



RESOLUTION NO. 04-2008

AMENDING CIAC RESOLUTION NO. 12-2006 (Prescribing Policy Guidelines and a Schedule of Penalties for Delayed Rendition of Arbitral Awards)

WHEREAS, on 27 April 2006, the Commission passed **CIAC Resolution No. 12-2006**, *Prescribing Policy Guidelines and a Schedule of Penalties for Delayed Rendition of Arbitral Awards*, requiring all arbitrators to render the Arbitral Award in a timely manner as prescribed under the CIAC Rules in order to preserve CIAC's reputation as a reliable venue for speedy resolution of construction disputes;

WHEREAS, under said resolution, monetary penalties by way of deductions from arbitrators' fees, and sanctions consisting of suspension (**i.e., disqualification from appointment as arbitrator**) or expulsion of the arbitrator/s, may be imposed for delays beyond the following prescribed periods for rendition of arbitral awards under the CIAC Rules:

1. Thirty (30) days from the date of the termination of hearing, or from the filing of additional documents, or from the submission date of memoranda, pleadings, documents or evidence, whichever is later (Section 13.18, CIAC Rules); and
2. Six (6) months from the date of signing of the Terms of Reference (TOR), or in cases where a TOR is absent, from the date of the last preliminary conference called for the purpose of finalizing and/or signing of the TOR (Section 16.1, CIAC Rules);

WHEREAS, the Commission, in its 107th Regular Meeting held on 28 March 2008, revisited the guidelines under said resolution and agreed that amendments were necessary to provide for the following:

1. Clear guidelines on the penalties and sanctions to be imposed on arbitrators for delays in the rendition of arbitral awards beyond the 6-month period;
2. Considering that the primary intent of the Commission is to ensure that awards are rendered within the CIAC target of six (6) months from TOR signing/start of proceedings, the sanctions of suspension (**i.e., disqualification from appointment as arbitrator**) and expulsion under the Table of Delays and Penalties in Section 2.2.1, Annex A of CIAC Resolution No. 12-2006, should only be imposed for delays beyond the 6-month period; and

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3. For awards rendered beyond the 30-day period but within the 6-month period, only the corresponding penalties (deductions from arbitrator's fees) shall be imposed;

NOW THEREFORE, the **COMMISSION**, by virtue of the powers vested in it by law, **RESOLVES**, as it **DOES RESOLVE**, to amend Annex A of CIAC Resolution No. 12-2006, Prescribing Policy Guidelines and a Schedule of Penalties for Delayed Rendition of Arbitral Awards, to read as follows:

“POLICY GUIDELINES and SCHEDULE of PENALTIES **AND SANCTIONS** for
DELAYED RENDITION of ARBITRAL AWARDS

1. RATIONALE

- 1.1 The Arbitral Tribunal appointed for a specific case is obliged to render the Arbitral Award in a timely manner as prescribed by the CIAC.
- 1.2 The Tribunal's failure to comply therewith is detrimental to CIAC's mandate to resolve construction disputes as expeditiously as possible, and to the reputation it has built over the years as being a venue for speedy resolution of construction disputes.
- 1.3 In a Tribunal of three (3) members, the rendition of an arbitral award in a timely manner is a collective responsibility of the three (3) Arbitrators. Thus, any penalty which may be imposed for delayed rendition of the arbitral award shall be shared by the said arbitrators.
- 1.4 CIAC shall impose a corresponding penalty for delays and shall not hesitate to apply the full sanction of canceling the accreditation of an arbitrator who fails to abide by the prescribed periods for rendering the arbitral award, without prejudice to CIAC's consideration of equitable matters to alleviate the penalties/sanctions it may impose against the arbitrator/s.

2. METHODS OF APPLICATION

2.1 Penalty for delayed Rendition of an Arbitral Award

- 2.2.1 The following periods within which an Arbitral Award should be rendered shall be strictly complied with:

(a) **thirty (30) days from the date of the termination of hearing, or from the filing of additional documents, or from the submission date of memoranda/draft decisions, pleadings, documents or evidence, whichever is later; and**

(b) **six (6) months from the date of signing of the Terms of Reference (TOR), or in the absence of a TOR, from the date of**

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the last preliminary conference called for the purpose of finalizing and/or signing of the TOR.

Penalties and/or sanctions shall be imposed on delays in award rendition beyond the above prescribed periods. Delays shall be reckoned from the lapse of any or both of the said time frames.

- 2.2.2 All hearings must be completed and terminated within 4 ½ months from TOR signing, or in the absence of a TOR, from the date of the last preliminary conference called for the purpose of finalizing and/or signing of the TOR.
- 2.2.3 ~~[Unless an approved extension of time is granted by CIAC,]~~ The following schedule of delays and corresponding penalties/sanctions shall be used as a guide in assessing the applicable penalties and sanctions which may be imposed against the arbitrator/s:

**TABLE OF PENALTIES & SANCTIONS
FOR DELAYS IN AWARD RENDITION**

No. of days in delay	Penalties for delays beyond the 30-day period and/or 6-month period	Sanctions for delays beyond the 6-month period (in addition to penalties)
01 - 15	10% of fees due for award drafting	1-7 days of delay: Warning 8-15 days: 1 month <u>disqualification from appointment as arbitrator</u>
16 - 30	20% of fees due for award drafting	2 months <u>disqualification from appointment as arbitrator</u>
31 - 45	30% of fees due for award drafting	3 months <u>disqualification from appointment as arbitrator</u>
46 - 60	40% of fees due for award drafting	4 months <u>disqualification from appointment as arbitrator</u>
61 - 75	50% of fees due for award drafting	5 months <u>disqualification from appointment as arbitrator</u>
76 - 90	60% of fees due for award drafting	6 months <u>disqualification from appointment as arbitrator</u>
91 - 105	70% of fees due for award drafting	7 months <u>disqualification from appointment as arbitrator</u>

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106- 120	80% of fees due for award drafting	8 months <u>disqualification from appointment as arbitrator</u>
121- 135	90% of fees due for award drafting	9 months <u>disqualification from appointment as arbitrator</u>
136- 150	100% of fees due for award drafting	10 months <u>disqualification from appointment as arbitrator</u>
Over 150 days	100% of fees due for award drafting and cancellation of CIAC accreditation/expulsion from the roll of accredited arbitrators	

Note:

- The default sharing of monetary penalty shall be the same as the default sharing of the arbitrators' fees (i.e. 40% for the Chairman and 30% for the two members), unless the arbitrators have agreed to a different mode of sharing.

Illustrative Example

The TOR of a case handled by an Arbitral Tribunal was signed on January 30, 2006. The case was deemed submitted for decision on March 30, 2006, the date of submission of draft decision by the parties. The decision was rendered on June 30, 2006. The 40% fee for award drafting is P100,000.

The panel had 6 meetings to deliberate on the award and all of the members incurred absences during the deliberation as follows: Chairman – 1 absence, Member 1 – 2 absences, Member 2 – 3 absences. The Tribunal agreed to share the penalty for the delay in the percentage that is directly proportional to their respective absences:

Chairman	1	=	17%
Member 1	2	=	33%
Member 2	3	=	50%
	6	=	100%

There was a delay of 60 days; penalty = 40% of fees due or = P40,000

Sharing of penalties: Chairman = 17% (40,000) = 6,800
 Member 1 = 33% (40,000) = 13,200
 Member 2 = 33% (40,000) = 20,000 40,000.00

- Where the award was rendered beyond the two prescribed periods, the penalty and sanction to be imposed shall be that corresponding to the sum of the number of days of delay for the two periods.

Illustrative Example: An Award was rendered 6 days beyond the 30-day period from last submission, and 22 days beyond the 6-month period from TOR signing, or a total delay of 28 days. The applicable penalty & sanction are 20% of the fees for award drafting and 2 months

disqualification from appointment as arbitrator (corresponding penalty & sanction for 16-30 days in delay).

- **Except for delays beyond 150 days, no sanction shall be imposed for awards rendered beyond the 30-day period but within the 6-month period.**
- **Awards rendered beyond the 6-month period regardless of whether these were rendered within the 30-day period, shall be imposed the appropriate penalties and sanctions.**
- **Sanctions ranging from **disqualification from appointment as arbitrator** to expulsion shall be applied to all members of the Arbitral Tribunal after the award has been rendered.**

3. MONITORING

- 3.1 Attendance of arbitrators in scheduled executive meetings shall be monitored by the staff-in-charge and a report thereon shall be made periodically to CIAC, with a copy thereof furnished the Philippine Institute of Construction Arbitrators and Mediators, Inc. (PICAM).
- 3.2 Deduction of penalties shall be effected before the release of the final payment to arbitrators.
- 3.3 Accidents and serious illness are considered valid excuses for the imposition of sanctions (i.e., **disqualification** and expulsion) but shall not be a ground for the non-imposition of penalties, the concept of the mode being "payment for services rendered".
- 3.4 Deducted penalties shall accrue to the CIAC Arbitration Development Fund (ADF)."

The foregoing amendments shall take effect immediately.

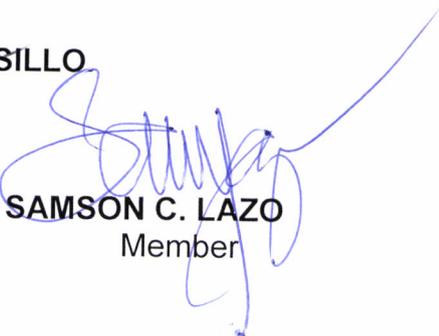
UNANIMOUSLY APPROVED.

Done in the City of Makati this 28th day of March 2008.

THE COMMISSION:


JOSUE N. BELLOSILLO
Chairman


ISAAC S. DAVID
Member


SAMSON C. LAZO
Member