

# THE PHILIPPINE ADR REVIEW

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BROADENING ITS SCOPE OF ARBITRATION ADVOCACY



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## *PDRCI approves new guidelines on fees*

*By Arveen N. Agunday*



The Board of Trustees of the Philippine Dispute Resolution Center, Inc. (PDRCI) approved on March 17, 2014 the new Guidelines on Fees. The Guidelines will take effect immediately.

PDRCI's administrative fees will now range from a minimum of ₱50,000.00 (US\$1,112.00 at current exchange rates) for cases where the sum in dispute (SID) is up to ₱1,000,000.00 (US\$22,222.00), to ₱3,435,700.00 (US\$76,350.00) + 0.16% of amount in excess of ₱2 billion ( US\$44.4M) but in no case to exceed ₱5,000,000.00, for cases where the SID is above ₱2 billion. The formula for computing the administrative fees is explained in Schedule A of the Guidelines.

The Guidelines also provides for the computation of arbitrators' fees in arbitrations -administered by

PDRCI. The arbitrators' fees will be separately assessed for the claimant and respondent on the basis of their respective claims or counterclaims. It will consist of a base amount plus adjustments to account for the complexity of the case, the number of disputants, and number of arbitrators involved. ► **PAGE 4**

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# Online dispute resolution and its prospects in the Philippines

By Oscar Carlo F. Cajucom



## The concept of ODR

Online dispute resolution (ODR) is a mode of resolving disputes using the Internet as the primary medium (Julio César Betancourt and Eline Zlatanska, *Online Dispute Resolution (ODR): What is it, and is it the Way Forward?*, 79 INTERNATIONAL JOURNAL OF ARBITRATION, MEDIATION AND DISPUTE MANAGEMENT 256, Issue 3, 2013). ODR facilitates dispute resolution through what is known as computer-mediated communication, or interaction through the use of computers. These include the exchange of emails, instant messaging, online forum discussions, other similar text-based electronic communications, and video conferencing.

## History

ODR traces its history directly to conventional alternative dispute resolution (ADR). In its earliest forms, ODR procedures were basically ADR procedures conducted online [Colin Rule, *Online Dispute Resolution for Business* 13 (2002)].

ODR started to develop even before the advent of the Internet, through small and specialized experiments. According to Colin Rule, before the 1990s online communication happened through networks of “bulletin boards” or software that allowed computers to dial up a central computer where persons may participate in discussions, share files, or view pictures (*Id.*, at 22). Persons who had access to these boards became small online communities. On occasion, these boards would

have discussion areas where users could vent, disagree, or air out concerns and commentaries, often times anonymously. Most boards, however, did not have organized dispute resolution programs. There was also no special technology in place to resolve online disputes.

In the early to mid-1990s, there was much discussion on the integration of technology with ADR mechanisms. Particularly, the focus was on how computers could be used to aid disputants in conflict resolution. (*Id.*, at 23)

When it arrived, the Internet was primarily used for information dissemination and communication. Soon enough, it “allowed users on different machines – either across town or across the world – to work together to solve problems.” (*Id.*, at 26) It was therefore inevitable that the Internet and dispute resolution would intersect [Orna Rabinovich-Einy & Ethan Katsh, *Technology and the Future of Dispute Systems Design*, 17 HARVARD NEGOTIATION LAW REVIEW 151, 164 (2012)]. According to Katsh and Janet Rifkin, “[w]hat has come to be called [ODR] was a response, at least initially, to problems occurring in the very active and quite novel environment of cyberspace, where a dispute resolution process that took place over a network seemed both necessary and appropriate.” [ETHAN KATSH & JANET RIFKIN, *ONLINE DISPUTE RESOLUTION: RESOLVING CONFLICTS IN CYBERSPACE* 47 (2001)] Aside from being a response to the growing number of disputes arising out of online activities, ODR also emerged essentially to fill a vacuum in dispute resolution where

law was seemingly absent or at least inadequate (Einy & Katsh, *supra*, at 164).

Increasingly through the years, ODR mechanisms were adopted in resolving various types of disputes, ranging from those that stem from online activities to those that are wholly offline but for one reason or another are more expediently resolved online. As it developed and transformed over the last ten years, ODR has gradually become accepted as part of ADR (*Id.*, at 165), although “court-run ODR” has also been increasingly recognized.

### ODR practices across countries

ODR is practically borderless and geographically unconstrained. However, most of the early ODR practices originated in North America (Arthur Pearlstein, Bryan Hanson and Noam Ebner, *ODR in North America*, in *ONLINE DISPUTE RESOLUTION: THEORY AND PRACTICE* 443). In the United States, the federal government is only starting to explore the possibilities of ODR. For example, the use of ODR has been recently promoted for commercial export disputes. ODR was also applied in setting up a now defunct cyber courthouse in Michigan. In Quebec, Canada, court-annexed ODR has been adopted for disputes involving small claims (*Id.*, at 454).

In North America, the bulk of ODR practice still lies within the private sector, where an estimated 70 ODR service providers were identified. These service providers offer ODR process in one form or another, like mediation, arbitration, complaint handling, automated and assisted negotiation, case appraisal, adjudication, negotiation support, mediation support, information exchange, facilitation, early neutral evaluation, and settlement conference (*Id.*, at 447). Service providers also employ various media and technology in conducting ODR. These include email, video conferencing, and online-chat rooms. Costs for availment of ODR

are usually comprised of the appointed neutral’s rate, software licensing fees, optional additional facilitation and technical support services, case filing fees, and a bonus for successful resolution. Meanwhile, processing time frames may range from a few hours up to seven to 30 days. One interesting trend in North America is the influx of individual ODR practitioners (*Id.*, at 451-3).


In Asia, the major ODR players are China and Japan. In China, most dispute resolutions are simultaneously conducted on and offline. The Online Dispute Resolution Center was also established at the China International Economic and Trade Arbitration Commission (CIETAC) [Zhao Yun, Timothy Sze, Tommy Li & Chittu Nagarajan, *Online Dispute Resolution in Asia*, in *ONLINE DISPUTE RESOLUTION: THEORY AND PRACTICE* 511]. In 2009, the CIETAC adopted the Online Arbitration Rules, which provides for the rules in resolving e-commerce and other economic and trade disputes through online arbitration and mediation.

In Japan, the world’s leader in information and communications technology, several initiatives and projects have focused on exploring the relationship between ODR and e-commerce transactions (*Id.*, at 517). Online application or case filing was also adopted by the Ministry of Justice. However, users or service providers consider ODR as an online consultation tool rather than a reliable forum for dispute resolution. Notably, there are law firms who actively use their websites and create and maintain chat rooms, blogs and/or twitter accounts to answer queries, promote their business, or interact with their clients or potential clients (*Ibid.*).

ODR may also be a complementary tool to traditional in-court schemes and state-run judicial systems (Nicolas W. Vermeys & Karim Benyekhlef, *ODR and the Courts*, in *ONLINE DISPUTE RESOLUTION: THEORY AND PRACTICE* 307). It has been employed

by courts in the form of electronic filing and case management systems. Courts that significantly use forms of ODR to conduct proceedings have been called ‘cybercourts.’

These show that ODR processes are not limited to ADR mechanisms in their application. In fact, court-annexed ODR procedures have been adopted by some jurisdictions. The United Kingdom initiated the Money Claim Online, which is a procedure for making or responding to a money claim online. (*Id.*, at 314) The Federal Court of Australia also introduced a virtual courtroom that enables parties and the court to exchange submissions and orders. The so-called “eCourt” also adopts a message board system similar to that of social media websites such as Facebook (*Id.*, at 312).

To illustrate, a party or judge simply has to log onto the system with his user name and password to post messages and attach documents on a webpage reserved for the matter in which he is taking part. Once that is done, an email alert is automatically sent to all other participants in the matter. A user then simply has to click on a link included within the email’s body to be taken directly to the related matter and message on the eCourtroom. 

*Next issue: ODR and ADR mechanisms, its pros and cons, and the prospects of ODR in the Philippines.*

### About the Author



Caloy Cajucom is an associate attorney at Castillo Laman Tan Pantaleon & San Jose. He obtained his law degree from the Ateneo Law School in 2012, where he graduated with second honors and was a member of the Executive Committee of the Ateneo Law Journal. He was admitted to the Philippine Bar in 2013.



## MEMBER SPOTLIGHT

### Atty. Leovillo C. Agustin




Atty. Bill C. Agustin has practiced law for the last 50 years. He specializes in civil and criminal litigation.

Atty. Agustin received his Associate in Arts degree from the University of the Philippines (U.P.) in Diliman in 1958 and finished law from the same university in 1962. He took graduate courses in public administration from U.P. in 1966. He then went to Harvard Law School and studied international and comparative law. He was awarded a fellowship by the Southwestern Legal Foundation in the University of Dallas, Texas for the 16th Annual Academy of American and International Law.

Atty. Agustin was cited as one of the Ten Outstanding Young Men (TOYM) by the Philippine Jaycees in 1979 for excellence in law practice. He was also The Outstanding Young Filipino awardee in 1978 and a recipient of the President Jimmy Carter Letter of Commendation in 1979 as a Young Ambassador of Goodwill and Friendship in the field of international law.

He served as President of the Integrated Bar of the Philippines (IBP), Quezon City chapter before becoming IBP Governor for the Greater Manila Region and *ex-officio* IBP National Vice President. He has devoted part of his practice to providing free legal aid.


Atty. Agustin is a member of the U.P. Law Alumni Association, Dallas Academy of American and International Law Alumni Association, Capitol Bar Association, and the Philippine Bar Association. 

## PDRCI approves new guidelines on fees



◀ **PAGE 1** Arbitrators' fees will range from ₱100,000.00 (US\$US\$2,222.00) for cases where the amount of the claim or counterclaim is up to ₱1,000,000.00 (US\$22,222.00), up to five times the sum of ₱3,590,000.00 (US\$79,778.00) and 0.2% of amount in excess of ₱500 million (US\$11,111,111.00) for cases involving claims or counterclaims in excess of ₱500 million.

The formula for computing the arbitrators' fees is likewise explained in Schedule A of the Guidelines. However, the arbitrators' fees may be adjusted based on any of the following factors: (1) complexity of the case; and (2) qualifications of arbitrators.

Compared with the administrative and arbitrators' fees of other arbitration centers, PDRCI's fees are among the lowest in the Asia-Pacific region. One Southeast Asian arbitration center imposes a minimum administrative fee of approximately ₱115,000.00 (US\$2556.00) and a minimum arbitrators' fee of approximately ₱195,000.00 (US\$4,333.33), while another East Asian center imposes a minimum administrative fee of approximately ₱85,000.00 (US\$1,889.00) and a minimum arbitrators' fee of 11% of SID of up to approximately ₱250,000.00 (US\$5,556.00). 

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