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RULES ON ALTERNATIVE DISPUTE RESOLUTION (ADR), FOR DISPUTES BETWEEN NATIONAL GOVERNMENT AGENCIES

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WHEREAS, disputes and controversies affecting government offices, agencies, and instrumentalities are inherently imbued with public interest, affecting as they do the delivery of basic services to the general public;

WHEREAS, the fair and speedy resolution of such disputes is in the best interest of the public;

WHEREAS, the law encourages the amicable settlement of disputes through alternative dispute resolution (ADR) methods, in place of adversarial, judicial processes;

WHEREAS, there is a necessity to tailor the present rules on ADR to disputes between and among government offices, agencies, and instrumentalities;

WHEREAS, pursuant to P.D. No. 242 in relation to Sections 66-71, Chapter 14, E.O. No. 292, the Solicitor General is authorized encourage settlement to resolve disputes, and is accordingly vested with authority to settle claims, disputes, and controversies between or among the departments, bureaus, offices and other agencies of the National Government;

The following rules are hereby adopted:

RULE 1
GENERAL PROVISIONS

SECTION 1.1 Statement of Policy and Objectives – It is the policy and objective of these Rules to provide a fair and expeditious settlement of disputes among agencies of the National Government through a non-judicial process which ensures harmonious and friendly relationships between or among the parties.

SECTION 1.2 Definition of Terms-

1.2.1 Alternative Dispute Resolution (ADR) means any process for resolving a dispute or controversy other than by judicial adjudication. These include Mediation, Arbitration, or Early Neutral Evaluation, among others.

1.2.2 Arbitration is a process by which a neutral third party resolves a dispute by rendering an award.

1.2.3 Mediation is a voluntary process by which a neutral third party facilitates communication and negotiation, and assists the parties in reaching a voluntary agreement in resolving their dispute.

1.2.4 Early Neutral Evaluation is a process of assessing on a non-binding basis the strengths and weaknesses of each party’s case for the purpose of serving as basis for a compromise agreement.

1.2.5 National Government Agency (“NGA”) means any governmental entity, office or officer, other than a court that is vested by law with quasi-judicial power or the power to resolve or adjudicate disputes involving the government, its agencies and instrumentalities or private persons; provided, that an NGA does not include government-owned or controlled corporations as defined in Sec.2 of P.D. No. 2029 [1].

Sec. 1.3 Choice of Appropriate Mode. – Consistent with the declared policy under Sec.1.1 above, the Solicitor

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General shall choose the most appropriate mode of dispute resolution according to the nature of the interests involved.

Sec. 1.4. Disputes not covered by these rules. Disputes involving constitutional issues, public order, public policy, morals, principles of public exemplarity or other matters o public interest shall be resolved through adjudication. All others may be the subject of a compromise agreement secured through negotiation, mediation/conciliation or other alternative mode of dispute resolution, except those that by law cannot be the subject of a compromise.

Sec. 1.5 Application and interpretation. – In applying and constructing the provisions of the ADR Rules, consideration must be given to the State policy "to actively promote party autonomy in the resolution of disputes" [2] and the need "to promote candor of parties and mediators through confidentiality of the mediation process, the policy of fostering prompt, economical and amicable resolution of disputes in accordance with principles of integrity of determination by the parties, and the policy that the decision-making authority in the mediation process rests with the parties." [3]

Sec. 1.6 Technical Rules not Binding – In ADR proceedings before the OSG, the rules of evidence prevailing in courts of law or equity need not be controlling, and arbitrators shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of substantive due process.

RULE 2
PROCEDURE IN MEDIATION

Sec 2.1 Coverage. – The rules on mediation shall apply to all disputes, claims, and controversies, including incipient ones and those ongoing or pending cases with the OSG, between or among NGAs that do not involve constitutional issues, public order, public policy, morals, principles of public exemplarity or other matters of public interest, which cases are better resolved by adjudication, provided that the involvement of a private third party, which is indispensable to the final resolution of the dispute, will not preclude the application of these Rules.

Sec. 2.2 Preliminary determination. – The Solicitor general shall, after evaluating the nature of the dispute, determine whether it is appropriate for mediation under the criteria set forth in Section 2.1.

Sec. 2.3 Preliminary mediation conference. – Following such determination, the Solicitor General, or his/her duly designated Assistant Solicitor General, shall direct the parties, through their duly authorized representative, to appear before the assigned ASG, for a preliminary mediation conference specifying the date, time and place.

The representatives of the parties appearing before the OSG panel in mediation proceedings must be fully authorized to appear, negotiate and enter into 1) a stipulation of facts; and 2) a compromise agreement. For this purpose, an appropriate Board Resolution or Special Power of attorney issued by each of the parties shall be submitted to the Mediator during the preliminary mediation conference.

During such conference, the process and benefits of mediation shall be explained to the parties, together with an assessment of the risks and cost of pursuing litigation. An agreement to submit the dispute to mediation shall be signed by the parties through their duly-authorized representatives.

Sec. 2.4 Selection of Mediator. – After agreeing to mediation, the parties shall, assisted by the assigned ASG, select from among the rooster of accredited OSG lawyer- mediators, who will be the Mediator of their dispute. If the parties cannot agree on a common choice, the assigned ASG shall proceed to assign the Mediator.

The Solicitor General shall constitute a committee who shall be responsible for the training and accreditation of OSG lawyers-mediators.

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Sec. 2.5 Presence of lawyers. – Lawyers of the parties may attend the mediation proceedings and shall cooperate with the Mediator towards securing a settlement of the dispute. The Supreme Court Guidelines on the Role of Lawyers during Mediation Proceedings shall be observed.[4]

Sec 2.6 Initial joint conference. – During the initial joint conference, the Mediator shall make an opening statement introducing himself/herself and informing the parties of the process flow, including the manner by which the proceedings will be conducted, and shall stress the confidentiality thereof as provided in Section 2.7 hereunder.

The parties shall each make an opening statement of how the controversy arose and their respective positions therein.

After the statements made by the parties, the Mediator shall:

a. draw out the parties' underlying interests behind the legal issues and explore common ground for settlement; and

b. suggest options for parties to consider, and if practical or necessary seek the assistance of a co-mediator or a technical expert, to help resolve the dispute.

The parties, with the assistance of the Mediator, shall endeavor to resolve their dispute.

If no settlement is reached at this conference, the Mediator may, with the consent of both parties, hold separate caucuses with each party to enable the Mediator to determine their respective real interests in the dispute. Thereafter, another joint conference may be held to consider various options, including assessment (on a non-binding basis) of the strengths and weaknesses of each party's case, proposed by the Mediator to resolve the dispute.

The Mediator shall not record the proceedings in any manner, although he may take down personal notes to guide him.

The OSG shall not keep a file of mediation proceedings, except the report of the Mediator. All other records or documents that may have been submitted by the parties during the mediation shall be returned to them.

Thirty (30) working days after the initial mediation conference with no settlement having been reached, the mediation proceedings shall be terminated, unless the parties agree to further continue the mediation, in which case an extension of another thirty (30) working days may be granted by the Mediator, with the written approval of the Solicitor General.

Sec. 2.7 Confidentiality. – The Mediation proceedings and all incidents thereto shall be kept strictly confidential, unless otherwise specifically provided by law, and all admissions or statements made therein shall be inadmissible of any purpose in any proceeding.

Communications by one party to the Mediator during the separate caucuses that are not intended to be known by the other party or parties, including documents, reports, position papers, and affidavits, shall not be communicated or shown to the latter, unless permitted in writing by such party. However, evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its use in mediation.

The parties shall not rely on or introduce as evidence in any other proceeding the following matters:

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

b. admissions made by either party in the course of the mediation proceedings;

c. proposals for settlement suggested by the mediator; and

d. the fact that the other party had indicated willingness to accept any particular proposal for settlement expressed to the Mediator.

No transcript or minutes of the mediation proceedings shall be taken, and the personal notes of the Mediator, if any, shall not be furnished any court, tribunal or body for whatever purpose. Any such transcript, minutes and notes shall be inadmissible as evidence in any other proceedings.

Sec. 2.8 Successful settlement; compromise agreement. – Where parties agreed to a full or partial compromise, the Mediator shall see to it that the written terms be immediately drafted with the concurrence of the parties or counsel. For this purpose, the Mediator shall provide legal assistance to their clients in the drafting of the compromise agreement.

The final compromise agreement shall be signed by the parties through their duly-authorized representatives together with their respective counsels.

The approved compromise agreement may be converted into an arbitral award under R.A. 9285 which shall be submitted to the Solicitor General, and later, to the Secretary of Justice under Section 70, Chapter 14, E.O. 292 for his final approval.

Sec. 2.9 Enforcement of mediated settlement agreements. – The rules for the deposit and enforcement of mediated settlement agreements provided by R.A. No. 9285, together with the implementing rules promulgated by the Supreme Court and Department of Justice, are hereby adopted.

Sec. 2.10 Costs of mediation.- The costs of mediation shall be imposed by way of special assessment in accordance with the schedule hereto attached, as may be modified from time to time.

RULE 3
PROCEDURE IN ARBITRATION

Sec. 3.1 Parties. – NGAs which have claims, disputes or controversies with other agencies, including private individuals/entities that are indispensable to the final resolution of the dispute, may be parties to the arbitration proceedings.

Sec 3.2 Coverage. – the following cases between or among NGAs, which were not earlier selected by the Solicitor General as appropriate for mediation, may be submitted to the Solicitor General for adjudication through arbitration:

a. cases of first instance, where a petition for arbitration is filed;

b. cases forwarded or transmitted after a failed mediation; and

c. matters referred by the Secretary of Justice.

Provided, cases involving purely legal questions and constitutional issues and those which cannot be compromised shall not be subject to arbitration.

Sec 3.3 Arbitration condition precedent to filing in court. – Arbitration as a means of dispute settlement shall be a condition precedent before parties to an arbitrable dispute may be filed before the regular courts. [5]

Sec 3.4 How commenced. – A request for arbitration shall be commenced through a petition filed by the

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aggrieved party in sufficient copies to the OSG in the form required under the following Section.

Sec. 3.5 Contents of Petition. – The petition shall be verified and shall contain the following:

a. names and addresses of the parties;
b. the ultimate facts upon which the cause of action rests;
c. signature of the head of the government agency; and
d. disclosure on whether the matter is pending before another forum.

The petition is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records; Provided, that said affidavit must comply with the provisions of the 2004 Rules on Notarial Practice,[6] with the jurat indicating that the affiant has exhibited competent evidence of his identity: Provided further, that the phrase " competent evidence of identity" refers to the identification of an individual based on at least one current identification document issued by an official agency bearing the photograph and signature of the individual.

Sec. 3.6 Order to file an answer.- The Solicitor General shall within five (5) days from filing of the petition issue an Order for the respondent/s to answer the petition within a period of ten (10) days from receipt thereof, attaching thereto all pertinent documents, and furnishing the claimant with a copy of the answer. Said answer shall contain the defenses interposed by the respondent/s as well as any counterclaim arising from the same incident which he/she may have against the petitioner: provided, that the counterclaim may also be the subject of arbitration proceedings.

In the event of failure of the respondent to answer, the dispute may be resolved on the basis of the complaint and documents submitted.

Sec. 3.7 Extension. – Except for the most compelling reasons, no extension of time bars shall be allowed and if so allowed, the period of extension shall not exceed the original period.

Sec. 3.8 Failure or Refusal to Arbitrate – Where the jurisdiction of the Solicitor General is properly invoked by the filing of a petition in accordance with these Rules, the failure or refusal of the respondent to arbitrate shall not affect the proceedings. In such case, the Solicitor General shall appoint a sole arbitrator or panel of arbitrators from among the list of accredited arbitrators. Arbitration proceedings shall continue notwithstanding the absence or lack of participation of the respondent, and the award shall be made after receiving the evidence of the claimant. In the event that, before award, the respondent shall appear and offer to present his evidence, the arbitrator shall reopen the proceedings and allow the respondent to present his evidence, but evidence already received shall not be affected by the reopening of the proceedings.

Sec 3.9 Claim or defense based on documents. – Whenever a claim or defense is based upon a written instrument or document, the substance thereof shall be set forth in the petition or answer, and the original or copy thereof shall be attached as an annex thereto.

Sec. 3.10 Selection of an Arbitral Tribunal.- A sole arbitrator or an arbitral tribunal of three arbitrators may settle a dispute. The Solicitor General has the option to appoint a sole arbitrator or an arbitral tribunal taking into consideration the complexities and intricacies of the dispute.

The sole arbitrator or the members and chairman of the arbitral tribunal appointed by the Solicitor General for a dispute or their replacement shall come from the list of accredited OSG lawyer-arbitrators.

The Solicitor General shall constitute a committee who shall be responsible for the training and accreditation of OSG lawyers-arbitrators.

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Sec. 3.11 Qualifications of arbitrators – Any OSG lawyer-arbitrator appointed to serve as must not be related by blood or marriage within the sixth degree to either party to the controversy. No person shall serve as an arbitrator in any proceeding if he has or has had financial, fiduciary or other interest in the controversy or cause to be decided or in the result of the proceeding, or has any personal bias, which might prejudice the right of any party to a fair and impartial award.

Sec. 3.12 Control Over Proceedings. – The arbitrator or the Chairman of the arbitral tribunal shall exercise complete control over all proceedings to insure a speedy, adequate and justifiable disposition of the disputes and cases submitted to them for resolution.

Sec 3.13 Extent of Power of Arbitrator. – The arbitrator or the arbitral tribunal shall decide only such issues and related matters as are submitted to them for adjudication.

Sec. 3.14 Arbitration proceedings of record; Arbitration and Mediation Division (AMD) Secretariat. – All arbitration proceedings under this Rule shall be of record. The AMD Secretariat shall perform all the duties of a clerk of court and act as custodian of all records relative to such proceedings.

Sec. 3.15 Authority of AMD Secretariat. – The AMD Secretariat shall exercise the same authority conferred by law upon an administrative or non-judicial officer authorized to take testimony or evidence. Persons who, without lawful excuse, fail or refuse to obey orders issued in arbitration proceedings shall be dealt with in accordance with the law.

Sec 3.16 Preliminary conference. – After all issues have been joined, the arbitral tribunal shall send a notice to the parties setting the date, time and place of the preliminary conference to discuss, among others, the simplification of issues, necessity or possibility of obtaining stipulations of facts and of documents to avoid unnecessary proof, the limitation of the number of witnesses, the propriety of submitting the case for decision without trial, and such other matters as may aid in the prompt disposition of the dispute.

During the preliminary conference, the parties may agree on the procedure that will govern the conduct of the arbitration proceedings. In default thereof, the procedure as provided under these rules shall be followed. The Special Rules of Court on Alternative Dispute Resolution (A.M. No. 07-11-08-SC) shall be applied suppletorily.

In the event of failure of the petitioner to attend such conference, the petition may be dismissed.

In the event of failure of the respondent to attend such conference, despite having filed an answer, the case may be deemed submitted for decision taking into consideration both the petition and the answer, and after reception of the evidence of the petitioner and such other evidence as may be necessary for the arbitral tribunal to render a just and equitable resolution.

Sec. 3.17 Preliminary Conference Order. – Before proceeding with the hearing of the case, the arbitrator(s) shall issue the Preliminary Conference Order on the basis of the documents submitted and agreements reached in the preliminary and subsequent conferences with the parties. The Order shall include the following particulars:

a. the names and addresses of the parties to which notifications or communications arising in the course of the arbitration may validly be made;

b. a summary of the parties' respective claims;

c. definition of the issues to be resolved; and

d. such other particulars as may be required to make the arbitral award enforceable in law or may be regarded as helpful by the arbitrator(s).

The Preliminary Conference Order shall be signed by the parties and the arbitrator(s), within ten (10) days from the preliminary conference.

Sec. 3.18 Arbitrator's disclosure. – During the preliminary conference, the arbitrator/s shall make disclosures to the parties of such facts and circumstances that may be perceived by them as affecting his/her impartiality and independence.

If, after appointment but before or during hearing, a person appointed to serve as an arbitrator shall discover any circumstances likely to create a presumption of bias, or which he believes might disqualify him as an impartial arbitrator, the arbitrator shall immediately disclose such information to the parties. There after the parties may agree in writing:

a. to waive the presumptive disqualifying circumstances; or

b. to declare the office of such arbitrator vacant. Any such vacancy shall be filled in the same manner as the original appointment was made. [7]

Sec. 3.19 Challenge. – An arbitrator may be challenged by a party at any time after his appointment but before Award upon the ground of his partiality, bias, incompetence, or unprofessional conduct.

The challenge shall be in the form of a complaint under oath, stating distinctly and concisely the facts complained of, supported by affidavits, if any, of persons having personal knowledge of the facts therein alleged and shall be accompanied with copies of such documents as may substantiate said facts.

The arbitrator concerned shall be given by the Solicitor General an opportunity to be heard. He may, without admitting the existence of the ground of the challenge, choose to inhibit himself, but his decision shall be subject to approval by the Solicitor General.

In case the challenged arbitrator is allowed to inhibit himself or is removed, the Solicitor General shall promptly appoint his replacement. If the arbitrator concerned is the third member of the arbitral tribunal, the first two members thereof shall designate his replacement. The decision of the Solicitor General to retain or replace an arbitrator shall be final.

Sec. 3.20 Place of arbitration. – The initial hearing of the arbitration shall be held at the OSG office. Subsequent sessions or proceedings shall be held at the venue mutually agreed upon by the parties and the arbitral tribunal.

Sec. 3.21 Subpoena and subpoena duces tecum. – The arbitral tribunal shall have the power to require any person to attend a hearing as a witness. It shall have the power to subpoena witnesses and documents when the relevancy of the testimony and the materiality thereof has been demonstrated.

Sec. 3.22 Proceedings. A hearing shall be opened by recording of the place, time and date of hearing, the presence of the arbitrator(s), parties, and witnesses, if any. The names and addresses of all witnesses and exhibits in the order received shall be made part of the record.

Sec. 3.22.1 Quorum. – Two members of a tribunal shall comprise a quorum for the purpose of conducting a hearing.

Sec. 3.22.2 Briefing on Rules and Procedures. – At the initial hearing, the arbitrator/ arbitral tribunal shall inform the parties of the general rules and procedures that will be adopted to ensure a speedy and adequate disposition of the issues.

Sec. 3.22.3 Opening Statements. – The initial proceedings may start with the parties making an opening statement or its explanation of the issues, a brief statement of allegations, what it proposes to prove and the relief sought.

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Sec. 3.22.4 Clarification of the Issues. – After the opening statements, the arbitrator/ arbitral tribunal shall clarify and further redefine the issues, if necessary.

Sec. 3.22.5 Order of Presentation. – It shall be within the discretion of the arbitrator/ arbitral tribunal to determine the order of presentation. Generally, the party who seeks to enforce a right or establish a claim shall be required to present its evidence first, followed by the other party.

Sec. 3.22.6 Expeditious Procedures. – The arbitrator/arbitral tribunal shall at all times adopt the most expeditious procedures for the introduction and reception of evidences, and shall have complete control over the proceedings, but in any case shall afford full and equal opportunity to all parties to present relevant evidence.

Sec. 3.22.7 Evidence. – The parties may offer such evidence they desire and shall produce such additional documents and witnesses as the arbitrator/arbitral tribunal may deem necessary to an understanding and determination of the dispute. The arbitrator/ arbitral tribunal shall act according to justice and equity and merits of the case, without regard to technicalities or legal forms and shall not be bound by any technical rule of evidence. All evidences shall be taken in the presence of the arbitrator or a majority of the Arbitrators in an arbitral tribunal and all of the parties, except where any of the parties is absent, or has waived his right to be present.

Upon motion of either or both of the parties, or on its own initiative, the arbitrator/ arbitral tribunal may request any person, board, body, tribunal, or government office, agency or instrumentality, or corporation to produce real or documentary evidence necessary for the proper adjudication of the issues.

The arbitrator/arbitral tribunal may, likewise, request any person to give testimony at any proceedings for arbitration.

Sec. 3.22.8 Testimony of witnesses. – The direct testimony of witnesses shall be reduced to writing in affidavit form in sequentially numbered questions and answers and shall be divided into as many parts as there are issues that have been formulated by the parties. The affidavit of the respective parties shall be exchanged simultaneously not less than five (5) days before the hearing, furnishing copies thereof to the arbitrator.

Cross-examination of witnesses for the petitioner shall immediately be commenced on the day of hearing. No additional direct examination questions shall be allowed. Thereafter, cross-examination of witnesses for the respondent shall follow.

Re-direct and re-cross examination of a witness may be allowed upon the discretion of the arbitral tribunal.

Clarificatory questions may be asked at any stage of the hearing by the arbitral tribunal.

Sec. 3.22.9 Examination by Arbitrator/Arbitral Tribunal. – The arbitrator/arbitral tribunal may conduct a searching of such witnesses whether or not the parties are represented by counsel. Such counsel at his motion may be allowed to ask additional direct or cross-examination questions of any witness.

Sec. 3.22.10 Offer of Documentary Evidence. – The parties shall submit together with the affidavits required above, a formal offer of documentary evidence in appropriate matrix form divided into markings, description, and purpose.

Sec. 3.22.11 Interim Measures. – The arbitrator(s) shall have the power at any time, before rendering the award, without prejudice to the rights of any party to petition the court to take measures to safeguard and conserve any matter which is the subject of the dispute in arbitration.[8] The arbitrator(s) may, upon the request of either of both parties or upon his/their own initiative, issue orders as is necessary for the following:

a. provide security for the performance of any obligation;

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b. prevent irreparable loss or injury;
c. prevent loss or deterioration of property;
d. produce or preserve any evidence; or
e. such other measures deemed by the arbitrator(s) to be necessary to prevent a miscarriage of justice or abuse of rights of any of the parties.

A party who does not comply with the order shall be liable for all damages resulting from non-compliance, including all expenses, and reasonable attorney's fees, paid in obtaining the order's judicial enforcement.[9]

Sec.3.22.12 Summation. – The parties may make a brief oral summation and arguments at the end of the hearing.

Sec. 3.22.13 Closing of the Hearings. – The arbitrator/arbitral tribunal shall inquire from all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, the arbitrator/arbitral tribunal shall declare the hearing closed and the minutes thereof shall be recorded.

Sec. 3.22.14 Draft Decisions. – After termination of presentation of evidence, the arbitral tribunal upon shall require the simultaneous submission of the parties' memorandum of arguments in the form of draft decisions in their respective favor within ten (10) days therefrom. Said decisions shall be divided into as many parts as there are issues.

Sec. 3.22.15 Submission for decision without hearing. – After considering the stipulation of facts that have been made and the documentary evidence submitted, the parties may agree to submit their dispute for decision, without need of presentation of evidence, on the basis of their pleadings and upon submission of draft decisions in their respective favor.

Sec. 3.22.16 Adjournments. – The arbitrator/arbitral tribunal for good cause shown, may adjourn the hearing upon his/its own initiative or upon the request of one of the parties.

Sec. 3.22.17 Reopening of hearing. The hearing may be reopened by the arbitrator/ arbitral tribunal upon the request of any party, upon good cause shown, for the purpose of receiving newly-discovered evidence, at any time before an arbitral award's made.

Sec 3.23 Award. – The arbitrator/arbitral tribunal, after evaluating the evidence presented and the draft decisions submitted by the parties, shall within thirty (30) days from submission of the parties' draft decisions, render a decision in the form of an award stating clearly and distinctly the facts and the law on which it is based. The arbitrator/ arbitral tribunal shall sign the award and file it with the AMD Secretariat. If there is an arbitral tribunal, each arbitrator must indicate his/her concurrence or dissent, and the decision of the majority shall prevail.

Sec. 3.23.1 Contents of the Award. Generally, the Award shall state the issues involved, a brief statement and discussion of the facts, and the authority relied upon for the resolution or disposition of the issues.

Sec. 3.23.2 Award Upon Settlement. If the parties settle their dispute(s) during the course of the arbitration, the arbitrator/arbitral tribunal, upon their request, may set forth the agreed settlement as an Award.

Sec. 3.23.3 Termination of Jurisdiction. – The jurisdiction of the arbitrator(s) over the dispute is terminated upon the finality of the Award or Decision. Where an appeal is taken from a decision or award, and the appellate body directs a re-hearing 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 body or a final determination of all the issues therein.

Sec. 3.23.4 Notification of Award to Parties. – Once an award has been made, provided that the cost of the arbitration have been fully paid to the AMD Secretariat by the parties or by one of them, the Secretariat shall notify the parties of the text signed by the arbitrator or arbitral tribunal. Additional true copies certified by the

Executive Director of the Secretariat shall be made available, on request at reasonable office hours, to the parties or their counsel but to no one else.

Sec. 3.23.5 Deposit of Award. – An original copy of each Award made in accordance with these Rules shall be deposited with the AMD Secretariat. The Arbitrators and the AMD Secretariat shall assist the parties in complying with whatever further formalities may be necessary.

Sec. 3.23.6 Motion for correction. – A motion for correction may be allowed on the following grounds:

> a. Evident miscalculation of figures or evident mistake in the description of a person, thing or property referred to in the award; and
>
> b. Where the arbitral tribunal made an award upon an issue not submitted for resolution by the parties.[10]

Sec 3.23.7 Prohibited pleading.– A motion for reconsideration or for new trial shall be considered a prohibited pleading.

Section 3.23.8 Motion to vacate award; grounds. – In any one of the following cases, the Secretary of Justice shall issue an order vacating the award the award upon the petition of any party to the controversy when such party proves affirmatively that in the arbitration proceedings:

> a. The award was procured by corruption, fraud, or other undue means; or
>
> b. There was evident partiality or corruption in the arbitrators or any of them; or
>
> c. The arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; that one or more of the arbitrators was disqualified to act as such under section nine hereof, and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or d. The arbitrators exceeded their powers, or so imperfectly executed them, or that a mutual, final and definite award upon the subject matter submitted to them was not made.

Where an award is vacated, the Secretary of Justice, in his discretion, may direct a new hearing either before the same arbitrators or before a new arbitrator or arbitrators to be chosen on the same manner of selection of the original arbitrator or arbitrators, and any provision limiting the time in which the arbitrators may make a decision shall be deemed applicable to the new arbitration and to commence from the date of the Secretary's order.[11]

Sec. 3.23.9 Motion to vacate, modify or correct award: when made. – Notice of motion to vacate, modify or correct the award must be served upon the adverse party or his counsel within ten (10) days upon receipt of the award. [12]

Sec. 3.24 Transmittal to the Secretary of Justice. – After ten (10) days from notice to the parties, the award shall be transmitted to the Secretary of Justice for final action, approving, disapproving or modifying the award made.

Sec. 3.25 When award becomes final and binding . – The award, as approved or modified by the Secretary of Justice, shall become final and binding upon the parties and shall have the same force and effect as final decisions of the court of justice.

Sec. 3.26 Appeal to the Office of the President. – An appeal may be taken to the Office of the President by filing a notice of appeal and serving the same upon all parties within a period of fifteen (15) days from receipt of a copy of the final action taken by the Secretary of Justice. In such event, the award shall become final only upon affirmation/ approval by the Office of the President. If no appeal is taken to the Office of the President within the said period, the action taken by the Secretary of Justice shall become final upon the expiration of the said period.

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Sec. 3.27 General Provisions

Sec 3.27.1 Pleadings. – All pleadings and written statements submitted by the parties, as well as all documents attached thereto, shall be printed in sufficient copies to provide one copy for each party, plus one for each arbitrator, and one for the AMD Secretariat.

Sec. 3.27.2 Notices. – Notifications or communications from the AMD Secretariat and/or the arbitrator(s) shall be validly made if they are delivered against receipt or forwarded by registered mail to the address or last known address of the party/ies for whom the same are intended as notified by the party/ies in question or by the other party/ies as appropriate.

Notification or communication shall be deemed to have been effected on the date when received.

Sec. 3.27.3 Confidentiality of Proceedings. – The arbitration proceedings shall be considered confidential and shall not be published except with the consent of the parties.

Sec 3.27.4 Recording of Proceedings. Proceedings before an arbitrator or an arbitral tribunal may be recorded by means of any audio or audio visual recording equipment such as, but not limited to, tape recorders and video cameras, or if a stenographer is available, either through stenographic notes or minutes taken of the proceedings. All recordings on tapes, films, cassettes, or disks shall be done by the OSG and shall remain in its custody for safekeeping and eventual disposal after the resolution of the case. Copies of such recordings including transcripts and minutes of the proceedings shall be made available to the parties upon request for a fee.

Sec. 3.27.5 Appointment of Experts. – The service of technical or legal experts may be utilized in the settlement of disputes if requested by any of the parties or by the arbitral tribunal. If the request for an expert is done by either or by both of the parties, it is necessary that the appointment of the expert be confirmed by the arbitral tribunal.

Whenever the parties request for the services of an expert, they shall equally shoulder the expert’s fees and expenses, half of which shall be deposited with the AMD Secretariat before the expert renders service. When only one party makes the request, it shall deposit the whole amount required. If the request for an expert is by the arbitrator(s), the cost of such service(s) shall be considered part of the arbitration expenses which may be ordered to be paid by the losing party or by both parties as the arbitrator(s) in his/their award may adjudge, in the absence of a provision in the Terms of Reference signed by the parties relative to the sharing of these expenses; provided, however, both parties consented to the hiring of an expert.

Sec. 3.27.6.1 Cost of arbitration. – Arbitration costs shall include the filling fee and arbitrators’ fees; fee and expenses of the expert, and other costs, if necessary, which may be imposed by the OSG.

The filing fees and the arbitrators’ fees shall be computed on the basis of the sum in dispute and imposed by way of special assessment in accordance with the following schedule:

Filing Fee Amount of Claim

8% - Below One Million Pesos (Php1,000,000.00)

10% - One Million Pesos (Php1,000,000.00) to Ten Million Pesos (Php10,000,000.00)

20% - Ten Million Pesos (Php10,000,000) above

20% - If not applicable of pecuniary estimation

Arbitration Fee

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Sole Arbitration - Twenty-Five Thousand Pesos (Php25,000)

Arbitral Tribunal:

Chairperson - Twenty Thousand Pesos (Php20,000)

Member - Fifteen Thousand Pesos (Php15,000)

The OSG may amend or modify the above fees at any time prior to the arbitral award if, at its discretion, the same is necessary depending upon the complexity of the issues to be resolved.

Sec 3.27.6.2 Payment to cover arbitration expenses. – The OSG shall be authorized to fix the amount to be paid equivalent to the arbitration expenses in accordance with the above schedule. The payment of said amount shall be made to the OSG Cashier before the proceedings shall commence. The deposit for arbitration expenses shall be paid by the petitioner.

Sec. 3.27.6.3 The arbitrators shall have the power to include in their award the arbitration expenses of any party against another. The arbitral award, therefore, shall specifically state whether the costs shall be equally shared by the parties or be paid by either of them. In the event the petitioner prevails in the arbitration case, the arbitration expenses shall form part of the damages assessed against the respondent; if the respondent prevails, the expenses shall be deducted from the award assessed against the petitioner. Consequently, any amount advanced by petitioner as arbitration expenses shall be added to or deducted from the arbitral award, as the case may be.

Sec. 3.28 Execution of Award. – A final arbitral award as approved by the Secretary of Justice shall become executory upon the lapse of fifteen (15) days from receipt thereof by the parties.

Sec. 3.29 Entry of Judgment. – If a final award is appealed and a stay or restraining order is issued by the appellate body, such award shall become executory upon the issuance of the entry of judgment of the appellate court or upon the expiration or lifting of the stay or retraining order without a preliminary injunction being issued.

Sec. 3.30 Effect of Appeal. – The appeal shall not stay the execution of an award sought to be reviewed unless the appellate body shall direct otherwise upon such terms as it may deem just.

Sec. 3.31 Execution and Enforcement of Awards. – As soon as a decision, order or award has become final and executory, the arbitral tribunal or sole arbitrator shall, with the concurrence of the Solicitor General, motu proprio or on motion of the prevailing party issue a writ of execution requiring any sheriff or proper officer to execute said decision, order or award.

Sec. 3.32 Execution after Appeal. – When a writ of execution is issued after an appeal interposed in accordance with these Rules, the arbitral tribunal or sole arbitrator, with the concurrence of the Solicitor General, may require the prevailing party to post a sufficient bond executed to the adverse party in an amount equivalent to the amount of the award, to serve as restitution in case the award is reversed partially or totally.

Sec. 3.33 Stay of Execution Pending Appeal. – Execution issued under the preceding Section may be stayed upon approval by the arbitral tribunal or sole arbitrator, with the concurrence of the Solicitor General, of a bond or counter-bond posted by the party against whom it is directed, conditioned upon the performance of the judgment of the appellate court in case it upholds the appealed award in whole or in part.

Section 3.34 Effect of Reversal of Award. – Where an award is partially or totally reversed on appeal, the arbitral tribunal or sole arbitrator may, on proper motion, issue such order of restitution or reparation of damages as equity and justice may warrant under the circumstances.

RULE 4

PROCEDURES FOR AMENDMENT OF RULES

SECTION 4.1 Creation of a committee to study proposed amendment. Any amendment or revision of any provision of these Rules shall be made by the Solicitor General, who shall create a committee to carefully study and analyze whether there are sufficiently weighty reasons to amend the same. Report thereon by said committee containing its recommendation shall be submitted to the Solicitor General within thirty (30) days from assignment.

Sec. 4.2 Action on the committee report. – Upon receipt of the report, the Solicitor General may, at his/her discretion, approve or amend, alter and modify said report.

Sec. 4.2 Prospective application. – Any provision/s of the Rules that have been amended, altered or modified shall only have prospective application.

Sec. 4.4 Effectivity of amendment. – The amended Rules duly approved by the Solicitor General shall take effect fifteen (15) days after its publication in a newspaper of general circulation.

(SGD.) RENAN E. RAMOS
Committee to Draft Implementing Rules and
Regulations for Arbitration before the OSG

(SGD.) GLORIA VICTORIA C. YAP-TARUC
Co-Chairperson

(SGD.) HERMAN R. CIMAFRANCA
Co-Chairman

(SGD.) MARIA MERCEDES MAGLAYA
Member

(SGD.) SHARON MILLAN-DECANO
Member

(SGD.) KATRINA PUZON
Member

(SGD.) MARICAR TOLENTINO-MENDOZA
Member

(SGD.) MA. TERESA ANA V. BERMEJO
Member

(SGD.) LILIAN C. ABENOJAR
Member

(SGD.) JUNE ABIGAIL S. DELA CRUZ
Member

(SGD.) SHEILA MARIE JAVIER-SISON
Member

Approved By:

(SGD.) ALBERTO C. AGRA

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Acting Solicitor General

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[1] Section 2, P.D. No. 2029 – A government-owned or controlled corporation is a stock or non-stock corporation, whether performing governmental or proprietary functions, which is directly chartered by a special law or if organized under the general corporation law is owned or controlled by the government directly, or indirectly through a parent corporation or subsidiary corporation, to the extent of at least a majority of its outstanding capital stock or of its outstanding voting capital stock; x x x
[2] Section 2, R.A. No. 9285
[3] Section 8, RA 9285.
[4] A.M. No. 04-3-15-SC, 23 March 2004.
[5] cf. Sec. 1.3
[6] A.M. No. 02-8-13-SC.
[7] Sec. 10, RA 876
[8] Sec 14 R.A. No. 872
[9] Sec 28(b), RA 9285
[10] Sec. 25, R.A. 876
[11] Id.
[12] Sec. 26, RA 876.

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