

THE PHILIPPINE ADR REVIEW

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BROADENING ITS SCOPE OF ARBITRATION ADVOCACY



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PDRCI approves guidelines on confirmation of arbitrators

By: Juan Paolo E. Colet

On October 17, 2011, the PDRCI Board of Trustees unanimously approved Administrative Guidelines No. III on the confirmation of arbitrators and the selection of the PDRCI as appointing authority for *ad hoc* arbitration.

Under the Guidelines, the appointment of a sole arbitrator, party-nominated arbitrator, presiding arbitrator or replacement arbitrator shall be confirmed by the PDRCI Board after the submission to the PDRCI Secretariat of certain documents, such as the appointee's undertaking to comply with the PDRCI's Arbitration Rules and other guidelines.

An arbitrator confirmed by the PDRCI shall resolve the arbitration or render a final award within one year from the date of his appointment or such extended period that the PDRCI Board may give. Failure to comply with this time limit shall be sufficient cause for removal or replacement of the arbitrator.

In addition, the Guidelines include the parameters in selecting PDRCI as appointing authority for *ad hoc* arbitration. A party may request PDRCI to appoint an arbitrator on behalf of such party, or to make a default appointment of a sole arbitrator, party-appointed arbitrator or chairman of a three-member arbitral tribunal.

The PDRCI's considerations for ap-

pointing an arbitrator are the person's neutrality, integrity, independence, competence, arbitration experience and subject matter expertise, taking into account the nature and substance of the dispute, case complexity, amount in dispute, applicable law, place and language of arbitration, as well as the nationality of the parties and the other arbitrators.

The Guidelines allow the PDRCI's role as appointing authority to be limited in the terms of the appointment to making a default appointment of an arbitrator, resolving an unsuccessful challenge of an arbitrator, or appointing a replacement arbitrator.

Unless the contrary is provided in the appointment letter, the authority vested in the PDRCI as appointing authority shall continue until the dispute is resolved and the arbitration is terminated.

The Guidelines also affirm the PDRCI's immunity from liability for acts done in the performance of its duties as appointing authority.

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The Revised Rules on Court-Annexed Mediation and Judicial Dispute Resolution

By: Donemark Joseph L. Calimon



The first part of this article discussed the expanded coverage of CAM and JDR. This part of the article discusses the CAM and JDR procedures.

CAM and JDR

The Guidelines divide judicial proceedings into two stages, namely: (a) from the filing of a complaint up to the conduct of CAM and JDR during the pre-trial stage; and (b) from the pre-trial proper up to trial and judgment.

In both CAM and JDR, the court or any party may move to sanction a party who fails to appear or any person who engages in abusive conduct during the proceedings. Sanctions may include censure, reprimand, contempt or requiring the absent party to reimburse up to treble the cost of the appearing party.

A representative of a party who is

unable to attend in person must be fully authorized to appear, negotiate and enter into a compromise without need of further approval by or notification to the authorizing party. With respect to corporations, partnerships, or other juridical entities, the representative must also be a ranking corporate officer.

The Guidelines emphasize that both CAM and JDR are confidential. Any information or communication made or received is inadmissible as evidence in any other proceeding. JDR judges and all court personnel or any other person present during the proceeding are prohibited from passing information obtained in the course of conciliation and early neutral evaluation to the trial judge or to any other person.

CAM Procedure

Under the Guidelines, the CAM procedure is:

1. Upon filing the last pleading, the judge orders the parties to appear before the PMC Unit.
2. The parties shall select an acceptable accredited mediator. Otherwise, the mediator shall be chosen by lot.
3. The mediator starts the mediation and explains the mediation process.
4. With the consent of both sides, the mediator may hold separate caucuses and/or joint conferences with them.
5. If no settlement is reached at the end of the mediation period, the case is returned to the referring judge.
6. The mediator has 30 days from the initial conference to complete the mediation process, extendible for another 30 days upon motion to be filed by the mediator, with the conformity of the parties.

7. If full settlement is reached, the parties shall draft the compromise agreement for approval by the court. If compliance has been made, the court shall dismiss the case upon the submission by the parties of a satisfaction of claim or a mutual withdrawal of the case.

If partial settlement is reached, the parties will submit its terms for appropriate action by the court, without waiting for resolution of the unsettled part. The court will conduct JDR for the unsettled part of the dispute.

JDR Procedure

Under the Guidelines, the JDR procedure is:

1. The JDR judge first refers the case to CAM but also pre-sets the JDR conference not earlier than 45 days from the parties' first mediation appearance.

First-level courts such as Metropolitan Trial Courts and Regional Trial Courts have 30 days from the first JDR conference to complete the process. Second-level courts such as Regional Trial Courts exercising its appellate jurisdiction have 60 days to complete the process.

In criminal cases where a settlement has been reached on the civil aspect but the period of payment in accordance with the terms of settlement exceeds one year, the case may be archived upon motion of the prosecution, with notice to the other party and with approval by the judge.

2. The judge to whom the case was assigned by raffle shall be the JDR judge. He shall preside over the first stage and resolve all incidents or motions filed during this stage. If the case is not resolved during JDR, it shall be raffled to another judge

for the second stage. As a general rule, the JDR judge shall not preside over the trial of the case. However, the parties may jointly request in writing that the case be tried by the JDR judge.

3. In single-sala courts, the parties may file a joint written motion requesting the court of origin to conduct the JDR and trial. Otherwise the JDR will be conducted by the judge of the pair court or, if none, by the judge of the nearest court at the station where the case was originally filed. The result of the JDR shall be referred to the court of origin for appropriate action, *e.g.*, approval of the compromise agreement or trial.

4. In areas where only one court is designated as a family court, the parties may file a joint written motion requesting the family court to which the case was originally raffled to conduct the JDR and trial. Otherwise, the JDR shall be conducted by a judge of another branch through raffle. If there is another family court in the same area, the family court to whom the case was originally raffled shall conduct JDR and, if no settlement is reached, the other family court shall conduct the pre-trial proper and trial.


5. In areas where only one court is designated as commercial/intellectual property/environmental court ("special court"), unless otherwise agreed upon by the parties, the JDR shall be conducted by another judge through raffle and not by the judge of the special court. Where there is no settlement, the judge of the special court shall be the trial judge. Any incident or motion filed before the pre-trial stage shall be dealt with by the special court that referred the case to CAM.

6. Cases may be referred to JDR even during trial, upon written motion of one or

both parties. The JDR judge may either be (a) another judge through raffle in multiple-sala courts; or (b) the nearest court (or pair court, if any) regardless of the level of the latter court in single sala courts.

7. If the dispute is fully settled, the parties will submit the compromise agreement for approval by the court. If there has been compliance, the court shall dismiss the case upon submission by the parties of a satisfaction of claims or a mutual withdrawal of the parties' respective claims and counterclaims.

In case of partial settlement, the compromise may be submitted to the court for approval and rendition of a judgment upon partial compromise, which may be immediately enforced by execution.

In criminal cases, if settlement is reached on the civil aspect thereof, the parties shall submit the compromise agreement for appropriate action by the court. Action on the criminal aspect of the case will be determined by the Public Prosecutor, subject to the appropriate action of the court. 

About the Author



Donemark J.L. Calimon is a partner at the Litigation and Dispute Resolution Group of Quisumbing Torres Law Offices, a member firm of Baker & McKenzie International. He is a trustee and an accredited arbitrator of PDRCI, an associate of the Chartered Institute of Arbitrators, East Asia Branch (Philippine Chapter) and a director/officer of the Philippine Institute of Arbitrators. He obtained his law degree at the University of the Philippines in 2000 and was admitted to the Philippine Bar in 2001.

(1) All civil cases and the civil liability of criminal cases covered by the Rule on Summary Procedure, including the civil liability for violation of B.P. 22, except cases which may not be compromised.
 (2) Special proceedings for the settlement of estates.
 (3) All civil and criminal cases filed with a certificate to file action issued by the Punong Barangay or the Pangkat ng Tagapagkasundo under the Revised Katarungang Pambarangay Law.
 (4) The civil aspect of Quasi-Offenses under Title 14 of the Revised Penal Code.
 (5) The civil aspect of estafa, theft and libel.
 (6) All civil cases, probate proceedings, forcible entry and unlawful, cases involving title to or possession of real property or an interest therein, and habeas corpus cases decided by the first level courts in the absence of the Regional Trial Court judge, brought on appeal from the exclusive and original jurisdiction granted to the first level courts.

MEMBER SPOTLIGHT

Atty. Ramon S. Esguerra




Atty. Ramon S. Esguerra manages his firm, Esguerra & Blanco. He was formerly a senior partner of Castillo Laman Tan Pantaleon & San Jose, where he

headed its intellectual property practice.

Apart from intellectual property, Atty. Esguerra specializes in litigation, estate and corporate law, criminal law, administrative law, and real property. He has extensive experience in public service, serving as Undersecretary of the Department of Justice, director of the Housing and Land Use Regulatory Board and the Dangerous Drugs Board, and Chairman of the Presidential Human Rights Committee and the Board of Pardons and Parole.

Atty. Esguerra was a professorial lecturer in criminal law and remedial law at the University of the Philippines College of Law. He teaches criminal law and intellectual property law at the Pamantasan ng Lungsod ng Maynila Graduate School of Law and the Lyceum of the Philippines University College of Law.

He received his law degree in 1979 from the University of the Philippines, finishing fifth in his class.

Atty. Esguerra is the President of the Intellectual Property Association of the Philippines, director of the Licensing Executive Society of the Philippines, councilor of the Asian Intellectual Property Association and the Asian Patent Attorneys Association, and member of the International Trademark Association and Asia Pacific Bar Association. 

SC affirms power of courts to grant interim relief prior to constitution of tribunal

By: Rommel V. Cuison

In its Decision dated September 1, 2010 in *Department of Foreign Affairs, et al. vs. Hon. Franco T. Falcon, et al.*, the Philippine Supreme Court upheld the power of Regional Trial Courts to grant interim measures of protection prior to the constitution of an arbitral tribunal. The High Court further ruled that such authority is subject to limitations that may be imposed by special laws and may only be exercised in conjunction with a pending arbitration case. According to the opinion:

We note that under Section 28, Republic Act No. 9285 or the Alternative Dispute Resolution Act of 2004, the grant of an interim measure of protection by the proper court before the constitution of an arbitral tribunal is allowed:

Sec. 28. Grant of Interim Measure of Protection. — (a) It is not incompatible with an arbitration agreement for a party to request, before constitution of the tribunal, from a Court an interim measure of protection and for the Court to grant such measure. After constitution of the arbitral tribunal and during arbitral proceedings, a request for an interim measure of protection, or modification thereof, may be made with the arbitral tribunal or to the extent that the arbitral tribunal has no power to act or is unable to act effectively, the request may be made with the Court. The arbitral tribunal is deemed constituted when the sole arbitrator or the third arbitrator, who has been nominated, has accepted the nomination and written communication of said nomination and acceptance has been received by the party making the request.

Section 3 (h) of the same statute provides that the "Court" as referred to in Article 6 of the Model Law shall mean a Regional Trial Court.


Republic Act No. 9285 is a general law applicable to all matters and controversies to be resolved through alternative dispute resolution methods. This law allows a Regional Trial Court to grant interim or provisional relief, including preliminary injunction, to parties in an arbitration case prior to the constitution of the arbitral tribunal. This general statute, however, must give way to a special law governing national government projects, Republic Act No. 8975 which prohibits courts, except the Supreme Court, from issuing

TROs and writs of preliminary injunction in cases involving national government projects.

BCA's petition for interim relief before the trial court is essentially a petition for a provisional remedy (i.e., preliminary injunction) ancillary to its Request for Arbitration in PDRCI Case No. 30-2006/BGF. BCA specifically prayed that the trial court grant it interim relief pending the constitution of the arbitral tribunal in the said PDRCI case. Unfortunately, during the pendency of this case, PDRCI Case No. 30-2006/BGF was dismissed by the PDRCI for lack of jurisdiction, in view of the lack of agreement between the parties to arbitrate before the PDRCI. In *Philippine National Bank v. Ritratto Group, Inc.*, we held:

A writ of preliminary injunction is an ancillary or preventive remedy that may only be resorted to by a litigant to protect or preserve his rights or interests and for no other purpose during the pendency of the principal action. The dismissal of the principal action thus results in the denial of the prayer for the issuance of the writ. . . . (Emphasis supplied.)

In view of intervening circumstances, BCA can no longer be granted injunctive relief and the civil case before the trial court should be accordingly dismissed. However, this is without prejudice to the parties litigating the main controversy in arbitration proceedings, in accordance with the provisions of the Amended BOT Agreement, which should proceed with dispatch.

DFA v. Falcon involved a petition to set aside the writ of preliminary injunction issued by respondent judge in favor of BCA International Corporation (BCA), pursuant to Section 28 of the Alternative Dispute Resolution Act. In 2001, the DFA and BCA entered into a Build-Operate-Transfer (BOT) Agreement in connection with the government's Machine Readable Passport and Visa Project (MRP/V). Citing BCA's supposed breach of its warranties under the BOT Agreement, the DFA terminated the agreement. Pursuant to the arbitration clause in the BOT Agreement, BCA filed a Request for Arbitration with the Philippine Dispute Resolution Center, Inc. Pending the constitution of the arbitral tribunal, BCA filed a Petition for Interim Relief with the respondent court, which resulted in the issuance of the questioned writ of preliminary injunction in favor of BCA. 

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