MEMORANDUM CIRCULAR NO. 8
Series of 2022

TO : ALL CONCERNED

SUBJECT : Guidelines on Arbitration of Intra-Corporate Disputes for Corporations

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WHEREAS, Section 181 of Republic Act No. 11232, otherwise known as the Revised Corporation Code of the Philippines ("RCC"), provides that an arbitration agreement may be provided in the articles of incorporation or by-laws of a corporation, and when such an agreement is in place, disputes between the corporation, its stockholders or members, which arise from the implementation of the articles of incorporation or by-laws, or from intra-corporate relations, shall be referred to arbitration. A dispute shall be non-arbitrable when it involves criminal offenses and interests of third parties. The arbitration agreement shall be binding on the corporation, its directors, trustees, officers, and executives or managers.

WHEREAS, the same Section provides that to be enforceable, the arbitration agreement should indicate the number of arbitrators and the procedure for their appointment. The power to appoint the arbitrators forming the arbitral tribunal shall be granted to a designated independent third party. Should the third party fail to appoint the arbitrators in the manner and within the period specified in the arbitration agreement, the parties may request the Commission to appoint the arbitrators. In any case, arbitrators must be accredited or must belong to organizations accredited for the purpose of arbitration.

WHEREAS, the same Section provides that the arbitral tribunal shall have the power to rule on its own jurisdiction and on questions relating to the validity of the arbitration agreement. When an intra-corporate dispute is filed with a Regional Trial Court, the court shall dismiss the case before the termination of the pre-trial conference, if it determines that an arbitration agreement is written in the corporation's articles of incorporation, by-laws, or in a separate agreement. The arbitral tribunal shall have the power to grant interim measures necessary to ensure enforcement of the award, prevent a miscarriage of justice, or otherwise protect the rights of the parties.

WHEREAS, the same Section provides that a final arbitral award shall be executory after the lapse of fifteen (15) days from receipt thereof by the parties and shall be stayed only by the filing of a bond or the issuance by the appellate court of an injunctive writ.

WHEREAS, the same Section provides that the Commission shall formulate the rules and regulations, which shall govern arbitration under this Section, subject to existing laws on arbitration.

NOW, THEREFORE, the Commission hereby promulgates the guidelines on the arbitration of intra-corporate disputes for corporations.

I. GENERAL PROVISIONS

SECTION 1. ***Purpose***. – These rules are promulgated to prescribe the procedures and guidelines for the implementation of Section 181 of the RCC.

SECTION 2. ***Application.*** – These rules shall apply to appointments made by the Commission, upon the request of the parties, of arbitrators tasked to resolve intra-corporate disputes of domestic corporations

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in accordance with Section 181 of the RCC. These rules shall not apply if the Arbitration Agreement expressly states a seat or place of arbitration that is other than the Philippines.

SECTION 3. ***Exclusions from Arbitration.*** – An intra-corporate dispute shall not be referred to arbitration when it involves criminal offenses and interests of third parties.

SECTION 4. ***Definition of Terms.*** – For purposes of these Rules, the terms shall be defined as follows:

a. *ADR Act* – Republic Act No. 9285, otherwise known as the Alternative Dispute Resolution Act of 2004.

b. *Arbitral Tribunal* – a sole arbitrator or a panel of arbitrators appointed to render an award in a dispute that is the subject of an arbitration agreement.

c. *Arbitration* – a voluntary dispute resolution process in which one or more arbitrators, appointed by the parties' designated independent third party or in accordance with these Rules, resolve a dispute by rendering an award.

d. *Arbitration Agreement* – an agreement by the parties to submit to arbitration all or certain disputes, which may be in a form of a separate contract or a clause incorporated in the articles of incorporation or by-laws of a corporation.

e. *Award* – any partial or final decision by an arbitral tribunal in resolving the issue or controversy.

f. *Claimant* – the party initiating recourse to arbitration.

g. *Commission* – the Securities and Exchange Commission.

h. *Intra-corporate dispute* – any dispute involving the rights and obligations of corporations, its directors, trustees, officers, and stockholders/members arising from the implementation of the articles of incorporation or bylaws, or from intra-corporate relations.

i. *OADR* - the Office for Alternative Dispute Resolution as established under the ADR Act.

j. *Third Party* – any person, other than the corporation, its director, trustees, officers, stockholder or member, and executives or manager.

SECTION 5. ***Arbitration Agreement in Articles of Incorporations, By-Laws, or Separate Agreement.*** – An Arbitration Agreement may be included in the articles of incorporation or by-laws of a domestic corporation. An Arbitration Agreement may also be stipulated in the form of a separate agreement.

SECTION 6. ***Effects of Arbitration Agreements.*** – When an Arbitration Agreement is in place, disputes between the corporation, its stockholders or members, which arise from the implementation of the articles of incorporation or by-laws, or from intra-corporate relations, shall be referred to arbitration after compliance with any agreed pre-arbitration alternative forms of dispute resolution, such as negotiation or mediation, under the Arbitration Agreement.

Despite not being signatories to the Articles of Incorporation, By-Laws or the Arbitration Agreement, the Arbitration Agreement shall be binding on the corporation, its directors, trustees, officers, and executives or managers.

SECTION 7. ***Referral to Arbitration.*** – When an intra-corporate dispute is filed with a Regional Trial Court and the court, before the termination of the pre-trial conference, determines that an Arbitration Agreement is written in the corporation's articles of incorporation, by-laws, or in a separate agreement, the court shall act in accordance with such rules of procedure the Supreme Court may promulgate to implement Section 181.

SECTION 8. ***Minimum Provisions of Arbitration Agreements.*** – (a) All Arbitration Agreements executed under these rules shall contain the following:

1. The number of arbitrators (e.g., one or three);
2. The designated independent third party who shall appoint the arbitrator or arbitrators;
3. The procedure for the appointment of the arbitrator or arbitrators; and
4. The period within which the arbitrator or arbitrators should be appointed by the designated independent third party.

(b) Arbitration Agreements that do not meet the foregoing minimum provisions shall be unenforceable under these Guidelines. However, arbitration shall still proceed under the ADR Act and its implementing rules and regulations if the seat or place of arbitration is the Philippines, or under the relevant arbitration law if the seat or place of arbitration is outside the Philippines.

SECTION 9. ***Seat or place of arbitration.*** – Unless the Arbitration Agreement stated otherwise, the seat or place of arbitration shall be presumed to be the Philippines unless the arbitral tribunal subsequently decides otherwise.

SECTION 10. ***Appointment of Arbitrator(s).*** – The power to appoint the arbitrator or arbitrators forming the arbitral tribunal shall be granted to a designated independent third party and in accordance with the procedure agreed upon in the Arbitration Agreement.

Should the designated independent third party fail to appoint the arbitrator or arbitrators in the manner and within the period specified in the Arbitration Agreement, any of the parties to the arbitration may request the Commission to appoint the arbitrators. In any case, arbitrators must be (a) accredited by the OADR or the Commission or (b) accredited by organizations accredited by the OADR or the Commission for the purpose of arbitration.

SECTION 11. ***Powers of the Arbitral Tribunal.*** – The arbitral tribunal shall have the power to rule on its own jurisdiction and on questions relating to the validity of the Arbitration Agreement. The arbitral tribunal shall have the power to grant interim measures necessary to ensure enforcement of the award, prevent a miscarriage of justice, or otherwise protect the rights of the parties.

Such interim measures may include following:

a. Preliminary injunction directed against a party to arbitration;
b. Preliminary attachment against property or garnishment of funds in the custody of a bank or a third person;
c. Appointment of a receiver;
d. Detention, preservation, delivery or inspection of property; or
e. Appointment of a management committee.

The powers of the arbitral tribunal under the ADR Act shall apply insofar as they are not inconsistent with Section 181 of the RCC and these Rules.

SECTION 12. ***Final Arbitral Award.*** – Final arbitral award under Section 181 shall be considered as a commercial arbitration award and shall be executed in accordance with the rules of procedure promulgated by the Supreme Court to implement Section 181 of the RCC.

II. COMPOSITION OF THE ARBITRAL TRIBUNAL AND APPOINTMENT PROCEDURE

SECTION 13. ***Number of Arbitrators.*** - The Arbitral Tribunal shall consist of such number of arbitrators as has been agreed upon by the parties in the Arbitration Agreement. In the absence of an agreement on the number of arbitrators, the arbitration shall proceed under the ADR Act and its implementing rules and regulations if the seat or place of arbitration is the Philippines, or under the relevant arbitration law if the seat or place of arbitration is outside the Philippines.

SECTION 14. ***Appointment of Arbitrators.*** – The arbitrators shall be appointed by a designated independent third party pursuant to the parties' agreed procedure. The parties are deemed to have agreed on an appointment procedure if (a) the Arbitration Agreement provides for the application of a set of arbitration rules that include an appointment procedure and a designated appointing authority; or (b) the Arbitration Agreement expressly provides an appointment procedure, which requires the parties' designated independent third party to appoint an arbitrator or arbitrators. In the absence of an agreement on the appointment procedure, the arbitration shall proceed under the ADR Act and its implementing rules and regulations if the seat or place of arbitration is the Philippines, or under the relevant arbitration law if the seat or place of arbitration is outside the Philippines.

SECTION 15. ***Default Appointment.*** – (a) Should the designated appointing authority fail to appoint the arbitrators in the manner and within the period specified in the Arbitration Agreement, the Commission shall make the appointment upon written request from a party to the arbitration, having regard to:

i. the nature of the dispute;
ii. whether the arbitrators who possess the required qualifications would be available to accept the appointment;
iii. the identity and nationality of the parties to the arbitration agreement;
iv. any considerations in respect of the independence and impartiality of the person to be appointed as an arbitrator;
v. any stipulations in the relevant agreement; and
vi. any suggestions made by the parties themselves.

(b) If the sole or presiding arbitrator has not been appointed as required under the parties' agreed appointment procedure, the Commission shall make the appointment in accordance with the following procedure:

1. The Commission shall send to each party an identical list of candidates. The list shall include the names of at least three (3) candidates in alphabetical order with their respective Curriculum Vitae. If the parties have agreed on any particular qualifications, the Commission shall endeavor to provide a list of candidates who satisfy those qualifications.
2. Each party shall have the right to delete the name of any candidate or candidates it objects to and shall number any remaining candidates in the order of preference.
3. Each party may return the marked list to the Commission within fifteen (15) days from their receipt of the list.
4. After the expiration of the above period of time the Commission shall appoint the sole arbitrator from among the names approved on the lists returned to it and in accordance with the order of preference indicated by the parties.
5. If for any reason the appointment cannot be made according to this procedure, the appointing authority may exercise its discretion in appointing the sole arbitrator.

(c) Any party to an Arbitration Agreement requesting the appointment of an arbitrator by the Commission under Section 181 of the RCC and these Rules must make the request to the Commission in the following manner:

i. The request must be—
   a. in the form found in Schedule 1 of these Rules.
   b. accompanied by the relevant fee that the Commission may charge as stated in Schedule 2 of these Rules; and
   c. signed by the requesting party, or by a person authorized to sign on behalf of the requesting party, stating that the details contained in the request are true and accurate.

ii. The requesting party must—
   a. serve a copy of the request on the other party or parties to the arbitration in accordance with modes of service allowed under the ADR Act; and
   b. submit with the Commission the relevant proof of such service.

(d) Before making an appointment of an arbitrator, the Commission shall allow the other party or parties to the arbitration to give the Commission any written information that the other party or those other parties consider relevant to the request, including objections to the appointment of an arbitrator.

(e) If (i) reasons why no arbitrator should be appointed are given to the Commission by the other party or parties to the arbitration; and (ii) the Commission is satisfied that no arbitrator should be appointed, the Commission may decline to appoint an arbitrator.

(f) If no information mentioned in subsection (d) is given to the Commission within fifteen (15) days after the date on which a copy of the request is served on the other party or parties to the arbitration under subsection (c), the Commission may proceed to make an appointment of an arbitrator.

(g) When the Commission has made any decision under this section, it shall notify both the requesting party and the other party or parties to the arbitration.

SECTION 16. ***Prohibited Communications.*** – No party or any person acting on its behalf shall communicate with any candidate for appointment as arbitrator without notice to the other party except to discuss the candidate's qualifications, availability, or independence in relation to the parties.

SECTION 17. ***Requirements for Acceptance of Appointment.*** – (a) Each prospective arbitrator shall accept his/her potential appointment in writing and sent to the Commission.

(b) By accepting the appointment, the arbitrator shall make sufficient time available to enable the arbitration to be conducted and completed expeditiously; and shall perform his or her functions with impartiality and independence.

III. DISCLOSURES BY AND CHALLENGE OF ARBITRATORS

SECTION 18. ***Disclosures Requirements.*** – When a person is approached in connection with his or her possible appointment as an arbitrator, he or she shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. An arbitrator, from the time of his or her appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties and the other arbitrators unless they have already been informed by him or her of these circumstances.

SECTION 19. ***Challenge of Arbitrator.*** – (a) Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to his or her impartiality or independence.

(b) A party may challenge the arbitrator appointed by it only for reasons of which it becomes aware after the appointment has been made.

SECTION 20. ***Procedure for the Challenge.*** – (a) A party who intends to challenge an arbitrator who was appointed under these Rules shall send notice of its challenge ("Notice of Challenge") within fifteen (15) days after it has been notified of the appointment of the challenged arbitrator, or within fifteen (15) days after the circumstances mentioned in Sections 18 and 19 became known to that party.

(b) The Notice of Challenge shall be communicated to all other parties, to the arbitrator who is challenged, to the other arbitrators, and the Commission. The Notice shall clearly state the reasons for the challenge.

(c) The other party shall have the right to respond to the Notice of Challenge within fifteen (15) days from receipt of such notice copy furnished to the Commission, the arbitrators, and the other party.

(d) The other party may agree to the challenge or the challenged arbitrator voluntarily withdraws. In such case, the arbitrator shall be replaced without implying acceptance of the validity of the grounds for the challenge.

(e) If all parties do not agree to the challenge or the challenged arbitrator does not withdraw, the party making the challenge may elect to pursue it. In such case, within thirty (30) days from the date of the Notice of Challenge, it may seek a decision on the challenge by the Commission upon payment of the Challenge Fee as stated in Schedule 2 of these Rules. The decision is administrative in nature and shall be final. The Commission shall not be required to state the reasons for its decision.

(f) During the pendency of the challenge, the arbitral tribunal may suspend or continue the arbitral proceedings at its discretion.

SECTION 21. ***Request for Release by Arbitrator.*** – (a) The arbitrator may file a request to be released from appointment either with the consent of the parties or by the Commission.

(b) The parties may jointly release the arbitrator from appointment and shall notify the Commission of such release whether or not the arbitrator filed a request.

(c) In the event that an arbitrator fails to act or in the event of the *de jure* or *de facto* impossibility of his or her performing his or her functions, the procedure in respect of the challenge of an arbitrator as provided in Section 20 shall apply.

SECTION 22. ***Replacement of an Arbitrator.*** – The appointment of a substitute arbitrator shall be made pursuant to the procedure under these Rules.

SECTION 23. ***Waiver of Liability.*** - The parties waive any claim against the arbitrators, the Commission, and any person appointed by the arbitral tribunal based on any act or omission in connection with the arbitration unless there is a clear showing of bad faith, malice, or gross negligence.

IV. OTHER PROVISIONS

SECTION 24. ***When Exemption May Be Given.*** – In the broader interest of justice and in order to best serve public interest, the Commission may, in particular matter, exempt a party from these Rules in exceptional cases and apply such suitable, fair and reasonable procedure to improve the delivery of public service and to assist the parties in obtaining a speedy and judicious disposition of cases.

SECTION 25. ***Applicability of Other Rules.*** – The pertinent provisions of the ADR Act and its implementing rules and regulations, the SEC Rules of Procedure, and the Special Rules of Court on Alternative Dispute Resolution may, in the interest of expeditious dispensation of justice and whenever practicable, be applied by analogy or in a suppletory character and effect.

SECTION 26. ***Separability Clause.*** – If any of the provisions of these Rules is declared invalid or unconstitutional, other provisions hereof which are not affected thereby shall continue to be in full force and effect.

SECTION 27. ***Effectivity.*** - These rules shall take effect upon its publication in two (2) newspapers of general circulation in the Philippines.

Makati City, Philippines, 19 September 2022.

EMILIO B. AQUINO
Chairperson

Schedule 1
Form for Request to Appoint an Arbitrator

REQUEST FOR THE APPOINTMENT OF AN ARBITRATOR

(This form shall be used to request the Securities and Exchange Commission to appoint an arbitrator in accordance with Section 181 of Republic Act No. 11232 otherwise known as the Revised Corporation Code of the Philippines or the RCC and its implementing rules.)

1. The undersigned hereby requests the Securities and Exchange Commission (the **"Commission")** to appoint an arbitrator in the dispute described below in accordance with Section 181 of the RCC and its implementing rules. (Check the requestor's participation in the arbitration and state the name of the requestor.)

   ☐ Claimant: _____

   ☐ Respondent: _____

   ☐ Others: _____

2. The parties to the dispute are as follows:

Name of Claimant(s):	**Name of Respondent(s):**
Postal Address:	Postal Address:
Contact number:	Contact Number:
Email Address:	Email Address:
Other contact details:	Other contact details:
Nationality:	Nationality:
Legal counsel/advisor (if any):	**Legal counsel/advisor (if any):**
Contact number:	Contact Number:
Email Address:	Email Address:
Other contact details:	Other contact details:

3. Contract/Agreement in respect of which the dispute has arisen: (Enclose a copy and summarize briefly.)

4. Arbitration clause or agreement under which the appointment of an arbitrator is to be made (**Arbitration Agreement/Clause**): (State verbatim below and enclose a copy.)

5. Brief description of the dispute: (Give details including the nature of the dispute, the circumstances in which the dispute arises, and the amount at issue. Use an additional page, if necessary.)

6. Other relevant details: (Include any proposed or agreed qualifications of the arbitrator.)

_____

_____

_____

_____

_____

_____

_____

_____

7. The undersigned has paid the relevant fees to the Commission for the appointment of an arbitrator. (Attach proof of payment.)

8. The undersigned certifies that the parties' designated independent third party has failed to appoint the arbitrator(s) in accordance with their Arbitration Agreement/Clause and that the copy of the Arbitration Agreement/Clause attached to this Request is a true copy thereof.

9. The undersigned certifies that the details contained in this Request are true and accurate.

10. The undersigned acknowledges that the Commission or any of its officers shall not be liable to any party for any act, omission, or misconduct in connection with any appointment made under this Request.

Name and capacity of the requestor:

Signature:

Date:

NOTE:

1. The following shall be attached to this Request: (a) a Copy of the Arbitration Agreement/Clause; (b) If necessary, a document proving the authority of the signatory; and (c) SEC Official Receipt of payment of Appointment Fee.
2. The email and contact number of the parties and authorized representatives indicated in this Request shall be the official email and contact number to facilitate communication. Unless otherwise requested, all communications shall be made electronically.

Schedule 2
Schedule of Fees

Particulars	Rates
Filing of Request to Appoint Arbitrators	Php10,000.00
Challenge Fee	Php50,000.00