

THE PHILIPPINE ADR REVIEW

NOVEMBER 2012

BROADENING ITS SCOPE OF ARBITRATION ADVOCACY



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International speakers to grace ADR conference

By Leonid C. Nolasco



Minn Naing Oo of the Singapore International Arbitration Center



Mary Thomson of the Chartered Institute of Arbitrators East Asia Branch



H. Priyatna Abdurrasyid of the BANI Arbitration Center



Peter Chow of the Hong Kong Institute of Arbitrators



Khong Cheng Yee of the ICC International Court of Arbitration



Chiann Bao of Hong Kong Institute of Arbitrators



Guy Spooner of Norton Rose LLP



Haig Oghigian of the Japan Commercial Arbitration Association

The Philippine Dispute Resolution Center, Inc. (PDRCI), the Philippine Institute of Arbitrators (PIArb), and the Philippine Institute of Construction Arbitrators and Mediators (PICAM) will host a two-day conference on “ADR Best Practices & PPP Opportunities” on November 8 and 9, 2012 at the InterContinental Hotel in Makati City.

The conference will highlight global trends and best practices in arbitration and alternative modes of dispute resolution (ADR) as well as feature public-private partnership opportunities (PPP) in the Philippines.

Confirmed international speakers for the event include Minn Naing Oo of the Singapore International Arbitration Center, Mary Thomson of the Chartered Institute of Arbitrators East Asia Branch, H. Priyatna Abdurrasyid of the BANI Arbitration Center, Peter Chow of the Hong Kong Institute of Arbitrators, Khong Cheng Yee of the ICC International Court of Arbitration, Chiann Bao of Hong Kong Institute of Arbitrators, Guy Spooner of Norton Rose LLP, and Haig Oghigian of the Japan Commercial Arbitration Association.

Among the topics to be discussed are: the International Bar Association Guidelines on Disclosure; Dispute Resolution on PPP; Substance, Procedure and Institutions in International Investment Arbitration and International Commercial Arbitration; Recognition and Enforcement of Arbitral Awards – Latest Developments on the Concept of “Public Policy,” Due Process, Arbitrator Discretion and the Treatment of Evidence in Commercial Arbitration; Recent Challenges Faced by Arbitral Institutions; and recent developments in international commercial arbitration.

The conference aims to improve and strengthen the Philippine ADR system by keeping key stakeholders abreast on recent ADR trends and best practices.

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The court's jurisdiction in aid of arbitration

By Arthur P. Autea



Fifth, when an arbitrator is challenged before the arbitral tribunal under the procedure agreed upon by the parties or under the procedure provided in Article 13 (2) of the Model Law and the challenge is not successful, the aggrieved party may request the Appointing Authority to rule on the challenge, and when such Appointing Authority fails or refuses to act on the challenge within such period as may be allowed under the applicable rule or in the absence thereof, within 30 days from receipt of the request, that the aggrieved party may renew the challenge in court (SADR, Rule 7.2). After hearing, the court shall remove the challenged arbitrator if it finds merit in the petition; otherwise, it shall dismiss the petition (SADR, Rule 7.7).

Sixth, any of the parties to an arbitration may request the termination of the mandate of an arbitrator where an arbitrator becomes *de jure* or *de facto* unable to perform his function or for other reasons fails to act

without undue delay and that arbitrator, upon request of any party, fails or refuses to withdraw from his office (SADR, Rule 8.1). If an arbitrator refuses to withdraw from his office, and subsequently, the Appointing Authority fails or refuses to decide on the termination of the mandate of that arbitrator within such period as may be allowed under the applicable rule or, in the absence thereof, within 30 days from the time the request is brought before him, any party may file with the court a petition to terminate the mandate of that arbitrator (SADR, Rule 8.2). After hearing, if the court finds merit in the petition, it shall terminate the mandate of the arbitrator who refuses to withdraw from his office; otherwise, it shall dismiss the petition (SADR, Rule 8.6).

Seventh, while the arbitral tribunal is

granted the power to issue *subpoena*, it has no power to punish for contempt in the event that the person subject of the *subpoena* refuses to obey. This may cause a stumbling block in the taking of evidence in arbitration. Thus, any party to an arbitration, whether domestic or foreign, may request the court to provide assistance in taking evidence (SADR, Rule 9.1). The court may grant or execute the request for assistance in taking evidence within its competence and according to the rules of evidence (SADR, Rule 9.4). If the evidence sought is not privileged and is material and relevant, the court shall grant the assistance in taking evidence requested and shall order petitioner to pay costs attendant to such assistance (SADR, Rule 9.8).


Eighth, a party, counsel, or witness who disclosed or who was compelled to disclose

information relative to the subject of ADR, under circumstances that would create a reasonable expectation on behalf of the source that the information shall be kept confidential, has the right to prevent such information from being further disclosed without the express written consent of the source or the party who made the disclosure (SADR, Rule 10.1). A party may request a protective order at any time there is a need to enforce the confidentiality of the information obtained, or to be obtained, in ADR proceedings (SADR, Rule 10.2). If the court finds the petition or motion meritorious, it shall issue an order enjoining a person or persons from divulging confidential information (SADR, Rule 10.8).

Ninth, any party to a domestic arbitration may petition the court to confirm, correct, or vacate a domestic arbitral award (SADR, Rule 11.1). Unless a ground to vacate an arbitral award is fully established, the court shall confirm the award (SADR, Rule 11.9).

Tenth, any party to an international commercial arbitration in the Philippines may petition the court to recognize and enforce or set aside an arbitral award (SADR, Rule 12.1). It is presumed that an arbitral award was made and released in due course and is subject to enforcement by the court, unless the adverse party is able to establish a ground for setting aside or not enforcing an arbitral award (SADR, Rule 12.12).

Eleventh, any party to a foreign arbitration may petition the court to recognize and enforce a foreign arbitral award (SADR, Rule 13.1). It is presumed that a foreign arbitral award was made and released in due course of arbitration and is subject to enforcement by the court. The court shall recognize and enforce a foreign arbitral award unless a ground to refuse recognition or enforcement of the foreign arbitral award Rule 13 is fully established (SADR, Rule 13.11).

While the law respects party autonomy in arbitration and other forms of alternative dispute resolution, the power of judicial review remains and it is best expressed in the power of the court to confirm, correct, or modify; vacate, recognize, and enforce; set aside; or to refuse recognition of an arbitral award. 

About the Author



Atty. Arthur P. Autea 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 Autea and Associates.

Atty. Autea 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. Autea also served as Deputy Executive Secretary under Philippine President Gloria Macapagal Arroyo.

MEMBER SPOTLIGHT




Dr. Ernesto de Castro

Dr. Ernesto de Castro is the President and CEO of ESCA, Inc., a leading consulting firm involved in the project design and management of major commercial and institutional projects such as SM and Robinson's malls, One ADB Avenue Building, and the Makati City Hall Building.

He served in the Philippine government as Presidential Assistant on foreign-assisted projects in 1988. In 2004 to 2006, he was acting chair of the Philippine Contractors Accreditation Board. He was a member of various governing boards of the Philippine Council for Advanced Science Technology and Research (1988 to 2000), Philippine National Construction Corporation (1990-91), and the Metropolitan Waterworks and Sewerage System (1989-91). He was the chair of the Board of Civil Engineering of the Professional Regulation Commission from 1991-97.

His stint in academia includes the chancellorship of the University of the East (Caloocan), and the deanship of its College of Engineering. He also taught in the University of the Philippines College of Engineering and College of Business Administration. He is a member and officer of various professional societies such as Association of Structural Engineers of the Philippines (ASEP), Philippine Institute of Civil Engineers, and the U.P. Alumni Engineers (U.P. AE), among others. This year, he was inducted as a Life Member of the American Society of Civil Engineers.

In recognition of Dr. De Castro's achievements, he was cited by U.P. AE as one of the country's *Most Outstanding Engineers of the Century* in celebration of the U.P. College of Engineering's centennial in 2011. In the same year, ASEP included him in its list of the 50 Most Outstanding Structural Engineers of the country. The U.P. Alumni Association gave him the Most Distinguished U.P. Engineering Alumnus Award in 2003.

Aside from his membership in PDRCI, Dr. de Castro is an accredited arbitrator of the Construction Industry Arbitration Commission (CIAC). He received his bachelor's and master's degrees in civil engineering from the University of the Philippines (U.P.) in 1967 and 1968, respectively. In 1975, he was conferred a doctorate degree in civil engineering, major in structures by Lehigh University of Bethlehem, Pennsylvania, U.S.A. 



International Conference on Alternative Dispute Resolution

THEME: SHARING ADR BEST PRACTICES HERE AND ABROAD

November 8 - 9, 2012

INTERCONTINENTAL HOTEL MAKATI, PHILIPPINES

CONFERENCE TRACK:

This two day conference will highlight the Public-Private Partnership (PPP) opportunities in the Philippines, global trends and best practices on arbitration and other alternative dispute resolution modes. Learn from the international experts as they share their knowledge and experiences on international legal and commercial ADR. This event will mark the integration of the arbitration industry in the Philippines.

WHO SHOULD ATTEND?

Increase your knowledge on the latest developments in alternative dispute resolution and network with

- Academicians
- Arbitration Professionals
- Business Personnel
- Contract Managers
- Contractors
- Developers
- Government Agency Heads
- Government Procurement Officers
- International Arbitration Experts
- Judges
- Lawyers
- Project Managers / Owners

CONFERENCE HIGHLIGHTS:

Discover the latest trends in alternative dispute resolution:

- Regional Developments (Trends and Best Practices)
- IBA Guidelines on Disclosure
- Arbitrators Ethical Conduct and Challenges
- Dispute Resolution in PPP – International Perspective
- Recent Development on the Concept of “Public Policy”
- Procedural, Process and Evidence
- Public Policy and Enforcement/Recognition of Arbitral Awards
- Due Process and Arbitrator Discretion in Commercial Arbitration
- Institutional Arbitration – Recent Challenges
- Procedural Due Process and Evidence

REGISTRATION FEE:

Local Delegates:

Php 12,000.00 – Regular Rate

Php 10,000.00 – Early Bird Rate (up to August 31, 2012)

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