

# THE PHILIPPINE ADR REVIEW

AUGUST 2014

BROADENING ITS SCOPE OF ARBITRATION ADVOCACY



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**PDRCI BOARD OF TRUSTEES 2014- 15:** From left, front: Victor Orocio, Dean Custodio Parlade, Miguel Varela, Gregorio Navarro, Victor Lazatin, and Eduardo Ong. Back, from left: Gwen Garcia, Shirley Alinea, Rogelio Nicandro, Mario Valderrama, Edmund Tan, Roberto Dio, Ricardo Ongkiko, Patricia Prodigalidad, and Donemark Calimon.

## *PDRCI elects new trustees and officers*

*By: Arveen N. Agunday*

PDRCI gave a fresh mandate to its Board of Trustees and officers and inducted new members at its annual meeting on July 21, 2014 at its office at Bonifacio Global City in Taguig City.

The members unanimously re-elected the incumbent trustees to a new term. At the organizational meeting that followed, the Board elected the following officers for the 2014-2015 term: Miguel B. Varela, Chairman; Gregorio S. Navarro, President; Roberto N. Dio, Secretary General; Donemark Joseph L. Calimon, Treasurer; and Patricia-Ann T. Prodigalidad, Corporate Secretary.

Former PDRCI President Victor P. Lazatin was named Vice-Chairman for Internal Affairs; Former PDRCI President Eduardo R. Ceniza, Vice-Chairman for External Affairs; Beda G. Fajardo, Vice-President for Internal Affairs; Salvador S. Panga, Jr., Vice-President for External Affairs; Shirley F. Alinea, Deputy Secretary General; Eduardo G. Ong, Assistant Treasurer; and Ricardo Ma. P. G. Ongkiko, Assistant Corporate Secretary. Former Chief Justice Artemio V. Panganiban was elected Chairman *Emeritus*

and former PDRCI President Custodio O. Parlade, President *Emeritus*.

The new members of the Executive Committee were of Messrs. Navarro, Lazatin, Dio, Ceniza and Edmundo L. Tan.

On the same occasion, PDRCI welcomed 12 new members, who took their oath before President Navarro. The new members, all members of the Philippine Bar, were: Abraham Rey M. Acosta, Maria Chona P. Balanquit, Manuel M. Cosico, Margarita N. Gutierrez, Donato S. Navarro, Asuncion de Leon Omila, Julius Anthony R. Omila, Esperanza Caridad A. Orig, Jay Patrick R. Santiago, Pedro C. Santizo, Benjamin A. Somera, Jr., and Rio Sesinando E. Venturanza. 🇵🇭

## CONTENTS

PDRCI elects new trustees and officers ..... 1

The ADR Act of 2004:  
A decade of changes and challenges ..... 2 - 3

Microinsurance training for mediators ..... 4

Member Spotlight: Atty. Ismael M. Jose ..... 4

## PART ONE

# *The ADR Act of 2004: A decade of changes and challenges*

*By Ryan P. Oliva*



*In this three-part series, the author looks at the history of the ADR Act of 2004, its implementation, and the challenges facing the Philippines as it grows into a regional arbitration center. Part One covers PDRCI's role in the law's enactment.*

Ten years ago, the Philippine Congress deemed it was time to update the then 51-year-old Republic Act No. 876 (1953), or the Philippine Arbitration Law, which dealt principally with domestic arbitration.

To recall, on June 10, 1958, the Philippines signed the United Nations Convention on the Recognition and the Enforcement of Foreign Arbitral Awards of 1958, or the New York Convention, which was ratified nine years later in 1965. RA 876, however,

was not modified by any law to ensure the Philippines' compliance with its treaty obligations under the New York Convention.

Recognizing the forces of globalization and the evolving trends in arbitration, Congress shepherded the passage of a consolidated bill to "actively promote party autonomy in the resolution of disputes or the freedom of the parties to make their own arrangements to resolve their disputes" and to "promote the use of Alternative Dispute Resolution (ADR) as an important means to achieve speedy and impartial justice and declog court dockets."

### **Conceiving the ADR Act**

Dean Custodio O. Parlade, PDRCI President *Emeritus*, reminisced on the

circumstances behind the passage of the ADR Act: "It was sometime late in 2001 or early 2002 when the late [Prof.] Annabelle T. Abaya [spokesperson of former Philippine President Fidel V. Ramos] and Atty. Eduardo [Dindo] S. de los Angeles visited PDRCI with the information that the then House [of Representatives] Speaker, Jose de Venecia, Jr. expressed great interest in pushing through the legislature a comprehensive ADR bill."

"We were provided with a draft of an ADR bill that contained provisions for mediation, and PDRCI was requested to draft the rest. A group of PDRCI lawyer members helped, principally Victor P. Lazatin, Beda G. Fajardo, Daisy P. Arce, Eliseo Alampay, [and] Salvador S. Panga," he said.

## UNCITRAL Model Law

According to Dean Parlade, PDRCI realized that Ms. Abaya's and Atty. De los Angeles's visit was a perfect opportunity to propose the adoption of the UNCITRAL Model Law. "Thus, the initial draft incorporated as part of the bill the model law provisions, but Annabelle suggested that we prune down the provisions because the sponsor would prefer a shorter version. This became a very difficult task because we were loath (a) to adopt only a part of the model law, or (b) abbreviate the model law."

Dean Parlade added that both alternatives were turned down because it would not serve the Model Law's purpose. "The Model Law was crafted by experts for a period of three to four years. Tampering with the work of experts is foolhardy," he said.

Atty. Victor P. Lazatin, who was a PDRCI Trustee at that time, recounted his active lobbying in the Philippine Senate: "With respect to lobbying, I was active in the Senate while Ms. Annabelle T. Abaya was active in the House of the Representatives."

"I principally advocated the adoption of the UNCITRAL (United Nations Commission on International Trade Law) Model Law for both international and domestic arbitration. However, I was successful only in convincing the group to adopt the UNCITRAL Model Law for international arbitration. It was argued that local lawyers were already familiar with RA 876 (Arbitration Law)," Atty. Lazatin said. "Thus, under the ADR Act of 2004, we have two regimes—UNCITRAL Model Law for international arbitration and the Arbitration Law for domestic arbitration," he added.

Atty. Lazatin suggested including in the draft bill a provision adopting the Model Law as the law to govern international arbitration without actually reproducing the entire Model Law in the bill. "It was an excellent suggestion," Dean Parlade said.

Atty. Lazatin's suggestion also begged the question of what to do with RA 876. After deliberation, Congress decided to retain the old law and applied key provisions of the Model Law to RA 876. This is now Section 33 of the ADR Act, which provides that "[a]rticles 8, 10, 11, 12, 13, 14, 18 and 19 and 29 to 32 of the Model Law... shall apply to domestic arbitration."

## Mediation

Dean Parlade also remembered the contributions of Prof. Abaya, who passed away in 2012.

"The mediation provisions were drafted by Annabelle. In this, [she] used her expertise in mediation to provide for a law that would guide and govern commercial mediation. The Supreme Court, acting through [then] Assistant Court Administrator Bernardo Ponferrada and others with whom the PDRCI team was in contact, were closely monitoring the developments particularly the changes in the mediation provisions largely because of the concern that they may have an adverse impact on court-annexed mediation."


## Support from PCCI and Congress

The Philippine Chamber of Commerce and Industry supported PDRCI's efforts. "Miguel Varela, as always, was behind us. At a later stage when there was need to galvanize support from the senators, then PCCI president, Naomi L. Saludo, wrote

individual letters to the senators urging support for the measure and encouraged business groups to do likewise," Dean Parlade said.

Dean Parlade was grateful to former Speaker De Venecia's support for the then ADR bill. "True to his word, Speaker De Venecia used his office to push the Congressmen to approve the ADR bill in record time," he said.

He added, however, that it was in the Senate where some delay was encountered. "But through the effort of the then Senate Majority Floor Leader Francis Pangilinan and Senator Joker Arroyo, the ADR bill was passed by the Senate shortly before the Congress adjourned in 2004," he said.

The consolidated version of Senate Bill No. 2671 and House Bill No. 5654 was signed into law by former President Gloria Macapagal-Arroyo on April 2, 2004. Thus, Republic Act No. 9285, or the Alternative Dispute Resolution Act of 2004 (ADR Act), was born. 

*Part Two: The early years of the law, the formulation of its implementing rules and regulations and the Special ADR Rules, and the growing acceptance of arbitration.*

## About the Author



Atty. Ryan P. Oliva is a litigation associate at Castillo Laman Tan Pantaleon & San Jose. His practice focuses on arbitration,

commercial and securities litigation, family, labor, and criminal law. He also teaches legal history in the University of the Philippines (U.P.) College of Law, where he obtained his law degree in 2011. He was a recipient of the U.P. Law Dean's Medals for academic excellence and leadership and was cited by the U. P. Office of Legal Aid as one of its outstanding law interns.

**MEMBER SPOTLIGHT**
**Atty. Ismael M. Jose**



Atty. Ismael M. Jose is an internal counsel of North Luzon Railways Corporation (Northrail), an attached agency of the Philippine Department of Transportation and Communications engaged in the construction of railway infrastructure.

Atty. Jose handles litigation and corporate matters of Northrail, such as civil and expropriation cases, resolution of labor disputes, real estate transactions, and government procurement.

He served as a member of Northrail's arbitration team representing the Philippine government in a major international commercial arbitration before the Hong Kong International Arbitration Centre.

Before joining Northrail, Atty. Jose worked in various law firms from 2005 to 2009. In 2006 to 2009, he was a part-time professor in the College of Arts and Sciences of San Beda College, Manila.

He obtained his economics degree from San Beda College where he was a consistent dean's lister. He earned his law degree from the same college.

Atty. Jose was admitted into the Philippine Bar in 2006. 

***Microinsurance training for mediators***
*By Oscar F. Cajucom*


The Philippine Insurance Commissioner (IC) and the German International Cooperation – Regulatory Framework Promotion of Pro-Poor Insurance Markets in Asia (GIZ-RFPI Asia) will hold a series of trainings on basic microinsurance for accredited mediators on September 4, 2014 in Davao City, September 18, 2014 in Cebu City, and October 17, 2014 in Manila.

The training implements IC Circular Letter No. 15-2013 (CL No. 15-2013), which aims to introduce participants to the concepts underlying risk protection and risk transfer mechanisms for the low income sector. CL 15-2013 provides the minimum qualifications, competencies, and training required as well as the procedure for the accreditation of mediator-conciliators under the Alternative Dispute Resolution for Microfinance (ADReM) program of the IC.

The ADReM is a venue for the settlement through mediation of disputes involving microinsurance claims.

Under CL 15-2013, ADReM mediators-conciliators must be at least 21 years of age, able to communicate in English, Filipino and/or the local dialect, of good moral character, and able to conduct the mediation process professionally and independently. The participants will undergo training on basic mediation-conciliation and basic microinsurance. CL 15-2013 also provides the procedure for accreditation of mediator-conciliator applicants, along with the documentary requirements therefor.

By the end of 2013, the Philippines leads the emerging economies in terms of microinsurance promotion, with microinsurance penetration rate of 20.4 percent. (Michael V. Remo, PH now a model of microinsurance promotion in Asia, PHIL. DAILY INQ., Jan. 31, 2014, *available at* <http://business.inquirer.net/162435/ph-now-a-model-of-microinsurance-promotion-in-asia> [last accessed August 4, 2014]). With the growth of microinsurance in the country, increase in the incidence of microinsurance disputes are expected.

The IC and GIZ-RFPI Asia have invited PDRCI accredited mediators to apply for accreditation as ADReM mediators. Registration for the training is free of charge. Those interested may contact Ms. Amelia Cervales at [amelia.cervales@giz.de](mailto:amelia.cervales@giz.de) or (+632) 353 1044 to 45. 



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