

THE PHILIPPINE ADR REVIEW

APRIL 2010

BROADENING ITS SCOPE OF ARBITRATION ADVOCACY



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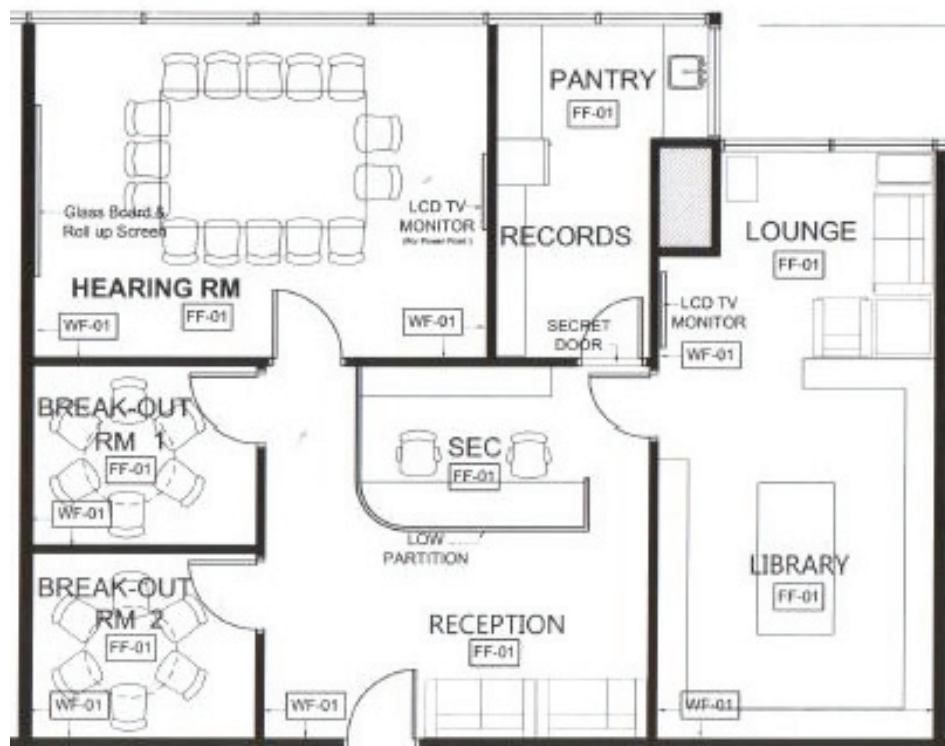
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PDRCI approves new office design

By Bamba B. Parungao

The Board of Trustees of PDRCI recently approved the budget and proposed layout and design of its new office at the 3/F, Chamber and Industry Plaza, McKinley Hills, Taguig City. The new office will have 110



square meters of floor space, with a hearing room, two break-out rooms, a lounge, a library, reception area, records room, and pantry. The design of the office will be flexible enough to allow possible adjustments on the design in some of the rooms.

The hearing room will accommodate 20 participants. It will be equipped with a flat-panel LCD or LED video for conferencing and presentations, **PAGE 3** ►

Proposed PDRCI Office in McKinley Hills as designed by PDRCI Trustee, Engr. Salvador P. Castro, Jr., and his firm S. P. Castro & Associates.

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Supreme Court rules that CIAC arbitration is not subject to DAB

By Custodio O. Parlade¹

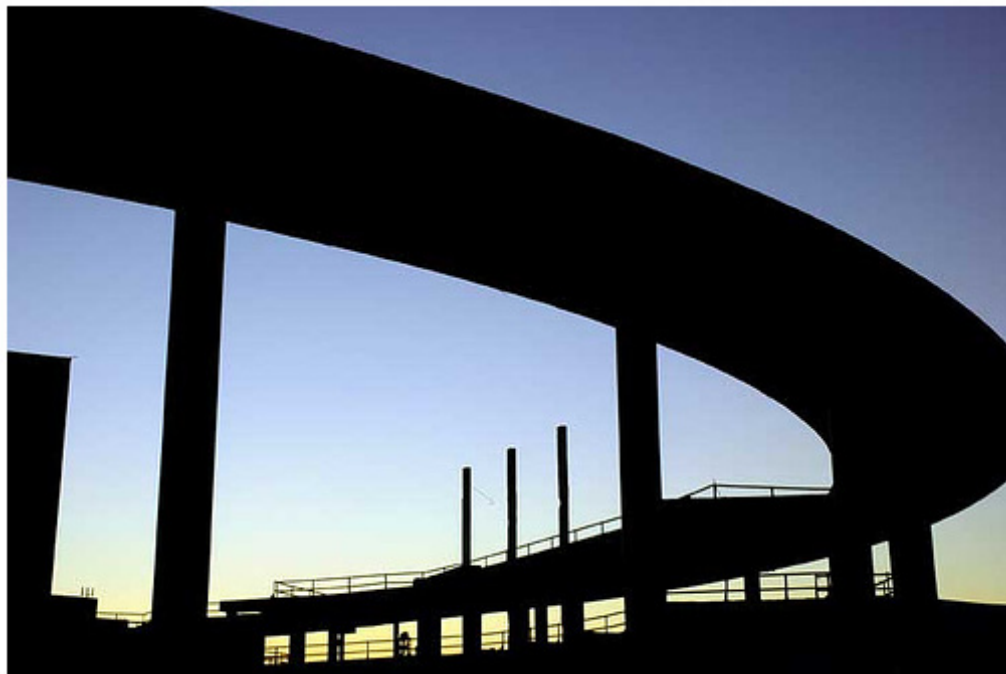
In a Decision promulgated last April 24, 2009, the Philippine Supreme Court's Third Division ruled that the Construction Industry Arbitration Commission (CIAC) may assume jurisdiction of a dispute even if the parties had not previously referred it to the Dispute Adjudication Board (DAB) as stipulated in their construction agreement.

Background

The ruling was rendered in G.R. No. 180640, entitled HUTAMA-RSEA Joint Operations, Inc. vs. Citra Metro Manila Tollways Corporation. The case stemmed from a dispute over money claims of HUTAMA-RSEA Joint Operations, Inc. (HUTAMA), an engineering and construction subcontractor, against Citra Metro Manila Tollways Corporation (Citra), the general contractor and operator of the South Metro Manila Skyway Project (Skyway Project).

On September 25, 1996, Citra and HUTAMA entered into an Engineering Procurement Construction Contract (EPCC), whereby HUTAMA would construct Stage 1 of the Skyway Project, and Citra agreed to pay HUTAMA the total amount US\$369,510,304.00 for the construction. Thereafter, HUTAMA made several demands on Citra for the payment of various balances, charges and other amounts. Despite several meetings and negotiations, the parties failed to amicably settle their dispute.

HUTAMA filed a Request for Arbitration with CIAC to enforce its money claims. In its Answer Ad Cautelam with Motion to Dismiss, Citra argued that the case was premature because the parties had not complied with a condition precedent in the EPCC requiring referral of their dispute to the DAB prior to arbitration. CIAC ruled that it had jurisdiction over the case, and the issue



raised by Citra was factual and should be resolved during the trial.

After the parties signed the Terms of Reference, Citra urgently moved that CIAC refrain from proceeding with the arbitration until it resolved the issue of whether prior resort by the parties to the DAB was a condition precedent to the submission of the dispute to CIAC.

When CIAC denied Citra's motion, it appealed the CIAC ruling to the Court of Appeals. The appellate court ruled in favor of Citra and enjoined CIAC from proceeding with the arbitration until the parties' dispute was first referred to and resolved by the DAB. HUTAMA moved for reconsideration, but this was denied by the Court of Appeals. HUTAMA then filed a petition for review on certiorari with the Supreme Court.

CIAC Jurisdiction

The Supreme Court granted HUTAMA's petition and held that CIAC had jurisdiction over a dispute involving a contraction contract if it contained an arbitration clause, notwithstanding any reference by the same agreement to another arbitration institution or arbitral body.

Although the Supreme Court noted that the EPCC stipulated that the parties should first refer their dispute to the DAB prior to commencing arbitration, the Tribunal held that this did not bar CIAC from assuming jurisdiction over the dispute if such condition was not complied with. According to the Supreme Court, since the jurisdiction of CIAC was conferred by law, it could not be subjected to any condition nor can it

¹ President Emeritus, PDRCI.

be waived or diminished by the stipulation, act or omission of the parties, as long as the parties agreed to submit their

A DAB created at the commencement of the construction work plays a key role in resolving disputes between the parties



to the contract while the work is in progress, even if the resolution of the dispute is only provisional. However, where no party had taken any step to constitute the DAB within the agreed period and construction is completed, the utility of

dispute to arbitration or agreed to an arbitration clause in their construction contract. In other words, the arbitration clause in the EPCC ipso facto vested CIAC with jurisdiction over the dispute between HUTAMA and Citra.


The Supreme Court also considered the factual milieu of the parties. It noted that the dispute between them had been lingering for almost five years, and no amicable settlement was reached despite numerous meetings and negotiations. The Tribunal believed that it would be circuitous and dilatory, and would entail unnecessary delays and expenses on both parties, to refer the dispute to the DAB. This would be contrary to the intent of Executive Order No. 1008 (1985), which mandated CIAC to expeditiously settle construction industry disputes.

Role of the DAB

The Tribunal's Decision did not discuss the important role played by the DAB in alternative dispute resolution.

creating a DAB at such late stage may be questionable.

It can hardly be said that it is the intention of the parties to submit their dispute – which remained unresolved at that stage – to a two-tiered process, first the DAB which is a less formal dispute resolution procedure, and then to arbitration. The exception, which is highly unlikely, is when the parties agree to accept the resolution of the dispute by the DAB.

However, perhaps in anticipation of the Tribunal's resolution of the issue raised by HUTAMA, Rule 3, Section 3.2.2 of the CIAC Revised Rules of Procedure Governing Construction Arbitration now provides that in case of non-compliance with a condition precedent, absent a showing of justifiable reasons, exemption, or a waiver thereof, CIAC shall suspend arbitration proceedings pending compliance therewith within a reasonable period directed by the arbitral tribunal. 

PDRCI approves new office design


FROM PAGE 1 ... a glass board for manual presentations, and pull-out white screen for overhead displays and projections. It will be fully wired for high-fidelity recording of meetings and hearings. PDRCI will purchase a computerized stenographic machine for real-time transcriptions for this purpose.

The two break-out rooms will be used as private meeting rooms by opposing parties during hearings to give them privacy to discuss their case. All rooms will be provided with a self-service coffee nook. The library will have floor-to-ceiling bookshelves, conference tables and furniture so it can serve as an extra hearing room when the need arises.

To augment its own internally generated funds, PDRCI welcomes donations from individual and corporate benefactors to complete the project. In exchange for their grants, the do-



nors will have naming rights for the whole center, the hearing room, the two break-out rooms as well as the library. Those interested may write or email the Secretariat at secretariat@pdrcl.org.

The office layout was designed by PDRCI Trustee, Engr. Salvador P. Castro, Jr., and his firm S. P. Castro & Associates. 

MEMBER SPOTLIGHT

Custodio O. Parlade




Dean Parlade is the President Emeritus of PDRCI, having served as its President from 1996 to 2001. At present, he is a member of the ICC International Court of Arbitration and a trustee of the Philippine Institute of

Construction Arbitrators and Mediators, Inc. as well as the Foundation for the Enhancement of Legal Education.

He is an active construction arbitrator and an accredited mediator of the Philippine Court of Appeals. He regularly serves as arbitrator in international or domestic disputes, and is one of only two Philippine arbitrators included in *The International Who's Who of Commercial Arbitrators 2008*. He lectures on international commercial arbitration in Mandatory Continuing Legal Education (MCLE) seminars in the Philippines.

He was formerly the Vice Chairman of the International Chamber of Commerce Philippines, Inc. and Chairman of its International Arbitration Commission. He served in the Working Committee that assisted the Philippine House of Representatives in drafting the bill which became the ADR Act of 2004. He was a member of the Department of Justice Committee that prepared the Implementing Rules and Regulations of the ADR Act. He also served as Vice Chairman of the Supreme Court Sub-Committee that prepared the Special ADR Rules of Court.

He has been the resource person or paper writer for domestic and international seminars and conferences on alternative dispute resolution. He has submitted various papers on arbitration and written articles on arbitration in domestic and foreign publications. He has written two books on construction arbitration, *Construction Arbitration* (1997) and *The Law and Practice of Conciliation and Arbitration of Construction Disputes* (2002).

Dean Parlade was the topnotcher of the Philippine Bar examinations in 1958. He is a doting grandfather to his 18 grandchildren. 

UPCOMING SEMINAR



**3RD ARBITRATION
TRAINING SEMINAR 2010**

THE LAW AND PRACTICE OF COMMERCIAL ARBITRATION

**MAY 26-29, 2010, 8:30 A.M. TO 4:30 P.M.
THE LINDEN SUITES, ORTIGAS CENTER, PASIG CITY**

SESSION 1

INTRODUCTION TO ARBITRATION

SESSION 2

PRE-ARBITRATION ISSUES

SESSION 3

COMMENCING THE ARBITRATION

SESSION 4

PRE-HEARING CONSIDERATIONS

SESSION 5

CONDUCTING THE ARBITRATION
HEARINGS

SESSION 6

RECOGNITION, ENFORCEMENT,
CHALLENGE AND VACATION OF AWARDS

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