

# THE PHILIPPINE ADR REVIEW

JULY 2011

BROADENING ITS SCOPE OF ARBITRATION ADVOCACY



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## *PDRCI inaugurates new office*

“Please accept our deepest gratitude for institutionalizing arbitration in the country,” Supreme Court Associate Justice Jose P. Perez said during his keynote speech at the inauguration of PDRCI’s new office on June 16, 2011 at the Commerce & Industry Plaza at the McKinley Town Center in Fort Bonifacio, Taguig City. Justice Perez added that PDRCI provided the judiciary with “a reliable, responsible and respectable partner” in the administration of justice in the Philippines.

The new office, located near the spanking Bonifacio Global City, was blessed by Fr. Philip P. Lazatin, SDB. The welcome remarks of PDRCI Chair, former Chief Justice Artemio V. Panganiban, were delivered by President Emeritus Custodio O. Parlade, after which Justice Perez was introduced by trustee Jose A. Grapilon. Atty. Gapilon cites Justice Learned Hand in describing the opinions written by Justice Perez as characterized by a “tenacious grasp of fine points, honed almost to invisibility, ... when we are suddenly aware of the sweep and direction of the law and its place in the lives of men.”

Justice Perez recalled how he, as a former Court Administrator, worked with two PDRCI trustees, Engr. Salvador P. Casto



**Father Philip Lazatin blesses the PDRCI board room with PDRCI President Victor Lazatin.**

and Atty. Salvador Panga, Jr., in pushing for court-annexed mediation and winning over reluctant judges and lawyers who feared the loss of cases to alternative dispute resolution (ADR).

Ambassador Francis Chua, President of the Philippine Chamber of Commerce & Industries, Inc., which donated the use of the office space, gave an inspirational talk. PDRCI President Victor P. Lazatin then gave the closing remarks. Trustee Gregorio S. Navarro served as emcee.

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# Challenges and Procedure

By: Arveen N. Agunday

In our last issue, we wrote about the commencement of and procedure in intellectual property arbitration administered by the Intellectual Property Office (IPOPHL) and Philippine Dispute Resolution Center, Inc. (PDRCI) Arbitration Center. This article will discuss challenges to arbitrators, filing of the Answer, conduct of hearings, and issuance of Award.

## Challenges

Any arbitrator may be challenged by a party if circumstances exist that give rise to justifiable doubt as to the arbitrator's

impartiality or independence. A party may also challenge an arbitrator whom it has appointed or in whose appointment it concurred, only for reasons of which it becomes aware after the appointment has been made.

The challenge shall be made within 15 days after being notified of that arbitrator's appointment or after becoming aware of the circumstances that it considers give rise to justifiable doubt as to that arbitrator's impartiality or independence. The other party has 15 days from receipt of the notice of challenge within which to respond. The challenge shall be resolved by the Administering Body, whose decision on the matter shall be final. If the challenge is sustained, a substitute arbitrator shall be appointed. On the other hand, if the challenge is denied, the arbitrator shall continue with the arbitration.

Once the arbitral tribunal is constituted, it shall have the power to hear and

determine objections to its own jurisdiction, including any objections with respect to form, existence, validity or scope of the Arbitration Agreement. Any objection to the jurisdiction of the tribunal shall be raised not later than in the Statement of Defense or, with respect to a counter-claim or a set-off, the Statement of Defense thereto, failing which any such plea shall be barred in the subsequent arbitral proceedings or before any court.

## Statement of Claim and Answer

Unless the Statement of Claim accompanied the Notice of Arbitration or is embodied therein, the Claimant shall, within 30 days after receipt of notification from the Administering Body of the establishment of the tribunal, communicate its Statement of Claim to the Respondent and to the tribunal. The Respondent shall, within 30 days after receipt of the Statement of Claim or within 30 days after receipt of notification from the Administering Body of the establishment of the tribunal, whichever occurs later, communicate its Statement of Defense to the Claimant and to the tribunal. Both Statements shall be by the documentary evidence in support of the parties' respective claims or defenses.

During the proceeding, the tribunal may, at the request of a party, issue interim measures it deems necessary, including injunctions and measures for the conservation of goods which form part of the subject matter in dispute, such as an order for their deposit with a third person or for the sale of perishable goods. The tribunal may make the granting of such measures subject to appropriate security being furnished by the requesting party. The tribunal shall also have the power to subpoena witnesses and documents when the relevancy of

the testimony and the materiality thereof has been demonstrated to it.

## Preliminary conference and hearings

Following the submission of the Statement of Defense, the tribunal may conduct a preliminary conference during which the parties define the issues of arbitration, limit the number of witnesses, organize and schedule subsequent proceedings, and agree on other matters that are relevant to the proceedings.

Within 15 days from the preliminary conference or if there is none, after the completion of the submissions the written statements, the tribunal shall draw up a Procedural Order, defining, among others, the issues to be determined in the arbitration. The Procedural Order shall be signed by the parties and the tribunal and approved by the Administering Body. If a party refuses to sign, the tribunal and the Administering Body will sign and indicate reasons why the party refuses to sign.

After the parties are afforded sufficient opportunity to present their respective submissions and evidence, either through documents, testimonies of witnesses, or other forms of evidence, the tribunal shall declare the proceedings closed.

## Award

The tribunal shall then decide the substance of the dispute in accordance with the law or rules of law chosen by the parties and proceed to render the arbitral award. Where there is more than one arbitrator, the award shall be made by a majority of the members of the tribunal. In the absence of a majority, the presiding arbitrator shall make the award, order or other decision

as if acting as sole arbitrator.

The award shall be in writing and shall state the date on which it was made, as well as the place of arbitration. It shall likewise explain the reasons on which it is based, unless the parties have agreed that no reasons should be stated and the law applicable to the arbitration does not require the statement of such reasons.

The tribunal shall send the draft award for scrutiny by the Administering Body with regard to matters of form and substance but only to ensure the enforceability of the award. The tribunal shall have the sole authority and discretion to decide on whether or not to accept the suggestions of the Administering Body.

The award shall be effective and binding on the parties from the date it is communicated by the Administering Body. Within a reasonable timeframe upon receipt of the award from the Administering Body, the IPOPHL Arbitration Office shall assist in the enforcement of the award which the IPOPHL is able to do so under applicable legislation and regulations.

## 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

### Dr. Eduardo G. Ong




Dr. Eduardo G. Ong is a respected businessman, educator and civic leader. He is the Assistant Treasurer of PDRCI and a member of its Board of Trustees. He is also the Chairman of the Professional Regulatory Board of Real Estate Service, which is tasked to implement Republic Act No. 9646 or the Real Estate Service Act of the Philippines.

Dr. Ong is a veteran realtor and has been involved in several real estate industry organizations. He was former President of the Pasay Makati Realtors Board, National President of the Philippine Association of Realtors Board, immediate past President of the Philippine Association of Realty Consultants and Specialists, President of the Philippine Council of Real Estate Educators, member of the Realty Service Council of the Philippines, former Director General of the CREBA Research Institute, and former Vice President for Academic Affairs of CREBA National. He was also topnotcher of the Department of Trade and Industry's examination for real estate consultants and brokers and was named Outstanding Realtor in 1995.

Dr. Ong has also been active in the Philippine Chamber of Commerce and Industry, where he occupied various positions, including local chamber President, Governor, Vice President for NCR, Treasurer, Executive Director, Vice President for External Affairs, and Vice President for Education, Training, Science and Technology. He is also the President of the Capital Market Institute of the Philippines and Corporate Secretary of the United Nations Association of the Philippines.

In the academic field, Dr. Ong has been a professor, regent, officer and consultant of various universities in Metro Manila. He is presently the Vice President for Academic Affairs and Dean of the Southeast Asian College and Board Member of the Technical Education and Skills Development Authority or TESDA. Dr. Ong also chairs a technical panel on business, public administration and real estate management of the Commission on Higher Education.

Dr. Ong's participation in civic affairs has earned him various awards and recognitions, including Most Outstanding Citizen of Malabon, Outstanding Alumnus of the University of Santo Tomas College of Commerce and Graduate School of Business, Outstanding Father of the Year, and Outstanding Rotarian. Last year, he was awarded Outstanding Business Educator in the Field of Finance.

Dr. Ong has a law degree and doctorates in Philosophy (magna cum laude), Business Administration and Public Administration to his name. He was a former columnist of the Philippine Daily Inquirer and has published six books on diverse topics such as real estate marketing, human resource management, economics and research. 

### SP Castro to speak in FIDIC seminar in Singapore


By: Germai C. Abella

The International Federation of Consulting Engineers (FIDIC) will hold its Asia-Pacific Contract User's Conference at the Grand Hyatt in Singapore on July 5 and 6, 2011. The two-day seminar provides its participants with marathon lectures on FIDIC contracts and construction dispute resolution spearheaded by experts in said fields.

Engr. Salvador P. Castro, PDRCI's Trustee and Chair of its Mediation Committee will be one of the panelists for the session on Dispute Adjudication Board ("DAB") process.

The DAB procedure was introduced as FIDIC's method for primary dispute resolution and has now been made mandatory by multilateral development banks (MDB) for the MDB Harmonized Edition of the FIDIC Construction Contract.

During the conference, Engr. Castro will share his knowledge of the procedural developments of DAB, examples and different forms of DAB, and recent trends in dispute resolution in the construction industry. He will also discuss the perceived barriers to DABs, the issues concerning the use of DAB in various projects, cost savings and other benefits of DAB, and the enforcement of DAB decisions in court.


The two-day conference aims to provide a guide for successfully utilizing the FIDIC construction contracts and effectively resolving construction disputes in the Asia-Pacific region. 

### Greg Navarro is new Managing Partner of Manabat, Delgado Amper and Co.



PDRCI Trustee and Treasurer, Gregorio S. Navarro, is the new Managing Partner and CEO of Manabat, Delgado Amper and Co., Philippine member firm of international audit, tax, consulting and advisory magafirm Deloitte Touche Tohmatsu Ltd., described by Wikipedia as "the largest private professional services organization in the world." He succeeds Atty. Luis Gerardo C. Manabat, who becomes Chairman of MDA & Co.

Greg obtained his accounting degree from the University of the East and became a certified public accountant in 1976. He has 35 years of experience in accounting, auditing, management consulting, and corporate finance.

He has participated in special executive programs at the Kellogg School of Management, Northwestern University in Chicago in 1992 and at the Columbia Business School in New York in 2003. He is a fellow of the Institute of Corporate Directors and the Institute for Solidarity in Asia, Chairman of the FINEX Research & Development Foundation, President of the Carl Jung Circle Center, trustee of the CIBI Foundation, and member of the board of visitors of the Philippine Military Academy. He is currently a member of the Philippine Financial Reporting Standards Council and also a governor of the Management Association of the Philippines. 

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