

THE PHILIPPINE ADR REVIEW

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BROADENING ITS SCOPE OF ARBITRATION ADVOCACY



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Supreme Court approves CTA mediation rules

By Juan Paolo E. Colet

The Supreme Court has approved the rules governing mediation of cases filed with the Court of Tax Appeals.

Under A.M. No. 11-1-5-SC-PHILJA dated January 18, 2011 or the Interim Guidelines for Implementing Mediation in the Court of Tax Appeals (CTA Mediation Guidelines), cases within the jurisdiction of the CTA may be referred to mediation.

Excluded from the coverage of the CTA Mediation Guidelines are cases involving its jurisdiction; cases where there is a pending application for temporary restraining order or preliminary injunction against the collection of taxes; cases arising from criminal offenses; decisions, resolutions or orders of the Regional Trial Court in tax collection cases involving final and executory assessments and in local tax cases; decisions of the Central Board of Assessment Appeals in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the

Provincial or City Board of Assessment Appeals; and civil cases involving final and executory tax assessments.



The CTA Mediation Guidelines provide that a case shall be referred to mediation (a) after the Comment is filed in cases pending with the CTA *En Banc*; and (b) before or during the pre-trial conference for cases pending with a CTA

Division. Parties who agree to mediate shall execute an Agreement to Mediate.

The referral to mediation shall suspend the CTA proceedings for 30 days, which may be extended for an additional 30 days upon joint motion of the parties with the concurrence of the mediator. **PAGE 4 ►**

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Commencement and appointment of arbitrators

By: Arveen N. Agunday

The Intellectual Property Office of the Philippines (IPOP HL), in cooperation with the World Intellectual Property Organization and the Philippine Dispute Resolution Center, Inc. (PDRCI), recently promulgated Office Order No. 61, series of 2011, otherwise known as the Rules of Procedure for IPOP HL Arbitration Proceedings (IPOP HL Rules).

Purpose

The IPOP HL Rules aims to introduce an arbitration mechanism in resolving intellectual property disputes or those involving a breach of intellectual property rights, which are actionable under Philippine law. It applies when the parties to the dispute agree to refer the matter to arbitration through the IPOP HL and PDRCI Arbitration Center as Administering Body. However, where any of the provisions of the IPOP HL Rules is in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, the latter provision shall prevail.



Commencement of arbitration

The arbitration under the IPOP HL Rules is deemed to commence from the Administering Body's receipt of the Notice of Arbitration filed by any party to the dispute. The

Notice of Arbitration may also be accompanied by a Statement of Claims. Within 15 days from the Respondent's receipt of the Notice of Arbitration from the Claimant, the Respondent shall file an Answer to the Request. If a Statement of

Claims accompanies the Notice of Arbitration, the Respondent's Answer may also be accompanied by a Statement of Defenses.

Appointment of arbitrators

The arbitral tribunal that will resolve the dispute may be composed of such number of arbitrators as may be agreed upon by the parties. If the parties do not agree, the tribunal shall consist of a sole arbitrator unless the Administering Body determines that in view of all the circumstances of the case, a tribunal composed of three members is appropriate.

In the absence of an appointment procedure for a sole arbitrator, the latter shall be appointed jointly by the parties. If the parties fail to agree on a sole arbitrator, the following procedure shall be adopted:

(a) The Administering Body shall send to each party an identical list of at least three candidates in alphabetical order. The list shall include or be accompanied by a brief statement of each candidate's qualifications. If the parties have agreed on any particular qualifications, the list shall contain only the names of candidates that satisfy those qualifications.

(b) Each party shall have the right to delete the name of any candidate or candidates to whose appointment it objects and shall number any remaining candidates in order of preference.

(c) Each party shall return the marked list to the Administering Body within 15 days from receipt thereof. Any party failing to return a marked list within that period of time shall be deemed to have assented to all candidates appearing on the list.

(d) As soon as possible after receipt by it of the lists from the parties, or failing this, after the expiration of the 15-day period, the Administering Body shall, taking into account the preferences and objections expressed by the parties, invite a person from the list to be the sole or presiding arbitrator.

(e) If the lists which have been returned do not show a person who is acceptable as arbitrator to both parties, the Administering Body shall be authorized to appoint the sole arbitrator.

On the other hand, if the tribunal is composed of three arbitrators, the following procedure shall be adopted:

(a) The Claimant shall appoint an arbitrator in its Notice of Arbitration or in a separate communication. The Respondent shall appoint an arbitrator within 30 days from receipt of the Notice of Arbitration. The two arbitrators thus appointed shall, within 15 days after the appointment of the second arbitrator, appoint a third arbitrator, who shall be the presiding arbitrator.

(b) Where three arbitrators are to be appointed as a result of the exercise of the discretion of the Administering Body, the Claimant shall, by notice to the Administering Body and to the Respondent, appoint an arbitrator within 15 days after the receipt by it of notification by the Administering Body that the tribunal is to be composed of three arbitrators. The Respondent shall appoint an arbitrator within 30 days after the receipt by it of the said notification. The two arbitrators thus appointed shall, within 20 days after the appointment of the second arbitrator, appoint a third arbitrator,

who shall be the presiding arbitrator.

(c) If the appointment of any arbitrator is not made within the applicable period of time referred to in the preceding paragraphs, that arbitrator shall be appointed in accordance with the procedure for the appointment of a sole arbitrator by the Administering Body.

In appointing an arbitrator, the Administering Body and the parties shall give due regard to the qualifications required of the arbitrators by the agreement of the parties. The arbitrators should be impartial and independent and shall, before accepting appointment, disclose in writing to the parties, the Administering Body and any other arbitrator who has already been appointed any circumstances that might give rise to justifiable doubt as to the arbitrator's impartiality or independence, or confirm that no such circumstances exist.

Next issue: IPO arbitration: Challenges and procedure.

About the Author



Arveen N. Agunday is a senior associate in Castillo Laman Tan Pantaleon & San Jose, where he has practiced law for more than five years. He has extensive experience in civil, commercial and criminal litigation as well as in corporate and labor laws.

He obtained his Bachelor of Arts degree in Political Science from the Ateneo de Manila University in 2001 and received his Bachelor of Laws degree from the University of the Philippines in 2005.

MEMBER SPOTLIGHT

Salvador P. Castro, Jr.




Engr. Salvador P. Castro, Jr., is a Trustee of PDRCI and head of its Mediation Committee. A civil engineer by profession, he is

the Chairman and President of SPCastro, Inc., a project management firm with operations in the Philippines and the United Arab Emirates.

Engr. Castro advocates the institutionalization of alternative dispute resolution and the professionalization of mediators in the Philippines. In 2002, he initiated the drafting and adoption of the Policies and Procedures in Mediation of PDRCI. In 2005, during his term as Chair of the Mediation Committee of the Philippine Institute of Construction Arbitrators and Mediators, Inc. (PICAM), he developed its Mediation Rules and Fees.

Engr. Castro is an accredited mediator and trainor of the Philippine Judicial Academy on court-annexed cases. He is also an accredited arbitrator and mediator of the Construction Industry Arbitration Commission (CIAC). He is a member of the Chartered Institute of Arbitrators (CI Arb) in the United Kingdom, the International Panel of Mediators of the Singapore Mediation Centre, and the Panel of Arbitrators and Panel of General Mediators of the Hong Kong International Arbitration Centre. He is also the Philippine representative to the Dispute Resolution Board Foundation. On the academic side, he lectures on Contract Administration as an adjunct professor of the Asian Institute of Management.

In international construction, Engr. Castro is known as the project director of the *Istana Nurul Iman* of the Sultan of Negara Brunei Darussalam, the biggest palace in the world. He has been invited by various industry organizations to lecture on construction and arbitration. In July 2011, he will speak on alternative dispute resolution during the FIDIC Asia-Pacific Contract User's Conference in Singapore. 


IPO launches IP arbitration with PDRCI



The Philippine Intellectual Property Office (IPOP) and the Philippine Dispute Resolution Center, Inc. (PDRCI) jointly launched the IPOP-PDRCI intellectual property (IP) arbitration program on April 29, 2011 at the lobby of the Philippine Supreme Court in Manila.

During the occasion, the Memorandum of Agreement between IPOP and PDRCI was signed, after which 30 newly-accredited IP arbitrators took their oath of office. IPOP Director General Ricardo Blancaflor welcomed the new arbitrators and their guests from the IP community. President Victor P. Lazatin spoke on behalf of PDRCI and thanked the Supreme Court and IPOP for their support.

Supreme Court Associate Justice Jose P. Perez addressed the new arbitrators. He cited the courts' initial hostility towards arbitration, which then Supreme Court Justice George Malcolm criticized in his dissent in the 1924 case of *Vega vs. San Carlos Milling Co., Ltd.* (51 Phil. 908). From there, the Philippines enacted Rep. Act No. 876, The Arbitration Law, in 1953 and the Alternative Dispute Resolution Act of 2004. Recently, the Supreme Court enacted the Special ADR Rules to apply to incidents before the courts involving arbitration.


Justice Perez noted that while it took a long time, arbitration has become universally accepted as an effective means of resolving disputes. Supreme Court Associate Justice Ma. Lourdes A. Sereno also graced the occasion. 



Supreme Court approves CTA mediation rules

FROM PAGE 1 ► Under the CTA Mediation Guidelines, the parties shall choose their mediator from among the accredited CTA mediators. In case the parties fail to do so, the Chairperson of the Philippine Mediator Center-CTA shall choose the mediator.

In April 2011, the Supreme Court through the Philippine Judicial Academy (PHILJA) and the CTA issued an invitation for applicants for CTA mediators. To qualify, applicants must be a retired justice or judge, a senior law practitioner, a senior certified public accountant or a senior licensed customs broker with at least five years of experience in tax or customs law. Law practitioners, certified public accounts and customs brokers are also required to have at least 10 years of practice. Applicants are also required to have creative problem-solving and human relations skills.

For accreditation as CTA mediator, the CTA Mediation Guidelines requires applicants to undergo an orientation or training and internship program conducted by the Philippine Mediation Center and the PHILJA. 

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