



MEMORANDUM CIRCULAR NO. 02-2021

TO: ALL CIAC ARBITRATORS

SUBJECT: Clarification on the determination of arbitration costs in the arbitral award under Section 16.5 of the CIAC Rules of Procedure Governing Construction Arbitration

DATE: 19 October 2021

Section 16.5 of the CIAC Rules provides for the determination by the Arbitral Tribunal of arbitration costs, as follows:

"Decision as to costs of arbitration - In the case of non-monetary claims or where the parties agreed that the sharing of fees shall be determined by the Arbitral Tribunal, the Final Award shall, in addition to dealing with the merits of the case, fix the costs of the arbitration, and/or decide which of the parties shall bear the cost(s) or in what proportion the cost(s) shall be borne by each of them."

Lest the above provision be misconstrued to cover expenses such as arbitration fees and other charges imposed By the CIAC, the Commission hereby clarifies that the phrase "costs of arbitration" in Section 16.5 of the CIAC Rules, **EXCLUDES** the arbitration expenses enumerated in Executive Order No. 1008 (the Construction Industry Arbitration Law) and the CIAC Rules, to wit:

E.O. No. 1008

"Section 16. Arbitration Expenses - Arbitration expenses shall include the filing fee, administrative charges, arbitrator's fees; fee and expenses of the expert, and others which may be imposed by the CIAC.

The administrative charges and the arbitrator's fees shall be computed on the basis of percentage of the sum in dispute to be fixed in accordance with the Table of Administrative charges and Arbitrator's Fees.

RULE 22 - COSTS (CIAC RULES)

"Section 22.1.1 *The filing and administrative fees, ADF charges, and arbitrator's fees for monetary, non-monetary and small claims and the schedules of payment therefor shall be in accordance with the CIAC-approved Table of administrative charges and Arbitrator's Fees.*

Section 22.1.2 *Expert's Fees shall be determined and paid for in accordance with Section 15.1.1 of the Rules."*

RULE 15 - APPOINTMENT OF EXPERTS (CIAC RULES)

"Section 15.1.1 *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 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 Arbitral Tribunal, 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 arbitral Tribunal in his/their award may adjudge, in the absence of a provision in the TOR signed by the parties relative to the sharing of these expenses; provided, however, both parties consented to the hiring of an expert."*

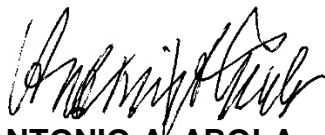
All other costs or expenses of arbitration incurred in the proceedings (such as, but not limited to, site inspection costs; travel to and from the site and accommodation expenses of the arbitrator/s, staff, and/or expert/s; stenographer's fee; costs of transcript of stenographic notes or TSN; and other costs/expenses of similar nature) which have not been imposed or are to be fixed/determined by the CIAC under the above cited provisions, may be adjudged by the Arbitral Tribunal in the Final Award in accordance with Section 16.5 of the CIAC Rules.

In addition, pursuant to Section 16.5 of the CIAC Rules, the Arbitral Tribunal may determine the allocation among the parties of the arbitration costs and expenses incurred.

For the guidance of all concerned.

THE COMMISSION:


JUSTICE TERESITA V. DIAZ-BALDOS (RET.)
Chairperson


ANTONIO A. ABOLA
Member


EMILIO LOLITO J. TUMBOCON
Member