

The Committee on Ways and Means in the 16th Congress: *A Breather from Burdensome Taxes!*



by

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Among the 39 standing Committees¹ in the Senate to which bills and resolutions of different subject matters are referred, the Committee on Ways and Means is considered a major committee as it deals with generally all types of revenues and collection of taxes, duties, tariffs and fees². Since taxes are the lifeblood of the government and are vital in carrying out all government operations, the mandate of the Committee is to find ways to generate and increase revenues through tax and other sources/forms of income for the government.

It is important to note that legislative measures involving taxes and revenues are often upon the behest of Malacañang and should always be initiated by the House of Representatives as required by the Constitution³. As asserted by Senator Ralph Recto, who chaired the Committee for three (3) terms⁴, “*A tax is not a unilateral act of the Senate*⁵.”

In the 16th Congress (July 01, 2013 to June 30, 2016), the Committee on Ways and Means took a twist from its not so popular reputation when it provided a respite to the people, especially the taxpayers, through legislation of significant bills which were enacted into laws.

1 Section 13, Rule X, Rules of the Senate

2 Rule X, Section 13(5) of the Rules of the Senate, “*All matters relating to revenue generally, taxes and fees, tariffs, loans and other sources and forms of revenue.*”

3 Article VI, Section 24 of the Constitution, *viz.*: “*All appropriation, revenue or tariff bills, bills authorizing increase of the public debt, bills of local application, and private bills shall originate exclusively in the House of Representatives, but the Senate may propose or concur with amendments.*”

4 Senator Ralph Recto was the Chairman of the Committee on Ways and Means from 2001-2004 (12th Congress), 2004-2007 (13th Congress) and 2010-2013 (15th Congress).

5 Privilege Speech of Senator Recto on October 15, 2012.

The Committee is reputed for passing bills which more often than not are burdensome to the people or "**pahirap sa tao**". This time, however, the Committee came out with initiatives which either increased the taxpayers' take home pay and their spending capacity or provided reliefs through tax exemptions and improved revenue administration/collections. The laws recently passed by the Committee are deemed necessary in order to adapt to changing times and keep pace with the growing economy of the country.

Because most of the Committee's initiatives are not acceptable or despised by the people as exemplified by the Expanded Value Added Tax and the Sin Taxes, it can also be said that only a few senators, more likely those who are re-electionists or vying for higher post, dared to chair the Ways and Means Committee. Senator Recto, in one of his speeches in the Plenary when he was still the Committee chair in the 15th Congress, lamented that "*A Ways and Means Committee chair has to plod on and just be comforted by the thought that although what he's doing might be unpopular, it is right*". Senator Recto also stressed that "*no tax measure is non-debatable and amendment-proof*" because all tax bills will always undergo scrutiny from critical Senators because of the bills' effect on the economy and in the everyday lives of the people. And the Chairman will have to pass through the eye of a needle during grueling debates and interpellations.

Senator Juan Edgardo "Sonny" Angara is the Chairman of the Committee during the entire 16th Congress. He's being a neophyte, a first-terminer Senator elected in 2013, did not discourage him to take the challenge of spearheading the Committee.

In the Committee, several pieces of legislation were thoroughly studied and subjected to numerous public hearings, meetings or consultations. Most of the bills prioritized by the Committee dealt with increasing the purchasing power of the working class as well as improving revenue generation for the government.

Under Senator Angara's term, a total of 168 bills and resolutions were primarily referred to the Ways and Means Committee, broken down as follows: 121 Senate Bills, 7 House Bills, 39 Resolutions, and 1 Joint Resolution.

Out of the 168 primary referrals, 56 Senate/House Bills and Resolutions were subjected to public hearings, consultations and technical working group meetings (TWGs). The Committee has conducted 18 public hearings, 7 TWGs, and 6 Bicameral Committee Conferences.

Among the initiatives heard by the Committee and debated upon on the Senate Floor, three (3) were approved by both the Senate and House of Representatives which eventually became laws, namely:

- **Republic Act No. 10653**⁶, otherwise known as "Adjusting the 13th Month Pay and Other Benefits' Ceiling" was signed by President Aquino III on February 12, 2015, and authored in the Senate by Senators Recto, Lapid, Angara, et al.

The law increased the tax-exempt threshold for the 13th month pay, Christmas bonus and productivity incentives given to private and government employees from Php30,000.00 to Php82,000.00. The most distinct feature of the law is that the President shall adjust the new ceiling to inflation in 2018 using the Consumer Price Index (CPI), as published by the National Statistics Office (NSO) now the Philippine Statistics Authority or PSA, every three (3) years thereafter without the need for legislative fiat. This provision underscored the need to keep pace with inflation in order to increase workers' disposable income and purchasing power. The principal author, Senator Recto, in his press release emphasized that "*the passage of RA 10653 means that the government is concerned with the people's welfare and is one with their aspirations for a better life*"⁷.

- **Republic Act No. 10708**⁸, also known as the "Tax Incentives Management and Transparency Act" was signed by the President on December 09, 2015, and authored in the Senate by Senators Drilon, Recto and Angara.

This law seeks to enhance fiscal accountability and transparency in the grant and management of tax incentives whereby 1) tax returns and complete annual tax incentives reports are required to be submitted by "registered business entities" to the concerned investment promotion agencies (IPAs); 2) non-compliance is punishable by a fine of Php100,000.00 (1st violation), Php500,000.00 (2nd violation) and cancellation (3rd violation); and 3) monitoring of tax incentives shall be done by DOF while NEDA is mandated to conduct a cost-benefit analysis on the investment incentives to determine the impact of the tax incentives to the Philippine economy.

The main purpose of the law is to better monitor the fiscal incentives which the government gives the business sector in order to ensure that the revenue loss actually leads to more investments and high-income jobs⁹.

6 Republic Act No. 10653 - AN ACT ADJUSTING THE 13TH MONTH PAY AND OTHER BENEFITS CEILING EXCLUDED FROM THE COMPUTATION OF GROSS INCOME FOR PURPOSES OF INCOME TAXATION, AMENDING FOR THE PURPOSE SECTION 32(B), CHAPTER VI OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED.

7 Press Release dated February 12, 2015.

8 Republic Act (RA) No. 10708 - AN ACT ENHANCING TRANSPARENCY IN THE MANAGEMENT AND ACCOUNTING OF TAX INCENTIVES ADMINISTERED BY INVESTMENT PROMOTION AGENCIES

9 Press Release of Senator Angara dated May 26, 2015.

- **Republic Act No. 10754¹⁰** which expands the benefits and exemptions of persons with disability or PWDs was signed by President Aquino III on March 29, 2016, and authored in the Senate by Senators Recto, Aquino IV, Legarda, Angara, et al.

To give reprieve to around 1.44 million PWDs¹¹, the law exempts them from the 12% Value Added Tax on certain goods and services (Sec. 1) on top of the regular 20% discount being enjoyed by them on medical and dental services; purchase of medicines; admission fees in theaters and concerts; bus/MRT/LRT fares; and all services in hotels, restaurants and recreation centers, among others. The additional VAT exemption makes the benefits and exemptions being enjoyed by PWDs at par with those of the senior citizens.

Another salient feature of the law is the granting of a Php25,000.00 annual income tax deduction to a relative who lives with and takes care of his/her disabled kin (Sec. 2).

In addition to the three (3) new laws, there are still 3 enrolled bills which are pending signature of the President, to wit:

- 1) Local Water Districts (SBN2518/HBN3675)¹², is authored in the Senate by Senators Recto and Angara, and passed by both Houses of Congress on February 02, 2016. The LWD bill seeks to provide for the automatic condonation of the pending income tax liabilities of local water districts deleting the conditions previously specified in the present law. These income liabilities are those incurred from the period August 13, 1996 until the effectivity of RA 10026 in March 2010. According to the BIR, the total receivables/delinquent accounts of LWDs amount to Php1.01 billion.
- 2) VAT exemption of Sugar, (SBN 2987/HBN 5713)¹³, is authored by Senator Osmeña III, and passed by both Houses of Congress on February 02, 2016. The measure purports to clarify the definition of raw sugar and raw cane sugar. At present the BIR treats raw sugar as VAT-able. Under the definition in the proposed law, raw sugar and raw cane sugar shall be treated as one and the same, thus will both be VAT-exempt (Section 1). It also provided that the services rendered by raw sugar growers and importers shall be likewise exempted from VAT.
- 3) The Customs Modernization and Tariff Act or CMTA (SBN 2968/HBN 5525)¹⁴, is authored in the

Senate by Senators Osmena III, Escudero, Recto, Ejercito-Estrada, Poe, Aquino IV, Defensor Santiago, A. Cayetano, Binay, Ejercito, Angara, Villar and Pimentel III, and passed by both Houses of Congress on February 02, 2016. The proposed law seeks to expressly repeal the outdated Tariff and Customs Code of the Philippines of 1978, as amended and making the country's Customs laws compliant with the Revised Kyoto Convention. Senate President Pro-Tempore Ralph Recto summarized the CMTA bill as "*a raft of measures which would make the Bureau of Customs (BOC) processes simple, streamlined, transparent and fast*"¹⁵.

The salient features of this measure are: 1) initiating the application of information and communications technology (Sec. 109) to enhance customs control and to support a cost-effective and efficient customs operations geared toward a paperless customs environment. Electronic lodgement of the goods declaration will also be allowed. This would mean lesser manual intervention in the BOC to prevent corruption; 2) increasing the *de minimis* value from Php10.00 to Php10,000.00 (Sec. 423); 3) providing clear provisions on transshipment which is a rich source of smuggling (Sec. 603); and 4) increasing the value of 'Balikbayan' Boxes OFWs can bring in or send to their families and relatives in the Philippines free of duties and taxes from Php10,000.00 to Php150,000.00, to be adjusted by the President to its present value every 3 years using the CPI as published by the PSA (Sec. 800 paragraph "g")¹⁶.

As of this writing, the enrolled copies of the 3 bills for signature of the President were submitted to by the Presidential Legislative Liaison Office (PLLO) to Malacañang for review of its Legal Department.

It is hoped that the three enrolled bills will not be vetoed by President Benigno Aquino III and suffer the same fate of the additional 2,000 SSS Pension hike (16th Congress) and the Proposed Centennial law (15th Congress). The same goes with the newly signed laws whose implementation might be deferred due to delayed publication in newspapers as required by law or prolonged drafting by the concerned agency(ies) of the necessary Implementing Rules and Regulations as in the present case of TIMTA and PWD laws.



10 Republic Act No. 10754 AN ACT EXPANDING THE BENEFITS AND PRIVILEGES OF PERSONS WITH DISABILITY (PWDs).

11 2010 Census of Population and Housing.

12 "AN ACT REMOVING THE CONDITIONS FOR THE CONDONATION OF ALL UNPAID INCOME TAXES DUE FROM LOCAL WATER DISTRICTS, AMENDING FOR THE PURPOSE SECTION 289-A OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED."

13 "AN ACT DEFINING RAW SUGAR OR RAW CANE SUGAR, AMENDING SECTION 109(A) AND (F) OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES."

14 "AN ACT MODERNIZING THE CUSTOMS AND TARIFF ADMINISTRATION (CMTA)."

15 Press Release dated March 14, 2016.

16 Proposed amendments by Senator Ralph Recto in the Plenary.

TAX NEWS DIGEST

"BIR reports 99% tax stamp rule compliance"



"Up to 99 percent of cigarette packs in the country now bear tax stamps, data from the Department of Finance (DOF) and the World Bank showed.

"Liquor industry players, meanwhile, are closely working with the Bureau of Internal Revenue (BIR) to address concerns ahead of the planned implementation of the Internal Revenue Stamps Integrated System (Irsis) for distilled spirits and fermented liquor this year. IRSIS is aimed at ensuring collection of correct excise taxes slapped on "sin" products.

"Data on the DOF's website showed that during the week of Jan. 3, 99.16 percent of cigarette packs in retail outlets adhered to IRSIS on tobacco products, which the BIR started to implement in late 2014.

In the week of Jan. 10, monitored compliance was at 98.79 percent, while the week of Jan. 17 showed 99.08 percent compliance." (PDI, 18 January 2016)

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"Asia to fuel global growth this year, say experts"



"The economic outlook around Asia is pinched with uncertainty, but this should not prevent the region from continuing to expand this year.

"Such was the sentiment at the opening Monday of the Asian Financial Forum 2016 (AFF) at the Hong Kong Convention and Exhibition Center.

"Vincent Lo, chair of the Hong Kong Trade Development Council, pointed out that Asia and China would continue to fuel global growth this year, although at a slower pace. Regional growth in Asia is projected at a little more than 3 percent, still better than the expected US economic growth of 2.7 percent for 2016.

"Much of the optimism at the annual financial gathering revolved around China's Belt and Road Initiative, a key strategy launched by the Chinese government to promote cooperative development in Asia, Europe, Middle East and Africa." (PDI, 19 January 2015)

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"Demand for real estate loans rose in Q4 2015"



"Banks reported higher demand for real estate loans during the fourth quarter of last year on the back of a growing economy, a trend expected to be sustained in the first three months of 2016.

"The results of the Bangko Sentral ng Pilipinas' (BSP) Fourth Quarter 2015 Senior Bank Loan Officers' Survey showed that a number of banks indicated increased demand for commercial real estate loans on the back of clients' improved economic outlook and increased customer inventory financing needs."

"In the first quarter of this year, a number of banks expect demand for commercial real estate loans to increase further" even as the majority of the respondent-banks anticipate generally steady loan demand," the BSP said.

"According to the BSP, overall credit standards for commercial real estate loans were basically unchanged during the fourth quarter of 2015, as indicated by all 35 universal and commercial banks that participated in the survey." (PDI, 25 January 2016)

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"Gov't urged to seek new OFW markets"



Cash remittance inflows will remain robust despite economic or political troubles in the biggest overseas job markets if a sizable number of Filipino workers will continuously be deployed to smaller, nontraditional destinations, according to the Department of Finance's chief economist.

"The country should continue exploiting nontraditional markets for deploying OFWs [overseas Filipino workers] to reduce risks. While OFWs are in professions that are socially necessary (such as nursing, education and management) and are therefore less prone to job turnovers, reduced concentration could minimize risks from sociopolitical upheavals and economic instability," Finance Undersecretary Gil S. Beltran said in an economic bulletin last week.

"The destination of OFWs is becoming more dispersed. Except for Europe and Oceania, the share of other countries which are usually the smaller countries is growing faster than traditional markets," Beltran noted.

"While the steep decline in global oil prices has yet to impact on remittance flows from the Middle East, Beltran urged the Department of Labor and Employment to "be ready with viable options in case the economic crunch starts to bite." (PDI, 25 January 2016)

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"Tourism earnings projected to hit \$6.5B in '16"



"The Philippine tourism industry is well poised to sustain its growth momentum this year, as earnings are projected to hit \$6.5 billion, while international tourist arrivals are expected to breach the six-million mark."

"Earnings from tourism activities last year were estimated to have reached about \$6 billion while tourist arrivals stood at 5.3 million, Tourism Undersecretary Benito C. Bengzon Jr. said on the sidelines of the Hospitality Investment Conference on Thursday.

"According to Bengzon, the local tourism industry currently accounts for 8.5 percent of the gross domestic product (GDP). The projected \$6.5 billion earnings this year will bring the industry closer to its goal of accounting for 10 to 12 percent of the GDP.

"Such goal is expected to be realized in three to five years, he added. Bengzon said the expected growth this year would likely be driven by three critical factors: greater air connectivity, expanding capacity and the continued aggressive marketing and promotions campaign by the DOT." (PDI, 28 January 2016)

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"PH signs Asean air pact, joins region's integrating skies"



The Philippines has finally acceded to key air transport liberalization agreements with its Association of Southeast Nations (Asean) neighbors, paving the way for increased travel and trade within the region, and possibly cheaper flights.

"The Department of Transportation and Communications (DOTC) said in a statement on Sunday that President Aquino had signed Protocols 5 and 6 of the Asean Multilateral Agreement on Air Services, or MAAS, on Feb. 3.

"With the signing, Philippine air carriers will be allowed to fly unlimited frequencies to and beyond the capital cities" of the Asean. This, the DOTC said, would lead to better and more efficient connectivity and translate to more competitive fares and services.

"As the next step, the DOTC and the Civil Aeronautics Board will assist Philippine air carriers in securing additional flight schedules from each of the nine other Asean member states. They are Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Singapore, Thailand and Vietnam." (PDI, 9 February 2016)



REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE COMMISSIONER OF INTERNAL REVENUE, Petitioner, v. TEAM (PHILS.) ENERGY CORPORATION (FORMERLY MIRANT (PHILS.) ENERGY CORPORATION), Respondent. (G.R. No. 188016, January 14, 2015)

Facts:

The antecedent events in the words of the Supreme Court:

"Respondent Mirant (Philippines) Energy Corporation, a domestic corporation, is primarily engaged in the business of developing, designing, constructing, erecting, assembling, commissioning, owning, operating, maintaining, rehabilitating, and managing gas turbine and other power generating plants and related facilities for conversion into electricity, coal, distillate and other fuel provided by and under contract with the Government, or any subdivision, instrumentality or agency thereof, or any government-owned or controlled corporations or any entity engaged in the development, supply or distribution of energy. On August 16, 2001, the respondent filed with the Securities and Exchange Commission (SEC) its Amended Articles of Incorporation stating its intent to change its corporate name from Mirant (Philippines) Mobile Corporation to Mirant (Philippines) Energy Corporation; and to include the business of supplying and delivering electricity and providing services necessary in connection with the supply or delivery of electricity. The SEC approved the amendment on October 22, 2001.

"The respondent filed its annual income tax return (ITR) for calendar years 2002 and 2003 on April 15, 2003 and April 15, 2004, respectively, reflecting overpaid income taxes or excess creditable withholding taxes in the amounts of P6,232,003.00 and P10,134,410.00 for taxable years 2002 and 2003, respectively. It indicated in the ITRs its option for the refund of the tax overpayments for calendar years 2002 and 2003.

"On March 22, 2005, the respondent filed an administrative claim for refund or issuance of tax credit certificate with the Bureau of Internal Revenue (BIR) in the total amount of P16,366,413.00, representing the overpaid income tax or the excess creditable withholding tax of the respondent for calendar years 2002 and 2003.

"Due to the inaction of the BIR and in order to toll the running of the two-year prescriptive period for claiming a refund under Section 229 of the National Internal Revenue Code (NIRC) of 1997, the respondent filed a petition for review in the Court of Tax Appeals (CTA) on April 14, 2005."

Issue:

Whether the respondent Mirant proved its entitlement to the refund.

Held:

The Supreme Court (SC) stated that the Commissioner of Internal Revenue's (CIR) petition is without merit. The SC referred to Section 76 of the Tax Code in resolving the case. Said the Court:

"Section 76 of the NIRC outlines the mechanisms and remedies that a corporate taxpayer may opt to exercise, viz:

"Section 76. Final Adjusted Return. - Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:

- (A) Pay the balance of the tax still due; or
- (B) Carry over the excess credit; or
- (C) Be credited or refunded with the excess amount paid, as the case may be.

"In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. Once the option to carry over and apply the excess quarterly income tax against income tax due for the taxable years of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor."

The SC explained:

"The two options are alternative and not cumulative in nature, that is, the choice of one precludes the other. The logic behind the rule, according to Philam Asset Management, Inc. v. Commissioner of Internal Revenue, is to ease tax administration, particularly the self-assessment and collection aspects. In Philam Asset Management, Inc., the Court expounds on the two alternative options of a corporate taxpayer on how the choice of one option precludes the other, viz:

"The first option is relatively simple. Any tax on income that is paid in excess of the amount due the government may be refunded, provided that a taxpayer properly applies for the refund.

"The second option works by applying the refundable amount, as shown on the FAR of a given taxable year, against the estimated quarterly income tax liabilities of the succeeding taxable year.

"These two options under Section 76 are alternative in nature. The choice of one precludes the other. Indeed, in Philippine Bank of Communications v. Commissioner of Internal Revenue, the Court ruled that a corporation must signify its intention – whether to request a tax refund or claim a tax credit – by marking the corresponding option box provided in the FAR. While a taxpayer is required to mark its choice in the form provided by the BIR, this requirement is only for the purpose of facilitating tax collection.

"One cannot get a tax refund and a tax credit at the same time for the same excess income taxes paid. x x x"

The Supreme Court finally resolved the case in favor of Mirant. It stated:

"With respect to the third requirement, the respondent proved that it had met the requirement by presenting the 10 certificates of creditable taxes withheld at source. The petitioner did not challenge the respondent's compliance with the requirement.

*"We are likewise unmoved by the assertion of the petitioner that the respondent should have submitted the quarterly returns of the respondent to show that it did not carry-over the excess withholding tax to the succeeding quarter. When the respondent was able to establish *prima facie* its right to the refund by testimonial and object evidence, the petitioner should have presented rebuttal evidence to shift the burden of evidence back to the respondent. Indeed, the petitioner ought to have its own copies of the respondent's quarterly returns on file, on the basis of which it could rebut the respondent's claim that it did not carry over its unutilized and excess creditable withholding taxes for the immediately succeeding quarters. The BIR's failure to present such vital document during the trial in order to bolster the petitioner's contention against the respondent's claim for the tax*

refund was fatal."

The petition for review on certiorari was denied.

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**WINEBRENNER & IÑIGO
INSURANCEBROKERS,**

INC., Petitioner, v. COMMISSIONER OF INTERNAL REVENUE, Respondents. (GR No. 206526, January 28, 2015)

Facts:

The background of the case is as follows:

Petitioner *Winebrenner & Iñigo Insurance Brokers, Inc.* filed its annual income tax return (ITR) for calendar year 2003.

On April 7, 2006, petitioner applied for an administrative tax credit/refund claiming entitlement to the refund of its excess or unutilized creditable withholding tax (CWT) for calendar year (CY) 2003 with the Bureau of Internal Revenue (BIR).

The BIR did not act on the claim, hence, a petition for review was filed by petitioner before the Court of Tax Appeals (CTA) on April 11, 2006.

On April 13, 2010, CTA Division partially granted petitioner's claim. Both the petitioner and BIR moved for Reconsideration. BIR filed for denial, while petitioner prayed for the grant of the entire amount.

The CTA-Division reversed itself. *In an Amended Decision, it denied the entire claim of petitioner. The CTA deduced that petitioner should have presented as evidence its first, second and third quarterly ITRs for the year 2004 to prove that the unutilized CWT being claimed had not been carried over to the succeeding quarters.* The appeal to the CTA En Banc went to naught.

Issue:

"The sole issue here is whether the submission and presentation of the quarterly ITRs of the succeeding quarters of a taxable year is indispensable in a claim for refund."

Held:

The Supreme Court (SC) reinstated the CTA Division decision insofar as it granted petitioner the reduced refund in the amount of P2,737,903.34 as excess creditable withholding tax paid for taxable year 2003.

The elucidation of the High Court partially said:

"There is no question that those who claim must not only prove its entitlement to the excess credits, but likewise must prove that no carry-over has been made in cases where refund is sought. x x x.

"Proving that no carry-over has been made does not absolutely require the presentation of the quarterly ITRs.

"In Philam, the petitioner therein sought for recognition of its right to the claimed refund of unutilized CWT. The CIR opposed the claim, on the grounds similar to the case at hand, that no proof was provided showing the non-carry over of excess CWT to the subsequent quarters of the subject year. In a categorical manner, the Court ruled that the presentation of the quarterly ITRs was not necessary. Therein, it was written:

"Requiring that the ITR or the FAR of the succeeding year be presented to the BIR in requesting a tax refund has no basis in law and jurisprudence.

"First, Section 76 of the Tax Code does not mandate it. The law merely requires the filing of the FAR for the preceding – not the succeeding – taxable year. Indeed, any refundable amount indicated in the FAR of the preceding taxable year may be credited against the estimated income tax liabilities for the taxable quarters of the succeeding taxable year. However, nowhere is there even a tinge of a hint in any provisions of the [NIRC] that the FAR of the taxable year following the period to which the tax credits are originally being applied should also be presented to the BIR.

"Second, Section 5 of RR 12-94, amending Section 10(a) of RR 6-85, merely provides that claims for refund of income taxes deducted and withheld from income payments shall be given due course only (1) when it is shown on the ITR that the income payment received is being declared part of the taxpayer's gross income; and (2) when the fact of withholding is established by a copy of the withholding tax statement, duly issued by the payor to the payee, showing the amount paid and the income tax withheld from that amount.

"That factual distinction does not negate the proposition that subsequent quarterly ITRs are not indispensable. The logic in not requiring quarterly ITRs of the succeeding taxable years

*to be presented remains true to this day. What Section 76 requires, just like in all civil cases, is to prove the *prima facie* entitlement to a claim, including the fact of not having carried over the excess credits to the subsequent quarters or taxable year. It does not say that to prove such a fact, succeeding quarterly ITRs are absolutely needed.*

"This simply underscores the rule that any document, other than quarterly ITRs may be used to establish that indeed the non-carry over clause has been complied with, provided that such is competent, relevant and part of the records. The Court is thus not prepared to make a pronouncement as to the Indispensability of the quarterly ITRs in a claim for refund for no court can limit a party to the means of proving a fact for as long as they are consistent with the rules of evidence and fair play. The means of ascertainment of a fact is best left to the party that alleges the same. The Court's power is limited only to the appreciation of that means pursuant to the prevailing rules of evidence. To stress, what the NIRC merely requires is to sufficiently prove the existence of the non-carry over of excess CWT in a claim for refund.

"The implementing rules similarly support this conclusion, particularly Section 2.58.3 of Revenue Regulation No. 2-98 thereof. There, it provides as follows:

"SECTION 2.58.3. Claim for Tax Credit or Refund.

"(A) The amount of creditable tax withheld shall be allowed as a tax credit against the income tax liability of the payee in the quarter of the taxable year in which income was earned or received.

"(B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payments shall be given due course only when it is shown that the income payment has been declared as part of the gross income and the fact of withholding is established by a copy of the withholding tax statement duly issued by the payer to the payee showing the amount paid and the amount of tax withheld therefrom."

In finally disposing of the controversy, the SC pronounced:

"Verily, with the petitioner having complied with the requirements for refund, and without the CIR showing contrary evidence other than its bare assertion of the absence of the quarterly ITRs, copies of which are easily

verifiable by its very own records, the burden of proof of establishing the propriety of the claim for refund has been sufficiently discharged. Hence, the grant of refund is proper.

"The Court does not, and cannot, however, grant the entire claimed amount as it finds no error in the original decision of the CTA Division granting refund to the reduced amount of P2,737,903.34. This finding of fact is given respect, if not finality, as the CTA, which by the very nature of its functions of dedicating itself exclusively to the consideration of the tax problems has necessarily developed an expertise on the subject. It being the case, the Court partly grants this petition to the extent of reinstating the April 23, 2010 original decision of the CTA Division.

"The Court reminds the CIR that substantial justice, equity and fair play take precedence over technicalities and legalisms. The government must keep in mind that it has no right to keep the money not belonging to it, thereby enriching itself at the expense of the law-abiding citizen or entities who have complied with the requirements of the law in order to forward the claim for refund. Under the principle of solution indebiti provided in Article 2154 of the Civil Code, the CIR must return anything it has received.

*"Finally, even assuming that the Court reverses itself and pronounces the indispensability of presenting the quarterly ITRs to prove entitlement to the claimed refund, petitioner should not be prejudiced for relying on Philam. The CTA En Banc merely based its pronouncement on a case that does not enjoy the benefit of *stare decisis et non quieta movere* which means "to adhere to precedents, and not to unsettle things which are established." As between a CTA En Banc Decision (*Millennium*) and this Court's Decision (*Philam*), it is elementary that the latter should prevail."*

"WHEREFORE, the Court partly grants the petition. The March 22, 2013 Decision of the Court of Tax Appeals En Banc is **REVERSED**. The April 13, 2010 Decision of the Court of Tax Appeals Special First Division is **REINSTATED**. Respondent Commissioner of Internal Revenue is ordered to **REFUND** to petitioner the amount of P2,737,903.34 as excess creditable withholding tax paid for taxable year 2003."

Editor's Note: Starting this issue, we will accommodate views and scholarly write-ups of our readers and stakeholders.

COMPATIBILITY OF ELECTRONIC ONLINE DISPUTE RESOLUTION MECHANISM ON COMMERCIAL CASES IN THE UNITED STATES OF AMERICA AND OTHER SELECTED COUNTRIES WITH THE ALTERNATIVE DISPUTE RESOLUTION LAW OF 2004 : A CRITICAL ANALYSIS AND PROPOSAL FOR REFORMS

by

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I. Introduction

It cannot be denied that in the process of integration of economies and societies of different countries across the globe, globalization has been a great stimulation and tool to break from economic barriers in envisioning the work as a market of trade. The number of businesses and customers transacting in the opposite corners of the world is increasing rapidly because transactions generate disputes. "This is an era in which change is not only occurring rapidly but at an accelerated pace."¹

The emergence of the Internet and its universal proliferation² has opened a Pandora's box of legal issues. As the Internet rapidly emerges as a speedy and cost-effective way of conducting business, it also increases the number of disputes arising out of the use of this new technology.³ The internet promises to be a more economical, influential and global medium of doing business. In order to ensure that its potential is not undermined, it is incumbent that dispute resolution mechanisms used in settling online disputes are efficacious.

In the context of the Internet, where parties located in different corners of the world can contract with each other at the click of a mouse, litigation of online disputes is often inconvenient, impractical, time-consuming and prohibitive.⁴ In such situations, the injured consumer or party might be left without an effective remedy and the dishonest Internet business or website owner would stand to gain.

Providing an alternative approach to redress such grievances might assist in resolving such disputes and gaining consumer confidence in e-commerce. Alternative Dispute Resolution (ADR) is an appurtenant nominee for such an approach.⁵ Problems and issues brought by the advent of electronic commerce need to be addressed by an online alternative dispute mechanism other than the traditional ADR in which people have been used to. Online Dispute Resolution (ODR) has been labelled "a logical and natural step" for the resolution of disputes that arise on the Internet⁶ and which other countries had already adopted and found to be effective. However, can ODR become an effective mechanism for resolving commercial disputes in the Philippines on the basis of the experience of other countries? Is ODR suitable, convenient or possible to develop in the Philippines without massive Internet connectivity? Would this mechanism be useful where access is only available to a limited

1. Ray Kurzweil, *The Law of Accelerating Returns*.
2. In November 30, 2015, approximately 3,366,261.156 people used the Internet out of the 7,259,902.243 population, with a growth of 832.5% from 2000-2015. *World Internet Usage and Population Statistics*. Global Reach, Global Internet Statistics, at <http://www.gireach.com/globstats/index.php3> (last updated November 30, 2015). Copy of which is attached in this manuscript.
3. Aashit Shah. *Using ADR to Resolve Online Disputes*. Richmond Journal of Law & Technology. Volume X. Issue 3.
4. See Thomas Schultz, *Online Arbitration: Binding or Non-Binding?*, ADR ONLINE MONTHLY, at <http://www.ombuds.org/center/adr2002-11-schultz.html> (last visited Nov. 22, 2003).
5. Ethan Katsh et. al., *E-Commerce, E-Disputes and E-Dispute Resolution: In the Shadow of "eBay Law,"* 15 OHIO ST. J. ON DISP. RESOL. 705, 707, 727 (2000). Id. At 707.
6. Rafal Morek. *Regulation of Online Dispute Resolution: Between Law and Technology*. August 2005.

segment of the population? How can this be effectively developed in the current regulatory framework of the ADR law of 2004?

II.

Overview of the effectiveness of ADR

In traditional commercial transactions which result to disputes on commercial agreements and contracts by the parties, the aggrieved party is constrained to resort to the judicial machinery for its resolution. However, due to expected lengthy and costly litigation in bringing the aggrieved party's cause of action in court, the need to resort to "alternative" modes of dispute resolution or more commonly known as "ADR" is highly felt. This sets the emergence of the trend of an alternative remedy of resolving conflicts in an expedient way, thus giving relief to contending parties who are dispensed from unnecessary expenses, delay, and even humiliation brought by litigation. Hence, to address the growing frequency of arbitration for a regulatory law, in 1953, the Philippine Congress enacted Republic Act No. 876,⁷ which was modelled after the US Federal Arbitration Act.

The said law, which expressly authorizes arbitration of domestic disputes not only recognizes the validity, enforceability and irrevocability of arbitration agreements, but it also allows the parties to an arbitration agreement to stipulate that the arbitral award shall be final. Through this law, "the modern view that arbitration as an inexpensive, speedy and amicable method of settling disputes and as a means of avoiding litigation should receive every encouragement from the courts",⁸ has evolved.

The parties in ADR have the flexibility to choose the dispute resolution procedure that seems most appropriate in his/her case given the nature of their relationship, the subject matter of the dispute and their specific needs. This is generally informal, solution-oriented, cost-effective, treated with confidentiality and less adversarial, as opposed to the antagonistic and blame-oriented setting that characterizes the confrontation of parties in court. It likewise avoids procedural and jurisdictional hindrances, contrary to what transpires in a court hearing.

The rationale behind using ADR includes the reduction of the caseloads of overburdened courts, the reduction of expenses and delays from traditional litigations and the provision of alternative means of dispute resolution to those who are disillusioned with the adversarial nature of litigation. This is apart from

the fact that ADR is also seen as a remedy to the problem of clogged court dockets, thus giving the court time to resolve other cases involving more urgent and pressing issues.

Fifty years after the enactment of the Philippine Arbitration Law, President Gloria Macapagal-Arroyo signed into law, R. A. 9285 or the Alternative Dispute Resolution Act.⁹ The law, authored by Senator Francis Pangilinan, Jr., seeks to promote methods of resolving cases other than through traditional court litigations. The enactment of Republic Act No. 9285 was the Philippines' solution in making arbitration an efficient and effective method in dispute resolution especially for international arbitration.

The said law defines ADR system or Alternative Dispute Resolution System as 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, wherein a neutral third party participates to assist in the resolution of issues, which includes arbitration, mediation, conciliation, early neutral evaluation, mini-trial, or any combination thereof.¹⁰ Also the new law provided for the application of the provisions of the Electronic Signatures in Global and E-Commerce Act,¹¹ and its Implementing Rules and Regulations in the proceedings contemplated under the new law.

III.

ODR's Growth and Evolution

When the World Wide Web was invented in 1989 and the Internet Service Providers (ISPs) and first graphical browsers appeared a few years later, there has been an amazing growth and evolution of the internet which even reach the point that it affects the daily lives of every individual. Internet which was once conceptualized as a means and venue for sharing information was transformed into a means of communication and correspondence to everyone, where it even further evolved into a medium for trade and commerce.

Problems and issues brought by the advent of electronic commerce need to be addressed by an online alternative dispute mechanism other than the traditional ADR in which people have been used to. Online Dispute Resolution (ODR) is dispute resolution using information technology conducted at a distance, usually via the Internet, which is independent from the physical location of the parties.

7. An Act to Authorize the Making of Arbitration and Submission Agreements, To Provide for the Appointment of Arbitrators and the Procedure for Arbitration in Civil Controversies, and for Other Purposes ("The Arbitration Law"). Approved June 19, 1953.
8. Eastboard Navigation Ltd., vs. Juan Ysmael Co., Inc., 102 Phil. 1 (1957).
9. Alternative Dispute Resolution Act of 2004.
10. Ibid, Sec. 3 (a).
11. Ibid, Sec. 4.

The latest definition of ODR was proposed in the UNCITRAL Draft Procedural Rules on Online Dispute Resolution for Cross-border Electronic Commerce Transactions 2013, Article 2 (1) which refers to a mechanism for resolving disputes facilitated through the use of electronic communications and other information and communication technology.¹²

The rapid growth of electronic commerce increases the potential for conflicts over contracts which have been entered into online, thus the use of online dispute resolution (ODR) mechanisms to resolve such as e-commerce conflicts is crucial for building consumer confidence and permitting access to justice in an online business environment.¹³ With ODR, no traditional courtroom is involved. Instead, the process of resolving a dispute, especially in the formulation of the solution, is entirely or largely conducted through the Internet.¹⁴

At present, the main application for ODR is extra-judicial ODR which was made in 1996 up to 1997 in US and Canada. This was developed from the use of offline ADR, which is more prevalent in the Anglo-American legal tradition and where the principles of ADR systems are being integrated into the ODR system. The court services around the world are also considering the incorporation of elements of ODR into the ordinary court system. The aim is that, for a lower cost, it will provide an increased access to justice.¹⁵

Asian governments as well as private companies have seen international advancements of ODR where they are introducing forms of ADR to their online services. For instance, Hong Kong, Korea, and Kuala Lumpur jointly operate the ADNDRC, which is one of the four domain name dispute resolution providers globally. In China, the government enacted the Internet Domain Name Regulations and created an online dispute resolution system. The China International Economic and Trade Arbitration Commission adopted the Online Arbitration Rules which was noted as a prominent breakthrough for ODR in Asia. Likewise, Chinese courts are attempting to introduce the use of information technology to litigation. In Japan, while ODR is in its infant stages, the path has

been set for large-scale growth. India has experienced great advancements in e-commerce, partially because of eBay India. eBay India, like eBay in the United States, developed an online dispute resolution policy that demonstrates high success rates.¹⁶ In Latin American countries, ODR is still in its early stages.¹⁷

As it is widely known, a great economic divide still exists between developed and developing countries. One of the consequences of this divide is that, in the area of Information and Communication Technologies ("ICT"), developed countries are several steps ahead of emerging countries, widely enjoying the benefits of connection technologies.¹⁸ It follows that within rich nations, the use of an Internet environment in conflict-resolution is becoming quite widespread. With all this in mind, we aim to analyze the feasibility of ADR for developing countries like the Philippines.

In light of the foregoing, this paper attempts to analyze the effectiveness of Alternative Dispute Resolution (ADR) mechanism in resolving conflicts in the Philippines from the time of its adoption in 2004 until 2014. Further, this work intends to analyze on the effectiveness of Online Dispute Resolution (ODR) in resolving disputes from internet commerce as adopted and applied in other countries, and whether ODR is feasible in the Philippines as an emerging developing country with a growing number of Internet users even though access to the Internet has yet to become widespread. Furthermore, the researcher analyzes on how ODR be made effective and regulated and weighs its compatibility in the ADR Law of 2004. This endeavor is focused on making concrete recommendations and proposal for reforms on how ODR will be integrated as an additional alternative dispute resolution mechanism in the ADR Law of 2004.

Specifically, this paper will focus on resolving the following issues:

1. How effective are the traditional modes of alternative dispute resolution in the Philippines from the time they were adopted in the ADR law of 2004 up to 2014?

12. UNCITRAL. Online Dispute Resolution for Cross-border Electronic Commerce Transactions: Draft Procedural Rules, A/CN.9/WG.III/WP.119, 11 March 2013.
13. V. Bonnet, K. Boudaoud, J. Harms. Electronic Communication Issues Related To Online Dispute Resolution Systems. Centre Universitaire Informatique, University of Geneva, Switzerland
14. Richard Susskind. Tomorrow's Lawyers: An Introduction to Your Future. Oxford University Press. First Edition. p. 92
15. Julia Hornie. Disputes Solved in Cyberspace and the Rule of Law. Electronic Law Journals-JILT 2001.
16. Ed. Modamed S. Abdel Wahab, et. al., Online Dispute Resolution: Theory and Practice: A Treatise on Technology and Dispute Resolution, Journal of High Technology Law. 1 (2012) quoting the contributions to Online Dispute Resolution in Asia of Zhao Yun, Timothy Sze, Tommy Li, and Chittu Nagarajan.
17. See Mark B. Baker, Integration of the Americas: A Latin Renaissance or a Prescription for Disaster? 11 TEMP. INT'L & COMP. L.J. 309, 311 (1997) cited by Albornoz, Maria Mercedes and Martin, Nuria Gonzalez, Feasibility Analysis of Online Dispute Resolution in Developing Countries. Inter-American Law Review, Vol. 44:1.2012.
18. Connection technologies are "tools that connect people to vast amounts of information and to one another." Eric Schmidt & Jared Cohen. The Digital Disruption: Connectivity and the Diffusion of Power, 89 FOREIGN AFFAIRS, 75 (2010) cited by Albornoz, Maria Mercedes and Martin, Nuria Gonzalez, Feasibility Analysis of Online Dispute Resolution in Developing Countries. Inter-American Law Review, Vol. 44:1.2012.

2. How can electronic online dispute resolution (ODR) become an effective mechanism for resolving commercial disputes in the Philippines on the basis of the experience of other countries?
3. How can electronic online dispute resolution be effectively developed in the current regulatory framework of the ADR law of 2004?
4. How can electronic online dispute resolution be adopted and developed in the Philippines without massive Internet connectivity?

IV.

ODR Experiences of other countries

(1) The European Unions framework¹⁹

On 23 April 2008, the EC Directive of the European Parliament and of the Council on Certain Aspects of Mediation in Civil and Commercial Matters (hereafter 'EC Directive on Mediation') was approved by the European Parliament²⁰ and entered into force in June 2008,²¹ purposely to facilitate access to dispute resolution, encourage the use of mediation and to ensure a sound relationship between mediation and judicial proceedings.²² It is in favor of electronic communications and, to an extent, online dispute resolution. It encourages the use of mediation in cross-border disputes and the use of modern communication technologies in the mediation process. It further include provisions of 'ensuring the quality of mediation'²³ and 'information for the general public'²⁴ in support for using ODR methods in the EU.

On May 21, 2013, the first regulation concerning ODR,²⁵ along with the EC Directive on Consumer ADR

was adopted²⁶ by the European Parliament and the Council. The Regulation on Consumer ODR 2013 is considered to be landmark legislation, although it is applicable to resolve consumer contractual disputes. The adoption of the EU Regulation on Consumer ODR 2013 is the recognition of the benefit of using an ODR mechanism for consumer's contractual disputes of online transactions.

This significant recognition and pioneer legislative model may be helpful for the future deployment and legal transplantation of an ODR mechanism in other fields such as B2B contractual transactions, financial services or other types of small claim disputes. It applies to 'the out-of-court resolution of disputes concerning contractual obligations stemming from online sales or service contracts between a *consumer* resident in the Union and a *trader* established in the Union'.²⁷ This regulation is adopted in response to a growing concern of upholding the consumers' confidence for online transactions which is essential to dismantle existing barriers and to boost consumer confidence'.²⁸

(2) ODR, the United States trend²⁹

The study took notice of the absence of uniform legislation regulating ODR services In the United States (US). Self-regulation and guidelines of best practice are the approaches recommended by the American Bar Association (ABA) including introduction of *iADR* Center which is a non-profit, educational and informational entity. The US self-regulation arbitration and mediation module rules from the American Bar Association (ABA) and American Arbitration Association (AAA) according to their study are the most widely used in US ADR practices. The AAA offers fast,

19. Faye Fangfei Wang. Resolving Electronic Commercial Disputes. Law of Electronic Commercial Transactions. Contemporary Issues in the EU, US and China. Second Edition 2014.
20. EC Directive of the European Parliament and of the Council on Certain Aspects of Mediation in Civil and Commercial Matters, Brussels, 28 February 2008, 15003/5/07 REV5. Available at: http://ec.europa.eu/civiljustice/docs/st15003-re05_en07.pdf (last accessed 30 June 2013)
21. Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters, OJ L136/5, 24 May 2008. Available at: <http://eurlex.eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:136:0003:0008:EN:PDF> (last accessed 30 June 2013).
22. EU Press Release Reference: Mediation in Civil and Commercial Matters, MEMO/08/263, Brussels, 23 April 2008. Available at: <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/08/263&type=HTML&aged=0&language=EN&guiLanguage=en> (last accessed 30 June 2013).
23. EC Directive on Mediation 2008, Article 4.
24. Ibid, Article 9.
25. Regulation (EU) No. 524/2013 of the European Parliament and the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No. 2006/2004 and Directive 2009/22/EC (Regulation on consumer ODR), OJ L165/1, 18 JUNE 2013.
26. Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No. 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR), OJ L165/63, 18 June 2013.
27. EU Regulation on Consumer ODR 2013, Article 2 (1).
28. Ibid, Recital 6.
29. Supra at Note 19.

convenient online claim filing through their AAA Web File service known as an ODR platform, which includes functions such as filing claims, making payments, performing online case management, accessing rules and procedures, electronically transferring documents, selecting neutrals, using a case-customized message board and checking the status of their case.³⁰

In 2010, AAA's international division – the International Center for Dispute Resolution (ICDR) – introduced a Manufacturer/Supplier Online Dispute Resolution

Protocol for Manufacturer/Supplier Disputes (known as 'the MS-ODR Program')³¹ The MS-ODR program is designed to help manufacturers and suppliers to resolve small disputes (the total amount does not exceed US\$10,000) quickly, fairly and inexpensively in order to move on with their business relationship. There are two phases in the purposes: negotiation and arbitration. At the end, a dispute is either settled or decided by an arbitrator. The entire process is designed to take no longer than sixty-six (66) days.³² The online negotiation uses the 'double blind bidding' system created by Cyber Settle, a strategic alliance with AAA, and if the dispute does not settle within the 12 days of the online negotiation, it then proceeds to the next stage of online.

(3) The Chinese approach.³³

The scope of ODR in China is broad as while most dispute resolution procedures can be conducted online, it does not exclude offline communications. In most situations, online and offline communications are simultaneously utilized. Secondly, the term is not a simple equivalence to online alternative dispute resolution as it also includes the adoption of online applications in court procedures. Thus, the term can be more complicated.

The government shows effort of harmonizing the standard online arbitration practice in China, one of which is the promulgation of 'Online Arbitration Rules' by China International Economic and Trade Arbitration Commission (CIETAC) on 8 January 2009, which came into force on 1 May 2009. These Rules are formulated to arbitrate online contractual and non-contractual economic and trade disputes and other such disputes.

The CIETAC Online Arbitration Rules apply to the resolution of disputes over electronic commerce transactions and other economic and trade disputes which the parties agree to apply these Rules for dispute resolution.³⁴

In 2005, China Commercial Arbitration website was established by Guangdong Arbitration Commissions (GAC) which has since then offered online arbitration services to resolve disputes related to e-commerce as the whole process can be conducted online.

Notwithstanding the foregoing, the very few rules which define the operation and effects of ODR procedure, which he agrees with some scholars that the government's role is important in promoting the ODR. He suggested that the governmental involvement should improve the effectiveness and recognition of ODR. He however mentioned the efforts of the people's courts in China in introducing information technology on the litigation procedures which is most meaningful to some remote areas as the combination of online and offline mechanisms can be a cost saving and effective way for the people's court to carry out judicial duties.

(4) Africa's ODR³⁵

Owing to the fact that ODR essentially involves utilizing ICT applications to, directly or indirectly, resolve disputes, the study recommends that it is a prerequisite for ODR to have an efficient techno-legal framework that can support ODR modalities. Information technology, the Internet, wide area networking techniques, and broadband connections have made it possible for anyone to transmit significant amounts of information across the globe instantaneously, which improves the conditions of the global economy, accelerates the growth of e-commerce, and creates a positive milieu for the development of ODR.

(5) Australia's ODR³⁶

One of the most significant domestic changes in Australia is linked to the Web 2.0 approach where government and others are adapting policy and processes on an unprecedented scale to take advantage of new technologies and better connectivity.

- 30. AAA Web file. Available at: <https://apps.adr.org/webfile/> last accessed 30 June 2013.
- 31. The ICDB Manufacturer/Supplier Online Dispute Resolution Protocol: MS-ODR Programme. Available at: <http://www.adr.org> or <http://www.adr.org> (last accessed 30 June 2013).
- 32. ICDR Manufacturer/Supplier Online Dispute Resolution Program (Frequently Asked Questions). Available at :<http://www.icdr.org> (last accessed 30 June 2013).
- 33. Dr. Yun Zhao. Online Dispute Resolution in Asia.
- 34. CIETAC Online Arbitration Rules 2009, Article 1.
- 35. Mohamed Abdel Wahab, Ethan Katsh and Daniel Rainey. Online Dispute Resolution Theory and Practice. Eleven International Publishing, The Hague, Netherlands at: www.elevenpub.com.
- 36. Tania Sourdin and Chinthaka Liyanage. "The Promise and Reality of Online Dispute Resolution in Australia,"

Many Australian ADR environments now use Facebook, Twitter and YouTube to engage with business, consumers and stakeholders about dispute resolution and to support dispute avoidance and self managed negotiation strategies.

The study provides that within Australia, ODR has been used to refer to dispute resolution processes conducted with the assistance of communications and information technology, particularly the internet. ODR can include facilitative processes such as online mediation, advisory processes such as online case appraisal and determinative processes such as online arbitration or adjudication. It also includes processes conducted through a computer program or other artificial intelligence that do not involve a "human" practitioner.

(6) ODR in Latin America

According to an author, J. Gamba, in the region, a lot is being developed for ICT to bring efficacy to the administration of justice.³⁷ The same author gives some examples of best practices in the implementation of ICT in the administration of justice in some of the countries of the region, such as Uruguay, where there is a kind of administrative, non judicial proceeding that uses electronic files. Also, Costa Rica, Peru and some Argentinean also has a pilot program for digital filing and case management for Pension Law cases. Brazil has the *Ley de Informatizacao do Processo Judicial N 11,419/2006* and its modification that has implemented, among other reforms, electronic citation and electronic petitions to the courts. In addition, Chile has been implementing reforms for the gradual elimination of the physical case file and has improved cases management in general.

The situation for mobile phone penetration is quite different. In any case, this massive and fast technology adoption phenomenon means a significant change to vulnerable populations of the region. As most did not have regular phones available before, mobile devices elevated life quality and provided access to technology and new services. Still the number of these mobile phones with broadband internet access is still not as high as expected, and most of the projections for the

growth of m-commerce in the region are based on the expectation of the growth of cheap broadband connection through mobile devices.³⁸

The government cooperation with companies, the scientific community and civil society, both at the national and international level, is needed for ODR to flourish in the region in two specific aspects: 1) the promotion of ICT policies to reduce the internal and international digital divide and to overcome social, economic and cultural challenges. 2) The consolidation of an adequate legal framework for ICT in general that would support ODR development.³⁹ Also, ICT structural reforms in the region, cyber legislation harmonization and Digital Economy expansion, are indicators for the readiness of the region in terms of capacity for ODR successful implementation.⁴⁰

(7) ODR in Japan⁴¹

One of the most successful accomplishments in Japan was online application or case filing, such as the online case filing system operated by the Ministry of Justice. On a different note, there are organizations that provide full dispute resolution services online, such as: the ECnetwork, one of the most popular service providers in Japan, which resolves small claim disputes online via emails. There are law firms actively using their websites, chat-room, blogs and/or twitter to answer queries or promote their consulting business, and/or interact with their clients or potential customers.⁴²

In the ADR-OMS (Alternative Dispute Resolution Online Modelling System) adopted in Japan, the authors further noted the use of a unique modelling system to improve dispute resolution processes and the quality of ADR services. ADR-OMS can keep track of a particular Internet incident, encourage and enhance the disputants to settle, use multi-layer network and engine, to house the whole dispute resolution cycle on one platform. The system can cover the flow of whole dispute life cycle and integrate them into a searchable, accessible database, which enables the party to foresee the potential risk and take pre-emptive action to prevent disputes.

- 37. J. Gamboa, Panorama del Derecho Informatico en America Latina y el Caribe, Ed. ECLAC/CEPAL-UN, Santiago de Chile 2010. Accessible at www.eclac.org.org/id.asp?id.asp?id=38898/. Original text in Spanish.
- 38. For more information on mobile ecommerce in the region, see *E-Readiness in Latin America: A Report into Regional Conditions for E-Commerce, 2010*, p. 4.
- 39. Gabriela R. Szlak. Online Dispute Resolution in Latin America, Challenges and Opportunities.
- 40. Ibid
- 41. Dr. Timothy Sze and Tommy Li. Online Dispute Resolution in Asia.
- 42. ODR in Japan is jointly prepared by Dr. Timothy Sze, China ODR Forum and Mr. Tommy Li, an independent IT expert and project management consultant.

(8) ODR in India⁴³

In this study of Chittu Nagarajan, he observed the boon of the Internet and the IT revolution to India's growth and economy. But while millions of people in India work on the Internet every day, the more significant revolution for hundreds of millions of more people is the mobile phone where it has more than 700 million mobile phone users. People are communicating more and transacting more over their phones, and that is generating disputes. E-governance has also gained momentum in recent years, and is now starting to build a suitable IT infrastructure. However, now the landscape is different because ODR extends into the mobile technology space. Mobile phones can be used to send and receive money, for health services, for learning and education, for market information services, or for agriculture and rural development services. When we speak of ODR we are now also thinking of how the tools of dispute resolution can be made available via the mobile phone. The ubiquitous mobile phone known for its affordability, accessibility, connectivity, flexible functionality, with no special skills or literacy required for operation has the capability of extending ODR to India's one billion-plus population.

The author further noted that the e-commerce industry receives and resolves complaints using software tools. One of the early adopters of ODR in this sector was eBay India, which started using online negotiation and mediation to resolve their feedback disputes. eBay India was also a pioneer in launching the Community Court⁴⁴ where trusted community members help resolve disputes amongst sellers and buyers. Public grievance portals and receiving complaints via online or mobile means are now available. An SMS based complaint registry also exists where complaints can be registered via mobile phone. Consumer Complaint websites are mushrooming. The Ministry of Consumer Affairs has its Consumer Online Resource Empowerment (CORE) centre which accepts and resolves complaints end-to-end via a sophisticated online process. An interesting introduction of technology for grievance redress is by the Tamil Nadu Electricity Board which generates a unique ten-digit number for its consumers for redress of grievances. Software tied to SMS technology is used to notify complainants on status of complaints. Rural kiosks will also be leveraged.

(9) ODR in Singapore⁴⁵

In this paper authored by Colin Rule, he noted the support of government for ODR application. On July 31, 2002, the Honorable Chief Justice Yong Pung How launched DisputeManager.com, the first comprehensive ODR service in Asia. Developed by the Singapore Academy of Law, and its subsidiary, the Singapore Mediation Centre (SMC), DisputeManager.com offered three main services; e-Settlement,⁴⁶ Online Mediation and Neutral Evaluation. DisputeManager.com also supported the Singapore Domain Name Dispute Resolution Service, a service similar to ADNDRC, but focused only on resolving Singapore domain name disputes.

(10) ODR in Malaysia

One of the newest and most ambitious private ODR providers in Asia is ODR-World,⁴⁷ started by Chittu Nagarajan in 2004. She designed ODR-World to provide people who have a dispute even for a negligible sum or for non-monetary transactions looking for satisfaction to get what is rightly owed to them.

(11) ODR in Hongkong

In this brief study made by Zhao Yun, Timothy Sze, Tommy Li and Chittu Nagarajan, he mentioned the establishment in 1985 of Hong Kong International Arbitration Center (HKIAC) which pioneered in promoting ODR and provides services in Hong Kong with country code top level domain name .hg (Hong Kong).

They also took notice of the Hong Kong Domain Name Registration Company Limited (HKDNR) which adopted the Domain Name Dispute Resolution Policy for .hk domain name disputes. It basically follows the Uniform Domain Name Dispute Resolution Policy (UDRP) approach. However, one drastic deviation is that all decisions under this Policy will be final and binding.⁴⁸ The HKIAC was approved by the CHHIC in April 2005 to help resolve the Internet Keyword Disputes under the CNNIC Internet Keyword Dispute Resolution Policy. Furthermore, DotAsia Organization (DotAsia) appointed in 2007 the HKIAC as the global official dispute resolution provider to handle disputes and challenges arising out of the launch of the .asia domain. It is also worth noting that the HKIAC has adopted the Electronic Transaction Arbitration Rules

43. Prepared by Chittu Nagarajan.

44. www.ebaycourt.com

45. Colin Rule. Asia: The New Frontier for Online Dispute Resolution.

46. An automated ADR process in which the parties make offers and agree to settle once certain conditions are met)

47. www.disputeresolution.ph

48. Hong Kong Domain Name Registration Company Limited Domain Name Dispute Resolution Policy , effective 27 June 2995, Article 4 (i).

since 2002. The Rules aim "to help parties and Arbitrators take maximum advantage of the flexible procedures available in arbitration for the resolution of disputes quickly and economically."⁴⁹

V. Related UNCITRAL issuances

In providing for the future work on ODR, the United Nations Commission on International Trade law (UNCITRAL) after monitoring the ODR systems currently being experimented within the field of e-commerce considered issues to study, among which are the types of conflicts that may be solved by ODR systems, whether any possible future work on ODR mechanisms should include e-commerce disputes involving both business-to-business as well as business-to-consumer transactions, accrediting ODR providers and to maintain a single database of certified ODR providers for e-commerce transactions.⁵⁰

UNCITRAL took into consideration a note submitted by the Institute of International Commercial Law and different organizations and institutions in the world⁵¹ to the Secretariat in support of the future work

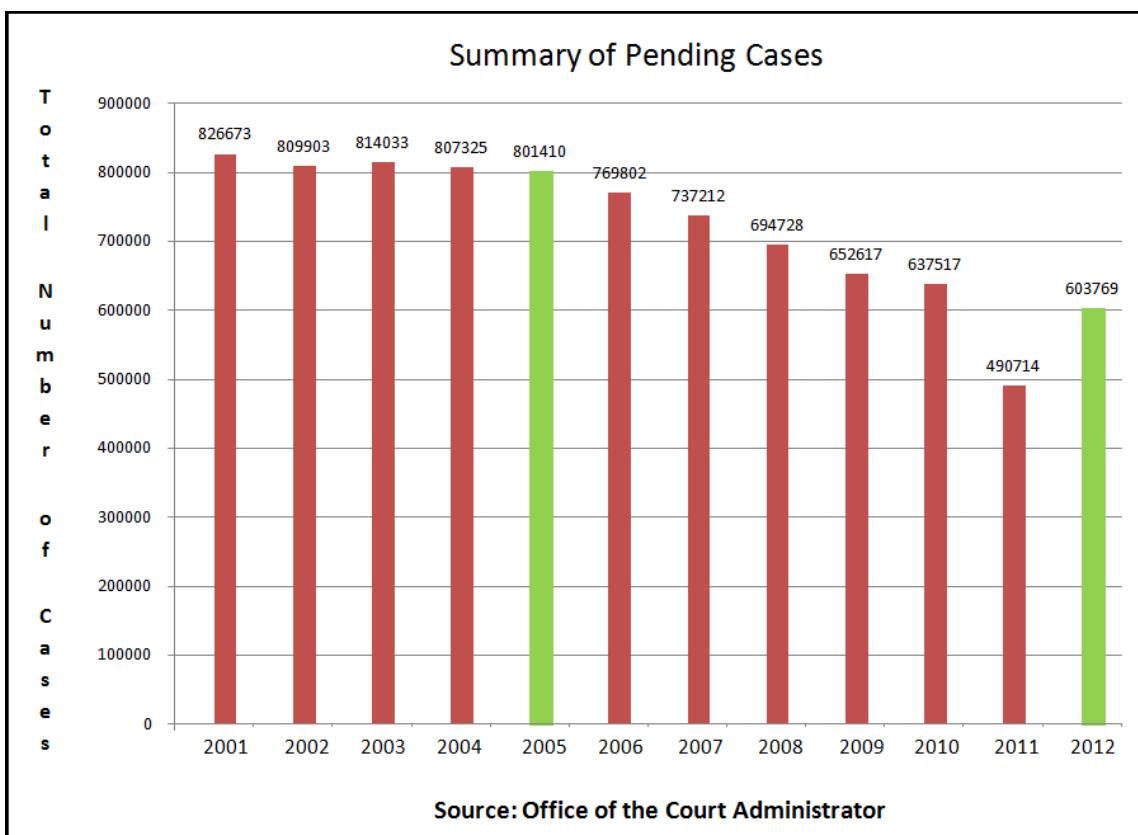
on online dispute resolution in cross-border electronic commerce transactions where it was agreed that the increase and indispensability of information and communications technology (ICT) in the developed and developing world represents significant opportunities for access to justice by buyers and sellers concluding cross-border commercial transactions via Internet⁵² and mobile platforms. In tandem with the sharp increase over the last two decades of commercial transactions concluded via the Internet, there has been extensive discussion regarding the use of systems - either judicial or extrajudicial - to resolve the domestic and cross-border disputes which inevitably arise as part of the management of this type of commercial transactions. Online dispute resolution (ODR)⁵³ has emerged as a desirable option for the resolution of such disputes. In fact, for small-value, high-volume contracts concluded electronically it is acknowledged by industry and consumer groups that extra-judicial (ADR) procedures – particularly ODR are desired for the fair and expeditious settlement of these disputes.⁵⁴

UNCITRAL is uniquely positioned to establish instruments or guidelines particularly suited for redress in the online commercial environment, reflecting the

- 49. Hong Kong International Arbitration Center. Electronic Transaction Arbitration Rules, adopted to take effect from 1 January 2002, available at ,http://hkiac.org/documents/Arbitration/Arbitration%20Rules/en_EТАrbRules.pdf?.
- 50. The U.S. Federal Trade Commission and consumer protection agencies in 23 other countries have created an International ADR Directory containing contact information of dispute resolution service providers that can help consumers resolve problems with cross-border sellers. The Directory is available at <http://www.econsumer.gov/english/resolve/directory-of-adrs.shtm>. Similarly, the European Commission together with its member States, currently maintains a central database of ADR bodies which are considered to be in conformity with the UNCITRAL's Recommendations on dispute resolution. The data is maintained on the website of the Health and Consumer Protection Directorate General. See http://ec.europa.eu/consumers/redress_cons/adr_en.htm.
- 51. American National Standards Institute; Cairo Regional Centre for International Commercial Arbitration, Egypt; Center for Transnational Law (CENTRAL), Cologne University, Germany; Center for International Legal Education, University of Pittsburgh; Chartered Institute of Arbitrators (Singapore) Limited; Committee on International Contract and Commercial Law, International Section of New York State Bar Association; Czech Arbitration Court; China Society of Private International Law; Construction Industry Arbitration Council (CIAC), India; Dispute Resolution Division, Council of Better Business Bureaus, Inc.; Egyptian ADR Association; European Legal Studies Institute, University of Osnabrück, Germany; Faculty of Law, Potchefstroom Campus, Northwest University, Potchefstroom, South Africa; Geneva Master in International Dispute Settlement, University of Geneva Law faculty and Graduate Institute of International and Development Studies; Global Business Dialogue on e-Society; Hong Kong Internet Forum; Hong Kong Institute of Arbitrators (HKIArb); Institute of Commercial Law, Penn State Dickinson School of Law; Institute of Computer and Communications Law, Centre for Commercial Law Studies, Queen Mary College, University of London; Institute of Law and Technology, Faculty of Law, Masaryk University, Czech republic; Institute of International Law, Wuhan University, P.R. China; International Association for Commercial and Contract Management (IACCM); International Chamber of Commerce; International Institute for Conflict Prevention & Resolution (CPR); International Law Department of China Foreign Affairs University; Internet Bar Organization; Istanbul Bilgi University Institute of ICT and Law, Turkey; Latin American E-commerce institute; Law Department of the European University Institute; Mediators Beyond Borders; National Institute for Dispute Resolution and Technology; OECD – Committee on Consumer Policy Secretariat; ODR Latin America; School of International Arbitration, Centre for Commercial Law Studies, Queen Mary College, University of London; School of law, City University of Hong Kong; and The Mediation Room.
- 52. Electronic commerce B2B, B2C and C2C.
- 53. "ODR is a collective noun for dispute resolution techniques outside the courts using (information and communications technology), and, in particular, Internet applications." J. Hornle, Cross-Border Internet Dispute Resolution, p. 75 (2009).
- 54. "Recourse to courts in disputes resulting from international Internet transactions is often complicated by the difficult questions of which law applies, and which authorities have jurisdiction over such disputes. Furthermore, international court proceedings can be expensive, often exceeding the value of the goods and services in disputes. If this were the only means to settle disputes, it would certainly not enhance consumer confidence in international electronic commerce and would strongly encourage merchants to restrict the geographic scope of their offers. This in turn would limit competition and consumer choice. An important catalyst for consumer confidence in electronic commerce is that Internet merchants offer their customers attractive extra-judicial procedures for settling disputes as an alternative to the cumbersome and expensive resorts to courts." Agreement reached between Consumers International and the Global Business Dialog on Electronic Commerce, Alternative Dispute Resolution Guidelines, Global Business Dialogue on Electronic Commerce, p54-55 (GBDe) (November, 2003) (hereinafter "GBDe Agreement"). The GBDe Agreement reflects a ground-breaking consensus document between industry and consumers declaring the need for extra-judicial procedures for the settling of disputes for contracts concluded electronically, and outlining principles regarding the creation of such a system. See also Conference on Empowering E-Consumers: Strengthening Consumer Protection in the internet Economy, Background Report, p. 35 (Washington D.C., December 8-10, 2009) (hereinafter "OECD Consumer Background Report") ("Consumers should be provided with meaningful access to fair and timely alternative dispute resolution and redress without undue cost and burden"), cited in UNCITRAL Forty-third session, New York, 21 June – 9 July 2010.

needs of the developed and developing world. The Note reflects on the consensus established by experts within the ODR community and enumerates guidelines for the development of harmonized rules and/or guidelines to support such ODR systems.⁵⁵

The UNCITRAL note further provides the need to a collaborative effort of creating an integrated system for ODR as the existence of a global redress system is essential to the continued success and growth of electronic commerce and mobile commerce in the developed and developing world, hence a global online dispute resolution system (ODR) would be a fair, attractive, and affordable redress system to both sellers and buyers and should inspire confidence in the ability of the system to economically, expeditiously, efficiently, fairly and transparently resolve claims.⁵⁶ In fact, conservative estimates suggest millions of small value disputes⁵⁷ could be resolved via a global ODR system annually, more so that Mobile telephony is experiencing exponential growth in developing countries and will have important and definite implications for doing business in the developing world.



VI.

How effective are the traditional modes of alternative dispute resolution in the Philippines from the time they were adopted in the ADR law of 2004 up to 2015?

The above table indicates that the number of pending cases from the year 2001 to 2004 had been consistency high. If there was a decrease, it was not considerable. From 2001 to 2002 for example, there is a difference of 16,777, while from 2002 to 2003, the reduction is only 4,150. From 2003 to 2004, the pending cases has a reduction of 6,656. When the ADR Law of 2004 was applied in some of the pilot courts, the pending cases in 2004 had a substantial decrease of 35,793 in 2005. The significant decrease continued, most especially in 2011 where from 617,527 pending cases in 2012, this was dropped to 490,784 in 2011.

55. We also support the recommendation of the Secretariat that "the goal of any work undertaken by UNCITRAL in this field should be to design generic rules which, consistent with the approach adopted in UNCITRAL instruments (such as the Model Law on Electronic Commerce), could apply in both business-to-business and business-to-consumer environments." Id. Para. 51., cited in UNCITRAL Forty-third session, New York, 21 June – 9 July 2010.

56. Both B2B and B2C.

57. Ibid.

The significant contribution of the ADR Law of 2004 was again felt when “*mediatable cases*” are referred to Court-Annex Mediation (CAM) for mediation under the accredited mediators in the Philippine Mediation Center (PMC), thus suspending the pre-trial.

The Court-Annexed Mediation (CAM) Statistical Report covers the year 2002 to 2014, and includes information on the number of PMC units, number of Courts covered, number of accredited mediators, total number of cases referred to PMC and total number of back to court, either for failed or unsuccessful mediation or failure of one or both of the parties to appear. It also contained the total number of cases mediated, total number of successful mediation and success rate.

CAM SUCCESS RATE IN THE PHILIPPINES
PHILIPPINE JUDICIAL ACADEMY
PHILIPPINE MEDIATION CENTER OFFICE
CAM STATISTICAL REPORT AS OF DECEMBER 2014

YEAR	No. of PMC Units	No. of Courts Covered	No. of Accredited Mediators	Total No. of Cases Referred	Total No. of Back to Court Cases	Total No. of Cases Mediated	Total No. of Successful Mediation	Success Rate
2002	26	442	360	4,118	559	3,559	3,000	84.29%
2003	26	442	360	4,246	1,149	3,097	2,410	77.82%
2004	30	601	309	20,277	12,787	7,490	5,899	78.76%
2005	37	675	483	25,745	14,028	11,717	7,626	65.08%
2006	40	730	524	21,211	8,161	13,050	8,159	62.52%
2007	53	931	628	38,816	18,671	20,145	13,633	67.67%
2008	70	1105	717	62,678	16,994	45,684	29,148	63.80%
2009	97	1380	571	49,702	18,477	31,225	19,406	62.15%
2010	97	1380	571	50,558	16,748	33,810	20,304	60.05%
2011	106	1496	706	49,497	19,777	29,720	18,029	60.66%
2012	107	1540	680	56,498	24,218	32,280	19,266	59.68%
2013	115	1623	704	58,786	18,638	33,556	20,525	61.17%
2014	119	1641	657	64,356	15,082	37,843	23,236	61.40%
TOTAL	119	1641	657	506,488	185,289	303,176	190,641	62.88%

The table above shows from 2002 to 2014, the success rate has always been consistently considerable, where the total number of successful mediation is more than the number of back-to-court cases. As of December 2014, with 119 PMC units, 1,641 courts covered, and 303,176 mediated cases, 190,641 were successful or with a success rate of 62.88%, leaving only 185,289 to be referred back to the Court

As Courts are gearing towards speedy resolution of pending cases, Judicial Dispute Resolution (JDR) system was adopted by the Supreme Court (described as an “enhanced pre-trial proceeding”) under its on-going JURIS Project on August 29, 2006 through **En Banc A.M. No. 04-1-12-SC-PhilJA**.⁵⁸ The concept is that those “*mediatable cases*” which were not resolved under CAM and returned to the Court are subsequently referred to Judicial Dispute Resolution (JDR) “*for further mediation by the judges*.” If the case is still not settled in JDR, “*the*

58. In **En Banc A.M. No. 04-1-12-SC-PhilJA**, August 29, 2006, “Re: PhilJA Resolution No. 06-22, re: Revised Guidelines for the Implementation of an Enhanced Pre-Trial Proceeding under the JURIS Project, as Amended”, the Philippine Supreme Court adopted the rules of the new judicial dispute resolution (JDR) system of the Philippines (described as an “enhanced pre-trial proceeding”) under its on-going JURIS Project.

case is transferred to the pairing court to proceed with trial". The judge conducting the JDR is called the JDR judge instead of pre-trial judge because under the revised guidelines, pre-trial proper is resumed after JDR, but this time, to be conducted by the trial judge instead of the judge who conducted JDR. A case may be referred to JDR "even after conclusion of the pre-trial and during the trial itself". The JDR judge "may preside over the trial proceedings upon joint request of both parties". A limited period is imposed for settlement of JDR cases, i.e., thirty (30) days for first level courts and sixty (60) days for regional trial courts. These periods may be extended upon the discretion of the JDR judge.

The table below on JDR Statistical report as of December 2014 however shows that the pilot courts' success rate from the year 2007 to 2014 was not even more than 50% of the total number of cases mediated.

JDR SUCCESS RATE IN THE PHILIPPINES
 Philippine Judicial Academy
 Philippine Mediation Center Office
JDR STATISTICAL REPORT AS OF DECEMBER 2014

YEAR	No. of JDR Sites (Clustered)	No. of Courts Covered	Total No. of Cases Preferred	Total No. of Back to Court Cases	Total No. of Cases Mediated	Total No. of Successful Mediation	Success Rate
2004	2	101	22		22	15	68.18%
2005	2	101	487		487	205	42.09%
2006	4	166	1,437		1,171	454	38.77%
2007	5	195	6,370	2,388	3,982	1,660	41.69%
2008	6	232	8,569	3,122	5,447	2,010	36.90%
2009	6	232	5,727	2,257	3,470	1,487	42.85%
2010	8	377	6,032	2,298	3,734	1,320	35.35%
2011	9	421	8,140	3,487	4,653	1,924	41.35%
2012	13	636	9,218	4,840	4,378	1,513	34.56%
2013	18	836	9,678	1,088	7,636	2,853	37.36%
2014	40	977	18,091	995	9,672	3,395	35.10%
TOTAL	40	977	79,368	20,475	44,652	16,836	37.70%

As compared from CAM where more than 50% were successfully mediated and where success rate could be used as basis, JDR proved to be unsuccessful. This can be attributed to the fact that unlike CAM where the Philippine Mediation Center (PMC) mediators preside, in JDR, courts are not spared as they play a vital role of acting as "mediators" and conducting the same. This is an additional workload for judges who instead of spending their precious time hearing and resolving cases are mandated to provide days to set JDR proceedings in their respective Courts.

VII.

How has electronic online dispute resolution (ODR) become an effective mechanism for resolving commercial disputes in the Philippines on the basis of the experience of other countries?

INTERNET USERS IN THE PHILIPPINES

As July 1, 2016

Year	Internet Users ⁵⁹	Penetration (% of Pop)	Total Population	Non-Users (Internetless)	1Y User Change	1Y User Change	Population Change
2016	44,478,808	43.5 %	102,250,133	57,771,325	4.4%	1,855,574	1.54%
2015	42,623,234	42.3%	100,699,395	58,076,161	8.3%	3,275,088	1.57%
2014	39,348,146	39.7%	99,138,690	59,790,544	9%	3,246,626	1.61%
2013	36,101,520	37%	97,571,676	61,470,156	3.8%	1,309,547	1.62%
2012	34,791,973	36.2%	96,017,322	61,225,349	27%	7,386,615	1.6%
2011	27,405,358	29%	94,501,233	67,095,875	17.8%	4,145,632	1.57%
2010	23,259,726	25%	93,038,902	69,779,177	182%	15,011,956	1.52%
2009	8,247,769	9%	91,641,881	83,394,112	46.8%	2,631,289	1.49%
2008	5,616,481	6.2%	90,297,115	84,680,634	5.7%	305,240	1.5%
2007	5,311,241	6%	88,965,508	83,654,267	5.6%	282,895	1.57%
2006	5,028,346	5.7%	87,592,899	82,564,553	8.1%	378,748	1.69%
2005	4,649,598	5.4%	86,141,373	81,491,775	4.8%	213,685	1.83%
2004	4,435,913	5.2%	84,596,249	80,160,336	10.1%	405,418	1.96%
2003	4,030,495	4.9%	82,971,734	78,941,239	14.4%	508,598	2.06%
2002	3,521,897	4.3%	81,294,378	77,772,481	75.3%	1,512,673	2.12%
2001	2,009,223	2.5%	79,604,541	77,595,318	30.5%	464,409	2.15%
2000	1,544,814	2%	77,932,247	76,387,433	41.5%	452,708	2.16%

The table above shows the elaboration of data by International Telecommunication Union (ITU), World Bank, and United Nations Population Division which indicates that from the total population of 102,250,133, the Philippines has 44,478,808 Internet users as of July 2016, with 43.5% (penetration) as share of Philippines population in the Internet users in the world of 3,424,971,1237, and 1.3% share of world Internet users.

59. ** Internet User = individual who can access the Internet at home, via any device type and connection.

ASIA TOP INTERNET COUNTRIES⁶⁰
November 30, 2015

Country	No. of Internet Users**	Penetration (% Population)	Users in Asia
1. China	674.0	49.5%	41.6%
2. India	375.0	30.0%	23.1%
3. Japan	114.9	90.6%	7.1%
4. Indonesia	78.0	30.5%	4.8%
5. Bangladesh	53.9	31.9%	3.3%
6. Vietnam	47.3	50.1%	2.9%
7. PHILIPPINES	47.1	43.0%	29.0%
8. South Korea	45.3	92.3%	2.8%
9. Pakistan	29.1	14.6%	1.8%
10. Malaysia	20.6	67.5%	1.3%

*According to the highest of Internet users

**Millions of Internet users

Although this rate of Internet adoption is considerably lower than its Asian neighbors, the percentage of Filipino Internet users has exponentially increased to 47.1 Million as of November 2015, with 43.0% penetration in the population and 29.0% users in Asia.

In 2016, the Revenue in the "E-Commerce" market in the Philippines amounts to USD 1,318.3 Million. The E-Commerce market encompasses the sale of physical goods via a digital channel to a private end user, or Business-to-Consumer (B2C). Incorporated in this definition are purchases via desktop computer, including notebooks and laptops as well as purchases via mobile devices such as smartphones and tablets.

The following are not included in the E-Commerce market: digitally distributed services, digitally distributed goods in Business-to-Business (B2B) markets nor digital purchase or resale of used, defective or repaired goods. The E-Commerce market considers the following product categories: "Clothes & shoes", "Consumer electronics & physical media", "Food, cosmetics & pharmaceuticals", "Furniture & home appliances" and "Special Interest".⁶¹

The E-Commerce market report further shows that revenue is expected to show an annual growth rate (CAGR 2016-2020) of 20.67% resulting in a

market volume of USD 2,794.8 Million in 2020. The market's largest segment is the segment "Consumer electronics & physical media" with a market volume of USD 606.7 Million in 2016. The user penetration is at 42.52% in 2016 and is expected to hit 60.90% in 2020. The average revenue per user (ARPU) currently amounts to USD 44.70.⁶²

In terms of sales, Lazada led internet retailing in the country in 2015, with a 20% value share. This was due to the heightened interest of Filipino consumers towards gadgets and electronic appliances, which includes smartphones, tablets, laptops and home theatre systems among others that Lazada was able to respond to. Lazada not only provided a wide variety of gadgets and electronic appliances, but it also offered huge discounts that consumers appreciated.

At the present, disputes arising from online purchase is settled in Court and undergo mediation under the ADR Law of 2004. While ADR and ODR mechanisms share some common traits, such as lower cost, greater speed, more flexibility in outcomes, less adversarial strategies, more informal flow, privacy and solution oriented methods instead of blame-oriented techniques, it can not be denied that ODRs feature a host of unique features different from ADR, which include among others the following: (1) the fact that disputants do not have to meet face to face; (2) the dispute resolution process may occur at any time, regardless of geographical distance; and (3) the possibility of asynchronous communication.⁶³

It may be inferred that for the betterment and growth of electronic commerce, the best mechanism for dispute resolution could be online dispute resolution. Online Dispute Resolution (ODR) is a relatively new development but it uses sound principles and practices which have evolved and been tested over the years in the field of Alternative Dispute Resolution (ADR).⁶⁴ This was correctly observed and proven through the experience of different countries in the world which adopted ODR in resolving disputes among which are the European Nations, United States, Africa, Australia, Latin America, Japan, China, India, Singapore, Malaysia, and Hong Kong.

60. Source: Internet World Stats – www.internetworldstats.com/stats3.htm

61. www.statista.com

62. Ibid.

63. E.M. Katsh and J. Rifkin (2011) Online Dispute Resolution: Resolving Conflicts in Cyberspace (San Francisco:Jossey-Bass), p. 10.

64. Online Dispute Resolution Using technology to provide dispute resolution services and facilitate business and trade Yufei Yuan Wayne C. Fox Chair in Business Innovation Norm Archer Professor Emeritus McMaster eBusiness Research Centre (MeRC) McMaster University April 2004

In studying the experiences of other countries discussed in this dissertation, the researcher finds the ODR system in the U.S. as more appropriate in the Philippine setting. *First*, much of ODR's early development was based in the US, where one of the reasons is because of the deeply-set roots and early adoption of ADR processes.⁶⁵ Philippine history disclosed that similar to the U.S., ADR processes was already introduced and applied when during Spanish occupation, the Spanish *Ley de Enjuiciamiento Civil* which was applied to the Philippines, contained provisions for the appointment by the parties of friendly adjusters, known as *juicio de amigables compenedores*, for the settlement of their differences.⁶⁶ It was in the early 1920s that the Philippine Supreme Court began to lay the basis for recognition and acceptance of arbitration as a mode of settling disputes and continued thereafter.⁶⁷

Second, recent comparative studies show that the influence of European countries and the United States is increasingly significant in Asia and in their legal systems in general. In fact, Republic Act No. 876⁶⁸ which the Philippine Congress enacted in 1953 was modelled after the US Federal Arbitration Act. *Third*, the ODR mechanism has been proven effective in the U.S. and its application can likely be applied in the country.

VIII.

How can electronic online dispute resolution be effectively developed in the current regulatory framework of the ADR law of 2004?

Another issue on hand is whether Electronic Online Dispute Resolution (ODR) could be adopted as additional alternative dispute Resolution (ADR) mechanism or whether legislation is necessary to regulate it. Different approaches have been adopted at different jurisdictions. For instance America and Canada opted to leave the initiative with self-regulation.⁶⁹ Same view is taken up by European Commission in the E-Commerce Directive. Article 16 of the E-commerce directive urges Member States and the Commission to encourage self-regulation. On the other hand there are initiatives taken by some countries such as Netherland to codify it.⁷⁰

In the Philippines however the researcher finds no need to have a separate enactment of law as ODR can be included as additional alternative dispute mechanism under the ADR Law of 2004. This can be

issued by the Supreme Court under their rule-making authority pursuant to Section 5(5) of Article VIII of the 1987 Constitution where the Supreme Court has, among others the power to promulgate rules and procedure in all courts which shall provide a simplified and inexpensive procedure for the speedy disposition of cases.

Section 2 of the ADR Law of 2004 is also relevant, as it is the declared policy of the State in enacting this law to actively promote party autonomy in the resolution of disputes or the freedom of the parties to make their own arrangement to resolve disputes. Towards this end, the State shall encourage and actively promote the use of Alternative Dispute Resolution (ADR) as an important means to achieve speedy and impartial justice and de-clog court dockets. As such, the State shall provide means for the use of ADR as an efficient tool and an alternative procedure for the resolution in the settlement of disputes through ADR.

This Act further provides that it shall be without prejudice to the adoption by the Supreme Court of any ADR system, such as mediation, conciliation, arbitration, or any combination thereof as a means of achieving speedy an efficient means of resolving cases pending before all courts in the Philippines which shall be governed by such rules as the Supreme Court may approve from time to time.⁷¹

It is in view of this declared policy of the State and recognition of the independence of the Judiciary that pending court cases were diverted to Court-Annexed Mediation (CAM) and to Judicial Dispute Resolution (JDR), purposely to put an end to pending litigation through a compromise agreement of the parties and thereby help solve the ever-pressing problem of court docket congestion. It is also intended to empower the parties to resolve their own disputes and give practical effect to the State Policy expressly stated in the ADR Act of 2004.

Using its rule-making power, the Supreme Court could also promulgate special rules on ODR as additional dispute resolution mechanism under the ADR Law of 2004, more so that it applies to E-Commerce Act⁷² and that it had issued the Rules on Electronic Evidence which became effective on August 1, 2001. Section 6 of the E-Commerce Act provides that information shall not be denied validity or enforceability solely on the ground that it is in the form

65. Supra at Note 19.

66. Cordoba vs. Conde, G.R. No. 1125 (1903); 2 Phil. 441 (1903).

67. Victor P. Lazatin and Patricia Ann T. Prodigalidad, *Arbitration in the Philippines..*

68. Supra at Note 7.

69. Dispute Resolution Mechanisms in Electronic Commerce (Special Reference to Online Dispute Resolution Mechanism. A research paper submitted to the University of Manchester for the degree of LL.M. Masters (International Business Law) in the Faculty of Humanities: School of Law. Student No.: 554116

70. Ibid.

71. Supra at Note 9.

72. Supra at Note 11.

of electronic data messages, or that it is merely incorporated by reference in that electronic data message. As a general rule, electronic documents shall have legal effect, validity or enforceability as any other document or legal writing.

A significant concern on security and confidentiality of online communications are addressed by data privacy protection laws such as Electronic Commerce Act of 2000,⁷³ Cybercrime Prevention Act of 2012,⁷⁴ and Data Privacy Act of 2012.⁷⁵ These laws provide sufficiency of technical measures and legal protocols of data privacy protection which is vital in creating users' trust and confidence in online interactions and transactions. They keep the balance between the free flow of data information and the fundamental human rights of privacy.

IX.

How can electronic online dispute resolution be adopted and developed in the Philippines without massive Internet connectivity?

Certainly, the rich practices of ADR cannot be easily reproduced in the online environment, there are disadvantages, or at least obstacles in the use of ODR.⁷⁶ Access to online computers may pose a problem for some individuals, especially those involved in disputes that result from offline transactions.⁷⁷ Those who are less familiar with computers, or no access at all with computers primarily because of its huge broadband cost may be at a disadvantage as compared to their opponents possessing higher IT skills. On the other hand, it seems that access to information technology is increasing at a relatively rapid rate, and the gap between IT *haves* and *have-nots* is closing.⁷⁸

The foregoing concerns however are addressed by the government who can certainly help in promoting public awareness of ODR systems and encourage their usage by providing affordable global access.⁷⁹ In fact, the Department of Transportation and Communication-Information and Communication Technology (DOTC-ICT)⁸⁰ under its ePhilippines project of developing the country as a World Class ICT Services Provider which shall provide affordable internet access to all segments of the population.

To support for a legal and regulatory environment infrastructure, the government commits to develop the

Philippine Information Infrastructure (PII), lower bandwidth cost in Information Technology (IT) and educational hubs, consolidation of government networks, and Communal/collective access to information as universal access strategy.

Since the country has a weak regulatory and administrative capacity on ICT development, the government shall create a Department of Information and Communication Technology, a single department that will oversee the development of ICT in the country, provide policies and guidelines, provide security and direct ICT efforts of the government. This will allow important information to be put online and to give citizens and consumers the peace of mind in making transactions over the Internet.

Further, the Department of Science and Technology, Information and Communication Technology (DOST-ICT) Office's flagship project, the "Juan Konek Free Wi-Fi Internet Access in Public Places Project", is set to begin the initial phases of implementation with the issuance of the Notice of Proceed to the Project's commissioned Service Providers last March 16, 2016. The Juan, Konek Free Public Wi-Fi Internet Access in Public Places Project was conceived and implemented to achieve the DOST-ICTO's vision of providing Internet for All, where No Juan is left behind. It aims to provide initially free broadband Internet access to 1,462 Class 1-6 municipalities, and 44 key cities nationwide.⁸¹

As there is a need to make business more competitive in the global arena and responsive to local needs, the government shall establish a Port e-community to evolve into a Trade e-community. Promote digital signature, intellectual property protection, security and privacy to protect consumers, and build and maintain a world-class private sector websites.

To build an E-Community and address the issue of inadequate communal/collective public access to ICT facilities throughout the country, the government shall establish Multi-purpose Telecenters in municipalities, and study the provision of incentives for schools that would serve as the venue for Multi-purpose Telecenters.

For the community to attain E-Knowledge and address the low quality and standard in basic

73. R.A. No. 8792.

74. R.A. No. 10175.

75. Ibid.

76. Rafal Morek, Regulation of Online Dispute Resolution: Between Law and Technology. August 2005.

77. Joel B. Eisen, "Are We Ready for Mediation in Cyberspace? (1998) BYU L. Rev. 1305 at 1308

78. Benjamin M. Compaine, The digital divide: facing a crisis or creating a myth? (Cambridge, Mass MIT Press, 2001).

79. Mohamed Wahab. Globalization and ODR: Dynamics of Change in E-Commerce Dispute Settlement. International Journal of Law and Information Technology, Vol. 12 No. 1 Oxford University Press 2004. Page 23

80. Strategic Vision of ePhilippines, Information and Communication Technology (ICT) Development in the Philippines, delivered by Assistant Secretary Cecilia V. Reyes of the Department of Transportation and Communications.

81. Icto.dost.gov.ph.

education, the government shall develop guidelines on enhancement of basic education to strengthen foundation for ICT knowledge, establish the program to increase the number of Filipinos with IT skills of international standard, and develop program to raise ICT awareness and capability through formal and informal methodologies.

On the issue of Low literacy among broad section of the population, a SchoolNet shall be formed by connecting public schools to the Internet to expand capacity for learning, facilitate Internet access by students, and provide broadband to key locations like educational hubs and IT parks at affordable cost.

As to wide knowledge gap and uneven distribution of technical know-how, the government shall develop online distance education programs for short and full credit courses via the Internet or CD-ROM, establish virtual classroom, and develop policy and program on e-learning which includes ICT learning and program.

X. Conclusion

Prior to the enactment of ADR Law of 2004, the number of pending cases from the year 2001 to 2004 had been consistency high although Arbitration Law has been enacted and adopted in the country. This can be attributed to the fact that resolution of cases and even arbitration were left to the hands of judges. With the adoption of ADR Law of 2004, CAM's success rate is far better than the success rate of JDR program. This can be attributed to the fact that unlike CAM where the Philippine Mediation Center (PMC) mediators preside, in JDR, courts acted as "mediators" in conducting the same. This additional workload and burden will constrain them to spend time in JDR, where if there is no settlement, the case will be re-raffled to another Court, which again will cause delay in the proceedings. With the adoption of ADR Law in 2004 however, the number of pending cases was considerably reduced from 2005 to 2011 in line with the declared policy⁸² of the State to encourage and actively promote the use of alternative dispute resolution (ADR) systems as an important means to achieve speedy and impartial justice.

Significantly, the Internet users in the Philippines is fast-moving and continuously increasing, where user penetration of 42.52% in July 2016 is expected to hit 60.90% in 2020. This led to conclude that as Internet

use increases, E-Commerce also is growing, with the market's largest segment to be "Consumer electronics & physical media" in 2016. It may be inferred that for the betterment and growth of electronic commerce, the best mechanism for dispute resolution is online dispute resolution, where researcher finds the ODR system in the U.S. as more appropriate in the Philippine setting on the following grounds: (1) Much of ODR's early development was based in the US due to deeply-set roots and early adoption of ADR processes, where similarly, Philippine history has an early adoption and application since the Spanish occupation, (2) The influence of the United States is increasingly significant in the Philippine legal system as evidenced by Republic Act No. 876⁸³ which the Philippine Congress enacted in 1953 and modelled after the US Federal Arbitration Act, (3) The ODR mechanism has been proven effective in the U.S. and its application can likely be applied in the country. However, there is no need to have a separate enactment of law as ODR can be included as additional alternative dispute mechanism under the ADR Law of 2004, and which a Special Rules on ODR can be issued by the Supreme Court under their rule-making authority.

As regards to security and confidentiality of online communications, they are addressed by data privacy protection laws in the country which keep the balance between the free flow of data information and fundamental rights of privacy such as Electronic Commerce Act of 2000,⁸⁴ Cybercrime Prevention Act of 2012,⁸⁵ and Data Privacy Act of 2012.⁸⁶ These laws provide sufficiency of technical measures and legal protocols of data privacy protection which is vital in creating users' trust and confidence in online interactions and transactions.

Since basic access to computers and the Internet, and Internet use are still low in the Philippines, the Department of Transportation and Communication (DOTC), through its Information and Communication Technology (ICT) Development in the Philippines⁸⁷ line up of programs for ePhilippines project which will develop the country as a World Class ICT Services Provider, provide affordable internet access to all segments of the population, and develop an IT enabled workforce. The anticipated obstacles in the use of ODR however are being addressed by the government which can certainly help in promoting public awareness of ODR systems and encourage their usage by providing affordable global access.⁸⁸

82. Supra at Note 9.

83. Supra at Note 7.

84. R.A. No. 8792.

85. R.A. No. 10175.

86. Ibid.

87. Supra at Note 80

88. Mohamed Wahab. Globalization and ODR: Dynamics of Change in E-Commerce Dispute Settlement. International Journal of Law and Information Technology, Vol. 12 No. 1 Oxford University Press 2004. Page 23

XI. Recommendations

On the basis of the gathered findings and conclusions drawn, the following recommendations and reforms are suggested.

1. For the Supreme Court - It is recommended that the Supreme Court, using its rule-making power under Article VIII, Section 5 (5) of the 1987 Constitution adopts the ODR as additional alternative dispute mechanism under the ADR Law of 2004. In this regard, the Supreme Court shall issue a Special Rules on Online Dispute Resolution for electronic commercial dispute and should be in harmony with the international ODR guidelines and standard of service in the global market as prescribed by UNCITRAL Draft Procedural Rules for Online Dispute Resolution. As pilot project of ODR, it can be applied to small claim E-Commerce disputes, or disputes arising out of business-to-business contracts (B2B) initiated on the Internet⁸⁹ or electronic commerce⁹⁰ which are pending and not yet filed in Court. Small-claim dispute refers to small disputes where the total amount of claim does not exceed One Hundred Thousand Pesos (Php100,000.00). In this regard, a Manufacturer-Supplier-Buyer Online Dispute Resolution (MSB-ODR program) should be formed to help manufacturers, suppliers and buyers resolve through online negotiation their small E-Commerce disputes arising with not more than Php100,000.00 through an accredited privately owned service provider which will have an alliance with the Philippine Dispute Resolution Center (PDRC). The entire process will not be longer than 60 days and once the dispute is not settle within the 15 days of the online negotiation, it then proceeds to the next stage of online arbitration. Since PDRC works closely with the three branches of the Philippine government (the executive, through the Philippine Department of Justice and the Department of Trade and Industry; the legislative, through the Philippine Congress; and the judiciary through the Philippine Supreme Court) in drafting substantive laws and procedural rules on ADR as well as in information dissemination and training on matters concerning ADR, trade law, and commerce, PDRC should assist the Supreme Court in drafting not only the Special Rules on ODR but also the MSB-ODR program.

2. For the Integrated Bar of the Philippines - Similar to the American Bar Association (ABA) in the United States, the Integrated Bar of the Philippines (IBP) is also encouraged to take an active role in the formulation of model ethical codes related to ODR transaction by forming an IBP Task Force which shall provide recommendation as to guidelines of best practice for ODR service providers, such as but not limited

to adhere to adequate standards and codes of conduct and strive to achieve transparency through information and disclosure to attain sustainability.

The IBP is also recommended to form its own Internet Online Dispute Resolution (iODR) Center in every municipal hall to administer an IBP WebFile service known as ODR platform which includes functions such as filing claims, making payments, assessing rules and procedures, electronically transferring documents, selecting neutrals, and checking the status of online case. The IBP for that matter can tap the College of Law and Legal Management students to assist them in this task as part of their Legal Aid Clinic program.

3. For the national government, through the Department of Transportation and Communication-Information and Communication Technology (DOST-ICT) - The Department of Transportation and Communication (DOTC), through its Information and Communication Technology (ICT) Development in the Philippines⁹¹ is recommended to proceed and continue with its programs of developing the country as a World Class ICT Services Provider to provide affordable internet access to all segments of the population.

a. Development of ICT infrastructure - It should develop an IT enabled workforce, and address the country's inadequate ICT infrastructure to support interconnectivity and wider public access not only to government information and services but to ensure the success of ODR program. In this regard, a Department of Information and Communication Technology should be created to oversee the development of ICT in the country, provide policies and guidelines and direct ICT efforts of the government to address the weak regulatory and administrative capacity on ICT development be made.

b. Available broadband in the public areas - For the limited broadband in key cities and identified growth centers and priority areas, the government shall have provision of broadband at selected key locations such as Industrial Parks, ICT Parks, Municipal Buildings and Business/Trade Centers to ensure the passage of a law that will allow the convergence of telecoms, broadcast media and the broadband facility of cable TV for 2-way communication for faster, wider and more affordable public access to ICT and Internet.



89. Supra at Note 3.

90. A.B.A. Taskforce on Electronic Commerce & Alternative Dispute Resolution, Addressing Disputes in Electronic Commerce: Final Recommendation and Report, 58 BUS. LAW. 415, 434 (2002).

91. Supra at Note 80.

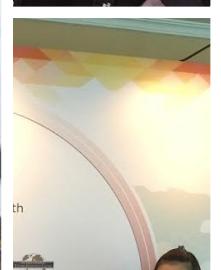




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