



**Construction Industry Arbitration Commission ("CIAC")
Guidelines on the Conduct of On-Line or Virtual
Proceedings for CIAC Cases**

29 July 2020

This is a briefing on the *CIAC Memorandum Circular No. 01-2020* dated June 10, 2020,¹ a COVID-19 related issuance.

- A. Authority to Hold Virtual Proceedings
- B. No Change in the Deadline for the Issuance of Final Awards
- C. In-Person Proceedings
- D. Conduct of Virtual Proceedings

CIAC's *Memorandum Circular No. 01-2020* ("CIAC Virtual Proceedings Guidelines") provides guidelines on the conduct of online or virtual proceedings. In response to the clamor of various CIAC arbitral tribunals and CIAC sole arbitrators (the "CIAC Arbitrators") seeking guidance on how to proceed with their CIAC arbitration proceedings during the community quarantine brought about by the COVID 19 pandemic, CIAC issued Memorandum Circular No. 01-2020 ("Virtual Proceedings Guidelines"). It provides guidelines on the conduct of online or virtual proceedings and these guidelines have been in effect since June 15, 2020.

A. Authority to Hold Virtual Proceedings²

In the Virtual Proceedings Guidelines, the CIAC confirmed the full authority of the CIAC Arbitrators to decide to conduct Online/Virtual Case Proceedings ("Virtual Proceedings") even without the consent of both parties.

If the CIAC Arbitrators order the holding of Virtual Proceedings, the failure or refusal of a party to participate in the Virtual Proceedings, including the non-submission of "e-bundle" of documentary exhibits that may be required, will not stay the proceedings.

If both parties fail to participate in the Virtual Proceedings, the case may be deemed submitted for decision.

¹ <http://ciap.dti.gov.ph/sites/default/files/CIAC%20Memo%20Circular%2001-2020%20%281%29.pdf>; last accessed at 2:30 PM on July 19, 2020.

² CIAC Memorandum Circular No. 01-2020, June 10, 2020, Section 1.

B. No Change in the Deadline for the Issuance of Final Awards

The Virtual Proceedings Guidelines state that, whether virtual or live proceedings are conducted, the recognized deadlines for the issuance of Final Awards in CIAC proceedings, which is six (6) months from the signing of the Terms of Reference, shall not be extended by the CIAC except in meritorious cases.³

C. In-Person Proceedings⁴

The Guidelines still allow the holding of in-person case proceedings but these are required to be held in a sufficiently large public venue, to strictly observe social distancing. The parties are to share equally in the costs of such public venue, subject to the determination by the CIAC Arbitrators as to who shall finally bear such costs in the Final Award.

Also subject to the strict observance of social distancing and the wearing of face masks or face shields at all times, the CIAC hearing rooms may still be used for the following in-person proceedings: (a) executive meetings of the CIAC arbitral tribunal, (b) mediation meetings between the mediator and one or both of the parties, and (c) conferences and hearings before a CIAC sole arbitrator. CIAC Arbitrators may also use the CIAC hearing rooms to attend partial Virtual Proceedings.

D. Conduct of Virtual Proceedings⁵

The Virtual Proceedings Guidelines provide rules for specific aspects of a Virtual Proceedings, which includes telephone, video, or other electronic conference.

There is no requirement that the Virtual Proceedings should use any particular platform, allowing the parties and the CIAC Arbitrators to choose that which may be best for all concerned. The telephone, video, or other electronic conference is required to be of sufficient quality to allow for clear video and/or audio transmission. If the CIAC Arbitrators find the quality unsatisfactory during the actual Virtual Proceedings, to the point that it is unfair to any of the parties to continue, the CIAC Arbitrators may terminate the session.

The Mediator, Sole Arbitrator, Tribunal Chair, a member of the Tribunal, or the CIAC staff-in-charge, may act as the host or organizer for the Virtual Proceedings. The Guidelines explicitly provide for a notice requirement. The host shall notify all participants of the case proceedings with the dial-in number, the link, meeting ID and password, at least three days before the event.

Before the actual date of the Virtual Proceedings, the parties and the CIAC Arbitrators shall conduct a trial-run on the platform agreed upon at least one week prior to the actual Virtual Proceedings to try to ensure that the latter proceed without any hitches.

Each of the parties need to prepare a hard copy bundle and an e-bundle of their documentary evidence to be provided to the CIAC Arbitrators, the counterparty, and the witness concerned. The documentary evidence shall be pre-marked, clearly identified and paginated, be without any annotations or mark-ups, and correspond with the hard copies submitted. The parties may agree to utilize a shared virtual document repository.⁶

³ CIAC Memorandum Circular No. 01-2020, Section 2.

⁴ CIAC Memorandum Circular No. 01-2020, Section 2.

⁵ CIAC Memorandum Circular No. 01-2020, Section 4.

⁶ CIAC Memorandum Circular No. 01-2020, Section 5.

Legal Briefing: CIAC Guidelines on Virtual Proceedings

The Virtual Proceedings Guidelines provide that the CIAC Mediator, or the CIAC Arbitrators, shall ensure confidentiality and security of the Virtual Proceedings, and measures that may be adopted to address confidentiality and security are listed.⁷

The CIAC Arbitrators are to arrange for an alternative means to conduct private caucuses during the proceedings.

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⁷ CIAC Memorandum Circular No. 01-2020, Section 6.

Legal Briefing: CIAC Guidelines on Virtual Proceedings

This briefing contains a summary of the legal issuances discussed above. It was prepared by SyCip Salazar Hernandez & Gatmaitan (SyCipLaw) to update its clients about recent legal developments.

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