



Arbitration Rules

2015

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PDRCI Arbitration Rules

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Brief History

The Philippine Dispute Resolution Center, Inc. (PDRCI) is a non-stock, non-profit organization incorporated in 1996 out of the Arbitration Committee of the Philippine Chamber of Commerce and Industry. PDRCI promotes and encourages the use of arbitration, mediation and other alternative mode of settling commercial disputes, and provides alternative dispute resolution (ADR) services to the business community. Its membership is composed of prominent lawyers, members of the judiciary, academicians, professionals, arbitrators, accountants, bankers, and businessmen.

PDRCI continues to broaden its ADR advocacy mission. It administers arbitration and mediation in specialized fields such as maritime, banking, insurance, securities, and intellectual property disputes.

With the trade globalization, PDRCI has forged cooperation agreements with foreign arbitration centers such as the Korean Commercial Arbitration Board, the Indian Council of Arbitration, the Indonesian National Board of Arbitration, the Singapore International Arbitration Center, the Hong Kong International Arbitration Centre and the Institute of Arbitrators and Mediators Australia. It networks with the various committees of the International Chamber of Commerce, among which is the International Court of Arbitration.

On November 2, 2004, PDRCI, together with 16 other arbitration centers and associations within the Asia Pacific region, established the Asia Pacific Regional Arbitration Group (APRAG) in Sydney, Australia.

In June 2011, PDRCI moved to its new office at the Commerce & Industry Plaza, McKinley Town Center in Bonifacio Global City.

Services

PDRCI offers the following dispute resolution services:

- administration of commercial arbitration and mediation
- appointment of arbitrators and mediators
- organizing seminars on commercial arbitration and mediation
- training and accreditation
- networking with various international arbitration centers
- referral services
- information on arbitration agreements, rules and arbitration law and practice
- transcription of minutes and hearings

PDRCI works closely with the three branches of the Philippine government – the executive, through the Departments of Justice and Trade and Industry, legislative through the Philippine Congress, and judiciary through the Philippine Supreme Court – in drafting substantive and procedural rules on ADR as well as in information dissemination and training on matters concerning ADR, trade law, and commerce. It publishes *The Philippine ADR Review*, a monthly newsletter.

Facilities

- Meeting and hearing rooms
- Break-out rooms
- Library
- Online video-conferencing
- Audio-conferencing
- Audio-visual, photocopying, and printing equipment

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PDRCI ARBITRATION RULES

(Effective as of January 1, 2015)

Section I: Introductory Provisions

Model Arbitration Clause:

"Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof shall be settled by arbitration in accordance with the PDRCI Arbitration Rules in force at the time of the commencement of the arbitration."

Parties may consider adding:

"The number of arbitrators shall be ... (one or three);

The place of arbitration shall be ... (city or country);

The language(s) to be used in the arbitral proceedings shall be... (language)"

Article 1

Scope of Application

(1) These rules shall be known as the PDRCI Arbitration Rules ("Rules"). The PDRCI *Guidelines on Fees* and its Schedules ("*Guidelines on Fees*"; Annex B of the Rules), as may be amended by PDRCI from time to time, shall form part of the Rules. By agreeing to arbitrate under the Rules, the parties are deemed to have accepted the *Guidelines on Fees*.

(2) Where parties have agreed that disputes, controversies or claims ("Disputes") between them shall be referred to arbitration under the Rules, then such Disputes shall be settled in accordance with the Rules, subject to such modification as the parties may agree in writing.

(3) The Rules shall apply to arbitrations commenced on or after 1 January 2015, unless the parties have expressly agreed to apply a particular version of the Rules.

(4) Where any of the Rules is in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision of the law shall prevail.

Article 2

Notice and Calculation of Period of Time

(1) A notice, including a request, communication or proposal, may be transmitted by any means that provides or allows for a record of its transmission.

(2) If an address has been designated by a party specifically for this purpose or authorized by the arbitral tribunal, a notice shall be delivered to the party at such address, and if so delivered shall be deemed to have been received. Delivery by electronic means, such as email or facsimile, may only be made to an electronic address so designated by the party or authorized by the arbitral tribunal.

(3) In the absence of such designation or authorization, a notice is:

- (a) received, if it is physically delivered to the addressee; or
- (b) deemed to have been received, if it is delivered at the place of business, habitual residence, or mailing address of the addressee.

(4) If after reasonable efforts, delivery cannot be made in accordance with paragraphs 2 or 3 of this Article, a notice is deemed received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means that provides a record of delivery or of attempted delivery.

(5) A notice is deemed to have been received on the day it is delivered in accordance with paragraphs 2, 3, or 4 of this Article or attempted to be delivered in accordance with paragraph 4 of this Article. A notice transmitted by electronic means is deemed received on the day it is sent, except a Notice of Arbitration, which is deemed received on the day it reaches the party's electronic address.

(6) For purposes of calculating the period of time under the Rules, such period shall begin to run on the day following the day when a notice is received or deemed received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day that follows. Official holidays or non-business days occurring within the period of time are included in calculating the period.

Article 3

Communications to PDRCI

All communications to PDRCI by one party shall at the same time be communicated by that party to all other parties and, if already constituted, to the arbitral tribunal.

Article 4

Notice of Arbitration

(1) The party or parties initiating recourse to arbitration ("Claimant") shall communicate to PDRCI a notice of arbitration ("Notice of Arbitration").

(2) The arbitration shall be deemed to commence on the date when PDRCI receives the Notice of Arbitration and the payment of the Filing Fee in accordance with the *Guidelines on Fees*, whichever is later.

(3) The Notice of Arbitration shall include the following:

- (a) A demand that the dispute be referred to arbitration;
- (b) The names, addresses and other contact details of the parties;
- (c) A reference to the arbitration clause or arbitration agreement;
- (d) A reference to the contract or legal relationship involved in the dispute;
- (e) A brief description of the claim and an estimate of the amount involved, including any claim in the alternative;
- (f) The relief sought;
- (g) A proposal as to the number of arbitrators (one or three), if the parties have not previously agreed on such number; and
- (h) Proposals regarding the appointment of a sole arbitrator or an arbitrator referred to in Articles 7 (Joinder of Additional Parties) and 8 (Claims between Multiple Parties).

(4) The Notice of Arbitration may also include the Statement of Claim referred to in Article 27.

(5) The submission of a Notice of Arbitration shall be accompanied by payment of a non-refundable Filing Fee in accordance with the *Guidelines on Fees*. The claimant shall also pay a provisional advance on cost ("Provisional Advance") in accordance with the *Guidelines on Fees*.

(6) PDRCI shall not act on the Notice of Arbitration, including any proposal for the appointment of arbitrators, and the respondent shall not be required to submit a response to the Notice of Arbitration, unless the Provisional Advance has been paid.

Article 5

Response to the Notice of Arbitration

(1) Within thirty (30) days from receipt of PDRCI's notice to submit the response to the Notice of Arbitration, the respondent shall communicate to the PDRCI a response to the Notice of Arbitration ("Response to the Notice of Arbitration"), which shall include:

- (a) The names, addresses and other contact details of each respondent;
- (b) A response to the information set forth in the Notice of Arbitration;
- (c) A brief description of any counterclaim, or any other claim for the purpose of set-off, indemnity or contribution, if any, including an estimate of the principal and alternative amounts involved, and the reliefs sought; and
- (d) Proposals regarding the appointment of a sole arbitrator or an arbitrator referred to in Articles 7 (Joinder of Additional Parties) and 8 (Claims between Multiple Parties).

(2) The Response to the Notice of Arbitration may also include:

- (a) A plea that an arbitral tribunal to be constituted under the Rules lacks jurisdiction; and
- (b) The Statement of Defense referred to in Article 28.

(3) The respondent shall pay a Provisional Advance in accordance with the *Guidelines on Fees*. Unless the Provisional Advance on cost is paid by the respondent, the arbitral tribunal shall not act on any counterclaim, or any other claim or affirmative relief sought by respondent.

(4) The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to a respondent's failure to communicate a Response to the Notice of Arbitration, or an incomplete or late Response to the Notice of Arbitration, which shall be finally resolved by the arbitral tribunal.

Article 6

Representation and Assistance

Each party may be represented or assisted by any person chosen by it. The participation of any person in the arbitration shall be subject to the discretion of the arbitral tribunal.

Section II: Joinder, Multiple Parties/Contracts and Consolidation

Article 7

Joinder of Additional Parties

(1) A party wishing to join an additional party to the arbitration shall submit its request for arbitration against the additional party ("Request for Joinder") to PDRCI. The date on which the Request for Joinder is received by PDRCI shall, for all purposes, be deemed to be the date of the commencement of arbitration against the additional party. PDRCI may fix a time limit for the submission of a Request for Joinder.

(2) The Request for Joinder shall contain the following information:

- (a) the case reference of the existing arbitration;
- (b) the names, addresses and other contact details of each of the parties, including the additional party;

- (c) a request that the additional party be joined to the arbitration;
 - (d) information required in Article 4 (Notice of Arbitration) to the extent applicable.
- (3) Upon receipt of the Request for Joinder, PDRCI shall:
- (a) assess the party requesting the joinder the corresponding Provisional Advance in accordance with the *Guidelines on Fees*, which shall include the additional cost for determining the propriety of the joinder;
 - (b) assign a provisional docket number to the Request for Joinder upon payment of the amount referred to in the preceding paragraph;
 - (c) notify the additional party to be joined of the Request for Joinder to give the latter the opportunity to submit a response;
 - (d) refer the Request for Joinder to the arbitral tribunal.
- (4) The arbitral tribunal, after consulting the parties, shall have the power to allow an additional party to be joined to the arbitration, upon a *prima facie* determination that an arbitration agreement under the Rules exists and that it binds all the parties and the additional party.
- (5) The arbitral tribunal's decision pursuant to paragraph 4 of this Article is final, without prejudice to its power to subsequently decide any question as to its jurisdiction arising from such decision.
- (6) The additional party shall submit a response to the Request for Joinder in accordance with Article 5 (Response to the Notice of Arbitration) to the extent applicable. The additional party may make claims against any other party in accordance with Article 8

(Claims Between Multiple Parties). PDRCI shall assess the additional party the corresponding Provisional Advance, as may be applicable, in accordance with the *Guidelines on Fees*.

(7) Where PDRCI receives a Request for Joinder before the arbitral tribunal is constituted, it may join the additional party to the arbitration, upon a *prima facie* determination that an arbitration agreement under the Rules exists and that it binds all the parties and the additional party. Any question arising from PDRCI's decision under this paragraph shall be finally decided by the arbitral tribunal once constituted.

(8) Where an additional party is joined to the arbitration before the arbitral tribunal is constituted, all parties to the arbitration, including the additional party joined, shall decide the composition and appointment of the arbitral tribunal. In the absence of an agreement among them, PDRCI may revoke the confirmation of any arbitrator and proceed to appoint the new arbitrator.

(9) The revocation of the confirmation of an arbitrator under the preceding paragraph is without prejudice to:

- (a) the validity of any act done or order made by that arbitrator before his or her confirmation was revoked;
- (b) his or her entitlement to be paid his or her fees and expenses;
- (c) the date when any claim or defense was raised for the purpose of applying any statute of limitation or any similar rule or provision.

(10) The parties waive any objection to the validity and/or enforcement of any award made by the arbitral tribunal on the basis of its decision to join an additional party to the arbitration, in so far as such waiver can validly be made.

(11) In case of denial of the Request for Joinder, the same shall be deemed withdrawn, unless the requesting party elects to treat it as a separate Notice of Arbitration and notifies PDRCI and the party requested to be joined accordingly, in which case the Request for Joinder may be amended or supplemented within a period to be determined by PDRCI.

Article 8

Claims between Multiple Parties

(1) In an arbitration with multiple parties, claims may be made by any party against any other party, subject to the provisions of Articles 30 (Pleas as to the Jurisdiction of the Arbitral Tribunal), Article 9 (Multiple Contracts) and this Article and provided that no new claims may be made after the Terms of Reference are signed, except as provided under Articles 29 (Amendments to the claim or defense) and Article 26 (Terms of Reference).

(2) In an arbitration involving more than two parties, or involving additional parties joined pursuant to Article 7 (Joinder of Parties), the arbitration shall proceed between those parties with respect to whom there is a *prima facie* determination that an arbitration agreement under the Rules exists and that it binds all the parties and the additional party.

(3) Article 4 (Notice of Arbitration) and Article 5 (Response to the Notice of Arbitration) shall apply, to the extent applicable, to any claim made under this Article.

Article 9

Multiple Contracts

(1) Subject to the provisions of Articles 30 (Pleas as to the Jurisdiction of the Arbitral Tribunal), Article 26 (Terms of Reference) and this Article, claims arising out of or in connection

with more than one contract may be made in a single arbitration, whether or not such claims are made under one or more than one arbitration agreement under the Rules.

(2) Where claims pursuant to this Article are made under more than one arbitration agreement, the arbitration shall proceed as to those claims with respect to which a *prima facie* determination is made that the arbitration agreements under which those claims are made may be compatible and, thus, those claims can be determined jointly in a single arbitration.

Article 10

Consolidation of Arbitrations

(1) PDRCI shall have the power, at the request of a party ("Request for Consolidation") and after consulting with the parties and any confirmed arbitrators, to consolidate two or more arbitrations under the Rules, where:

- (a) the parties agree to consolidate; or
- (b) all the claims in the arbitrations are made under the same arbitration agreement; or
- (c) where the claims are made under more than one arbitration agreement, a common question of law or fact arises in both or all of the arbitrations, the rights to relief claimed are in respect of, or arise out of, the same transaction or series of transactions, and PDRCI finds the arbitration agreements to be compatible.

(2) Agreements referring or submitting Disputes to arbitration under the Rules are *prima facie* compatible.

(3) All other parties and any arbitrators shall be given a copy of the Request for Consolidation

(4) In deciding whether to consolidate, PDRCI shall take into account the circumstances of the case including, but not limited to, whether one or more arbitrators have been appointed in more than one of the arbitrations, and if so, whether the same or different arbitrators have been confirmed.

(5) Where PDRCI decides to consolidate two or more arbitrations, the arbitrations shall be consolidated into the arbitration that commenced first, unless all parties agree or PDRCI decides otherwise, taking into account the circumstances of the case.

(6) In case of consolidation of arbitrations, the parties to all such arbitrations shall be deemed to have waived their right to designate an arbitrator, and PDRCI may revoke the appointment of any arbitrators already confirmed and proceed to appoint the arbitral tribunal of the consolidated arbitrations.

(7) The consolidation of two or more arbitrations, however, is without prejudice to the validity of any act done or order made by a court in support of the arbitration before it was consolidated.

(8) The revocation of the appointment of an arbitrator under paragraph 6 of this Article is without prejudice to:

- (a) the validity of any act done or order made by that arbitrator before his or her confirmation was revoked;
- (b) his or her entitlement to be paid his or her fees and expenses; and
- (c) the date when any claim or defense was raised for the purpose of applying any statute of limitation or any similar rule or provision.

(9) The parties waive any objection to the validity and/or enforcement of any award made by the arbitral tribunal on the basis of its decision to consolidate proceedings, in so far as such waiver can validly be made.

(10) In case of a Request for Consolidation, PDRCI may assess a corresponding Provisional Advance, as may be applicable, in accordance with the *Guidelines on Fees*.

Section III. Composition of the Arbitral Tribunal

Article 11

Number of Arbitrators

If the parties have not previously agreed on the number of arbitrators, PDRCI shall determine the number of arbitrators to be appointed, taking into account the circumstances of the case.

Article 12

Appointment of Arbitrators

In arbitrations under the Rules, the appointment of arbitrators, whether as a sole arbitrator or an arbitral tribunal, shall be subject to confirmation by PDRCI. By accepting their appointment, the arbitrators are deemed to have accepted the Rules and the *Guidelines on Fees*.

Article 13

Sole Arbitrator

(1) If a sole arbitrator is to be appointed, the parties shall propose the name of one or more nominees for sole arbitrator in the Notice of Arbitration or in the Response to the Notice of Arbitration, or in a subsequent communication within the time allowed by PDRCI.

(2) If within thirty (30) days from receipt by a party of another party's proposal made in accordance with paragraph 1 of this Article, the parties have not reached agreement on the choice of a sole arbitrator or either party fails to make any proposal, the sole arbitrator shall be appointed by PDRCI.

(3) Unless both parties agree on a procedure for the appointment of the sole arbitrator, PDRCI shall determine the appropriate procedure for the case.

(4) In making the appointment, PDRCI shall ensure the appointment of a qualified and independent arbitrator and, when appropriate, it shall appoint an arbitrator of a nationality other than the nationalities of the parties.

Article 14

Arbitral Tribunal

(1) If three arbitrators are to be appointed, each party may propose one arbitrator in the Notice of Arbitration and one arbitrator in the Response to the Notice of Arbitration, or in a subsequent communication within the time allowed by PDRCI. Unless the parties agree otherwise, the two arbitrators so appointed, upon confirmation of their appointments, shall choose the third arbitrator, who upon confirmation of his appointment, will act as the Chair of the arbitral tribunal.

(2) If either party fails to appoint an arbitrator, PDRCI, as appointing authority, shall appoint the arbitrator for that party.

(3) If within thirty (30) days after the confirmation of the second arbitrator, the two arbitrators have not agreed on the choice of the Chair, PDRCI shall appoint the Chair in the same manner as a sole arbitrator.

Article 15

Multiple Parties and Arbitrators, Constitution of Arbitral Tribunal

(1) For the purpose of Article 14(1), where there are multiple parties as claimants or respondents and unless the parties have agreed to another method of appointment of arbitrators, the multiple claimants or the multiple respondents shall jointly appoint an arbitrator.

(2) If the parties have agreed that the arbitral tribunal shall be composed of a number of arbitrators other than one or three, the arbitrators shall be appointed according to the method agreed upon by the parties.

(3) The arbitral tribunal is deemed constituted when the appointment of the sole arbitrator or of the third arbitrator, in case of an arbitral tribunal, has been confirmed by PDRCI. PDRCI shall send a notice of the confirmation to the parties and the arbitral tribunal, expressly providing for the date of the arbitral tribunal's constitution.

(4) In case of failure to constitute the arbitral tribunal for any cause under the Rules, PDRCI shall, at the request of any party, constitute the arbitral tribunal and in doing so may revoke any appointment or confirmation already made and appoint or reappoint each of the arbitrators and designate one of them as the Chair.

Article 16

Information on Proposed Arbitrators

Where the names of one or more persons are proposed for appointment as arbitrators, their full names, addresses, contact details and nationalities shall be indicated, together with a description of their qualifications.

Article 17

Disclosure of Arbitrators

When a person is approached in connection with his or her possible appointment as an arbitrator, he or she shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. An arbitrator, from the time of his or her appointment and throughout the arbitration, shall without delay disclose any such circumstances to PDRCI, the parties, and the other arbitrators, unless they were previously informed or were aware of such circumstances.

Article 18

Challenge of Arbitrators

- (1) Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.
- (2) A party may challenge the arbitrator appointed by him only for reasons of which he becomes aware after the appointment.
- (3) In the event that an arbitrator fails to act or it becomes impossible for an arbitrator to perform his or her functions, the procedure in respect of the challenge of an arbitrator as provided in Article 19 (Challenge of Arbitrators) shall apply.

Article 19

Communication of Notice, Acceptance of Challenge

- (1) A party who intends to challenge an arbitrator shall send a notice of challenge within fifteen (15) days after it was notified of the appointment of the challenged arbitrator or

within fifteen (15) days after the circumstances mentioned in Articles 17 to 18 (Challenge of Arbitrators) became known to that party.

(2) The notice of challenge shall be communicated to PDRCI, to the other parties, to the arbitrator who is challenged, and to the other arbitrators. The notice of challenge shall be in writing and shall state the reasons for the challenge.

(3) All parties may agree to the challenge, in which case the appointment shall be deemed withdrawn. The challenged arbitrator may also withdraw the acceptance of his appointment. Acceptance of the challenge by the nominating party or by the challenged arbitrator shall not imply the validity of the challenge.

Article 20

Resolution of Challenge

(1) If the other party does not agree to the challenge or the challenged arbitrator does not withdraw within fifteen (15) days from notice of the challenge, PDRCI shall decide the challenge within thirty (30) days from referral by the Secretariat, by the arbitral tribunal or by any of the parties. PDRCI may adopt any appropriate procedure and adjust the time limit to decide the challenge, including hearing the parties and the challenged arbitrator.

(2) If PDRCI sustains the challenge, a substitute arbitrator shall be appointed or chosen pursuant to the procedure applicable to the appointment or choice of an arbitrator as provided in Articles 12 to 16 (Appointment of Arbitrators).

(3) PDRCI's decision on the challenge shall be final.

Article 21

Replacement of Arbitrators

(1) Subject to paragraph 2 of this Article, in any event where an arbitrator has to be replaced in the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in Articles 12 to 16 (Appointment of Arbitrators) that was applicable to the appointment or choice of the arbitrator being replaced. This procedure shall apply even if in the process of appointing the arbitrator to be replaced, a party had failed to exercise its right to appoint or to participate in the appointment.

(2) If, at the request of a party, PDRCI determines that on account of the exceptional circumstances of the case it would be justified for a party to be deprived of its right to appoint a substitute arbitrator, PDRCI may, after consulting the parties and the remaining arbitrators: (a) appoint the substitute arbitrator; or (b) after the closure of the hearings, authorize the other arbitrators to proceed with the arbitration without delay and make any decision or render an award

Article 22

Repetition of Hearings

If an arbitrator is replaced, the proceedings shall resume at the stage where the arbitrator who was replaced ceased to perform his or her functions without repeating the previous hearings, unless the arbitral tribunal decides otherwise.

Section IV. Arbitral Proceedings

Article 23

General Provisions

(1) Subject to the Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and given a reasonable opportunity of presenting its case. The arbitral tribunal shall provide a fair and efficient process of resolving the dispute, avoiding unnecessary delay and expense.

(2) As soon as practicable after its constitution and after consulting the parties, the arbitral tribunal shall establish the procedural timetable of the arbitration. The arbitral tribunal may likewise extend or shorten any period of time in the procedural timetable or prescribed under the Rules, after consulting the parties.

(3) If so requested by a party, the arbitral tribunal shall hold hearings at an appropriate stage of the proceedings for the presentation of evidence, including expert testimony, or for oral argument. In the absence of such a request, the arbitral tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.

(4) All communications between the arbitral tribunal and the parties, and vice versa, shall at the same time be communicated by the communicating party or by the arbitral tribunal to all other parties and PDRCI. Such communications shall be made at the same time, except as otherwise permitted by the arbitral tribunal under the applicable law.

Article 24

Place of Arbitration

(1) If the parties have not previously agreed on the place of arbitration, the place of arbitration shall be determined by the arbitral tribunal, having regard to the circumstances of the case. The award shall be deemed to have been made at the place of arbitration.

(2) The arbitral tribunal may meet at any location it considers appropriate for deliberations. Unless otherwise agreed by the parties, the arbitral tribunal may also meet at any location it considers appropriate for any other purpose, including hearings.

Article 25

Language

(1) Subject to an agreement by the parties, the arbitral tribunal shall, promptly after its appointment, determine the language or languages to be used in the proceedings. This determination shall apply to the Statement of Claim referred to in Article 27, the Statement of Defense referred to in Article 28, any further written statements, and, if oral hearings take place, to the language or languages to be used in such hearings. In the absence of such agreement, the language of the arbitration shall be English.

(2) The arbitral tribunal may order that any document annexed to the Statement of Claim referred to in Article 27 or Statement of Defense referred to in Article 28 and any supplementary documents or exhibits submitted in the course of the proceedings, delivered in their original language, shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal, or in the absence of such determination, in English.

Article 26

Terms of Reference

(1) As soon as the arbitral tribunal has received the files from PDRCI, the arbitral tribunal shall prepare on the basis of the parties' submissions and, if appropriate, upon consultation with the parties, a document defining its terms of reference ("Terms of Reference"). This document shall include the following particulars:

- (a) the names, addresses and other contact details of the parties, their representatives and counsel, if any;
- (b) the addresses to which notices and communications arising in the course of the arbitration may be made;
- (c) a summary of the parties' respective claims and of the relief sought by each party, together with the amounts of such claims, including, to the extent possible, an estimate of the value of non-monetary claims;
- (d) a list of issues to be determined;
- (e) the names, addresses and other contact details of each of the arbitrators;
- (f) the place of the arbitration;
- (g) the particulars of the applicable procedural rules other than the Rules and, if necessary, reference to the power conferred upon the arbitral tribunal to act as *amiable compositeur* or to decide *ex aequo et bono*; and
- (h) the parties' preference for a file counsel to be assigned to the case.

(2) The Terms of Reference may be in the form of a procedural order issued by the arbitral tribunal or in the form of a joint submission by the parties or in any other form. It shall be issued within fifteen (15) days from the date of the

receipt of the file by the arbitral tribunal. Once issued, the same shall be reviewed and signed by the parties and the arbitral tribunal.

(3) If a party refuses or is unable to sign the Terms of Reference, the arbitration shall proceed on the basis of the Terms of Reference signed by at least one party and the arbitral tribunal.

(4) The issues defined under the Terms of Reference may be amended, as the arbitral tribunal may deem appropriate, taking into account the nature of the claims defined by the parties in their Statements of Claim or Statement of Defense.

Article 27

Statement of Claim

(1) The claimant shall communicate its statement of claim in writing ("Statement of Claim") to PDRCI, to respondent and to each of the arbitrators within a period of time to be determined by the arbitral tribunal. The claimant may elect to treat the Notice of Arbitration as the Statement of Claim, provided that the Notice of Arbitration also complies with the requirements of paragraphs 2 to 4 of this Article.

(2) The Statement of Claim shall include the following particulars:

- (a) The names, addresses and other contact details of the parties;
- (b) A statement of the facts supporting the claim;
- (c) The points at issue;
- (d) The legal grounds or arguments supporting the claim;
- (e) The value of the claims and the amounts involved, or if the relief sought is non-monetary, an estimate thereof; and
- (f) The relief sought.

(3) A copy of any contract or other legal instrument out of or in relation to which the dispute arises and of the arbitration agreement shall be annexed to the Statement of Claim.

(4) The Statement of Claim shall, as far as possible, be accompanied by all documents and other evidence relied upon by the claimant, or contain references to them.

(5) Upon the filing of the Statement of Claim, PDRCI shall determine the amount of claimant's final advance on cost ("Final Advance") and shall require the claimant to pay the same, less any amounts paid by way of Provisional Advance, in accordance with the *Guidelines on Fees*.

Article 28

Statement of Defense

(1) Within a period of time to be determined by the arbitral tribunal, the respondent shall communicate its statement of defense in writing ("Statement of Defense") to PDRCI, to claimant and to each of the arbitrators. The respondent may elect to treat the Response to the Notice of Arbitration as the Statement of Defense, provided that the Response to the Notice of Arbitration also complies with the requirements of paragraph 2 of this Article.

(2) The Statement of Defense shall reply to the particulars required by Article 27(2)(b) to (f). The Statement of Defence shall, as far as possible, be accompanied by all documents and other evidence relied upon by the respondent, or contain references to them.

(3) In the Statement of Defense, or at a later stage upon the discretion of the arbitral tribunal, respondent may make a counterclaim, or rely on any other claim for the purpose of a set-off provided that the arbitral tribunal has jurisdiction over it.

(4) The provisions of Article 27(2) shall apply to a counterclaim and any other claim relied on for the purpose of a set-off.

(5) Upon the filing of the Statement of Defense and the counterclaim, or any other claim, PDRCI shall determine the respondent's Final Advance and shall require respondent to pay the same, less any amounts paid by way of Provisional Advance, in accordance with the *Guidelines on Fees*.

Article 29

Amendment to the Claim or Defense

In the course of the arbitral proceedings, a party may amend or supplement its claim or defense, including a counterclaim or any other claim for the purpose of a set-off, unless the arbitral tribunal considers it inappropriate to allow such amendment or supplement having regard to the delay in making it or prejudice to other parties or any other circumstances. However, a claim or defense, including a counterclaim or any other claim for the purpose of a set-off, may not be amended or supplemented in such a manner that the amended or supplemented claim or defense falls outside the jurisdiction of the arbitral tribunal.

Article 30

Pleas to the Jurisdiction of the Arbitral Tribunal

(1) The arbitral tribunal shall have the power to rule on objections that it has no jurisdiction, including any objections with respect to the existence or validity of the arbitration clause or arbitration agreement, or concerning whether all of the claims made in the arbitration may be determined in a single arbitration.

(2) An arbitration clause forming part of a contract and that provides for arbitration under the Rules shall be treated as an agreement

independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is void shall not automatically entail the invalidity of the arbitration clause.

(3) A plea that the arbitral tribunal does not have jurisdiction, or that the claims made in the arbitration may not be determined in a single arbitration, shall be raised not later than in the Statement of Defense or, with respect to a counterclaim or any other claim for the purpose of set-off, in the reply thereto. A party is not precluded from raising such a plea by the fact that it has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the proceedings. However, the arbitral tribunal may admit a later plea if it considers the delay justified.

(4) The arbitral tribunal shall rule on a plea concerning its jurisdiction, either as a preliminary question or in an award on the merits. The arbitral tribunal may continue the arbitral proceedings and make an award, notwithstanding any pending challenge to its jurisdiction before a court if allowed under the applicable law

(5) In cases when the propriety of a single or consolidated arbitration is in issue, PDRCI shall decide whether and to what extent the arbitration shall proceed. The arbitration shall proceed in accordance with Article 10 (Consolidation of Arbitrations).

Article 31

Further Written Statements

The arbitral tribunal shall decide which further written statements, in addition to the Statement of Claim and the Statement of Defense, shall be required from the parties or may be presented by them. The arbitral tribunal shall fix the periods of time for communicating such statements.

Article 32

Periods of Time

The periods of time fixed by the arbitral tribunal for the communication of written statements (including the Statement of Claim and Statement of Defense) shall not exceed forty-five (45) days. However, the arbitral tribunal may extend the time limit if it finds that an extension is justified.

Article 33

Interim Measures of Protection

(1) It is not incompatible with an arbitration agreement for a party, before the constitution of the arbitral tribunal, to request a court to grant an interim measure of protection ("Interim Measure") or to apply for Emergency Relief pursuant to Article 53.

(2) After the constitution of the arbitral tribunal and during the arbitration proceeding, a request for an Interim Measure or modification thereof may be made with the arbitral tribunal or, to the extent that the arbitral tribunal has no power to act or is unable to act effectively, with the court.

(3) Any party may request that an Interim Measure be granted against any other party.

(4) Such relief may be granted to:

- (a) prevent irreparable loss or injury;
- (b) provide security for the performance of any obligation;
- (c) produce or preserve any evidence;
- (d) maintain or restore the status quo pending the determination of the Dispute;
- (e) take action to prevent, or refrain from taking action that is likely to cause current or imminent harm or prejudice to the arbitration;

- (f) provide a means of preserving the goods in dispute and any other assets out of which the award may be satisfied, including appointment of receivers or detention, preservation and inspection of property; or
- (g) compel any other appropriate act or omission.

(5) The party requesting an Interim Measure under paragraph 5 (a), (d), (e) and (f) of this Article shall satisfy the arbitral tribunal that:

- (a) harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and
- (b) there is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination of this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.

(6) With respect to other forms of Interim Measure, the requirements under paragraph 5 of this Article shall apply only to the extent the arbitral tribunal considers appropriate.

(7) An Interim Measure may be requested by written application transmitted by reasonable means to the arbitral tribunal and to the party against whom the measure is sought, describing in appropriate detail the precise relief, the party against whom the relief is requested, the grounds for the relief, and the evidence supporting the request.

(8) The order shall be binding upon the parties.

(9) The arbitral tribunal may modify, suspend or terminate the Interim Measure it has granted, upon application of any party or, in exceptional circumstances and after prior notice to the parties, on the arbitral tribunal's own initiative.

(10) A party who does not comply with the Interim Measure shall be liable for all damages resulting from non-compliance, including all cost and reasonable legal fees paid in obtaining judicial enforcement.

(11) Either party may apply with the court for assistance in implementing or enforcing the Interim Measure ordered by the arbitral tribunal.

(12) The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the Interim Measure was requested or granted.

(13) The order granting an Interim Measure may be conditioned upon the provision of security for any act or omission specified in the order.

(14) The party requesting an Interim Measure may be liable for any cost and damages caused by the Interim Measure to any party if the arbitral tribunal later determines that, in the circumstances then prevailing, the Interim Measure should not have been granted. The arbitral tribunal may award such cost and damages at any point during the arbitral proceedings.

Article 34

Case Management Conference and Procedural Timetable

(1) As soon as the Terms of Reference are signed or issued, and at any time upon the discretion of the arbitral tribunal, it shall convene the parties to a case management conference (in person or, in appropriate cases,

by video or audio conference, as the arbitral tribunal may direct) to discuss, among others, the procedural measures that may be adopted (“Case Management Conference”). The arbitral tribunal may invite the parties to submit proposals in advance of the Case Management Conference.

(2) During or following such conference, the arbitral tribunal shall establish the procedural timetable that it intends to follow for the arbitration (“Procedural Timetable”). The Procedural Timetable and any modifications thereto shall be communicated to PDRCI and the parties.

(3) To ensure continued effective case management, the arbitral tribunal, after consulting the parties, may adopt further procedural measures or modify the Procedural Timetable.

Article 35

Evidence and Burden of Proof

(1) Each party shall have the burden of proving the facts relied on to support its claim or defense.

(2) Witnesses, including expert witnesses, who are presented by the parties to testify on any issue of fact or expertise may be any individual, notwithstanding that the individual is a party to the arbitration or in any way related to a party. Unless otherwise directed by the arbitral tribunal, statements by witnesses, including expert witnesses, shall be in writing and signed by them.

(3) At any time before the close of hearings, the arbitral tribunal may require the parties to produce oral or written testimony, documents, or other evidence and to allow the inspection and reproduction of such evidence, upon such terms as it shall determine.

(4) The arbitral tribunal shall have the power to determine the admissibility, relevance, materiality and weight of a party's evidence.

Article 36

Hearings

(1) In case of an oral hearing, the arbitral tribunal shall give the parties adequate advance notice of the date, time and place of such hearing.

(2) Witnesses, including expert witnesses, may be heard under the conditions and examined in the manner set by the arbitral tribunal.

(3) Hearings shall be held in camera unless the parties agree otherwise. The arbitral tribunal may require the exclusion of any witness or witnesses, including expert witnesses, during the testimony of other witnesses, except that a witness who is a party or a party representative to the arbitration shall be entitled to attend the hearings without being excluded.

(4) The taking of evidence shall be subject to conditions as the arbitral tribunal shall prescribe. In appropriate cases, the arbitral tribunal may direct the examination of witnesses, including expert witnesses, by means of telecommunication (such as audio or video conference) that do not require their physical presence at the place of the hearing.

Article 37

Experts Appointed by the Arbitral Tribunal

(1) After consultation with the parties, the arbitral tribunal may, upon request of one or both parties, appoint one or more experts to report to it, in writing, on specific issues to be determined by the arbitral tribunal. A copy of the expert's terms of reference, established by

the arbitral tribunal, shall be communicated to the parties.

(2) Before accepting the appointment, the expert shall submit to the arbitral tribunal and to the parties a description of his or her qualifications and a statement of his or her impartiality and independence. Within the time ordered by the arbitral tribunal, the parties shall inform the arbitral tribunal whether they have any objections as to the expert's qualifications, impartiality or independence. The arbitral tribunal shall decide such objections promptly. After an expert's appointment, a party may object to the expert's qualifications, impartiality or independence only for reasons of which the party became aware after the appointment was made. The arbitral tribunal shall promptly decide such objection and what action to take, if any.

(3) The parties shall give the expert all relevant information or produce for his inspection all relevant documents, information, goods or other evidence that he or she may require of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.

(4) Upon receipt of the expert's report, the arbitral tribunal shall communicate a copy of the report to the parties, who shall be given the opportunity to express, in writing, their opinion on the report. A party shall be entitled to examine any document on which the expert has relied in his or her report.

(5) At the request of any party, the expert, after delivery of the report, may be heard at a hearing where the parties shall have the opportunity to be present and to examine the expert. At this hearing, either party may present expert witnesses in order to testify on the points at issue. The provisions of Article 36 (Evidence and Hearings) shall be applicable to such proceedings.

Article 38

Default

(1) If, within the period of time fixed by the Rules or by the arbitral tribunal:

- (a) the claimant, without sufficient cause, fails to communicate the Statement of Claim, the arbitral tribunal may issue an order for the termination of the arbitration.
- (b) the respondent, without sufficient cause, fails to communicate the Response to the Notice of Arbitration or the Statement of Defense, the arbitral tribunal shall order that the proceedings continue, without treating such failure in itself as an admission of the claims. This subparagraph shall also apply to a failure to submit a defense to a counterclaim, or any other claim.

(2) If a party, duly notified under the Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration.

(3) If a party requested by the arbitral tribunal or by its appointed expert to produce documents, information, goods or other evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the arbitral tribunal may make the award on the evidence before it.

Article 39

Closure of Hearings

(1) The arbitral tribunal may inquire of the parties if they have any further evidence to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the hearings closed.

(2) The arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own initiative or upon application of a party, to reopen the hearings at any time before the award is made.

Article 40

Waiver of Right to Object

A failure by any party to object promptly to any non-compliance with the Rules or with any requirement of the arbitration agreement shall be deemed to be a waiver of the right of such party to make such an objection, unless such party can show that, under the circumstances, its failure to object was justified.

Article 41

Confidentiality of Proceedings

Any information relating to the subject of arbitration, expressly intended by the source not to be disclosed or obtained under circumstances that would create such a reasonable expectation on behalf of the source of the information that it will not be disclosed, shall not be disclosed. It shall include statements, information, goods, submissions, evidence, and all other papers filed or submitted in an arbitration or for expert evaluation.

Section V. The Award

Article 42

Awards / Decisions

(1) When there is more than one arbitrator, any award or decision of the arbitral tribunal shall be made within one (1) year from constitution of the arbitral tribunal by a majority of the arbitrators. If there is no majority, unless

the parties agree otherwise, the award may be made by the Chair of the arbitral tribunal alone.

(2) In questions of procedure, when there is no majority or when the arbitral tribunal so authorizes, the presiding arbitrator may decide alone, subject to revision, if any, by the arbitral tribunal.

(3) The arbitral tribunal may make a single award or several awards in respect of all parties so involved in the arbitration under Articles 7 (Joinder of Parties), 8 (Claims between Multiple Parties) and 9 (Multiple Contracts).

Article 43

Form and Effect of Awards

(1) The arbitral tribunal may make separate awards on different issues at different times.

(2) All awards shall be made in writing and shall be final and binding on the parties, unless the arbitral tribunal provides otherwise. The parties shall carry out all awards without delay.

(3) The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.

(4) An award shall be signed by the sole arbitrator or by majority of the arbitrators and shall state the date on which the award was made and the place of arbitration. Where there is more than one arbitrator and any of them fails to sign, the award shall state the reason for the absence of the signature.

(5) An award may be made public (a) with the consent of all parties; or (b) where and to the extent disclosure is required of a party by legal duty, to protect or pursue a legal right, or in relation to legal proceedings before a court or other competent authority.

(6) Original and certified copies of the award signed by the arbitrators shall be provided to the parties.

(7) Upon the issuance of the award, the arbitral tribunal shall become *functus officio*. It shall have no further jurisdiction, except to the extent allowed by the Rules or the applicable law.

Article 44

Applicable Law, Amiable Compositeur

(1) The arbitral tribunal shall apply the law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall apply the law that it determines to be appropriate.

(2) The arbitral tribunal shall act as *amiable compositeur* or *ex aequo et bono* only if the parties have expressly authorized the arbitral tribunal to do so. However, if the law applicable to the arbitral procedure permits such arbitration, the parties may agree to waive or restrict such authority.

(3) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract, if any, and shall take into account any usage of trade applicable to the transaction.

Article 45

Settlement or Other Grounds for Termination

(1) If, before the award is made, the parties agree to settle the Dispute, the arbitral tribunal shall either issue an order terminating the arbitration or, if requested by both parties and accepted by the tribunal, record the settlement in the form of an arbitral award on agreed

terms. The arbitral tribunal is not obliged to give reasons for such an award.

(2) The order terminating the arbitration or the award on agreed terms, signed by the arbitrators, shall be communicated by PDRCI to the parties. Where an award on agreed terms is made, Article 43 (2) to (7) shall apply.

(3) If the claimant withdraws its claim and the respondent who has a counterclaim or any other claim objects to the termination of the arbitration, the order terminating the arbitration shall apply only to the claim but not to the counterclaim or any other claim. A party is not excused from the payment of arbitration fees and cost when its claim is withdrawn.

(4) If, before the award is made, the arbitration proceeding becomes unnecessary or impossible for any reason not mentioned in paragraph 1 of this Article, the arbitral tribunal shall notify the parties of its intention to issue an order for the termination of the proceeding. The arbitral tribunal may hear any objection before issuing an order of termination.

(5) Paragraphs (1) to (4) of this Article shall not apply to the dismissal or withdrawal of one or more but less than all of the claims of a party. The exclusion by the arbitral tribunal of a party from the arbitration shall not be treated as a termination of the proceeding covered by this Rule. The arbitral tribunal shall issue an order directing the dismissal or withdrawal of the claim or claims or the exclusion of a party or parties and continue the arbitration proceeding as to the remaining claims or against the remaining parties.

(6) Grounds for avoiding arbitration such as lack of jurisdiction of the arbitral tribunal, statute of limitation, bar by prior judgment, or any other ground then available shall be raised as defenses in the Response to the Notice of Arbitration or in the Statement of Defense. A request to dismiss or other similar request shall be treated as a Response to Notice of Arbitration or as a Statement of Defense.

Article 46

Interpretation of Award

(1) Within thirty (30) days after the receipt of the award, a party, with notice to the other party, may request that the arbitral tribunal give an interpretation of a specific point or part of the award.

(2) If the arbitral tribunal considers the request to be justified, it shall make the interpretation in writing within thirty (30) days after the receipt of the request. The interpretation shall form part of the award and the provisions of Article 43(2) to (7) shall apply.

Article 47

Correction of Award

(1) Within thirty (30) days after the parties' receipt of the award, the arbitral tribunal, on its own initiative, or any of the parties, with notice to the other party, may request the arbitral tribunal to correct in the award any error in computation, any clerical or typographical error, or any error or omission of a similar nature.

(2) If the arbitral tribunal considers the party's request to be justified, it shall make the correction within forty-five (45) days from receipt of the request.

(3) Such corrections shall be in writing and shall form part of the award. The provisions of Article 43 (2) to (7) shall apply.

Article 48

Additional Award

(1) Within thirty (30) days after the receipt of the termination order under Article 45 (2) or the award, a party, with notice to the other party, may request the arbitral tribunal to make

an additional award as to claims presented in the arbitral proceedings but not decided by the arbitral tribunal.

(2) If the arbitral tribunal considers the request to be justified, it shall render an additional award or complete its award within sixty (60) days after the receipt of the request. The arbitral tribunal may extend, if necessary, the period of time to make the award.

(3) When such an award or additional award is made, the provisions of Article 43(2) to (7) shall apply.

Section VI. Cost

Article 49

Definition of Cost

(1) The arbitral tribunal shall fix the cost of arbitration in its Award. The term "cost" shall include:

- (a) The arbitrators' fees and any filing fees, administrative fees and expenses set by PDRCI in accordance with the Rules and the *Guidelines on Fees*;
- (b) The travel and other expenses incurred by the arbitrators;
- (c) The cost of expert advice and of other assistance required by the arbitral tribunal;
- (d) The travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;
- (e) The cost of legal representation and assistance reasonably incurred by the successful party in connection with the arbitration, provided such cost were claimed and proved during the arbitral proceedings.

(2) In relation to the interpretation, correction or completion of any award under Articles 46 (Interpretation of the Award), 47 (Correction of the Award) and 48 (Additional Award), PDRCI may charge cost in accordance with the *Guidelines on Fees*.

Article 50

Allocation of Cost

(1) The cost of arbitration shall in principle be borne by the unsuccessful party. However, the arbitral tribunal may apportion each of such cost between the parties if it determines that apportionment is appropriate, taking into account the circumstances of the case.

(2) The arbitral tribunal shall in the final award or, if it deems appropriate, in any other award, determine any amount that a party may have to pay to another party as a result of the decision on allocation of cost.

(3) When the arbitral tribunal issues an order for the termination of the arbitration or makes an award on agreed terms, it shall allocate the cost of arbitration in the order or award.

Article 51

Advance on Cost

PDRCI shall set the advances on cost and require payment thereof in accordance with the Rules and the *Guidelines on Fees*.

Section VII. Other Provisions

Article 52

Expedited Procedure

(1) Prior to the constitution of the arbitral tribunal, a party may apply to PDRCI in writing

for the arbitration to be conducted in accordance with this Article where:

- (a) the amount in dispute representing the aggregate of any claim, counterclaim, or any other claim does not exceed Twenty-Five Million (Php25,000,000) Pesos; or
- (b) the parties so agree; or
- (c) in cases of exceptional urgency.

(2) When PDRCI, after consultation with the parties, grants an application for expedited procedure, the arbitration shall be conducted in accordance with the Rules but subject to the following changes:

- (a) the case shall be heard by a sole arbitrator, unless the arbitration agreement provides for three arbitrators;
- (b) if the arbitration agreement provides for three arbitrators, PDRCI shall invite the parties to agree to a sole arbitrator. If the parties do not agree, the case shall be heard by three arbitrators;
- (c) PDRCI may shorten the time limits provided in the Rules as well as any other time limits that it has set;
- (d) the arbitral tribunal shall adopt a simplified procedure to expedite the arbitration, including shorter time limits for submission of evidence and documents;
- (e) after the submission of the Response to the Notice of Arbitration, the parties shall in principle be entitled to submit one Statement of Claim and one Statement of Defense (and counterclaim, or any other claim);
- (f) the arbitral tribunal shall decide the dispute on the basis of documents and materials only, unless it decides that it is appropriate to hold one or more oral hearings;

- (g) the award shall be made within six months from the date PDRCI transmits the file to the arbitral tribunal. In exceptional circumstances, PDRCI may extend this time limit; and
- (h) the arbitral tribunal may state in summary form the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.

Unless the parties agree otherwise, the expedited procedure provided in this Article shall not apply to any consolidated arbitrations under Article 10 (Consolidation of Arbitration) or to any arbitrations under Articles 7 (Joinder of Additional Parties), 8 (Claims between Multiple Parties) or 9 (Multiple Contracts).

Article 53

Emergency Arbitrator

(1) A party may apply for an Interim Measure concurrent with or following the filing of a Notice of Arbitration but prior to the constitution of the arbitral tribunal ("Emergency Relief") by submitting an application for the appointment of an emergency arbitrator ("Emergency Arbitrator") to PDRCI ("Application").

(2) The Application shall be submitted in the same manner as the Notice of Arbitration pursuant to Articles 4 and 5 of the Rules and shall include the following information:

- (a) the names, addresses and other contact details of the parties to the Application and of their counsel;
- (b) the circumstances giving rise to the Application and the relevant agreements;
- (c) the Emergency Relief sought;

- (d) the reasons for the issuance of Emergency Relief on an urgent basis;
 - (e) comments on the language, the seat of the Emergency Relief proceedings, and the applicable law; and,
 - (f) confirmation of payment of the deposit in accordance with the *Guidelines on Fees* ("Emergency Arbitration Fee"); therewith have been or are being served simultaneously on all other parties to the application.
- (3) The Application may contain such other documents or information as the applicant considers appropriate or as may contribute to the efficient examination of the Application.
- (4) Upon receipt of the Application, PDRCI shall:
- (a) assign a provisional docket number to the Application upon payment of the amount referred to in the preceding paragraph;
 - (b) determine if it should accept the Application;
 - (c) assess the applicant the further Emergency Arbitration Fees, in accordance with the *Guidelines on Fees*, taking into account the nature of the case and the estimated amount of work to be performed by PDRCI and the Emergency Arbitrator;
 - (d) endeavour to appoint an Emergency Arbitrator within two days after receipt of the Application and the Emergency Arbitration Fee, whichever is later; and
 - (e) Refer the Application and transmit the file to the Emergency Arbitrator once appointed, with notice to the other parties.

(5) If the applicant fails to pay the Emergency Arbitration Fee or any further fees that PDRCI may assess in connection with the Application, within the time limit provided by PDRCI, the Application shall be dismissed.

(6) Upon notice of the appointment of the Emergency Arbitrator, all written communications from the parties shall be submitted directly to the Emergency Arbitrator with copies to the other parties and PDRCI. All written communications from the Emergency Arbitrator to the parties shall also be given to PDRCI.

(7) A party who intends to challenge an Emergency Arbitrator shall send notice of its challenge, in accordance with Article 19(2), within three (3) days after it was notified of the appointment of the challenged arbitrator or after the circumstances mentioned in Articles 17 to 18 (Challenge of Arbitrators) became known to that party. If the other party does not agree to the challenge or the challenged arbitrator does not withdraw within three (3) days from notice of the challenge, PDRCI shall decide the challenge. PDRCI may adopt any appropriate procedure and time limit to decide the challenge, including hearing the parties and the challenged arbitrator. If PDRCI sustains the challenge, or the Emergency Arbitrator otherwise becomes incapable of performing his or her functions, a substitute arbitrator shall be appointed. PDRCI's decision on the challenge shall be final.

(8) If an Emergency Arbitrator is replaced, the Emergency Relief proceedings shall resume at the stage where the Emergency Arbitrator was replaced or ceased to perform his or her functions, unless the substitute Emergency Arbitrator decides otherwise.

(9) The Emergency Arbitrator may conduct the proceedings in such a manner as he considers appropriate, taking into account the urgent nature of the proceedings. The Emergency Arbitrator shall have the power to rule on objections to his jurisdiction, including any objections with respect to the existence,

validity or scope of the arbitration clause(s) or of the separate arbitration agreement(s), and shall resolve any dispute involving the applicability of this Article 53.

(10) Any decision, order or award of the Emergency Arbitrator on the Application ("Emergency Decision") shall be made within twenty (20) days from the date in which PDRCI transmitted the file to the Emergency Arbitrator. This period of time may be extended by agreement of the parties or, in appropriate circumstances, by PDRCI.

(11) The Emergency Decision shall:

- (a) be in writing;
- (b) state in summary form the reasons upon which the decision is based, unless the parties have agreed that no reasons are to be given;
- (c) state the date when it was made and be signed by the Emergency Arbitrator; and
- (d) set the cost of the Emergency Relief proceedings and allocate such costs in accordance with Article 50 (Allocation of Cost) of the Rules

(12) An Emergency Relief is, and shall have the same force and effect as, an Interim Measure. Article 33 (Interim Measure of Protection) shall be applicable to Emergency Reliefs, except that references to the arbitral tribunal shall be deemed to be references to the Emergency Arbitrator.

(13) The Emergency Arbitrator shall have no further power to act once the arbitral tribunal is constituted. However, the Emergency Decision may be made even if in the meantime the file has been transmitted to the arbitral tribunal.

(14) Any Emergency Decision ceases to be binding:

- (a) upon the arbitral tribunal rendering a final award, unless the arbitral tribunal expressly decides otherwise;

- (b) upon the withdrawal of all claims or the termination of the arbitration before the rendering of a final award; or
 - (c) if the arbitral tribunal is not constituted within 90 days from the date of the Emergency Decision, unless this period is extended by agreement of the parties or by PDRCI.
- (15) Any Emergency Decision may, upon request of a party, be modified, suspended or terminated by the arbitral tribunal, once constituted.
- (16) The Emergency Arbitrator may not act as arbitrator in any arbitration relating to the dispute that gave rise to the application and in respect of which the Emergency Arbitrator has acted, unless otherwise agreed by the parties to the arbitration.
- (17) This Article on Emergency Relief shall not prevent any party from seeking urgent Interim Measures from a competent judicial authority at any time.
- (18) In all matters not expressly provided for in this Schedule, the Emergency Arbitrator shall act in the spirit of the Rules.
- (19) The Emergency Arbitrator shall make every reasonable effort to ensure that an Emergency Decision is valid.

Article 54

Limitation of Liability

PDRCI, its trustees and employees, file counsels, and the arbitral tribunal or any person appointed by PDRCI or by the arbitral tribunal, including its expert witnesses, shall not be liable to any person for any act or omission made in connection with the arbitration, except upon a clear showing of bad faith, malice or gross negligence.

ANNEX A

PDRCI ADMINISTRATIVE GUIDELINES

(Effective as of 1 January 2015)

Article 1. Administrative Guidelines

- (1) These Administrative Guidelines ("Guidelines") shall form part of the Arbitration Rules ("Rules") of PDRCI. By agreeing to submit their dispute to arbitration under the Rules, the parties are deemed to have accepted the terms of these Guidelines.
- (2) These Guidelines supersede Administrative Guidelines No. 1 dated 17 October 2005, Administrative Guidelines No. 2 dated 15 September 2008, and Administrative Guidelines No. 3 dated 30 August 2012 and shall take effect on 1 January 2015.
- (3) In case any of the provisions of these Guidelines are inconsistent with any provision of: (a) the Rules; (b) the applicable arbitration agreement(s); or (c) any applicable arbitration law or rules, the latter provision shall prevail.
- (4) Requests, notices, documents, orders and decisions submitted or issued in accordance with these Guidelines shall be communicated to the parties, the arbitral tribunal and PDRCI in accordance with: (a) the applicable provisions of the Rules; (b) any method specified in the applicable arbitration agreement(s); or (c) any applicable arbitration law or rules.

Article 2. The Role of PDRCI

- (1) PDRCI is a non-stock, non-profit organization incorporated in 1996 out of the Arbitration Committee of the Philippine Chamber of Commerce and Industry. PDRCI promotes and encourages the use of arbitration, mediation and other alternative modes of settling commercial disputes, and provides alternative dispute resolution (“ADR”) services to the business community. Its members are composed of prominent lawyers, members of the judiciary, academicians, professionals, arbitrators, bankers, accountants, and businessmen. PDRCI acts or performs its functions through its board of trustees, unless such actions or functions have been delegated to one of its committees, its officers or the PDRCI Secretariat.
- (2) As an arbitral institution, PDRCI does not itself resolve disputes. It administers arbitrations under the Rules, but the function of resolving disputes through arbitration rests on the arbitrators who are appointed in accordance with the Rules. PDRCI ensures the proper application of and compliance with the Rules.
- (3) Among others, PDRCI performs the following functions in relation to the administration of arbitrations:
 - (a) Receive and communicate pleadings and other papers from the parties to the arbitral tribunal, or vice versa, and from one party to another;
 - (b) Monitor the arbitration process;
 - (c) Confirm appointments in arbitrations under the Rules;
 - (d) Resolve challenges to and replacement of arbitrators;
 - (e) Act as appointing authority;

- (f) Exercise supervisory authority over arbitrators to ensure that they perform their functions with due diligence and efficiency in accordance with the parties' arbitration agreement and the Rules;
- (g) Fix, assess and collect provisional advances for arbitration fees;
- (h) Resolve arbitration-related issues prior to the constitution of the arbitral tribunal, such as extension of time and appointment of emergency arbitrators;
- (i) Arrange facilities and services to be provided during the arbitration;
- (j) Provide information to parties on matters relating to the drafting of arbitration agreements or the adoption of appropriate rules to govern the conduct of arbitration for a speedy and fair resolution of their disputes; and
- (k) Provide assistance on issues relating to joinder of parties or consolidation of arbitrations or as the arbitral tribunal may request in aid of arbitration.

Article 3. PDRCI Secretariat, Secretary General and Counsel-In- Charge of the File

PDRCI Secretariat

- (1) The PDRCI Secretariat is responsible for providing technical and administrative support to the PDRCI Board and its committees. It also assists the Secretary General in the performance of his/her functions. It is headed by the Executive Director who is responsible for its day-to-day operations.

Secretary General

- (2) PDRCI monitors the status of ongoing arbitrations through the Secretary General. The Secretary General shall have access to the files of a case, which shall include all pleadings, papers and communications in the arbitration. In case of a manifest violation of the Rules, PDRCI, upon recommendation of the Secretary General, may intervene directly in the conduct of an arbitration. The Secretary General shall submit periodic reports to PDRCI concerning all arbitrations under the Rules. The Secretary General is assisted by or may delegate his monitoring functions in respect of a particular case to the PDRCI Secretariat.

Counsel-In-Charge of the File

- (3) The Secretary General may recommend to PDRCI the appointment of a Counsel-In-Charge of the File ("File Counsel") to monitor an arbitration and to report to PDRCI. The File Counsel shall also have access to the file and may attend a hearing and any meeting of the arbitral tribunal and the parties, unless the arbitral tribunal expressly directs otherwise, and shall regularly inform the Secretary General of the progress of or lack of progress in the case.

Article 4. Time frame for Completion of Arbitration

- (1) Arbitrations under the Rules shall be completed within a period of one (1) year from the constitution of the arbitral tribunal.

- (2) When an arbitration case is not fully and completely resolved by an arbitral tribunal in a final award or in a final order of dismissal within a period of one (1) year from the constitution of the arbitral tribunal, the File Counsel, if any, shall submit a full and complete written report to the Secretary General.
- (3) The Secretary General shall confer with the arbitral tribunal or any member thereof to ascertain the cause for the delay and submit to PDRCI a report of his verification of the relevant circumstances and recommend to PDRCI whether to give the arbitral tribunal a reasonable extension of the period for making the final award or to replace the chairman, or an arbitrator or the entire tribunal. PDRCI shall have the sole authority to remove and replace an arbitrator, a chairman or the entire tribunal.

Article 5. Code of Ethics

PDRCI hereby adopts as its Code of Ethics for Arbitration the: (a) Rules of Ethics for International Arbitrators adopted by the International Bar Association (“IBA”); (b) 2014 IBA Guidelines on Conflicts of Interest in International Arbitration; and (c) IBA Guidelines on Party Representation in International Arbitration, to the extent that they do not conflict with any provision of Philippine law.

Article 6. Duties of Arbitrators and Parties

Duties of Arbitrators

An arbitrator who accepts an appointment as arbitrator shall:

- (1) Comply with the applicable laws, the Rules and these Guidelines, or any other applicable arbitration rules and the PDRCI

Code of Ethics for Arbitration, and to devote as much time and attention to the arbitration as the circumstances may require in order to achieve the objective of a speedy, effective and fair resolution of the dispute.

- (2) Refrain from making any communication or taking any action that may be interpreted as solicitation or as accepting, or having a predisposition to accept or to receive any gift, favor or advantage from a party or its lawyer or representative or from any other representative.
- (3) Comply faithfully with the rules concerning prompt disclosure of any potential conflict of interest during the proceedings and up to the time of final award.
- (4) Ensure that the proceedings are kept confidential including the records of the arbitration and to avoid any ex parte communication with the Parties, their lawyers or representatives, or any other person concerning the proceedings.
- (5) Ensure the complete resolution of the arbitration not later than one (1) year from the date of the constitution of the arbitral tribunal, unless PDRCI extends this period.
- (6) Comply with administrative requirements concerning transmission and delivery of documents and other submissions, the selection of the venue of the arbitration, arrangements for travel, hotel bookings, facilities for site visits, recording requirements including video and audio equipment and the like, and the collection of provisional advances by complying without equivocation with any directive from PDRCI or the PDRCI Secretariat to suspend the proceedings for non-payment of fees and charges that are past due.

- (7) PDRCI may, on its own initiative, upon consultation with the parties and the arbitral tribunal, remove or replace the arbitrator in the event that the arbitrator fails to comply with the Rules, including the Guidelines.
- (8) An arbitrator who fails to resolve a dispute and make and release a final award within a period of one (1) year from the date the arbitral tribunal is constituted or within such extended period as PDRCI may grant, shall be conclusively presumed to be de facto incapacitated to act and this shall constitute sufficient cause for his removal and replacement.
- (9) An arbitrator shall perform his/her duties promptly and with due diligence until a full final award is made.

Duties of Parties

A party to an arbitration shall:

- (10) Comply with: (a) the applicable provisions of the Rules and these Guidelines; (b) the applicable arbitration agreement(s); (c) any applicable arbitration law or rules; and (d) the PDRCI Code of Ethics for Arbitration.
- (11) Not in any manner improperly influence any of the arbitrators on matters that require action or resolution by the arbitral tribunal.
- (12) Not to seek the removal of an arbitrator that it appoints by directly or indirectly exercising moral suasion and pressuring or persuading the arbitrator to resign.

Article 7. Confirmation of Arbitrator Appointments

- (1) The appointment of any arbitrator under the Rules is subject to confirmation by PDRCI.

- (2) In addition to other applicable requirements, no arbitrator appointment shall be confirmed unless the following requirements are complied with:
 - (a) Submission of a signed copy of the prescribed form for Arbitrator Acceptance, Oath of Office and Statement of Independence and Impartiality (Schedule C of *Guidelines on Fees*).
 - (b) The arbitrator's curriculum vitae, which shall include pertinent information about the nominee, his/her contacts or involvement with a party or party-related entities, either as officer, director, employee, agent, counsel, consultant, adviser, trustee or trustor, or with such organizations, causes, activities, or programs from which a party may have cause or reason to believe that the arbitrator is not independent or impartial, or is otherwise incapable of rendering a fair and just award.
- (3) An arbitrator whose appointment is confirmed by PDRCI shall, without delay, submit an oath or affirmation in writing undertaking to efficiently, faithfully and fairly conduct the arbitration and to make just awards or orders according to the best of his ability and understanding. The oath or affirmation shall be provided to PDRCI and to the parties.

Article 8. Default Appointment of Arbitrator

- (1) In making a default appointment, PDRCI shall have regard to such considerations as are likely to ensure the appointment of an independent and impartial arbitrator.
- (2) PDRCI, having regard to the circumstances, may give the parties a period of not

more than thirty (30) days to submit their positions with respect to PDRCI making the default appointment.

- (3) PDRCI shall inform the parties and the members of the arbitral tribunal of the appointment made as soon as possible.

Article 9. Resolution of Challenge of an Arbitrator

- (1) This Article provides for the rules for challenging arbitrators under Article 20(1) of the Rules.
- (2) A notice of challenge shall be in writing and shall state the reasons for the challenge.
- (3) An arbitrator may be challenged on any grounds specified in the applicable arbitration law, rules or agreements.
- (4) The grounds of a challenge shall, in principle, be limited to those set out in the notice of challenge.
- (5) The other party or parties to the arbitration and the challenged arbitrator may submit an answer to the notice of challenge, within fifteen (15) days from receipt.
- (6) The challenging party may comment on the answers to the notice of challenge within five (5) days from receipt of the answer submitted pursuant to the preceding paragraph.
- (7) PDRCI shall determine the challenge on the basis of written evidence and written submissions alone, unless it decides that it is appropriate to hold one or more hearings.
- (8) PDRCI's determination of the challenge shall be communicated to the parties, the challenged arbitrator and, where applicable, the other members of the arbitral tribunal in writing.

- (9) PDRCI has no obligation to, but may give reasons for its determination on the challenge.
- (10) Until a decision is made to replace the arbitrator in case of a challenge, the arbitration shall continue notwithstanding the challenge and the challenged arbitrator shall continue to participate therein as an arbitrator.
- (11) The party making the challenge shall pay such fees as may be assessed by PDRCI pursuant to Article 3(3) of the *Guidelines on Fees*. If the party making the challenge fails to pay such fees within the period granted by PDRCI, the challenge shall be dismissed. PDRCI may at any time require the party making the challenge to deposit further sums to meet its additional fees and expenses, taking into account, among others, the nature of the case and the nature and amount of work performed by PDRCI.
- (12) PDRCI shall have the sole discretion to decide whether and when and in what manner arbitrators' fees of challenged arbitrators shall be released to the arbitrators, taking into account all relevant circumstances of the case. When an arbitrator is challenged, and before the matter of the challenge is finally resolved, PDRCI may allow the release of all or part of the arbitration fees to the arbitrator.

Article 10. Replacement of Arbitrator

When an arbitral tribunal is truncated because of the death, resignation, disqualification and removal of an arbitrator, the remaining arbitrators shall suspend the arbitration proceedings until the replacement arbitrator has been appointed.

Article 11. Appointing Authority for *Ad Hoc* and UNCITRAL Arbitrations

- (1) If so empowered pursuant to an agreement of the parties, PDRCI shall act as appointing authority in accordance with the parties' agreement and/or the *UNCITRAL Arbitration Rules*.
- (2) Where an authority within PDRCI is requested to act as appointing authority pursuant to the parties' agreement, such designation will be understood to refer to PDRCI and these Guidelines shall apply.
- (3) A party requesting PDRCI to act as appointing authority shall submit a request containing all the information that the requesting party may consider appropriate to allow PDRCI to make the requested appointment.
- (4) When acting as the appointing authority under the *UNCITRAL Arbitration Rules*, PDRCI shall follow the relevant provisions of the *UNCITRAL Arbitration Rules* with respect to appointment of arbitrators, resolution of challenges of arbitrators, replacement of arbitrators and any other functions of an appointing authority.
- (5) When acting as appointing authority in *ad hoc*, non-UNCITRAL arbitrations, the following rules shall apply:
 - (a) PDRCI, exercising its discretion within the limits fixed by the parties in their agreement(s), or the limits contained in the applicable law or rules, shall appoint an arbitrator independent of the parties involved in the arbitration.
 - (b) The parties to non-UNCITRAL arbitrations may agree that PDRCI, as appointing authority, shall have the power to decide a challenge

made by any of the parties against any member of the arbitral tribunal.

- (c) Unless otherwise agreed by the parties, a challenge shall be made in accordance with the Rules and these Guidelines.
- (4) For purposes of this Article 10, PDRCI may, if it deems necessary, require the submission of comments from the party, arbitrator or arbitral tribunal or the holding of hearings prior to resolving the challenge.
- (5) If so empowered by an arbitration clause, a subsequent agreement of the parties or otherwise, PDRCI shall consider providing services, besides those specifically indicated in this Article 10, in accordance with the parties' agreement.
- (6) An arbitrator appointed pursuant to this Article 10 shall comply with all the requirements of the Rules for the confirmation of the appointment of an arbitrator by PDRCI.
- (7) PDRCI has no obligation to give reasons for its determinations in connection with its functions as an appointing authority under this Article 10.
- (8) The party making the request shall pay the fees as may be assessed by PDRCI pursuant to Article 3(3) of the *Guidelines on Fees*. If the party making the request fails to pay such fees within the period granted by PDRCI, the request will be dismissed. PDRCI may require the party making the request to deposit further sum(s) to meet its additional fees and expenses, taking into account, among others, the nature of the case and the nature and amount of work performed by PDRCI.

ANNEX B

PDRCI GUIDELINES ON FEES

(Effective as of 1 November 2014)

Article 1. General Rule

1. These Guidelines, together with its Schedules ("*Guidelines on Fees*"), shall form part of the PDRCI Arbitration Rules ("*Rules*"). By agreeing to submit their dispute to arbitration under the Rules, the parties are deemed to have accepted the terms of these *Guidelines on Fees*. By accomplishing and submitting to PDRCI the form attached as Schedule "C" (for arbitrators), the arbitrators appointed under the Rules are deemed to have accepted the terms of these *Guidelines on Fees*.
2. Notwithstanding any agreement of the parties, the provisional advances on cost¹ ("*Provisional Advance*" or "*Provisional Advances*") shall be set and collected solely by PDRCI. In setting the Provisional Advances for arbitrator's fees, PDRCI shall follow the schedule of fees for arbitrators in the cases that it administers. The schedule of fees, as of 1 November 2012, is provided in Schedule "A." In exceptional cases, PDRCI may increase the fees for certain arbitrations on account of the amount in dispute, complexity of the subject matter, time spent by the arbitrators and other relevant circumstances.
3. Payment of Provisional Advances shall be made directly to PDRCI. Unless PDRCI grants a different period, Provisional Advances shall be paid within thirty (30) days from receipt of the corresponding statement from PDRCI.

1 For Arbitrator's Fees, administrative fees and any other arbitration-related expenses

4. Payment of Provisional Advances shall be exclusive of any applicable value-added tax ("VAT").
5. The parties and the arbitrators involved in the arbitration shall comply with the relevant tax laws and regulations.
6. The rules on the fees in relation to Emergency Relief Proceedings are provided in Schedule "D," as supplemented by other parts of these *Guidelines on Fees*.
7. The schedules forming part of these *Guidelines on Fees* are:
 - (a) Schedule A - Schedule of Fees as of 1 November 2012²;
 - (b) Schedule B - Form for Information to be provided by Parties;
 - (c) Schedule C - Form for Arbitrator Acceptance, Oath of Office and Statement of Independence and Impartiality; and
 - (d) Schedule D - *Guidelines on Fees* for Emergency Relief Proceedings.

Article 2. Arbitrator's Fees

1. Provisional Advances for arbitrator's fees are composed of: (a) arbitrator's fees ("Arbitrator's Fees"); and (b) fees for services extended by PDRCI to arbitrators ("PDRCI Development Fund"), set at 10% of the Arbitrator's Fees.
2. Payments received by PDRCI for Arbitrator's Fees are received in trust for the arbitrators and not for the account of PDRCI. PDRCI shall issue acknowledgment receipts for such payments. Arbitrator's Fees are released solely and directly by PDRCI. Once released by PDRCI, the Arbitrator's Fees are deemed paid by the

² For the current Schedule of Fees, please consult PDRCI.

parties to the arbitrators, in accordance with PDRCI's Guidelines on Arbitrator's Compensation ("Guidelines on Arbitrator's Compensation"). Any agreement of the parties that allows a party or an entity other than PDRCI to pay Arbitrator's Fees or arbitration-related expenses to an arbitrator directly, or to any other person, are superseded by these *Guidelines on Fees*.

3. For purposes of releasing the Arbitrator's Fees to the arbitrators, PDRCI shall act as the parties' authorized agent for the sole purpose of withholding and remitting to the Bureau of Internal Revenue ("BIR") the withholding taxes due on the Arbitrator's Fees, if any.³ For this purpose, the parties and the arbitrators shall provide to PDRCI all relevant tax information (see Schedules "B" and "C"). A Certificate of Tax Withheld shall be issued to the arbitrators,

3 Philippine tax laws specify the income payments that are subject to creditable withholding tax ("CWT"). Under existing tax laws, rules and regulations, payments of administrative and Arbitrator's Fees are generally not subject to CWT. Payments received by PDRCI in trust for arbitrators do not qualify as payments of professional, talent or promotional fees that are subject to CWT under Section 2.57.2.(A) of Revenue Regulation No. 2-98, as amended, which expressly identifies the individuals the payments of fees to whom are subject to CWT. Arbitrators do not fall under the catch-all clause introduced under Revenue Regulations No. 3-03 (amending paragraph 1 Section 2.57.2.(A)), i.e., "those individually engaged in the practice of ... all other profession requiring government licensure examinations and/or regulated by the Professional Regulations Commission, Supreme Court," etc. Nevertheless, parties to PDRCI arbitrations have sought in the past to subject to CWT payments intended for PDRCI arbitrators. In light of specific procedures for the release of Arbitrator's Fees, the withholding of taxes by parties may make it difficult for the arbitrators to claim tax credits. These Guidelines addresses this ensuring that the withholding of taxes are made in accordance with Philippine tax laws/rules. In the interest of harmonizing the withholding tax rates to be applied to arbitrator 's fees, PDRCI shall adopt and apply the 15% rate applicable to payments made to professionals under Revenue Regulations No. 2-98.

except in the case of an arbitrator whose tax withheld is considered as a final withholding tax under Philippine tax laws and regulations.⁴

4. The arbitrator's fees shall be exclusive of VAT. The parties shall be assessed the amount of VAT due on the Arbitrator's Fees, which shall be paid as part of the advance on cost to PDRCI. Prior to acceptance of their nomination, arbitrators shall advise PDRCI in writing whether or not they are subject to VAT. The parties and the arbitrators acknowledge that the release of the Arbitrator's Fees to the arbitrators is the income-generating event for purposes of withholding taxes, if any. The date of receipt by the arbitrators of the Arbitrator's Fees shall be considered to be the date of payment of Arbitrator's fees from which the payment of VAT, if applicable, shall be reckoned. PDRCI shall authorize the release of Arbitrator's Fees to the Arbitral Tribunal in accordance with the Schedule of Fees and, upon such release, the arbitrators shall issue an official receipt to the paying party. The parties agree that they shall not withhold any tax or claim input VAT on the Arbitrator's Fees unless and until such fees are actually paid to the arbitrators by PDRCI on the parties' behalf in accordance with its Guidelines on Arbitrator's Compensation.
5. PDRCI may assign to an Arbitration Monitoring Committee ("Committee") the performance of any of its functions under these *Guidelines on Fees*. The Committee shall be composed of at least three (3)

4 In case of an arbitrator who is a non-resident alien not engaged in trade or business in the Philippines (i.e. is an alien who comes to the Philippine and stays for an aggregate period of 180 days or less during any calendar year) and renders services in the Philippines, the payments of Arbitrator's Fees shall be subject to the 25% final withholding tax.

members: (a) the Treasurer, who shall act as Chairman; (b) Secretary General; and (c) appointee/s of the President. The Counsel-In-Charge of the file may be invited by the Committee to sit in its deliberations as an ex-officio member. The Committee cannot amend the Schedule of Fees.

6. Except as the parties or the Arbitral Tribunal may agree otherwise, or PDRCI decides in exceptional circumstances at the request of the Arbitral Tribunal, the Chair of the Arbitral Tribunal shall be entitled to forty percent (40%) and each arbitrator, thirty percent (30%), of the Arbitrator's Fees.
7. Except as PDRCI may direct otherwise, taking into account all relevant circumstances, PDRCI shall release Arbitrator's Fees in accordance with its Guidelines on Arbitrator's Compensation.
8. The PDRCI Development Fund shall be treated in the same manner as Administrative Fees under Article 3 below.

Article 3. Administrative Fees

1. The amount of Administrative Fees shall be determined by PDRCI in accordance with the Rules and these *Guidelines on Fees*.
2. Each Notice of Arbitration shall be accepted for filing by the PDRCI Secretariat upon payment of a non-refundable filing fee of Fifty Thousand Pesos (P50,000.00) ("Filing Fee"), to be credited to the claimant's Provisional Advance.
3. PDRCI may increase and/or charge a separate, reasonable, Administrative Fee for performing the following or similar functions:
 - (a) providing a Counsel-In-Charge of the file;

- (b) resolving or dealing with a Request for Joinder of parties or consolidation of arbitrations;
 - (c) dealing with an application for Interim Measures or Emergency Relief;
 - (d) acting as an appointing authority under the Rules or any other rules pursuant to an agreement of the parties;
 - (e) making a default appointment of an arbitrator or chair of an Arbitral Tribunal;
 - (f) acting on a challenge to the appointment of an arbitrator;
 - (g) making a decision on a request to replace an arbitrator who has become de facto or de jure incapable of acting or continuing as such arbitrator;
 - (h) arranging a site inspection, or a hearing other than at PDRCI's hearing rooms;
 - (i) engagement of an expert witness for the Arbitral Tribunal;
 - (j) issuance of subpoena, taking of the deposition of a witness, conducting proceedings in a different venue, or acting on applications for Interim Measures; and
 - (k) performing other similar functions.
4. The Secretary General may recommend to PDRCI the appointment of a Counsel-In-Charge of the file, taking into account the amount in dispute, the complexity of the arbitration, the presence of one or more foreign arbitrators, the foreign venue of the arbitration proceedings, and other relevant circumstances. Such counsel shall monitor the arbitration and report to PDRCI when circumstances or situations

develop that may call for the exercise of the supervisory authority of PDRCI. Such counsel shall be entitled to an allowance of not less than one thousand pesos (P1,000.00) nor more than three thousand pesos (P3,000.00) per hour actually devoted to the arbitration, or such other fees as PDRCI may subsequently determine. The compensation to the Counsel-In-Charge of the file shall be charged to the Administrative Fees to be paid by the parties.

5. Administrative Fees paid to PDRCI shall not be subject to withholding taxes, PDRCI being a non-stock, non-profit organization exempt from income tax under Philippine tax laws and regulations. If the parties request in writing that withholding taxes be applied on such fees, the amount to be paid shall be grossed-up to cover all taxes due, including VAT, which shall be shouldered by the paying party/ies. PDRCI shall issue an official receipt for its Administrative Fees.

Article 4. Advances on Cost

1. The Advances on Cost shall be fixed by PDRCI in accordance with the Rules and these *Guidelines on Fees*.
 - (a) **Provisional Advances** - Separate Provisional Advances on Cost shall be assessed by PDRCI on the claimant upon receipt of the Notice of Arbitration and on the respondent upon receipt of the Response to the Notice of Arbitration.
 - (b) **Final Advances on Cost ("Final Advances")** - The Final Advance on Cost shall be assessed by PDRCI on the claimant upon receipt of the Statement of Claims and on the respondent upon receipt of the Statement of Defense and counterclaim.

- (c) **Supplementary advances on cost (“Supplementary Advances”)** - Pursuant to Article 4(3) of these *Guidelines on Fees*, further advances on cost may be assessed on the parties.
2. The Advances on Cost shall consist of the Arbitrator’s Fees, Administrative Fees, and any other arbitration-related expenses that may be incurred in the course of arbitration. In setting the advances on cost, PDRCI shall take into account the amount of a party’s monetary claims and/or the value of any non-monetary claims. The following rules shall further apply:
- (a) a party who prays for specific performance shall specify the monetary value of the performance or the amount of damages that may be awarded when performance is no longer possible;
 - (b) a party who prays for rescission or annulment of contract, where the applicable law allows the award of a sum of money as indemnity or alternative relief, shall quantify its claim and state its equivalent monetary value;
 - (c) a party who makes a claim as indemnity or alternative relief shall provide a provisional estimate of the amount or value of its claim;
 - (d) any additional or supplemental claim may be specified in an amended or supplemental statement to be submitted prior to the closure of hearing;
 - (e) in cases where a party fails or refuses to specify the monetary value of its claim, PDRCI shall make a provisional estimate of the amount of a party’s claim for purposes of fixing the Advances on Cost; and

- (f) the Advances on Cost may be based on the party's statement of the monetary value of the claim or on the provisional estimate made by PDRCI.
3. The Advances on Cost may be adjusted and readjusted any time during the arbitral proceedings. PDRCI may require payment of Supplementary Advances on account of, but not limited to:
- (a) increase or decrease in the amount in dispute or the claims and counterclaims of the parties;
 - (b) one or more foreign arbitrators are appointed at the request of a party or of the parties or when the Arbitration Agreement/s so provide;
 - (c) the agreed place of arbitration is in another country or is outside Metro Manila;
 - (d) increase in cost is caused by the evolving difficulty or complexity of the arbitration, such as, but not limited to:
 - (i) increase in the number of parties allowed by the Arbitral Tribunal or PDRCI;
 - (ii) submission of applications to stay or dismiss the arbitration or to enjoin a party or the Arbitral Tribunal or a member of the Arbitral Tribunal from participating in the arbitration;
 - (iii) submission of an Application for Interim Measure or Emergency Relief; or
 - (iv) bifurcation of the proceeding to dispose first of any preliminary issues, including a challenge to the jurisdiction of the arbitral tribunal, before a hearing and determination

of all the other claims and counterclaims of the parties; or

- (e) any other circumstance when PDRCI may consider it appropriate to assess further administrative fees or other cost to the parties.
4. In requiring Supplemental Advances, PDRCI shall take into account any corresponding additional arbitration-related expenses.
 5. If the required Provisional Advances are not paid in full within thirty (30) days after receipt of the invoice for payment:
 - (a) PDRCI shall not act on the Notice of Arbitration or the Response to the Notice of Arbitration, including any proposals for the appointment of arbitrators;
 - (b) In case of failure to pay by the claimant, PDRCI shall not require the respondent to submit a response to the Notice of Arbitration, and, upon determination of the PDRCI, the claim shall be deemed withdrawn or the arbitration shall be suspended; and
 - (c) In case of failure to pay by the respondent, PDRCI shall invite the claimant to pay the respondent's share of the advance on cost. Pending payment by claimant, the Arbitral Tribunal shall not act on any counterclaim, or any other claim or affirmative relief sought by respondent.
 6. If the required Final and Supplementary Advances are not paid in full within thirty (30) days after receipt of the invoice for payment, PDRCI or the Arbitral Tribunal may do any of the following:

- (a) extend the period for payment to a period of not more than thirty (30) days unless PDRCI determines otherwise;
 - (b) continue the proceedings but suspend the hearing on the claim of the defaulting party;
 - (c) suspend the proceedings for a period of not more than thirty (30) days, unless PDRCI determines otherwise, or until payment of the deposit in full, whichever is earlier;
 - (d) receive evidence of the special defenses of the defaulting party;
 - (e) receive the evidence of the defaulting party but omit from the award the Arbitral Tribunal's findings of fact and of law on its claim;
 - (f) determine whether the defaulting party may examine the witnesses of the adverse party and the scope of such examination;
 - (g) dismiss the claim, counterclaim, or any other claim, without prejudice to reinstatement or refiling;
 - (h) consider the claim withdrawn; and/or
 - (i) take any other appropriate action.
7. In all cases of non-payment of advances on cost, any party shall be free to pay any other party's share of any advance on cost should such other party fail to pay its share.
8. Any amount paid by a party as advances on cost, which exceeds the cost of the arbitration actually set by PDRCI, shall be reimbursed to the party. The amount to be reimbursed to the party shall be determined by PDRCI with the assistance of the Arbitral Tribunal, if necessary.

9. If the arbitral proceedings terminate before the arbitral tribunal shall have rendered a final award, or the parties shall have settled their dispute and withdrawn the case from arbitration, PDRCI shall in its discretion set the cost of arbitration in accordance with its Guidelines on Arbitrator's Compensation, taking into account the stage of the arbitral proceedings, whether pre-hearing proceedings have taken place and have been completed, or whether hearing on the merits were completed and the Arbitral Tribunal were ready to release its final award and any other relevant circumstances.

SCHEDULE A

SCHEDULE OF FEES⁵

Article 1. Table of Arbitrator's Fees

(Effective 1 November 2012)

The arbitrator's fees shall consist of a Base Amount ("BA") plus adjustments to reflect, among others, complexity of the case, number of disputants and number of arbitrators. The arbitrator's fees will be separately assessed for the claimant and the respondent on the basis of their respective claim or counterclaim in accordance with the Rules.

1. Base Amount (BA), in Philippine Peso

a.	Up to 1M	100,000.00	
b.	over 1M to 5M	105,000.00	+ 4.0% of excess of amount
c.	over 5M to 10M	265,000.00	+ 3.0% of excess of amount
d.	over 10M to 20M	420,000.00	+ 2.0% of excess of amount
e.	over 20M to 50M	625,000.00	+ 1.5% of excess of amount
f.	over 50M to 100M	1,080,000.00	+ 1.0% of excess of amount
g.	over 100M to 500M	1,585,000.00	+ 0.5% of excess of amount
h.	over 500M	3,590,000.00	+ 0.2% of excess of amount

5 As of 1 November 2012. For the current Schedule of Fees, please consult PDRCI.

2. Adjustments

The BA computed in Item No. 1 shall be adjusted to take into account the following:

	Adjustment Factor
2.1 Complexity (AF1)	
Simple	1.0
Complex	2.0
2.2 No. of Disputants (AF2)	
2	1.0
3	2.0
4 and over	3.0
2.3 No. of Arbitrators (AF3)	
1	1.0
3	2.0
2.4 Overall Adjustment Factor (OAF)	
OAF = (AF1+ AF2 + AF3) – 3.0	

3. Total Honoraria = BA x (OAF + 1.0)

Article 2. Table of Administrative Fees

(Effective 1 November 2012)

The Administrative Fees shall be separately computed for the claimant and the respondent on the basis of their respective claim or counterclaim in accordance with the Rules and shall be collected from the parties in the form of Advances on Cost pursuant to Article 4 of the *Guidelines on Fees*.

In all cases, the claimant is required to pay upon filing of its Notice of Arbitration a Filing Fee of P50,000.00.

The Administrative Fees shall be based on the following schedule:

Claim or Counter-Claim

up to (1M)	P50,000.00	
Over 1M to 5M	P55,000.00	+ 1.68% of amount in excess of 1M

Claim or Counter-Claim

Over 5M to 10M	P127,200.00	+ 0.91% of amount in excess of 5M
Over 10M to 50M	P177,700.00	+ 0.17% of amount in excess of 10M
Over 50M to 100M	P250,700.00	+ 0.17% of amount in excess of 50M
Over 100M to 200M	P340,700.00	+ 0.16% of amount in excess of 100M
Over 200M to 300M	P505,700.00	+ 0.16% of amount in excess of 200M
Over 300M to 400M	P670,700.00	+ 0.16% of amount in excess of 300M
Over 400M to 500M	P835,700.00	+ 0.16% of amount in excess of 400M
Over 500M to 600M	P1,005,700.00	+ 0.16% of amount in excess of 500M
Over 600M to 700M	P1,170,700.00	+ 0.16% of amount in excess of 600M
Over 700M to 800M	P1,335,700.00	+ 0.16% of amount in excess of 700M
Over 800M to 900M	P1,500,700.00	+ 0.16% of amount in excess of 800M
Over 900M to 1B	P1,665,700.00	+ 0.16% of amount in excess of 900M

Claim or Counter-Claim

Over 1B to 2B P1,830,700.00 + 0.16% of amount in excess of 1B, in no case to exceed P2.5 Million

Over 2B P3,435,700.00 + 0.16% of amount in excess of 2B, but in no case to exceed P5 Million.

**Article 3. Fees in connection with
Emergency Relief proceedings**

The Emergency Arbitrator’s Fees and the Administrative Fees and related expenses in case of Emergency Relief proceedings shall be set by PDRCI, taking into account the nature of the case, the nature and amount of work performed or to be performed by the emergency arbitrator, PDRCI, the President and the Secretariat of PDRCI, among other considerations.

SCHEDULE B

PARTY INFORMATION

This form must be completed and signed by parties as soon as possible after the commencement of the arbitral proceedings.

Pursuant to the PDRCI Arbitration Rules ("Rules"), PDRCI acts as my/our agent for the limited purpose of withholding and remitting on my/our behalf the proper withholding taxes due on the arbitration cost, if any, to the Bureau of Internal Revenue ("BIR"). For this purpose, I am providing PDRCI with the following relevant information:

1. Withholding Agent's Name:

[Party's complete name for individuals /
registered name for non-individuals]

2. Registered Address / ZIP Code:

3. Tax Identification Number: _____

4. RDO Code: _____

Name of Party

Name of Representative of Party

Position of Representative of Party

SCHEDULE C

ARBITRATOR ACCEPTANCE, OATH OF OFFICE AND STATEMENT OF INDEPENDENCE AND IMPARTIALITY

I, _____,

Filipino, of legal age and with office address
at _____

having been appointed as Arbitrator in the case
of _____

PDRCI Case No. _____

_____, do hereby:

1. ACCEPT the appointment;
2. Agree to comply with the applicable law, including the relevant tax laws and regulations, the PDRCI Arbitration Rules ("Rules") and the PDRCI Code of Ethics for Arbitration (i.e., the Rules of Ethics for International Arbitrators adopted by the International Bar Association ["IBA Rules"], and the IBA Guidelines on Conflicts of Interest in International Arbitration ["IBA Guidelines"]);
3. Agree to devote as much time and attention to the arbitration as the circumstances may require in order to achieve the objective of a speedy, effective and fair resolution of the dispute;

4. State that:
- (a) I am in full enjoyment of my civil rights;
 - (b) I am not related by blood or by marriage within the sixth civil degree to either party to the controversy;
 - (c) I do not have any financial, fiduciary or other interest in the controversy or cause to be decided or in the result of the proceeding, or have any personal bias which might prejudice the right of any party to a fair and impartial award;
 - (d) I am not aware of the existence of any circumstance that will cause my disqualification as provided in the parties' arbitration agreement; and
 - (e) I undertake to faithfully and fairly hear and examine the matters in controversy and to make a just award according to the best of my ability.
5. I likewise confirm that I have reviewed the IBA Rules and the IBA Guidelines and hereby state that: *(Please check as applicable)*
- To the best of my knowledge, there are no facts or circumstances, past or present, that need to be disclosed because they might be of such a nature as to call into question my independence or impartiality in the eyes of the parties; or
- While I am independent and impartial and intend to remain so, I wish to call the parties' attention to certain facts or circumstances which I hereby disclose (see attached Disclosure Statement) because they might be of such a nature as to call into question my independence or impartiality in the eyes of any of the parties based on the standards provided under the IBA Rules and the IBA Guidelines.

I also undertake to make an immediate disclosure to the parties should I hereafter become aware of the existence of any facts or circumstances which might be of such a nature as to call into question my independence or impartiality based on the foregoing standards.

6. Further to the foregoing:

- (i) I hereby inform the PDRCI that I am subject [] or not subject [] to value-added taxes ("VAT"). I undertake to inform PDRCI of any change in my status in respect hereof as soon as said change in status takes effect.
- (ii) I agree to issue an official receipt (VAT or non-VAT) in favor of the parties immediately upon my receipt of my Arbitrator's Fees.⁶
- (iii) I agree to pay directly to the Bureau of Internal Revenue ("BIR") the proper VAT due on my Arbitrator's fees within the period prescribed by law.
- (iv) I consent to PDRCI's authority to deduct from my Arbitrator's Fees

7. 15% withholding tax to be remitted by the PDRCI to the BIR.

I declare that I have read, understood and agree to the PDRCI *Guidelines on Fees*. My conformity with the Rules serve as a binding agreement between me and PDRCI, and this shall supersede any contrary agreement or understanding I have with any of the party/ies involved in this arbitration.

6 Not applicable if the arbitrator is a member of a law firm and the law firm will issue the official receipt.

Name

Address

TIN

ACKNOWLEDGMENT

SUBSCRIBED AND SWORN to before me, this _____ day of _____.

Affiant exhibited to me his/her Personal Identifications, to wit:

Name	Competent Evidence of Identity		Community Tax Certificate	
	Type of ID	ID Number and Expiry Date (if applicable)	Number	Date/Place Issued
	1.			
	2.			

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Series of 2015.

SCHEDULE D

GUIDELINES ON FEES FOR EMERGENCY RELIEF PROCEEDINGS

Article 1. Emergency Arbitration Fee

1. In connection with an Application for Emergency Relief, the applicant must pay an amount of PhP250,000, as provisional advance on cost for PDRCI administrative fees, the emergency arbitrator's fees and any other expenses relating to the Emergency Relief proceedings ("Emergency Arbitration Fee"). PDRCI shall not act on the Application unless the Deposit has been paid.
2. The President of PDRCI may, at any time during the Emergency Arbitrator proceedings, increase the provisional advance on cost for Emergency Arbitration Fee taking into account, among others, the nature of the case and the nature and amount of work performed or to be performed by the emergency arbitrator, PDRCI, the President and the Secretariat of PDRCI. If the party which submitted the Application fails to pay any part of the provisional advance within the time limit fixed by the President or the Secretariat of PDRCI, the Application shall be considered as withdrawn.

Article 2. Emergency Arbitration Cost

3. The PDRCI shall set the cost of the Emergency Relief proceedings. The Emergency Arbitrator shall decide which of the parties shall bear the cost and in what proportion they shall be borne in its Order ("Emergency Decision"). The term

“cost” in Emergency Relief proceedings shall include:

- (a) The fees of the emergency arbitrator, PDRCI administrative fees and other expenses, as determined by PDRCI pursuant to Article 3 of Schedule “A”;
 - (b) The travel and other expenses incurred by the emergency arbitrator;
 - (c) The cost of expert advice and of other assistance required by the emergency arbitrator;
 - (d) The travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal; and
 - (e) The cost of legal representation and assistance reasonably incurred by the successful party in connection with the Emergency Relief proceedings, provided such cost were claimed and proved during the Emergency Relief proceedings.
4. In the event that the Emergency Relief proceedings is terminated prior to the making of an Emergency Decision, PDRCI or its President shall determine the amount to be reimbursed to the applicant, if any. An amount of PhP50,000 for PDRCI Administrative Fees is non-refundable in all cases.

Article 3. Application of other rules

1. The following provisions of the *Guidelines on Fees* shall apply to Emergency Relief Proceedings:
 - (a) Articles 2(1), 2(3), 2(8), 3(1), 3(4), 3(5), 4(4) and 4(8).

- (b) Articles 2(2) and 2(4), except that Emergency Arbitrator Fees shall be released based on the determination of PDRCI.
 - (c) Articles 3(3) and 4(3) to the extent applicable.
- 2. Schedule B shall be accomplished and submitted to PDRCI by parties to an Emergency Relief proceedings.
- 3. Schedule C shall be accomplished and submitted to PDRCI by emergency arbitrators appointed under the Rules.
- 4. For purposes of the application of this Article, references in Schedule B and Schedule C of the *Guidelines on Fees* to arbitrators and Arbitral Tribunal shall be deemed to be reference to emergency arbitrators and references to arbitration shall be deemed references to Emergency Relief proceedings.

ANNEX C

ACCREDITATION RULES

I. Procedure

1. An application and/or nomination (with a Curriculum Vitae attached) to be an accredited arbitrator of PDRCI must be favorably endorsed by an officer or member of PDRCI to the Accreditation Committee. The nominee must indicate his consent to the nomination and willingness to be bound by the PDRCI Rules.
2. The Accreditation Committee shall review the application/ nomination and may approve the same if the applicant/ nominee has all of the qualifications.
3. The favorable recommendation of the Accreditation Committee will be presented to the Board of Directors who may veto the same. If not vetoed, the application/ nomination is deemed approved and confirmed and effective upon payment of the required membership dues.

II. Qualifications:

1. For Foreign Applicants:
 - A. The applicant/nominee must be an accredited arbitrator in a recognized international or domestic (where he is a resident or citizen) arbitral institute.
 - B. He must have actual experience in international arbitration in at least 3 cases – either as a sole arbitrator, a chairman or member of an arbitral panel.

- C. He must speak and write fluently in English.
 - D. He must become an associate member of PDRCI and pay the appropriate membership dues.
2. For Domestic Applicants:
- A. The Applicant/nominee must have undergone an Arbitrator's Training course with the PDRCI (a "PDRCI Trained Arbitrator").
 - B. The PDRCI Trained Arbitrator must have actual arbitration experience either as sole arbitrator, a chairman or member of an arbitral panel, to be classified as a PDRCI accredited arbitrator.
 - C. The Board of Directors, upon recommendation of the Accreditation Committee, may waive the training requirement for an applicant/nominee who has actual experience in international or domestic arbitration in at least 5 cases.
 - D. The PDRCI Trained Arbitrator/PDRCI Accredited Arbitrator must become a regular member of PDRCI and must comply with all requirements, including payment of the required fees, to be in good standing.

III. Roster of Arbitrators

The PDRCI shall maintain the following Rosters:

- (i) PDRCI Accredited Arbitrators
- (ii) PDRCI Trained Arbitrators
- (iii) Foreign Accredited Arbitrators.

IV. Certification Period

1. The accreditation shall be for a period of four (4) years, unless sooner terminated by the Board of Directors for good reasons.
2. Within the year before the end of the Fourth Year, PDRCI will commence the re-certification process by requesting the Arbitrator to submit the required documentation.

IV. Fees

To maintain the accreditation, all arbitrators are required to pay Membership Dues as may be imposed by the Board.

