable to the Chapter on Mediation

1. ***Ad hoc* Mediation** means any mediation other than institutional or court-annexed.

2. **Institutional Mediation** means any mediation administered by, and conducted under the rules of, a mediation institution.

3. **Court-Annexed Mediation** means any mediation process conducted under the auspices of the court and in accordance with Supreme Court approved guidelines, after such court has acquired jurisdiction of the dispute.

4. **Court-Referred Mediation** means mediation ordered by a court to be conducted in accordance with the agreement of the parties when an action is prematurely commenced in violation of such agreement.

5. **Certified Mediator** means a mediator certified by the Office for ADR as having successfully completed its regular professional training program.

6. **Mediation** means 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.

7. **Mediation Party** means a person who participates in a mediation and whose consent is necessary to resolve the dispute.

8. **Mediator** means a person who conducts mediation.

9. **Non-Party Participant** means a person, other than a party or mediator, who participates in a mediation proceeding as a witness, resource person or expert.

C. Terms Applicable to the Chapter on International Commercial Arbitration

1. **Appointing Authority** as used in the Model Law shall mean the person or institution named in the arbitration agreement as the appointing authority; or the regular arbitration institution under whose rules the arbitration is agreed to be conducted. Where the parties have agreed to submit their dispute to institutional arbitration rules, and unless they have agreed to a different procedure, they shall be deemed to have agreed to the procedure under such arbitration rules for the selection and appointment of arbitrators. In *ad hoc* arbitration, the default appointment of an arbitrator shall be made by the National President of the Integrated Bar of the Philippines (IBP) or his/her duly authorized representative.

2. **Arbitral Tribunal (under the Model Law)** means a sole arbitrator or a panel of arbitrators.

3. **Arbitration** means any arbitration whether or not administered by a permanent arbitration institution.

4. **Commercial Arbitration** means an arbitration that covers matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include, but are not limited to, the following commercial transactions: any trade transaction for the supply or exchange of goods or services; distribution agreements; construction of works; commercial representation or agency; factoring; leasing; consulting; engineering; licensing; investment; financing; banking; insurance; joint venture and other forms of industrial or business cooperation; carriage of goods or passengers by air, sea, rail or road.

5. **Convention Award** means a foreign arbitral award made in a Convention State.

6. **Convention State** means a state that is a member of the New York Convention.

7. **Court (under the Model Law)** means a body or organ of the judicial system of the Philippines (i.e., the Regional Trial Court, Court of Appeals and Supreme Court).

8. **International Arbitration** means an arbitration where:

   [a] the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different states; or

   [b] one of the following places is situated outside the Philippines in which the parties have their places of business:

      [i] the place of arbitration if determined in, or pursuant to, the arbitration agreement;

      [ii] any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject matter of the dispute is most closely connected; or

   [c] the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.

   For this purpose:

   [a] if a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration agreement;

   [b] if a party does not have a place of business, reference is to be made to his/her habitual residence.

9. **New York Convention** means the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards approved in 1958 and ratified by the Philippine Senate under Senate Resolution No. 71.

10. **Non-Convention Award** means a foreign arbitral award made in a state, which is not a Convention State.

11. **Non-Convention State** means a state that is not a member of the New York Convention.

D. Terms Applicable to the Chapter on Domestic Arbitration

1. ***Ad hoc* Arbitration** means an arbitration administered by an arbitrator and/or the parties themselves. An arbitration

administered by an institution shall be regarded as an *ad hoc* arbitration if such institution is not a permanent or regular arbitration institution in the Philippines.

2. **Appointing Authority** in *Ad Hoc* Arbitration means, in the absence of an agreement, the National President of the IBP or his/her duly authorized representative.

3. **Appointing Authority Guidelines** means the set of rules approved or adopted by an appointing authority for the making of a Request for Appointment, Challenge, Termination of the Mandate of Arbitrator/s and for taking action thereon.

4. **Arbitration** means a voluntary dispute resolution process in which one or more arbitrators, appointed in accordance with the agreement of the parties or these Rules, resolve a dispute by rendering an award.

5. **Arbitral Tribunal** means a sole arbitrator or a panel, board or committee of arbitrators.

6. **Claimant** means a person/s with a claim against another and who commence/s arbitration against the latter.

7. **Court** means, unless otherwise specified in these Rules, a Regional Trial Court.

8. **Day** means calendar day.

9. **Domestic Arbitration** means an arbitration that is not international as defined in Article 1(3) of the Model Law.

10. **Institutional arbitration** means arbitration administered by an entity, which is registered as a domestic corporation with the Securities and Exchange Commission (SEC) and engaged in, among others, arbitration of disputes in the Philippines on a regular and permanent basis.

11. **Request for Appointment** means the letter-request to the appointing authority of either or both parties for the appointment of arbitrator/s or of the two arbitrators first appointed by the parties for the appointment of the third member of an arbitral tribunal.

12. **Representative** is a person duly authorized in writing by a party to a dispute, who could be a counsel, a person in his/her employ or any other person of his/her choice, duly authorized to represent said party in the arbitration proceedings.

13. **Respondent** means the person/s against whom the claimant commence/s arbitration.

14. **Written communication** means the pleading, motion, manifestation, notice, order, award and any other document or paper submitted or filed with the arbitral tribunal or delivered to a party.

E. Terms Applicable to the Chapter on Other ADR Forms

1. **Early Neutral Evaluation** means an ADR process wherein parties and their lawyers are brought together early in the pre-trial phase to present summaries of their cases and to receive a non-binding assessment by an experienced neutral person, with expertise in the subject matter or substance of the dispute.

2. **Mediation-Arbitration or Med-Arb** is a two-step dispute resolution process involving mediation and then followed by arbitration.

3. **Mini-trial** means a structured dispute resolution method in which the merits of a case are argued before a panel comprising of senior decision-makers, with or without the presence of a neutral third person, before which the parties seek a negotiated settlement.

CHAPTER 2
THE OFFICE FOR ALTERNATIVE DISPUTE RESOLUTION

RULE 1 – Office for Alternative Dispute Resolution (OADR)

Article 2.1. ***Establishment of the Office for Alternative Dispute Resolution.*** There is hereby established the OADR as an agency attached to the Department of Justice. It shall have a Secretariat and

shall be headed by an Executive Director, who shall be appointed by the President of the Philippines, taking into consideration the recommendation of the Secretary of Justice.

Article 2.2. ***Powers of the OADR.*** The OADR shall have the following powers:

[a] To act as appointing authority of mediators and arbitrators when the parties agree in writing that it shall be empowered to do so;

[b] To conduct seminars, symposia, conferences and other public fora and publish proceedings of said activities and relevant materials/information that would promote, develop and expand the use of ADR;

[c] To establish an ADR library or resource center where ADR laws, rules and regulations, jurisprudence, books, articles and other information about ADR in the Philippines and elsewhere may be stored and accessed;

[d] To establish training programs for ADR providers/ practitioners, both in the public and private sectors; and to undertake periodic and continuing training programs for arbitration and mediation and charge fees on participants. It may do so in conjunction with or in cooperation with the IBP, private ADR organizations, and local and foreign government offices and agencies and international organizations;

[e] To certify those who have successfully completed the regular professional training programs provided by the OADR;

[f] To charge fees for services rendered such as, among others, for training and certifications of ADR providers;

[g] To accept donations, grants and other assistance from local and foreign sources; and

[h] To exercise such other powers as may be necessary and proper to carry into effect the provisions of the ADR Act.

Article 2.3. ***Functions of the OADR.*** The OADR shall have the following functions:

[a] To promote, develop and expand the use of ADR in the private and public sectors through information, education and communication;

[b] To monitor, study and evaluate the use of ADR by the private and public sectors for purposes of, among others, policy formulation;

[c] To recommend to Congress needful statutory changes to develop, strengthen and improve ADR practices in accordance with international professional standards;

[d] To make studies on and provide linkages for the development, implementation, monitoring and evaluation of government and private ADR programs and secure information about their respective administrative rules/procedures, problems encountered and how they were resolved;

[e] To compile and publish a list or roster of ADR providers/ practitioners, who have undergone training by the OADR, or by such training providers/institutions recognized or certified by the OADR as performing functions in any ADR system. The list or roster shall include the addresses, contact numbers, e-mail addresses, ADR service/s rendered (e.g. arbitration, mediation) and experience in ADR of the ADR providers/practitioners;

[f] To compile a list or roster of foreign or international ADR providers/practitioners. The list or roster shall include the addresses, contact numbers, e-mail addresses, ADR service/s rendered (e.g. arbitration, mediation) and experience in ADR of the ADR providers/practitioners; and

[g] To perform such other functions as may be assigned to it.

Article 2.4. ***Divisions of the OADR.*** The OADR shall have the following staff and service divisions, among others:

[a] **Secretariat** – shall provide necessary support and discharge such other functions and duties as may be directed by the Executive Director.

[b] **Public Information and Promotion Division** – shall be charged with the dissemination of information, the promotion of the importance and public acceptance of mediation, conciliation, arbitration or any combination thereof and other ADR forms as a means of achieving speedy and efficient means of resolving all disputes and to help in the promotion, development and expansion of the use of ADR.

[c] **Training Division** – shall be charged with the formulation of effective standards for the training of ADR practitioners; conduct of trainings in accordance with such standards; issuance of certifications of training to ADR practitioners and ADR service providers who have undergone the professional training provided by the OADR; and the coordination of the development, implementation, monitoring and evaluation of government and private sector ADR programs.

[d] **Records and Library Division** - shall be charged with the establishment and maintenance of a central repository of ADR laws, rules and regulations, jurisprudence, books, articles, and other information about ADR in the Philippines and elsewhere.

RULE 2 - The Advisory Council

Article 2.5. ***Composition of the Advisory Council.*** There is also created an Advisory Council composed of a representative from each of the following:

[a] Mediation profession;
[b] Arbitration profession;
[c] ADR organizations;
[d] IBP; and
[e] Academe.

The members of the Council, who shall be appointed by the Secretary of Justice upon the recommendation of the OADR Executive Director, shall choose a Chairman from among themselves.

Article 2.6. ***Role of the Advisory Council.*** The Advisory Council shall advise the Executive Director on policy, operational and other relevant matters. The Council shall meet regularly, at least once every two (2) months, or upon call by the Executive Director.

CHAPTER 3
MEDIATION

RULE 1 - General Provisions

Article 3.1. ***Scope of Application.*** These Rules apply to voluntary mediation, whether *ad hoc* or institutional, other than court-annexed mediation and only in default of an agreement of the parties on the applicable rules.

These Rules shall also apply to all cases pending before an administrative or quasi-judicial agency that are subsequently agreed upon by the parties to be referred to mediation.

Article 3.2. ***Statement of Policy.*** In applying and construing the provisions of these Rules, consideration must be given to the need to promote candor of parties and mediators through confidentiality of the mediation process, the policy of fostering prompt, economical and amicable resolution of disputes in accordance with principles of integrity of determination by the parties and the policy that the decision-making authority in the mediation process rests with the parties.

A party may petition a court before which an action is prematurely brought in a matter which is the subject of a mediation agreement, if at least one party so requests, not later than the pre-trial conference or upon the request of both parties thereafter, to refer the parties to mediation in accordance with the agreement of the parties.

RULE 2 - Selection of a Mediator

Article 3.3. ***Freedom to Select Mediator.*** The parties have the freedom to select their mediator.

The parties may request the OADR to provide them with a list or roster or the resumés of its certified mediators. The OADR may be requested to inform the mediator of his/her selection.

Article 3.4. ***Replacement of Mediator.*** If the mediator selected is unable to act as such for any reason, the parties may, upon being informed of such fact, select another mediator.

Article 3.5. ***Refusal or Withdrawal of Mediator.*** A mediator may refuse from acting as such, withdraw or may be compelled to withdraw, from the mediation proceedings under the following circumstances:

[a] If any of the parties so requests the mediator to withdraw;

[b] The mediator does not have the qualifications, training and experience to enable him/her to meet the reasonable expectations of the parties;

[c] Where the mediator's impartiality is in question;

[d] If continuation of the process would violate any ethical standards;

[e] If the safety of any of the parties would be jeopardized;

[f] If the mediator is unable to provide effective services;

[g] In case of conflict of interest; and

[h] In any of the following instances, if the mediator is satisfied that:

[i] one or more of the parties is/are not acting in good faith;

[ii] the parties' agreement would be illegal or involve the commission of a crime;

[iii] continuing the dispute resolution would give rise to an appearance of impropriety;

[iv] continuing with the process would cause significant harm to a non- participating person or to the public; or

[v] continuing discussions would not be in the best interest of the parties, their minor children or the dispute resolution process.

RULE 3 - Ethical Conduct of a Mediator

Article 3.6. ***Competence.*** It is not required that a mediator shall have special qualifications by background or profession unless the special qualifications of a mediator are required in the mediation agreement or by the mediation parties. However, the certified mediator shall:

[a] maintain and continually upgrade his/her professional competence in mediation skills;

[b] ensure that his/her qualifications, training and experience are known to and accepted by the parties; and

[c] serve only when his/her qualifications, training and experience enable him/her to meet the reasonable expectations of the parties and shall not hold himself /herself out or give the impression that he/she has qualifications, training and experience that he/she does not have.

Upon the request of a mediation party, an individual who is requested to serve as mediator shall disclose his/her qualifications to mediate a dispute.

Article 3.7. ***Impartiality.*** A mediator shall maintain impartiality.

[a] Before accepting a mediation, an individual who is requested to serve as a mediator shall:

[i] 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 a 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

[ii] disclose to the mediation 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] (i) of this Article after accepting a mediation, the mediator shall disclose it as soon as practicable to the mediation parties.

Article 3.8. ***Confidentiality.*** A mediator shall keep in utmost confidence all confidential information obtained in the course of the mediation process.

A mediator shall discuss issues of confidentiality with the mediation parties before beginning the mediation process including limitations on the scope of confidentiality and the extent of confidentiality provided in any private sessions or caucuses that the mediator holds with a party.

Article 3.9. ***Consent and Self-Determination.*** [a] A mediator shall make reasonable efforts to ensure that each party understands the nature and character of the mediation proceedings including private caucuses, the issues, the available options, the alternatives to non-settlement, and that each party is free and able to make whatever choices he/she desires regarding participation in mediation generally and regarding specific settlement options.

If a mediator believes that a party, who is not represented by counsel, is unable to understand, or fully participate in, the mediation proceedings for any reason, a mediator may either:

[i] limit the scope of the mediation proceedings in a manner consistent with the party's ability to participate, and/or recommend that the party obtain appropriate assistance in order to continue with the process; or

[ii] terminate the mediation proceedings.

[b] A mediator shall recognize and put in mind that the primary responsibility of resolving a dispute and the shaping of a voluntary and uncoerced settlement rests with the parties.

Article 3.10. ***Separation of Mediation from Counseling and Legal Advice.*** [a] Except in evaluative mediation or when the parties so request, a mediator shall:

(i) refrain from giving legal or technical advice and otherwise engaging in counseling or advocacy; and

(ii) abstain from expressing his/her personal opinion on the rights and duties of the parties and the merits of any proposal made.

[b] Where appropriate and where either or both parties are not represented by counsel, a mediator shall:

(i) recommend that the parties seek outside professional advice to help them make informed decision and to understand the implications of any proposal; and

(ii) suggest that the parties seek independent legal and/or technical advice before a settlement agreement is signed.

[c] Without the consent of all parties, and for a reasonable time under the particular circumstance, a mediator who also practices another profession shall not establish a professional relationship in that other profession with one of the parties, or any person or entity, in a substantially and factually related matter.

Article 3.11. ***Charging of Fees.*** [a] A mediator shall fully disclose and explain to the parties the basis of cost, fees and charges.

[b] The mediator who withdraws from the mediation shall return to the parties any unearned fee and unused deposit.

[c] A mediator shall not enter into a fee agreement which is contingent upon the results of the mediation or the amount of the settlement.

Article 3.12. ***Promotion of Respect and Control of Abuse of Process.*** The mediator shall encourage mutual respect between the parties, and shall take reasonable steps, subject to the principle of self-determination, to limit abuses of the mediation process.

Article 3.13. ***Solicitation or Acceptance of any Gift.*** No mediator or any member of a mediator's immediate family or his/her agent shall request, solicit, receive or accept any gift or any type of compensation other than the agreed fee and expenses in connection with any matter coming before the mediator.

RULE 4 - Role of Parties and their Counsels

Article 3.14. ***Designation of Counsel or any Person to Assist Mediation.*** Except as otherwise provided by the ADR Act or by these Rules, 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.

Article 3.15. ***Role of Counsel.*** [a] The lawyer shall view his/her role in mediation as a collaborator with the other lawyer in working together toward the common goal of helping their clients resolve their differences to their mutual advantage.

[b] The lawyer shall encourage and assist his/her client to actively participate in positive discussions and cooperate in crafting an agreement to resolve their dispute.

[c] The lawyer must assist his/her client to comprehend and appreciate the mediation process and its benefits, as well as the client's greater personal responsibility for the success of mediation in resolving the dispute.

[d] In preparing for participation in mediation, the lawyer shall confer and discuss with his/her client the following:

(i) The mediation process as essentially a negotiation between the parties assisted by their respective lawyers, and facilitated by a mediator, stressing its difference from litigation, its advantages and benefits, the client's heightened role in mediation and responsibility for its success and explaining the role of the lawyer in mediation proceedings.

(ii) The substance of the upcoming mediation, such as:

(aa) The substantive issues involved in the dispute and their prioritization in terms of importance to his/her client's real interests and needs;

(bb) The study of the other party's position in relation to the issues with a view to understanding the underlying interests, fears, concerns and needs;

(cc) The information or facts to be gathered or sought from the other side or to be exchanged that are necessary for informed decision-making;

(dd) The possible options for settlement but stressing the need to be open-minded about other possibilities; and

(ee) The best, worst and most likely alternatives to a non-negotiated settlement.

Article 3.16. ***Other Matters which the Counsel shall do to Assist Mediation.*** The lawyer:

[a] shall give support to the mediator so that his/her client will fully understand the rules and processes of mediation;

[b] shall impress upon his/her client the importance of speaking for himself/herself and taking responsibility for making decisions during the negotiations within the mediation process;

[c] may ask for a recess in order to give advice or suggestions to his/her client in private, if he/she perceives that his/her client is unable to bargain effectively;

[d] shall assist his/her client and the mediator put in writing the terms of the settlement agreement that the parties have entered into. The lawyers shall see to it that the terms of the settlement agreement are not contrary to law, morals, good customs, public order or public policy.

RULE 5 - Conduct of Mediation

Article 3.17. ***Articles to be Considered in the Conduct of Mediation.*** [a] The mediator shall not make untruthful or exaggerated claims about the dispute resolution process, its costs and benefits, its outcome or the mediator's qualifications and abilities during the entire mediation process.

[b] The mediator shall help the parties reach a satisfactory resolution of their dispute but has no authority to impose a settlement on the parties.

[c] The parties shall personally appear for mediation and may be assisted by a lawyer. A party may be represented by an agent who must have full authority to negotiate and settle the dispute.

[d] The mediation process shall, in general, consist of the following stages:

(i) opening statement of the mediator;

(ii) individual narration by the parties;

(iii) exchange by the parties;

(iv) summary of issues;

(v) generation and evaluation of options; and

(vi) closure.

[e] The mediation proceeding shall be held in private. Persons, other than the parties, their representatives and the mediator, may attend only with the consent of all the parties.

[f] The mediation shall be closed:

(i) by the execution of a settlement agreement by the parties;

(ii) by the withdrawal of any party from mediation; and

(iii) by the written declaration of the mediator that any further effort at mediation would not be helpful.

RULE 6 – Place of Mediation

Article 3.18. ***Agreement of Parties on the Place of Mediation.*** The parties are free to agree on the place of mediation. Failing such agreement, the place of mediation shall be any place convenient and appropriate to all parties.

RULE 7 – Effect of Agreement to Submit Dispute to Mediation Under Institutional Rules

Article 3.19. ***Agreement to Submit a Dispute to Mediation by an Institution.*** An agreement to submit a dispute to mediation by an institution shall include an agreement to be bound by the internal mediation and administrative policies of such institution. Further, an agreement to submit a dispute to mediation under institutional mediation rules shall be deemed to include an agreement to have such rules govern the mediation of the dispute and for the mediator, the parties, their respective counsels and non-party participants to abide by such rules.

RULE 8 - Enforcement of Mediated Settlement Agreements

Article 3.20. ***Operative Principles to Guide Mediation.*** The mediation shall be guided by the following operative principles:

[a] A settlement agreement following successful mediation shall be prepared by the parties with the assistance of their respective counsels, if any, and by the mediator. The parties and their respective counsels shall endeavor to make the terms and condition of the settlement agreement complete and to make adequate provisions for the contingency of breach to avoid conflicting interpretations of the agreement.

[b] The parties and their respective counsels, if any, shall sign the settlement agreement. The mediator shall certify that he/she explained the contents of the settlement agreement to the parties in a language known to them.

[c] If the parties agree, the settlement agreement may be jointly deposited by the parties or deposited by one party with prior notice to the other party/ies with the Clerk of Court of the Regional Trial Court (a) where the principal place of business in the Philippines of any of the parties is located; (b) if any of the parties is an individual, where any of those individuals resides; or (c) in the National Capital Judicial Region. Where there is a need to enforce the settlement agreement, a petition may be filed by any of the parties with the same court, in which case, the court shall proceed summarily to hear the petition, in accordance with the Special ADR Rules.

[d] The parties may agree in the settlement agreement that the mediator shall become a sole arbitrator for the dispute and shall treat the settlement agreement as an arbitral award which shall be subject to enforcement under Republic Act No. 876, otherwise known as "The Arbitration Law", notwithstanding the provisions of Executive Order No. 1008, s.1985, otherwise known as the "Construction Industry Arbitration Law" for mediated disputes outside of the Construction Industry Arbitration Commission.

RULE 9 - Confidentiality of Information

Article 3.21. ***Confidentiality of Information.*** Information obtained through mediation proceedings shall be subject to the following principles and guidelines:

[a] Information obtained through mediation shall be privileged and confidential.

[b] A party, mediator, or non-party participant may refuse to disclose and may prevent any other person from disclosing a confidential information.

[c] Confidential information shall not be subject to discovery and shall be inadmissible in any adversarial proceeding, whether judicial or quasi-judicial. However, evidence or information

that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its use in a mediation.

[d] In such an adversarial proceeding, the following persons involved or previously involved in a mediation may not be compelled to disclose confidential information obtained during the mediation:

(i) the parties to the dispute;

(ii) the mediator or mediators;

(iii) the counsel for the parties;

(iv) the non-party participants;

(v) any person hired or engaged in connection with the mediation as secretary, stenographer, clerk or assistant; and

(vi) any other person who obtains or possesses confidential information by reason of his/her profession.

[e] The protections of the ADR Act shall continue to apply even if a mediator is found to have failed to act impartially.

[f] A mediator may not be called to testify to provide confidential information gathered in mediation. A mediator who is wrongfully subpoenaed shall be reimbursed the full cost of his/her attorney's fees and related expenses.

Article 3.22. ***Waiver of Confidentiality.*** [a] A privilege arising from the confidentiality of information may be waived in a record or orally during a proceeding by the mediator and the mediation parties.

[b] With the consent of the mediation parties, a privilege arising from the confidentiality of information may likewise be waived by a non-party participant if the information is provided by such non-party participant.

[c] A person who discloses confidential information shall be precluded from asserting the privilege under Article 3.21 *(Confidentiality of Information)* to bar disclosure of the rest of the information necessary to a complete understanding of the previously disclosed information. If a person suffers loss or damage as a result of the disclosure of the confidential information, he/she shall be entitled

to damages in a judicial proceeding against the person who made the disclosure.

[d] A person who discloses or makes a representation about a mediation is precluded from asserting the privilege mentioned in Article 3.21 to the extent that the communication prejudices another person in the proceeding and it is necessary for the person prejudiced to respond to the representation or disclosure.

Article 3.23. ***Exceptions to the Privilege of Confidentiality of Information.*** [a] There is no privilege against disclosure under Article 3.21 in the following instances:

(i) in an agreement evidenced by a record authenticated by all parties to the agreement;

(ii) available to the public or made during a session of a mediation which is open, or is required by law to be open, to the public;

(iii) a threat or statement of a plan to inflict bodily injury or commit a crime of violence;

(iv) intentionally used to plan a crime, attempt to commit, or commit a crime, or conceal an ongoing crime or criminal activity;

(v) sought or offered to prove or disprove abuse, neglect, abandonment or exploitation in a proceeding in which a public agency is protecting the interest of an individual protected by law; but this exception does not apply where a child protection matter is referred to mediation by a court or where a public agency participates in the child protection mediation;

(vi) sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediator in a proceeding; or

(vii) sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a party, non-party participant, or representative of a party based on conduct occurring during a mediation.

[b] If a court or administrative agency finds, after a hearing in camera, that the party seeking discovery of the proponent of the evidence has shown that the evidence is not otherwise available, that there is a need for the evidence that substantially outweighs the interest in protecting confidentiality, and the mediation communication is sought or offered in:

(i) a court proceeding involving a crime or felony; or

(ii) a proceeding to prove a claim or defense that under the law is sufficient to reform or avoid a liability on a contract arising out of the mediation.

[c] A mediator may not be compelled to provide evidence of a mediation communication or testify in such proceeding.

[d] If a mediation communication is not privileged under an exception in sub-section [a] or [b] hereof, only the portion of the communication necessary for the application of the limited purpose of an exception does not render that evidence, or any other mediation communication, admissible for any other purpose.

Article 3.24. ***Non-Reporting or Communication by Mediator.*** A mediator may not make a report, assessment, evaluation, recommendation, finding or other communication regarding a mediation to a court or agency or other authority that may make a ruling on a dispute that is the subject of a mediation, except:

[a] to state that the mediation occurred or has terminated, or where a settlement was reached; or

[b] as permitted to be disclosed under Article 3.23 *(Exceptions to the Privilege of Confidentiality of Information)*.

The parties may, by an agreement in writing, stipulate that the settlement agreement shall be sealed and not disclosed to any third party including the court. Such stipulation, however, shall not apply to a proceeding to enforce or set aside the settlement agreement.

RULE 10 – Fees and Cost of Mediation

Article 3.25. ***Fees and Cost of Ad hoc Mediation.*** In *ad hoc* mediation, the parties are free to make their own arrangement as to mediation cost and fees. In default thereof, the schedule of cost and fees to be approved by the OADR shall be followed.

Article 3.26. ***Fees and Cost of Institutional Mediation.*** [a] In institutional mediation, mediation cost shall include the administrative charges of the mediation institution under which the parties have agreed to be bound, mediator's fees and associated expenses, if any. In default of agreement of the parties as to the amount and manner of payment of mediation's cost and fees, the same shall be determined in accordance with the applicable internal rules of the mediation service providers under whose rules the mediation is conducted.

[b] A mediation service provider may determine such mediation fee as is reasonable taking into consideration the following factors, among others:

(i) the complexity of the case;

(ii) the number of hours spent in mediation; and

(iii) the training, experience and stature of mediators.

CHAPTER 4
INTERNATIONAL COMMERCIAL ARBITRATION

RULE 1 - General Provisions

Article 4.1. ***Scope of Application.*** [a] This Chapter applies to international commercial arbitration, subject to any agreement in force between the Philippines and other state or states.

[b] This Chapter applies only if the place or seat of arbitration is the Philippines and in default of any agreement of the parties on the applicable rules.

[c] This Chapter shall not affect any other law of the Philippines by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of the ADR Act.

Article 4.2. ***Rules of Interpretation.*** [a] International commercial arbitration shall be governed by the Model Law on International Commercial Arbitration.

[b] In interpreting this Chapter, regard shall be had to the international origin of the Model Law and to the need for

uniformity in its interpretation. Resort may be made to the *travaux preparatoires* and the Report of the Secretary-General of the United Nations Commission on International Trade Law dated March 1985 entitled, "International Commercial Arbitration: Analytical Commentary on Draft Text identified by reference number A/CN. 9/264".

[c] Moreover, in interpreting this Chapter, the court shall have due regard to the policy of the law in favor of arbitration and the policy of the Philippines to actively promote party autonomy in the resolution of disputes or the freedom of the parties to make their own arrangement to resolve their dispute.

[d] Where a provision of this Chapter, except the Rules applicable to the substance of the dispute, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party, including an institution, to make that determination.

[e] Where a provision of this Chapter refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules referred to in that agreement.

[f] Where a provision of this Chapter, other than in paragraph [a] of Article 4.25 *(Default of a Party)* and paragraphs (b) (i) of Article 4.32 *(Termination of Proceedings),* refers to a claim, it also applies to a counter-claim, and where it refers to a defense, it also applies to a defense to such counter-claim.

Article 4.3. ***Receipt of Written Communications.*** [a] Unless otherwise agreed by the parties:

(i) any written communication is deemed to have been received if it is delivered to the addressee personally or at his/her place of business, habitual residence or mailing address; if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it;

(ii) the communication is deemed to have been received on the day it is so delivered.

[b] The provisions of this Article do not apply to communications in court proceedings, which shall be governed by the Rules of Court.

Article 4.4. ***Waiver of Right to Object.*** A party who knows that any provision of this Chapter from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating the objections for such non-compliance without undue delay or if a time limit is provided therefor, within such period of time, shall be deemed to have waived the right to object.

Article 4.5. ***Extent of Court Intervention.*** In matters governed by this Chapter, no court shall intervene except where so provided in the ADR Act. Resort to Philippine courts for matters within the scope of the ADR Act shall be governed by the Special ADR Rules.

Article 4.6. ***Court or Other Authority for Certain Functions of Arbitration Assistance and Supervision.*** [a] The functions referred to in paragraphs [c] and [d] of Article 4.11 *(Appointment of Arbitrators)* and paragraph [c] of Article 4.13 *(Challenge Procedure)* and paragraph [a] of Article 4.14 *(Failure or Impossibility to Act)* shall be performed by the appointing authority as defined in Article 1.6 C1, unless the latter shall fail or refuse to act within thirty (30) days from receipt of the request in which case the applicant may renew the application with the court. The appointment of an arbitrator is not subject to appeal or motion for reconsideration.

[b] The functions referred to in paragraph [c] of Article 4.16 [c] *(Competence of Arbitral Tribunal to Rule on its Jurisdiction),* second paragraph of Article 4.34 *(Application for Setting Aside an Exclusive Recourse Against Arbitral Award),* Article 4.35 *(Recognition and Enforcement),* Article 4.38 *(Venue and Jurisdiction),* shall be performed by the appropriate Regional Trial Court.

[c] A Court may not refuse to grant, implement or enforce a petition for an interim measure, including those provided for in Article 4.9 *(Arbitration Agreement and Interim Measures by Court),* Article 4.11 *(Appointment of Arbitrators),* Article 4.13 *(Challenge Procedure),* Article 4.27 *(Court Assistance in Taking Evidence),* on the sole ground

that the Petition is merely an ancillary relief and the principal action is pending with the arbitral tribunal.

RULE 2 - Arbitration Agreement

Article 4.7. ***Definition and Form of Arbitration Agreement.*** The arbitration agreement, as defined in Article 1.6 A4, shall be in writing. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defense in which the existence of an agreement is alleged by one party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract.

Article 4.8. ***Arbitration Agreement and Substantive Claim Before Court.*** [a] A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if at least one party so requests not later than the pre-trial conference, or upon the request of both parties thereafter, refer the parties to arbitration unless it finds that the arbitration agreement is null and void, inoperative or incapable of being performed.

[b] Where an action referred to in the previous paragraph has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.

[c] Where the action is commenced by or against multiple parties, one or more of whom are parties to an arbitration agreement, the court shall refer to arbitration those parties who are bound by the arbitration agreement although the civil action may continue as to those who are not bound by such arbitration agreement.

Article 4.9. ***Arbitration Agreement and Interim Measures by Court.*** [a] It is not incompatible with an arbitration agreement for a party to request from a court, before the constitution of the arbitral tribunal or during arbitral proceedings, an interim measure of protection and for a court to grant such measure.

[b] To the extent that the arbitral tribunal has no power to act or is unable to act effectively, a request for interim measures of protection, or modification thereof as provided for, and in the manner indicated in, Article 4.17 *(Power of Arbitral Tribunal to Order Interim Measures),* may be made with the court.

The rules on interim or provisional relief provided for in paragraph [c] of Article 4.17, of these Rules shall be observed.

A party may bring a petition under this Article before the court in accordance with the Rules of Court or the Special ADR Rules.

RULE 3 - Composition of Arbitral Tribunal

Article 4.10. ***Number of Arbitrators.*** The parties are free to determine the number of arbitrators. Failing such determination, the number of arbitrators shall be three (3).

Article 4.11. ***Appointment of Arbitrators.*** [a] No person shall be precluded by reason of his/her nationality from acting as an arbitrator, unless otherwise agreed by the parties.

[b] The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs [d] and [e] of this Article.

[c] Failing such agreement:

(i) in an arbitration with three (3) arbitrators, each party shall appoint one arbitrator, and the two (2) arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty (30) days of receipt of a request to do so from the other party, or if the two (2) arbitrators fail to agree on the third arbitrator within thirty (30) days of their appointment, the appointment shall be made, upon request of a party, by the appointing authority;

(ii) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he/she shall be appointed, upon request of a party, by the appointing authority.

[d] Where, under an appointment procedure agreed upon by the parties,

(i) a party fails to act as required under such procedure, or

(ii) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure, or

(iii) a third party, including an institution, fails to perform any function entrusted to it under such procedure,

any party may request the appointing authority to take the necessary measure to appoint an arbitrator, unless the agreement on the appointment procedure provides other means for securing the appointment.

[e] A decision on a matter entrusted by paragraphs [c] and [d] of this to the appointing authority shall be immediately executory and not be subject to a motion for reconsideration or appeal. The appointing authority shall have in appointing an arbitrator, due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.

A party may bring a petition under this Article before the court in accordance with the Rules of Court or the Special ADR Rules.

Article 4.12. ***Grounds for Challenge.*** [a] When a person is approached in connection with his/her possible appointment as an arbitrator, he/she shall disclose any circumstance likely to give rise to justifiable doubts as to his/her impartiality or independence. An arbitrator, from the time of his/her appointment and throughout the arbitral proceedings shall, without delay, disclose any such circumstance to the parties unless they have already been informed of them by him/her.

[b] An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his/her impartiality or independence, or if he/she does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him/her, or in whose appointment he/she has participated, only for reasons of which he/she becomes aware after the appointment has been made.

Article 4.13. *Challenge Procedure.* [a] The parties are free to agree on a procedure for challenging an arbitrator, subject to the provisions of this Article.

[b] Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen (15) days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in paragraph [b] of Article 4.12 *(Grounds for Challenge),* send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his/her office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

[c] If a challenge under any procedure agreed upon by the parties or under the procedure of paragraph [b] of this Article is not successful, the challenging party may request the appointing authority, within thirty (30) days after having received notice of the decision rejecting the challenge, to decide on the challenge, which decision shall be immediately executory and not subject to motion for reconsideration or appeal. While such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

A party may bring a petition under this Article before the court in accordance with the Rules of Court or the Special ADR Rules.

Article 4.14. *Failure or Impossibility to Act.* [a] If an arbitrator becomes *de jure* or *de facto* unable to perform his/her functions or for other reasons fails to act without undue delay, his/her mandate terminates if he/she withdraws from his/her office or if the parties agree on the termination. Otherwise, if a controversy remains concerning any of these grounds, any party may request the appointing authority to decide on the termination of the mandate, which decision shall be immediately executory and not subject to motion for reconsideration or appeal.

[b] If, under this Article or paragraph [b] of Article 4.13 *(Challenge Procedure),* an arbitrator withdraws from his/her office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this Article or in paragraph [b] of Article 4.12 *(Grounds for Challenge).*

Article 4.15. ***Appointment of Substitute Arbitrator.*** Where the mandate of an arbitrator terminates under Articles 4.13 *(Challenge Procedure)* and 4.14 *(Failure or Impossibility to Act)* or because of his/her withdrawal from office for any other reason or because of the revocation of his/her mandate by agreement of the parties or in any other case of termination of his/her mandate, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

RULE 4 – Jurisdiction of Arbitral Tribunal

Article 4.16. ***Competence of Arbitral Tribunal to Rule on its Jurisdiction.*** [a] The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement or any condition precedent to the filing of a request for arbitration. For that purpose, an arbitration clause, which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

[b] A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defense (i.e., in an Answer or Motion to Dismiss). A party is not precluded from raising such plea by the fact that he/she has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

[c] The arbitral tribunal may rule on a plea referred to in paragraph [b] of this Article either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty (30) days after having received notice of that ruling, the Regional Trial Court to decide the matter, which decision shall be immediately executory and not subject to motion for reconsideration or appeal. While such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

Article 4.17. ***Power of Arbitral Tribunal to Order Interim Measures.*** [a] Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measures of protection as the arbitral tribunal may consider necessary in respect of the subject matter of the dispute following paragraph [c] of this Article. Such interim measures may include, but shall not be limited to, preliminary injunction directed against a party, appointment of receivers, or detention, preservation, inspection of property that is the subject of the dispute in arbitration.

[b] After constitution of the arbitral tribunal, and during arbitral proceedings, a request for interim measures of protection, or modification thereof shall be made with the arbitral tribunal. The arbitral tribunal is deemed constituted when the sole arbitrator or the third arbitrator, who has been nominated, has accepted the nomination and written communication of said nomination and acceptance has been received by the party making the request.

[c] The following rules on interim or provisional relief shall be observed:

(i) Any party may request that interim or provisional relief be granted against the adverse party.

(ii) Such relief may be granted;

(aa) To prevent irreparable loss or injury;

(bb) To provide security for the performance of an obligation;

(cc) To produce or preserve evidence; or

(dd) To compel any other appropriate acts or omissions.

(iii) The order granting provisional relief may be conditioned upon the provision of security or any act or omission specified in the order.

(iv) Interim or provisional relief is requested by written application transmitted by reasonable means to the arbitral tribunal and the party against whom relief is sought, describing in appropriate details of the precise relief, the party against whom the relief is requested, the ground for the relief, and the evidence supporting the request.

(v) The order either granting or denying an application for interim relief shall be binding upon the parties.

(vi) Either party may apply with the court for assistance in implementing or enforcing an interim measure ordered by an arbitral tribunal.

(vii) A party who does not comply with the order shall be liable for all damages, resulting from noncompliance, including all expenses, and reasonable attorney's fees, paid in obtaining the order's judicial enforcement.

RULE 5 - Conduct of Arbitral Proceedings

Article 4.18. ***Equal Treatment of Parties.*** The parties shall be treated with equality and each party shall be given a full opportunity of presenting his/her case.

Article 4.19. ***Determination of Rules of Procedure.*** [a] Subject to the provisions of this Chapter, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

[b] Failing such agreement, the arbitral tribunal may, subject to this Chapter, conduct the arbitration in such manner as it considers appropriate. Unless the arbitral tribunal considers it inappropriate, the UNCITRAL Arbitration Rules adopted by the UNCITRAL on 28 April 1976 and the UN General Assembly on 15 December 1976 shall apply subject to the following clarification: All references to the "Secretary-General of the Permanent Court of Arbitration at the Hague" shall be deemed to refer to the appointing authority.

[c] The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

Article 4.20. ***Place of Arbitration.*** [a] The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be in Metro Manila unless the arbitral tribunal, having regard to the circumstances of the case, including the convenience of the parties, shall decide on a different place of arbitration.

[b] Notwithstanding the rule stated in paragraph [a] of this provision, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

Article 4.21. ***Commencement of Arbitral Proceedings.*** Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

Article 4.22. ***Language.*** [a] The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the language to be used shall be English. This agreement, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

[b] The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal in accordance with paragraph [a] of this Article.

Article 4.23. ***Statements of Claim and Defense.*** [a] Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his/her/its claim, the points at issue and the relief or remedy sought, and the respondent shall state his/her/its defense in respect of these particulars, unless the parties have otherwise agreed as to the required elements of such statements. The parties may submit with their statements, all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

[b] Unless otherwise agreed by the parties, either party may amend or supplement his/her claim or defense during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.

Article 4.24. ***Hearing and Written Proceedings.*** [a] Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for

oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

[b] The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents.

[c] All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. Also, an expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

Article 4.25. ***Default of a Party.*** Unless otherwise agreed by the parties, if, without showing sufficient cause,

[a] the claimant fails to communicate his statement of claim in accordance with paragraph [a] Article 4.23 *(Statement of Claim and Defense),* the arbitral tribunal shall terminate the proceedings;

[b] the respondent fails to communicate his/her/its statement of defense in accordance with paragraph [a] Article 4.23 *(Statement of Claim and Defense),* the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;

[c] any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

Article 4.26. ***Expert Appointed by the Arbitral Tribunal.*** Unless otherwise agreed by the parties, the arbitral tribunal,

[a] may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal; or

[b] may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his/her inspection.

Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his/her written or oral report, participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

Article 4.27. ***Court Assistance in Taking Evidence.*** The arbitral tribunal or a party with the approval of the arbitral tribunal may request from a court of the Philippines assistance in taking evidence. The court may execute the request within its competence and according to its rules on taking evidence.

The arbitral tribunal shall have the power to require any person to attend a hearing as a witness. The arbitral tribunal shall have the power to subpoena witnesses and documents when the relevancy of the testimony and the materiality thereof has been demonstrated to it. The arbitral tribunal may also require the retirement of any witness during the testimony of any other witness.

A party may bring a petition under this Section before the court in accordance with the Rules of Court or the Special ADR Rules.

Article 4.28. ***Rules Applicable to the Substance of Dispute.*** [a] The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given state shall be construed, unless otherwise expressed, as directly referring to the substantive law of that state and not to its conflict of laws rules.

[b] Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules, which it considers applicable.

[c] The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorized it to do so.

[d] In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

Article 4.29. ***Decision-Making by Panel of Arbitrators.*** In arbitral proceedings with more than one arbitrator, any decision of the arbitral

tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members. However, questions of procedure may be decided by a presiding arbitrator, if so authorized by the parties or all members of the arbitral tribunal.

Article 4.30. ***Settlement.*** If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

An award on agreed terms shall be made in accordance with the provisions of Article 4.31 *(Form and Contents of Award),* and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case.

Article 4.31. ***Form and Contents of Award.*** [a] The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.

[b] The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under paragraph [a] of Article 4.20 *(Place of Arbitration).*

[c] The award shall state its date and the place of arbitration as determined in accordance with paragraph [a] of this Article. The award shall be deemed to have been made at that place.

[d] After the award is made, a copy signed by the arbitrators in accordance with paragraph [a] of this Article shall be delivered to each party.

Article 4.32. ***Termination of Proceedings.*** [a] The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with paragraph [b] of this Article.

[b] The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when:

(i) The claimant withdraws his/her/its claim, unless the respondent objects thereto and the arbitral tribunal

recognized a legitimate interest on his/her/its part in obtaining a final settlement of the dispute;

(ii) The parties agree on the termination of the proceedings;

(iii) The arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

[c] The mandate of the arbitral tribunal ends with the termination of the arbitral proceedings, subject to the provisions of Articles 4.33 *(Correction and Interpretation of Award, Additional Award)* and paragraph [d] of Article 4.34 *(Application for Setting Aside an Exclusive Recourse against Arbitral Award).*

[d] Notwithstanding the foregoing, the arbitral tribunal may, for special reasons, reserve in the final award or order, a hearing to quantify costs and determine which party shall bear the costs or the division thereof as may be determined to be equitable. Pending determination of this issue, the award shall not be deemed final for purposes of appeal, vacation, correction, or any post-award proceedings.

Article 4.33. ***Correction and Interpretation of Award, Additional Award.***
[a] Within thirty (30) days from receipt of the award, unless another period of time has been agreed upon by the parties:

(i) A party may, with notice to the other party, request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature;

(ii) A party may, if so agreed by the parties and with notice to the other party, request the arbitral tribunal to give an interpretation of a specific point or part of the award.

[b] If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within thirty (30) days from receipt of the request. The interpretation shall form part of the award.

[c] The arbitral tribunal may correct any error of the type referred to in paragraph [a] of this Article on its own initiative within thirty (30) days from the date of the award.

[d] Unless otherwise agreed by the parties, a party may, with notice to the other party, request, within thirty (30) days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty (60) days.

[e] The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under paragraphs [a] and [b] of this Article.

[f] The provisions of Article 4.31 *(Form and Contents of Award)* shall apply to a correction or interpretation of the award or to an additional award.

Article 4.34. ***Application for Setting Aside an Exclusive Recourse against Arbitral Award.*** [a] Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with second and third paragraphs of this Article.

[b] An arbitral award may be set aside by the Regional Trial Court only if:

(i) the party making the application furnishes proof that:

(aa) a party to the arbitration agreement was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the Philippines; or

(bb) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(cc) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only the part of the award which contains decisions on matters not submitted to arbitration may be set aside; or

(dd) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of ADR Act from which the parties cannot derogate, or, failing such agreement, was not in accordance with ADR Act; or

(ii) the Court finds that:

(aa) the subject-matter of the dispute is not capable of settlement by arbitration under the law of the Philippines; or

(bb) the award is in conflict with the public policy of the Philippines.

[c] An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under Article 4.33 *(Correction and Interpretation of Award, Additional Award)* from the date on which that request has been disposed of by the Arbitral Tribunal.

[d] The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

[e] A party may bring a petition under this Article before the court in accordance with the Special ADR Rules.

RULE 6 - Recognition and Enforcement of Awards

Article 4.35. ***Recognition and Enforcement.*** [a] A foreign arbitral award shall be recognized as binding and, upon petition in writing to the Regional Trial Court, shall be enforced subject to the provisions of this Article and of Article 4.36 *(Grounds for Refusing Recognition or Enforcement).*

[b] The petition for recognition and enforcement of such arbitral

awards shall be filed with the Regional Trial Court in accordance with the Special ADR Rules.

(i) Convention Award – The New York Convention shall govern the recognition and enforcement of arbitral awards covered by said Convention.

The petitioner shall establish that the country in which the foreign arbitration award was made is a party to the New York Convention.

(ii) Non-Convention Award – The recognition and enforcement of foreign arbitral awards not covered by the New York Convention shall be done in accordance with procedural rules to be promulgated by the Supreme Court. The court may, on grounds of comity and reciprocity, recognize and enforce a non-convention award as a convention award.

[c] The party relying on an award or applying for its enforcement shall file with the Regional Trial Court the original or duly authenticated copy of the award and the original arbitration agreement or a duly authenticated copy thereof. If the award or agreement is not made in an official language of the Philippines, the party shall supply a duly certified translation thereof into such language.

[d] A foreign arbitral award when confirmed by a court of a foreign country, shall be recognized and enforced as a foreign arbitral award and not as a judgment of a foreign court.

[e] A foreign arbitral award when confirmed by the Regional Trial Court, shall be enforced in the same manner as final and executory decisions of courts of law of the Philippines.

[f] If the Regional Trial Court has recognized the arbitral award but an application for (rejection and/or) suspension of enforcement of that award is subsequently made, the Regional Trial Court may, if it considers the application to be proper, vacate or suspend the decision to enforce that award and may also, on the application of the party claiming recognition or enforcement of that award, order the other party seeking rejection or suspension to provide appropriate security.

Article 4.36. ***Grounds for Refusing Recognition or Enforcement.***

A. CONVENTION AWARD.

Recognition or enforcement of an arbitral award, made in a state, which is a party to the New York Convention, may be refused, at the request of the party against whom it is invoked, only if the party furnishes to the Regional Trial Court proof that:

[a] The parties to the arbitration agreement were, under the law applicable to them, under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

[b] the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

[c] the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

[d] the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

[e] the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made.

Recognition and enforcement of an arbitral award may also be refused if the Regional Trial Court where recognition and enforcement is sought finds that:

[a] the subject-matter of the dispute is not capable of settlement by arbitration under the law of the Philippines; or

[b] the recognition or enforcement of the award would be contrary to the public policy of the Philippines.

A party to a foreign arbitration proceeding may oppose an application for recognition and enforcement of the arbitral award in accordance with the Special ADR Rules only on the grounds enumerated under paragraphs [a] and [c] of Article 4.35 *(Recognition and Enforcement).* Any other ground raised shall be disregarded by the Regional Trial Court.

B. NON-CONVENTION AWARD.

[a] A foreign arbitral award rendered in a state which is not a party to the New York Convention will be recognized upon proof of the existence of comity and reciprocity and may be treated as a convention award. If not so treated and if no comity or reciprocity exists, the non- convention award cannot be recognized and/or enforced but may be deemed as presumptive evidence of a right as between the parties in accordance with Section 48 of Rule 39 of the Rules of Court.

[b] If the Regional Trial Court has recognized the arbitral award but a petition for suspension of enforcement of that award is subsequently made, the Regional Trial Court may, if it considers the petition to be proper, suspend the proceedings to enforce the award, and may also, on the application of the party claiming recognition or enforcement of that award, order the other party seeking suspension to provide appropriate security.

[c] If the petition for recognition or enforcement of the arbitral award is filed by a party and a counter-petition for the rejection of the arbitral award is filed by the other party, the Regional Trial Court may, if it considers the counter-petition to be proper but the objections thereto may be rectified or cured, remit the award to the arbitral tribunal for appropriate action and in the meantime suspend the recognition and enforcement proceedings and may also on the application of the petitioner order the counter-petitioner to provide appropriate security.

Article 4.37. ***Appeal from Court Decision on Arbitral Awards.*** A decision of the Regional Trial Court recognizing, enforcing, vacating or setting aside an arbitral award may be appealed to the Court of Appeals in accordance with the rules of procedure to be promulgated by the Supreme Court.

The losing party who appeals from the judgment of the court recognizing and enforcing an arbitral award shall be required by the Court of Appeals to post a counter-bond executed in favor of the prevailing party equal to the amount of the award in accordance with the Special ADR Rules.

Any stipulation by the parties that the arbitral tribunal's award or decision shall be final, and therefore not appealable, is valid. Such stipulation carries with it a waiver of the right to appeal from an arbitral award but without prejudice to judicial review by way of certiorari under Rule 65 of the Rules of Court.

Article 4.38. ***Venue and Jurisdiction.*** Proceedings for recognition and enforcement of an arbitration agreement or for vacation or setting aside of an arbitral award, and any application with a court for arbitration assistance and supervision, except appeal, shall be deemed as special proceedings and shall be filed with the Regional Trial Court where:

[a] the arbitration proceedings are conducted;

[b] where the asset to be attached or levied upon, or the act to be enjoined is located;

[c] where any of the parties to the dispute resides or has its place of business; or

[d] in the National Capital Judicial Region at the option of the applicant.

Article 4.39. ***Notice of Proceedings to Parties.*** In a special proceeding for recognition and enforcement of an arbitral award, the court shall send notice to the parties at their address of record in the arbitration, or if any party cannot be served notice at such address, at such party's last known address. The notice shall be sent at least fifteen (15) days before the date set for the initial hearing of the application.

Article 4.40. ***Legal Representation in International Commercial Arbitration.*** In international commercial arbitration conducted in the Philippines, a party may be represented by any person of his/her/its choice: Provided, that such representative, unless admitted to the practice of law in the Philippines, shall not be authorized to appear as counsel in any Philippine court or any other quasi-judicial body whether

or not such appearance is in relation to the arbitration in which he/she appears.

Article 4.41. ***Confidentiality of Arbitration Proceedings*****.** The arbitration proceedings, including the records, evidence and the arbitral award, shall be considered confidential and shall not be published except:

[a] with the consent of the parties; or

[b] for the limited purpose of disclosing to the court relevant documents in cases where resort to the court is allowed herein.

Provided, however, that the court in which the action or the appeal is pending may issue a protective order to prevent or prohibit disclosure of documents or information containing secret processes, developments, research and other information where it is shown that the applicant shall be materially prejudiced by an authorized disclosure thereof.

Article 4.42. ***Summary Nature of Proceedings before the Court.*** A petition for recognition and enforcement of awards brought before the court shall be heard and dealt with summarily in accordance with the Special ADR Rules.

Article 4.43. ***Death of a Party.*** Where a party dies after making a submission or a contract to arbitrate as prescribed in these Rules, the proceeding may be begun or continued upon the application of, or notice to, his/her executor or administrator, or temporary administrator of his/her estate. In any such case, the court may issue an order extending the time within which notice of a motion to recognize or vacate an award must be served. Upon recognizing an award, where a party has died since it was filed or delivered, the court must enter judgment in the name of the original party; and the proceedings thereupon are the same as where a party dies after a verdict.

Article 4.44. ***Multi-Party Arbitration.*** When a single arbitration involves more than two parties, the foregoing rules, to the extent possible, shall be used, subject to such modifications consistent with this Chapter as the arbitral tribunal shall deem appropriate to address possible complexities of a multi-party arbitration.

Article 4.45. ***Consolidation of Proceedings and Concurrent Hearings.*** The parties and the arbitral tribunal may agree –

[a] that the arbitration proceedings shall be consolidated with other arbitration proceedings; or

[b] that concurrent hearings shall be held, on such terms as may be agreed.

Unless the parties agree to confer such power on the arbitral tribunal, the tribunal has no power to order consolidation of arbitration proceedings or concurrent hearings.

Article 4.46. ***Costs.*** [a] The arbitral tribunal shall fix the costs of arbitration in its award. The term "costs" include only:

(i) The fees of the arbitral tribunal to be stated separately as to each arbitrator and to be fixed by the tribunal itself in accordance with the paragraph [b] of this Article;

(ii) The travel and other expenses incurred by the arbitrators;

(iii) The costs of expert advice and of other assistance required by the arbitral tribunal;

(iv) The travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;

(vi) The costs for legal representation and assistance of the successful party if such costs were claimed during the arbitral proceedings, and only to the extent that the arbitral tribunal determines that the amount of such costs is reasonable;

(vii) Any fees and expenses of the appointing authority.

[b] The fees of the arbitral tribunal shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject matter, the time spent by the arbitrators and any other relevant circumstances of the case.

If an appointing authority has been agreed upon by the parties and if such authority has issued a schedule of fees for arbitrators in international cases which it administers, the arbitral tribunal in fixing its fees shall take that schedule of fees into account to the extent that it considers appropriate in the circumstances of the case.

If such appointing authority has not issued a schedule of fees for arbitrators in international cases, any party may, at any time request the appointing authority to furnish a statement setting forth the basis for establishing fees which is customarily followed in international cases in which the authority appoints arbitrators. If the appointing authority consents to provide such a statement, the arbitral tribunal, in fixing its fees, shall take such information into account to the extent that it considers appropriate in the circumstances of the case.

[c] In cases referred to in the second and third sub-paragraphs of paragraph [b] of this Article, when a party so requests and the appointing authority consents to perform the function, the arbitral tribunal shall fix its fees only after consultation with the appointing authority which may make any comment it deems appropriate to the arbitral tribunal concerning the fees.

[d] Except as provided in the next sub-paragraph of this paragraph, the costs of arbitration shall, in principle, be borne by the unsuccessful party. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.

With respect to the costs of legal representation and assistance referred to in paragraph [c] of paragraph [a] (iii) of this Article, the arbitral tribunal, taking into account the circumstances of the case, shall be free to determine which party shall bear such costs or may apportion such costs between the parties if it determines that appointment is reasonable.

When the arbitral tribunal issues an order for the termination of the arbitral proceedings or makes an award on agreed terms, it shall fix the costs of arbitration referred to in paragraphs [b], [c] and [d] of this Article in the context of that order or award.

[e] The arbitral tribunal, on its establishment, may request each party to deposit an equal amount as an advance for the costs referred to in paragraphs (i), (ii) and (iii) of paragraph [a] of this Article.

During the course of the arbitral proceedings, the arbitral tribunal may request supplementary deposits from the parties.

If an appointing authority has been agreed upon by the parties and when a party so requests and the appointing authority consents to perform the function, the arbitral tribunal shall fix the amounts of any deposits or supplementary deposits only after consultation with the appointing authority which may make any comments to the arbitral tribunal which it deems appropriate concerning the amount of such deposits and supplementary deposits.

If the required deposits are not paid in full within thirty (30) days after receipt of the request, the arbitral tribunal shall so inform the parties in order that the required payment may be made. If such payment is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.

After the award has been made, the arbitral tribunal shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

CHAPTER 5
DOMESTIC ARBITRATION

RULE 1 - General Provisions

Article 5.1. ***Scope of Application.*** [a] Domestic arbitration, which is not international as defined in paragraph C8 of Article 1.6 shall continue to be governed by Republic Act No. 876, otherwise known as "The Arbitration Law", as amended by the ADR Act. Articles 8, 10, 11, 12, 13, 14, 18 and 19 and 29 to 32 of the Model Law and Sections 22 to 31 of the ADR Act are specifically applicable to domestic arbitration.

In the absence of a specific applicable provision, all other rules applicable to international commercial arbitration may be applied in a suppletory manner to domestic arbitration.

[b] This Chapter shall apply to domestic arbitration whether the dispute is commercial, as defined in Section 21 of the ADR Act, or non-commercial, by an arbitrator who is a private individual appointed by the parties to hear and resolve their dispute by rendering an award; Provided that, although a construction dispute may be commercial, it shall continue to be governed by E.O. No. 1008,

s.1985 and the rules promulgated by the Construction Industry Arbitration Commission.

[c] Two or more persons or parties may submit to arbitration by one or more arbitrators any controversy existing between them at the time of the submission and which may be the subject of an action; or the parties to any contract may in such contract agree to settle by arbitration a controversy thereafter arising between them. Such submission or contract shall be valid, enforceable and irrevocable, save upon such grounds as exist at law for the revocation of any contract.

Such submission or contract may include questions arising out of valuations, appraisals or other controversies which may be collateral, incidental, precedent or subsequent to any dispute between the parties.

A controversy cannot be arbitrated where one of the parties to the controversy is an infant, or a person judicially declared to be incompetent, unless the appropriate court having jurisdiction approved a petition for permission to submit such controversy to arbitration made by the general guardian or guardian *ad litem* of the infant or of the incompetent.

But where a person capable of entering into a submission or contract has knowingly entered into the same with a person incapable of so doing, the objection on the ground of incapacity can be taken only in behalf of the person so incapacitated.

Article 5.2. ***Delivery and Receipt of Written Communications.*** [a] Except as otherwise agreed by the parties, a written communication from one party to the other or to the arbitrator or to an arbitration institution or from the arbitrator or arbitration institution to the parties shall be delivered to the addressee personally, by registered mail or by courier service. Such communication shall be deemed to have been received on the date it is delivered at the addressee's address of record, place of business, residence or last known address. The communication, as appropriate, shall be delivered to each party to the arbitration and to each arbitrator, and, in institutional arbitration, one copy to the administering institution.

[b] During the arbitration proceedings, the arbitrator may order a mode of delivery and a rule for receipt of written communications different from that provided in paragraph [a] of this Article.

[c] If a party is represented by counsel or a representative, written communications for that party shall be delivered to the address of record of such counsel or representative.

[d] Except as the parties may agree or the arbitrator may direct otherwise, a written communication may be delivered by electronic mail or facsimile transmission or by such other means that will provide a record of the sending and receipt thereof at the recipient's mailbox (electronic inbox). Such communication shall be deemed to have been received on the same date of its transmittal and receipt in the mailbox (electronic inbox).

Article 5.3. ***Waiver of Right to Object.*** [a] A party shall be deemed to have waived his right to object to non-compliance with any non-mandatory provision of these Rules (from which the parties may derogate) or any requirement under the arbitration agreement when:

(i) he/she/it knows of such non-compliance; and

(ii) proceeds with the arbitration without stating his/her/its objections to such non- compliance without undue delay or if a time-limit is provided therefor, within such period of time.

[b] If an act is required or allowed to be done under this Chapter, unless the applicable rule or the agreement of the parties provides a different period for the act to be done, it shall be done within a period of thirty (30) days from the date when such act could have been done with legal effect.

Article 5.4. ***Extent of Court Intervention.*** In matters governed by this Chapter, no court shall intervene except in accordance with the Special ADR Rules.

Article 5.5. Court or Other Authority for Certain Functions of Arbitration Assistance and Supervision. The functions referred to in paragraphs [c] and [d] of Article 5.10 *(Appointment of Arbitrators),* paragraph [a] of Article 5.11 *(Grounds for Challenge),* and paragraph [a] of Article 5.13 *(Failure or Impossibility to Act)*, shall be performed by the appointing authority, unless the latter shall fail or refuse to act within thirty (30) days from receipt of the request in which case, the applicant may renew the application with the court.

RULE 2 - Arbitration Agreement

Article 5.6. ***Form of Arbitration Agreement.*** An arbitration agreement shall be in writing. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defense in which the existence of an agreement is alleged by one party and not denied by the other. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract.

Article 5.7. ***Arbitration Agreement and Substantive Claim Before Court.*** [a] A party to an action may request the court before which it is pending to stay the action and to refer the dispute to arbitration in accordance with their arbitration agreement not later than the pre -trial conference. Thereafter, both parties may make a similar request with the court. The parties shall be referred to arbitration unless the court finds that the arbitration agreement is null and void, inoperative or incapable of being performed.

[b] Where an action referred to in paragraph [a] of this Article has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.

[c] Where the action is commenced by or against multiple parties, one or more of whom are parties to an arbitration agreement, the court shall refer to arbitration those parties who are bound by the arbitration agreement although the civil action may continue as to those who are not bound by such arbitration agreement.

Article 5.8. ***Arbitration Agreement and Interim Measures by Court.*** [a] It is not incompatible with an arbitration agreement for a party to request from a court, before the constitution of the arbitral tribunal or during arbitral proceedings, an interim measure of protection and for a court to grant such measure.

[b] After the constitution of the arbitral tribunal and during arbitral proceedings, a request for an interim measure of protection, or modification thereof, may be made with the arbitral tribunal or to

the extent that the arbitral tribunal has no power to act or is unable to act effectively, the request may be made with the court.

[c] The following rules on interim or provisional relief shall be observed:

(i) Any party may request that interim or provisional relief be granted against the adverse party.

(ii) Such relief may be granted:

(aa) To prevent irreparable loss or injury;

(bb) To provide security for the performance of an obligation;

(cc) To produce or preserve evidence; or

(dd) To compel any other appropriate act or omissions.

(iii) The order granting provisional relief may be conditioned upon the provision of security or any act or omission specified in the order.

(iv) Interim or provisional relief is requested by written application transmitted by reasonable means to the arbitral tribunal and the party against whom relief is sought, describing in appropriate detail of the precise relief, the party against whom the relief is requested, the ground for the relief, and the evidence supporting the request.

(v) The order either granting or denying an application for interim relief shall be binding upon the parties.

(vi) Either party may apply with the court for assistance in implementing or enforcing an interim measure ordered by an arbitral tribunal.

(vii) A party who does not comply with the order shall be liable for all damages, resulting from noncompliance, including all expenses, and reasonable attorney's fees, paid in obtaining the order's judicial enforcement.

[d] Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measures of protection as the arbitral tribunal may consider necessary in respect of the subject matter of the dispute following

the Rules in this Article. Such interim measures may include but shall not be limited to preliminary injunction directed against a party, appointment of receivers or detention, preservation, inspection of property that is the subject of the dispute in arbitration. Either party may apply with the court for assistance in implementing or enforcing an interim measure ordered by an arbitral tribunal.

RULE 3. Composition of Arbitral Tribunal

Article 5.9. ***Number of Arbitrators.*** The parties are free to determine the number of arbitrators. Failing such determination, the number of arbitrators shall be three (3).

Article 5.10. ***Appointment of Arbitrators.*** [a] Any person appointed to serve as an arbitrator must be of legal age, in full enjoyment of his/her civil rights and knows how to read and write. No person appointed to serve as an arbitrator shall be related by blood or marriage within the sixth degree to either party to the controversy. No person shall serve as an arbitrator in any proceeding if he/she has or has had financial, fiduciary or other interest in the controversy or cause to be decided or in the result of the proceeding, or has any personal bias, which might prejudice the right of any party to a fair and impartial award.

No party shall select as an arbitrator any person to act as his/her champion or to advocate his/her cause.

[b] The parties are free to agree on a procedure of appointing the arbitrator or arbitrators. If, in the contract for arbitration or in the submission, a provision is made for a method of appointing an arbitrator or arbitrators, such method shall be followed.

[c] Failing such agreement,

(i) in an arbitration with three (3) arbitrators, each party shall appoint one (1) arbitrator, and the two (2) arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty (30) days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty (30) days of their appointment, the appointment shall be made, upon request of a party, by the appointing authority;

(ii) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he/she shall be appointed, upon request of a party, by the appointing authority.

[d] Where, under an appointment procedure agreed upon by the parties,

(i) a party fails to act or appoint an arbitrator as required under such procedure, or

(ii) the parties, or two (2) arbitrators, are unable to appoint an arbitrator or reach an agreement expected of them under such procedure, or

(iii) a third party, including an institution, fails to appoint an arbitrator or to perform any function entrusted to it under such procedure, or

(iv) The multiple claimants or the multiple respondents is/are unable to appoint its/their respective arbitrator,

any party may request the appointing authority to appoint an arbitrator.

In making the appointment, the appointing authority shall summon the parties and their respective counsel to appear before said authority on the date, time and place set by it, for the purpose of selecting and appointing a sole arbitrator. If a sole arbitrator is not appointed in such meeting, or the meeting does not take place because of the absence of either or both p arties despite due notice, the appointing authority shall appoint the sole arbitrator.

[e] If the default appointment of an arbitrator is objected to by a party on whose behalf the default appointment is to be made, and the defaulting party requests the appointing authority for additional time to appoint his/her arbitrator, the appointing authority, having regard to the circumstances, may give the requesting party not more than thirty (30) days to make the appointment.

If the objection of a party is based on the ground that the party did not fail to choose and appoint an arbitrator for the arbitral tribunal, there shall be attached to the objection the appointment of an arbitrator together with the latter's acceptance thereof and *curriculum vitae*. Otherwise, the appointing authority shall appoint the arbitrator for that party.

[f] In making a default appointment, the appointing authority shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator. In order to achieve speedy and impartial justice and to moderate the cost of arbitration, in choosing an arbitrator, the appointing authority shall give preference to a qualified person who has a place of residence or business in the same general locality as the agreed venue of the arbitration and who is likely to accept the arbitrator's fees agreed upon by the parties, or as fixed in accordance either with the internal guidelines or the Schedule of Fees approved by the administering institution or by the appointing authority.

[g] The appointing authority shall give notice in writing to the parties of the appointment made or its inability to comply with the Request for Appointment and the reasons why it is unable to do so, in which later case, the procedure described under Article 5.5 *(Court or Other Authority for Certain Functions of arbitration Assistance and Supervision)* shall apply.

[h] A decision on a matter entrusted by this Article to the appointing authority shall be immediately executory and not subject to appeal or motion for reconsideration. The appointing authority shall be deemed to have been given by the parties discretionary authority in making the appointment but in doing so, the appointing authority shall have due regard to any qualification or disqualification of an arbitrator/s under paragraph [a] of Article 5.10 *(Appointment of Arbitrators)* as well as any qualifications required of the arbitrator/s by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator.

[i] The chairman of the arbitral tribunal shall be selected in accordance with the agreement of the parties and/or the rules agreed upon or, in default thereof, by the arbitrators appointed.

[j] Any clause giving one of the parties the power to choose more arbitrators than the other is void. However, the rest of the agreement, if otherwise valid, shall be construed as permitting the appointment of one (1) arbitrator by all claimants and one (1) arbitrator by all respondents. The third arbitrator shall be appointed as provided above.

If all the claimants or all the respondents cannot decide among themselves on an arbitrator, the appointment shall be made for them by the appointing authority.

[k] The appointing authority may adopt Guidelines for the making of a Request for Appointment.

[l] Except as otherwise provided in the Guidelines of the appointing authority, if any, a Request for Appointment shall include, as applicable, the following:

(i) the demand for arbitration;

(ii) the name/s and curricula vitae of the appointed arbitrator/s;

(iii) the acceptance of his/her/its appointment of the appointed arbitrator/s;

(iv) any qualification or disqualification of the arbitrator as provided in the arbitration agreement;

(v) an executive summary of the dispute which should indicate the nature of the dispute and the parties thereto;

(vi) principal office and officers of a corporate party;

(vii) the person/s appearing as counsel for the party/ies; and

(viii) information about arbitrator's fees where there is an agreement between the parties with respect thereto.

In institutional arbitration, the request shall include such further information or particulars as the administering institution shall require.

[m] A copy of the Request for Appointment shall be delivered to the adverse party. Proof of such delivery shall be included in, and shall form part of, the Request for Appointment filed with the appointing authority.

[n] A party upon whom a copy of the Request for Appointment is communicated may, within seven (7) days of its receipt, file with the appointing authority his/her/its objection/s to the Request or ask for an extension of time, not exceeding thirty (30) days from receipt of the request, to appoint an arbitrator or act in accordance with the procedure agreed upon or provided by these Rules.

Within the aforementioned periods, the party seeking the extension shall provide the appointing authority and the adverse party with a copy of the appointment of his/her arbitrator, the latter's *curriculum vitae*, and the latter's acceptance of the appointment. In the event that the said party fails to appoint an arbitrator within said period, the appointing authority shall make the default appointment.

[o] An arbitrator, in accepting an appointment, shall include, in his/her acceptance letter, a statement that:

(i) he/she agrees to comply with the applicable law, the arbitration rules agreed upon by the parties, or in default thereof, these Rules, and the Code of Ethics for Arbitrators in Domestic Arbitration, if any;

(ii) he/she accepts as compensation the arbitrator's fees agreed upon by the parties or as determined in accordance with the rules agreed upon by the parties, or in default thereof, these Rules; and

(iii) he agrees to devote as much time and attention to the arbitration as the circumstances may require in order to achieve the objective of a speedy, effective and fair resolution of the dispute.

Article 5.11. *Grounds for Challenge.* [a] When a person is approached in connection with his/her possible appointment as an arbitrator, he/she shall disclose any circumstance likely to give rise to justifiable doubts as to his/her impartiality, independence, qualifications and disqualifications. An arbitrator, from the time of his/her appointment and throughout the arbitral proceedings, shall, without delay, disclose any such circumstances to the parties unless they have already been informed of them by him/her.

A person, who is appointed as an arbitrator notwithstanding the disclosure made in accordance with this Article, shall reduce the disclosure to writing and provide a copy of such written disclosure to all parties in the arbitration.

[b] An arbitrator may be challenged only if:

(i) circumstances exist that give rise to justifiable doubts as to his/her impartiality or independence;

(ii) he/she does not possess qualifications as provided for in this Chapter or those agreed to by the parties;

(iii) he/she is disqualified to act as arbitration under these Rules;

(iv) he refuses to respond to questions by a party regarding the nature and extent of his professional dealings with a party or its counsel.

[c] If, after appointment but before or during hearing, a person appointed to serve as an arbitrator shall discover any circumstance likely to create a presumption of bias, or which he/she believes might disqualify him/her as an impartial arbitrator, the arbitrator shall immediately disclose such information to the parties. Thereafter, the parties may agree in writing:

(i) to waive the presumptive disqualifying circumstances; or

(ii) to declare the office of such arbitrator vacant. Any such vacancy shall be filled in the same manner the original appointment was made.

[d] After initial disclosure is made and in the course of the arbitration proceedings, when the arbitrator discovers circumstances that are likely to create a presumption of bias, he/she shall immediately disclose those circumstances to the parties. A written disclosure is not required where it is made during the arbitration and it appears in a written record of the arbitration proceedings.

[e] An arbitrator who has or has had financial or professional dealings with a party to the arbitration or to the counsel of either party shall disclose in writing such fact to the parties, and shall, in good faith, promptly respond to questions from a party regarding the nature, extent and age of such financial or professional dealings.

Article 5.12. ***Challenge Procedure.*** [a] The parties are free to agree on a procedure for challenging an arbitrator, subject to the provisions of paragraph [c] of this Article.

[b] Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen (15) days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in paragraph [b] of Article 5.11 *(Grounds for*

Challenge), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his/her office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

[c] If a challenge under any procedure agreed upon by the parties or under the procedure of paragraph [b] of this Article is not successful, the challenging party may request the appointing authority, within thirty (30) days after having received notice of the decision rejecting the challenge, to decide on the challenge, which decision shall be immediately executory and not subject to appeal or motion for reconsideration. While such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

[d] If a request for inhibition is made, it shall be deemed as a challenge.

[e] A party may challenge an arbitrator appointed by him/her/it, or in whose appointment he/she/it has participated, only for reasons of which he/she/it becomes aware after the appointment has been made.

[f] The challenge shall be in writing and it shall state specific facts that provide the basis for the ground relied upon for the challenge. A challenge shall be made within fifteen (15) days from knowledge by a party of the existence of a ground for a challenge or within fifteen (15) days from the rejection by an arbitrator of a party's request for his/her inhibition.

[g] Within fifteen (15) days of receipt of the challenge, the challenged arbitrator shall decide whether he/she shall accept the challenge or reject it. If he/she accepts the challenge, he/she shall voluntarily withdraw as arbitrator. If he/she rejects it, he/she shall communicate, within the same period of time, his/her rejection of the challenge and state the facts and arguments relied upon for such rejection.

[h] An arbitrator who does not accept the challenge shall be given an opportunity to be heard.

[i] Notwithstanding the rejection of the challenge by the arbitrator, the parties may, within the same fifteen (15) day period, agree to the challenge.

[j] In default of an agreement of the parties to agree on the challenge thereby replacing the arbitrator, the arbitral tribunal shall decide on the challenge within thirty (30) days from receipt of the challenge.

[k] If the challenge procedure as agreed upon by the parties or as provided in this Article is not successful, or a party or the arbitral tribunal shall decline to act, the challenging party may request the appointing authority in writing to decide on the challenge within thirty (30) days after having received notice of the decision rejecting the challenge. The appointing authority shall decide on the challenge within fifteen (15) days from receipt of the request. If the appointing authority shall fail to act on the challenge within thirty (30) days from the date of its receipt or within such further time as it may fix, with notice to the parties, the requesting party may renew the request with the court.

The request made under this Article shall include the challenge, the reply or explanation of the challenged arbitrator and relevant communication, if any, from either party, or from the arbitral tribunal.

[l] Every communication required or agreement made under this Article in respect of a challenge shall be delivered, as appropriate, to the challenged arbitrator, to the parties, to the remaining members of the arbitral tribunal and to the institution administering the arbitration, if any.

[m] A challenged arbitrator shall be replaced if:

(i) he/she withdraws as arbitrator, or

(ii) the parties agree in writing to declare the office of arbitrator vacant, or

(iii) the arbitral tribunal decides the challenge and declares the office of the challenged arbitrator vacant, or

(iv) the appointing authority decides the challenge and declares the office of the challenged arbitrator vacant, or

(v) in default of the appointing authority, the court decides the challenge and declares the office of the challenged arbitrator vacant.

[n] The decision of the parties, the arbitral tribunal, the appointing authority, or in proper cases, the court, to accept or reject a challenge is not subject to appeal or motion for reconsideration.

[o] Until a decision is made to replace the arbitrator under this Article, the arbitration proceeding shall continue notwithstanding the challenge, and the challenged arbitrator shall continue to participate therein as an arbitrator. However, if the challenge incident is raised before the court, because the parties, the arbitral tribunal or appointing authority failed or refused to act within the period provided in paragraphs [j] and [k] of this Article, the arbitration proceeding shall be suspended until after the court shall have decided the incident. The arbitration shall be continued immediately after the court has delivered an order on the challenging incident. If the court agrees that the challenged arbitrator shall be replaced, the parties shall immediately replace the arbitrator concerned.

[p] The appointment of a substitute arbitrator shall be made pursuant to the procedure applicable to the appointment of the arbitrator being replaced.

Article 5.13. ***Failure or Impossibility to Act.*** [a] If an arbitrator becomes *de jure* or *de facto* unable to perform his/her functions or for other reasons fails to act without undue delay, his/her mandate terminates if he/she withdraws from his/her office or if the parties agree on the termination. Otherwise, if a controversy remains concerning any of these grounds, any party may request the appointing authority to decide on the termination of the mandate, which decision shall be immediately executory and not subject to appeal or motion for reconsideration.

[b] If, under this Article or Article 5.12 *(Challenge Procedure)*, an arbitrator withdraws from his/her office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this Article or in Article 5.12.

Article 5.14. ***Appointment of Substitute Arbitrator.*** Where the mandate of an arbitrator terminates under Articles 5.12 *(Challenge Procedure)* or 5.13 *(Failure or Impossibility)* or because of his withdrawal from office for any other reason or because of the revocation of his mandate by agreement of the parties or in any other case of termination of his/her mandate, a substitute arbitrator shall be appointed according to the rules applicable to the appointment of the arbitrator being replaced.

RULE 4 - Jurisdiction of Arbitral Tribunal

Article 5.15. ***Competence of Arbitral Tribunal to Rule on its Jurisdiction.*** [a] When a demand for arbitration made by a party to a dispute is objected to by the adverse party, the arbitral tribunal shall, in the first instance, resolve the objection when made on any of the following grounds:

(i) the arbitration agreement is inexistent, void, unenforceable or not binding upon a person for any reason, including the fact that the adverse party is not privy to said agreement; or

(ii) the dispute is not arbitrable or is outside the scope of the arbitration agreement; or

(iii) the dispute is under the original and exclusive jurisdiction of a court or quasi-judicial body.

[b] If a party raises any of the grounds for objection, the same shall not preclude the appointment of the arbitrator/s as such issue is for the arbitral tribunal to decide.

The participation of a party in the selection and appointment of an arbitrator and the filing of appropriate pleadings before the arbitral tribunal to question its jurisdiction shall not be construed as a submission to the jurisdiction of the arbitral tribunal or of a waiver of his/her/its right to assert such grounds to challenge the jurisdiction of the arbitral tribunal or the validity of the resulting award.

[c] The respondent in the arbitration may invoke any of such grounds to question before the court the existence, validity, or enforceability of the arbitration agreement, or the propriety of the arbitration, or the jurisdiction of the arbitrator and invoke the pendency of such action as ground for suspension of the arbitration proceeding. The arbitral tribunal, having regard to the circumstances of the case, and the need for the early and expeditious settlement of the dispute, in light of the facts and arguments raised to question its jurisdiction, may decide either to suspend the arbitration until the court has made a decision on the issue or continue with the arbitration.

[d] If a dispute is, under an arbitration agreement, to be submitted to arbitration, but before arbitration is commenced or while it is pending, a party files an action before the court which embodies

or includes as a cause of action the dispute that is to be submitted to arbitration, the filing of such action shall not prevent the commencement of the arbitration or the continuation of the arbitration until the award is issued.

Article 5.16. ***Power of Arbitral Tribunal to Order Interim Measures.*** [a] Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measures of protection as the arbitral tribunal may consider necessary in respect of the subject matter of the dispute following the rules in this Article. Such interim measures may include, but shall not be limited to preliminary injunction directed against a party, appointment of receivers or detention, preservation, inspection of property that is the subject of the dispute in arbitration.

[b] After the constitution of the arbitral tribunal, and during arbitral proceedings, a request for interim measures of protection, or modification thereof, shall be made with the arbitral tribunal. The arbitral tribunal is deemed constituted when the sole arbitrator or the third arbitrator, who has been nominated, has accepted the nomination and written communication of said nomination and acceptance has been received by the party making the request.

[c] The following rules on interim or provisional relief shall be observed:

(i) Any party may request that provisional or interim relief be granted against the adverse party.

(ii) Such relief may be granted:

(aa) To prevent irreparable loss or injury;

(bb) To provide security for the performance of an obligation;

(cc) To produce or preserve evidence; or

(dd) To compel any other appropriate act or omissions.

(iii) The order granting provisional relief may be conditioned upon the provision of security or any act or omission specified in the order.

(iv) Interim or provisional relief is requested by written application transmitted by reasonable means to the arbitral tribunal and the party against whom relief is sought, describing in

appropriate detail the precise relief, the party against whom the relief is requested, the ground for the relief and the evidence supporting the request.

(v) The order either granting or denying an application for interim relief shall be binding upon the parties.

(vi) Either party may apply with the court for assistance in implementing or enforcing an interim measure ordered by an arbitral tribunal.

(vii) A party who does not comply with the order shall be liable for all damages, resulting from noncompliance, including all expenses, and reasonable attorney's fees paid in obtaining the order's judicial enforcement.

RULE 5 - Conduct of Arbitral Proceedings

Article 5.17. ***Equal Treatment of Parties.*** The parties shall be treated with equality and each party shall be given a full opportunity of presenting his/her/its case.

Article 5.18. ***Determination of Rules of Procedure.*** [a] Subject to the provisions of these Rules, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

[b] Failing such agreement, the arbitral tribunal may, subject to the provision of the ADR Act, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine admissibility, relevance, materiality and weight of evidence.

Article 5.19. ***Place of Arbitration.*** [a] The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be in Metro Manila unless the arbitral tribunal, having regard to the circumstances of the case, including the convenience of the parties, shall decide on a different place of arbitration.

[b] The arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

Article 5.20. ***Commencement of Arbitral Proceedings.*** [a] Where there is a prior arbitration agreement between the parties, arbitration is deemed commenced as follows:

(i) In institutional arbitration, arbitration is commenced in accordance with the arbitration rules of the institution agreed upon by the parties.

(ii) In *ad hoc* arbitration, arbitration is commenced by the claimant upon delivering to the respondent a demand for arbitration. A demand may be in any form stating:

(aa) the name, address, and description of each of the parties;

(bb) a description of the nature and circumstances of the dispute giving rise to the claim;

(cc) a statement of the relief sought, including the amount of the claim;

(dd) the relevant agreements, if any, including the arbitration agreement, a copy of which shall be attached; and

(ee) appointment of arbitrators and /or demand to appoint.

[b] If the arbitration agreement provides for the appointment of a sole arbitrator, the demand shall include an invitation of the claimant to the respondent to meet and agree upon such arbitrator at the place, time and date stated therein which shall not be less than thirty (30) days from receipt of the demand.

[c] If the arbitration agreement provides for the establishment of an arbitral tribunal of three (3) arbitrators, the demand shall name the arbitrator appointed by the claimant. It shall include the *curriculum vitae* of the arbitrator appointed by the claimant and the latter's acceptance of the appointment.

[d] Where there is no prior arbitration agreement, arbitration may be initiated by one party through a demand upon the other to submit their dispute to arbitration. Arbitration shall be deemed commenced upon the agreement by the other party to submit the dispute to arbitration.

[e] The demand shall require the respondent to name his/her/its arbitrator within a period which shall not be less than fifteen (15) days from receipt of the demand. This period may be extended by agreement of the parties. Within said period, the respondent shall give a written notice to the claimant of the appointment of the respondent's arbitrator and attach to the notice the arbitrator's *curriculum vitae* and the latter's acceptance of the appointment.

Article 5.21. *Language.* [a] The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the language to be used shall be English or Filipino. The language/s agreed, unless otherwise specified therein, shall be used in all hearings and all written statements, orders or other communication by the parties and the arbitral tribunal.

[b] The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties in accordance with paragraph [a] of this Article.

Article 5.22. *Statements of Claim and Defense.* [a] Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his/her claim, the points at issue and the relief or remedy sought, and the respondent shall state his/her defense in respect of these particulars, unless the parties may have otherwise agreed as to the required elements of such statements. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

[b] Unless otherwise agreed by the parties, either party may amend or supplement his/her/its claim or defense during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendments having regard to the delay in making it.

Article 5.23. *Hearing and Written Proceedings.* [a] In *ad hoc* arbitration, the procedure determined by the arbitrator, with the agreement of the parties, shall be followed. In institutional arbitration, the applicable rules of procedure of the arbitration institution shall be followed. In default of agreement of the parties, the arbitration procedure shall be as provided in this Chapter.

[b] Within thirty (30) days from the appointment of the arbitrator or the constitution of an arbitral tribunal, the arbitral tribunal shall call the parties and their respective counsels to a pre-hearing conference to discuss the following matters:

(i) The venue or place/s where the arbitration proceeding may be conducted in an office space, a business center, a function room or any suitable place agreed upon by the parties and the arbitral tribunal, which may vary per session/hearing/ conference;

(ii) The manner of recording the proceedings;

(iii) The periods for the communication of the statement of claims, answer to the claims with or without counterclaims, and answer to the counterclaim/s and the form and contents of such pleadings;

(iv) The definition of the issues submitted to the arbitral tribunal for determination and the summary of the claims and counterclaims of the parties;

(v) The manner by which evidence may be offered if an oral hearing is required, the submission of sworn written statements in lieu of oral testimony, the cross-examination and further examination of witnesses;

(vi) The delivery of certain types of communications such as pleadings, terms of reference, order granting interim relief, final award and the like that, if made by electronic or similar means, shall require further confirmation in the form of a hard copy or hard copies delivered personally or by registered post;

(vii) The issuance of a subpoena or a subpoena *duces tecum* by the arbitral tribunal to compel the production of evidence if either party shall or is likely to request it;

(viii) The manner by which expert testimony will be received if a party will or is likely to request the arbitral tribunal to appoint one or more experts, and in such case, the period for the submission to the arbitrator by the requesting party of the proposed terms of reference for the expert, the fees to be paid,

the manner of payment to the expert and the deposit by the parties or of the requesting party of such amount necessary to cover all expenses associated with the referral of such issues to the expert before the expert is appointed;

(ix) The possibility of either party applying for an order granting interim relief either with the arbitral tribunal or with the court, and, in such case, the nature of the relief to be applied for;

(x) The possibility of a site or ocular inspection, the purpose of such inspection, and in such case, the date, place and time of the inspection and the manner of conducting it, and the sharing and deposit of any associated fees and expenses;

(xi) The amount to be paid to the arbitral tribunal as fees and the associated costs, charges and expenses of arbitration and the manner and timing of such payments; and

(xii) Such other relevant matters as the parties and the arbitral tribunal may consider necessary to provide for a speedy and efficient arbitration of the dispute.

[c] To the extent possible, the arbitral tribunal and the parties shall agree upon any such matters and in default of agreement, the arbitral tribunal shall have the discretion and authority to make the decision, although in making a decision, regard shall be given to the views expressed by both parties.

[d] The arbitral tribunal shall, in consultation with the parties, fix the date/s and the time of hearing, regard being given to the desirability of conducting and concluding an arbitration without undue delay.

[e] The hearing set shall not be postponed except with the conformity of the arbitrator and the parties and only for a good and sufficient cause. The arbitral tribunal may deny a request to postpone or to cancel a scheduled hearing on the ground that a party has requested or is intending to request from the court or from the arbitrator an order granting interim relief.

[f] A party may, during the proceedings, represent himself/herself/itself or be represented or assisted by a representative as defined by these Rules.

[g] The hearing may proceed in the absence of a party who fails to obtain an adjournment thereof or who, despite due notice, fails to be present, by himself /herself/itself or through a representative, at such hearing.

[h] Only parties, their respective representatives, the witnesses and the administrative staff of the arbitral tribunal shall have the right to be present during the hearing. Any other person may be allowed by the arbitrator to be present if the parties, upon being informed of the presence of such person and the reason for his/her presence, interpose no objection thereto.

[i] Issues raised during the arbitration proceeding relating to (a) the jurisdiction of the arbitral tribunal over one or more of the claims or counter-claims, or (b) the arbitrability of a particular claim or counter-claim, shall be resolved by the arbitral tribunal as threshold issues, if the parties so request, unless they are intertwined with factual issues that they cannot be resolved ahead of the hearing on the merits of the dispute.

[j] Each witness shall, before giving testimony, be required to take an oath/affirmation before the arbitral tribunal, to tell the whole truth and nothing but the truth during the hearing.

[k] The arbitral tribunal shall arrange for the transcription of the recorded testimony of each witness and require each party to share the cost of recording and transcription of the testimony of each witness.

[l] Each party shall provide the other party with a copy of each statement or document submitted to the arbitral tribunal and shall have an opportunity to reply in writing to the other party's statements and proofs.

[m] The arbitral tribunal may require the parties to produce such other documents or provide such information as in its judgment would be necessary for it to render a complete, fair and impartial award.

[n] The arbitral tribunal shall receive as evidence all exhibits submitted by a party properly marked and identified at the time of submission.

[o] At the close of the hearing, the arbitral tribunal shall specifically inquire of all parties whether they have further proof or witnesses

to present; upon receiving a negative reply, the arbitral tribunal shall declare the hearing closed.

[p] After a hearing is declared closed, no further motion or manifestation or submission may be allowed except for post-hearing briefs and reply briefs that the parties have agreed to submit within a fixed period after the hearing is declared closed, or when the arbitral tribunal, *motu proprio* or upon request of a party, allows the reopening of the hearing.

[q] Decisions on interlocutory matters shall be made by the sole arbitrator or by the majority of the arbitral tribunal. The arbitral tribunal may authorize its chairman to issue or release, on behalf of the arbitral tribunal, its decision on interlocutory matters.

[r] Except as provided in Section 17 (d) of the ADR Act, no arbitrator shall act as a mediator in any proceeding in which he/she is acting as arbitrator even if requested by the parties; and all negotiations towards settlement of the dispute must take place without the presence of the arbitrators.

[s] Before assuming the duties of his/her office, an arbitrator must be sworn by any officer authorized by law to administer an oath or be required to make an affirmation to faithfully and fairly hear and examine the matters in controversy and to make a just award according to the best of his/her ability and understanding. A copy of the arbitrator's oath or affirmation shall be furnished each party to the arbitration.

[t] Either party may object to the commencement or continuation of an arbitration proceeding unless the arbitrator takes an oath or affirmation as required in this Chapter. If the arbitrator shall refuse to take an oath or affirmation as required by law and this Rule, he /she shall be replaced. The failure to object to the absence of an oath or affirmation shall be deemed a waiver of such objection and the proceedings shall continue in due course and may not later be used as a ground to invalidate the proceedings.

[u] The arbitral tribunal shall have the power to administer oaths to, or require affirmation from, all witnesses directing them to tell the truth, the whole truth and nothing but the truth in any testimony, oral or written, which they may give or offer in any arbitration

hearing. The oath or affirmation shall be required of every witness before his/her testimony, oral or written, is heard or considered.

[v] The arbitral tribunal shall have the power to require any person to attend a hearing as a witness. It shall have the power to subpoena witnesses, to testify and/or produce documents when the relevancy and materiality thereof has been shown to the arbitral tribunal. The arbitral tribunal may also require the exclusion of any witness during the testimony of any other witness. Unless the parties otherwise agree, all the arbitrators appointed in any controversy must attend all the hearings and hear the evidence of the parties.

Article 5.24. ***Power of Arbitral Tribunal to Order Interim Measures.*** [a] Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party and in accordance with the this Article, order any party to take such interim measures of protection as the arbitral tribunal may consider necessary in respect of the subject matter of the dispute or the procedure. Such interim measures may include, but shall not be limited, to preliminary injunction directed against a party, appointment of receivers or detention of property that is the subject of the dispute in arbitration or its preservation or inspection.

[b] After the constitution of the arbitral tribunal, and during the arbitration proceedings, a request for interim measures of protection, or modification thereof, may be made with the arbitral tribunal. The arbitral tribunal is deemed constituted when the sole arbitrator or the third arbitrator, who has been nominated, has accepted the nomination and written communication of said nomination and acceptance has been received by the party making the request.

[c] The following rules on interim or provisional relief shall be observed:

(i) Any party may request that provisional or interim relief be granted against the adverse party.

(ii) Such relief may be granted:

(aa) To prevent irreparable loss or injury;

(bb) To provide security for the performance of an obligation;

(cc) To produce or preserve evidence; or

(dd) To compel any other appropriate act or omissions.

(iii) The order granting provisional relief may be conditioned upon the provision of security or any act or omission specified in the order.

(iv) Interim provisional relief is requested by written application transmitted by reasonable means to the arbitral tribunal and the party against whom relief is sought, describing in appropriate detail of the precise relief, the party against whom the relief is requested, the ground for the relief, and the evidence supporting the request.

(v) The order either granting or denying an application for interim relief shall be binding upon the parties.

(vi) Either party may apply with the court for assistance in implementing or enforcing an interim measure ordered by an arbitral tribunal.

(vii) A party who does not comply with the order shall be liable for all damages, resulting from noncompliance, including all expenses, and reasonably attorney's fees, paid in obtaining the order's judicial enforcement.

[d] The arbitral tribunal shall have the power at any time, before rendering the award, without prejudice to the rights of any party to petition the court to take measures to safeguard and/or conserve any matter which is the subject of the dispute in arbitration.

Article 5.25. *Default of a Party.* Unless otherwise agreed by the parties, if, without showing sufficient cause,

[a] the claimant fails to communicate his/her/its statement of claim in accordance with paragraph [a] of Article 5.22 *(Statements of Claim and Defense)*, the arbitral tribunal shall terminate the proceedings;

[b] the respondent fails to communicate his/her/its statement of defense in accordance with paragraph [a] of Article 5.22 *(Statements of Claim and Defense)*, the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;

[c] any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award based on the evidence before it.

Article 5.26. ***Expert Appointed by the Arbitral Tribunal.*** [a] Unless otherwise agreed by the parties, the arbitral tribunal,

(i) may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal; or

(ii) may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his/her inspection.

[b] Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his/her written or oral report, participate in a hearing where the parties have the opportunity to put questions to him/her and to present expert witnesses in order to testify on the points at issue.

[c] Upon agreement of the parties, the finding of the expert engaged by the arbitral tribunal on the matter/s referred to him shall be binding upon the parties and the arbitral tribunal.

Article 5.27. ***Court Assistance in Taking Evidence and Other Matters.*** [a] The arbitral tribunal or a party, with the approval of the arbitral tribunal may request from a court, assistance in taking evidence such as the issuance of subpoena *ad testificandum* and subpoena *duces tecum*, deposition taking, site or ocular inspection, and physical examination of properties. The court may grant the request within its competence and according to its rules on taking evidence.

[b] The arbitral tribunal or a party to the dispute interested in enforcing an order of the arbitral tribunal may request from a competent court, assistance in enforcing orders of the arbitral tribunal, including but not limited, to the following:

(i) Interim or provisional relief;

(ii) Protective orders with respect to confidentiality;

(iii) Orders of the arbitral tribunal pertaining to the subject matter of the dispute that may affect third persons and/or their properties; and/or

(iv) Examination of debtors.

Article 5.28. ***Rules Applicable to the Substance of Dispute.*** [a] The arbitral tribunal shall decide the dispute in accordance with such law as is chosen by the parties. In the absence of such agreement, Philippine law shall apply.

[b] The arbitral tribunal may grant any remedy or relief which it deems just and equitable and within the scope of the agreement of the parties, which shall include, but not be limited to, the specific performance of a contract.

[c] In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

Article 5.29. ***Decision Making by the Arbitral Tribunal.*** [a] In arbitration proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members. However, questions of procedure may be decided by the chairman of the arbitral tribunal, if so authorized by the parties or all members of the arbitral tribunal.

[b] Unless otherwise agreed upon by the parties, the arbitral tribunal shall render its written award within thirty (30) days after the closing of the hearings and/or submission of the parties' respective briefs or if the oral hearings shall have been waived, within thirty (30) days after the arbitral tribunal shall have declared such proceedings in lieu of hearing closed. This period may be further extended by mutual consent of the parties.

Article 5.30. ***Settlement.*** [a] If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms, consent award or award based on compromise.

[b] An award as rendered above shall be made in accordance with the provisions of Article 5.31 *(Form and Contents of Award)* and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case.

Article 5.31. ***Form and Contents of Award.*** [a] The award shall be made in writing and shall be signed by the arbitral tribunal. In arbitration

proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.

[b] The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms, consent award or award based on compromise under Article 5.30 *(Settlement).*

[c] The award shall state its date and the place of arbitration as determined in accordance with paragraph [a] of Article 5.19 *(Place of Arbitration).* The award shall be deemed to have been made at that place.

[d] After the award is made, a copy signed by the arbitrators in accordance with paragraph [a] of this Article shall be delivered to each party.

[e] The award of the arbitral tribunal need not be acknowledged, sworn to under oath, or affirmed by the arbitral tribunal unless so required in writing by the parties. If despite such requirement, the arbitral tribunal shall fail to do as required, the parties may, within thirty days from receipt of said award, request the arbitral tribunal to supply the omission. The failure of the parties to make an objection or make such request within the said period shall be deemed a waiver of such requirement and may no longer be raised as a ground to invalidate the award.

Article 5.32. *Termination of Proceedings.* [a] The arbitration proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with paragraph [b] of this Article.

[b] The arbitral tribunal shall issue an order for the termination of the arbitration proceedings when:

(i) The claimant withdraws his claim, unless the respondent objects thereto for the purpose of prosecuting his counterclaims in the same proceedings or the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute; or

(ii) The parties agree on the termination of the proceedings; or

(iii) The arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible; or

(iv) The required deposits are not paid in full in accordance with paragraph [d] of Article 5.46 (Fees and Costs).

[c] The mandate of the arbitral tribunal ends with the termination of the arbitration proceedings, subject to the provisions of Article 5.33 *(Correction and Interpretation of Award, Additional Award)* and Article 5.34 *(Application for Setting Aside an Exclusive Recourse Against Arbitral Award).*

[d] Except as otherwise provided in the arbitration agreement, no motion for reconsideration, correction and interpretation of award or additional award shall be made with the arbitral tribunal. The arbitral tribunal, by releasing its final award, loses jurisdiction over the dispute and the parties to the arbitration. However, where it is shown that the arbitral tribunal failed to resolve an issue submitted to him for determination, a verified motion to complete a final award may be made within thirty (30) days from its receipt.

[e] Notwithstanding the foregoing, the arbitral tribunal may, for special reasons, reserve in the final award or order, a hearing to quantify costs and determine which party shall bear the costs or apportionment thereof as may be determined to be equitable. Pending determination of this issue, the award shall not be deemed final for purposes of appeal, vacation, correction, or any post-award proceedings.

Article 5.33. ***Correction and Interpretation of Award, Additional Award.***
[a] Within thirty (30) days from receipt of the award, unless another period of time has been agreed upon by the parties:

(i) A party may, with notice to the other party, the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature.

(ii) If so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within thirty (30) days from receipt of the request. The interpretation shall form part of the award.

[b] The arbitral tribunal may correct any error of the type referred to in paragraph [a] of this Article on its own initiative within thirty (30) days of the date of the award.

[c] Unless otherwise agreed by the parties, a party may, with notice to the other party, may request, within thirty (30) days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty (60) days.

[d] The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under paragraphs [a] and [c] of this Article.

[e] The provisions of Article 5.31 *(Form and Contents of Award)* shall apply to a correction or interpretation of the award or to an additional award.

Article 5.34. ***Application for Setting Aside an Exclusive Recourse against Arbitral Award.*** The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside an award.

Article 5.35. ***Grounds to Vacate an Arbitral Award.*** [a] The arbitral award may be questioned, vacated or set aside by the appropriate court in accordance with the Special ADR Rules only on the following grounds:

(i) The arbitral award was procured by corruption, fraud or other undue means; or

(ii) There was evident partiality or corruption in the arbitral tribunal or any of its members; or

(iii) The arbitral tribunal was guilty of misconduct or any form of misbehavior that has materially prejudiced the rights of any party such as refusing to postpone the hearing upon sufficient cause shown or to hear evidence pertinent and material to the controversy; or

(iv) One or more of the arbitrators was disqualified to act as such under this Chapter and willfully refrained from disclosing such disqualification; or

(v) The arbitral tribunal exceeded its powers, or so imperfectly executed them, such that a complete, final and definite award upon the subject matter submitted to it was not made.

Any other ground raised to question, vacate or set aside the arbitral award shall be disregarded by the court.

[b] Where a petition to vacate or set aside an award is filed, the petitioner may simultaneously, or the oppositor may in the alternative, petition the court to remit the case to the same arbitral tribunal for the purpose of making a new or revised final and definite award or to direct a new hearing before the same or new arbitral tribunal, the members of which shall be chosen in the manner originally provided in the arbitration agreement or submission. In the latter case, any provision limiting the time in which the arbitral tribunal may make a decision shall be deemed applicable to the new arbitral tribunal and to commence from the date of the court's order.

[c] Where a party files a petition with the court to vacate or set aside an award by reason of omission/s that do not affect the merits of the case and may be cured or remedied, the adverse party may oppose that petition and instead request the court to suspend the vacation or setting aside proceedings for a period of time to give the arbitral tribunal an opportunity to cure or remedy the award or resume the arbitration proceedings or take such other action as will eliminate the grounds for vacation or setting aside.

RULE 6 - Recognition and Enforcement of Awards

Article 5.36. ***Confirmation of Award.*** The party moving for an order confirming, modifying, correcting, or vacating an award, shall, at

the time that such motion is filed with the court for the entry of judgment thereon, also file the original or verified copy of the award, the arbitration or settlement agreement, and such papers as may be required by the Special ADR Rules.

Article 5.37. *Judgment.* Upon the grant of an order confirming, modifying or correcting an award, judgment may be entered in conformity therewith in the court where said application was filed. Costs of the application and the proceedings subsequent thereto may be awarded by the court in its discretion. If awarded, the amount thereof must be included in the judgment. Judgment will be enforced like court judgments.

Article 5.38. *Appeal.* A decision of the court confirming, vacating, setting aside, modifying or correcting an arbitral award may be appealed to the Court of Appeals in accordance with Special ADR Rules.

The losing party who appeals from the judgment of the Court confirming an arbitral award shall be required by the Court of Appeals to post a counter-bond executed in favor of the prevailing party equal to the amount of the award in accordance with the Special ADR Rules.

Article 5.39. *Venue and Jurisdiction.* Proceedings for recognition and enforcement of an arbitration agreement or for vacation or setting aside of an arbitral award, and any application with a court for arbitration assistance and supervision, except appeal, shall be deemed as special proceedings and shall be filed with the court:

[a] where the arbitration proceedings are conducted;

[b] where the asset to be attached or levied upon, or the act to be enjoined is located;

[c] where any of the parties to the dispute resides or has its place of business; or

[d] in the National Capital Judicial Region at the option of the applicant.

Article 5.40. *Notice of Proceedings to Parties.* In a special proceeding for recognition and enforcement of an arbitral award, the court shall send notice to the parties at their address of record in the arbitration, or if any party cannot be served notice at such address, at such party's last

known address. The notice shall be sent at least fifteen (15) days before the date set for the initial hearing of the application.

Article 5.41. ***Legal Representation in Domestic Arbitration.*** [a] In domestic arbitration conducted in the Philippines, a party may be represented by any person of his/her/its choice: Provided, that such representative, unless admitted to the practice of law in the Philippines, shall not be authorized to appear as counsel in any Philippine Court, or any other quasi-judicial body whether or not such appearance is in relation to the arbitration in which he/she appears.

[b] No arbitrator shall act as a mediator in any proceeding in which he/she is acting as arbitrator and all negotiations towards settlement of the dispute must take place without the presence of the arbitrators.

Article 5.42. ***Confidentiality of Arbitration Proceedings.*** The arbitration proceedings, including the records, evidence and the arbitral award and other confidential information, shall be considered privileged and confidential and shall not be published except-

(1) with the consent of the parties; or

(2) for the limited purpose of disclosing to the court relevant documents in cases where resort to the court is allowed herein:

Provided, however, that the court in which the action or the appeal is pending may issue a protective order to prevent or prohibit disclosure of documents or information containing secret processes, developments, research and other information where it is shown that the applicant shall be materially prejudiced by an authorized disclosure thereof.

Article 5.43. ***Death of a Party.*** Where a party dies after making a submission or a contract to arbitrate as prescribed in these Rules, the proceeding may be begun or continued upon the application of, or notice to, his/her executor or administrator, or temporary administrator of his/her estate. In any such case, the court may issue an order extending the time within which notice of a motion to recognize or vacate an award must be served. Upon recognizing an award, where a party has died since it was filed or delivered, the court must enter judgment in the name of the original party; and the proceedings thereupon are the same as where a party dies after a verdict.

Article 5.44. ***Multi-Party Arbitration.*** [a] When a single arbitration involves more than two parties, these Rules, to the extent possible, shall be used subject to such modifications consistent with Articles 5.17 *(Equal Treatment of Parties)* and 5.18 *(Determination of Rules of Procedure)* as the arbitral tribunal shall deem appropriate to address possible complexities of a multi-party arbitration.

[b] When a claimant includes persons who are not parties to or otherwise bound by the arbitration agreement, directly or by reference, between him/her and the respondent as additional claimants or additional respondents, the respondent shall be deemed to have consented to the inclusion of the additional claimants or the additional respondents unless not later than the date of communicating his/her answer to the request for arbitration, either by motion or by a special defense in his answer, he objects, on jurisdictional grounds, to the inclusion of such additional claimants or additional respondents. The additional respondents shall be deemed to have consented to their inclusion in the arbitration unless, not later than the date of communicating their answer to the request for arbitration, either by motion or a special defense in their answer, they object, on jurisdictional grounds, to their inclusion.

Article 5.45. ***Consolidation of Proceedings and Concurrent Hearings.*** The parties may agree that -

[a] the arbitration proceedings shall be consolidated with other arbitration proceedings; or

[b] that concurrent hearings shall be held, on such terms as may be agreed.

Unless the parties agree to confer such power on the arbitral tribunal, the tribunal has no power to order consolidation of arbitration proceedings or concurrent hearings.

Article 5.46. ***Fees and Costs.*** [a] The fees of the arbitrators shall be agreed upon by the parties and the arbitrator/s in writing prior to the arbitration.

In default of agreement of the parties as to the amount and manner of payment of arbitrator's fees, the arbitrator's fees shall be determined in

accordance with the applicable internal rules of the regular arbitration institution under whose rules the arbitration is conducted; or in *ad hoc* arbitration, the Schedule of Fees approved by the IBP, if any, or in default thereof, the Schedule of Fees that may be approved by the OADR.

[b] In addition to arbitrator's fees, the parties shall be responsible for the payment of the administrative fees of an arbitration institution administering an arbitration and cost of arbitration. The latter shall include, as appropriate, the fees of an expert appointed by the arbitral tribunal, the expenses for conducting a site inspection, the use of a room where arbitration proceedings shall be or have been conducted, and expenses for the recording and transcription of the arbitration proceedings.

[c] The arbitral tribunal shall fix the costs of arbitration in its award. The term "costs" include only:

(i) The fees of the arbitral tribunal to be stated separately as to each arbitrator and to be fixed by the arbitral tribunal itself in accordance with this Article;

(ii) The travel and other expenses incurred by the arbitrators;

(iii) The costs of expert advice and of other assistance required by the arbitral tribunal, such as site inspection and expenses for the recording and transcription of the arbitration proceedings;

(iv) The travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;

(v) The costs for legal representation and assistance of the successful party if such costs were claimed during the arbitral proceedings, and only to the extent that the arbitral tribunal determines that the amount of such costs is reasonable;

(vi) Any fees and expenses of the appointing authority.

[d] The fees of the arbitral tribunal shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject matter, the time spent by the arbitrators and any other relevant circumstances of the case.

If an appointing authority has been agreed upon by the parties and if such appointing authority has issued a schedule of fees for arbitrators in domestic cases which it administers, the arbitral tribunal, in fixing its fees shall take that schedule of fees into account to the extent that it considers appropriate in the circumstances of the case.

If such appointing authority has not issued a schedule of fees for arbitrators in international cases, any party may, at any time request the appointing authority to furnish a statement setting forth the basis for establishing fees which is customarily followed in international cases in which the authority appoints arbitrators. If the appointing authority consents to provide such a statement, the arbitral tribunal, in fixing its fees shall take such information into account to the extent that it considers appropriate in the circumstances of the case.

In cases referred to in paragraph [d] of this Article, when a party so requests and the appointing authority consents to perform the function, the arbitral tribunal shall fix its fees only after consultation with the appointing authority which may make any comment it deems appropriate to the arbitral tribunal concerning the fees.

[e] Except as provided in the next paragraph, the costs of arbitration shall, in principle, be borne by the unsuccessful party. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.

With respect to the costs of legal representation and assistance referred to in paragraph [c] (iii) of this Article, the arbitral tribunal, taking into account the circumstances of the case, shall be free to determine which party shall bear such costs or may apportion such costs between the parties if it determines that appointment is reasonable.

When the arbitral tribunal issues an order for the termination of the arbitral proceedings or makes an award on agreed terms, it shall fix the costs of arbitration referred to in paragraph [a] of this Article in the context of that order or award.

Except as otherwise agreed by the parties, no additional fees may be charged by the arbitral tribunal for interpretation or correction or completion of its award under these Rules.

[f] The arbitral tribunal, on its establishment, may request each party to deposit an equal amount as an advance for the costs referred to in paragraphs (i), (ii) and (iii) of paragraph [c] of this Article.

During the course of the arbitral proceedings, the arbitral tribunal may request supplementary deposits from the parties.

If an appointing authority has been agreed upon by the parties, and when a party so requests and the appointing authority consents to perform the function, the arbitral tribunal shall fix the amounts of any deposits or supplementary deposits only after consultation with the appointing authority which may make any comments to the arbitral tribunal which it deems appropriate concerning the amount of such deposits and supplementary deposits.

If the required deposits are not paid in full within thirty (30) days after receipt of the request, the arbitral tribunal shall so inform the parties in order that one of them may make the required payment within such a period or reasonable extension thereof as may be determined by the arbitral tribunal. If such payment is not made, the arbitral tribunal may order the termination of the arbitral proceedings.

After the award has been made, the arbitral tribunal shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

CHAPTER 6
ARBITRATION OF CONSTRUCTION DISPUTES

The Construction Industry Arbitration Commission (CIAC), which has original and exclusive jurisdiction over arbitration of construction disputes pursuant to Executive Order No. 1008, s.1985, otherwise known as the "Construction Industry Arbitration Law", shall promulgate the Implementing Rules and Regulations governing arbitration of construction disputes, incorporating therein the pertinent provisions of the ADR Act.

CHAPTER 7
OTHER ADR FORMS

RULE 1 - General Provisions

Article 7.1. ***Scope of Application and General Principles.*** Except as otherwise agreed, this Chapter shall apply and supply the deficiency in the agreement of the parties for matters involving the following forms of ADR:

[a] early neutral evaluation;

[b] neutral evaluation;

[c] mini-trial;

[d] mediation-arbitration;

[e] a combination thereof; or

[f] any other ADR form.

Article 7.2. ***Applicability of the Rules on Mediation.*** If the other ADR form/process is more akin to mediation (i.e., the neutral third-person merely assists the parties in reaching a voluntary agreement), Chapter 3 governing Mediation shall have suppletory application to the extent that it is not in conflict with the agreement of the parties or this Chapter.

Article 7.3. ***Applicability of the Rules on Arbitration.*** If the other ADR form/process is more akin to arbitration (i.e., the neutral third-person has the power to make a binding resolution of the dispute), Chapter 5 governing Domestic Arbitration shall have suppletory application to the extent that it is not in conflict with the agreement of the parties or this Chapter.

Article 7.4. ***Referral.*** If a dispute is already before a court, either party may, before and during pre-trial, file a motion for the court to refer the parties to other ADR forms/processes. However, at any time during court proceedings, even after pre-trial, the parties may jointly move for suspension/dismissal of the action pursuant to Article 2030 of the Civil Code of the Philippines.

Article 7.5. ***Submission of Settlement Agreement.*** Either party may submit to the court before which the case is pending any settlement agreement following a neutral or an early neutral evaluation, mini-trial or mediation-arbitration.

RULE 2 – Neutral or Early Neutral Evaluation

Article 7.6. ***Neutral or Early Neutral Evaluation.*** [a] The neutral or early neutral evaluation shall be governed by the rules and procedure agreed upon by the parties. In the absence of said agreement, this Rule shall apply.

[b] If the parties cannot agree on, or fail to provide for:

(i) The desired qualification of the neutral third person;

(ii) The manner of his/her selection;

(iii) The appointing authority (not IBP) who shall have the authority to make the appointment of a neutral third person; or

(iv) if despite agreement on the foregoing and the lapse of the period of time stipulated for the appointment, the parties are unable to select a neutral third person or appointing authority,

then, either party may request the default appointing authority, as defined under paragraph C1 of Article (Definition of Terms), to make the appointment taking into consideration the nature of the dispute and the experience and expertise of the neutral third person.

[c] The parties shall submit and exchange position papers containing the issues and statement of the relevant facts and appending supporting documents and affidavits of witnesses to assist the neutral third person in evaluating or assessing the dispute.

[d] The neutral third person may request either party to address additional issues that he /she may consider necessary for a complete evaluation/assessment of the dispute.

[e] The neutral third person may structure the evaluation process in any manner he/she deems appropriate. In the course thereof, the neutral third person may identify areas of agreement, clarify the issues, define those that are contentious, and encourage the parties to agree on a definition of issues and stipulate on facts or admit the genuineness and due execution of documents.

[f] The neutral third person shall issue a written evaluation or assessment within thirty (30) days from the conclusion of the

evaluation process. The opinion shall be non-binding and shall set forth how the neutral third person would have ruled had the matter been subject to a binding process. The evaluation or assessment shall indicate the relative strengths and weaknesses of the positions of the parties, the basis for the evaluation or assessment, and an estimate, when feasible, of the amount for which a party may be liable to the other if the dispute were made subject to a binding process.

[g] There shall be no *ex-parte* communication between the neutral third person and any party to the dispute without the consent of all the parties.

[h] All papers and written presentations communicated to the neutral third person, including any paper prepared by a party to be communicated to the neutral third person or to the other party as part of the dispute resolution process, and the neutral third person's written non -binding assessment or evaluation, shall be treated as confidential.

RULE 3 – Mini-Trial

Article 7.7. *Mini-Trial.* [a] A mini-trial shall be governed by the rules and procedure agreed upon by the parties. In the absence of said agreement, this Rule shall apply.

[b] A mini-trial shall be conducted either as: (i) a separate dispute resolution process; or (ii) a continuation of mediation, neutral or early neutral evaluation or any other ADR process.

[c] The parties may agree that a mini-trial be conducted with or without the presence and participation of a neutral third person. If a neutral third person is agreed upon and chosen, he/she shall preside over the mini-trial. The parties may agree to appoint one or more (but equal in number per party) senior executive/s, on its behalf, to sit as mini-trial panel members.

[d] The senior executive/s chosen to sit as mini-trial panel members must be duly authorized to negotiate and settle the dispute with the other party. The appointment of a mini- trial panel member/s shall be communicated to the other party. This appointment shall constitute a representation to the other party that the mini-trial

panel member/s has/have the authority to enter into a settlement agreement binding upon the principal without any further action or ratification by the latter.

[e] Each party shall submit a brief executive summary of the dispute in sufficient copies as to provide one copy to each mini-trial panel member and to the adverse party. The summary shall identify the specific factual or legal issue or issues. Each party may attach to the summary a more exhaustive recital of the facts of the dispute and the applicable law and jurisprudence.

[f] At the date, time and place agreed upon, the parties shall appear before the mini- trial panel member/s. The lawyer of each party and/or authorized representative shall present his/her case starting with the claimant followed by the respondent. The lawyer and/or representative of each party may thereafter offer rebuttal or sur-rebuttal arguments.

Unless the parties agree on a shorter or longer period, the presentation-in-chief shall be made, without interruption, for one hour and the rebuttal or sur-rebuttal shall be thirty (30) minutes.

At the end of each presentation, rebuttal or sur-rebuttal, the mini-trial panel member/s may ask clarificatory questions from any of the presentors.

[g] After the mini-trial, the mini-trial panel members shall negotiate a settlement of the dispute by themselves.

In cases where a neutral third person is appointed, the neutral third person shall assist the parties/mini-trial panel members in settling the dispute and, unless otherwise agreed by the parties, the proceedings shall be governed by Chapter 3 on Mediation.

RULE 4 – Mediation-Arbitration

Article 7.8. ***Mediation-Arbitration.*** [a] A Mediation-Arbitration shall be governed by the rules and procedure agreed upon by the parties. In the absence of said agreement, Chapter 3 on Mediation shall first apply and thereafter, Chapter 5 on Domestic Arbitration.

[b] No person shall, having been engaged and having acted as mediator of a dispute between the parties, following a failed mediation, act as arbitrator of the same dispute, unless the parties, in a written agreement, expressly authorize the mediator to hear and decide the case as an arbitrator.

[c] The mediator who becomes an arbitrator pursuant to this Rule shall make an appropriate disclosure to the parties as if the arbitration proceeding had commenced and will proceed as a new dispute resolution process, and shall, before entering upon his/her duties, execute the appropriate oath or affirmation of as arbitrator in accordance with these Rules.

RULE 5 – Costs and Fees

Article 7.9. *Costs and Fees.* [a] Before entering his/her duties as ADR Provider, he/she shall agree with the parties on the cost of the ADR procedure, the fees to be paid and manner of payment for his/her services.

[b] In the absence of such agreement, the fees for the services of the ADR provider/practitioner shall be determined as follows:

(i) If the ADR procedure is conducted under the rules and/or administered by an institution regularly providing ADR services to the general public, the fees of the ADR professional shall be determined in accordance with schedule of fees approved by such institution, if any;

(ii) In *ad hoc* ADR, the fees shall be determined in accordance with the schedule of fees approved by the OADR;

(iii) In the absence of a schedule of fees approved by the ADR institution or by the OADR, the fees shall be determined by the ADR institution or the OADR, as the case may be, on the basis of *quantum meruit,* taking into consideration, among others, the length and complexity of the process, the amount in dispute and the professional standing of the ADR professional.

[c] A contingency fee arrangement shall not be allowed. The amount that may be allowed to an ADR professional may not be made dependent upon the success of his/her effort in helping the parties to settle their dispute.

CHAPTER 8
MISCELLANEOUS PROVISIONS

Article 8.1. ***Amendments.*** These Rules or any portion hereof may be amended by the Secretary of Justice.

Article 8.2. ***Separability Clause.*** If any part, article or provision of these Rules are declared invalid or unconstitutional, the other parts hereof not affected thereby shall remain valid.

Article 8.3. ***Funding.*** The heads of departments and agencies concerned, especially the Department of Justice, insofar as the funding requirements of the OADR is concerned, shall immediately include in their annual appropriation the funding necessary to implement programs and extend services required by the ADR Act and these Rules.

Article 8.4. ***Transitory Provisions.*** Considering the procedural character of the ADR Act and these Rules, the provisions of these Rules shall be applicable to all pending arbitration, mediation or other ADR forms covered by the ADR Act if the parties agree.

Article 8.5. ***Effectivity Clause.*** These Rules shall take effect fifteen (15) days after the completion of its publication in at least two (2) national newspapers of general circulation.

APPROVED.

December 4, 2009

(Sgd.) AGNES VST DEVANADERA
Acting Secretary

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Undersecretary Zenaida N. Maglaya
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PHILIPPINE DISPUTE RESOLUTION CENTER, INC.

The Philippine Dispute Resolution Center, Inc. (PDRCI) is a non-stock, non-profit organization incorporated in 1996 out of the Arbitration Committee of the Philippine Chamber of Commerce and Industry for the purpose of promoting and encouraging the use of arbitration as an alternative mode of settling commercial transaction disputes and providing dispute resolution services to the business community. Its membership is composed of prominent lawyers, members of the judiciary, academicians, arbitrators, engineers, accountants, bankers, and businessmen.

PDRCI has broadened its scope of arbitration advocacy mission. It administers arbitration in specialized fields such as maritime, banking, insurance, securities, and intellectual property disputes.

With the globalization of trade, PDRCI has forged cooperation agreements with foreign arbitration centers such as the Korean Commercial Arbitration Board, the Indian Council of Arbitration, the Indonesian National Board of Arbitration, the Singapore International Arbitration Center, the Hong Kong International Arbitration Centre, and the Institute of Arbitrators and Mediators Australia. It has also networked with the various committees of the International Chamber of Commerce, among which is the International Court of Arbitration.

On November 2, 2004, PDRCI, together with 16 other arbitration centers and associations within the Asia Pacific region, established the Asia Pacific Regional Arbitration Group (APRAG) at Sydney, Australia.

On April 29, 2011, PDRCI also entered into a Memorandum of Agreement with the Intellectual Property Office of the Philippines, which it renewed on June 7, 2019.

On January 15, 2019, PDRCI entered into a Memorandum of Agreement with the Philippine Olympic Committee to develop sports arbitration.

Services

PDRCI offers the following disputes resolution services:

- administration of commercial arbitration and mediation;
- appointment of arbitrators and mediators;
- seminars on commercial arbitration;
- training and accreditation of neutrals;
- networking with various international ADRcenters;
- referral services; and
- information on arbitration agreements, rules and arbitration law and practice

In addition, PDRCI has a system for accreditation of arbitrators and mediators. It maintains a panel of local arbitrators and a panel of foreign arbitrators.

PDRCI is actively involved in information dissemination, policy formulation, promotion, research, and drafting of legislation on alternative dispute resolution, trade law and commerce.

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