

PRESCRIBING NEW GUIDELINES FOR THE PAYMENT OF TRAVEL EXPENSES, PER DIEMS, ARBITRATOR'S FEES, AND COMPENSATION OF FOREIGN ARBITRATORS

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WHEREAS, pursuant to Section 37 of R.A. 9285 (the Alternative Dispute Resolution Act of 2004), Rule 9.4 of the CIAC Rules of Procedure Governing Construction Arbitration was promulgated which provides for the appointment of a foreign arbitrator nominated by an international party to a case filed with the Commission;

WHEREAS, in its 11th Regular Meeting held on 30 October 2008, the Commission, based on the recommendation of the Philippine Institute of Construction Arbitrators & Mediators, Inc. (PICAM), adopted the following guidelines on the payment of arbitrator's fee as well as travel, lodging and other related expenses in case a foreign arbitrator is appointed to an Arbitral Tribunal:

1. The cost of airfare to and from the Philippines and per diems of the foreign arbitrator shall be borne solely by the nominating party which shall deposit the amount with the CIAC;

1.1 Per diems covering hotel, food and inland travel shall not exceed P20,000.00 per day;

1.2 If air travel does not exceed four (4) hours, the foreign arbitrator shall be entitled to an economy class ticket.

If the travel time exceeds 4 hours, the foreign arbitrator should travel on business class;

2. Arbitrator's fees shall range from twice to five times the existing CIAC rates for all arbitrators (foreign and local) subject to increase arising from the complexity of the issues and substantial amount of the claim. Arbitrator's fees shall be shouldered by the parties either equally, or proportionally to their claims or as agreed in the Terms of Reference (TOR); and

3. Administrative fees shall remain as is. When hearings and proceedings are conducted outside CIAC premises, the CIAC staff's expenses shall be shouldered by the parties;

WHEREAS, in its 119th Regular Meeting held on 31 March 2009, the Commission, likewise, adopted the following formula suggested by Atty. Alfredo F. Tadiar, CIAC Legal Counsel, for computing a foreign arbitrator's fees where the Sum in Dispute cannot be determined/quantified:

Estimated Time for an Arbitrator's Services

- Decision-making - 80 hours

- Meetings, preliminary conference, hearings

(9 days x 8 hours/day)

- 72 hours

Total No. of Hours

- 152 hours

x Average hourly rate of US \$200

=

US\$30,400;

WHEREAS, subsequently, concerns were raised on the costs of appointing a foreign arbitrator which may be either perceived as prohibitive, thus adversely affecting the right to nominate one as provided under the ADR law, or which may be too expensive for a local party, and thus may be used by an international party to "defeat" the former by making the arbitration too expensive for the local party to afford;

WHEREAS, to address these concerns, the Commission, in its 128th Regular Meeting held on 10 March 2010, requested the PICAM to undertake a comprehensive review of the system for administering cases with foreign arbitrators taking into account the experience in a 2008 CIAC case where a foreign arbitrator was appointed to the Arbitral Tribunal; and

WHEREAS, in a memorandum dated 23 June 2011, Atty. Eduardo R. Ceniza, PICAM President, submitted the following recommendations of the PICAM Board:

- Retention of the existing CIAC guidelines on travel costs and per diems of the foreign arbitrator which, consistent with the ruling of the Court of Appeals dated 26 January 2011 in CA-G.R. SP No. 113828, shall be borne entirely by the nominating party;
- Retention of the existing CIAC guideline on administrative fees but expanded to cover the special assessment fee for the Arbitration Development Fund (ADF);
- Deletion of the existing CIAC guideline prescribing higher arbitrator's fees when a foreign arbitrator is appointed (ranging from 2 to 5 times the existing rates) to prevent a party with huge financial resources from taking undue advantage of a party with limited financial resources by nominating a foreign arbitrator to make the cost of arbitration prohibitive and beyond the means of the party with limited financial resources; and
- Provision of extra compensation for a foreign arbitrator since the existing CIAC arbitrator's fees are not competitive by international standards and may not be sufficient to pay for lost income that the foreign arbitrator would have otherwise earned if he/she were working in his/her own country;

WHEREAS, the above recommendations were discussed by the Commission in its 136th Regular Meeting and were found to be in order;

NOW, THEREFORE, THE COMMISSION, by virtue of the powers vested in it by law and after due deliberation, RESOLVES, based on the recommendations of the PICAM and the CIAC Legal Counsel, to prescribe new guidelines for the payment of travel expenses, per diems, arbitrator's fees, and extra compensation of foreign arbitrators, as follows:

1. The nominating party shall shoulder the entire travel expenses of the foreign arbitrator in going to and returning from the Philippines, as well as the per diems of the foreign arbitrator. The estimated cost of travel and per diems shall be deposited by the nominating party with the CIAC, which shall use the same to reimburse the foreign arbitrator, upon submission of airfare tickets and receipts of expenses incurred in accordance with these guidelines. Any excess deposit shall be returned to the depositor.

2. Per diem (for hotel, food and land transportation while in the Philippines) shall not exceed US \$500.00 per day.

3. If air travel does not exceed four (4) hours, the foreign arbitrator shall be entitled to travel on economy class; if the travel time exceeds four (4) hours, the foreign arbitrator shall be entitled to travel on business class.

4. Administrative fees and the ADF fees shall remain unaffected by the appointment of a foreign arbitrator nominated by one of the parties.

5. The arbitrator's fees shall be the same for both the local arbitrators and the foreign arbitrator and shall be computed according to the schedule of arbitrators' fees prescribed by the CIAC. Arbitrators' fees shall be paid in Philippine currency. A foreign arbitrator, however, may request the CIAC, in writing, for payment to be made by direct foreign exchange remittance to his/her bank account. The cost of such remittance shall be charged to the foreign arbitrator.

6. A foreign arbitrator shall be entitled to an extra compensation for travel to and from the Philippines and for the duration of his/her stay in the Philippines for the conduct of arbitration proceedings at the rate of US \$250.00 per hour x 8 hours for each day or US \$2,000.00 per day up to a maximum of fourteen (14) days. The entire amount of extra compensation for travel shall be borne by the party nominating the foreign arbitrator and shall be deposited in U.S. currency with the CIAC for payment to the foreign arbitrator after promulgation of the final award or as agreed in the Terms of Reference (TOR). Any excess deposit shall be returned to the depositor.

7. The travel expenses, per diem, and extra compensation given to the foreign arbitrator shall not be subject to the determination of the arbitral tribunal in the award rendered as reimbursable cost due to the prevailing party.

These guidelines shall take effect fifteen (15) days from receipt of certified true copies thereof by the Office of the National Administrative Register, University of the Philippines Law Center.

UNANIMOUSLY APPROVED.

Adopted: 23 June 2011

THE COMMISSION:

(SGD.) ISAAC S. DAVID

(SGD.) SAMSON C. LAZO

Acting Chairman

Member

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