AMENDING RULES 16, 18 AND 19 OF THE CIAC REVISED RULES OF PROCEDURE GOVERNING CONSTRUCTION ARBITRATION

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WHEREAS, the Construction Industry Arbitration Commission (CIAC) is empowered under Sections 16 and 21 of Executive Order 1008 (the Construction Industry Arbitration Law) to “enunciate policies and prescribe rules and procedures for construction arbitration” and to “formulate necessary rules and procedures for construction arbitration”, respectively;

WHEREAS, Section 16.6 (Termination of Jurisdiction), Rule 16 of the CIAC Revised CIAC Rules of Procedure Governing Construction Arbitration (CIAC Rules) provides for the termination of the jurisdiction of the arbitrator/s over the dispute upon the finality of the Final Award or Decision;

WHEREAS Section 21.2.1, Rule 21 (General Matters) of the CIAC Revised Rules further provides that in all arbitration proceedings before or after an award is rendered but prior to the termination of the jurisdiction of the Arbitral Tribunal pursuant to Rule 16.6, the arbitrator/s shall have the power to issue subpoena and/or subpoena duces tecum requiring any person to attend hearings as a witness or to produce relevant documents;

WHEREAS, there have been cases where the arbitrator/s had to conduct post-award hearings and issue subpoenas and subpoenas duces tecum to concerned persons, including those who were not parties to the arbitration, in order to resolve various motions related to execution which were filed by the parties even after the Final Award or Decision had attained finality (e.g., motions to examine judgment debtor and or its debtor and such other motions necessary for the full satisfaction of the award/decision);

WHEREAS, the issuance by the Arbitral Tribunal of subpoenas to the debtors of the judgment obligor in one of the cases filed before the CIAC was questioned on the contention, among others, that the Arbitral Tribunal no longer had jurisdiction over the dispute pursuant to Rule 16.6; that the Tribunal’s authority with respect to the execution or enforcement of its award is limited solely to the issuance of the writ of execution “requiring any sheriff or proper officer to execute said decision, order or final award” (Sec. 20, E.O 1008; Sec. 18.5, Rule 18 of the CIAC Rules); and that Rule 18 of the CIAC Rules, which governs the execution of final awards of the CIAC, as well as the provisions of EO 1008, would show that no additional power is granted to the Tribunal as this power is specifically reserved to the courts pursuant to Secs. 36 to 38 of Rule 39 of the Rules of Court;

WHEREAS, to preclude similar questions from being raised in future cases, Atty. Victor P. Lazatin, Chairman of the Arbitral Tribunal in the above-mentioned case, proposed amendments to Rules 16 and 18 of the CIAC Rules to expressly provide for the power of the arbitrator/s to act on matters pertaining to the execution of the Final Award even after the same has attained finality under Rule 16.6. Atty. Lazatin, noting that Rule 19 (Post-Execution Proceedings) contemplates motions related to execution but not expressly provided in the Rules, also proposed that the title of said Rules be changed to “Relief not covered by the Rules”; and

WHEREAS, the Commission discussed the proposed amendments during its 127th Regular Meeting held on 28 January 2010 and found the same to be necessary and in order;

NOW, THEREFORE, THE COMMISSION, by virtue of the powers vested in it by law, RESOLVES, AS IT IS

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HEREBY RESOLVED, to amend Section 16.6 (Termination of Jurisdiction) of Rule 16 (The Arbitration Award) by providing that for execution or post-award proceedings, the Arbitral Tribunal's jurisdiction subsists even after finality of the award/decision; adding a new sub-section, Section 18.8 (Executory Powers), under Rule 18 (Execution of Final Award); and amending the title of Rule 19, as follows;

> Rule 16.6 Termination of jurisdiction – Except for execution or post-award proceedings, the jurisdiction of the Arbitral Tribunal over the dispute is terminated upon the finality of the Final Award or Decision. Where an appeal is taken from a decision or Final Award, and the appellate court directs a rehearing or a hearing on the merits on any issue arising in the case, jurisdiction terminates only upon a final disposition of the case by the appellate court and/or a final determination of all incidental matters thereto.
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> Rule 18.8 Executory Powers – The Arbitral Tribunal (or the surviving/ remaining member/s, or the Commission , if there are no remaining/surviving appointed arbitrator/s) shall have the authority and power to decide matters and issue appropriate orders which are necessary and related to the execution of the Award, including but not limited to the determination of sufficiency of the bond, approval of the surety or bonding company, satisfaction of the award, quashal of the execution, partial execution, issuance of alias writs, assessment of properties levied, appointment of a quantity surveyor or assessor, examination of, and issuance of subpoena ad testificandum and subpoena duces tecum to banks, debtors of the judgment debtor and any person holding properties or assets of the judgment debtor.
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> Rule 19 Relief not covered by the Rules

UNANIMOUSLY APPROVED.

Adopted: 28 Jan. 2010

THE COMMISSION:

(SGD) ISAAC S. DAVID
Acting Chairman

(SGD) SAMSON C. LAZO
Member

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