

THE PHILIPPINE ADR REVIEW

DECEMBER 2012

BROADENING ITS SCOPE OF ARBITRATION ADVOCACY



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Volker Jurowich speaking on Dispute Boards.

PDRCI hosts international ADR conference

By Ryan P. Oliva

PDRCI joined the Philippine Institute of Arbitrators and the Philippine Institute of Construction Arbitrators and Mediators in holding an international conference on alternative dispute resolution on November 8 to 9, 2012 in Manila. The two-day event, attended by leading ADR experts, was held at the Hotel InterContinental in Makati City.

PDRCI President Victor P. Lazatin welcomed the delegates with his message that the conference theme, “*Sharing ADR best practices*,” adheres closely to PDRCI’s philosophy that “a candle does not lose any of its light by lighting another candle.” “Knowledge that is shared,” Mr. Lazatin stressed, “does not diminish but rather multiplies as it is passed on.”

The was facilitated by PDRCI

Trustees and members such as Dean Custodio O. Parlade, Eduardo Ceniza, Arthur Autea, Ricardo P.G. Ongkiko, Gwen B. Grecia-De Vera, and Patricia Ann T. Prodigalidad. Jose Martin R. Tensuan acted as master of ceremonies.

One of the highlights of the conference was Haig Oghigian’s presentation of the International Bar Association (IBA) guidelines on conflicts of interest in international arbitration. Mr. Oghigian, a member of Baker & McKenzie Tokyo and the Chartered Institute of Arbitrators (CIArb), delivered his lecture through PDRCI Trustee and Baker & McKenzie Manila member Donemark Calimon. **PAGE 4**

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Accreditation guidelines for ADR provider organizations and training standards for ADR practitioners

By: Arveen N. Agunday

On August 17, 2012, the Office for Alternative Dispute Resolution (OADR), through the Department of Justice, promulgated Department Circular No. 49 (Adopting Accreditation Guidelines for Alternative Dispute Resolution Provider Organizations and Training Standards for Alternative Dispute Resolution Practitioners).

The Guidelines were enacted pursuant to Section 50 of the Alternative Dispute Resolution Act of 2004 (“ADR Act”), which empowered the OADR to formulate training standards for and to certify the professional training of ADR practitioners and service providers.

Accreditation, in general

As a rule, the Guidelines mandate accreditation only for ADR practitioners and ADR provider organizations (“APO”) that offer their services to government agencies or in partnership with said agencies.

A *private* APO, such as PDRCI, is a private sector APO that offers ADR training programs or dispute resolution services to the general public, to government agencies, or in partnership with said agencies. A *public* APO is a government agency that offers ADR training programs or dispute resolution services within that agency, to the general public, to other government agencies, or in partnership with said other agencies

Private APOs offering ADR services to government agencies or in partnership with said agencies are required to secure OADR accreditation. However, accreditation is voluntary for private APOs that offer services to

the general public, but not to government agencies or in partnership with government agencies.

The *ADR programs of public APOs*—except those of the Constitutional Commissions (Commission on Audit, Commission on Elections, and Civil Service Commission), the Philippine Congress, the Supreme Court and its subordinate agencies and all lower courts, and the Construction Industry Arbitration Commission, as well as ADR programs under the Labor Code and the Katarungang Pambarangay Law—shall also be accredited by the OADR.

ADR practitioners, or those individuals acting as a mediator, conciliator, arbitrator, neutral evaluator, or exercising similar functions in any ADR system, offering ADR services to government agencies or in partnership with said agencies are likewise required to secure OADR accreditation. For ADR practitioners offering services to the general public but not to government agencies or in partnership with government agencies, OADR accreditation is voluntary.

Chapter I, Title I of the Guidelines applies to ADR practitioners trained by accredited APOs, while Title II covers the accreditation of APO practitioners trained by *non-accredited* APOs, ADR centers or institutions.

Requirements for accreditation

The following table shows the requirements for and the effects of accreditation of private APOs, public APOs, and ADR practitioners:

PRIVATE APO

REQUIREMENTS

- (a) notarized application form (OADR Form 001) signed by a duly authorized senior officer of the applicant and supported by a board resolution where applicable;
- (b) certificate of registration from the Securities and Exchange Commission or other relevant regulatory agencies;
- (c) website address or link containing, at a minimum, the following information: (1) basic information, such as company profile, mission and objectives, officers and directors, contact details; (2) kinds of ADR services offered, including process flow, rules of procedure and enforcement mechanism; (3) roster of accredited practitioners (including professional resumes) and schedule of fees, as well as qualification standards for the practitioners; (4) ethical standards and recourse mechanisms (for complaints against the practitioners), which must be consistent with ethical standards of the ADR Act and related laws and regulations;
- (d) complete printout (in letter-sized paper) of all the information contained in the website at the time of the filing of the application;
- (e) duly-signed OADR Form 002 expressing the applicant’s commitment

to the guidelines and standards of the OADR Statement of Principles for Accredited ADR Provider Organizations (“Statement of Principles”) and the OADR Training Standards for ADR Practitioners (“Training Standards”); and (f) payment of application fee.

EFFECTS OF ACCREDITATION

- (a) the private APO shall be included in the list of accredited APOs in the OADR website;
- (b) any certification or accreditation of individual ADR practitioners granted by the private APO shall be recognized by the OADR, but only for the period within which the private APO remains accredited and only for the particular field of practice for which the ADR practitioner has been certified or accredited; and
- (c) the private APO shall be permitted to offer ADR services to government agencies and shall also be allowed to provide ADR training, systems design or similar services to government agencies, subject to additional guidelines that the OADR may prescribe.

Applications for accreditation submitted by an APO or ADR practitioner will be initially evaluated by the OADR for completeness or defects, in which case the applicant will be directed to make the corresponding corrections or submit additional documents.

ADR PRACTITIONER

REQUIREMENTS

- (a) notarized application form (OADR Form 003);
- (b) curriculum vitae showing relevant ADR training and experience;
- (c) syllabus/brochure/program indicating training courses taken, names of instructors, training hours and dates, or similar documentation indicating nature and duration of training received;
- (d) certificate or other proof of attendance to relevant trainings; and
- (e) payment of application fee.

EFFECTS OF ACCREDITATION

- (a) the ADR practitioner shall be included in the list of accredited ADR practitioners in the OADR website but only for the particular field of practice for which the ADR practitioner has applied for and had been certified and/or accredited by the OADR); and
- (b) the ADR practitioner may offer ADR services to government agencies and shall also be allowed to provide ADR training, systems design or similar services to government agencies, subject to additional guidelines that the OADR may prescribe.

PUBLIC APO

REQUIREMENTS

- (a) notarized application form (OADR Form 004) signed by the head of agency or by the designated official;
- (b) OADR certificate of accreditation of the private APO or private ADR practitioner (in case the public APO intends to partner with such private APO or ADR practitioner for the design or implementation of its proposed ADR program);
- (c) agency issuance authorizing the proposed ADR program and subsequent issuances approving the revised ADR program, if any;
- (d) proposed ADR program and related documents, including, to the extent possible, those enumerated under item (c) above for private APOs; and
- (e) payment of application fee.

EFFECTS OF ACCREDITATION

- (a) the public APO's ADR program shall be included in the list of public APOs with accredited ADR programs in the OADR website; and
- (b) any certification or accreditation of individual ADR practitioners granted by the public APO under the accredited ADR program shall be recognized by the OADR, but only for the particular ADR program and field of practice for which the ADR practitioner has been certified or accredited.

Accreditation of ADR training program

Private and public APOs as well as ADR practitioners who intend to offer ADR training shall also submit their proposed training program to the OADR for approval. The proposed training program (including the faculty resumes/*curriculum vitae* and training materials/module) shall be submitted to the OADR at least one month prior to the intended training date. The OADR may require changes to the training program in accordance with the Guidelines and may monitor the training program by sending a representative. Any substantial deviation from the approved program without written approval of the OADR may be a ground for revocation of accreditation of the provider of the training program.

Term of accreditation

Once an APO or ADR practitioner is accredited by the OADR, the accreditation shall be valid for two years, subject to renewal upon submission of a new application form, payment of the required fees, and compliance with additional requirements that may be set by the OADR.

Those who were accredited as ADR practitioners under existing government ADR programs prior to the Guidelines will be recognized as accredited ADR practitioners for one year from the effectivity of the Guidelines, after which they must comply with the accreditation requirements under the Guidelines.

Monitoring by the OADR

The OADR shall monitor the compliance by accredited APOs with their commitments to the guidelines and principles provided under the Guidelines, as well as the OADR Statement of

Principles and the OADR Training Standards.

Revocation of accreditation

Upon complaint of any interested party or *motu proprio*, the OADR may revoke any accreditation upon a finding of (a) material violation of any provision of the OADR Statement of Principles or the OADR Training Standards; (b) failure to maintain the website required under the Guidelines, or its material alteration in such a way that the private APO adopts ethical, professional, practice, legal or administrative standards significantly lower than those initially represented in the original website; or (c) any other violation or circumstance of a similar nature and/or analogous to items (a) and (b). The OADR shall prepare a separate guideline outlining the procedure for resolving complaints against accredited entities.

Minimum ADR training standards


Under the Guidelines, an ADR training program shall comply with the following minimum standards:

- a detailed statement of the training objectives and expected outcome in terms of knowledge to be imparted and skills to be taught;
- the program must directly meet the objectives and expected outcomes of the training program
- the lecturers, trainers and facilitators must either have advanced training in ADR or work experience of at least three years in the specific area/s covered by the assigned topic
 - it must consist of at least 24 hours of lecture and/or coursework and a minimum of 16 hours of simulations, practical exercises and/or skills training
 - it shall cover the following areas: (1)

discussion of applicable laws, administrative and executive issuances on ADR; (2) ADR theory and concepts, depending on whether the course covered is mediation or arbitration; (3) subject-matter content, which shall include materials applying ADR theory and concepts to the typical types of ADR disputes; and (4) practical exercises, role plays, simulations or similar skills-based training.

The participants in the training program shall undergo either a written or skills assessment to test their understanding of the concepts and skills imparted. In case the training covers mediation, conciliation or any other consensus-based process, skills assessment is mandatory.

While an apprenticeship or mentoring program is not required, the Guidelines strongly encourages each APO to adopt this as part of their continuing education/training for newly-accredited practitioners.

The OADR will issue operational guidelines for the implementation of the Guidelines within 90 days from its effectivity. 



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

Atty. Enrique W. Galang




Atty. Enrique W. Galang is a senior partner and head of the Litigation Group of

Castillo Laman Tan Pantaleon & San Jose. Apart from litigation, his practice areas include administrative law, real property and labor law. He is also a trained arbitrator of the Philippine Dispute Resolution Center, Inc.

He is a member of his firm's Executive Committee since 2010. From 2004 to 2005, Atty. Galang served as a director of the Angeles City Lawyers' League.

He received his Bachelor of Laws from the University of the Philippines in 1992 where he was a SyCip Gorres & Velayo scholar, a member of the honor society Order of the Purple Feather, and a recipient of the Dean's Medal for Academic Excellence.

He graduated with a Political Science degree in 1988 from the same university. During his stay at U.P., Atty. Galang served as president of U.P. Aguman, an organization of students from Pampanga province.

He is married to Gail R. Galang with whom he has four children, Isabel, Emilio, Lorenzo and Luis. 

PDRCI hosts international ADR conference

FROM PAGE 1 ► He said that even though laws and arbitration rules provide some disclosure standards, there is a lack of detail in their guidance and uniformity in their application. As a result, he added, members of the international arbitration community quite often apply different standards in making decisions concerning disclosure, objections and challenges.

To address this issue, Mr. Oghigian said that the IBA created color-coded guidelines on conflicts of interest in international arbitration known as the Red, Orange and Green Lists. The Red Non-Waivable and Waivable Lists identify situations that raise justifiable doubts as to the arbitrator's impartiality and independence. The Orange List reflects situations where the arbitrator has a duty to disclose. The Green List identify situations where the arbitrator has no duty to disclose. He emphasized that the Guidelines are not legal provisions and that they do not override any applicable national law or arbitral rules chosen by the parties.

Singapore International Arbitration Centre (SIAC) chief executive officer Minn Naing Oo gave a survey of developments on judicial construction of the public policy exception in the recognition and enforcement of arbitral awards in Asia.

Mr. Oo noted that Singaporean courts consistently construed the public policy exception narrowly and aided the




Romell A. O. Cuenca

enforcement of foreign arbitral awards. He said that Indonesian courts adopted a broad and vague construction of public policy exception. He added that recent decisions in some jurisdictions have

contributed to the confusion. Mr. Oo said that Indian courts have been "notorious" in expanding the scope of the public policy exception. However, he expressed the hope that Indian courts would adopt a more pro-arbitration approach in construing the scope of the exception. He said that overall, there is a slow but sure movement towards a non-interventionist approach in enforcing arbitral awards.

Philippines Public-Private Partnership Center's Romell Antonio O. Cuenca, who is the Center's Director of Legal Service, introduced the services of the PPP Center to the delegates. He informed the delegates that amendments to the Philippine Build-Operate-Transfer Law are now under congressional deliberation.

The delegates included representatives from the Hong Kong International Arbitration Centre, Hong Kong Institute of Arbitrators, and other arbitration institutes. Other participants were members of the business sector and academia. 

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