


**NINETEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)**



'22 SEP 12 P 4 :04

**SENATE
S. No. 1308**

RECEIVED BY: 

Introduced by SENATOR FRANCIS "TOL" N. TOLENTINO

**AN ACT
PROVIDING FOR THE INTERNATIONAL COMMERCIAL ARBITRATION ACT
OF THE PHILIPPINES**

EXPLANATORY NOTE

Article III, Section 16 of the 1987 Philippine Constitution provides that "[a]ll persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies." In furtherance thereof, our courts and law makers recognized the need for the active promotion of the parties' freedom in arranging for the successful and speedy resolution of their disputes. This is seen in the provisions of the Revised Rules of Court on mediation and judicial dispute resolution and through Republic Act No. 876, otherwise known as the "*Arbitration Law*", and Republic Act No. 9285, otherwise known as the "*Alternative Dispute Resolution Act of 2004*", among others. The recognition of party autonomy in dispute resolution has proven to be an effective measure in unclogging our court dockets.

At the end of 2021, the lower courts have a total of 662,604 pending cases. The overall disposal rate in the same year is not that impressive either with just an average of 61.7%, which means that the case input or the influx of cases is greater than case output or the disposition of cases.

It is also a known fact that it takes several years before cases are ultimately decided and for decisions to reach finality. The long and tedious process of lawsuits are costly not only to the parties but also to the judiciary. Through arbitration and

other alternative modes of dispute resolution, disputes can be resolved much faster, simpler and less expensive than it would take if the parties resort to the judicial process.

Arbitration is not a novel concept in the Philippines. As early as 19 June 1953, the Philippine Congress enacted Republic Act No. 876, otherwise known as the "Arbitration Law," providing for arbitration procedure in civil controversies. In 1967, the Philippines acceded to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) and became one of its first signatories.

On 4 February 1985, Executive Order No. 1008, otherwise known as the "Construction Industry Arbitration Law," was issued creating an arbitration machinery for the Philippine construction industry. The Construction Industry Arbitration Commission (CIAC) was established to promote the expeditious settlement of disputes relating to the construction industry.

In April 2004, the Congress enacted Republic Act No. 9285 ("RA No. 9285"), otherwise known as the "Alternative Dispute Resolution Act (ADR) of 2004." The said act fosters prompt, economical, and amicable resolution of disputes while granting the parties the option to resort to alternative dispute resolution such as mediation and arbitration.

While RA No. 9285 provides a policy on ADR, it is still important to keep up with the advancements of the modern world. Companies from different nations frequently enter into business agreements with one another. Although such joint ventures provide for exciting opportunities, it can also lead to disagreements. It is critical therefore that there is a comprehensive policy for an alternative dispute mechanism in resolving these cross border challenges.

Pursuant to Section 19 of R.A. No. 9285, the Philippines adopts the Model Law on International Arbitration (Model Law) adopted by the United Nations Commission on International Trade Law (UNCITRAL) dated 21 June 1985. To assist States in

reforming and modernizing their domestic arbitral procedure, the Model Law reflects worldwide consensus covering all stages of the arbitral process.¹

On 7 July 2006, amendments to the Model Law were adopted, including amendments to Articles 1(2), 7, and 35(2); a new Chapter IVA to replace Article 17; and a new Article 2A. These amendments modernize the 1985 Model Law to reflect the current arbitral practices applicable to international contracts.

Thus, this Bill seeks to adopt the UNCITRAL Model Law, as amended, in order to update the commercial arbitration practices in the Philippines in conformity with international standards. Further, this Bill aims to assist legal practitioners specializing in the field of commercial arbitration and keep them abreast of arbitration practices governing international contracts.

In view of the foregoing, the immediate passage of this Bill is earnestly sought.



FRANCIS "TOL" N. TOLENTINO


¹ https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration

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Introduced by Senator FRANCIS N. TOLENTINO

**AN ACT
PROVIDING FOR THE INTERNATIONAL COMMERCIAL ARBITRATION ACT
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Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

**ARTICLE I
GENERAL PROVISIONS**

1
2 **Section 1. Short Title.** – This Act shall be known as the "International
3 Commercial Arbitration Act of the Philippines.

4 **Section 2. Declaration of Policy.** - It is hereby declared policy of the State
5 to actively promote party autonomy in the resolution of disputes or the freedom of
6 the party to make their own arrangements to resolve their disputes. Towards this end,
7 the State shall adopt an International Commercial Arbitration Law to provide a
8 standard in commercial relationships.

9 **Section 3. Scope of Application.** -

10 (a) This Act applies to international commercial arbitration, subject to any
11 agreement in force between the Republic of the Philippines and any other State or
12 States.

13 (b) The provisions of this Act, except Sections 8, 9, 27, 28, 29, 46 and 47,
14 apply only if the place of arbitration is in the territory of the Republic of the Philippines.

15 (c) An arbitration is international if:

- 1 1. the parties to an arbitration agreement have, at the time of the
2 conclusion of that agreement, their places of business in different
3 States; or
4 2. one of the following places is situated outside the Philippines in which
5 the parties have their places of business:
6 i. the place of arbitration if determined in, or pursuant to, the
7 arbitration agreement
8 ii. any place where a substantial part of the obligations of the
9 commercial relationship is to be performed or the place with
10 which the subject-matter of the dispute is most closely
11 connected; or
12 3. the parties have expressly agreed that the subject-matter of the
13 arbitration agreement relates to more than one country.

14 (d) For the purposes of paragraph (c) of this Section:

- 15 1. if a party has more than one place of business, the place of business is
16 that which has the closest relationship to the arbitration agreement;
17 2. if a party does not have a place of business, reference is to be made to
18 his habitual residence.

19 (e) An arbitration is commercial if it arises out of a relationship of a
20 commercial nature, but not limited to, the following: a trade transaction for the supply
21 and exchange of goods or services; a distribution agreement; a commercial
22 representation or agency; an exploitation agreement or concession; a joint venture or
23 other related form of industrial business cooperation; the carriage of goods or
24 passengers by air, sea, rail or road; the construction of works; insurance; licensing;
25 factoring; leasing; consulting; engineering; financing; banking; and investing.

26 (f) This Act shall not affect other existing laws and regulations by virtue of
27 which certain disputes may not be submitted to arbitration or may be submitted to
28 arbitration only according to provisions other than those of this Act.

29 **Section 4. Definitions And Rules of Interpretation** – For the purposes
30 of this Act:

31
32 (a) "**Arbitration**" means any arbitration whether or not administered by a
33 permanent arbitral institution;

34 (b) "**Arbitration Agreement**" is an agreement by the parties to submit to
35 arbitration all or certain disputes which have arisen or which may arise between them
36 in respect of a defined legal relationship, whether contractual or not. An arbitration
37 agreement may be in the form of an arbitration clause in a contract or in the form of
38 a separate agreement;

1 (c) "**Arbitral Tribunal**" means a sole arbitrator or a panel of arbitrators;

2 (d) "**Court**" means a body or organ of the judicial system of a State;

3 (e) Where a provision of this Act, except Section 40, leaves the parties free
4 to determine a certain issue, such freedom includes the right of the parties to authorize
5 a third party, including an institution, to make that determination;

6 (f) Where a provision of this Act refers to the fact that the parties have
7 agreed or that they may agree or in any other way refers to an agreement of the
8 parties, such agreement includes any arbitration rules referred to in that agreement;

9 (g) Where a provision of this Act, other than in Section 37(a) and 44(b)(1),
10 refers to a claim, it also applies to a counter-claim, and where it refers to a defense,
11 it also applies to a defense to such counter-claim.

12 (h) **International Origin and General Principles** –

13 i. In the interpretation of this Act, regard is to be had to its
14 international origin and to the need to promote uniformity in its
15 application and the observance of good faith.

16 ii. Questions concerning matters governed by this Act which are
17 not expressly settled in it are to be settled in conformity with the
18 general principles on which this Act is based.

19 **Section 5. Receipt of Written Communications**

20 (a) Unless otherwise agreed by the parties:

21 1. any written communication is deemed to have been received if it is
22 delivered to the addressee personally or if it is delivered at an
23 addressee's place of business, habitual residence or mailing address; if
24 none of these can be found after making a reasonable inquiry, a written
25 communication is deemed to have been received if it is sent to the
26 addressee's last- known place of business, habitual residence or mailing
27 address by registered letter or any other means which provides a record
28 of the attempt to deliver it;

29 2. the communication is deemed to have been received on the day it is so
30 delivered.

31 (b) The provisions of this Section do not apply to communications in court
32 proceedings.

33 **Section 6. Waiver of Right To Object** - A party who knows that any
34 provision of this Act from which the parties may derogate or any requirement under
35 the arbitration agreement has not been complied with and yet proceeds with the
36 arbitration without stating his objection to such non-compliance without undue delay
37 or, if a time-limit is provided therefor, within such period of time, shall be deemed to
38 have waived his right to object.

1 **Section 7. Extent of Court Intervention** - In matters governed by this
2 Act, no court shall intervene except where so provided in this Act.

3 **Section 8. Court or Other Authority for Certain Functions of**
4 **Arbitration Assistance And Supervision** - The functions referred to in Section
5 13(c), 13(d), 15(c), 16, 18(c) and 46(b) shall be performed by the person or institution
6 named in the arbitration agreement as the appointing authority; or the regular
7 arbitration institution under whose rules the arbitration is agreed to be conducted.

8 The functions referred to in Sections 18 (c) and 46 (b), shall be performed by
9 the appropriate Regional Trial Court.

ARTICLE II
ARBITRATION AGREEMENT

10 **Section 9. Form of Arbitration Agreement –**

11 (a) The arbitration agreement shall be in writing.

12 (b) An agreement is in writing if its content is recorded in any form, whether
13 or not the arbitration agreement or contract has been concluded orally, by conduct,
14 or by other means.

15 (c) The requirement that an arbitration agreement be in writing is met by
16 an electronic communication if the information contained therein is accessible so as
17 to be useable for subsequent reference; "electronic communication" means any
18 communication that the parties make by means of data messages; "data message"
19 means information generated, sent, received or stored by electronic, magnetic, optical
20 or similar means, including, but not limited to, electronic data interchange (EDI),
21 electronic mail, telegram, telex, or telecopy.

22 (d) Furthermore, an arbitration agreement is in writing if it is contained in
23 an exchange of statements of claim and defense in which the existence of an
24 agreement is alleged by one party and not denied by the other.

25 (e) The reference in a contract to any document containing an arbitration
26 clause constitutes an arbitration agreement in writing, provided that the reference is
27 such as to make that clause part of the contract.

28 **Section 10. Arbitration Agreement And Substantive Claim Before**
29 **Court**

1 (a) A court before which an action is brought in a matter which is the subject
2 of an arbitration agreement shall, if a party so requests not later than when submitting
3 his first statement on the substance of the dispute, refer the parties to arbitration
4 unless it finds that the agreement is null and void, inoperative or incapable of being
5 performed.

6 (b) Where an action referred to in paragraph (a) of this Section has been
7 brought, arbitral proceedings may nevertheless be commenced or continued, and an
8 award may be made, while the issue is pending before the court.

9 **Section 11. Arbitration Agreement And Interim Measures By Court -**

10 It is not incompatible with an arbitration agreement for a party to request, before or
11 during arbitral proceedings, from a court an interim measure of protection and for a
12 court to grant such measure.

**ARTICLE III
COMPOSITION OF ARBITRAL TRIBUNAL**

13 **Section 12. Number of Arbitrators**

14 (a) The parties are free to determine the number of arbitrators.

15 (b) Failing such determination, the number of arbitrators shall be three.

16 **Section 13. Appointment of Arbitrators**

17 (a) No person shall be precluded by reason of his nationality from acting as
18 an arbitrator, unless otherwise agreed by the parties.

19 (b) The parties are free to agree on a procedure of appointing the arbitrator
20 or arbitrators, subject to the provisions of paragraphs (d) and (e) of this Section.

21 (c) Failing such agreement,

- 22 1. in an arbitration with three arbitrators, each party shall appoint one
23 arbitrator, and the two arbitrators thus appointed shall appoint the third
24 arbitrator; if a party fails to appoint the arbitrator within thirty days of
25 receipt of a request to do so from the other party, or if the two
26 arbitrators fail to agree on the third arbitrator within thirty days of their
27 appointment, the appointment shall be made, upon request of a party,
28 by the court or other authority specified in Section 8;

1 2. in an arbitration with a sole arbitrator, if the parties are unable to agree
2 on the arbitrator, he shall be appointed, upon request of a party, by
3 the court or other authority specified in Section 8.

4 (d) Where, under an appointment procedure agreed upon by the parties,
5 1. a party fails to act as required under such procedure; or
6 2. the parties, or two arbitrators, are unable to reach an agreement
7 expected of them under such procedure; or
8 3. a third party, including an institution, fails to perform any function
9 entrusted to it under such procedure, any party may request the court
10 or other authority specified in Section 8 to take the necessary measure,
11 unless the agreement on the appointment procedure provides other
12 means for securing the appointment.

13 (e) A decision on a matter entrusted by paragraph (c) or (d) of this Section
14 to the court or other authority specified in Section 8 shall be subject to no appeal. The
15 court or other authority, in appointing an arbitrator, shall have due regard to any
16 qualifications required of the arbitrator by the agreement of the parties and to such
17 considerations as are likely to secure the appointment of an independent and impartial
18 arbitrator and, in the case of a sole or third arbitrator, shall take into account as well
19 the advisability of appointing an arbitrator of a nationality other than those of the
20 parties.

21 **Section 14. Grounds For Challenge**

22 (a) When a person is approached in connection with his possible
23 appointment as an arbitrator, he shall disclose any circumstances likely to give rise to
24 justifiable doubts as to his impartiality or independence. An arbitrator, from the time
25 of his appointment and throughout the arbitral proceedings, shall without delay
26 disclose any such circumstances to the parties unless they have already been informed
27 of them by him.

28 (b) An arbitrator may be challenged only if circumstances exist that give rise
29 to justifiable doubts as to his impartiality or independence, or if he does not possess
30 qualifications agreed to by the parties. A party may challenge an arbitrator appointed
31 by him, or in whose appointment he has participated, only for reasons of which he
32 becomes aware after the appointment has been made.

33 **Section 15. Challenge Procedure**

34
35 (a) The parties are free to agree on a procedure for challenging an
36 arbitrator, subject to the provisions of paragraph (c) of this Section.

1
2 (b) Failing such agreement, a party who intends to challenge an arbitrator
3 shall, within fifteen days after becoming aware of the constitution of the arbitral
4 tribunal or after becoming aware of any circumstance referred to in Section 14(b),
5 send a written statement of the reasons for the challenge to the arbitral tribunal.
6 Unless the challenged arbitrator withdraws from his office or the other party agrees
7 to the challenge, the arbitral tribunal shall decide on the challenge

8 (c) If a challenge under any procedure agreed upon by the parties or under
9 the procedure of paragraph (b) of this Section is not successful, the challenging party
10 may request, within thirty days after having received notice of the decision rejecting
11 the challenge, the court or other authority specified in Section 8 to decide on the
12 challenge, which decision shall be subject to no appeal; while such a request is
13 pending, the arbitral tribunal, including the challenged arbitrator, may continue the
14 arbitral proceedings and make an award.

15 **Section 16. Failure or Impossibility To Act**

16 (a) If an arbitrator becomes de jure or de facto unable to perform his
17 functions or for other reasons fails to act without undue delay, his mandate terminates
18 if he withdraws from his office or if the parties agree on the termination. Otherwise,
19 if a controversy remains concerning any of these grounds, any party may request the
20 court or other authority specified in Section 8 to decide on the termination of the
21 mandate, which decision shall be subject to no appeal

22 (b) If, under this Section or Section 15(b), an arbitrator withdraws from his
23 office or a party agrees to the termination of the mandate of an arbitrator, this does
24 not imply acceptance of the validity of any ground referred to in this Section or Section
25 14(b).

26 **Section 17. Appointment of Substitute Arbitrator** - Where the mandate
27 of an arbitrator terminates under Section 15 or 16 or because of his withdrawal from
28 office for any other reason or because of the revocation of his mandate by agreement
29 of the parties or in any other case of termination of his mandate, a substitute arbitrator
30 shall be appointed according to the rules that were applicable to the appointment of
31 the arbitrator being replaced.

ARTICLE IV
JURISDICTION OF ARBITRAL TRIBUNAL

32 **Section 18. Competence of Arbitral Tribunal to Rule on its Jurisdiction**

1 (a) The arbitral tribunal may rule on its own jurisdiction, including any
2 objections with respect to the existence or validity of the arbitration agreement. For
3 that purpose, an arbitration clause which forms part of a contract shall be treated as
4 an agreement independent of the other terms of the contract. A decision by the arbitral
5 tribunal that the contract is null and void shall not entail ipso jure the invalidity of the
6 arbitration clause.

7 (b) A plea that the arbitral tribunal does not have jurisdiction shall be raised
8 not later than the submission of the statement of defense. A party is not precluded
9 from raising such a plea by the fact that he has appointed, or participated in the
10 appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope
11 of its authority shall be raised as soon as the matter alleged to be beyond the scope
12 of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in
13 either case, admit a later plea if it considers the delay justified.

14 (c) The arbitral tribunal may rule on a plea referred to in paragraph (b) of
15 this Section either as a preliminary question or in an award on the merits. If the arbitral
16 tribunal rules as a preliminary question that it has jurisdiction, any party may request,
17 within thirty days after having received notice of that ruling, the Regional Trial Court
18 to decide the matter, which decision shall be subject to no appeal; while such a request
19 is pending, the arbitral tribunal may continue the arbitral proceedings and make an
20 award.

ARTICLE IV – A MEASURES AND PRELIMINARY ORDERS

Section 19. Power of Arbitral Tribunal to Order Interim Measures

22 (a) Unless otherwise agreed by the parties, the arbitral tribunal may, at the
23 request of a party, grant interim measures.

24 (b) An interim measure is any temporary measure, whether in the form of
25 an award or in another form, by which, at any time prior to the issuance of the award
26 by which the dispute is finally decided, the arbitral tribunal orders a party to:

- 27 1. Maintain or restore the status quo pending determination of the
28 dispute;
- 29 2. Take action that would prevent, or refrain from taking action that is
30 likely to cause, current or imminent harm or prejudice to the arbitral
31 process itself;
- 32 3. Provide a means of preserving assets out of which a subsequent award
33 may be satisfied; or

- 1 4. Preserve evidence that may be relevant and material to the resolution
2 of the dispute.

3 **Section 20. Conditions for Granting Interim Measures**

4 (a) The party requesting an interim measure under Section 19(b)(1), (2)
5 and (3) shall satisfy the arbitral tribunal that:

- 6 1. Harm not adequately reparable by an award of damages is likely to
7 result if the measure is not ordered, and such harm substantially
8 outweighs the harm that is likely to result to the party against whom
9 the measure is directed if the measure is granted; and
10 2. There is a reasonable possibility that the requesting party will succeed
11 on the merits of the claim. The determination on this possibility shall
12 not affect the discretion of the arbitral tribunal in making any
13 subsequent determination.

14 (b) With regard to a request for an interim measure under Section 19(b)(4),
15 the requirements in paragraphs (a)(1) and (2) of this Section shall apply to the extent
16 the arbitral tribunal considers appropriate.

17 **Section 21. Applications for Preliminary Orders and Conditions for**
18 **Granting Preliminary Orders**

20 (a) Unless otherwise agreed by the parties, a party may, without notice to
21 any other party, make a request for an interim measure together with an application
22 for a preliminary order directing a party not to frustrate the purpose of the interim
23 measure requested.

24 (b) The arbitral tribunal may grant a preliminary order provided it considers
25 that prior disclosure of the request for the interim measure to the party against whom
26 it is directed risks frustrating the purpose of the measure.

27 (c) The conditions defined under Section 20 apply to any preliminary order,
28 provided that the harm to be assessed under Section 20(a)(1), is the harm likely to
29 result from the order being granted or not.

30 **Section 22. Specific Regime for Preliminary Orders**

31 (a) Immediately after the arbitral tribunal has made a determination in
32 respect of an application for a preliminary order, the arbitral tribunal shall give notice
33 to all parties of the request for the interim measure, the application for the preliminary
34 order, if any, and all other communications, including by indicating the content of any
35 oral communication, between any party and the arbitral tribunal in relation thereto.

1 (b) At the same time, the arbitral tribunal shall be given an opportunity to
2 any party against whom a preliminary order is directed to present its case at the
3 earliest practicable time.

4 (c) The arbitral tribunal shall decide promptly on any objection to the
5 preliminary order.

6 (d) A preliminary order shall expire after twenty (20) days from the date on
7 which it was issued by the arbitral tribunal. However, the arbitral tribunal may issue
8 an interim measure adopting or modifying the preliminary order, after the party
9 against whom the preliminary order is directed has been given notice and an
10 opportunity to present its case.

11 (e) A preliminary order shall be binding on the parties but shall not be
12 subject to enforcement by a court. Such a preliminary order does not constitute an
13 award.

14 **Section 23. Modification, Suspension, Termination of Interim**
15 **Measure or Preliminary Order** – The arbitral tribunal may modify, suspend or
16 terminate an interim measure or a preliminary order it has granted, upon application
17 of any party or, in exceptional circumstances and upon prior notice to the parties, on
18 the arbitral tribunal's own initiative

19 **Section 24. Provision of Security**

20
21 (a) The arbitral tribunal may require the party requesting an interim
22 measure to provide appropriate security in connection with the measure.

23 (b) The arbitral tribunal shall require the party applying for a preliminary
24 order to provide security in connection with the order unless the arbitral tribunal
25 considers it inappropriate or unnecessary to do so.

26 **Section 25. Disclosure**

27 (a) The arbitral tribunal may require any party promptly to disclose any
28 material change in the circumstances on the basis of which the measure was
29 requested or granted.

30 (b) The party applying for a preliminary order shall disclose to the arbitral
31 tribunal all circumstances that are likely to be relevant to the arbitral tribunal's
32 determination whether to grant or maintain the order, and such obligation shall

1 continue until the party against whom the order has been requested has had an
2 opportunity to present its case. Thereafter, paragraph (a) of this Section shall apply.

3 **Section 26. Cost and Damages** – The party requesting an interim measure
4 or applying for a preliminary order shall be liable for any costs and damages caused
5 by the measure or the order to any party if the arbitral tribunal later determines that,
6 in the circumstances, the measure or the order should not have been granted. The
7 arbitral tribunal may award such costs and damages at any point during the
8 proceedings.

9 **Section 27. Recognition and Enforcement of Interim Measure**

10 (a) An interim measure issued by an arbitral tribunal shall be recognized as
11 binding and, unless otherwise provided by the arbitral tribunal, enforced upon
12 application to the competent court, irrespective of the country in which it was issued,
13 subject to the provisions of Section 28.

14 (b) The party who is seeking or has obtained recognition or enforcement of
15 an interim measure shall promptly inform the court of any termination, suspension or
16 modification of that interim measure.

17 (c) The court of the State where recognition or enforcement is sought may,
18 if it considers it proper, order the requesting party to provide appropriate security if
19 the arbitral tribunal has not already made a determination with respect to security or
20 where such a decision is necessary to protect the rights of third parties.

21 **Section 28. Grounds for Refusing Recognition or Enforcement of an**
22 **Interim Measure**

23 (a) Recognition or enforcement of an interim measure may be refused only:

- 24 1. At the request of the party against whom it is invoked if the court is
25 satisfied that:
- 26 i. Such refusal is warranted on the grounds set forth in Section
27 48(a)(1) (i), (ii), (iii) or (iv); or
 - 28 ii. The arbitral tribunal’s decision with respect to the provision of
29 security in connection with the interim measure issued by the
30 tribunal has not been complied with; or
 - 31 iii. The interim measure has been terminated or suspended by the
32 arbitral tribunal, or where so empowered, by the court of the
33 State in which the arbitration takes place or under the law of
34 which that interim measure was granted; or

1 2. If the court finds that:

- 2 i. The interim measure is incompatible with the powers conferred
3 upon the court unless the court decides to reformulate the
4 interim measure to the extent necessary to adapt it to its own
5 powers and procedures for the purposes of enforcing that
6 interim measure and without modifying its substance; or
7 ii. Any of the grounds set forth in Section 48(a)(2) (i) or (ii), or
8 apply to the recognition and enforcement of the interim
9 measure.

10 (b) Any determination of the court on the ground in paragraph (a) of this
11 Section shall be effective only for the purposes of the application to recognize and
12 enforce the interim measure. The court where the recognition or enforcement is
13 sought shall not, in making that determination, undertake a review of the substance
14 of the interim measure.

15 **Section 29. Court-Ordered Interim Measures** – A court shall have the
16 same power of issuing an interim measure in relation to arbitration proceedings,
17 irrespective of whether their place is in the territory of the Philippines, as it has in
18 relation to proceedings in courts. The court shall exercise such power in accordance
19 with its own procedures in consideration of the specific features of international
20 arbitration.

21

ARTICLE V CONDUCT OF ARBITRAL PROCEEDINGS

22 **Section 30. Equal treatment of Parties** - The parties shall be treated with
23 equality and each party shall be given a full opportunity of presenting his case.

24 **Section 31. Determination of Rules of Procedure**

25 (a) Subject to the provisions of this Law, the parties are free to agree on
26 the procedure to be followed by the arbitral tribunal in conducting the proceedings.

27 (b) Failing such agreement, the arbitral tribunal may, subject to the
28 provisions of this Act, conduct the arbitration in such manner as it considers
29 appropriate. The power conferred upon the arbitral tribunal includes the power to
30 determine the admissibility, relevance, materiality and weight of any evidence.

31 **Section 32. Place of Arbitration**

1 (a) The parties are free to agree on the place of arbitration. Failing such
2 agreement, the place of arbitration shall be determined by the arbitral tribunal having
3 regard to the circumstances of the case, including the convenience of the parties.

4 (b) Notwithstanding the provisions of paragraph (a) of this Section, the
5 arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it
6 considers appropriate for consultation among its members, for hearing witnesses,
7 experts or the parties, or for inspection of goods, other property or documents.

8 **Section 33. Commencement of Arbitral Proceedings** - Unless otherwise
9 agreed by the parties, the arbitral proceedings in respect of a particular dispute
10 commence on the date on which a request for that dispute to be referred to arbitration
11 is received by the respondent.

12 **Section 34. Language**

13 (a) The parties are free to agree on the language or languages to be used
14 in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall
15 determine the language or languages to be used in the proceedings. This agreement
16 or determination, unless otherwise specified therein, shall apply to any written
17 statement by a party, any hearing and any award, decision or other communication
18 by the arbitral tribunal.

19 (b) The arbitral tribunal may order that any documentary evidence shall be
20 accompanied by a translation into the language or languages agreed upon by the
21 parties or determined by the arbitral tribunal.

22 **Section 35. Statements of Claim and Defense**

23 (a) Within the period of time agreed by the parties or determined by the
24 arbitral tribunal, the claimant shall state the facts supporting his claim, the points at
25 issue and the relief or remedy sought, and the respondent shall state his defense in
26 respect of these particulars, unless the parties have otherwise agreed as to the
27 required elements of such statements. The parties may submit with their statements
28 all documents they consider to be relevant or may add a reference to the documents
29 or other evidence they will submit.

30 (b) Unless otherwise agreed by the parties, either party may amend or
31 supplement his claim or defense during the course of the arbitral proceedings, unless
32 the arbitral tribunal considers it inappropriate to allow such amendment having regard
33 to the delay in making it.

1 **Section 36. Hearings and Written Proceedings**

2 (a) Subject to any contrary agreement by the parties, the arbitral tribunal
3 shall decide whether to hold oral hearings for the presentation of evidence or for oral
4 argument, or whether the proceedings shall be conducted on the basis of documents
5 and other materials. However, unless the parties have agreed that no hearings shall
6 be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the
7 proceedings, if so requested by a party.

8 (b) The parties shall be given sufficient advance notice of any hearing and
9 of any meeting of the arbitral tribunal for the purposes of inspection of goods, other
10 property or documents.

11 (c) All statements, documents or other information supplied to the arbitral
12 tribunal by one party shall be communicated to the other party. Also any expert report
13 or evidentiary document on which the arbitral tribunal may rely in making its decision
14 shall be communicated to the parties.

15 **Section 37. Default of a Party**

16 Unless otherwise agreed by the parties, if, without showing sufficient cause,

17 (a) the claimant fails to communicate his statement of claim in accordance
18 with Section 35(a), the arbitral tribunal shall terminate the proceedings;

19 (b) the respondent fails to communicate his statement of defense in
20 accordance with Section 35(a), the arbitral tribunal shall continue the proceedings
21 without treating such failure in itself as an admission of the claimant's allegations;

22 (c) any party fails to appear at a hearing or to produce documentary
23 evidence, the arbitral tribunal may continue the proceedings and make the award on
24 the evidence before it.

25 **Section 38. Expert Appointed by Arbitral Tribunal**

26 (a) Unless otherwise agreed by the parties, the arbitral tribunal:
27 1. may appoint one or more experts to report to it on specific issues to be
28 determined by the arbitral tribunal;
 2. may require a party to give the expert any relevant information or to
 produce, or to provide access to, any relevant documents, goods or
 other property for his inspection.

1 (b) Unless otherwise agreed by the parties, if a party so requests or if the
2 arbitral tribunal considers it necessary, the expert shall, after delivery of his written or
3 oral report, participate in a hearing where the parties have the opportunity to put
4 questions to him and to present expert witnesses in order to testify on the points at
5 issue.

6 **Section 39. Court Assistance in Taking Evidence** - The arbitral tribunal
7 or a party with the approval of the arbitral tribunal may request from a competent
8 court of the Philippines assistance in taking evidence. The court may execute the
9 request within its competence and according to its rules on taking evidence.

ARTICLE VI MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

10 **Section 40. Rules Applicable to Substance of Dispute**

11 (a) The arbitral tribunal shall decide the dispute in accordance with such
12 rules of law as are chosen by the parties as applicable to the substance of the dispute.
13 Any designation of the law or legal system of a given State shall be construed, unless
14 otherwise expressed, as directly referring to the substantive law of that State and not
15 to its conflict of laws rules.

16 (b) Failing any designation by the parties, the arbitral tribunal shall apply
17 the law determined by the conflict of laws rules which it considers applicable.

18 (c) The arbitral tribunal shall decide *ex aequo et bono* or as amiable
19 *compositeur* only if the parties have expressly authorized it to do so.

20 (d) In all cases, the arbitral tribunal shall decide in accordance with the
21 terms of the contract and shall take into account the usages of the trade applicable to
22 the transaction.

23 **Section 41. Decision Making by Panel of Arbitrators** - In arbitral
24 proceedings with more than one arbitrator, any decision of the arbitral tribunal shall
25 be made, unless otherwise agreed by the parties, by a majority of all its members.
26 However, questions of procedure may be decided by a presiding arbitrator, if so
27 authorized by the parties or all members of the arbitral tribunal.

28 **Section 42. Settlement**

29 (a) If, during arbitral proceedings, the parties settle the dispute, the arbitral
30 tribunal shall terminate the proceedings and, if requested by the parties and not

1 objected to by the arbitral tribunal, record the settlement in the form of an arbitral
2 award on agreed terms.

3 (b) An award on agreed terms shall be made in accordance with the
4 provisions of Section 43 and shall state that it is an award. Such an award has the
5 same status and effect as any other award on the merits of the case.

6 **Section 43. Form and Contents of Award**

7 (a) The award shall be made in writing and shall be signed by the arbitrator
8 or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of
9 the majority of all members of the arbitral tribunal shall suffice, provided that the
10 reason for any omitted signature is stated.

11 (b) The award shall state the reasons upon which it is based, unless the
12 parties have agreed that no reasons are to be given or the award is an award on
13 agreed terms under Section 43.

14 (c) The award shall state its date and the place of arbitration as determined
15 in accordance with Section 32(a). The award shall be deemed to have been made at
16 that place.

17 (d) After the award is made, a copy signed by the arbitrators in accordance
18 with paragraph (a) of this Section shall be delivered to each party.

19 **Section 44. Termination of Proceedings**

20 (a) The arbitral proceedings are terminated by the final award or by an order
21 of the arbitral tribunal in accordance with paragraph (b) of this Section.

22 (b) The arbitral tribunal shall issue an order for the termination of the
23 arbitral proceedings when:

- 24 1. the claimant withdraws his claim, unless the respondent objects thereto
25 and the arbitral tribunal recognizes a legitimate interest on his part in
26 obtaining a final settlement of the dispute;
- 27 2. the parties agree on the termination of the proceedings;
- 28 3. the arbitral tribunal finds that the continuation of the proceedings has
29 for any other reason become unnecessary or impossible.

30 (c) The mandate of the arbitral tribunal terminates with the termination of
31 the arbitral proceedings, subject to the provisions of Sections 45 and 46(d).

1 **Section 45. Correction and Interpretation of Award; Additional**
2 **Award**

3 (a) Within thirty days of receipt of the award, unless another period of time
4 has been agreed upon by the parties:

- 5 1. a party, with notice to the other party, may request the arbitral tribunal
6 to correct in the award any errors in computation, any clerical or
7 typographical errors or any errors of similar nature;
8 2. if so agreed by the parties, a party, with notice to the other party, may
9 request the arbitral tribunal to give an interpretation of a specific point
10 or part of the award.
11 3. If the arbitral tribunal considers the request to be justified, it shall make
12 the correction or give the interpretation within thirty days of receipt of
13 the request. The interpretation shall form part of the award.

14 (b) The arbitral tribunal may correct any error of the type referred to in
15 paragraph (a)(1) of this Section on its own initiative within thirty days of the date of
16 the award.

17 (c) Unless otherwise agreed by the parties, a party, with notice to the other
18 party, may request, within thirty days of receipt of the award, the arbitral tribunal to
19 make an additional award as to claims presented in the arbitral proceedings but
20 omitted from the award. If the arbitral tribunal considers the request to be justified,
21 it shall make the additional award within sixty days.

22 (d) The arbitral tribunal may extend, if necessary, the period of time within
23 which it shall make a correction, interpretation or an additional award under paragraph
24 (a) or (c) of this Section.

25 (e) The provisions of Section 41 shall apply to a correction or interpretation
26 of the award or to an additional award.

27 **ARTICLE VII**
28 **RECOURSE AGAINST AWARD**

29 **Section 46. Application for Setting Aside as Exclusive Recourse**
30 **Against Arbitral Award**

31 (a) Recourse to a court against an arbitral award may be made only by an
 application for setting aside in accordance with paragraphs (b) and (c) of this Section.

1 (b) An arbitral award may be set aside by the court specified in Section 8
2 only if:

3 1. the party making the application furnishes proof that:
4 a party to the arbitration agreement referred to in Section 4(b) was
5 under some incapacity; or the said agreement is not valid under the
6 law to which the parties have subjected it or, failing any indication
7 thereon, under the law of this State; or

8 i. the party making the application was not given proper notice of
9 the appointment of an arbitrator or of the arbitral proceedings
10 or was otherwise unable to present his case; or

11 ii. the award deals with a dispute not contemplated by or not falling
12 within the terms of the submission to arbitration, or contains
13 decisions on matters beyond the scope of the submission to
14 arbitration, provided that, if the decisions on matters submitted
15 to arbitration can be separated from those not so submitted,
16 only that part of the award which contains decisions on matters
17 not submitted to arbitration may be set aside; or

18 iii. the composition of the arbitral tribunal or the arbitral procedure
19 was not in accordance with the agreement of the parties,
20 unless such agreement was in conflict with a provision of this
21 Act from which the parties cannot derogate, or, failing such
22 agreement, was not in accordance with this Act; or

23
24 2. the court finds that:

25 i. the subject-matter of the dispute is not capable of settlement by
26 arbitration under existing laws; or

27 ii. the award is in conflict with public policy.
28

29 (c) An application for setting aside may not be made after three months
30 have elapsed from the date on which the party making that application had received
31 the award or, if a request had been made under Section 45, from the date on which
32 that request had been disposed of by the arbitral tribunal.

33 (d) The court, when asked to set aside an award, may, where appropriate
34 and so requested by a party, suspend the setting aside proceedings for a period of
35 time determined by it in order to give the arbitral tribunal an opportunity to resume
36 the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion
37 will eliminate the grounds for setting aside.

ARTICLE VIII

RECOGNITION AND ENFORCEMENT OF AWARDS

1 **Section 47. Recognition and Enforcement of Arbitral Award**

2 (a) An arbitral award, irrespective of the country in which it was made, shall
3 be recognized as binding and, upon application in writing to the competent court, shall
4 be enforced subject to the provisions of this Section and of Section 48.

5 (b) The party relying on an award or applying for its enforcement shall
6 supply the duly authenticated original award or a duly certified copy thereof. If the
7 award is not made in an official language of this State, the court may request the
8 party to supply a translation thereof into such language.

9 **Section 48. Grounds for Refusing Recognition or Enforcement of**
10 **Arbitral Award**

11 (a) Recognition or enforcement of an arbitral award, irrespective of the
12 country in which it was made, may be refused only:

- 13 1. at the request of the party against whom it is invoked, if that party
14 furnishes to the competent court where recognition or enforcement is
15 sought proof that:
- 16 i. a party to the arbitration agreement referred to in Section 8 was
17 under some incapacity; or the said agreement is not valid under
18 the law to which the parties have subjected it or, failing any
19 indication thereon, under the law of the country where the
20 award was made; or
 - 21 ii. the party against whom the award is invoked was not given
22 proper notice of the appointment of an arbitrator or of the
23 arbitral proceedings or was otherwise unable to present his case;
24 or
 - 25 iii. the award deals with a dispute not contemplated by or not falling
26 within the terms of the submission to arbitration, or it contains
27 decisions on matters beyond the scope of the submission to
28 arbitration, provided that, if the decisions on matters submitted
29 to arbitration can be separated from those not so submitted, that
30 part of the award which contains decisions on matters submitted
31 to arbitration may be recognized and enforced; or
 - 32 iv. the composition of the arbitral tribunal or the arbitral procedure
33 was not in accordance with the agreement of the parties or,
34 failing such agreement, was not in accordance with the law of
35 the country where the arbitration took place; or

1 v. the award has not yet become binding on the parties or has been
2 set aside or suspended by a court of the country in which, or
3 under the law of which, that award was made; or

4 2. if the court finds that:

- 5 i. the subject-matter of the dispute is not capable of settlement by
6 arbitration under existing laws of the Philippines; or
7 ii. the recognition or enforcement of the award would be contrary
8 to the public policy of the Philippines.

9 (b) If an application for setting aside or suspension of an award has been
10 made to a court referred to in paragraph (a)(1)(v) of this Section, the court where
11 recognition or enforcement is sought may, if it considers it proper, adjourn its decision
12 and may also, on the application of the party claiming recognition or enforcement of
13 the award, order the other party to provide appropriate security.

ARTICLE IX GENERAL PROVISIONS

Section 49. General Provisions

15 (a) Unless otherwise agreed by the parties, all hearings and meetings in
16 arbitral proceedings must be held in private.

17 (b) Unless otherwise agreed by the parties, the parties and the arbitral
18 tribunal must not disclose any of the following:

- 19 1. proceedings, evidence, documents and information in connection with
20 the arbitration that are not otherwise in the public domain;
21 2. an arbitral award

22 (c) Paragraph (b) does not apply if disclosure is

- 23 1. required by law,
24 2. required to protect or pursue a legal right, including for the purposes
25 of preparing and presenting a claim or defense in the arbitral
26 proceedings or enforcing or challenging an arbitral award, or
27 3. authorized by a competent court.

28 **Section 50. Appropriations** – The amount necessary to carry out the
29 provisions of this Act shall be included in the General Appropriations Act of the year
30 following its enactment into law and thereafter.

1 **Section 51. Immunity** – an arbitrator is not liable for anything done or
2 omitted in connection with an arbitration unless the act or omission is in bad faith or
3 the arbitration is engaged in intentional wrongdoing.

4 **Section 52. Separability Clause.** – If any provision of this Act shall be held
5 unconstitutional or invalid, the other provisions not otherwise affected shall remain in
6 full force and effect.

7 **Section 53. Repealing Clause.** – All laws, decrees, executive orders,
8 proclamations, and other executive issuances which are inconsistent with or contrary
9 to the provisions of this Act are hereby amended or repealed accordingly.

10 **Section 54. Effectivity Clause.** – This Act shall take effect fifteen (15) days
11 following its complete publication in the Official Gazette or in a newspaper of general
12 circulation.

Approved,