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THE PHILIPPINE ADR REVIEW

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AUGUST 2018



PDRC holds 15th commercial arbitration training

PDRC recently held its 15th commercial arbitration training seminar (CATS) on July 9 to 13, 2018 at the University of the Philippines College of Law at Bonifacio Global City in Taguig City. Fifty lawyers attended the training.

The five-day intensive training began with an introduction to arbitration by Prof. Mario E. Valderrama. This was followed by a discussion on the arbitration agreement and commencement of arbitration by PDRC Corporate Secretary Atty. Patricia-Ann Prodigalidad.

On the second day, Atty. Gwen de Vera spoke on emergency arbitration and the arbitral tribunal, after which Atty. Shirley F. Alinea, PDRC Deputy Secretary General, discussed consolidation, multiple contracts, joinder of parties, and preliminary matters.

The third day featured the lecture by Atty. Ricardo Ongkiko on the conduct of the case management conference. Atty. Teodoro Kalaw IV then spoke on arbitration hearings and the arbitral award.

On the fourth day, Atty. Donemark L. Calimon talked on the recognition, enforcement, setting aside and refusal to enforce awards. PDRC Vice President Atty. Salvador Panga, Jr. talked on international arbitration, focusing on the UNCITRAL Model Law and Arbitration Rules.

On the last day, the participants staged a mock arbitration facilitated by Atty. Jay Santiago (lead), and Attys. Julius Omila and Mary Kimberly See. In the afternoon, they took a written assessment examination to qualify them to become PDRC-trained arbitrators.

WHAT'S INSIDE

PART 1

COA review of final awards against the Philippine government

By: Remy Rose A. Alegre¹

As a general rule, government funds and properties may not be seized under writs of execution or garnishment to satisfy judgment awards. This is based on obvious considerations of public policy. Disbursements of public funds must be covered by the corresponding appropriation as required by law. The functions and public services rendered by the State cannot be allowed to be paralyzed or disrupted by the diversion of public funds from their legitimate and specific objects, as appropriated by law [Commissioner of Public Highways v. San Diego, 31 SCRA 617, 625 (1970)]. Before execution may proceed against any government agency or instrumentality, a separate action for the payment of the judgment award must first be filed with the Commission on Audit (“COA”) (NPC Drivers and Mechanics Assoc’n v. National Power Corp., G.R. No. 156208, November 21, 2017; “NPC DAMA”).



Authority of COA to settle money claims

Section 26 of Presidential Decree No. 1445 (1978), or the “Government Auditing Code of the Philippines,” provides that the COA has primary jurisdiction over money claims against the government or any of its subdivisions, agencies and instrumentalities.

General jurisdiction. The authority and powers of the Commission shall extend to and comprehend all matters relating to auditing procedures, systems and controls, the keeping of the general accounts of the Government, the preservation of vouchers pertaining thereto for a period of ten years, the examination and inspection of the books, records, and papers relating to those accounts; and the audit and settlement of the accounts of all persons respecting funds or property received or held by them in an accountable capacity, as well as the

examination, audit, and settlement of all debts and claims of any sort due from or owing to the Government or any of its subdivisions, agencies and instrumentalities. The said jurisdiction extends to all government-owned or controlled corporations, including their subsidiaries, and other self-governing boards, commissions, or agencies of the Government, and as herein prescribed, including non-governmental entities subsidized by the government, those funded by donations through the government, those required to pay levies or government share, and those for which the government has put up a counterpart fund or those partly funded by the government. (Italics supplied)

On October 25, 2000, in response to numerous petitions for *mandamus* and indirect contempt against local governments and their officials who refused to comply with writs of execution issued by Regional Trial Courts, the Supreme Court issued Adm.

¹ The author is grateful to Atty. Cristina Montes for her valuable inputs. Atty. Montes is counsel for United Planners Consultants, Inc. (UPCI) in Department of Environment and Natural Resources v. United Planners Consultants, Inc., 751 SCRA 389 (2015).

Circular 10-2000 directing all trial court judges to “exercise utmost caution, prudence and judiciousness” in the issuance of writs of execution to satisfy money judgments against government agencies and local government units.

The circular clarified that whenever the State gives its consent to be sued by private parties either by general or special law, the statute limits the claimant’s action “only up to the completion of proceedings anterior to the stage of execution” and that the power of the courts ends when the judgment is rendered. Upon determination of the State’s liability, the prosecution, enforcement or satisfaction of the judgment must be filed with the COA in accordance with the rules and procedures laid down in the Government Auditing Code of the Philippines [Department of Agriculture v. Nat’l Labor Relations Comm., 227 SCRA 693, 701-02 (1993), citing Republic v. Villasor, 54 SCRA 84 (1973)]. Thus, all money claims against the Philippine Government must first be filed with the COA, which must act upon them within 60 days. Rejection of the claim will authorize the claimant to elevate the matter to the Supreme Court on *certiorari* and, in effect, sue the State (P.D. 1445, §§ 49-50).

Execution may issue against government funds and properties not held for public use

In the same circular, the Supreme Court clarified that only properties held for public use “and generally everything held for governmental purposes” are not subject to levy and sale in execution. The same rule applies to funds in the hands of a public officer and taxes due to a municipal corporation [Viuda de Tan Toco v. Municipal Council of Iloilo, 49 Phil 52, 56 (1926)]. All other funds and properties held by the national and local governments and their officials in a proprietary capacity are subject to execution:

...

2. Where a municipal corporation owns in its proprietary capacity, as distinguished from its public or governmental capacity, property not used or used for a public purpose but for quasi-private purposes, it is the general rule that such property may be seized and sold under execution against the corporation.

3. Property held for public purposes is not subject to execution merely because it is temporarily used for private purposes. If the public use is wholly abandoned, such property becomes subject to execution.

Procedure for filing a monetary claim with COA

In the 2009 Revised Rules of Procedure of the COA, a claimant for money against the government shall file a petition with the COA Secretary alleging the ultimate facts constituting the claimant’s cause of action and the legal basis for the petition and the relief sought. The petition shall be accompanied by certified true copies of documents referred therein and other relevant supporting papers (Rule VIII, §2; Rule IX), such as certified true copies of the final award, the judgment confirming the award, and the certificate of finality of the judgment of confirmation. In case of final awards in construction arbitration, the petition shall be accompanied by certified true copies of the final award, the certificate of finality, and the writ of execution issued by the Construction and Industry Arbitration Commission.



After payment by claimant of a filing fee not exceeding P10,000 (Rule IX, §5), the respondent shall file an answer within 15 days, pointing out insufficiencies or inaccuracies in the petitioner’s statement of facts and issues and stating why the petition should be denied or dismissed or granted (Rule VIII, §2.5). Court-adjudicated claims, which includes confirmed final awards in arbitration, shall be referred to the Legal Services Sector for preparation of the decision and formal deliberation by the COA (Rule VIII, §2.7). Upon motion by a party, or *motu proprio*, COA may call for oral arguments or allow the submission of written memorandums within 15 days from notice (Rule X, §3). COA shall decide the money claim within 60 days from the date it is submitted for decision or resolution (Rule X, §4).

Next issue: COA’s authority to review final arbitral awards.

About the Author

Atty. Alegre is a litigation associate at Castillo Laman Tan Pantaleon & San Jose, where she practiced since she was admitted to the Philippine Bar in 2015. She obtained her B.A. Political Science degree, magna cum laude, from the University of the Philippines. She also obtained her law degree, cum laude, from the same university. She was a member of the board of editors of the Philippine Law Journal Volume 87.





NEWLY INDUCTED PDRC MEMBERS with DOJ Secretary Guevarra (fifth from left) and PDRC officials (from leftmost) Atty. Victoriano Orocio, Chairman Victor Lazatin, President Edmundo Tan, and Vice President Beda Fajardo.

DOJ Secretary asks new PDRC members to surpass standard of excellence

In his address at the PDRCI annual general membership meeting on July 3, 2018, Secretary of Justice Menardo I. Guevarra urged the members, especially those newly inducted, to uphold and surpass the standard of conscientiousness, discipline and excellence expected of them. He said that through its members' collective efforts, PDRC stood at the forefront of cutting-edge legal thought in commercial dispute resolution.

He noted that as the leading provider of alternative dispute resolution (ADR) services in the country, PDRC is in a unique

position not only to energize but push the frontiers of legal thinking in ADR. He expressed the hope that the body of decisions issued by PDRC would move ADR from the periphery to the mainstream and help modernize the law—one that balances justice and equity without compromising fundamental principles.

Secretary Guevarra is on leave as a PDRC member since his appointment to various government positions in 2016. [P](#)

MEMBER SPOTLIGHT

Atty. Rico A. Limpingo is the partner-in-charge of civil and criminal litigation practice at the law firm of Solis Medina Limpingo & Fajardo.



He completed his interdisciplinary studies at the Ateneo de Manila University in 1989, the same university where he received his primary and secondary education. While working at Innodata Philippines, Inc. in 1992, he studied law and received his Bachelor of Laws degree from the Far Eastern University Institute of Law in 1996.

Shortly after graduating from law school, he worked as an associate at Solis & Medina Law Offices in 1999, until he was admitted to the partnership.

He was appointed commissioner of the Integrated Bar of the Philippines (IBP) Commission on Bar Discipline from 2007 to the present. He was a trustee of the Philippine Bar Association from 2012 to 2015.

At present, he also serves as one of the directors of the IBP Calmana Chapter until 2019. [P](#)

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