PROMULGATING THE CIAC RULES OF CONCILIATION

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WHEREAS, Section 2 of Executive Order No. 1008 creating the Construction Industry Arbitration Commission (CIAC) declares as a policy of the State, the encouragement of the early and expeditious settlement of disputes in the Philippine construction industry;

WHEREAS, Section 16 (a) of the Implementing Rules and Regulations of P.D. 1746 [the law creating the Construction Industry Authority of the Philippines (CIAP)] empowers the CIAC to establish rules of procedures to provide for a fair and expeditious settlement of construction disputes through a nonjudicial process which ensures harmonious and friendly relationships between or among the parties;

WHEREAS, there has been a lot of small construction claims referred to CIAC for conciliation, and in such cases, ad hoc proceedings have been conducted;

WHEREAS, there is a need to establish rules of procedures for conciliation to better respond to the needs of the construction industry;

NOW, THEREFORE, WE, THE UNDERSIGNED CIAC COMMISSIONERS, by virtue of the powers vested in Law, do hereby promulgate the following Rules of Conciliation, to wit:

RULES OF CONCILIATION
SECTION 1. Application of the Rules. — These Rules shall apply to conciliation of construction disputes. The term "construction disputes" shall have the same meaning as this term is defined in Executive Order No. 1008 (1985), otherwise known as the Construction Industry Arbitration Law, and the CIAC Rules on Arbitration of Construction Disputes.

SECTION 2. When Disputes May be Submitted to Conciliation. —

2.1 Construction disputes may be submitted to conciliation by a party in any of the following cases:

- When such submission is in pursuance of a conciliation agreement;

- When a party requests the conciliation services of CIAC in respect of a dispute which has not been submitted for settlement by a court or arbitrator; or

- When both parties request conciliation of a dispute (i) before the filing of a claim for arbitration or litigation, or (ii) during its pendency.

2.2 The term "mediation" when used in a mediation agreement shall have the same meaning as "conciliation"

SECTION 3. Commencement of Conciliation Proceedings. —

3.1 A party requiring conciliation, who shall be known as the Claimant, shall file a Request for Conciliation with the CIAC setting out briefly the purpose of the request, the parties to the dispute and their respective addresses, the substance of the dispute, the amount in dispute, and the relief prayed for, and pay the required administrative and conciliation fees. The claimant shall nominate not less than three (3) CIAC-accredited conciliators.

3.2 A third person may refer a dispute to CIAC for conciliation. The CIAC Secretariat shall invite the claimant to a preliminary meeting and if the claimant agrees to submit the dispute to conciliation, the Secretariat shall request him to comply with Section 3.1 above.

3.3 The Secretariat shall notify the other party to the dispute, who shall be known as the Respondent, of the request for conciliation. The respondent shall be given a period of fifteen (15) days or such longer period as the CIAC may allow for the respondent to inform the Secretariat whether he agrees or declines to participate in the proposed conciliation proceedings. If he agrees to participate therein, he will be requested to submit his answer to the claim and to nominate not less than three (3) CIAC-accredited conciliators.

3.4 Conciliation proceedings commence when the respondent accepts the invitation to conciliate.

SECTION 4. When Conciliation Cannot Proceed. —

4.1 In case of no reply or a negative reply from the respondent within the period given him, CIAC shall notify the claimant that conciliation cannot proceed.

SECTION 5. Conciliation Agreement to be Signed. —

5.1 In case both parties agree to submit their dispute to conciliation, they shall be requested to signed a conciliation agreement.

SECTION 6. Number of Conciliator. —

6.1 Unless the conciliation agreement of the parties provides otherwise, there shall be only one conciliator for the dispute.

SECTION 7. Appointment of Conciliator. —

7.1 CIAC shall appoint a conciliator who is the common nominee of the parties. In the absence of a common nominee, CIAC shall appoint a CIAC-accredited conciliator se name does not appear in the list of nominees of both parties and who, by training and experience, is deemed to be in a good position to act as conciliator for the dispute.

SECTION 8. Submission of Documents to Conciliator. — The parties may agree to submit documents, reports, position papers, including affidavits of witnesses, to the conciliator.

SECTION 9. Representation and Assistance. —

9.1 The parties may be represented or assisted by persons of their choice. The names and addresses of such periods shall be communicated in writing to the conciliator and to the party. Such communication shall specify whether appointment is for the purpose of representation or of assistance.

9.2 The presence of lawyers in a conciliation proceeding not be required.

SECTION 10. Role of Conciliator. —

10.1 The conciliator shall be guided by principles of objectivity, fairness and justice, giving due consideration among other things, the rights and obligations of the parties, the usages of the trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties.

10.2 The conciliator shall be free to adopt such means or methods in the conduct of the proceedings which in his judgment appear to be appropriate, taking into account the circumstances of the case, the wishes of the parties, including any request by a party that the conciliator hear oral statements and the need for a speedy settlement of

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dispute.

10.3 The conciliator may make proposals to the parties for settlement of their dispute, or encourage the parties to it to the conciliator suggestions for the settlement of dispute.

10.4 In order to facilitate the conduct of the conciliation proceedings, the parties or the conciliator, with the consent parties, may arrange for administrative assistance by a person.

10.5 The conciliator may interview the parties and their witnesses either separately or in the presence of each other.

10.6 When it appears that there exist elements of a settlement which would be acceptable to the parties, the conciliator shall formulate the terms of a possible settlement and submit them to the parties for their consideration and observation. After receiving the observations of the parties, the conciliator may reformulate the terms of a possible settlement in light of such observations.

SECTION 11. Drawing Up of Settlement Agreement.

11.1 If the parties shall reach an agreement on a settlement of the dispute, they shall draw up, with the assistance of the conciliator, a settlement agreement which shall be signed by them. The conciliator may witness the signing of this agreement.

11.2 The parties, by signing the settlement agreement, agree to put an end to the dispute and to be bound by the terms and conditions of the settlement agreement.

SECTION 12. Confidentiality of Proceedings. —

12.1 The conciliation proceedings shall be confidential.

12.2 No person except the parties, their duly authorized representatives and/or witnesses may be present during the proceedings.

12.3 Ex-parte communications by one party to the conciliator which are not intended by him to be known by the other party shall not be communicated to the other party. Documents, reports, position papers, and affidavits submitted by one party shall not be shown to the other without the consent of the former.

12.4 The conciliator shall not record the proceedings in any manner but he may take down notes of salient matters only as a guide to him.

12.5 The Secretariat shall not keep a file of any conciliation proceeding except the report of the conciliator, if one has been appointed; or if conciliation did not proceed, to record that fact. All other records which had been submitted to CIAC by either party to a dispute shall be returned to such party.

12.6 Both parties undertake not to rely or introduce as evidence in arbitral or judicial proceedings, whether or not such proceedings relate to the dispute, that it is the subject of the conciliation proceedings:

- Views expressed or suggestions made by the other party in respect of a possible settlement of the dispute;

- Admissions made by the other party in the course of the conciliation proceedings;

- Proposals made by the conciliator;

- The fact that the other party had indicated his willingness to accept a proposal for settlement made by the conciliator.

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12.7 No evidence which violates the confidentiality rule embodied herein shall be admissible in any proceeding involving both parties or either party to the conciliation proceeding.

SECTION 13. Termination of Conciliation Proceedings. —

13.1 The conciliator shall declare the proceedings at an end and terminate such if:

- The parties have agreed to settle their dispute and have signed an agreement to that effect. The conciliator shall assist the parties in the preparation and signing of a settlement agreement with the end in view of a complete settlement of the dispute the terms of which are clear to the parties.

- The parties have agreed that conciliation has failed; but in such case, the conciliator shall persuade the parties to submit their dispute to arbitration. The conciliator shall assist the parties in the preparation and signing of an arbitration agreement

- One or both parties have refused to attend further conciliation meetings.

13.2 When conciliation ends, the conciliator shall submit a brief report to CIAC of the conciliation. The report shall include the settlement agreement or the arbitration agreement, if any. The conciliator shall return to each party all the documents, reports, position papers and affidavits submitted to him.

SECTION 14. Disqualification of Arbitrator or Conciliator. —

14.1 No person acting or having acted as arbitrator for a construction dispute shall be appointed or act as conciliator of the same dispute. No conciliator of a construction dispute shall be appointed or act as arbitrator of the same dispute. No person who has acted a conciliator for a construction dispute shall be cited as a witness in a subsequent proceeding between the parties to give testimony in respect of the conciliation proceedings conducted by him or to produce or identify any document, report, position paper or affidavit produced during such conciliation proceedings.

SECTION 15. Accreditation of Conciliators. —

15.1 All CIAC-accredited arbitrators are automatically accredited for conciliation services. In addition, CIAC may accredit other conciliators and may prescribe the qualifications and requirements for accreditation of conciliators.

The foregoing rules shall take effect immediately.

Adopted: 15 Dec. 1998

(SGD.) JOSE U. JOVELLANOS
Chairman

(SGD.) ALFREDO L JUINIO, SR.
Member

(SGD.) LAMBERTO UN OCAMPO
Member

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