NATIONAL ADMINISTRATIVE REGISTER · JANUARY 24, 2007

# AMENDING SECTION 8.2 OF RULE 8 (QUALIFICATIONS OF ARBITRATORS) AND SECTIONS 9.1.1 TO 9.1.4 AND 9.2.1 OF RULE 9 (NOMINATION AND APPOINTMENT OF ARBITRATORS)

*CIAC RESOLUTION NO. 02-2007, January 24, 2007*

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WHEREAS, Sections 6 and 21 of Executive Order 1008 empowers the Construction Industry Arbitration Commission (CIAC) “to enunciate policies and prescribe rules and procedures for construction arbitration” and “to formulate necessary rules and procedures for construction arbitration” respectively;

WHEREAS, in its continuing review of its policies and rules, the Commission noted that while Section 8.2, Rule 8 (Qualification of Arbitrators) of the Revised CIAC Rules provides for the general rule that arbitrators must be CIAC-accredited, the exception to this rule which is provided under Section 9.1.2 Rule 9 (Number of Arbitrators) would be more appropriate under Rule 8 which deals with the qualifications of arbitrators for appointment to cases filed with the CIAC;

WHEREAS, the Commission also observed that if there are no common nominees, the procedure under Section 9.1.1, Rule 9 (Number of Arbitrators) of the Revised CIAC Rules, for CIAC to return the lists of nominees to the parties and ask them to make an agreement on a common nominee/s within 48 hours, should be applied only for Sole Arbitrator (Section 9.2.1) as it would facilitate the appointment process;

WHEREAS, for an Arbitral Tribunal, the appropriate procedure if there are no com- mon nominees, is already provided for under Section 9.3 of the Revised Rules;

WHEREAS, after due discussions in its 93rd Regular Meeting held on 24 January 2007, the Commission found the following changes in the CIAC Revised Rules to be in order.

- Deletion of the phrase “Except as otherwise provided under Section 9.1.2 below” from the 1st sentence of Section 8.2 and transfer of the last sentence of Section 9.1.2 to Section 8.2 to provide for the exception to the general rule that only CIAC accredited arbitrators can be nominated and appointed for the cases filed with CIAC;

- Transfer of the last sentence of Section 9.1.1 to Section 9.2.1 to provide for the procedure in case there are no common nominees for Sole Arbitrator;

- Deletion of Section 9.1.2 because the remaining portion of this Section is already captured in essence by Section 9.3 (Arbitral Tribunal);

- Re-numbering of Section 9.1.3 to 9.1.2; and

- Re-numbering of Section 9.1.4 to 9.1.3.

NOW, THEREFORE, WE THE UNDERSIGNED COMMISSIONERS, by virtue of the powers vested in us by law, hereby RESOLVE, as it hereby resolved, to amend Section 8.2, Rule 8 and Sections 9.1.1 to 9.1.4 and 9.2.1, Rule 9 of the Revised CIAC Rules, as follows:

> “Section 8.2. The Arbitrators must be CIAC-accredited - Only CIAC-accredited arbitrators may be nominated



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by parties or by the first two arbitrators appointed as the third member of a Tribunal and appointed by CIAC as arbitrator. A replacement arbitrator shall likewise be a CIAC-accredited arbitrator. However, as an exception to this rule, CIAC may appoint to an Arbitral Tribunal; an arbitrator who is not CIAC accredited PROVIDED that the nominee: 1) is the parties' common nominee; 2) possesses the technical/ legal competence to handle the construction dispute involved; and 3) has signified his availability/acceptance of his possible appointments."

"Section 9.1.1. The parties shall submit the name/s of not more than six (6) nominees from CIAC-accredited arbitrators in the order of their preference for appointment as arbitrators. The common nominee/s of the parties shall be appointed, subject to their availability and other considerations."

Section 9.1.2. In the absence of an agreement on the number of arbitrators, CIAC taking into consideration the complexities and intricacies of the dispute/s or the sum involved, has the option to appoint a Sole Arbitrator or an Arbitral Tribunal."

"Section 9.1.3. In case of multiple parties, whether as Claimant or as Respondent, including three (3) or more parties in the arbitration, where all parties are unable to agree to a method for constitution of the Tribunal within ten (10) days from notice, CIAC shall appoint the arbitrator/s.""Section 9.2.1. CIAC shall appoint as sole arbitrator the common nominee of the parties who is available and not disqualified. In the absence of a common nominee or in cases where the common nominee is disqualified or is not available, CIAC shall return the lists of nominees to the parties and ask them to make an agreement on a common nominee/s within 48 hours. If parties still fail to agree on a common nominee, CIAC may appoint a Sole Arbitrator or an Arbitral Tribunal. If CIAC decides to appoint a Sole Arbitrator, it may select an arbitrator who is not a nominee of any one of the parties and who is not disqualified and is available for appointment."

The foregoing amendments shall take effect fifteen (15) days from receipt by the National Administrative Register, U.P. Law Center, pursuant to Memorandum Circular No. 11 from the Office of the President.

**UNANIMOUSLY APPROVED.**

Adopted: 24 Jan. 2007

**THE COMMISSION:**

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