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# ..... THE PHILIPPINE ..... ADR REVIEW

*Broadening its scope of arbitration advocacy*

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## IBP launches new ADR Center

Citing its mandate to improve the administration of justice, the Integrated Bar of the Philippines (IBP) recently launched its new alternative dispute resolution (ADR) center, the Philippine International Center for Conflict Resolution (PICCR).

PICCR will provide commercial arbitration and other ADR services and facilities while creating opportunities for professional training, development, and accreditation for advocates and practitioners. Through the IBP's nationwide network, PICCR seeks to make arbitration and other ADR mechanisms more accessible in the Philippines.

Based at the IBP main office in Ortigas Center, Pasig City, PICRR will administer international and domestic arbitrations and other modes of dispute resolution involving foreign and local parties. PICCR has adopted a set of arbitration rules that incorporate the best practices of international commercial arbitration.



*Continued on page 4*

## WHAT'S INSIDE



## PART I

# Arbitrating intra-corporate disputes under the Revised Corporation Code

By Donemark Calimon & Anna Carmi Calsado-Amoroso

Section 181 of the Revised Corporate Code (“RCC”), which took effect on February 23, 2019, allows an arbitration agreement to be incorporated into the articles of incorporation (“AOI”) or by-laws of an unlisted corporation. As a result, intra-corporate disputes may be resolved through arbitration instead of litigation through the court system.

Section 181 is an important law and may very well be the first legislation worldwide to expressly allow the inclusion of an arbitration clause in the AOI and by-laws of a corporation.

Disputes among stockholders, officers and directors as well as those against the corporation, election contests, or derivative suits not involving third parties, among others, may now be resolved through arbitration. This much-welcomed development promotes the speedy resolution of these type of disputes, which would otherwise have to undergo three to five years of litigation at the trial court level. Arbitration takes an average of one year to be completed.

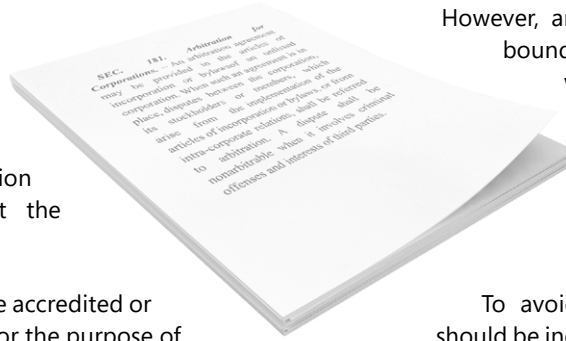
## Standards for enforceability of corporate arbitration clauses

The RCC provides certain standards for the enforceability of arbitration clauses in the AOI and/or by-laws.

As mentioned, only unlisted corporations may include an arbitration agreement. While the arbitration agreement may either be in the AOI and/or by-laws, the third paragraph of Section 181 (“When an intra-corporate dispute is filed with a Regional Trial Court, the court shall dismiss the case before the termination of the pre-trial conference, if it determines that an arbitration agreement is written in the corporation’s articles of incorporation, by-laws, or in a separate agreement.”) implies that it may also be contained in a separate agreement between the parties.

In addition, the arbitration agreement shall indicate the number of arbitrators to be appointed as well as the procedure for their appointment. In view of the risk that parties are unable to easily

constitute the tribunal, Section 181 requires that the power to appoint arbitrators shall be granted to a designated independent third party and that if said third party fails to appoint, the Securities and Exchange Commission ("SEC") may be requested to appoint the arbitrator.



However, an issue may arise if all these persons are bound by the arbitration agreement, especially when the respondents to an arbitration are not signatories to either the AOI or by-laws. For example, is a person who subsequently became an officer of the corporation bound by the arbitration agreement?

Finally, arbitrators to be appointed must be accredited or must belong to organizations accredited for the purpose of acting as arbitrators.

To avoid such issues, the arbitration agreement should be included in the AOI and by-laws. To bind those who are not signatories thereto, there should be a separate agreement to clearly bind them to the arbitration clause in the AOI and By-laws.

If the requirements of Section 181 are met, the arbitration clause will be binding on the corporation, its directors, trustees, officers, and executives or managers. The arbitration clause will cover disputes between the corporation, its stockholders or members that arise from the implementation of the AOI or by-laws, or from intra-corporate relations.

### Number of arbitrators and the procedure for their appointment

While Section 181 requires that the arbitration clause indicate the number of arbitrators, it is not advisable in certain instances to indicate either a sole arbitrator or a panel of arbitrators in an arbitration clause. The determination of whether disputes that may arise from a contract would be complex as to require more than a sole arbitrator is often not an easy task. In most cases, the determination of the number of arbitrators is better left to the application of the rules of the arbitral institution.

As in any other arbitration, (a) the arbitration contemplated by Section 181 excludes disputes involving criminal offenses and those involving interests of third parties; and (b) the tribunal has the power to rule on its own jurisdiction and the validity of the arbitration agreement.

**Next issue: Possible issues on appointment of arbitrators and enforcement of arbitral awards.**

If a case is filed in court involving disputes covered by an arbitration agreement, the court shall dismiss the case before termination of the pre-trial conference. Notably, a final arbitral award under Section 181 becomes executory after 15 days from receipt of the award by the parties, unless stayed by the filing of a bond or the issuance by an appellate court of an injunctive writ.

The significant positive impact of Section 181 notwithstanding, it may give rise to certain issues that need to be clarified in the implementing rules to be issued by the SEC. It has been reported that the SEC will not issue implementing rules and regulations for the RCC but will issue circulars implementing certain provisions of the RCC. The potential issues discussed below can be clarified through a well-crafted set of implementing guidelines.

### Binding effect of the arbitration agreement

It is clear that Section 181 is intended to bind the corporation, its directors, trustees, officers, and executives or managers. It is also clear that the arbitration agreement will bind the stockholders or members pursuant to the first paragraph of Section 181 (which refers to disputes between the corporation and its members or stockholders), even if the provision does not expressly say that it is binding on these persons.

#### About the Authors



Donemark Calimon is a partner of Quisumbing Torres, where he heads its Dispute Resolution Practice Group and the Industrials, Manufacturing, and Transportation Industry Group. He has more than 18 years of experience in dispute resolution. He is presently the Secretary General of the Philippine International Center for Conflict Resolution (PICCR).




Carmi Calsado-Amoroso is a senior associate of Quisumbing Torres. She specializes in dispute resolution and immigration and has extensive experience in corporate insolvency, intra-corporate disputes, tax disputes, immigration, and civil litigation.

# IBP launches new ADR Center

*(Continued from page 1)*

With the help of training faculty from PDRC, PICCR successfully trained and accredited nine new arbitrators who studied Module 1 on Fundamentals of Commercial Arbitration; Module 2 on the PICCR Arbitration Rules; and Module 3 on Writing Arbitral Awards.

On May 28, 2019, PICCR administered the oath to its new accredited arbitrators as well as its training faculty who were admitted to the Panel of Arbitrators. The Panel of Arbitrators includes past PDRC Presidents Eduardo Ceniza and Victor Lazatin, Secretary General Roberto Dio, Corporate Secretary Patricia Ann Prodigalidad, and Trustees Mario Valderrama, Gwen de Vera, and Arthur Autea. 



PICCR Pres. Sixto Antonio leads the oath-taking on May 28, 2019 of new arbitrators who successfully completed the accreditation course, shown in the back row. Retired Supreme Court Justice Arturo Brion joined PDRCI Sec. Gen. Roberto Dio and Trustees Patricia Ann Prodigalidad and Mario Valderrama in the front row as newly accredited PICCR arbitrators.

## MEMBER SPOTLIGHT : Oscar Carlo F. Cajucom


Caloy is a senior associate at Gulapa Law Office and is an adjunct professor in several law schools.

He studied Political Science at the University of the Philippines, Diliman and took up law at the Ateneo de Manila University School of Law (ALS), where he obtained his Juris Doctor degree in 2012, finishing 12th in his class.

In law school, he interned at the Ateneo Human Rights Center. He was also a member of the Executive Committee of the Ateneo Law Journal (2011-12), the Lead Editor of the Ateneo Law Journal Legal Citation Guide (2012), and a member of the ALS and Philippine Delegation to the 22nd Criminal Justice Trial Advocacy Competition (Mock Trial) sponsored by the American Bar Association and the John Marshall Law School, held in March 2012 in Chicago, Ill., U.S.A.

He joined the law firm of Castillo Laman Tan Pantaleon & San Jose as an associate attorney in January 2013. After three years, he became senior manager in the legal department of the Filinvest Group, until 2018. He returned to law firm practice as a senior associate at Gulapa Law Office from April 2018 until the present.

Currently, he teaches at ALS and at the University of Makati Law School. He is also a consultant at the Office of the Dean, University of the Philippines College of Law and at the Special Protection of Children Against Sexual Abuse and Exploitation Program of the Asia Foundation.

He has written several articles in the Ateneo Law Journal. 



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