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# THE PHILIPPINE ADR REVIEW

*Broadening its scope of arbitration advocacy*

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OCTOBER 2018




## PDRCI to present paper at the 5th AMA Conference in Jakarta

PDRCI Assistant Secretary General Francisco D. Pabilla, Jr. will present a paper on “Learning from Experience: Travails of a Court-annexed Mediator” at the 5th Asian Mediation Association (AMA) Conference on October 24 to 25, 2018 in Jakarta, Indonesia.

Mr. Pabilla’s paper is one of twenty papers chosen by the AMA conference committee to be presented under the theme, “Can Mediators Survive in a World of Trumpian Negotiators?”

AMA was organized in Singapore on August 17, 2007 by major mediation centers in Asia to promote mediation in resolving business and commercial disputes through close cooperation between its members. Since its establishment, four AMA Conferences had been successfully hosted by Singapore Mediation Centre in 2009, Malaysian Mediation Center 2011, and Hong Kong Mediation Centre 2014, and China 2016.

Aside from the Philippines, AMA-member countries include China, Fiji, Hong Kong, India, Indonesia, Japan, Malaysia, Mongolia, Singapore, and Thailand. Mr. Pabilla’s paper was featured in the June and July 2015 issues of *The Philippine ADR Review*. 

## WHAT’S INSIDE



# Supreme Court lifts court injunction after ICC renders Final Award

By: Remy Rose A. Alegre

In its Decision issued on August 15, 2018 but published much later in *Philippine Charity Sweepstakes Office v. Hon. Maximo M. De Leon and Philippine Gaming and Management Corporation* (G.R. Nos. 236577 and 236597), the Third Division of the Supreme Court recognized the Final Award of the International Chamber of Commerce (“ICC”) International Court of Arbitration upholding the Philippine Charity Sweepstakes Office’s (“PCSO”) position that Philippine Gaming and Management Corporation (“PGMC”) does not have the exclusive right to supply an online lottery system in Luzon Island, Philippines and lifted the preliminary injunction issued by the National Capital Regional Trial Court, Branch 143, Makati City (“trial court”) enjoining the PCSO bidding of new online lottery equipment.

The case arose from the Equipment Lease Agreement executed on January 25, 1995 for PGMC’s (lessor) operation of PCSO’s (lessee) online lottery equipment and accessories in Luzon Island. In 1997 and 2004, the Equipment Lease Agreement was amended to extend its term through 2015. However, after PGMC refused the reduced rental rate requested by PCSO pursuant to the Philippine Senate Blue Ribbon Commission’s



recommendation, PCSO allowed a competing company, Pacific Online Systems Corporation, to provide equipment for online lottery operations in Luzon Island.

On June 8, 2012, PGMC filed a Petition for Indirect Contempt with Temporary Restraining Order (“TRO”) and/or *Writ* of Preliminary Injunction (SCA Case 12-530) before the trial court to stop PCSO’s

alleged violation of a court order confirming PGMC's exclusive right as online lottery operator for Luzon Island. PGMC's application for preliminary injunction was granted by the trial court. After a few months, another petition for contempt was filed by PGMC (SCA Case No. 21-1011) because of PCSO's refusal to comply with the preliminary injunction previously issued by the trial court.

While both cases were pending, PCSO and PGMC entered into settlement agreements, where they essentially agreed to (a) resolve the exclusivity issue by arbitration under the International Chamber of Commerce Rules; (b) dismiss all pending judicial and civil actions between them and continue with the arbitration until the dispute is resolved with finality; and (c) extend the term of the Equipment Lease Agreement until August 21, 2018.

Accordingly, PGMC commenced arbitration proceedings before the ICC, raising the principal issue if it has the exclusive right to supply online lottery equipment to PCSO in Luzon Island.

When the term of the Equipment Lease Agreement was about to expire in August 2018, PGMC filed a new application for a TRO and *writ* of preliminary injunction in SCA Case Nos. 12-530 and 12-1011 to enjoin PCSO's planned public bidding of the Nationwide Online Lottery System. After a summary hearing, the new presiding judge of the trial court, Judge Maximo M. De Leon, granted PGMC's application for injunctive reliefs to prevent the public bidding insofar as the Luzon Island territory was concerned.

Aggrieved, PCSO elevated the matter to the Supreme Court. The sole issue raised by PCSO on a petition for *certiorari* before the Supreme Court was whether Judge De Leon committed grave abuse of discretion in granting PGMC's application for injunctive reliefs. Among others, PCSO argued that Judge De Leon should have denied or deferred action on PGMC's application for TRO/*writ* of preliminary injunction because PGMC has instituted a similar application before the ICC.


Meanwhile, the ICC rendered a Final Award holding that PGMC does not have exclusive contractual right to supply an online lottery system for Luzon Island. The Arbitral Award was later confirmed by another branch of the trial court.

In ruling that PCSO may proceed with the bidding of its Nationwide Online Lottery System, the Supreme Court held that PGMC's claim of exclusive rights pertained to its rights to the Equipment Lease Agreement, which was extended only until August 21, 2018. Hence, PGMC cannot claim that it still



had exclusive rights to be protected and that it would suffer irreparable injury if PCSO would continue with the Nationwide Online Lottery System bidding process for the next supplier, which would commence operations on August 22, 2018.

Further, the High Court considered the *writ* of preliminary injunction against PCSO as deemed lifted because of the trial court's confirmation of the ICC's Final Award.

In its Resolution confirming the ICC Final Award, the trial court ruled that the parties are bound by the arbitral tribunal's decision not only because of Article 35(6) of the ICC Rules of Arbitration but also because they agreed to submit themselves to the jurisdiction of the arbitral tribunal to determine the issue of PGMC's alleged exclusivity of contract under the Equipment Lease Agreement. 

#### About the Author

Atty. Remy Rose A. 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.





## MEMBER SPOTLIGHT

**Joven B. Joaquin** is a certified public accountant, a seasoned contractor, and a construction arbitrator.




Mr. Joaquin received his degree in business administration from the University of the East in 1950 and was certified the next year as a public accountant.

He has a wide experience in construction, first as a budget and accounting officer of the United States Navy and later by Adrian Wilson Associates (AWA), a U.S.-based architectural/engineering firm that provided architectural and engineering services exclusively to the U.S. Department of Defense. He helped incorporate Adrian Wilson International Associates, Inc. (AWIA) as a domestic corporation to handle AWA's expansion works and construction contracts in the Philippines and served initially as AWIA's Corporate Secretary and General Manager, before taking over the company as President in 1970 until his retirement in 2015.

In 1976, his firm, along with six other local engineering consulting firms, organized the Council of Engineering Consulting Firms of the Philippines (CECOPHIL), one of the members of the International Federation of Consulting Engineers (FIDIC). Since CECOPHIL's establishment, he has served as its Trustee and Treasurer for more than 17 years.

An active Trustee of CECOPHIL, he trained and was subsequently accredited as a construction arbitrator of the Construction Industry Arbitration Commission (CIAC) in 1991. In the same year, he joined the Philippine Institute of Construction Arbitrators and Mediators (PICAM) and served as one of its Trustees in 1991 and as its President in 1993 and 1994.


Since his accreditation as a construction arbitrator, Mr. Joaquin sat in close to 80 CIAC arbitrations, more than half of which he either chaired or conducted as sole arbitrator. He sits in the Boards of Directors of various companies, including the Rural Bank of San Pascual and United Caddtech Philippines, Inc. 

## PDRC is now an accredited ADR provider

After undergoing an extended accreditation process, PDRC has been certified by the Office for Alternative Dispute Resolution (OADR) as an accredited ADR service provider.

The OADR, through OIC Executive Director Bernadette C. Ongoco and OIC Director (Accreditation Division) Marlyn C. Angeles, certified on September 26, 2018 that PDRC has complied with the requirements of accreditation as an ADR provider organizations under Department of Justice Department (DOJ) Circular No. 49 issued on August 17, 2012.

The certification, which is valid for two years, covers the implied recognition by OADR of the accreditation made by PDRC of its accredited individual ADR practitioners during PDRC's accreditation period and for the particular field of practice for which the individual ADR practitioner was accredited.

By virtue of its OADR accreditation, PDRCI may now offer ADR services, which includes ADR training, systems design or similar services, to government offices, including local government units (LGUs). 

**16th PDRCI COMMERCIAL ARBITRATION TRAINING SEMINAR**

**“The Law and Practice of Commercial Arbitration”**

**November 19 to 23, 2018**

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