

INTELLECTUAL PROPERTY P H I L I P P I N E S

OFFICE ORDER NO. 61
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SUBJECT: **RULES OF PROCEDURE FOR IPOPHL ARBITRATION PROCEEDINGS**

Pursuant to the directive under E.O. No. 523 for all departments, agencies, and government owned and controlled corporations, under the executive branch to promote and encourage the use of Alternative Dispute Resolution (ADR) as part of the practice in resolving disputes filed before them, and also to the authority of the Director General of the Intellectual Property Office of the Philippines under Sec.7.1 of Republic Act No. 8293, also known as the Intellectual Property Code of the Philippines, the Rules of Procedure for IPOPHL Arbitration Proceedings, are hereby promulgated.

Introduction

Arbitration is a legal technique for the resolution of disputes outside the courts, wherein the parties refer the dispute to one or more persons by whose decision they agree to be legally bound. Its objective is the final disposition of disputes in a speedy and inexpensive way. In the Philippines, arbitration began to develop with the passing of the Arbitration Law (R.A. No. 876). This development was immediately followed by the country's accession to the 1958 New York Convention. Fifty years after the enactment of the Arbitration Law, Congress enacted Republic Act No. 9285, otherwise known as the Alternative Disputes Resolution Act of 2004. This Act specifically articulated the policy of the state "to actively promote party autonomy in the resolution of disputes or the freedom of the parties to make their own arrangements to resolve their disputes" and "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."

The IPOPHL has responded to the challenge of establishing a complete ADR system through the establishment of an arbitration mechanism in cooperation with the World Intellectual Property Organization and the Philippine Dispute Resolution Center, Inc. (the leading institutionalized Arbitration Center in the Philippines). As a result, the final IPOPHL Arbitration Rules was drafted in cooperation with a local and international experts including Dean Custodio O. Parlade (one of the leading Filipino international arbitrator), Atty. Victor P. Lazatin (PDRCI), Atty. Salvador S. Panga, Jr. (PDRCI), Atty. Lope R. Manuel, Jr. (IPOPHL), Professor Gwen B. Grecia-De Vera (UP Law Center and PDRCI), Ms Sarah Theurich (WIPO) and Mr. Ignacio De Castro (Deputy Director of Arbitration and Mediation Center of WIPO).

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I. GENERAL PROVISIONS

Definition of Terms

Section 1

For purposes of these Rules:

"Arbitration" means a voluntary dispute resolution process in which one or more arbitrators, appointed in accordance with the agreement of the parties or these Rules, resolves a dispute by rendering an award;

"Arbitration Agreement" means an agreement by the parties to submit to arbitration all or certain disputes, which have arisen, or which may arise between them; an Arbitration Agreement may be in the form of an arbitration clause in a contract or in the form of a separate contract;

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

"Claimant" means the party initiating arbitration;

"Respondent" means the party against which the arbitration is initiated, as named in the Request for Arbitration;

"Tribunal" includes a sole arbitrator or all the arbitrators where more than one is appointed;

"IPOP HL" or "IP Philippines" means the Intellectual Property Office of the Philippines;

"PDRCI" means the Philippine Dispute Resolution Center Incorporated;

"Administering Body" means the combined IPOP HL and PDRCI Arbitration Center (a partnership program between the IPOP HL and PDRCI);

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

"The Rules" means IPOPHL Arbitration Rules;

Words used in the singular include the plural and vice versa, as the context may require.

Scope of Application

Section 2

(a) These rules shall be applicable to the arbitration of intellectual property rights which under the Intellectual Property Code of the Philippines and or other existing laws of the Philippines may be submitted to the IP Philippines for determination where the parties thereto have agreed to submit such disputes to arbitration.

(b) The term "intellectual property disputes" shall mean disputes involving intellectual properties that are already registered or recognized even without registration or are in the process of registration or which are registrable under the laws of the Philippines and all other disputes involving a breach of intellectual property rights which are actionable under the Philippine law.

(c) The arbitration agreement of the parties shall be deemed an agreement to submit intellectual property disputes to arbitration under the IPOPHL Arbitration Rules.

(d) The arbitration agreement may be in the form of a separate contract between the parties or a clause in such contract.

(e) Intellectual property disputes submitted or which may be submitted for arbitration by the IPOPHL or by PDRCI shall be referred to the Administering Body under these Rules and the arbitration shall be conducted in accordance with these Rules.

Section 3

(a) These Rules shall govern the arbitration, except that, where any of these Rules is in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.

(b) The law applicable to the arbitration shall be determined in accordance with Section 59(b) of these Rules.

Notices and Calculation of Time Period

Section 4

For purposes of these rules:

(a) Any notice or other communication that may or is required to be given under these Rules shall be in writing and shall be delivered by expedited postal or courier service, or transmitted by telefax, e-mail or other means of telecommunication that provide a record thereof.

(b) A party's last known residence or place of business shall be a valid address for the purpose of any notice or other communication in the absence of any notification of a change by that party. Communications may in any event be addressed to a party in the manner stipulated or, failing such a stipulation, according to the practice followed in the course of the dealings between the parties.

(c) For the purpose of determining the date of commencement of a time limit, a notice or other communication shall be deemed to have been received on the day it is delivered or, in the case of telecommunications, transmitted in accordance with paragraphs (a) and (b) of this Section.

(d) For the purpose of determining compliance with a time limit, a notice or other communication shall be deemed to have been sent, made or transmitted if it is dispatched, in accordance with paragraphs (a) and (b) of this Section, prior to or on the day of the expiration of the time limit.

(e) For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice or other communication is 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, which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

(f) The parties may agree to reduce or extend the periods of time referred to in Sections 11, 15(b), 16(b), 17(b), 17(c), 18, 19(b)(iii), 41(a) and 42(a).

(g) The Administering Body may, at the request of a party or on its own motion, extend the periods of time referred to in Sections 11, 15(b), 16(b), 17(b), 17(c), 18, 19(b)(iii), 67(d), 68(e) and 70(e).

Documents Required to be Submitted to the Administering Body

Section 5

(a) Until the notification by the Administering Body of the establishment of the Tribunal, any written statement, notice or other communication required or allowed under these rules shall be submitted by a party to the Administering Body and a copy thereof shall at the same time be transmitted by that party to the other party.

(b) Any written statement, notice or other communication so sent to the Administering Body shall be sent in a number of copies equal to the number required to provide one copy for each envisaged arbitrator and one for the Administering Body.

(c) After the notification by the Administering Body of the establishment of the Tribunal, any written statements, notices or other communications shall be submitted by a party directly to the Tribunal and a copy thereof shall at the same time be supplied by that party to the other party.

(d) The Tribunal shall send to the Administering Body a copy of each order or other decision that it makes.

II. NOTICE OF ARBITRATION AND ANSWER

Notice of Arbitration

Section 6

The party wishing to commence arbitration shall transmit a Notice of Arbitration to the Administering Body and to the Respondent. If the parties refer to arbitration through an Arbitration Agreement that was entered into after the conflict has arisen, the Notice of Arbitration may be filed by either of the parties in the case.

Commencement Date

Section 7

The date of commencement of the arbitration shall be the date on which the Notice of Arbitration is received by the Administering Body.

Notification and Suspension

Section 8

(1) The Administering Body shall inform the Claimant and the Respondent of the receipt by it of the Notice of Arbitration and of the date of the commencement of the arbitration.

Contents of the Notice of Arbitration

Section 9

The Notice of Arbitration shall contain:

- (a) a demand that the dispute be referred to arbitration under the IPOPHL Arbitration Rules;
- (b) the names, addresses and telephone, telefax, e-mail or other communication references of the parties and of the representative of the Claimant;
- (c) a copy of the Arbitration Agreement and, if applicable, any separate choice-of-law clause;
- (d) a brief description of the nature and circumstances of the dispute, including an indication of the rights and property involved and the nature of any technology involved;
- (e) a statement of the relief sought and an indication, to the extent possible, of any amount claimed; and
- (f) any appointment that is required by, or observations that the Claimant considers useful in connection with, Sections 14 to 20.

Section 10

The Notice of Arbitration may also be accompanied by the Statement of Claim referred to in Section 41

Answer to the Notice of Arbitration

Section 11

Within 15 days from the date on which the Respondent receives the Notice of Arbitration from the

Claimant, the Respondent shall address to the Administering Body and to the Claimant an Answer to the Request which shall contain comments on any of the elements in the Request for Arbitration and may include indications of any counter-claim or set-off.

Section 12

If the Claimant has filed a Statement of Claim with the Request for Arbitration pursuant to Section 10, the Answer to the Request may also be accompanied by the Statement of Defense referred to in Section 42.

Representatives and Assistants

Section 13

(a) The parties may be represented by persons of their choice, irrespective of, in particular, nationality or professional qualification. The names, addresses and telephone, telefax, e-mail or other communication references of representatives shall be communicated to the Administering Body, the other party and, after its establishment, the Tribunal.

(b) Each party shall ensure that its representatives have sufficient time available to enable the arbitration to proceed expeditiously.

(c) The parties may also be assisted by persons of their choice.

III. COMPOSITION of the ARBITRAL TRIBUNAL AND APPOINTMENT RULES

Number of Arbitrators

Section 14

(a) The Tribunal shall consist of such number of arbitrators as has been agreed by the parties.

(b) Where the parties have not agreed on the number of arbitrators, the Tribunal shall consist of a sole arbitrator, except where the Administering Body in its discretion determines that, in view of all the circumstances of the case, a Tribunal composed of three members is appropriate.

Appointment in Accordance with the Procedure Agreed by the Parties

Section 15

(a) If the parties have agreed on a procedure for the appointment of the arbitrator or arbitrators different from the procedure provided under Section 16 to 20, that procedure shall be followed.

(b) If the Tribunal has not been established pursuant to such procedure within the period of time agreed upon by the parties or, in the absence of such an agreed period of time, within 30 days after the commencement of the arbitration, the Tribunal shall be established or completed, as the case may be, in accordance with Section 19.

Appointment of a Sole Arbitrator

Section 16

(a) Where a sole arbitrator is to be appointed and the parties have not agreed on an appointment procedure, the sole arbitrator shall be appointed jointly by the parties.

(b) For the purpose of making a joint appointment under paragraph (a) of this Section, either party may, in its pleading or other communication, propose names of one or more persons, one of whom would serve as the sole arbitrator;

(c) If the parties have not reached an agreement on the choice of a sole arbitrator within the period of time agreed upon or, in the absence of such an agreed period of time, within 30 days after the commencement of the arbitration, the sole arbitrator shall be appointed in accordance with Section 19.

Appointment of Three Arbitrators

Section 17

(a) Where three arbitrators are to be appointed and the parties have not agreed upon an appointment procedure, the arbitrators shall be appointed in accordance with this Section.

(b) The Claimant shall appoint an arbitrator in its Notice of Arbitration or in a separate communication. The Respondent shall appoint an arbitrator within 30 days from the date on which it receives the Notice of Arbitration. The two arbitrators thus appointed shall, within 15 days after the appointment of the second arbitrator, appoint a third arbitrator, who shall be the presiding arbitrator.

(c) Notwithstanding paragraph (b), where three arbitrators are to be appointed as a result of the exercise of the discretion of the Administering Body under Section 14(b), the Claimant shall, by notice to the Administering Body and to the Respondent, appoint an arbitrator within 15 days after the receipt by it of notification by the Administering Body that the Tribunal is to be composed of three arbitrators. The Respondent shall appoint an arbitrator within 30 days after the receipt by it of the said notification. The two arbitrators thus appointed shall, within 20 days after the appointment of the second arbitrator, appoint a third arbitrator, who shall be the presiding arbitrator.

(d) If the appointment of any arbitrator is not made within the applicable period of time referred to in the preceding paragraphs, that arbitrator shall be appointed in accordance with Section 19.

Appointment of Three Arbitrators with Multiple Claimants or Respondents

Section 18

Where a tribunal of three (3) arbitrators is to be appointed, the parties have not agreed on an appointment procedure, and the Request for Arbitration names more than one Claimant or more than one Respondent, the multiple Claimants jointly or the multiple Respondents jointly shall appoint one arbitrator. If, for any reason, the multiple Claimants, within 30 days from transmitting the Request for Arbitration to the Administering Body, or the multiple Respondents, within 30 days receiving a copy of the Request for Arbitration, shall fail to jointly nominate an arbitrator, the arbitrator shall be appointed in accordance with Section 19 of these Rules. The two arbitrators thus appointed shall within 30 days after the appointment of the second arbitrator, appoint a third arbitrator who shall be the presiding arbitrator.

Default Appointment

Section 19

(a) If a party or multiple parties have failed to appoint an arbitrator as required under Sections 15, 17 or 18, the Administering Body shall, in lieu of that party, forthwith make the appointment.

(b) If the sole or presiding arbitrator has not been appointed as required under Sections 15, 16, 17 or 18, the appointment shall take place in accordance with the following procedure:

(i) The Administering Body shall send to each party an identical list of candidates. The list shall comprise the names of at least three candidates in alphabetical order. The list shall include or be accompanied by a brief statement of each candidate's qualifications. If the parties have agreed on any particular qualifications, the list shall contain only the names of candidates that satisfy those qualifications.

(ii) Each party shall have the right to delete the name of any candidate or candidates to whose appointment it objects and shall number any remaining candidates in order of preference.

(iii) Each party shall return the marked list to the Administering Body within 15 days after the date on which the list is received by it. Any party failing to return a marked list within that period of time shall be deemed to have assented to all candidates appearing on the list. If a party returns the list with all the candidates stricken out, subparagraph b(v) of this Section shall apply.

(iv) As soon as possible after receipt by it of the lists from the parties, or failing this, after the expiration of the period of time specified in the previous subparagraph, the Administering Body shall, taking into account the preferences and objections expressed by the parties, invite a person from the list to be the sole or presiding arbitrator.

(v) If the lists which have been returned do not show a person who is acceptable as arbitrator to both parties, the Administering Body shall be authorized to appoint the sole or presiding arbitrator. The Administering Body shall similarly be authorized to do so if a person is not able or does not wish to accept the Administering Body's invitation to be the sole or presiding arbitrator, or if there appear to be other reasons precluding that person from being the sole or presiding arbitrator, and there does not remain on the lists a person who is acceptable as arbitrator to both parties.

(c) Notwithstanding the provisions of paragraph (b), or in the case of multiple parties, where the multiple claimants or the multiple respondents shall fail to act jointly, the Administering Body shall be authorized to appoint the sole or presiding arbitrator if it determines in its discretion that the procedure described in that paragraph is not appropriate for the case.

Nationality of Arbitrators

Section 20

(a) An agreement of the parties concerning the nationality of arbitrators shall be respected.

(b) If the parties have not agreed on the nationality of the sole or presiding arbitrator, such arbitrator shall, in the absence of special circumstances such as the need to appoint a person having particular qualifications, be a national of any country as maybe decided by the Administering Body.

Prohibited Communications

Section 21

No party or anyone acting on its behalf shall have any ex parte communication with any candidate for appointment as arbitrator except to discuss the candidate's qualifications, availability or independence in relation to the parties.

Impartiality and Independence

Section 22

In confirming or making an appointment under these Rules, the Administering Body and the parties shall have due regard to the qualifications required of the arbitrators by the agreement of the parties. The prospective arbitrator shall:

- (a) Be impartial and independent.
- (b) Before accepting appointment, disclose in writing to the parties, the Administering Body and any other arbitrator who has already been appointed any circumstances that might give rise to justifiable doubt as to the arbitrator's impartiality or independence, or confirm that no such circumstances exist.
- (c) If, at any stage during the arbitration, new circumstances arise that might give rise to justifiable doubt as to any arbitrator's impartiality or independence, the arbitrator shall promptly disclose such circumstances to the parties, the Administering Body and the other arbitrators.

Requirements for Acceptance of Appointment

Section 23

- (a) Each arbitrator shall, by accepting appointment, be deemed to have undertaken to make available sufficient time to enable the arbitration to be conducted and completed expeditiously.
- (b) Each prospective arbitrator shall accept appointment in writing and shall communicate such acceptance to the Administering Body.
- (c) The Administering Body shall notify the parties of the establishment of the Tribunal.

Challenge of Arbitrators

Section 24

- (a) Any arbitrator may be challenged by a party if circumstances exist that give rise to justifiable doubt as to the arbitrator's impartiality or independence.
- (b) A party may challenge an arbitrator whom it has appointed or in whose appointment it concurred, only for reasons of which it becomes aware after the appointment has been made.

Notice of Challenge

Article 25

A party challenging an arbitrator shall send notice to the Administering Body, the Tribunal and the other party, within 15 days after being notified of that arbitrator's appointment or after becoming aware of the

circumstances that it considers give rise to justifiable doubt as to that arbitrator's impartiality or independence.

The notice of the challenge shall be in writing and shall clearly state the reasons for the challenge.

Response to the Challenge

Section 26

When an arbitrator has been challenged by a party, the other party shall have the right to respond to the challenge and shall, if it exercises this right, send, within 15 days after receipt of the notice referred to in Section 25, a copy of its response to the Administering Body, the party making the challenge and the arbitrators.

Suspension or Continuation of Arbitration Pending the Challenge

Section 27

The Tribunal may, in its discretion, suspend or continue the arbitral proceedings during the pendency of the challenge.

Voluntary Withdrawal

Section 28

The other party may agree to the challenge or the arbitrator may voluntarily withdraw. In either case, the arbitrator shall be replaced without any implication that the grounds for the challenge are valid.

Decision on the Challenge

Section 29

a) If the other party does not agree to the challenge and the challenged arbitrator does not withdraw, the decision on the challenge shall be made by the Administering Body in accordance with its internal procedures. Such a decision is of an administrative nature and shall be final. The Administering Body shall not be required to state reasons for its decision.

b) If the challenge is sustained, a substitute arbitrator shall be appointed in accordance with the procedure in Sections 14 to 24 of these rules. The time limited provided in those rules shall commence from the date of the decision to sustain the challenge.

c) If the challenge is eventually dismissed, the arbitrator shall continue with the arbitration.

d) The Administering Body shall fix the cost of the challenge and may direct who and how such cost should be borne.

Request for Release

Section 30

At the arbitrator's own request, an arbitrator may be released from appointment as arbitrator either with the consent of the parties or by the Administering Body.

Section 31

Irrespective of any request by the arbitrator, the parties may jointly release the arbitrator from appointment as arbitrator. The parties shall promptly notify the Administering Body of such release.

Section 32

At the request of a party or on its own motion, the Administering Body may release an arbitrator from appointment as arbitrator if the arbitrator has become de jure or de facto unable to fulfill, or fails to fulfill, the duties of an arbitrator. In such a case, the parties shall be offered the opportunity to express their views thereon and the provisions of Section 26 to 29 shall apply mutatis mutandis.

Substitute Appointment

Section 33

(a) Whenever necessary, a substitute arbitrator shall be appointed pursuant to the procedure provided for in Sections 15 to 19 that was applicable to the appointment of the arbitrator being replaced.

(b) In the event that an arbitrator appointed by a party has either been successfully challenged on grounds which were known or should have been known to that party at the time of appointment, or has been released from appointment as arbitrator in accordance with Section 32, the Administering Body shall have the discretion not to permit that party to make a new appointment. If it chooses to exercise this discretion, the Administering Body shall make the substitute appointment.

(c) Pending the replacement, the arbitral proceedings shall be suspended, unless otherwise agreed by the parties.

Substitute Arbitrator

Section 34

Whenever a substitute arbitrator is appointed, the Tribunal shall, having regard to any observations of the parties, determine in its sole discretion whether all or part of any prior hearings is to be repeated.

Incomplete Tribunal

Section 35

(a) If an arbitrator on a three-person Tribunal, though duly notified and without good cause, fails to participate in the work of the Tribunal, the two other arbitrators shall, unless a party has made an application under Section 32, have the power in their sole discretion to continue the arbitration and to make any award, order or other decision, notwithstanding the failure of the third arbitrator to participate. In determining whether to continue the arbitration or to render any award, order or other decision without the participation of an arbitrator, the two other arbitrators shall take into account the stage of the arbitration, the reason, if any, expressed by the third arbitrator for such non-participation, and such other matters as they consider appropriate in the circumstances of the case.

(b) In the event that the two other arbitrators determine not to continue the arbitration without the

participation of a third arbitrator, the Administering Body shall, on proof satisfactory to it of the failure of the arbitrator to participate in the work of the Tribunal, declare the office vacant, and a substitute arbitrator shall be appointed by the Administering Body in the exercise of the discretion defined in Section 33, unless the parties agree otherwise.

Objections to the Jurisdiction of the Tribunal

Article 36

(a) The Tribunal shall have the power to hear and determine objections to its own jurisdiction, including any objections with respect to form, existence, validity or scope of the Arbitration Agreement examined pursuant to Section 59(b).

(b) The Tribunal shall have the power to determine the existence or validity of any contract of which the Arbitration Agreement forms part or to which it relates.

(c) A plea that the Tribunal does not have jurisdiction shall be raised not later than in the Statement of Defense or, with respect to a counter-claim or a set-off, the Statement of Defense thereto, failing which any such plea shall be barred in the subsequent arbitral proceedings or before any court. A plea that the 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 arbitral proceedings. The Tribunal may, in either case, admit a later plea if it considers the delay justified.

(d) The Tribunal may rule on a plea referred to in paragraph (c) as a preliminary question or, in its sole discretion, decide on such a plea in the final award.

(e) A plea that the Tribunal lacks jurisdiction shall not preclude the Administering Body from administering the arbitration.

IV. ARBITRATION PROCEEDINGS

Transmission of the File to the Tribunal

Section 37

The Administering Body shall transmit the file to each arbitrator as soon as the arbitrator is appointed.

General Powers of the Tribunal

Section 38

(a) Subject to Section 3, the Tribunal may conduct the arbitration in such manner as it considers appropriate.

(b) In all cases, the Tribunal shall ensure that the parties are treated with equality and that each party is given a fair opportunity to present its case.

(c) The Tribunal shall ensure that the arbitral procedure takes place with due expedition. It may, at the request of a party or on its own motion, extend in exceptional cases a period of time fixed by these Rules, by itself or agreed to by the parties. In urgent cases, such an extension may be granted by the presiding arbitrator alone.

Place of Arbitration

Section 39

- (a) The place of arbitration shall be Metro Manila, Philippines, unless the parties have agreed otherwise, or the Administering Body, taking into consideration any observations of the parties and the circumstances of the arbitration, shall decide on another place.
- (b) The Tribunal may, after consultation with the parties, conduct hearings at any place that it considers appropriate. It may deliberate wherever it deems appropriate.
- (c) The award shall be deemed to have been made at the place of arbitration.

Language

Section 40

- (a) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or the languages to be used in the proceedings having regard to any observations of the parties and the circumstances of the arbitration. 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.
- (b) The Tribunal may order that any documents submitted in languages other than the language of arbitration be accompanied by a translation in whole or in part into the language of arbitration.

WRITTEN STATEMENTS

Statement of Claim

Section 41

- (a) Unless the Statement of Claim accompanied the Notice of Arbitration or is embodied therein, the Claimant shall, within 30 days after receipt of notification from the Administering Body of the establishment of the Tribunal, communicate its Statement of Claim to the Respondent and to the Tribunal.
- (b) The Statement of Claim shall contain a comprehensive statement of the facts and legal arguments supporting the claim, including a statement of the relief sought.
- (c) The Statement of Claim shall, to as large an extent as possible, be accompanied by the documentary evidence upon which the Claimant relies, together with a schedule of such documents. Where the documentary evidence is especially voluminous, the Claimant may add a reference to further documents it is prepared to submit.

Statement of Defense

Section 42

- (a) The Respondent shall, within 30 days after receipt of the Statement of Claim or within 30 days after receipt of notification from the Administering Body of the establishment of the Tribunal, whichever

occurs later, communicate its Statement of Defense to the Claimant and to the Tribunal.

(b) The Statement of Defense shall reply to the particulars of the Statement of Claim required pursuant to Section 41(b). The Statement of Defense shall be accompanied by the corresponding documentary evidence described in Section 41(c).

(c) Any counter-claim or set-off by the Respondent shall be made or asserted in the Statement of Defense or, in exceptional circumstances, at a later stage in the arbitral proceedings if so determined by the Tribunal. Any such counter-claim or set-off shall contain the same particulars as those specified in Section 41(b) and (c).

Reply and Supplementary Statements

Section 43

(a) In the event that a counter-claim or set-off has been made or asserted, the Claimant shall reply to the particulars thereof. Section 42(a) and (b) shall apply *mutatis mutandis* to such reply.

(b) The Tribunal may, in its discretion, allow or require supplementary written statements.

Amendments to Written Statements

Section 44

Subject to any contrary agreement by the parties, a party may, *with prior leave of the Tribunal*, amend or supplement its claim, counter-claim, defense or set-off during the course of the arbitral proceedings. The Tribunal may decline to grant such leave if it considers the proposed amendment or supplement inappropriate having regard to its nature or the delay in making it and to the provisions of Section 38(b) and (c).

Communication Between Parties and Tribunal

Section 45

Except as otherwise provided in these Rules or permitted by the Tribunal, no party or anyone acting on its behalf may have any *ex parte* communication with any arbitrator with respect to any matter of substance relating to the arbitration, it being understood that nothing in this paragraph shall prohibit *ex parte* communications which concern matters of a purely organizational nature, such as the physical facilities, place, date or time of the hearings.

Interim Measures of Protection, Security for Claims and Costs

Section 46

(a) After the constitution of the Tribunal and during the arbitral proceedings, the Tribunal may, at the request of a party issue interim measures it deems necessary, including injunctions and measures for the conservation of goods which form part of the subject matter in dispute, such as an order for their deposit with a third person or for the sale of perishable goods. The Tribunal may make the granting of such measures subject to appropriate security being furnished by the requesting party.

(b) At the request of a party, the Tribunal may, if it considers it to be required by exceptional circumstances, order the other party to provide security, in a form to be determined by the Tribunal, for

the claim or counter-claim, as well as for costs referred to in Section 72.

(c) Measures and orders contemplated under this Section may take the form of an interim award.

(d) A request addressed by a party to a judicial authority for interim measures or for security for the claim or counter-claim, or for the implementation of any such measures or orders granted by the Tribunal, shall not be deemed incompatible with the Arbitration Agreement, or deemed to be a waiver of that Agreement.

(e) The Tribunal shall have the power to require any person to attend a hearing as a witness. The Tribunal has the power to subpoena witnesses and documents when the relevancy of the testimony and the materiality thereof has been demonstrated to it.

(f) The Tribunal may also require the retirement of any witness during the testimony of any other witness. (Based on Article 4.27 of the DOJ Rules)

(g) The Tribunal or any party may, *in accordance with the Special Rules of Court for Alternative Dispute Resolution ["Special ADR Rules"]*, request a court of the Philippines assistance in taking evidence as well as for interim measures of protection or for security for the claim or counter-claim, or for the implementation of any such measures or orders granted by the Tribunal. *Such application for court assistance* shall not be deemed incompatible with the Arbitration Agreement, or deemed to be a waiver of that Agreement.

Preliminary Conference and Procedural Order

Section 47

(a) The Tribunal may, in general following the submission of the Statement of Defense, conduct a preliminary conference with the parties for the purpose of defining the issues of the arbitration, limiting the number of witnesses, organizing and scheduling the subsequent proceedings and other relevant matters that the parties may agree on.

(b) Within 15 days following the preliminary conference or if there is none, after the completion of the submissions the written statements, the Tribunal shall on the basis of the parties written statements and in consultation with the parties proceed to draw up a Procedural Order, defining, among others, the issues to be determined in the arbitration.

(c) The parties and the Tribunal shall sign the Procedural Order. At the request of the Tribunal, the Administering Body may extend the time for the completion of the Procedural Order.

(d) If any party refuses to participate in drawing up of the Procedural Order or the definition of Issues or to sign the same after it has been drafted and signed by the Tribunal and the other party, the Tribunal shall submit the same to the Administering Body for approval.

(e) The Procedural Order shall be signed by the parties and the Tribunal and approved by the Administering Body. If a party refuses to sign, the Tribunal and the Administering Body will sign and indicate reasons why the party refuses to sign.

Evidence

Section 48

(a) The Tribunal shall be the sole judge of the admissibility, relevance, materiality and weight of evidence.

(b) At any time during the arbitration, the Tribunal may, at the request of a party or on its own motion, order a party to produce such documents or other evidence as it considers necessary or appropriate and may order a party to make available to the Tribunal or to an expert appointed by it or to the other party any property in its possession or control for inspection or testing.

Experiments

Section 49

(a) A party may give notice to the Tribunal and to the other party at any reasonable time before a hearing that specified experiments have been conducted on which it intends to rely. The notice shall specify the purpose of the experiment, a summary of the experiment, the method employed, the results and the conclusion. The other party may by notice to the Tribunal request that any or all such experiments be repeated in its presence. If the Tribunal considers such request justified, it shall determine the timetable for the repetition of the experiments.

(b) For the purposes of this Section, "experiments" shall include tests or other processes of verification.

Site Visits

Section 50

The Tribunal may, at the request of a party or on its own motion, and with notice to the other party, inspect or require the inspection of any site, property, machinery, facility, production line, model, film, material, product or process, as it deems appropriate. A party may request such an inspection at any reasonable time prior to any hearing, and the Tribunal, if it grants such a request, shall determine the timing and arrangements for the inspection, including the presence and participation of the tribunal and the parties.

Agreed Primers and Models

Section 51

The Tribunal may, where the parties so agree, determine that they shall jointly provide:

- (i) a technical primer setting out the background of the scientific, technical or other specialized information necessary to fully understand the matters in issue; and
- (ii) models, drawings or other materials that the Tribunal or the parties require for reference purposes at any hearing.

Disclosure of Trade Secrets and Other Confidential Information

Section 52

(a) For the purposes of this Section, confidential information shall mean any information, regardless of the medium in which it is expressed, which is:

- (i) in the possession of a party;

- (ii) not accessible to the public;
- (iii) of commercial, financial or industrial significance; and
- (iv) treated as confidential by the party possessing it.

(b) A party invoking the confidentiality of any information it wishes or is required to submit in the arbitration, including to an expert appointed by the Tribunal, shall make an application to have the information classified as confidential by notice to the Tribunal, with a copy to the other party. Without disclosing the substance of the information, the party shall give in the notice the reasons for which it considers the information confidential.

(c) The Tribunal shall determine whether the information is to be classified as confidential and of such a nature that the absence of special measures of protection in the proceedings would be likely to cause serious harm to the party invoking its confidentiality. If the Tribunal so determines, it shall decide under which conditions and to whom the confidential information may in part or in whole be disclosed and shall require any person to whom the confidential information is to be disclosed to sign an appropriate confidentiality undertaking.

(d) In exceptional circumstances, in lieu of itself determining whether the information is to be classified as confidential and of such nature that the absence of special measures of protection in the proceedings would be likely to cause serious harm to the party invoking its confidentiality, the Tribunal may, at the request of a party or on its own motion and after consultation with the parties, designate a confidentiality advisor who will determine whether the information is to be so classified, and, if so, decide under which conditions and to whom it may in part or in whole be disclosed. Any such confidentiality advisor shall be required to sign an appropriate confidentiality undertaking.

(e) The Tribunal may also, at the request of a party or on its own motion, appoint the confidentiality advisor as an expert in accordance with Section 55 in order to report to it, on the basis of the confidential information, on specific issues designated by the Tribunal without disclosing the confidential information either to the party from whom the confidential information does not originate or to the Tribunal.

Hearings

Section 53

(a) If either party so requests, the Tribunal shall hold a hearing for the presentation of evidence by witnesses, including expert witnesses, or for oral argument or for both. In the absence of a request, the Tribunal shall decide whether to hold such a hearing or hearings. If no hearings are held, the proceedings shall be conducted on the basis of documents and other materials alone.

(b) In the event of a hearing, the Tribunal shall give the parties adequate advance notice of the date, time and place thereof.

(c) Unless the parties agree otherwise, all hearings shall be in private.

(d) The Tribunal shall determine whether and, if so, in what form a record shall be made of any hearing.

Witnesses

Section 54

Subject to any directions to the parties prescribed by the Tribunal in the Procedural Order drawn up by the Tribunal with the participation and approval of the parties as provided in Section 47, the examination of witnesses shall be in accordance with the following rules:

- (a) Before any hearing, the Tribunal may require either party to give notice of the identity of witnesses it wishes to call, as well as of the subject matter of their testimony and its relevance to the issues.
- (b) The Tribunal has discretion, on the grounds of redundancy and irrelevance, to limit or refuse the appearance of any witness, whether witness of fact or expert witness.
- (c) Any witness who gives oral evidence may be questioned, under the control of the Tribunal, by each of the parties. The Tribunal may put questions at any stage of the examination of the witnesses.
- (d) The testimony of witnesses may, either at the choice of a party or as directed by the Tribunal, be submitted in written form, whether by way of signed statements, sworn affidavits or otherwise, in which case the Tribunal may make the admissibility of the testimony conditional upon the witnesses being made available for oral testimony.
- (e) A party shall be responsible for the practical arrangements, cost and availability of any witness it calls.
- (f) The Tribunal shall determine whether any witness shall retire during any part of the proceedings, particularly during the testimony of other witnesses.

Experts Appointed by the Tribunal

Section 55

- (a) The Tribunal may, after consultation with the parties, appoint one or more independent experts to report to it on specific issues designated by the Tribunal. A copy of the expert's terms of reference, established by the Tribunal, having regard to any observations of the parties, shall be communicated to the parties. Any such expert shall be required to sign an appropriate confidentiality undertaking.
- (b) Subject to Section 52, upon receipt of the expert's report, the Tribunal shall communicate a copy of the report to the parties, which shall be given the opportunity to express, in writing, their opinion on the report. A party may, subject to Section 52, examine any document on which the expert has relied in such a report.
- (c) Unless the Tribunal and parties have agreed otherwise, the expert shall testify during the hearing like any other witness and shall be subject to examination and cross-examination by the parties. At this hearing, the parties may present expert witnesses to testify on the points at issue.
- (d) The opinion of any expert on the issue or issues submitted to the expert shall be subject to the Tribunal's power of assessment of those issues in the context of all the circumstances of the case, unless the parties have agreed that the expert's determination shall be conclusive in respect of any specific issue.

Default

Section 56

(a) If the Claimant, without showing good cause, fails to submit its Statement of Claim in accordance with Section 41, the Tribunal shall terminate the proceedings.

(b) If the Respondent, without showing good cause, fails to submit its Statement of Defense in accordance with Section 42, the Tribunal may nevertheless proceed with the arbitration and make the award.

(c) The Tribunal may also proceed with the arbitration and make the award if a party, without showing good cause, fails to avail itself of the opportunity to present its case within the period of time determined by the Tribunal.

(d) If a party, without showing good cause, fails to comply with any provision of, or requirement under, these Rules or any direction given by the Tribunal, the Tribunal may draw the inferences therefrom that it considers appropriate.

Closure of Proceedings

Section 57

(a) The Tribunal shall declare the proceedings closed when it is satisfied that the parties have had adequate opportunity to present submissions and evidence.

(b) The Tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own motion or upon application of a party, to re-open the proceedings it declared to be closed at any time before the award is made.

Waiver

Section 58

A party which knows that any provision of, or requirement under, these Rules, or any direction given by the Tribunal, has not been complied with, and yet proceeds with the arbitration without promptly recording an objection to such non-compliance, shall be deemed to have waived its right to object.

V. ARBITRAL AWARDS

Applicable Substantive and Procedural Laws

Section 59

(a) The Tribunal shall decide the substance of the dispute in accordance with the law or rules of law chosen by the parties. Any designation of the law of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules. Failing a choice by the parties, the Tribunal shall apply the law or rules of law that it determines to be appropriate. In all cases, the Tribunal shall decide having due regard to the terms of any relevant contract and taking into account applicable trade usages. The Tribunal may decide as amiable compositeur or ex aequo et bono only if the parties have expressly authorized it to do so.

(b) The law applicable to the arbitration shall be the arbitration law of the place of arbitration, unless the parties have expressly agreed on the application of another arbitration law and such agreement is permitted by the law of the place of arbitration.

(c) An Arbitration Agreement shall be regarded as effective if it conforms to the requirements concerning form, existence, validity and scope of either the law or rules of law applicable in accordance with paragraph (a), or the law applicable in accordance with paragraph (b).

Interest

Section 60

(a) Monetary amounts in the award may be expressed in any currency.

(b) Unless otherwise agreed upon by the parties, the Tribunal may award simple or compound interest to be paid by a party on any sum awarded against that party. It shall be free to determine the interest at such rates as it considers to be appropriate as justified by the submission of a party and/or the parties, without being bound by legal rates of interest; and shall be free to determine the period for which the interest shall be paid, as justified by the submission of a party and/or the parties.

Decision-Making

Section 61

Unless the parties have agreed otherwise, where there is more than one arbitrator, any award, order or other decision of the Tribunal shall be made by a majority. In the absence of a majority, the presiding arbitrator shall make the award, order or other decision as if acting as sole arbitrator.

Form and Notification of Awards

Section 62

(a) The Tribunal may make preliminary, interim, interlocutory, partial or final awards.

(b) The award shall be in writing and shall state the date on which it was made, as well as the place of arbitration in accordance with Section 39(a).

(c) The award shall state the reasons on which it is based, unless the parties have agreed that no reasons should be stated and the law applicable to the arbitration does not require the statement of such reasons.

(d) The award shall be signed by the arbitrator or arbitrators. The signature of the award by a majority of the arbitrators, or, in the case of Section 61, second sentence, by the presiding arbitrator, shall be sufficient. Where an arbitrator fails to sign, the award shall state the reason for the absence of the signature.

(e) The Tribunal shall send the draft award for scrutiny by the Administering Body with regard to matters of form and substance but only to ensure the enforceability of the award. The Arbitral Tribunal shall have the sole authority and discretion to decide on whether or not to accept the suggestions of the Administering Body.

(f) The award shall be communicated by the Tribunal to the Administering Body in a number of originals sufficient to provide one for each party, the arbitrator or arbitrators and the Administering Body. The Administering Body shall formally communicate an original of the award to each party and the arbitrator or arbitrators.

(g) At the request of a party, the Administering Body shall provide it, at cost, with a copy of the award certified by the Administering Body. A copy so certified shall be deemed to comply with the requirements of Article IV(1)(a) of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, June 10, 1958.

(h) Before signing any Award, the Arbitral Tribunal shall submit it in draft form to the IPOPHL Arbitration Office. The IPOPHL Arbitration Office may lay down modifications as to the form of the Award and, without affecting the Arbitral Tribunal's liberty of decision, may also draw its attention to points of substance.

Time Period for Delivery of the Final Award

Section 63

(a) The arbitration should, wherever reasonably possible, be heard and the proceedings declared closed within not more than eight months after either the delivery of the Statement of Defense or the establishment of the Tribunal, whichever event occurs later. The final award should, wherever reasonably possible, be made within three months thereafter.

(b) If the proceedings are not declared closed within the period of time specified in paragraph (a), the Tribunal shall send the Administering Body a status report on the arbitration, with a copy to each party. It shall send a further status report to the Administering Body, and a copy to each party, at the end of each ensuing period of three months during which the proceedings have not been declared closed.

(c) If the final award is not made within two months after the closure of the proceedings, the Tribunal shall send the Administering Body a written explanation for the delay, with a copy to each party. It shall send a further explanation, and a copy to each party, at the end of each ensuing period of one month until the final award is made.

Effect of Award

Section 64

(a) By agreeing to arbitration under these Rules, the parties undertake to carry out the award without delay, and waive their right to any form of appeal or recourse to a court of law or other judicial authority, insofar as such waiver may validly be made under the applicable law.

(b) The award shall be effective and binding on the parties as from the date it is communicated by the Administering Body pursuant to Section 62(f), second sentence.

(c) Within a reasonable timeframe upon receipt of the award from the Administering Body pursuant to Sections 62(f) and 65(d), the IPOPHL Arbitration Office shall assist in the enforcement of the award, pertaining to the IPOPHL, which the IPOPHL is able to do so under applicable legislation and regulations.

Termination of the Arbitral Proceedings

Section 65

(a) *Settlement.* The Tribunal may suggest that the parties explore settlement at such times as the Tribunal may deem appropriate.

(b) *Agreement to Settle.* If, before the award is made, the parties agree on a settlement of the dispute, the Tribunal shall terminate the arbitration and, if requested jointly by the parties, record the settlement in the form of a consent award. The Tribunal shall not be obliged to give reasons for such an award.

(c) *Unnecessary and Impossible.* If, before the award is made, the continuation of the arbitration becomes unnecessary or impossible for any reason not mentioned in paragraph (b), the Tribunal shall inform the parties of its intention to terminate the arbitration. The Tribunal shall have the power to issue such an order terminating the arbitration, unless a party raises justifiable grounds for objection within a period of time to be determined by the Tribunal.

(d) *Consent Award.* The consent award or the order for termination of the arbitration shall be signed by the arbitrator or arbitrators in accordance with Article 62(d) and shall be communicated by the Tribunal to the Administering Body for scrutiny in accordance with Sections 62(e) and (h), in a number of originals sufficient to provide one for each party, the arbitrator or arbitrators and the Administering Body. After scrutiny that the award may be enforced in the IPOPHL for all those matters relating to IPOPHL as indicated in Section 64(c) and under applicable legislations and regulations, the Administering Body shall formally communicate an original of the consent award or the order for termination to each party and the arbitrator or arbitrators.

Correction and/or Additional Awards

Sections 66

(a) Within 30 days after receipt of the award, a party may, by notice to the Tribunal, with a copy to the Administering Body and the other party, request the Tribunal to correct in the award any clerical, typographical or computational errors. If the Tribunal considers the request to be justified, it shall make the correction within 30 days after receipt of the request. Any correction, which shall take the form of a separate memorandum, signed by the Tribunal in accordance with Section 62(d), shall become part of the award.

(b) The Tribunal may correct any error of the type referred to in paragraph (a) on its own initiative within 20 days after the date of the award.

(c) A party may, within 20 days after receipt of the award, by notice to the Tribunal, with a copy to the Administering Body and the other party, request the Tribunal to make an additional award as to claims presented in the arbitral proceedings but not dealt with in the award. Before deciding on the request, the Tribunal shall give the parties an opportunity to be heard. If the Tribunal considers the request to be justified, it shall, wherever reasonably possible, make the additional award within 45 days of receipt of the request.

VI. FEES AND COSTS

Schedule of Fees

Section 67

The Tribunal's fees and the fees of the Administering Body shall be ascertained in accordance with the Schedule of Fees in force at the time of commencement of the arbitration.

Unquantifiable Claims

Section 68

Where the amount of the claim or the counterclaim is not quantifiable at the time payment is due, the Administering Body shall make a provisional estimate of the costs of the arbitration. This may be adjusted in light of such information as may subsequently become available. Where the claim per se is not quantifiable but the applicable law allows the award of a sum of money as indemnity, or alternative relief as in the case of a claim for specific performance, rescission, or annulment, the equivalent monetary award shall be the basis for determining the amount of the claim or counterclaim.

Fees of the Arbitrators

Section 69

(a) The fees of the Tribunal shall be reasonable. The amount and currency of the fees of the arbitrator and the modalities and timing of their payment shall be fixed by the Administering Body in consultations with the arbitrators and the parties taking into account the amount in dispute, the complexity of the subject matter, the time spent by the arbitrators and any other relevant circumstances

(b) In fixing the fees of the arbitrators, the Administering Body shall take into account the Schedule of Fees, applicable on the date on which the Administering Body has received the Request for Arbitration.

The Administering Body's prevailing schedule of fees for arbitrators shall govern unless the parties and tribunal agree otherwise in writing.

Deposits

Section 70

(a) Upon receipt of notification from the Administering Body of the establishment of the Tribunal, the Claimant and the Respondent shall each deposit an equal amount as an advance for the costs of arbitration referred to in Section 71. However, where there is a significant disparity between the amount of the claim and the amount of the counterclaim, the Administering Body may direct that the deposit of the advance on costs shall be shared by the parties on a pro rata basis. The amount of the deposit and the period of time within which shall deposit shall be made shall be determined by the Administering Body.

(b) In the course of the arbitration, the Administering Body may require that the parties make supplementary deposits within such period indicated in the notice.

(c) If the required deposits are not paid in full within 30 days after receipt of the corresponding notification, the Administering Body shall so inform the parties in order that one or other of them may make the required payment.

(d) Where the Administering Body directs that payment of the deposit of costs of arbitration shall be

made on a pro rata basis, the Administering Body in its discretion may establish two separate deposits on account of claim and counter-claim. If separate deposits are established, the totality of the deposit on account of claim shall be paid by the Claimant and the totality of the deposit on account of counter-claim shall be paid by the Respondent.

(e) If a party fails, within 15 days after a second reminder in writing from the Administering Body, to pay the required deposit, it shall be deemed to have withdrawn the relevant claim or counter-claim.

(f) After the award has been made, the Administering Body shall, in accordance with the award, render an accounting to the parties of the deposits received and return any unexpended balance to the parties or require the payment of any amount owing from the parties.

(g) If the arbitration is settled or disposed of without a hearing, the costs of arbitration shall be finally determined by the Administering Body. The Administering Body shall have regard to all the circumstances of the case, including the stage of proceedings at which the arbitration is settled or disposed of. In the event that the costs of arbitration determined are less than the deposits made, there shall be a refund in such proportions as the parties may agree, or failing an agreement, in the same proportions as the deposits were made.

Costs of Arbitration

Section 71

(a) In its award, the Tribunal shall fix the costs of arbitration, which shall consist of:

(i) the arbitrators' fees;

(ii) the properly incurred travel, communication and other expenses of the arbitrators;

(iii) the costs of expert advice and such other assistance required by the Tribunal pursuant to these Rules; and

(iv) such other expenses as are necessary for the conduct of the arbitration proceedings, such as the cost of meeting and hearing facilities.

(b) The aforementioned costs shall, as far as possible, be debited from the deposits required under Section 70.

(c) The Tribunal shall, subject to any agreement of the parties, apportion the costs of arbitration and the registration and administration fees of the Administering Body between the parties in the light of all the circumstances and the outcome of the arbitration.

Costs Incurred by a Party

Section 72

In its award, the Tribunal may, subject to any contrary agreement by the parties and in the light of all the circumstances and the outcome of the arbitration, order a party to pay the whole or part of reasonable expenses incurred by the other party in presenting its case, including those incurred for legal representatives and witnesses.

Joint and Several Liabilities

Section 73

Parties are jointly and severally liable for the costs of the arbitration. Any party is free to pay the whole of the advances or deposits on costs of the arbitration in respect of the claim or the counterclaim should the other party fail to pay its share. The Tribunal may, in consultation with the Administering Body suspend its work should the advances or deposits directed under this Rule remain either wholly or in part unpaid.

VII. CONFIDENTIALITY

Confidentiality of the Existence of the Arbitration

Section 74

(a) The Tribunal and the parties shall at all times treat all matters relating to the existence of the arbitral proceedings as confidential;

(b) Except to the extent necessary in connection with a court challenge to the arbitration or an action for enforcement of an award, no information concerning the existence of an arbitration may be unilaterally disclosed by a party to any third party unless it is required to do so by law or by a competent regulatory body, and then only:

(i) by disclosing no more than what is legally required; and

(ii) by furnishing to the Tribunal and to the other party, if the disclosure takes place during the arbitration, or to the other party alone, if the disclosure takes place after the termination of the arbitration, details of the disclosure and an explanation of the reason for it.

(c) Notwithstanding paragraph (b), a party may disclose to a third party the names of the parties to the arbitration and the relief requested for the purpose of satisfying any obligation of good faith or candor owed to that third party.

Confidentiality of Disclosures Made During the Arbitration

Section 75

(a) In addition to any specific measures that may be available under Section 52, any documentary or other evidence given by a party or a witness in the arbitration shall be treated as confidential and, to the extent that such evidence describes information that is not in the public domain, shall not be used or disclosed to any third party by a party whose access to that information arises exclusively as a result of its participation in the arbitration for any purpose without the consent of the parties or order of a court having jurisdiction.

(b) For the purposes of this Section, a witness called by a party shall not be considered to be a third party. To the extent that a witness is given access to evidence or other information obtained in the arbitration in order to prepare the witness's testimony, the party calling such witness shall be responsible for the maintenance by the witness of the same degree of confidentiality as that required of the party.

(c) All other information obtained under circumstances that would create a reasonable expectation on behalf of the source that the information shall not be disclosed shall be treated as confidential.

Confidentiality of the Award

Section 76

The award shall be treated as confidential by the parties and may only be disclosed to a third party if and to the extent that:

- (i) the parties consent; or
- (ii) it falls into the public domain as a result of an action before a national court or other competent authority; or
- (iii) it must be disclosed in order to comply with a legal requirement imposed on a party or in order to establish or protect a party's legal rights against a third party.

Continuing Obligation for Confidentiality

Section 77

(a) Unless the parties agree otherwise, the Administering Body and the arbitrator shall maintain the confidentiality of the arbitration, the award and, to the extent that they describe information that is not in the public domain, any documentary or other evidence disclosed during the arbitration, except to the extent necessary in connection with a court action relating to the award, or as otherwise required by law.

(b) Notwithstanding paragraph (a), the Administering Body may include information concerning the arbitration in any aggregate statistical data that it publishes concerning its activities, provided that such information does not enable the parties or the particular circumstances of the dispute to be identified.

VIII. MISCELLANEOUS

Exclusion of Liability

Section 78

Except in respect of deliberate wrongdoing, the arbitrator or arbitrators, the IPOPHL, the PDRCI, and the Administering Body shall not be liable to a party for any act or omission in connection with the arbitration.

Waiver of Defamation

Section 79

The parties and, by acceptance of appointment, the arbitrator agree that any statements or comments, whether written or oral, made or used by them or their representatives in preparation for or in the course of the arbitration shall not be relied upon to found or maintain any action for defamation, libel, slander or any related complaint, and this Article may be pleaded as a bar to any such action.

Practice Notes

Section 80

The Administering Body may from time to time issue Practice Notes to supplement, regulate and implement these Rules for the purpose of facilitating the administration of arbitrations governed by these Rules.

Absence of Rules

Section 81

In all matters not expressly provided for in these rules, the Administering Body and the Tribunal shall act in the spirit of these Rules and shall make every reasonable effort to ensure that fair, expeditious and economical conclusion of the arbitration and the enforceability of the award.

Separability Clause

Section 82

In the event that any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Rules, but this Rules shall be construed as if such invalid, illegal or unenforceable provisions had never been contained herein, unless the deletion of such provision or provisions would result in such a material change so as to cause completion of the transactions contemplated herein to be unreasonable.

Effectivity Clause

Section 83

These Rules shall take effect immediately upon publication in the Official Gazette or in a newspaper of general circulation.

Repealing Clause

Section 84

All other orders, issuances, rules and regulations of the IPOPHL that are inconsistent with the provisions of this Rules are hereby repealed, amended or modified accordingly.

Done this 5th day of April 2011, Makati City.



RICARDO R. BLANCAFLOR
Director General