

ADR INSIGHTS

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WHAT IS THE OFFICE FOR ALTERNATIVE DISPUTE RESOLUTION?

The Office for Alternative Dispute Resolution (OADR) is an attached agency of the Department of Justice. It was created under Republic Act No. 9285, otherwise known as the "Alternative Dispute Resolution Act of 2004." State Counsel Bernadette C. Ongoco has been the OADR's OIC-Executive Director since its operationalization in March 24, 2010, by virtue of Department Order No. 209.

The OADR was established primarily to promote, develop and expand the use of alternative dispute resolution (ADR) in the private and public sectors. To fulfill this mandate, the OADR's Public Information and Promotion Division has developed various information, education and communication materials on ADR and has been conducting nationwide conferences for students and ADR stakeholders.

Moreover, the OADR's Training Division has been conducting basic mediation skills trainings for the members of the



Lupong Tagapamayapa to help them better perform their role under the Katarungang Pambarangay Law.

The OADR is also mandated to monitor, study and evaluate the use of ADR by the public and private sectors as well as to recommend to Congress, needful statutory changes to develop, strengthen and improve ADR practices in accordance with world standards. In this connection, the OADR is empowered to formulate standards for the training of ADR practitioners and service providers; establish training programs for ADR providers and practitioners; develop, implement, monitor, and evaluate all government ADR programs; and

accredit and certify ADR providers and practitioners.

Executive Order No. 97, series of 2012, conferred upon the OADR the management, development, coordination and oversight of ADR programs in the executive department.

In addition, with the issuance of Executive Order No. 78, series of 2012 which mandated the inclusion of provisions on the use of ADR mechanisms in all contracts involving public-private partnership projects, build-operate and transfer (BOT) project, joint venture agreements (JVA) between the government and private entities and those entered into by local government units, the OADR, among others, has been tasked to initiate massive information campaign on this policy and the different ADR mechanisms to all national and local government agencies/entities, the private sector and the general public.

In 2017, the OADR hosted and facilitated the Consultative Conference on the Proposed Amendments to the Chapters on Mediation and Arbitration of Republic Act No. 9285 during the OADR Anniversary Celebration. To date, the OADR is continuously conceptualizing more projects to ensure that ADR reaches all sectors in society to contribute to the settlement of conflicts and disputes without necessarily resorting to litigation.

ADR 101

What is ADR?

ADR stands for Alternative Dispute Resolution. The specific statute on alternative dispute resolution (ADR) in the Philippines is Republic Act No. 9285, otherwise known as the "Alternative Dispute Resolution Act of 2004", which was enacted into law on 02 April 2004.

What is the ADR System?

It is any process or procedure used to resolve a dispute or controversy, other than by adjudication of a presiding judge of a court or an officer of a government agency, in which a neutral third party participates to assist in the resolution of issues.

What are the most common ADR mechanisms?

Arbitration, mediation, early neutral evaluation, mini-trial or any combination thereof.

What is the aim of the ADR system?

The ADR system aims to achieve speedy and impartial justice and de-clog court dockets.

DEVELOPMENT IN INVESTOR-STATE DISPUTE SETTLEMENT

The UN Commission on International Trade Law (UNCITRAL) has the mandate to further the progressive harmonization and modernization of international trade law through the preparation and promotion of the adoption and use of legislative and non-legislative instruments in certain key areas of commercial law.

At its 2017 Session, the UNCITRAL Commission mandated the UNCITRAL Working Group III (Investor-State Dispute Settlement Reform) to identify possible areas of concerns in the field of investor-state dispute mechanism (ISDS).

Pursuant to its mandate, the UNCITRAL Working Group III, at its 34th and 35th Sessions held in Vienna, Austria and New York, U.S.A., respectively, was able to identify the following broad categories of concern, namely: (1) lack of consistency, coherence, predictability and correctness of arbitral decisions by ISDS tribunals; (2) those pertaining to arbitrators and decision-makers; and (3) those pertaining to cost and duration of ISDS cases. This is without prejudice to the identification of additional

concerns that might need to be addressed as the Working Group progresses with its work.

At the 36th Session of the UNCITRAL Working Group III in Vienna, Austria last October 2018, the Working Group was able to agree that reforms be developed by UNCITRAL to address the following concerns: unjustifiable inconsistencies in the interpretations of investment treaty provisions and other relevant principles of international law by ISDS tribunals; lack of framework for multiple proceedings brought pursuant to investment treaties, laws, instruments and agreements that provided access to ISDS mechanisms; limited or lack of mechanism to address inconsistency and incorrectness of decisions; and lack or apparent lack of impartiality and independence of arbitrators and decision-makers in ISDS.

The Working Group also agreed on the desirability to develop reforms to address concerns relating to the adequacy, effectiveness and transparency of the disclosure and challenge mechanisms available under many existing treaties and arbitration rules; lack of diversity in the pool of arbitrators and decision-makers in ISDS; concerns with respect to cost and duration of ISDS proceedings; concerns on the allocation of costs by arbitral

tribunals in ISDS; and difficulties faced by successful States to recover some or all of their costs from claimant investors, and the need for rules on security for cost.

The Working Group III agreed that the kinds of reforms to be developed will be discussed at its succeeding meetings.

One interesting concern is the lack of diversity in the pool of arbitrators and decision-makers in ISDS. Some delegations expressed the view that some arbitrators bring their international commercial arbitration background in investment arbitration, without knowledge of international law and international investment law.

Considering that the Philippines is a respondent in a number of international arbitration cases arising from its existing old generation bilateral investment treaties, it is important for the Philippines to participate in succeeding sessions and see how reforms in ISDS will develop.

Senior State Counsel Marlyn L. Angeles, State Counsel Leilani R. Fajardo-Aspiras and State Counsel Ulyses A. Aguila, concurrent Officers-in-Charge of the OADR, was part of the Philippine Delegation to the 36th Session of Working Group III in Vienna, Austria.

PIPD Conducts Nationwide Conferences for Students and ADR Stakeholders

The OADR is mandated to promote, develop and expand the use of ADR in the public and private sectors.

To implement this mandate, the Public Information and Promotion Division (PIPD) of the OADR kicked off its Project dubbed as the "Nationwide Conference for Students and ADR Stakeholders" to promote awareness on the use of alternative modes of dispute resolution in lieu of litigation.

The target audience of the conferences are college students and ADR stakeholders, such as members of the local business communities, members of the local

Integrated Bar of the Philippines (IBP) chapters and rotary clubs, and local government officials.

In these conferences, the OADR collaborated with private ADR practitioners as resource speakers on mediation and commercial arbitration. They include Atty. Salvador S. Panga, Jr. and Mediator Francisco P. Pabilla both of the Philippine Dispute Resolution Center Inc. (PDRCI), and Atty. Jay Patrick R. Santiago, formerly of Quisumbing Torres and the Philippine Institute of Arbitrators (PIArb).

Topics discussed during the two-day conferences include the introduction of the OADR, its powers and functions, the different ADR mechanisms, the accreditation guidelines for ADR practitioners and a more thorough discussion on commercial arbitration and

mediation. For the college students, a topic on careers relating to arbitration and mediation was added.

The first leg of the conference was held last 21-22 March 2018 at the Pontefino Hotel and at the University of Batangas in Batangas City. Subsequent conferences were held at the Mindanao State University in Iligan City on 5-8 June 2018, at the Dr. Vicente Orestes Romualdez Educational Foundation (DVOREF) in Tacloban City on 9-12 July 2018, at the University of San Jose Recoletos in Cebu City on 28-31 August 2018, and at the Silliman University in Dumaguete City on 18-21 September 2018.

Through these conferences, the OADR endeavored to bring the concept of ADR closer to the people and to make them aware that there is an alternative to litigation.

The Rise of Young Members Groups in the Philippines

Arbitration has proven to be an increasingly popular field amongst legal practitioners. Proof of arbitration's popularity are the many successful "Introduction to Arbitration" seminars conducted by various arbitration organizations. While both young and "seasoned" legal practitioners attend these seminars, the latter have the advantage of many years of legal experience (translating to transferrable skills and/or reputation), which could be helpful in starting an arbitration practice. On the other hand, young practitioners face unique difficulties, including (1) barriers to training opportunities (e.g., where law firms' resources would rather be devoted to senior associates or junior partners); (2) barriers to arbitration experience (e.g., where associates do not have a choice on the types of cases they get to handle); or (3) the absence of a capable mentor (e.g., in firms without an arbitration practice).

Young PI Arb ("YP"), PI Arb's young members group, was formed in 2016, and aims to address the aforementioned difficulties. It has organized many arbitration seminars and regularly organizes the "YP Lounge" where a small group of young practitioners get the chance to meet experienced arbitration practitioners over coffee or dinner.

Some of the YP Lounge's guests were Gary Born (President of the Singapore International Arbitration Centre), Sarah Grimmer (Secretary-General of the Hong Kong International Arbitration Centre), Peter Leaver QC (former Chairman of the Board of the London Court of International Arbitration), Anselmo Reyes SC (a barrister and a popular arbitrator in Hong Kong and Singapore), and Datuk Sunda Rajoo (former Director of the Asian International Arbitration Centre), as well as local practitioners Mario Valderrama and Ricardo Ongkiko. All PI Arb members aged 40 and below are eligible to be YP members.

On 24 January 2019, the Chartered Institute of Arbitrators ("CI Arb") will formally launch the Philippine Chapter of its Young Members Group ("YMG") at the monthly PI Arb and CI Arb fellowship in Quisumbing Torres. As in YP, all CI Arb members (associate, member, or fellow) aged 40 and below are eligible to be YMG members. The event will be from 11:30 am to 2:00 pm, and open to everyone interested in alternative dispute resolution. For more inquiries about the YMG, feel free to contact Jay Santiago, YP Co-Chair, at jaysantiago@jaysantiago.net.

The future of Philippine arbitration lies in the hands of young practitioners. In addition to law schools and law firms, young members groups would certainly play a crucial role in the training of future Filipino arbitration practitioners.



The Contributor

Jay Patrick R. Santiago is a senior associate in Quisumbing Torres' (QT) Dispute Resolution Practice Group. Jay has over nine years of legal experience, focusing on alternative dispute resolution and litigation. He is the Vice President for International Initiatives (Hong Kong) of the Philippine Institute of Arbitrators and the founding chairperson of Young PI Arb, the first young members arbitration organization in the Philippines. Prior to rejoining QT, Jay worked as Counsel at the Hong Kong International Arbitration Centre for over three years. He is currently completing his Master of Laws (with specialism on international business law) at the London School of Economics and Political Science under a Chevening scholarship. He is qualified to practice law in the Philippines and England and Wales (solicitor).

OADR participates in the First International ADR Conference

The First International ADR Conference was held from 17-18 April 2018 in Bangkok, Thailand. Jointly-organized by the United Nations Commission on International Trade Law-Regional Center for Asia and the Pacific (UNCITRAL-RCAP) and the Thailand Arbitration Center (THAC), the Conference was part of the regional celebratory roadshow on the occasion of the 60th Anniversary of the New York Convention and of the 6th Anniversary of the UNCITRAL-RCAP.

The Conference aimed to have a comprehensive discussion on convergence in the use of arbitration, mediation and other

forms of alternative dispute resolution, as well as the latest trends and developments in ADR.

Recent developments in the international mediation were also discussed that included professionalization, specialization, internationalization, and consolidation of the practice of mediation with the aim of making mediation more attractive to parties.

A panel of experts also discussed environmental arbitration and online dispute resolution and the latter's relevance to the present times when communications technology plays an important role in trade of goods and services.

The Conference focused on legal convergence geared towards more development in cross-border arbitration and mediation not only in the Greater Mekong Subregion but also beyond to aid in international trade and investment.

According to the THAC, around 300 participants, composed of arbitration and mediation practitioners, judges, lawyers, government officials of different countries and even Thai law students attended the Conference. Participating in the two-day event on behalf of the Office for Alternative Dispute Resolution (OADR) were OIC-Director and State Counsel Albert Ignatius C. Abragan II, and OIC-Deputy Directors State Counsel Mary Grace V. Pulido Sadian and Associate Prosecution Attorney II Jerome I. Coronel.

ADRC of Bhutan meets with OADR officials

The Chief of the Alternative Dispute Resolution Center (ADRC) of the Kingdom of Bhutan visited the Office for Alternative Dispute Resolution last 21 May 2018 and expressed interest to learn and gather information on the current setup and functions of the Philippines' OADR.

Singapore Deputy Chief of Mission visits OADR

The Office for Alternative Dispute Resolution (OADR) was visited by Singaporean Deputy Chief of Mission to the Philippines Zhou Suli on 12 July 2018. She was met by State Counsel Bernadette C. Ongoco, OADR OIC-Executive Director, State Counsel Leilani R. Fajardo-Aspiras, OADR OIC-Director for Administration and Finance, and Director Ma. Christina V. Abalos of the OADR'S Policy, Compliance and Monitoring Division.

Deputy Chief of Mission Suli relayed the gratitude of the Minister of Law of Singapore to the Philippines for the latter's continuous support to the UN Commission on International

Mr. Chimi Dorje, the Chief of the ADRC, shared that the ADRC, which was created in 2016, is still being funded by the Government of Bhutan. He and Mr. Tashi Dendup, a law practitioner in Bhutan, decided to visit the Philippines to find out how ADR is practised in the country and to gain insights on how to operationalize the ADRC.

In turn, OADR OIC-Executive Director Bernadette C. Ongoco briefed the ADRC of the current organizational setup of the OADR while the directors of

the different divisions informed the ADRC of the functions of their respective divisions, as well as the activities lined up by the OADR for 2018 to fulfill the mandate of the Office.

The ADRC representatives expressed their gratitude to their OADR counterparts for sharing the OADR's experience and efforts in disseminating information about the use of ADR. They were also provided with copies of the OADR Handbook which contains the various laws and issuances of the Philippines on ADR.



Trade Law (UNCITRAL) and mentioned that the signing ceremony for the UN Convention on International Settlement Agreements Resulting from Mediation will be held in Singapore in 2019. The officials then discussed the continued use of alternative dispute resolution (ADR) mechanisms in dispute settlement.

Director Fajardo-Aspiras discussed with Deputy Chief Suli about the ongoing

Nationwide Conference for Students and ADR Stakeholders to promote ADR as well as the planned coordination with the Commission on Higher Education and the Department of Education to include ADR in the students' curriculum.

The visit proved to be fruitful as the exchange of ideas strengthened the ties between the Philippines and Singapore with regard to cooperation in alternative dispute resolution.



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MISSION

The OADR shall promote, develop, and expand the use of Alternative Dispute Resolution (ADR) towards fast, accessible, convenient, and economical administration of justice.

VISION

The OADR shall be the premier institution of excellence in the promotion, development and expansion of the use of ADR as a mode of resolving disputes towards the effective and efficient administration of justice.

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