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 declog 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 and in good standing who represents a party in any ADR process.

9. **Court** mean**s** 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 neutral**s** 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 **c**ourt-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 **s**tate 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 a 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 counsel**s**, 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 exception for non-disclosure may be admitted. The admission of a particular evidence for 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 Intitutional 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 **c**ourt. 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 **a**rbitral **t**ribunal.

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 **c**ourt.

(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 **c**ourt 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.

(d) 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;

(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.

(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 parties 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 **c**ourt 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 office 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.

October 26, 2009

(Sgd.) **AGNES VST DEVANADERA**
Acting Secretary

Committee for the Formulation of the Implementing Rules and Regulations of the Alternative Dispute Resolution Act of 2004:

Undersecretary Jose Vicente B. Salazar
Department of Justice

Undersecretary Zenaida N. Maglaya
Department of Trade and Industry

Director Nelda D. Leda
Department of the Interior and Local Government

Atty. Victor P. Lazatin
Representative of the President of the Integrated Bar of the Philippines

Atty. Custodio O. Parlade
Arbitration Profession

Atty. Alfredo F. Tadiar
Professor **Annabelle T. Abaya**
Mediation Profession

Atty. Mario E. Valderrama
ADR Organization

OTHER PARTICIPANTS IN THE FORMULATION OF THE IMPLEMENTING RULES AND REGULATIONS:

DEPARTMENT OF JUSTICE

Chief State Counsel Ricardo V. Paras III
Assistant Chief State Counsel Ruben F. Fondevilla
Retired Assistant Chief State Prosecutor Nilo C. Mariano
Senior State Counsel Marlyn L. Angeles
State Counsel Bernadette C. Ongoco
State Counsel Leilani R. Fajardo
Ms. Suerte T. Gamiao
Mr. Jose Mario B. Uy

DEPARTMENT OF TRADE AND INDUSTRY

Director Victorio Mario A. Dimagiba

PRESIDENT OF THE INTEGRATED BAR OF THE PHILIPPINES

Atty. Patricia Tysman-Clemente

MEDIATION PROFESSION

Former Prosecutor Dominador Bornasal, Jr.