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Broadening its scope of arbitration advocacy

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Front, L-R: Atty. Shirley Alinea, Pres. Edmund Tan, IPOPHL Dir. Gen. Josephine Santiago, and Atty. Nathaniel Arevalo. Back, L-R: Attys. Salvador Panga, Jr., Ray Anthony Pinoy, Teresa Pascual, and Christine Canlapan, Dr. Frederick Romero, Atty. Daniel Hofileña, and Engr. Luwin dela Concha.

PDRC renews MOA with IPOPHL

The Philippine Dispute Resolution Center (PDRC) recently renewed its Memorandum of Agreement (MOA) with the Intellectual Property Office of the Philippines (IPOPHL).

PDRC President Edmund Tan and IPOPHL Director General Josephine Santiago signed the MOA in a formal ceremony on June 7, 2019 at the Board Room of the IPOPHL in Taguig City.

WHAT'S INSIDE



PART II

Arbitrating intra-corporate disputes under the Revised Corporation Code

By Donemark Calimon & Anna Carmi Calsado-Amoroso

In the previous issue, the authors discussed the standards for enforceability and binding effect of corporate arbitration clauses. In this issue, they analyse possible issues that may arise on the appointment of arbitrators and the enforcement of final awards.

Number of arbitrators and the procedure for their appointment

Section 181 does not require that the clause indicate either a sole arbitrator or a panel of arbitrators. Thus, it would seem that an arbitration clause that indicates one or three, to be appointed in accordance with the designated rules, would be sufficiently compliant.

Further, Section 181 requires that the procedure for the appointment of arbitrators be indicated. This should be easy to comply with by designating the rules of the arbitral institution chosen by the parties as the rules that will apply for this purpose. But in order to comply with Section 181, the parties should ensure that their

arbitration agreement provides for institutional arbitration whose rules authorize the arbitral institution to determine the number of arbitrators.

Appointment of arbitrators by a designated independent third party or by the SEC

Section 181 provides that the power to appoint the arbitrators forming the arbitral tribunal “shall be granted to a designated independent third party.” This requirement is unusual, considering that one of the advantages of arbitration is the ability of the parties to participate in the choice of arbitrators. This requirement appears to withhold that power from the parties. As a result, this may discourage parties from actually availing themselves of the benefits of Section 181.

Nevertheless, this requirement should not pose a significant concern insofar as institutional arbitration is concerned considering that in most cases, the institution reserves to itself the power to confirm

the appointment of the arbitrators, including those nominated by the parties.

Thus, designating an arbitral institution (the rules of which gives the institution the authority to confirm the appointment of arbitrators) would most likely allow the parties to both comply with Section 181 and at the same time still have the power to participate in the appointment of arbitrators and the constitution of the arbitral tribunal.

The arbitrators must be accredited or must belong to organizations accredited for the purpose of arbitration

It is not clear from Section 181 what kind of accreditation is required. It is hoped that the implementing rules will clarify that the accreditation required is one by any known arbitral institutions or organizations, instead of accreditation by a specific entity such as the Office of Alternative Dispute Resolution.

To limit the parties' choice of arbitrators to a very small group of arbitrators will be a disservice to the objective of the RCC and Section 181. It will effectively curtail the ability of the parties to nominate competent and experienced arbitrators of their choice, who may not be accredited by the organization identified by the SEC or the implementing guidelines.

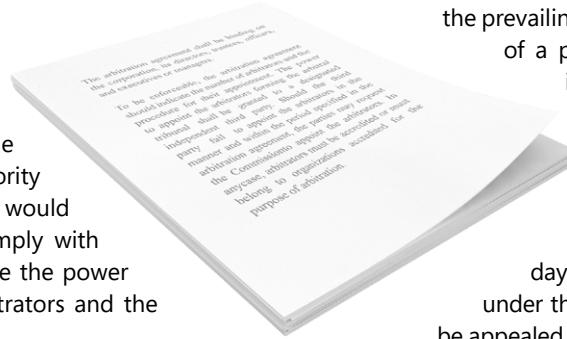
Dismissal of the case if it involves disputes covered by Section 181

Instead of dismissing the case, the Special Rules of Court on ADR provides that the case should be "referred" to arbitration. It is not necessary that the court dismiss the case considering that the parties may still need to invoke the jurisdiction of the court in the course of the arbitration.

Executory nature of the final award after 15 days unless stayed through a bond or by an injunctive writ

Section 181, to the extent it considers a final award as executory, is consistent with the provisions of the Special ADR Rules that gives arbitral awards the presumption of enforceability. Nevertheless, it will have to be harmonized with the rule that an award issued in arbitration still needs to go through the recognition and enforcement process under the Special ADR Rules.

Further, the provision suggests that the enforcement of an arbitral award may be stayed through the filing of a bond. How this requirement will be implemented will most likely be covered by the implementing rules. Considering the length of time that appellate proceedings take, the fact that a bond is in place is unlikely to give



the prevailing party adequate relief. From the perspective of a party winning the arbitration, the ability to immediately enforce the award is one of its key advantages.

This provision of Section 181 also suggests that an award may be stayed by an injunctive writ that may be issued within 15 days from the final award. There is no mechanism under the Special ADR Rules by which an award may be appealed within 15 days from its issuance, or by which a party may obtain injunctive relief against an award. Section 181 may be construed to suggest that such a remedy is available.

Under the Special ADR Rules, an appeal may be made from a decision of the trial court to enforce an arbitral award (but not from the award itself). However, under Rule 19.22, the appeal shall not stay the award unless the Court of Appeals directs otherwise.

It is hoped that the implementing rules will clarify that Section 181 does not create any new remedy but only recognizes that some rules or agreements may actually allow such remedies, in which case the parties may be avail themselves of those remedies.

While there are potential issues as stated above, the inclusion of Section 181 in the RCC provides a promising avenue for the efficient resolution of intra-corporate disputes. The main benefit of Section 181 is the potential of a more efficient, cost-effective, flexible and transparent medium of resolving intra-corporate disputes. Moreover, the use of arbitration in resolving intra-corporate disputes could significantly contribute to the much needed decongestion of the court's dockets.

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.

MEMBER SPOTLIGHT

Atty. Diana Lyn B. Bello-Castillo is a corporate lawyer and a founding partner of Castillo & Bello.



She specializes in commercial projects, handling corporate and property acquisitions, corporate structuring, corporate succession, joint venture arrangements, inward foreign direct investment, company and property due diligence review, contracts management, labor relations management, registration with investment promotions agencies, and intellectual property registration and protection. She also provides legal advice and assistance on compliance-related matters on data privacy and anti-money laundering, among others.

She was formerly a partner in Carpo Law & Associates and, before that, an associate at Angara, Abello, Concepcion, Regala and Cruz where she was a member of its Corporate and Special Projects Department.

Atty. Castillo is a fourth-generation lawyer who studied management at the Ateneo de Manila University-Loyola Schools. She obtained her Juris Doctor degree from the University of the Philippines, where she was the recipient of the Maria Clara Lopez Campos Prize for Best Paper in Corporation Law, the Dean's Medal for Leadership, and the U.P. Chancellor's Award. She was also a champion moot court debater, winning best oralist during the 2009 Asia Cup International Moot Court competition held in Tokyo, Japan.

In addition to her membership in the Integrated Bar of the Philippines, Atty. Castillo is active in the Inter-Pacific Bar Association, the Intellectual Property Association of the Philippines, and the ASEAN Intellectual Property Association.

PDRC renews MOA with IOPPHL

The new MOA renews the partnership between PDRC and IOPPHL after their original MOA expired in 2015. It provides, among others, for the creation of a Joint Technical Working Group (JTWG) composed of representatives from IOPPHL and PDRCI.



The JTWG will (a) implement the MOA, (b) coordinate with each other in (i) suggesting new modes of alternative dispute resolution (ADR) in resolving intellectual property disputes, (ii) reviewing and recommending amendments to the IOPPHL-PDRC Arbitration Rules to simplify the procedure, avoid technicalities and delays, ensure the independence of arbitrators and the fair and equal treatment of parties, minimize costs, and make the enforcement of awards easy, and (iii) proposing and implementing guidelines for training, accreditation and continuing education of all IOPPHL-PDRCI arbitrators, as well as the conduct of public information activities to promote arbitration, and (c) propose any necessary amendments to the MOA. It also sets the minimum qualifications for accrediting IOPPHL-PDRC arbitrators.

The MOA signing was attended by (a) for IOPPHL, Atty. Nathaniel Arevalo, Director IV, Bureau of Legal Affairs (BLA); Engr. Luwin dela Concha, Head, ADR Services; Atty. Daniel Hofileña, Consultant; and Dr. Frederick Romero, Director III, Bureau of Copyright; and Atty. Christine V. Pangilinan-Canlapan, Director III, BLA; and (b) for PDRC, Atty. Shirley Alinea, Deputy Secretary General and Chair, Training/Education Committee; Atty. Salvador Panga, Jr., Vice President and Chair, IOPPHL ADR Committee; and Attys. Ray Anthony Pinoy and Teresa Pascual, IOPPHL ADR Committee members. 🇵🇭



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