The Philippine ADR Review

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BROADENING ITS SCOPE OF ARBITRATION ADVOCACY

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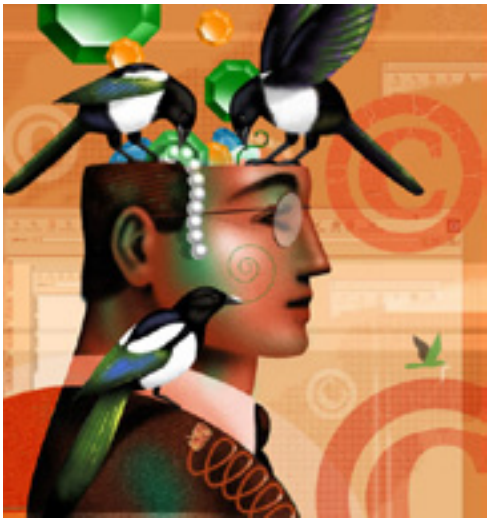
IPO launches IPR arbitration seminar with PDRCI

By Gerrmai C. Abella



The Intellectual Property Office (IPO), in collaboration with PDRCI, will conduct an intensive training seminar on intellectual property rights (IPR) in the last quarter of 2011. The training seminar is jointly organized by the IPO, PDRCI and the World Intellectual Property Office (WIPO).

The first part will be offered to PDRCI arbitrators who will handle IPR cases. It will be held on October 26-28, 2010 at the College of Law, University of the Philippines in Diliman, Quezon City.

It will cover basic knowledge and key issues on copyright, trademark and patent. The speakers on copyright will be IPO's Atty. Andrew Michael S. Ong and Atty. Louie Andrew C. Calvario, De La Salle University's Atty. Cris Cruz, and FILSCAP's Atty. Thursday Alciso. For trademark, the training will be conducted by IPO's Atty. Leny B. Raz, Atty. Antonio Z. Ros, and Atty. Ma. Corazon D.P. Marcial. The training on patent will be handled by Atty. Antonio Aldrin R. Mendoza, Engr. Epifanio Rey M. Evasco, and Engr. Rey Abrahan B. Negre.

The first part of the seminar aims to provide PDRCI arbitrators with a fundamental knowhow on copyright, trademark and patent. It also endeavors to impart a deeper understanding of issues, laws and principles that will be useful in resolving IPR issues in arbitration. The seminar will equip participants with the necessary skills to enlist in the IPO-PDRCI Pool of Intellectual Property Arbitrators.

The second part of the seminar will be a three-day arbitration training program for intellectual property professionals from the IPO. PDRCI will conduct the training on November 8-10, 2010 at the U.P. College of Law in Diliman, Quezon City. The last training seminar will be conducted by the WIPO on December 8-9, 2010 at the same venue.

There will be a written examination after the last seminar, the details of which will be announced soon.

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The new ADR Rules on Disputes between National Government Agencies

By: Shirley F. Alinea

PART II

Editor's note: In the last issue, Atty. Alinea discussed the mediation procedure in the new ADR Rules on disputes between national government agencies. In Part 2 of her article, she discusses the arbitration procedure and the peculiarities and ambiguities in the Rules.

Arbitration procedure

Rule 3 of the Rules sets out the procedure for arbitration. It states that the parties proceedings shall be "NGAs which have claims, disputes or controversies with other agencies, including private individuals/entities that are indispensable to the final resolution of the dispute."

Some of the cases that may be submitted to the Solicitor General for adjudication through arbitration (if not earlier selected as appropriate for mediation) are:

- cases of first instance, where a petition for arbitration is filed;
- cases forwarded or transmitted after a failed mediation; and
- matters referred by the Secretary of Justice.

The Rules require that *"arbitration ... shall be a condition precedent before parties to an arbitrable dispute may [refer refer it to] the regular courts."*

The arbitration is commenced by the filing of a petition with the OSG. Within five days from such filing, the Solicitor General will issue an order requiring the respondent to answer within 10 days from receipt of the order. In respondent fails to answer, the dispute may be resolved on the basis of the complaint and documents submitted.

The Solicitor General shall then appoint a sole or panel of arbitrators (as the "tribunal"), taking into consideration the complexities and intricacies of the dispute. The tribunal shall decide only such issues and related matters as are submitted to them for adjudication.

After the issues are joined, the tribunal shall hold a preliminary conference to discuss, among others, the simplification of

issues, necessity or possibility of obtaining stipulations of facts and documents to avoid unnecessary proof, limitation of the number of witnesses, the propriety of submitting the case for decision without trial, and such other matters as may aid in the prompt disposition of the dispute. The parties may also agree on the procedure that will govern the conduct of the proceedings, failing which the provisions of the Rules will govern. The Special ADR Rules shall be applied suppletorily.

Failure of the petitioner to attend the preliminary conference may cause the dismissal of the petition. Failure of the respondent, on the other hand, to attend despite having filed an Answer may result in the case being deemed submitted for decision, taking into consideration both the Petition and Answer, and after reception of the petitioner's evidence, and such other evidence as may be necessary for the tribunal to render a just and equitable resolution.

Before proceeding with the hearing, the tribunal shall issue a preliminary conference order which shall be signed by the parties and the tribunal within 10 days from the preliminary conference.

During the hearing proper, the parties may offer such evidence as they desire and shall produce such additional documents and witnesses as the tribunal may deem necessary to an understanding and determination of the dispute. The tribunal shall act according to justice, equity and merits of the case, without regard to technicalities or legal forms and shall not be bound by any technical rule of evidence. The parties may make a brief oral summation and arguments at the end of the hearing.

After the termination of the presentation of evidence, the tribunal shall require the simultaneous submission of the parties' memorandum of arguments in the form of draft decisions in their favor within 10 days. The parties may also agree, after considering the stipulation of facts made and the documentary evidence submitted, to submit their dispute for decision on the basis of the pleadings and draft decisions, without need of presentation of evidence.

Unless the hearing is reopened by the tribunal for reception of newly discovered evidence, it shall render the award within 30 days from submission of the parties' draft decisions. The award shall be signed and concurred with by a majority of the tribunal, stating clearly and distinctly the facts and law on which it is based, and filed with the Arbitration and Mediation Division (AMD) Secretariat. As a general rule, the jurisdiction of the tribunal terminates upon the finality of the award.

No motion for reconsideration or motion for new trial may be filed. Either party may file a motion for correction, modification or vacation on the limited grounds provided under the Rules, within 10 days from receipt of the award.

After 10 days from notice to the parties, the award shall be transmitted to the Secretary of Justice for final action approving, disapproving or modifying the award made. Unless appealed, the award, as approved or modified by the Secretary of Justice, shall become final and binding upon the parties and shall have the same force and effect as a final decision issued by a court.

An appeal may be taken to the Office of the President of the Philippines within 15 days from receipt of the final action of the Secretary of Justice by filing a notice of appeal and serving the same upon the parties. If an appeal is filed, the award shall become final only upon affirmation or approval by the Office of the President. If no such appeal is taken, the action taken by the Secretary of Justice shall become final and executory after the lapse of the 15-day period to file an appeal.

An appeal will not stay the execution of the award unless the appellate body or court shall direct otherwise upon such terms as it may deem just. If this happens, the award shall only become executory upon the issuance of the entry of judgment by the appellate body or court, or upon the expiration or lifting of the stay or restraining order without a preliminary injunction being issued.

As soon as the award becomes final and executory, the tribunal shall, with the concurrence of the Solicitor General, motu proprio or on motion of the prevailing party, issue a writ of execution requiring any sheriff or proper officer to execute the award.

When a writ of execution is issued pending appeal, the tribunal, with the concurrence of the Solicitor General, may require the prevailing party to post a sufficient bond executed to the adverse party in an amount equal to the amount of the award, to serve as restitution in case the award is reversed partially or totally. Execution pending appeal, however, may be stayed upon approval by the tribunal, with the concurrence of the Solicitor General, of a bond or counter-bond posted by the party against who the writ is directed, conditioned upon the performance of the judgment of the appellate body in case it upholds the appealed award in whole or in part.

Peculiarities and ambiguities in the Rules

The Rules, which appear to be patterned in some respects on Republic Act No. 876 (1953) or The Arbitration Law, have provisions that are peculiar and not common in modern commercial arbitration.

First, the obligation to arbitrate is generally contractual in nature. Hence, unless parties to a commercial transaction have agreed to resolve their disputes by arbitration, the parties may not be compelled to resolve any contractual dispute by arbitration. From a reading of PD No. 242 and the Code, as well as the Rules, however, it appears that the existence of an arbitration agreement between NGAs is not a requisite to the referral of their dispute to arbitration. Here, therefore, the obligation to arbitrate arises from law and not contract.

While there may be reason to create by law such obligation to arbitrate disputes between and among NGAs, the inclusion of "private individuals/entities that are indispensable to the final resolution of the dispute" as possible parties to the arbitration may be controversial and open to question. Private individuals or entities who may be compelled to arbitrate without an arbitration agreement may claim that there is no legal basis to impose such obligation on them.

Second, Rule 3, Section 3.3 states that *"(a)rbitration ... shall be a condition precedent before parties to an arbitrable dispute may [refer it to] the regular courts." This rule seems to reflect the old attitude of court protectionism and reluctance to have the dispute resolved by arbitration instead of traditional litigation."*

This attitude of protectionism and reluctance appears to be mirrored in the limitation of the matters that may be submitted to arbitration. While Rule 3, Section 3.13 states that the tribunal may decide on such issues and related matters as are submitted to them for adjudication, reading this provision in relation to PD No. 242 and the Code shows that only a determination of questions of facts may be made by the tribunal.

Third, except for a possible review of the award by the courts on limited grounds, the award is generally not required to be reviewed. The Rules, in providing for a review mechanism by the Secretary of Justice, is different in this respect. It highlights the fact that the arbitration contemplated by the Rules is not the usual commercial arbitration that we are familiar with. This is further highlighted by the remedy of appeal not to the courts but to the Office of the President of the Philippines. Of course, this makes sense considering that the parties involved are NGAs that are under the direct control and authority of the President of the Philippines.

Conclusion

While the Rules with its peculiarities and ambiguities may differ in some respects from the procedures and rules of modern commercial arbitration, it helps promote ADR, particularly mediation and arbitration, in the public sector. There is a significant amount of contracts between and among NGAs, as well as between and among NGAs and private entities or individuals. In bringing ADR as a mode of settling disputes into the consciousness of NGAs, the Rules will help push the growth of ADR, particularly arbitration, in the country.

About the Author

Shirley F. Alinea specializes in arbitration, litigation, labor and employment, and intellectual property law. She received her Bachelor of Laws degree from the University of the Philippines in 1996 and until 2008 was a partner of Quisumbing & Torres.

MEMBER SPOTLIGHT

Mario E. Valderrama

Mario E. Valderrama, AB, LLB, FCIArb, FHKIArb, FPIArb, SCM is the only Filipino in the Approved Faculty List of The Chartered Institute of Arbitrators (CIArb), the institution that provides, globally, the highest educational standards in ADR training to arbitration users and practitioners.

He was the first Filipino to be admitted as a Fellow of CIArb and the Hong Kong Institute of Arbitrators (HKIArb).

He is a member of the council of the Regional Arbitral Institutes Forum (RAIF), an organization of arbitral institutes in the Asia Pacific Region. He is the Philippine representative to the Sub-Regional Committee of the East Asia Branch of CIArb.

He is a professorial lecturer in the Far Eastern University Institute of Law and a faculty member of the Arellano University School of Law. He serves as President of the Philippine Institute of Arbitrators, Inc. (PIArb) and the Philippine Chapter, East Asia Branch of CIArb. He is an accredited arbitrator of the Philippine Construction Industry Arbitration Commission (CIAC), and a trustee and accredited arbitrator of PDRCI. In addition, he is an accredited mediator of the Philippine Supreme Court and the Philippine Intellectual Property Office.

Since 2002, he has lectured on ADR and arbitration in the Mandatory Continuing Legal Education program of Philippine lawyers, and has served as resource speaker on ADR and commercial arbitration in various forums. His experience in ADR includes acting as expert witness, party representative, file counsel, chair and member of arbitral tribunals in various domestic and international arbitrations, and mediator.

He received his law degree from the Far Eastern University Institute of Law, where he graduated valedictorian and magna cum laude in 1982. He placed 12th in the Philippine Bar Examination and was admitted to the Philippine Bar in 1983.

HKIAC 25th Anniversary

Register Now!

The Hong Kong International Arbitration Centre (the "HKIAC") will be celebrating its 25th Anniversary with a series of events from November 17-20 in Hong Kong.

The festivities will commence on November 17, 2010 with the Kaplan Lecture 2010 and the Opening Reception. This year's Kaplan Lecture will be delivered by Toby Landau QC. We are pleased to have Mallesons Stephen Jaques as our primary sponsor providing its generous support with this landmark event.

The HKIAC 25th Anniversary Conference will then be held from November 18-19, 2010. The theme for the Conference is "Rethinking International Arbitration". The Opening Keynote Speaker will be Jan Paulsson. The Conference will include many distinguished practitioners from around the world who will serve as presenters or moderators of the various sessions. These include Lord Hoffmann, Lord Goldsmith QC, Professor Dr Gabrielle Kaufmann-Kohler, Arthur Marriott QC, Prof. Dr. Albert Jan van den Berg, David W. Rivkin, Dominique Brown-Berset, Hon. Charles Brower, Prof. Dr. Bernard Hanotiau, Christian MJ Kröner, Yu Jianlong and others.

On November 29, 2010, the HKIAC will organise a mock arbitration co-supported by the ICC Court of International Arbitration and the Chartered Institute of Arbitrators, East Asia Branch. Eminent practitioners including Louise Barrington, Anthony Canham, Dr. Sabine Stricker-Kellerer, Christopher Lau SC, Prof. Jingzhou Tao, Prof. Doug Jones, Karen Mills and others will role-play an ICC arbitration seated in Hong Kong.

For more details, please visit http://www.hkiac.org/25th.

PIArb Basic Arbitration Seminar

By Juan Paolo E. Colet

The Philippine Institute of Arbitrators (PIArb), in cooperation with the Ongkiko Manhit Custodio & Acorda Center for Legal Education, held a basic arbitration seminar on September 23 and 24, 2010 at The Linden Suites in Pasig City.

The seminar covered various topics on arbitration, including basic concepts, relevant laws, procedure, enforcement of awards and ethics.

The seminar's noted speakers were led by PDRCI members Eduardo R. Ceniza, Mario E. Valderrama, Ricardo P.G. Ongkiko and Donemark J.L. Calimon. The other speakers were Teodoro Kalaw IV and Jesusito G. Morallos.

The seminar was designed as a preparatory course for individuals interested in taking the 2010 Qualifying Exam for membership in the Chartered Institute of Arbitrators, an international organization of arbitration practitioners.

Attendees of the two-day seminar earned 13 credits for Mandatory Continuing Legal Education.

Roberto N. Dio, Editor

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