

# SCL Construction Law Conference 2015

Legal Avenues in Securing Cash Flow  
Roderick R.C. Salazar III  
Philippines

## Philippine Construction Industry Overview

- ▶ Contributed 5.8% to Philippine economy in 2014
- ▶ Posted a 20.5% growth rate in Q4 of 2014
- ▶ Overall growth rate of 8.5% for 2014
- ▶ Expect sustained increase in residential projects
- ▶ HLURB has set a target of 1 Million housing units by 2016

## Security of Payments - Philippine Setting

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- ▶ No existing legislation
- ▶ No pending legislation
- ▶ No known lobby from private sector for passage of Security of Payments regime
- ▶ Remedies of contractor:
  - ▶ litigation (courts) or
  - ▶ arbitration (CIAC or other arbitral tribunal as agreed upon by the parties)

## Construction Industry Arbitration Commission (CIAC)

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- ▶ Executive Order 1008
- ▶ Has its own roster of accredited arbitrators
- ▶ Original and Exclusive jurisdiction over construction disputes
- ▶ Jurisprudence expands/clarifies jurisdiction of CIAC
- ▶ Preconditions for arbitration of a government construction contract
  1. exhaustion of administrative remedies
  2. unreasonable delay in acting on claim by government agency concerned
  3. application for interim relief

## Model Clause

Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination shall be referred to and finally decided by arbitration under the Rules of Procedure Governing Construction Arbitration promulgated pursuant to Executive Order 1008 by (1-3) arbitrator(s) to be appointed in accordance with such Rules. The place of arbitration shall be (PLACE).

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## CIAC Revised Rules of Procedure (Resolution 10-2005)

- I. Request for Arbitration → within 3 days CIAC Secretariat shall request Respondent to file Answer → within 15 days from receipt, Respondent shall file Answer → within 15 days, Claimant shall file Reply
- II. Preliminary conference shall be conducted not later than 15 days after appointment of arbitrator, Terms of Reference to be finalized.
- III. Presentation of Evidence, Submission of Memoranda or Draft Decisions
- IV. Award

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## Interim Reliefs (Rule 14)

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- ▶ Ensure enforcement of the award
- ▶ Prevent irreparable loss or injury or deterioration of property
- ▶ Minimize undue delays in project or contract implementation
- ▶ Provide security for the performance of any obligation
- ▶ Produce or preserve any evidence
- ▶ Such other measures deemed by the Arbitral Tribunal to be necessary to prevent a miscarriage of justice or abuse of rights

## Costs

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- ▶ Filing and administrative fees are computed on the basis of the sum involved (Rule 22)
- ▶ Motion for relief not covered by the Rules has a filing fee of P3,000 (Rule 19)
- ▶ Experts fees, if any appointed

Thank you.