

Kluwer Arbitration Blog

The Philippine Arbitration Day: A Barometer of the State of Philippine Arbitration

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The year 2019 was a milestone year for alternative dispute resolution (“**ADR**”) in the Philippines. It saw the inaugural [Philippine Arbitration Convention](#) organized by the Philippine Institute of Arbitrators (“**PIArb**”) on 25 November 2019 (the “**Arbitration Day**”), the signing of the Convention on International Settlement Agreements Resulting from Mediation (the “**Singapore Convention**”), the implementation of domestic statutes promoting arbitration, and the launch of a new arbitral institution.

Panel discussions

The panel topics at the Arbitration Day were as follows:

1. *“Arbitration as an Effective Mode of Resolving Commercial Disputes”*, with panelists representing both the business community and the arbitration community;
2. *“How Do I Start a Career in Arbitration?”*, with young and senior arbitration practitioners sharing their insights and experiences; and
3. *“Developments in International Arbitration”*, wherein speakers from China, Hong Kong, Malaysia, and Singapore shared updates and developments.

In particular, the final panel discussion highlighted the need for the Philippines to keep up with other arbitration-friendly jurisdictions.

The Philippines already possesses the basic requirements of a reliable arbitration jurisdiction. It is a “Model Law” jurisdiction, a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, boasts reliable local arbitral institutions, possesses a pool of competent arbitration practitioners (via PIArb and the panels of local arbitral institutions), has a business community that is open to exploring alternatives to litigation, and a supportive judiciary.

However, there is still room for the Philippines to do much better as a choice jurisdiction for ADR.

First, the Philippines has unfortunately yet to adopt the 2006 revisions to the 1985 UNCITRAL Model Law on International Commercial Arbitration. Like many

jurisdictions, its ADR laws are silent on third-party funding and recognition of emergency arbitrator decisions. The proposed amendments to the 16-year-old ADR law, [Republic Act No. 9285](#) (the “**ADR Act**”), has been with the Office for Alternative Dispute Resolution (“**OADR**”) since 2017. The OADR is an agency under the Department of Justice that is tasked to propose amendments to the ADR Act to the Philippine Congress.

Second, despite the promulgation of the [Special Rules of Court on Alternative Dispute Resolution](#) (the “**Special ADR Rules**”) in 2009, some judges are still unfamiliar with the courts’ role in relation to arbitral proceedings. Improvements are expected with the Supreme Court’s pronouncements in *Fruehauf* and *Mabuhay* (discussed below).

Third, with the Philippines’ signing of the [Singapore Mediation Convention](#), there now appears to be ambiguity as to the application of what was arguably the most innovative feature of the ADR Act, *i.e.* an enforcement mechanism for mediated settlement agreements.¹⁾ Guidance from the legislature or the courts will be required on this.

Separately, the Arbitration Day also covered another hot topic, “*West Philippine Sea Arbitral Award- What’s Next?*”, which was addressed by the keynote speaker Supreme Court Senior Associate Justice Antonio T. Carpio and a reaction panel. This topic relates to [PCA Case No. 2013-19](#) (*The Republic of the Philippines v. The People’s Republic of China*) where a tribunal, in 2016, affirmed the Philippines’ entitlements over parts of the South China Sea. To date, China, which refused to participate in the arbitration and disputed the arbitral tribunal’s jurisdiction, has not complied with the arbitral award. The panel discussed the Philippines’ post-award remedies, bearing in mind the absence of an enforcement mechanism under the [United Nations Convention on the Law of the Sea](#), and proposed courses of action that range from pragmatic to patriotic, in light of the present diplomatic relations between the Philippines and China.

The Philippines: a fertile ground for ADR

The Philippines has been consistently moving towards a more arbitration-friendly regime, which has bolstered confidence and interest in arbitration. In particular, there has been a significant shift in the courts’ attitude towards arbitration.

In 2016, the Supreme Court ruled in *Fruehauf Electronics Philippine Corporation v. Technology Electronics Assembly and Management Pacific Corporation*²⁾ that simple errors of fact, law, or fact and law committed by the arbitral tribunal are not justiciable errors. In that same case, the Supreme Court declared the need to uphold the autonomy of arbitral awards as an overriding public policy. Accordingly, courts are precluded from revising an arbitral award in a particular way, revisiting the tribunal’s findings of fact or conclusions of law, or otherwise encroaching upon the independence of an arbitral tribunal.

In late 2018, the Supreme Court ruled in *Mabuhay Holdings Corporation v. Sembcorp*

*Logistics Limited*³⁾ that mere errors in the interpretation of law or factual findings do not suffice to warrant refusal of enforcement on public policy grounds. To rely on public policy grounds, the illegality or immorality of the award must reach a level where enforcement of the same would be against the State's fundamental tenets of justice and morality, or would blatantly be injurious to the public or the interests of the society.

In 2019, the Philippines took a leap in promoting arbitration through its domestic legislation. The *Revised Corporation Code*,⁴⁾ which came into effect in February 2019, expressly states that the articles of incorporation or by-laws of a corporation may contain an arbitration clause. Intra-corporate disputes are therefore now expressly arbitrable under Philippine law.

In addition to the foregoing developments, the relatively slow pace of Philippine court litigation has also encouraged the business community to turn to ADR. The judiciary has made efforts to speed up court litigation, but only time will tell whether these efforts translate into greater efficiency in practice. In the meantime, the business community increasingly recognizes the advantages of ADR, particularly its certainty and speed.

The significant turnout and the panel topics at the Arbitration Day reflect the increased interest in ADR from the Philippines' business and professional communities. The business community's growing awareness of arbitration was evident at the Arbitration Day's panel discussion on "*Arbitration as an Effective Mode of Resolving Commercial Disputes*", where all panelists endorsed the use of arbitration in resolving business disputes. The panel discussion on "*How Do I Start a Career in Arbitration?*" was aimed at addressing the professional community's interest in ADR in response to clients' needs.

However, the authors believe that more intensive information campaigns on the benefits of arbitration remain necessary to achieve more widespread awareness of arbitration within the business community. Local professionals must also be exposed more to arbitration and receive more training, so that they will be able to recommend arbitration to their clients and competently advise and/or represent parties in domestic and international arbitrations.

It should also be noted that recent "negative publicity" relating to the government's compliance with arbitral awards could dampen the business community's confidence in arbitration. In late 2019, the Philippine government, in particular the Office of the President, *refused to comply with an arbitral award* finding the Philippine government liable to one of Metro Manila's water utility concessionaires. While it appears that the water concessionaire no longer intends to pursue enforcement proceedings against the Philippine government, it would have been interesting to see how the courts resolve an enforcement petition against the Philippine government, considering the Supreme Court's pronouncements in *Fruehauf* and *Mabuhay*.

New arbitral institution: a double-edged sword?

The Arbitration Day also provided a platform for the introduction of the newest arbitral institution in the Philippines – the [Philippine International Center for Conflict Resolution](#) (“**PICCR**”).

Formally established in early 2019, the PICCR was formed with the support of the Integrated Bar of the Philippines (“**IBP**”) and could prove to be a welcomed competitor to the [Philippine Dispute Resolution Center, Inc.](#) As the mandatory law society for Philippine-qualified lawyers, the IBP has chapters all over the Philippines. With the IBP’s vast network, the PICCR has the potential to more effectively promote ADR across the Philippines.

Carefully choosing an arbitral institution that one would support is crucial. If not managed properly, arbitral institutions could be used to promote a particular group’s business or personal agenda. Inexperienced leadership and case management teams could also cause delays in arbitral proceedings. This could erode ADR users’ confidence in arbitration.

As for the PICCR, the experienced leadership of Mr. Donemark Calimon, PICCR Secretary-General and immediate past president of PI Arb, can hopefully allay any such concerns.

From 2020 and beyond

The Arbitration Day is intended to be an annual event. PI Arb is already planning the next one, which is scheduled to be held in the fourth quarter of 2020. It promises to be a bigger event, alongside two arbitration conferences in the Philippines – the Regional Arbitral Institutes Forum and the CI Arb Young Members Group (East Asia Branch) Annual Conference.

The Arbitration Day will continue to be a litmus test for the Philippines’ appetite for ADR. More importantly, the Arbitration Day provides a much-needed platform for arbitration stakeholders to meet and exchange ideas, network with one another, and show the world that the Philippines continues to be an arbitration-friendly jurisdiction.

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References

↑1 See ADR Act, Sec. 17(c); Special ADR Rules, Rule 15.

↑2 G.R. No. 204197, 23 November 2016.

↑3 G.R. No. 212734, 5 December 2018.

↑4 Republic Act No. 11232.

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