FURTHER AMENDING SECTION 16.4.1 (SETTLEMENT AS AWARD), RULE 16, AND MODIFYING SECTION 21.7 (FREEDOM TO SETTLE), RULE 21 AND CIAC RULES

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WHEREAS, in line with the declaration of State policy under Section 2 of Executive Order 1008 (the Construction Industry Arbitration law) “to encourage the early and expeditious settlement of disputes in the Philippine construction industry”, and the active promotion of “party autonomy in the resolution of disputes or the freedom of the parties to make their own arrangements to resolve their disputes” under Section 2 of Republic Act No. 9285 or the Alternative Dispute Resolution Act of 2004, the CIAC Rules of Procedure Governing Construction Arbitration (CIAC Rules) contain the following provisions:

> “Section 16.4 Award upon settlement - If the parties settle their dispute(s) during the course of the arbitration, the Arbitral Tribunal, upon their request, may set forth the agreed settlement as an Arbitral Award.
>
> 16.4.1 Settlement as Award – A compromise agreement settled by mediation shall be treated as an arbitral award if so expressly stipulated in the settlement agreement and subject to the approval of the Arbitral Tribunal, after a summary hearing, that the same is not contrary to law, morals, good customs, public order, or public policy.
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> Xxx....xxx...xxx
>
> “Section 21.7 Freedom to settle - The parties shall be free to settle the dispute(s) anytime even if the same is under arbitration. In such case, the actual expenses incurred for arbitration shall be charged against the deposit. If the deposit is insufficient, the parties shall equally shoulder the balance.
>
> 21.7.1 The parties may either jointly withdraw or submit their compromise agreement to CIAC for the rendition of an award by the Arbitral Tribunal, if the latter have already been appointed. Where the arbitrators have been appointed and proceedings have commenced, the arbitration fees to be charged the parties shall be in accordance with the stage of proceedings.”

WHEREAS, Rule 16.4.1 (Settlement as Award) as quoted above, is the result of a recent amendment passed by the Commission in its 130th Regular Meeting under CIAC Resolution No. 04-2010, to expand the coverage of mediated settlement agreements which can be converted to arbitral awards after summary hearings to ensure that such settlements are not contrary to law, morals, good customs, public order, or public policy, thus helping to safeguard against the use of CIAC facilities for the award of fraudulent claims;

WHEREAS, recognizing that settlement agreements may be arrived at by the parties not only through mediation but also through direct negotiation, the CIAC Legal Counsel, Atty. Alfredo F. Tadiar, in the 131st CIAC Regular Meeting held on 08 November 2010, recommended that Section 16.4.1, Rule 16 be further amended to cover all settlement agreements for conversion to arbitral awards; that Section 21.7.1 be modified to expressly state that the parties may move that their compromise agreement be the basis for an award to be rendered by the Arbitral Tribunal; and that a new provision be added under Section 21.7 to require the Arbitral Tribunal to conduct a summary hearing before it acts on the motion to render an award;

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NOW, THEREFORE, THE COMMISSION, by virtue of the powers vested in it by law and based on the recommendations of the CIAC Legal Counsel, RESOLVES, to further amend Section 16.4.1 (Settlement as Award), Rule 16, to modify Section 21.7.1 (Freedom to Settle) Rule 21; and to add a new provision under Section 21.7 of the CIAC Rules, to read as follows:

> "Section 16.4.1 (Settlement of Award) – A compromise agreement settled by mediation in the course of arbitration or by direct negotiation between the parties shall be treated as an arbitral award if so moved by the parties and subject to the approval of the Arbitral Tribunal, after a summary hearing, that the same is not contrary to law, morals, good customs, public order, or public policy."
>
> "21.7.1 The parties may either jointly withdraw or move that their compromise agreement be the basis for rendering an award by the Arbitral Tribunal, if the latter have already been appointed. Where the arbitrators have been appointed and proceedings have commence, the arbitration fees to be charged the parties shall be in accordance with the stage of proceedings.
>
> 21.7.2 The Arbitral Tribunal shall act upon the motion after conducting a summary hearing."

The foregoing amended/revised provisions shall take effect fifteen (15) days from receipt of certified true copies of this Resolution by the Office of the National Administrative Register, University of the Philippines Law Center.

UNANIMOUSLY APPROVED.

(SGD.) ISAAC S. DAVID
Acting Chairman

(SGD.) SAMSON C. LAZO
Member

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