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PDRC, OADR to sign MOA

The Philippine Dispute Resolution Center (PDRC) and the Office of Alternative Dispute Resolution (OADR) have agreed in principle to a strategic partnership to develop and implement programs to institutionalize the use and practice of alternative dispute resolution (ADR) in the Philippines.




At their third online meeting on May 29, 2020, the OADR Management Committee led by its Executive Director, Irene Alogoc, and the PDRC team led by Secretary General Roberto Dio reviewed the terms of the draft Memorandum of Agreement (MOA) revised by OADR Director III Ma. Cristina Abalos-Naig. After a lively discussion, both sides agreed on the final terms of the MOA.

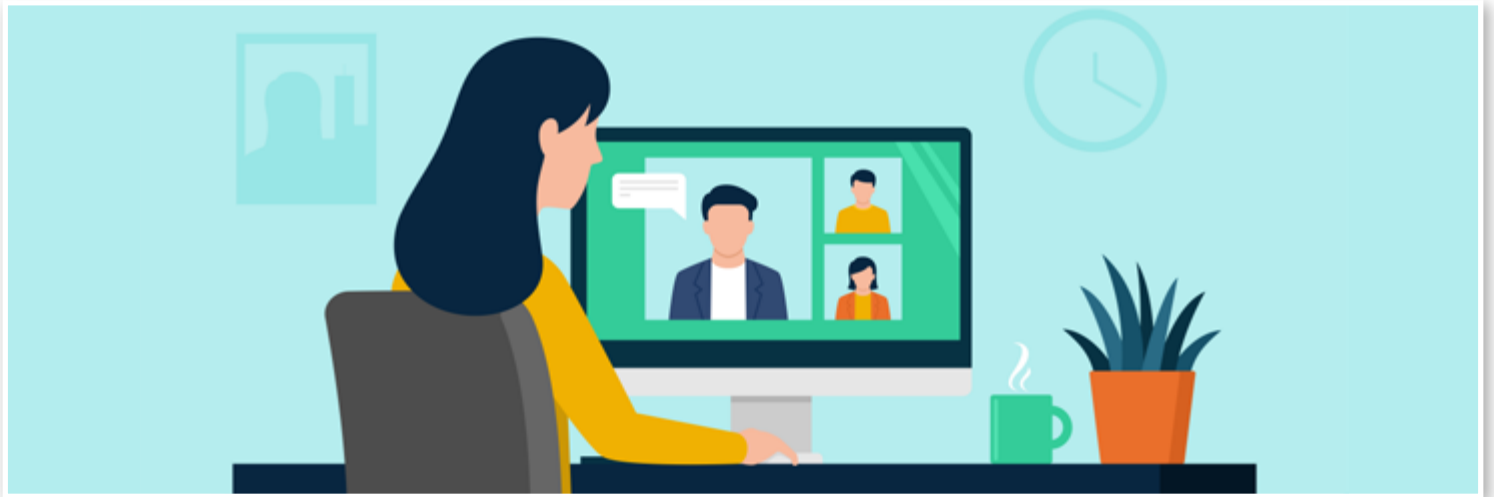
On May 31, 2020, the PDRC Executive Committee unanimously approved the revised draft MOA.

The MOA envisions PDRC to provide OADR with resource persons on policy formulation and in drafting legislation on ADR, with OADR and PDRC supporting each other in developing and implementing programs to institutionalize the use and practice of ADR. OADR and PDRC will hold monthly online meetings to identify these programs.

Among others, these will include ADR trainings and seminars to develop private and government ADR practitioners, e.g., those in the barangays and in the Department of Justice, forums and conferences on new developments, and joint research and studies. For its part, OADR committed to accredit ADR practitioners in PDRC's list of accredited arbitrators.

The MOA will be effective upon signing by the parties, which is expected this month, unless terminated after giving 60 days' notice. SecGen Dio was assisted by Trustee Joenar Pueblo and by Executive Director Francisco Pabilla, Jr. 

WHAT'S INSIDE



PART 1

CIAC Guidelines on the Conduct of Virtual Proceedings

By Ricardo Ma. P.G. Ongkiko and Christopher A. Capulong

The coronavirus pandemic has disrupted everyone's lives—how we live, how we work, how we play. It has disrupted day-to-day business operations and upended short-term plans and long-term goals. It has not spared any one—not even commercial arbitration—both here and abroad.

Both international and domestic arbitration institutions talk about the need to adopt a “new normal”, i.e., another way of conducting arbitration proceedings through online or virtual hearings. While not entirely new, because there have been instances in the past where a preliminary conference, a case management conference, or an oral hearing may have been conducted partly via telephone or video-conference, as when a counsel or a witness is not able to attend the in-person conference or hearing in the agreed venue, the use of online or virtual hearing for many arbitrations have not been the norm.

Because of this development, different arbitration institutions and organizations recently issued new guidance notes for video conference hearings¹. Among others, in March 2020, the Seoul Protocol on Video Conferencing in International Arbitration was drafted under the auspices of the Korean Commercial Arbitration



Board (KCAB) and the Seoul International Dispute Resolution Center (SIDRC). Later in the month, Delos Dispute Resolution came out with its own checklist on holding arbitration and mediation arbitration hearings in times of COVID-19.

In April 2020, the Chartered Institute of Arbitrators (CIArb) issued its Guidance Note on Remote Dispute Resolution Proceedings, while the International Chamber of Commerce (ICC) issued its Guidance Note on Possible Measures Aimed at Mitigating Effects of the COVID-19 Pandemic. Also in April 2020, the American Arbitration Association (AAA) and the International Centre for

Screenshot of a virtual hearing in a recent PDRC arbitration using Zoom videoconference application. Top row shows (from left) Bamba Parungao of the Secretariat, who hosted the meeting, the witness under examination, and respondent’s counsel. Bottom row shows (from left) File Counsel Atty. Diane Castillo, claimant’s counsel, and the sole arbitrator, PDRC Sec. Gen. Roberto Dio.



Dispute Resolution (ICDR) released their Virtual Hearing Guides for Arbitrators and Parties.

In the Philippines, the CIAC issued on June 10, 2020 its Memorandum Circular No. 01-2020 (“CIAC Guidelines”), which provided guidelines on the conduct of online or virtual proceedings in CIAC arbitration and mediation. The CIAC Guidelines is different from its international counterparts as it takes into consideration the unique situation that CIAC is in, as an arbitration institution that enjoys a statutory-mandated primary arbitration jurisdiction over construction disputes in the Philippines, where broadband connection is notoriously slow. The CIAC Guidelines took effect on June 15, 2020.

Authority to conduct online/virtual case proceedings

At the outset, the CIAC Guidelines confirms that the arbitral tribunal has full authority to decide if online or virtual proceedings may be conducted. The CIAC Guidelines is silent if the parties should agree to hold virtual proceedings. Instead, it cites Section 21.2 of the CIAC Revised Rules of Procedure Governing Construction Arbitration (“CIAC Rules”), which grants the tribunal authority to “exercise complete control over all proceedings to insure a speedy, adequate, and justifiable disposition” of the disputes before them.

The CIAC Guidelines provides that, when the tribunal decides to order the holding of virtual proceedings, the failure or refusal of a party to participate will not stay the proceedings. If both parties fail to participate in the proceedings, the case will be deemed submitted for decision with no further hearings and will be decided on the basis of documentary evidence already submitted.

Restricted use of CIAC premises for case proceedings

The CIAC Guidelines recognizes the propriety of holding in-person conferences and hearings in the CIAC hearing rooms or in adequately spacious public venues, subject to compliance with social distancing rules and the use of face masks or shields. Considering the size of the CIAC hearing rooms, the CIAC offices may be used only for (a) executive meetings of the tribunal; (b) mediation meetings between the mediator and one or both of the parties; and (c) conferences and hearings before a sole arbitrator.

The CIAC Guidelines also recognize the propriety of holding partial virtual proceedings, where some, but not all, of the participants are in the same venue. The parties shall equally advance the cost of use of outside venues, without prejudice to the tribunal determining who shall ultimately bear such costs in their final award.

Next issue: Hosting the virtual proceedings, documentary evidence, and security and confidentiality.



About the Authors

Ricardo Ma. P.G. Ongkiko heads the Litigation Department and sits as a member of the Executive Committee of the law firm of SyCip Salazar Hernandez & Gatmaitan. He is a Trustee of Philippine Dispute Resolution Center, Inc.



Christopher A. Capulong recently joined the same law firm as an associate attorney. He studied law at the University of the Philippines, Diliman, where he received the Dean’s Medal for Academic Excellence in 2019.

1 Previous to the pandemic, there were guidance notes and checklists on online arbitration. These include, among others, the International Chamber of Commerce (ICC) Commission Report on Managing E-Document Production (July 2016), the United Nations Commission on International Trade and Law (UNCITRAL) Technical Notes on Online Dispute Resolution (April 2017), and the International Bar Association (IBA) Cyber Security Guidelines (Oct. 2018).

MEMBER SPOTLIGHT

Atty. Jan Mari de Castro Adan



Atty. Jan Mari Adan is the Legal Manager of Pru Life Insurance Corporation of U.K.

She obtained both her philosophy and law degrees from the Ateneo de Manila University, where she was a consistent dean’s lister. Her J.D. thesis delved on the consent requirement of biological parents in domestic adoption.

After finishing law school in 2012 and passing the Philippine Bar the following year, she joined the law firm of Esguerra and Blanco, where she handled commercial arbitration as well as general civil, criminal, and administrative litigation.

After a year in Esguerra and Blanco, she transferred to Feria Tantoco Daos Law Firm, where she worked from 2014 to 2018, handling mergers and acquisitions, corporate reorganization, due diligence, estate planning, and general corporate housekeeping. She also handled registrations with administrative agencies as well as data privacy and anti-trust matters. She served as Chief Information Officer of a listed company and as Data Protection Officer of another private company.

Following six years of law firm experience, she joined Pru Life in 2019 as its in-house counsel.

Supreme Court rules that CIAC complaint filed within “reasonable time”

In a decision rendered on September 16, 2019 in G.R. No. 205007, *The Mercantile Insurance Co. Inc. v. DMCI-*



Laing Corporation Inc., Supreme Court (SC) upheld the timeliness of an arbitration commenced four months after the negotiations between the parties fell through.

The case began on May 29, 2003, when DMCI-Laing Construction, Inc. (DLCI) filed a complaint in arbitration with the Construction Industry Arbitration Commission (CIAC) against The Mercantile Insurance Co. Inc. (Mercantile Insurance), asking to recover on the performance bond issued by Mercantile Insurance to guarantee the completion of subcontracted works by Altech Fabrication Industries, Inc. (Altech) pursuant to a Sub-Contract Agreement (Sub-Contract). Mercantile Insurance denied DLCI’s claim to recover the costs it allegedly incurred to complete and rectify the unfinished and subpar works of Altech.

Mercantile Insurance argued that the complaint should have been dismissed outright because DLCI failed to file it within a “reasonable time” as stipulated in the Sub-Contract: “The demand for arbitration shall be made within a reasonable time after the dispute has arisen and attempts to settle amicably have failed.” The CIAC sided with Mercantile and dismissed the complaint. According to the arbitral tribunal, DLCI was unable to justify why it waited for more than three years after the termination of the Sub-Contract on February 21, 2000 before filing its complaint. The CA reversed the CIAC.

In an opinion penned by Associate Justice Alfredo Benjamin Caquiao, the SC affirmed the CA’s reversal of the CIAC and ruled that the complaint was filed within a reasonable time because it was commenced only four months after DLCI and Mercantile Insurance mutually agreed that attempts to arrive at an amicable settlement failed on January 27, 2003. (*Irish Jade G. Alimpolos*)

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