

# THE PHILIPPINE ADR REVIEW

JULY 2010

BROADENING ITS SCOPE OF ARBITRATION ADVOCACY



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## PDRCI Elects New Board

By Bamba B. Parungao



PDRCI held its General Membership Meeting on July 6, 2009 at The Linden Suites, during which the members elected the new Board of Trustees for the 2010-11 term. The new Board welcomed new trustees Arthur P. Autea and Edmund L. Tan, who replaced Rep. Rufus B. Rodriguez and Atty. Wilfredo Chato. The other incumbent trustees were re-elected for another term.

After 24 new PDRCI members and accredited arbitrators were sworn in, President Victor P. Lazatin gave his report, which highlighted PDRCI's accomplishments. Among these were the recent training seminar on arbitration, the new PDRCI office at the Commerce & Industry Plaza in McKinley Hills, and the launching of The Philippine ADR Review, which is now in its seventh issue. The President also reported on eight new cases referred to the Center during the same term and its collaboration with the Intellectual Property Office to design an arbitration system to

New members and accredited arbitrators take their oath during the PDRCI general membership meeting on July 6, 2010.

resolve intellectual property disputes.

The President also talked on how the Alternative Dispute Resolution Act of 2004 and its implementing rules and regulations relate to the Philippine Arbitration Act, the New York Convention of 1958, the Construction Industry Arbitration Law, and the Special ADR Rules of the Philippine Supreme Court.

The new Board of Trustees will hold its organizational meeting on July 19, 2010 to elect the new officers.

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Philippine ADR Review publishes matters of legal interest to PDRCI's members and readers. The articles printed in the Review contain individual views of the authors and do not state PDRCI's policy. Contributions may be sent to the PDRCI Secretariat. All materials submitted for publication become property of PDRCI and are subject to editorial review and revisions. Texts of original legal materials digested are available upon request.

# Commercial Arbitration: A Preferred Alternative to Litigation

By: Eduardo R. Ceniza

Republic Act No. 9285, otherwise known as the ADR Act of 2004, defines arbitration as "a voluntary dispute resolution process in which one or more arbitrators, appointed in accordance with the agreement of the parties, or rules promulgated pursuant to (the) Act, resolve a dispute by rendering an award." Otherwise stated, arbitration is a voluntary process of dispute resolution where a neutral third party renders a final and binding decision after each side has an opportunity to present its view. This method is especially useful in international business transactions where parties are often unfamiliar with foreign legal systems.

With the rapid growth and expansion of the world financial and business communities, it is increasingly important for businesses to have an established method of resolving business disputes quickly, efficiently and constructively. When disputes arise in the course of business, parties often prefer to settle them privately and informally, in a businesslike fashion that will enable them to maintain their business relationship. Arbitration is designed for just such occasions, in that it can be designed for quick, practical and efficient resolution.

Unlike a judicial process, arbitration is conducted outside the court system by impartial arbitrators who are selected by the parties based on criteria that best fits the nature of the contract. Arbitration is usually conducted by either one arbitrator or a panel of three arbitrators with the structure, format, site and scope of arbitration all decided by the parties and memorialized in the arbitration clause of their contract. The parties usually negotiate the arbitration clause at the same time they develop the initial contract. A properly structured provision will help establish a framework for expeditious resolution of contract disputes.

Arbitration allows the parties greater flexibility than a court proceeding. Parties can decide to have abbreviated time periods in which to respond to claims, where the arbitration will be conduct-

ed, how formal the process will be, or whether to involve lawyers in the arbitration.

## Philippine commercial arbitration

For commercial arbitration to flourish in a country, it is of utmost importance that its arbitration law be modern, arbitration-friendly and supportive of the arbitral process. Recognizing that the UNCITRAL Model Law has become the benchmark for many countries seeking to modernize their arbitration laws, particularly in international commercial arbitration, the Philippine Congress enacted in April 2004 the ADR Act of 2004. The Act expressly adopted the UNCITRAL Model Law as the law governing international commercial arbitration in the Philippines. Under the Act, the recognition and enforcement of foreign arbitral awards is governed by the New York Convention of 1958. Domes-

tic arbitration continues to be governed by the Arbitration Law of 1953 (Republic Act No 876), with some amendments introduced by the ADR Act.

With the adoption of the UNCITRAL Model Law as the law on interna-

tional commercial arbitration, the Philippines has become an "arbitration-friendly" country.

## Arbitration versus Litigation

There is increasing recognition throughout the modern world that arbitration is the most effective way of resolving commercial disputes. The demand for commercial arbitration as a mode

of dispute resolution - - and particularly international commercial arbitration - - is growing year by year in line with the expansion of transnational commerce and trade and the rapid globalization of the world economy.

The dispute resolution mechanisms provided by modern arbitral institutions such as the ICC International Court



of Arbitration and our very own, the Philippine Dispute Resolution Center (PDRCI), were conceived and designed specifically for business disputes in both international and domestic context. The parties to transnational commercial transactions, for example, are invariably of different nationalities, with different linguistic, legal and cultural backgrounds. As can be expected there may be a relatively strong distrust of a foreign legal system on the part of one or more of the parties, accompanied by uncertainty or a lack of information about the course to follow. These difficulties may be compounded by the perceived disadvantages one party may face in submitting to the procedure in the other party's home ground. These are some of the reasons why the national courts in the country of one of the parties may not appear suitable to the other party.

Here are some of the important reasons why arbitration, in the Philippine setting, ought to be a preferable, if not an altogether compelling choice, as against court litigation, for the resolution of commercial disputes.

### Speed and economy

It is a sad commentary that the wheels of justice in the Philippines grind ever so slowly. The principal reason for this is the clogged dockets of the courts, from the lowest to the highest court. The Philippine Congress has taken cognizance of this fact. Thus, in enacting the ADR Act, Congress declared it to be "the policy of the State to actively promote party autonomy in the resolution of disputes" and to "encourage and actively promote the use of Alternative Dispute Resolution (ADR) as an important means to achieve speedy and impartial justice and declog court dockets." Similarly, the Supreme Court has issued several Administrative Orders aimed at decongesting the clogged dockets of the courts. These Administrative Orders provide for, inter alia, (a) the establishment of court-


referred mediation system; (b) the creation of the Philippine Mediation Center; (c) the issuance of the Guidelines for the implementation of mediation proceedings; (d) the issuance of the Code of Ethical Standards for Accreditation of Mediators for court-referred and court-related mediation cases; and (e) the issuance of Standards and Procedures for Mediation and Supervisors. Notwithstanding these measures, courts are still bedeviled by clogged dockets and the perennial problem of slow and protracted court proceedings is still the order of the day.

### Specialized competence of arbitrators

Judicial systems do not allow the parties to a dispute to choose their own judges. In contrast, arbitration offers the parties the unique opportunity to designate persons of their choice as arbitrators, provided they are independent. This enables the parties to have their dispute resolved by people who have specialized competence in the relevant field. This advantage of arbitration over court litigation is of special importance in the Philippines.

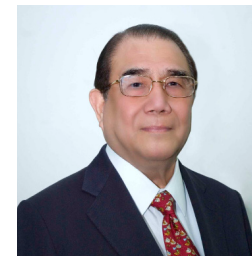
It used to be that only the most competent lawyers with unquestionable integrity were appointed to the courts. Unfortunately, things have changed. Although the Judicial and Bar Council recommends to the Philippine President the nominees for appointment to the courts, after reviewing and scrutinizing the qualifications of the candidates for appointment, this has not consistently happened. As a result, not a few incompetent judges – who do not have the training, the aptitude or the experience to try complex commercial cases – were appointed to the bench. Their lack of sufficient judicial qualifications oftentimes leads to atrociously wrong decisions.

Arbitration allows parties who wish

to avoid long delays in the court system to choose arbitrators with expertise in their business. The parties are also free to exercise some control on how the proceedings will proceed by specifying the rules which will govern the dispute resolution. For example, if the dispute concerns infringement of trademark or unfair competition, the parties could choose arbitrators from a roster of arbitrators whose specialization is Intellectual Property Law and they could choose PDRCI's special Rules on Intellectual Property Dispute to govern the arbitral proceedings. 

*Part 2 of Atty. Ceniza's article will be published in the next issue.*

### About the Author



*Atty. Eduardo R. Ceniza is the General Counsel of the Lucio Tan Group of Companies and, concurrently, Senior Vice President - General Counsel and Corporate Secretary of Philippine Airlines, Inc.*

*He was past president of PDRCI and incumbent Chairman of the Philippine Institute of Arbitrators. He is also the Chairman of the Philippine Chapter of the East Asia Branch, Chartered Institute of Arbitrators; President of the Philippine Institute of Construction Arbitrators and Mediators; and Vice President for External Relations of the Philippine Dispute Resolution Center, Inc. He is a Fellow of the Chartered Institute of Arbitrators, the Hong Kong Institute of Arbitrators, the Singapore Institute of Arbitrators, and the Philippine Institute of Arbitrators.*

*A consistent full university scholar, he graduated from the Lyceum of the Philippine University with the title Associate in Arts, with high honors, in 1956, and with the degree of Bachelor of Laws, summa cum laude, in 1960. He passed the Philippine Bar Examinations (12th place) in 1961.*


**MEMBER SPOTLIGHT**
*Shirley Alinea*


**S**hirley Alinea received her Bachelor of Laws degree from the University of the Philippines in 1996, after finishing legal manage-

ment from the Ateneo de Manila University in 1992. She was a member of the Order of the Purple Feather, the honor society of the University of the Philippines College of Law. She was admitted to the Philippine Bar in May 1997, ranking 6th in the 1996 bar examinations. Ms. Alinea was a partner of Quisumbing and Torres until July 2008.

Ms. Alinea manages her own firm. She specializes in arbitration, litigation, labor and employment, and intellectual property. As an immigration practitioner, she assists in the processing of alien employment permit and visa applications of her clients' expatriates and gives advice on immigration-related matters.

As a labor lawyer, Ms. Alinea advises clients on labor standards, welfare and relations issues, as well as prosecutes and defends clients in labor cases. As a litigation and arbitration practitioner, she counsels and represents clients in different litigation before Philippine courts, usually in commercial and civil cases, as well as in international and domestic commercial arbitrations.

Ms. Alinea teaches law at the University of the East College of Law. She is also a lecturer on commercial arbitration in Mandatory Continuing Legal Education seminars. She is a member of the Integrated Bar of the Philippines, U.P. Women Lawyers Circle and Women Trial Lawyers Organization, and is a Trustee and accredited arbitrator of PDRCI. 



## *HKIAC holds 25th Anniversary Conference in November 2010*

**T**he Hong Kong International Arbitration Centre (HKIAC) marks its 25th anniversary this year with a series of events from November 17 to 20, 2010.

A highlight of the celebration is the HKIAC 25th Anniversary Conference to be held on November 18 to 19, 2010 at the JW Marriott Hotel, Hong Kong. The conference theme is "Rethinking International Arbitration."


The keynote speaker of this event will be International Council for Commercial Arbitration President Jan Paulsson. The conference is expected to draw distinguished practitioners from around the world who will serve as presenters or moderators of the various sessions.

PDRCI is among the supporting organizations of the conference. For more information, please contact the PDRCI Secretariat. 

**UPCOMING COLUMN**

### *Problems in ADR*

The Philippine ARD Review will feature a regular column on problems in alternative dispute resolution beginning next issue. The initial contributors are Attys. Roberto Dio and Shirley Alinea, who will write on selecting the arbitral tribunal and other issues and practical problems they encountered in ADR practice.

Readers are invited to email their issues and comments to [secretariat@pdrci.org](mailto:secretariat@pdrci.org). Subject to editorial review, we will feature your contributions and comments in our forthcoming issues. If you have an opinion on any article in The Philippine ARD Review or ideas on best ADR practices that you would like to share with us, please send your thoughts to us by email. You may include photographs in high resolution (MPEG, JPEG or pdf) and with a short descriptive caption. 

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