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PDRC shares views on application of Singapore Convention in the Philippines

PDRC Sec. Gen. Roberto Dio

PDRC Secretary General Roberto Dio spoke on the domestic application of the Singapore Convention on Mediation in the Philippines at a colloquium hosted by the Department of Justice on December 9, 2019 at the Diamond Hotel Manila.

The colloquium aimed to generate awareness of the benefits of adopting the United Nations Convention on International Settlement Agreements Resulting from Mediation, also known as the Singapore Convention, and two other conventions on contracts on the international sale of goods and the use of electronic communications in international contacts.

In his presentation, Atty. Dio cited PDRC's Statement of Support in June 2019 for the Philippines to sign the Singapore Convention, which it believed would "facilitate the enforcement in Convention countries of settlements mediated in the Philippines" and "significantly improve our country's reputation as a

Continued on page 4

WHAT'S INSIDE

PART I

Balancing speed and due process in private commercial arbitration

By Atty. Julius Anthony R. Omila

In this article, the author discusses the need for arbitrators to respond to delays proactively, without risking the right of the parties to equal treatment and a full opportunity to present their sides.

Fairness in the arbitral procedure

Flexibility is a feature of the arbitral process, which makes it more attractive and advantageous than court litigation. As a party-driven process, the rules and procedure, including timelines, in the arbitration are agreed upon by the parties, especially in the Terms of Reference (TOR). When parties agree to institutional rules, the proceedings are governed by such rules.

Thus, parties are free to design the arbitral procedure to suit their specific cases. Absent the parties' agreement, the arbitral tribunal can exercise its procedural discretion. Either way, the parties should be treated fairly and given a full opportunity to be heard.

> So long as the parties are treated fairly, an arbitration can be tailored to meet the specific requirements of the dispute, rather than having to be conducted in accordance with fixed rules of civil procedure. To this flexibility- and adaptability- of the arbitral process, must be added the prospect of choosing a tribunal which is experienced enough to take advantage of its procedural freedom. Such a tribunal should be able to grasp quickly the salient issues of fact or law in dispute. This will save the parties both time and money, as well as offering them the prospect of a sensible award. [Redfern and Hunter on International Arbitration 33 (5th Ed., Student Version, 2009)]

Such principles are found in the UNCITRAL Model Law, specifically Articles 18 and 19, which respectively provide:

> Article 18. The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case.
>
> Article 19. (1) ... the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings. (2) Failing such agreement, the arbitral tribunal may, subject to the provisions of this Law, conduct the arbitration in such manner as it considers appropriate.

Gary Born, a respected authority in international commercial arbitration, affirms that the arbitrators' authority to determine the arbitral procedures is subject only to "mandatory protections of procedural fairness." He quotes one U.S. court opinion:

> Unless a mode of conducting the proceedings has been prescribed by the arbitration agreement ... arbitrators have a general discretion as to the mode of conducting the proceedings and are not bound by formal rules of procedure and evidence, and the standard of review of arbitration procedures is merely whether a party to an arbitration has been denied a fundamentally fair hearing.

He adds,

> The arbitrators' procedural discretion under institutional rules is not unlimited. Rather, as with most national laws, institutional regimes subject the arbitrators' procedural authority to overarching obligations to treat the parties fairly and to permit them reasonable opportunities to present their cases. [Gary B. Born, International Arbitration: Law and Practice150-51 (2012)]

However, the arbitral tribunal is generally mandated to conduct the arbitral proceedings expeditiously and in a cost-effective manner. Such inherent mandate of the arbitral tribunal is normally expressed in modern arbitration rules.

Time to render arbitral award

The UNCITRAL Rules of Arbitration, which is designed to apply in international ad hoc arbitrations, incorporates that principle:

> Article 17 1. Subject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at an appropriate stage of the proceedings each party is given a reasonable opportunity of presenting its case. *The arbitral tribunal, in exercising its discretion, shall conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the parties' dispute.* (Italics supplied)

The arbitration rules of modern arbitral institutions, including the Philippine Dispute Resolution Center, Inc. (PDRCI), also follow the same approach. Article 23 (1) of the 2015 PDRCI Arbitration Rules provides:

> Subject to the Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and given a reasonable opportunity of presenting its case. The arbitral tribunal shall provide a fair and efficient process of resolving the dispute, avoiding unnecessary delay and expense.

To ensure the expeditious conduct of the arbitration proceedings and avoid unnecessary delay, the PDRCI Arbitration Rules also specifies in Article 42 (1) the period within which the arbitral award shall be rendered:

> When there is more than one arbitrator, any award or decision of the arbitral tribunal shall be made within one (1) year from constitution of the arbitral tribunal by a majority of the arbitrators. If there is no majority, unless the parties agree otherwise, the award may be made by the Chair of the arbitral tribunal alone.

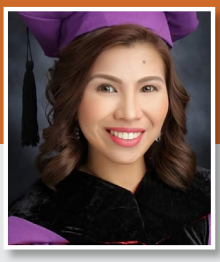
Next issue: The reality of delay and avoiding or resolving them.

About the Authors

Atty. Julius Anthony R. Omila is a PDRCI member. He is a Trustee of the Philippine Institute of Arbitrators (PIArb) and a member of the Chartered Institute of Arbitrators (CIArb). He is also the corporate secretary of the Philippine International Center for Conflict Resolution, Inc. (PICCR) and an accredited arbitrator of the Construction Industry Arbitration Commission (CIAC) and Wholesale Electricity Spot Market (WESM).

MEMBER SPOTLIGHT

Atty. Allesandra Fay V. Albarico



Atty. Albarico is the assistant vice president and head of the legal department of ISOC Holdings, Inc. and its subsidiaries.

She finished law at the Arellano University School of Law in 2010 and obtained her master's degree in law from the Pamantasan ng Lungsod ng Maynila Graduate School of Law in 2018. She is currently completing her doctorate degree in law at the University of Santo Tomas Graduate School of Law.

After her admission to the Philippine Bar in 2011, she worked for three years as court attorney at the Court of Appeals in the Offices of Justice Antonio L. Villamor and, later, Justice Zenaida T. Galapate Laguilles. While working in the appellate court, she served as an adjunct law professor at Centro Escolar University, Manila and at Our Lady of Fatima University, Antipolo City.

From 2014 to 2015, she worked as an associate attorney at Dato Incion & Associates, doing general law practice, before going to corporate law practice as legal counsel of various corporations like Citicore Power, Inc., Megawide Land, Inc, Megawide Construction Corporation, Ferronoux Holdings, Inc. (formerly AG Finance), and ISOC Holdings, Inc., from 2016 until the present.

She was conferred the Outstanding Professor award by Our Lady of Fatima University, Antipolo (2014-2018), a Certificate of Merit by the Supreme Court for her contribution in the pre-testing of the multiple-choice questions used in the 2011 Bar examinations (2011), and the Student of the Year award by the Arellano University School of Law (2010).

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(Continued from page 1)

venue conducive to the alternative dispute resolution of commercial disputes."

He discussed the Philippine's experience with mediation since 1949, when it was first recognized in the New Civil Code, to the passage of the Arbitration Law in 1953, and the adoption of the informal mediator in 1964 under the Revised Rules of Court. In 1978, the Katarungang Pambarangay Law institutionalized a highly successful community arbitration and mediation system, which was incorporated in 1991 in the Local Government Code.

He said that in 1997, the Supreme Court amended the civil rules of procedure to allow alternative dispute resolution (ADR) during the pre-trial conference. In 2001, it adopted court-annexed mediation in trial courts and in 2003, adopted it in the Court of Appeals, resulting in the settlement of 65% to 75% of civil cases.

He also said that the ADR Act of 2004 instituted mediation as an ADR form in eleven provisions, Sec. 17 of which provided rules for the enforcement of mediated settlements. In 2009, the Supreme Court provided for the judicial enforcement of mediated settlement agreements, which was immediately executory. At present, at least 13 government agencies have adopted mediation in resolving regulatory disputes. Presently, there is no enforcement mechanism for cross-border mediated settlement agreements.

PDRC urged the adoption of the Singapore Convention, which limits the procedural and substantive objections to the enforcement of international mediated settlement agreements.

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