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## IPO and WIPO hold training on WIPO Rules

By: Gerrmai C. Abella

The Philippine Intellectual Property Office (IPO) and World Intellectual Property Organization (WIPO) jointly conducted a seminar on the new IPO-PDRCI Arbitration Rules, which was patterned after the WIPO Arbitration Rules, on December 9 to 10, 2010 at the Edsa Shangri-la Plaza in Mandaluyong City.

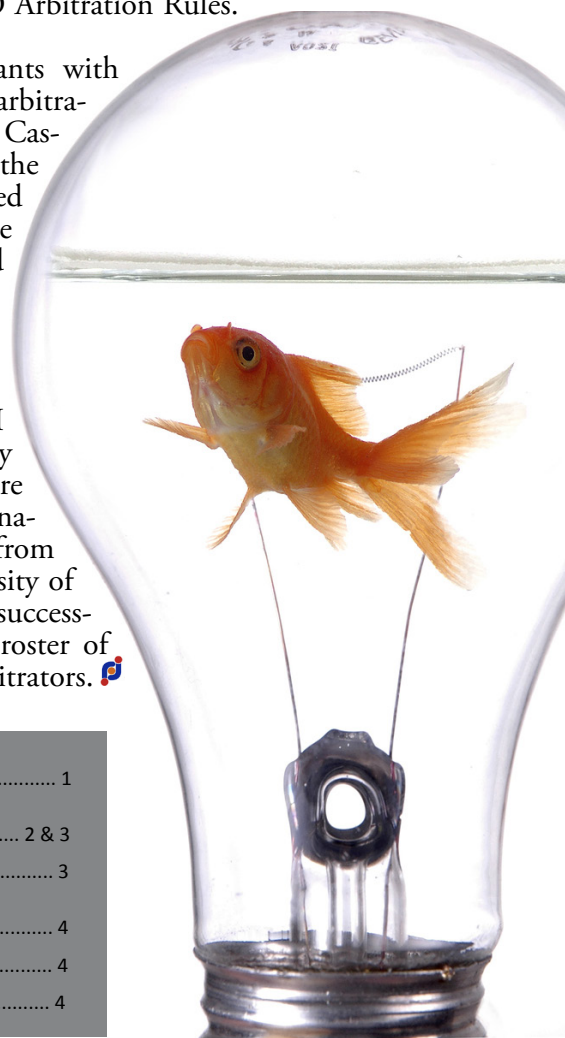
The training discussed the workflow of the arbitration process from the filing of the Request for Arbitration to the issuance of the Final Award. The session leaders for the two-day training were IPO Deputy Director Andrew Michael S. Ong, former Court of Appeals Justice Teresita Dy-Liaco Flores, WIPO Deputy Director Ignacio de Castro, and PDRCI President Emeritus Custodio O. Parlade. This was the first time that the WIPO allowed the intellectual property office of a member state to use the WIPO Arbitration Rules.

The training provided the participants with basic knowledge of IPO and WIPO arbitration and mediation procedures. Mr. de Castro cited examples of cases resolved by the WIPO arbitration section and responded to questions from the participants. He shared some tips on handling cases and explained the process of listing in the WIPO pool of arbitrators and experts.

The seminar was the third training jointly organized by the IPO, PDRCI and the WIPO on intellectual property rights for the last quarter of 2010. There will be a written assessment examination to be held on January 14, 2010, from 9:00 a.m. to 12:00 noon, at the University of the Philippines College of Law. The successful examinees will be included in the roster of PDRCI-trained intellectual property arbitrators.

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# Recognition and Enforcement of Foreign Arbitral Awards after the 2009 Special ADR Rules

By: Atty. Patricia Ann T. Prodigalidad

*The enactment of Republic Act No. 9285, otherwise known as the Alternative Dispute Resolution Act of 2004 or the ADR Law, and the recent promulgation by the Philippine Supreme Court of the Special Rules of Court on Alternative Dispute Resolution ("Special ADR Rules") will greatly impact on the recognition and enforcement of foreign arbitral awards in the Philippines. The Special ADR Rules is a significant step in the promotion of a harmonized legal system in the field of international trade through the recognition and enforcement of foreign arbitral awards.*

The Philippines is a signatory to the New York Convention, which enumerated the available grounds for refusing recognition and/or enforcement of a foreign arbitral award in a Convention state. Under Article V of the Convention, the recognition and enforcement of an award may be refused at the request of the party against whom it is invoked upon proof that (a) the parties were under some incapacity, the agreement is not valid under the law to which the parties subjected it to, or under the law of the country where the award was made; (b) the party against whom it is invoked was not given notice of the appointment of arbitrator or of the proceedings; (c) the award deals with a difference not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission; (d) the composition of the tribunal or procedure was not in accordance with the agreement of the parties; or (e) the award is not binding upon the parties or has been suspended by competent authority.

The award may also be refused recognition and enforcement if the competent



Law as the governing law for international commercial arbitration and implemented the Philippines' obligations under the New York Convention. Likewise, the Special ADR Rules not only implement the provisions of the ADR Law but, more importantly, prescribe a detailed procedure for the recognition and enforcement of international commercial arbitral awards and foreign arbitral awards in a manner consistent with the letter of the UNCITRAL Model Law and New York Convention.

The Special ADR Rules particularly exempts cases covered by it from the technical rules on service of summons, since the court acquires jurisdiction to act on the motion or petition upon proof that the respondent was served with a copy of the petition and notice of hearing in a way that reasonably ensures receipt thereof. In addition, motions for extension of time are expressly disallowed except in cases where an ex-parte temporary order of protection has been issued. More importantly, the court may motu proprio order a dilatory pleading to be expunged from the record.

authority finds that the subject matter of the difference is not capable of settlement by arbitration and the recognition and enforcement of the award would be contrary to the public policy of that country.

The ADR Law not only updated the 1953 Philippine Arbitration Law but also adopted the UNCITRAL Model

Further, the Special ADR Rules provide that the presentation of the parties' respective positions shall be via written pleadings or submissions. If the court finds that the issue between the parties is mainly one of law, the parties may be required to submit briefs of their respective legal arguments. If, however, there are issues of fact relating to the ground/s relied upon for the court to refuse enforcement, the court may require the presentation of evidence through the simultaneous submission of sworn witness affidavits and/or reply affidavits.


Consistent with the terms of the New York Convention, which the Philippines is bound to comply with under general principles of public international law as well as under its fundamental law, the Special ADR Rules limits the grounds for a court to refuse to recognize and/or enforce a foreign arbitral award rendered in a Convention State to the grounds enumerated in Article V of the New York Convention. To further emphasize the exclusivity of the enumeration, the Special ADR Rules expressly instruct courts to disregard any ground for opposing the recognition and enforcement of a foreign arbitral award other than those enumerated above.

As for Non-Convention Awards, that is, foreign arbitral awards made in a state that is not a signatory to the New York Convention, the court may, upon grounds of comity and reciprocity, still recognize and enforce a Non-Convention Award as if it were a Convention Award. However, if that country does not extend comity and reciprocity to awards made in the Philippines, the court may nevertheless treat such award as a foreign judgment enforceable as such under Rule 39, Section 48 of the 1997 Rules of Civil Procedure.

The Special ADR Rules repeatedly clarify the limits of judicial authority in special proceedings for the recognition and enforcement of foreign arbitral

awards and expressly proscribe courts from replacing the arbitral tribunal's findings with its own judgment. Thus, the Special ADR Rules provide that it is presumed that a foreign arbitral award was made in due course; hence, the court may not disturb the arbitral tribunal's determination of facts and/or interpretation of law.

In cases where the trial court refuses to recognize and/or enforce the award based on findings of fact, the appellate court may inquire only to determine the existence or non-existence of the ground relied upon by the trial court. Also, the decision of the court recognizing and enforcing a foreign arbitral award is immediately executory.

The Special ADR Rules also provides specific remedies available to a party if the trial court recognizes, enforces and/or refuses to recognize and/or enforce a foreign arbitral award: (a) file a Motion for Reconsideration within 15 days from receipt of the questioned ruling; (b) appeal to the Court of Appeals via Petition for Review under the ADR Rules and not under the 1997 Rules of Civil Procedure; (c) file a petition for certiorari with the Court of Appeals; or (d) for serious and compelling reasons, ask the Supreme Court to review the questioned ruling. 

*A full version of the article, with citations and references, is available online at [www.pdrci.com.ph](http://www.pdrci.com.ph). All rights of the author are reserved.*

## About the Author



*Trina Prodigalidad is a partner in Angara Abello Concepcion Regala & Cruz. She is the Monitor of the firm's Litigation and*

*Dispute Resolution Department and is an active ADR practitioner.*


# IPO requests PDRCI to assist in IP Code review

By: Juan Paolo E. Colet

The Philippine Intellectual Property Office (IPO) has requested PDRCI to assist in the review of Republic Act No. 8293 (1997), as amended, or the Intellectual Property Code of the Philippines (IP Code).

The IPO said that PDRCI could help identify IP Code provisions that may tend to encourage a pathological arbitration clauses and advise on their amendment.

Among the provisions to be examined by the PDRCI is Section 88 of the IP Code, which partly states that if a technology transfer arrangement shall provide for arbitration, "the Procedure of Arbitration of the Arbitration Law of the Philippines or the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) or the Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC) shall apply and the venue of arbitration shall be the Philippines or any neutral country."

The PDRCI Board will to designate a committee of experts to assist in the IPO's review of the IP Code. 



## MEMBER SPOTLIGHT

### Arthur P. Atea



Atty. Arthur P. Atea is a founding member of the PDRCI and a member of its Board of Trustees. He is the Managing Partner of his law firm, Arthur Atea and Associates.


Atty. Atea started his legal career in 1987, eventually becoming a partner in Quisumbing Torres, a member firm of Baker & McKenzie International, before establishing his own practice. Atty. Atea also served as Deputy Executive Secretary under Philippine President Gloria Macapagal Arroyo.

In the course of his practice, he represented and advised diverse clients in disputes involving civil, commercial, criminal and administrative law, constructions issues, corporate and intra-corporate controversies, intellectual property and mass tort, among others.

Atty. Atea is active in international commercial arbitration, either as an arbitrator or advocate. He has handled cases under different institutional rules such as UNCITRAL, International Chamber of Commerce, Singapore International Arbitration Centre, PDRCI, and the Philippine Construction Industry Arbitration Commission.

In 1998, the Philippine Supreme Court affirmed an arbitration related case handled by Atty. Atea in *BF Corporation vs. Court of Appeals*, 288 SCRA 267 (1998), where the Tribunal upheld the validity and enforceability of arbitration clauses in the Philippines. The legal position advocated by Atty. Atea in *Del Monte Corporation-USA vs. Court of Appeals*, 351 SCRA 373 (2001) on the enforcement of arbitration clauses in a multi-party dispute eventually became the prevailing rule when the Alternative Dispute Resolution Act of 2004 was enacted by the Philippine Congress.

Atty. Atea is active in various professional organizations, including the International Bar Association, Inter-Pacific Bar Association, and Law Association for Asia and the Pacific. Recently, he was accepted as an Associate Member of the Chartered Institute of Arbitrators. He also teaches alternative dispute resolution at the University of the Philippines College of Law.


Atty. Atea obtained his Bachelor of Arts in Political Science from the University of the Philippines, where he graduated cum laude in 1981. He received his Bachelor of Laws from the same University in 1986. 

## ICC forum on arbitration in Manila

Jason Fry, Secretary General of the International Chamber of Commerce (ICC) International Court of Arbitration (ICA), and Cheng-Yee Khong, Director and Counsel of the ICC ICA Asia Secretariat in Hong Kong, spoke on ICC arbitration at a forum organized by the University of the Philippines College of Law on November 22, 2010 at its campus in Diliman, Quezon City.

Mr. Fry described the role of the ICA in administering the arbitration and talked extensively on interim reliefs as well as enforcement and vacation of arbitral awards. Ms. Khong discussed the arbitration procedure, timelines, preparation of the Terms of Reference, and costs. In particular, she mentioned a fee calculator in the ICC website that could automatically compute the cost of arbitration depending on the number of Arbitrators involved and the amount of the claim.

During the open forum that followed, PDRCI officials led by President Victor P. Lazatin and Trustees Mario E. Valderrama, Arthur P. Atea, and Ricardo P.G. Ongkiko queried Mr. Fry, who gamely responded to the questions. When asked what the Philippines could do to develop into an arbitration center, Mr. Fry mentioned several important “ingredients in a recipe.” Among these were membership in the New York Convention, enactment of arbitration laws patterned after the Model Law, an arbitration-friendly judiciary, and the support of the local bar. He cited cases in other jurisdictions like India where parties went to court to get injunctions against arbitration. In Brazil, which was formerly anti-arbitration, the ICC helped draft the new arbitration law. Among the arbitration friendly jurisdictions that he cited were New York, London, Paris, Hong Kong, Singapore and recently, South Korea. Mr. Fry also said that by design, ICA is tough on the arbitral tribunal to make the arbitration time and cost effective.

Prof. Manuel P. Bautista, Jr., who teaches in the U.P. College of Law and practices with Baker Botts Hong Kong, coordinated the ICC forum and acted as emcee. 

## PDRCI accreditation examination


By: Juan Paolo E. Colet

PDRCI administered an examination on November 11, 2010 at the University of the Philippines Law Center in Quezon City to accredit newly-trained arbitrators.

Six candidates took the examination after undergoing training in commercial arbitration by PDRCI on November 8 to 10, 2010 at the same venue.

The three-day arbitration training-seminar formed the second module of the intensive training program for intellectual property professionals jointly organized by the Intellectual Property Office, PDCRI and

the World Intellectual Property Office.

The examination results will be released in December 2010. 

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