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Republic Act No. 9285 April 2, 2004

AN ACT TO INSTITUTIONALIZE THE USE OF AN ALTERNATIVE DISPUTE RESOLUTION SYSTEM IN THE PHILIPPINES AND TO ESTABLISH THE OFFICE FOR ALTERNATIVE DISPUTE RESOLUTION, AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

CHAPTER 1 - GENERAL PROVISIONS

SECTION 1. Title. - This act shall be known as the "Alternative Dispute Resolution Act of 2004."

SEC. 2. Declaration of Policy. - it is hereby declared the policy of the State to actively promote party autonomy in the resolution of disputes or the freedom of the party to make their own arrangements to resolve their disputes. Towards this end, the State shall encourage and actively promote the use of Alternative Dispute Resolution (ADR) as an important means to achieve speedy and impartial justice and declog court dockets. As such, the State shall provide means for the use of ADR as an efficient tool and an alternative procedure for the resolution of appropriate cases. Likewise, the State shall enlist active private sector participation in the settlement of disputes through ADR. This Act shall be without prejudice to the adoption by the Supreme Court of any ADR system, such as mediation, conciliation, arbitration, or any combination thereof as a means of achieving speedy and efficient means of resolving cases pending before all courts in the Philippines which shall be governed by such rules as the Supreme Court may approve from time to time.

SEC. 3. Definition of Terms. - For purposes of this Act, the term:

(a) "Alternative Dispute Resolution System" means any process or procedure used to resolve a dispute or controversy, other than by adjudication of a presiding judge of a court or an officer of a government agency, as defined in this Act, in which a neutral third party participates to assist in the resolution of issues, which includes arbitration, mediation, conciliation, early neutral evaluation, mini-trial, or any combination thereof;

(b) "ADR Provider" means institutions or persons accredited as mediator, conciliator, arbitrator, neutral evaluator, or any person exercising similar functions in any Alternative Dispute Resolution system. This is without prejudice to the rights of the parties to choose

nonaccredited individuals to act as mediator, conciliator, arbitrator, or neutral evaluator of their dispute.

Whenever referred to in this Act, the term "ADR practitioners" shall refer to individuals acting as mediator, conciliator, arbitrator or neutral evaluator;

(c) "Authenticate" means to sign, execute or adopt a symbol, or encrypt a record in whole or in part, intended to identify the authenticating party and to adopt, accept or establish the authenticity of a record or term;

(d) "Arbitration" means a voluntary dispute resolution process in which one or more arbitrators, appointed in accordance with the agreement of the parties, or rules promulgated pursuant to this Act, resolve a dispute by rendering an award;

(e) "Arbitrator" means the person appointed to render an award, alone or with others, in a dispute that is the subject of an arbitration agreement;

(f) "Award" means any partial or final decision by an arbitrator in resolving the issue in a controversy;

(g) "Commercial Arbitration" An arbitration is "commercial if it covers matter arising from all relationships of a commercial nature, whether contractual or not;

(h) "Confidential information" means any information, relative to the subject of mediation or arbitration, expressly intended by the source not to be disclosed, or obtained under circumstances that would create a reasonable expectation on behalf of the source that the information shall not be disclosed. It shall include (1) communication, oral or written, made in a dispute resolution proceedings, including any memoranda, notes or work product of the neutral party or non-party participant, as defined in this Act; (2) an oral or written statement made or which occurs during mediation or for purposes of considering, conducting, participating, initiating, continuing of reconvening mediation or retaining a mediator; and (3) pleadings, motions manifestations, witness statements, reports filed or submitted in an arbitration or for expert evaluation;

(i) "Convention Award" means a foreign arbitral award made in a Convention State;

(j) "Convention State" means a State that is a member of the New York Convention;

(k) "Court" as referred to in Article 6 of the Model Law shall mean a Regional Trial Court;

(l) "Court-Annexed Mediation" means any mediation process conducted under the auspices of the court, after such court has acquired jurisdiction of the dispute;

(m) "Court-Referred Mediation" means mediation ordered by a court to be conducted in accordance with the Agreement of the Parties when an action is prematurely commenced in violation of such agreement;

(n) "Early Neutral Evaluation" means an ADR process wherein parties and their lawyers are brought together early in a pre-trial phase to present summaries of their cases and receive a

nonbinding assessment by an experienced, neutral person, with expertise in the subject in the substance of the dispute;

(o) "Government Agency" means any government entity, office or officer, other than a court, that is vested by law with quasi-judicial power to resolve or adjudicate dispute involving the government, its agencies and instrumentalities, or private persons;

(p) "International Party" shall mean an entity whose place of business is outside the Philippines. It shall not include a domestic subsidiary of such international party or a coventurer in a joint venture with a party which has its place of business in the Philippines.

The term foreigner arbitrator shall mean a person who is not a national of the Philippines.

(q) "Mediation" means a voluntary process in which a mediator, selected by the disputing parties, facilitates communication and negotiation, and assist the parties in reaching a voluntary agreement regarding a dispute.

(r) "Mediator" means a person who conducts mediation;

(s) "Mediation Party" means a person who participates in a mediation and whose consent is necessary to resolve the dispute;

(t) "Mediation-Arbitration" or Med-Arb is a step dispute resolution process involving both mediation and arbitration;

(u) "Mini-Trial" means a structured dispute resolution method in which the merits of a case are argued before a panel comprising senior decision makers with or without the presence of a neutral third person after which the parties seek a negotiated settlement;

(v) "Model Law" means the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law on 21 June 1985;

(w) "New York Convention" means the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards approved in 1958 and ratified by the Philippine Senate under Senate Resolution No. 71;

(x) "Non-Convention Award" means a foreign arbitral award made in a State which is not a Convention State;

(y) "Non-Convention State" means a State that is not a member of the New York Convention.

(z) "Non-Party Participant" means a person, other than a party or mediator, who participates in a mediation proceeding as a witness, resource person or expert;

(aa) "Proceeding" means a judicial, administrative, or other adjudicative process, including related pre-hearing motions, conferences and discovery;

(bb) "Record" means an information written on a tangible medium or stored in an electronic or other similar medium, retrievable form; and

(cc) "Roster" means a list of persons qualified to provide ADR services as neutrals or to serve as arbitrators.

SEC. 4. Electronic Signatures in Global and E-Commerce Act. - The provisions of the Electronic Signatures in Global and E-Commerce Act, and its implementing Rules and Regulations shall apply to proceeding contemplated in this Act.

SEC. 5. Liability of ADR Provider and Practitioner. - The ADR providers and practitioners shall have the same civil liability for the Acts done in the performance of then duties as that of public officers as provided in Section 38 (1), Chapter 9, Book of the Administrative Code of 1987.

SEC. 6. Exception to the Application of this Act. - The provisions of this Act shall not apply to resolution or settlement of the following: (a) labor disputes covered by Presidential Decree No. 442, otherwise known as the Labor Code of the Philippines, as amended and its Implementing Rules and Regulations; (b) the civil status of persons; (c) the validity of a marriage; (d) any ground for legal separation; (e) the jurisdiction of courts; (f) future legitimate; (g) criminal liability; and (h) those which by law cannot be compromised.

CHAPTER 2 - MEDIATION

SEC. 7. Scope. - The provisions of this Chapter shall cover voluntary mediation, whether ad hoc or institutional, other than court-annexed. The term "mediation" shall include conciliation.

SEC. 8. Application and Interpretation. - In applying construing the provisions of this Chapter, consideration must be given to the need to promote candor or parties and mediators through confidentiality of the mediation process, the policy of fostering prompt, economical, and amicable resolution of disputes in accordance with the principles of integrity of determination by the parties, and the policy that the decision-making authority in the mediation process rests with the parties.

SEC. 9. Confidentiality of Information. - Information obtained through mediation proceedings shall be subject to the following principles and guidelines:

(a) Information obtained through mediation shall be privileged and confidential.

(b) A party, a mediator, or a nonparty participant may refuse to disclose and may prevent any other person from disclosing a mediation communication.

(c) Confidential Information shall not be subject to discovery and shall be inadmissible if any adversarial proceeding, whether judicial or quasi-judicial, However, evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its use in a mediation.

(d) In such an adversarial proceeding, the following persons involved or previously involved in a mediation may not be compelled to disclose confidential information obtained during mediation: (1) the parties to the dispute; (2) the mediator or mediators; (3) the counsel for the parties; (4) the nonparty participants; (5) any persons hired or engaged in connection with the mediation as secretary, stenographer, clerk or assistant; and (6) any other person who obtains or possesses confidential information by reason of his/her profession.

(e) The protections of this Act shall continue to apply even if a mediator is found to have failed to act impartially.

(f) a mediator may not be called to testify to provide information gathered in mediation. A mediator who is wrongfully subpoenaed shall be reimbursed the full cost of his attorney's fees and related expenses.

SEC. 10. Waiver of Confidentiality. - A privilege arising from the confidentiality of information may be waived in a record, or orally during a proceeding by the mediator and the mediation parties.

A privilege arising from the confidentiality of information may likewise be waived by a nonparty participant if the information is provided by such nonparty participant.

A person who discloses confidential information shall be precluded from asserting the privilege under Section 9 of this Chapter to bar disclosure of the rest of the information necessary to a complete understanding of the previously disclosed information. If a person suffers loss or damages in a judicial proceeding against the person who made the disclosure.

A person who discloses or makes a representation about a mediation is precluded from asserting the privilege under Section 9, to the extent that the communication prejudices another person in the proceeding and it is necessary for the person prejudiced to respond to the representation of disclosure.

SEC. 11. Exceptions to Privilege. -

(a) There is no privilege against disclosure under Section 9 if mediation communication is:

(1) in an agreement evidenced by a record authenticated by all parties to the agreement;

(2) available to the public or that is made during a session of a mediation which is open, or is required by law to be open, to the public;

(3) a threat or statement of a plan to inflict bodily injury or commit a crime of violence;

(4) internationally used to plan a crime, attempt to commit, or commit a crime, or conceal an ongoing crime or criminal activity;

(5) sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation in a proceeding in which a public agency is protecting the interest of an individual protected by law; but this exception does not apply where a child protection matter is referred to mediation by a court or a public agency participates in the child protection mediation;

(6) sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against mediator in a proceeding; or

(7) sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a party, nonparty participant, or representative of a party based on conduct occurring during a mediation.

(b) There is no privilege under Section 9 if a court or administrative agency, finds, after a hearing in camera, that the party seeking discovery of the proponent of the evidence has shown that the evidence is not otherwise available, that there is a need for the evidence that substantially outweighs the interest in protecting confidentiality, and the mediation communication is sought or offered in:

(1) a court proceeding involving a crime or felony; or

(2) a proceeding to prove a claim or defense that under the law is sufficient to reform or avoid a liability on a contract arising out of the mediation.

(c) A mediator may not be compelled to provide evidence of a mediation communication or testify in such proceeding.

(d) If a mediation communication is not privileged under an exception in subsection (a) or (b), only the portion of the communication necessary for the application of the exception for nondisclosure may be admitted. The admission of particular evidence for the limited purpose of an exception does not render that evidence, or any other mediation communication, admissible for any other purpose.

SEC. 12. Prohibited Mediator Reports. - A mediator may not make a report, assessment, evaluation, recommendation, finding, or other communication regarding a mediation to a court or agency or other authority that make a ruling on a dispute that is the subject of a mediation, except:

(a) Where the mediation occurred or has terminated, or where a settlement was reached.

(b) As permitted to be disclosed under Section 13 of this Chapter.

SEC. 13. Mediator's Disclosure and Conflict of Interest. - The mediation shall be guided by the following operative principles:

(a) Before accepting a mediation, an individual who is requested to serve as a mediator shall:

(1) make an inquiry that is reasonable under the circumstances to determinate whether there are any known facts that a reasonable individual would consider likely to affect the impartiality of the mediator, including a financial or personal interest in the outcome of the mediation and any existing or past relationship with a party or foreseeable participant in the mediation; and

(2) disclosure to the mediation parties any such fact known or learned as soon as is practical before accepting a mediation.

(b) If a mediation learns any fact described in paragraph (a) (1) of this section after accepting a mediation, the mediator shall disclose it as soon as practicable.

At the request of a mediation party, an individual who is requested to serve as mediator shall disclose his/her qualifications to mediate a dispute.

This Act does not require that a mediator shall have special qualifications by background or profession unless the special qualifications of a mediator are required in the mediation agreement or by the mediation parties.

SEC. 14. Participation in Mediation. - Except as otherwise provided in this Act, a party may designate a lawyer or any other person to provide assistance in the mediation. A lawyer of this right shall be made in writing by the party waiving it. A waiver of participation or legal representation may be rescinded at any time.

SEC. 15. Place of Mediation. - The parties are free to agree on the place of mediation. Failing such agreement, the place of mediation shall be any place convenient and appropriate to all parties.

SEC. 16. Effect of Agreement to Submit Dispute to Mediation Under Institutional Rules. - An agreement to submit a dispute to mediation by any institution shall include an agreement to be bound by the internal mediation and administrative policies of such institution. Further, an agreement to submit a dispute to mediation under international mediation rule shall be deemed to include an agreement to have such rules govern the mediation of the dispute and for the mediator, the parties, their respective counsel, and nonparty participants to abide by such rules.

In case of conflict between the institutional mediation rules and the provisions of this Act, the latter shall prevail.

SEC. 17. Enforcement of Mediated Settlement Agreement. - The mediation shall be guided by the following operative principles:

(a) A settlement agreement following successful mediation shall be prepared by the parties with the assistance of their respective counsel, if any, and by the mediator.

The parties and their respective counsels shall endeavor to make the terms and condition thereof complete and make adequate provisions for the contingency of breach to avoid conflicting interpretations of the agreement.

(b) The parties and their respective counsels, if any, shall sign the settlement agreement. The mediator shall certify that he/she explained the contents of the settlement agreement to the parties in a language known to them.

(c) If the parties so desire, they may deposit such settlement agreement with the appropriate Clerk of a Regional Trial Court of the place where one of the parties resides. Where there is a need to enforce the settlement agreement, a petition may be filed by any of the parties with the same court, in which case, the court shall proceed summarily to hear the petition, in accordance with such rules of procedure as may be promulgated by the Supreme Court.

(d) The parties may agree in the settlement agreement that the mediator shall become a sole arbitrator for the dispute and shall treat the settlement agreement as an arbitral award which shall be subject to enforcement under Republic Act No. 876, otherwise known as the Arbitration Law, notwithstanding the provisions of Executive Order No. 1008 for mediated dispute outside of the CIAC.

CHAPTER 3 - OTHER ADR FORMS

SEC. 18. Referral of Dispute to other ADR Forms. - The parties may agree to refer one or more or all issues arising in a dispute or during its pendency to other forms of ADR such as but not limited to (a) the evaluation of a third person or (b) a mini-trial, (c) mediation-arbitration, or a combination thereof.

For purposes of this Act, the use of other ADR forms shall be governed by Chapter 2 of this Act except where it is combined with arbitration in which case it shall likewise be governed by Chapter 5 of this Act.

CHAPTER 4 - INTERNATIONAL COMMERCIAL ARBITRATION

SEC. 19. Adoption of the Model Law on International Commercial Arbitration. - International commercial arbitration shall be governed by the Model Law on International Commercial Arbitration (the "Model Law") adopted by the United Nations Commission on International Trade Law on June 21, 1985 (United Nations Document A/40/17) and recommended approved on December 11, 1985, copy of which is hereto attached as Appendix "A".

SEC. 20. Interpretation of Model Law. - In interpreting the Model Law, regard shall be had to its international origin and to the need for uniformity in its interpretation and resort may be made to the travaux preparatoires and the report of the Secretary General of the United Nations Commission on International Trade Law dated March 25, 1985 entitled, "International Commercial Arbitration: Analytical Commentary on Draft Trade identified by reference number A/CN. 9/264."

SEC. 21. Commercial Arbitration. - An arbitration is "commercial" if it covers matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a transactions: any trade transaction for the supply or exchange of goods or services; distribution agreements; construction of works; commercial representation or agency; factoring; leasing, consulting; engineering; licensing; investment; financing; banking; insurance; joint venture and other forms of industrial or business cooperation; carriage of goods or passengers by air, sea, rail or road.

SEC. 22. Legal Representation in International Arbitration. - In international arbitration conducted in the Philippines, a party may be presented by any person of his choice. Provided, that such representative, unless admitted to the practice of law in the Philippines, shall not be authorized to appear as counsel in any Philippine court, or any other quasi-judicial body whether or not such appearance is in relation to the arbitration in which he appears.

SEC. 23. Confidential of Arbitration Proceedings. - The arbitration proceedings, including the records, evidence and the arbitral award, shall be considered confidential and shall not be published except (1) with the consent of the parties, or (2) for the limited purpose of disclosing to the court of relevant documents in cases where resort to the court is allowed herein. Provided, however, that the court in which the action or the appeal is pending may issue a protective order to prevent or prohibit disclosure of documents or information containing secret processes, developments, research and other information where it is shown that the applicant shall be materially prejudiced by an authorized disclosure thereof.

SEC. 24. Referral to Arbitration. - A court before which an action is brought in a matter which is the subject matter of an arbitration agreement shall, if at least one party so requests not later than the pre-trial conference, or upon the request of both parties thereafter, refer the parties to arbitration unless it finds that the arbitration agreement is null and void, inoperative or incapable of being performed.

SEC. 25. Interpretation of the Act. - In interpreting the Act, the court shall have due regard to the policy of the law in favor of arbitration. Where action is commenced by or against multiple parties, one or more of whom are parties who are bound by the arbitration agreement although the civil action may continue as to those who are not bound by such arbitration agreement.

SEC. 26. Meaning of "Appointing Authority." - "Appointing Authority" as used in the Model Law shall mean the person or institution named in the arbitration agreement as the appointing authority; or the regular arbitration institution under whose rules the arbitration is agreed to be conducted. Where the parties have agreed to submit their dispute to institutional arbitration rules, and unless they have agreed to a different procedure, they shall be deemed to have agreed to procedure under such arbitration rules for the selection and appointment of arbitrators. In ad hoc arbitration, the default appointment of an arbitrator shall be made by the National President of the Integrated Bar of the Philippines (IBP) or his duly authorized representative.

SEC. 27. What Functions May be Performed by Appointing Authority. - The functions referred to in Articles 11(3), 11(4), 13(3) and 14(1) of the Model Law shall be performed by the Appointing Authority, unless the latter shall fail or refuse to act within thirty (30) days from receipt of the request in which case the applicant may renew the application with the Court.

SEC. 28. Grant of Interim Measure of Protection. -

(a) It is not incompatible with an arbitration agreement for a party to request, before constitution of the tribunal, from a Court an interim measure of protection and for the Court to grant such measure. After constitution of the arbitral tribunal and during arbitral proceedings, a request for an interim measure of protection 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, the request may be made with the Court. The arbitral tribunal is deemed constituted when the sole arbitrator or the third arbitrator who has been nominated, has accepted the nomination and written communication of said nomination and acceptance has been received by the party making request.

(b) The following rules on interim or provisional relief shall be observed:

(1) Any party may request that provision relief be granted against the adverse party:

(2) Such relief may be granted:

(i) to prevent irreparable loss or injury:

(ii) to provide security for the performance of any obligation;

(iii) to produce or preserve any evidence; or

(iv) to compel any other appropriate act or omission.

(3) The order granting provisional relief may be conditioned upon the provision of security or any act or omission specified in the order.

(4) Interim or provisional relief is requested by written application transmitted by reasonable means to the Court or arbitral tribunal as the case may be and the party against whom the relief is sought, describing in appropriate detail the precise relief, the party against whom the relief is requested, the grounds for the relief, and evidence supporting the request.

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

(6) Either party may apply with the Court for assistance in Implementing or enforcing an interim measure ordered by an arbitral tribunal.

(7) A party who does not comply with the order shall be liable for all damages resulting from noncompliance, including all expenses, and reasonable attorney's fees, paid in obtaining the order's judicial enforcement.

SEC. 29. Further Authority for Arbitrator to Grant Interim Measure of Protection. - Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measures of protection as the arbitral tribunal may consider necessary in respect of the subject matter of the dispute following the rules in Section 28, paragraph 2. Such interim measures may include but shall not be limited to preliminary injunction directed against a party, appointment of receivers or detention, preservation, inspection of property that is the subject of the dispute in arbitration. Either party may apply with the Court for assistance in implementing or enforcing an interim measures ordered by an arbitral tribunal.

SEC. 30. Place of Arbitration. - The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be in Metro Manila, unless the arbitral tribunal, having regard to the circumstances of the case, including the convenience of the parties shall decide on a different place of arbitration.

The arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts, or the parties, or for inspection of goods, other property or documents.

SEC. 31. Language of the Arbitration. - The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the language to be used shall be English in international arbitration, and English or Filipino for domestic arbitration, unless the arbitral tribunal shall determine a different or another language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined in accordance with paragraph 1 of this section.

CHAPTER 5 - DOMESTIC ARBITRATION

SEC. 32. Law Governing Domestic Arbitration. - Domestic arbitration shall continue to be governed by Republic Act No. 876, otherwise known as "The Arbitration Law" as amended by this Chapter. The term "domestic arbitration" as used herein shall mean an arbitration that is not international as defined in Article (3) of the Model Law.

SEC. 33. Applicability to Domestic Arbitration. - Article 8, 10, 11, 12, 13, 14, 18 and 19 and 29 to 32 of the Model Law and Section 22 to 31 of the preceding Chapter 4 shall apply to domestic arbitration.

CHAPTER 6 - ARBITRATION OF CONSTRUCTION DISPUTES

SEC. 34. Arbitration of Construction Disputes: Governing Law. - The arbitration of construction disputes shall be governed by Executive Order No. 1008, otherwise known as the Construction Industry Arbitration Law.

SEC. 35. Coverage of the Law. - Construction disputes which fall within the original and exclusive jurisdiction of the Construction Industry Arbitration Commission (the "Commission") shall include those between or among parties to, or who are otherwise bound by, an arbitration agreement, directly or by reference whether such parties are project owner, contractor, subcontractor, quantity surveyor, bondsman or issuer of an insurance policy in a construction project.

The Commission shall continue to exercise original and exclusive jurisdiction over construction disputes although the arbitration is "commercial" pursuant to Section 21 of this Act.

SEC. 36. Authority to Act as Mediator or Arbitrator. - By written agreement of the parties to a dispute, an arbitrator may act as mediator and a mediator may act as arbitrator. The parties may also agree in writing that, following a successful mediation, the mediator shall issue the settlement agreement in the form of an arbitral award.

SEC. 37. Appointment of Foreign Arbitrator. - The Construction Industry Arbitration Commission (CIAC) shall promulgate rules to allow for the appointment of a foreign arbitrator or coarbitrator or chairman of a tribunal a person who has not been previously accredited by CIAC: Provided, That:

- (a) the dispute is a construction dispute in which one party is an international party
- (b) the person to be appointed agreed to abide by the arbitration rules and policies of CIAC;
- (c) he/she is either coarbitrator upon the nomination of the international party; or he/she is the common choice of the two CIAC-accredited arbitrators first appointed one of whom was nominated by the international party; and

(d) the foreign arbitrator shall be of different nationality from the international party.

SEC. 38. Applicability to Construction Arbitration. - The provisions of Sections 17 (d) of Chapter 2, and Section 28 and 29 of this Act shall apply to arbitration of construction disputes covered by this Chapter.

SEC. 39. Court to Dismiss Case Involving a Construction Dispute. - A regional trial court which a construction dispute is filed shall, upon becoming aware, not later than the pretrial conference, that the parties had entered into an arbitration to be conducted by the CIAC, unless both parties, assisted by their respective counsel, shall submit to the regional trial court a written agreement exclusive for the Court, rather than the CIAC, to resolve the dispute.

CHAPTER 7 - JUDICIAL REVIEW OF ARBITRAL AWARDS

A. DOMESTIC AWARDS

SEC. 40. Confirmation of Award. - The confirmation of a domestic arbitral award shall be governed by Section 23 of R.A. 876.

A domestic arbitral award when confirmed shall be enforced in the same manner as final and executory decisions of the Regional Trial Court.

The confirmation of a domestic award shall be made by the regional trial court in accordance with the Rules of Procedure to be promulgated by the Supreme Court.

A CIAC arbitral award need not be confirmed by the regional trial court to be executory as provided under E.O. No. 1008.

SEC. 41. Vacation Award. - A party to a domestic arbitration may question the arbitral award with the appropriate regional trial court in accordance with the rules of procedure to be promulgated by the Supreme Court only on those grounds enumerated in Section 25 of Republic Act No. 876. Any other ground raised against a domestic arbitral award shall be disregarded by the regional trial court.

B. FOREIGN ARBITRAL AWARDS

SEC. 42. Application of the New York Convention. - The New York Convention shall govern the recognition and enforcement of arbitral awards covered by the said Convention.

The recognition and enforcement of such arbitral awards shall be filed with regional trial court in accordance with the rules of procedure to be promulgated by the Supreme Court. Said procedural rules shall provide that the party relying on the award or applying for its enforcement shall file with the court the original or authenticated copy of the award and the arbitration agreement. If the award or agreement is not made in any of the official languages, the party shall supply a duly certified translation thereof into any of such languages.

The applicant shall establish that the country in which foreign arbitration award was made is a party to the New York Convention.

If the application for rejection or suspension of enforcement of an award has been made, the regional trial court may, if it considers it proper, vacate its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the party to provide appropriate security.

SEC. 43. Recognition and Enforcement of Foreign Arbitral Awards Not Covered by the New York Convention. - The recognition and enforcement of foreign arbitral awards not covered by the New York Convention shall be done in accordance with procedural rules to be promulgated by the Supreme Court. The Court may, grounds of comity and reciprocity, recognize and enforce a nonconvention award as a convention award.

SEC. 44. Foreign Arbitral Award Not Foreign Judgment. - A foreign arbitral award when confirmed by a court of a foreign country, shall be recognized and enforced as a foreign arbitral award and not a judgment of a foreign court.

A foreign arbitral award, when confirmed by the regional trial court, shall be enforced as a foreign arbitral award and not as a judgment of a foreign court.

A foreign arbitral award, when confirmed by the regional trial court, shall be enforced in the same manner as final and executory decisions of courts of law of the Philippines.

SEC. 45. Rejection of a Foreign Arbitral Award. - A party to a foreign arbitration proceeding may oppose an application for recognition and enforcement of the arbitral award in accordance with the procedural rules to be promulgated by the Supreme Court only on those grounds enumerated under Article V of the New York Convention. Any other ground raised shall be disregarded by the regional trial court.

SEC. 46. Appeal from Court Decisions on Arbitral Awards. - A decision of the regional trial court confirming, vacating, setting aside, modifying or correcting an arbitral award may be appealed to the Court of Appeals in accordance with the rules of procedure to be promulgated by the Supreme Court.

The losing party who appeals from the judgment of the court confirming an arbitral award shall be required by the appealant court to post counterbond executed in favor of the prevailing party equal to the amount of the award in accordance with the rules to be promulgated by the Supreme Court.

SEC. 47. Venue and Jurisdiction. - Proceedings for recognition and enforcement of an arbitration agreement or for vacation, setting aside, correction or modification of an arbitral award, and any application with a court for arbitration assistance and supervision shall be deemed as special proceedings and shall be filed with the regional trial court (i) where arbitration proceedings are conducted; (ii) where the asset to be attached or levied upon, or the act to be enjoined is located; (iii) where any of the parties to the dispute resides or has his place of business; or (iv) in the National Judicial Capital Region, at the option of the applicant.

SEC. 48. Notice of Proceeding to Parties. - In a special proceeding for recognition and enforcement of an arbitral award, the Court shall send notice to the parties at their address of record in the arbitration, or if any party cannot be served notice at such address, at such

party's last known address. The notice shall be sent at least fifteen (15) days before the date set for the initial hearing of the application.

CHAPTER 8 - MISCELLANEOUS PROVISIONS

SEC. 49. Office for Alternative Dispute Resolution. - There is hereby established the Office for Alternative Dispute Resolution as an attached agency to the Department of Justice (DOJ) which shall have a Secretariat to be headed by an executive director. The executive director shall be appointed by the President of the Philippines.

The objective of the office are:

(a) to promote, develop and expand the use of ADR in the private and public sectors; and

To assist the government to monitor, study and evaluate the use by the public and the private sector of ADR, and recommend to Congress needful statutory changes to develop. Strengthen and improve ADR practices in accordance with world standards.

SEC. 50. Powers and Functions of the Office for Alternative Dispute Resolution. - The Office for Alternative Dispute Resolution shall have the following powers and functions:

(a) To formulate standards for the training of the ADR practitioners and service providers;

(b) To certify that such ADR practitioners and ADR service providers have undergone the professional training provided by the office;

(c) To coordinate the development, implementation, monitoring, and evaluation of government ADR programs;

(d) To charge fees for their services; and

(e) To perform such acts as may be necessary to carry into effect the provisions of this Act.

SEC. 51. Appropriations. - The amount necessary to carry out the provisions of this Act shall be included in the General Appropriations Act of the year following its enactment into law and thereafter.

SEC. 52. Implementing Rules and Regulations (IRR). - Within one (1) month after the approval of this Act, the secretary of justice shall convene a committee that shall formulate the appropriate rules and regulations necessary for the implementation of this Act. The committee, composed of representatives from:

(a) the Department of Justice;

(b) the Department of Trade and Industry;

(c) the Department of the Interior and Local Government;

(d) the president of the Integrated Bar of the Philippines;

(e) A representative from the arbitration profession; and

(f) A representative from the mediation profession; and

(g) A representative from the ADR organizations

shall within three (3) months after convening, submit the IRR to the Joint Congressional Oversight Committee for review and approval. The Oversight Committee shall be composed of the chairman of the Senate Committee on Justice and Human Rights, chairman of the House Committee on Justice, and one (1) member each from the majority and minority of both Houses.

The Joint Oversight Committee shall become functus officio upon approval of the IRR.

SEC. 53. Applicability of the Katarungan Pambarangay. - This Act shall not be interpreted to repeal, amend or modify the jurisdiction of the Katarungan Pambarangay under Republic Act No. 7160, otherwise known as the Local Government Code of 1991.

SEC. 54. Repealing Clause. - All laws, decrees, executive orders, rules and regulations which are inconsistent with the provisions of this Act are hereby repealed, amended or modified accordingly.

SEC. 55. Separability Clause. - If for any reason or reasons, any portion or provision of this Act shall be held unconstitutional or invalid, all other parts or provisions not affected shall thereby continue to remain in full force and effect.

SEC. 56. Effectivity. - This act shall take effect fifteen days (15) after its publication in at least two (2) national newspapers of general circulation.

Approved,

FRANKLIN DRILON
President of the Senate

JOSE DE VENECIA JR.
Speaker of the House of Representatives

This Act which is a consolidation of Senate Bill No. 2671 and House Bill No. 5654 was finally passed by the Senate and the House of Representatives on February 4, 2004.

OSCAR G. YABES
Secretary of Senate

ROBERTO P. NAZARENO
Secretary General
House of Representatives

Approved: April 2, 2004

GLORIA MACAPAGAL-ARROYO
President of the Philippines