

# THE PHILIPPINE ADR REVIEW

JULY 2014

BROADENING ITS SCOPE OF ARBITRATION ADVOCACY



## SECRETARIAT

3rd Floor, Commerce and Industry Plaza  
1030 Campus Avenue cor. Park Avenue  
McKinley Town Center, Fort Bonifacio  
1634 Taguig City

Telefax: 822-4102  
Email: [secretariat@pdrci.org](mailto:secretariat@pdrci.org)  
Website: [www.pdrci.org](http://www.pdrci.org)

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## IPOPHL-WIPO usher enhanced collaboration in ADR

By Oscar Carlo F. Cajucom



**PARTICIPANTS ENGAGED IN ROLE-PLAYING EXERCISE.** Messrs. Wilbers and Moody act as mediators while participants listen to the discussion in the mock-up mediation.

The Intellectual Property Office of the Philippines (IPOPHL) and the World Intellectual Property Organization (WIPO) jointly held an advanced ADR course, “Workshop: Mediation of Intellectual Property Disputes,” on May 7 and 8, 2014 at the IPOPHL Multi-Purpose Hall at the IP Center Building in Taguig City.

The workshop was an intensive two-day course in the techniques and recent international developments on mediation. ADR expert Peter Moody of BrookStreet des Roches LLP, England, lectured and facilitated the parties’ preparation for and the different actors’ roles during mediation, preparatory organization, and the proper conduct of the mediation.

Erik Wilbers, Director of the WIPO

Arbitration and Mediation Center, gave a tour of the arbitration and mediation services of WIPO. Aside from the lectures, the participants took part in role-playing exercises designed to simulate mediation scenarios. Invited to attend were representatives from the private sector and intellectual property organizations, government agencies including the Department of Justice and the Office for Alternative Dispute Resolution; and IPOPHL officials and employees. ▶ **PAGE 4**

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PIARB PRESIDENT TEDDY KALAW (right) presents tokens of appreciation to the HKIAC Secretary-General Chiann Biao (left) and Attys. Jun Bautista and Nils Eliasson (center)

# *Hong Kong International Arbitration Centre road show in Manila*

*By Ricky A. Sabornay*

The Hong Kong International Arbitration Centre (HKIAC) visited Manila, Philippines last June 25, 2014 for its 2014 road show on its new arbitration rules and recent practices, after its successful road shows in Hong Kong, London, Frankfurt, and New York.

The event, which gave an overview of arbitration and dispute resolution through HKIAC and showcased HKIAC's 2013 Administered Arbitration Rules ("New Rules"), was hosted by the Philippine Institute of Arbitrators ("PiArb") and the law firm of Quisumbing Torres ("QT").

Various stakeholders, including lawyers and arbitrators from major firms in the country, professors, engineers, and members of the Chartered Institute of Arbitrators ("CiArb") and Philippine Dispute

Resolution Center, Inc. (PRDCI) and associate solicitors from the Office of the Solicitor General graced the event.

The road show was divided into three parts: The first was an interview with HKIAC's Secretary-General, Ms. Chiann Biao, who gave a brief background on HKIAC and its leading role in dispute resolution in Asia and in the world, followed by an introduction to HKIAC's New Rules by international arbitration expert Atty. Nils Eliasson, head of Mannheimer Swartling's dispute resolution practice group in Asia. The last segment featured a mock arbitration under the HKIAC 2013 Administered Arbitration Rules between the heads of the dispute resolution practice groups of the law firm of Sycip Salazar Hernandez & Gatmaitan and QT, Attys. Ricardo Ongkiko and Donemark Calimon.

During her interview, Ms. Biao noted that recent trends show a growing support for institutional arbitration in Asia. She attributed this to the value added to arbitration by arbitral institutions, which provide disputants a neutral party that effectively monitors and moves along the arbitration process despite the parties' differences. With the institutions, mechanisms are in place to ensure that the dispute is resolved with dispatch.

Asked how long an arbitration case in HKIAC usually takes, Ms. Biao said that, "On average, it takes about 18 months before a final award is rendered, but other expedited procedures are also made available by the HKIAC."

Some of these expedited procedures are reinforced in HKIAC's New



**ATTYS. DONEMARK CALIMON (LEFT) AND RICARDO ONGKIKO** present their arguments during the mock arbitration under the HKIAC New Rules.

**ATTY. JUN BAUTISTA** PLAYS THE ROLE OF EMERGENCY ARBITRATOR under the HKIAC New Rules while Attys. Ongkiko and Calimon prepare to present their arguments during the mock arbitration.

Rules, which supersedes the HKIAC’s 2008 Administered Arbitration Rules (“2008 Rules”). Where formerly the monetary threshold for the application of expedited procedure is limited to claims under US \$250,000, the New Rules now allow the application of expedited proceedings for (a) claims under HK \$250,000,000 (or over US \$3 million), (b) where both parties agree, or (c) in cases of exceptional emergency. If applicable, the expedited procedure results in a presumption that the proceeding is to be heard by a sole arbitrator and, in the absence of exceptional circumstances, the award will be rendered within six months of the transmission of the file to the tribunal.

Other features of the New Rules include the inclusion of suite provisions to deal with multi-party, multi-contract situations, the introduction of an emergency arbitrator procedure, and the fixing of a cap on the hourly rates chargeable by arbitrators.

Under the 2008 Rules, the joinder of third parties to arbitration could be ordered by a tribunal only where there was written consent. The New Rules extends the tribunal’s power to join to cover any additional party bound by

a valid arbitration agreement as well as to allow a request for joinder made by an additional party. Notably, the New Rules also confers a new power on HKIAC to consolidate two or more arbitrations upon the request of a party. This power, however, is discretionary and will only be exercised where certain conditions established in the Rules are met.

In response to the need for interim measures while a tribunal is being appointed, the HKIAC also introduced provisions for the appointment of emergency arbitrators in the New Rules. While the application of these provisions are yet to be seen in the Philippine jurisdiction, the Legislative Council of Hong Kong already amended Hong Kong’s Arbitration Ordinance to make emergency relief orders by an emergency arbitrator enforceable in Hong Kong in the same manner as orders and directions of an arbitral tribunal.

The New Rules aims to strengthen HKIAC’s competitiveness in terms of cost by adding two new features. First, if the parties chose to remunerate the arbitrators on an hourly basis, the agreed hourly rate per arbitrator shall not exceed the fee cap established by

the New Rules. Second, arbitrators are now required to agree to standard terms of appointment prepared by the HKIAC.

The road show ended with the mock arbitration where Atty. Ongkiko and Calimon presented their arguments before Atty. Jun Bautista of Herbert Smith Freehills, who played the role of emergency arbitrator. HKIAC’s next stop will be in Taipei (July 3) and Singapore (July 30).

### About the Author



Atty. Sabornay is a litigation associate at Castillo Laman Tan Pantaleon & San Jose. His practice focuses on arbitration, commercial and construction litigation, real estate, labor and criminal law. He graduated from the University of the Philippines College of Law in 2012, where he received the Dean’s Medal for academic excellence. He was an editor of the Philippine Law Journal from 2009 to 2011 and the U.P. Law team captain for the 2010 Asia Cup Moot Court in Tokyo, Japan and 2011 International Environmental Law Moot Court in Maryland, USA.

## MEMBER SPOTLIGHT

### Atty. Jose T. Tale




Atty. Jose T. Tale is the chief legal counsel of the Government Service Insurance System (GSIS), the state pension fund of the Philippines. Before joining GSIS, he served as a senior official in the Office of the President of the Philippines, first as undersecretary of the Cabinet Secretariat and deputy head of the Presidential Management Staff (PMS), and later as deputy executive secretary.

He served in the Office of the General Counsel of the Bangko Sentral ng Pilipinas and as a corporate legal officer of the National Development Company, the Philippine government's investment arm.

He was the general counsel and corporate secretary of the Shell Group of Companies in the Philippines. He was a legal manager of Sime Darby Malaysia, and vice president of Hambrecht and Quist, a San Francisco-based venture capital company. For a time, he led the energy and infrastructure practice of the law firm of Romulo Mabanta Buenaventura Sayoc and de los Angeles.

Atty. Tale studied humanities at the Ateneo de Manila University, where he was in the dean's list. He took up law at the same university and finished with second honors in 1979.

He studied international law at the The Hague Academy of International Law in The Hague, Netherlands and Beijing, China, and attended the Strategic Business Economic Program of the University of Asia and the Pacific. He was a fellow at the Asia Pacific Center for Security Studies in Honolulu, Hawaii. 

## IPOPHL-WIPO usher enhanced collaboration in ADR




1. IPOPHL DIRECTOR GENERAL RICARDO BLANCAFLOR addresses the workshop participants.
2. WIPO EXPERTS AND PARTICIPANTS pose for class photo after the workshop.
3. ERIK WILBERS, DIRECTOR OF THE WIPO ARBITRATION AND MEDIATION CENTER, talks on WIPO's collaboration with IPOPHL on ADR.

◀ **PAGE 1** The workshop is part of the collaboration between IPOPHL and the WIPO on ADR. A Memorandum of Understanding on the development and promotion of ADR was signed by IPOPHL Director General Ricardo

Blancaflor and WIPO Arbitration and Mediation Center Director Erik Wilbers on the first day of the workshop. One of the IPOPHL accredited mediators, Vilmi Quipit, talked about the best practices in IPOPHL mediation, particularly on the role of mediators in the proceeding.

IPOPHL is the only intellectual property office in Asia that offers multi-door solutions for intellectual property rights violation and disputes, specifically litigation, mediation, and arbitration. The IPOPHL ADR services were formalized in 2010, under the management of the Bureau of Legal Affairs (BLA).

Director Nathaniel Arevalo of the IPOPHL BLA, briefed the participants on the ADR program of IPOPHL. The IPOPHL ADR services have proved to be an effective complement to adjudication. When the redesigned ADR system became operational in February 2011, 619 cases were submitted for mediation. Of these, 253 cases were settled, a success rate of 41%. 



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Roberto N. Dio, Editor

Shirley Alinea and Donemark Calimon  
Contributors

Arveen N. Agunday, Leonid C. Nolasco,  
Ryan P. Oliva, and Juan Paolo E. Colet  
Staff Writers

