



Mediation

in 18 jurisdictions worldwide

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Philippines

Ricardo Ma P G Ongkiko and Jon Edmarc R Castillo

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Law and institutions

1 Treaties

Is your country a signatory to any treaties that refer to mediation? Is your domestic mediation law based on a treaty?

The Philippines has not adapted the UNCITRAL Model Law on International Commercial Conciliation and is at present not a party to any treaties that refer to mediation. However, the Philippines is a member to treaties that provide for conciliation, such as the ICSID convention.

2 Domestic mediation law

What are the primary domestic sources of law relating to domestic and foreign mediation? Are there any differences for the mediation of international cases?

For voluntary mediation, the Philippine Congress passed Republic Act No. 9285 or the Alternative Dispute Resolution Act of 2004 (ADR Law), which, among others, prescribes rules governing voluntary mediation, whether ad hoc or institutional, other than court-annexed. On the other hand, for court-annexed mediation, the Philippine Supreme Court, pursuant to article VIII, section 5 of the Philippine Constitution, which authorises the Supreme Court to promulgate rules for the enforcement of constitutional rights, which rules shall provide for simplified and inexpensive procedure for the speedy disposition of cases, issued AM No. 11-1-6-SC-PHILJA, providing guidelines for the mediation process through the court-annexed mediation (CAM) programme in the trial courts up to the appeals court level (the Revised Guidelines).

3 Mandatory provisions

Are there provisions of domestic mediation law that must be considered in mediation?

The ADR Law treats information obtained through voluntary mediation as generally privileged and confidential; however, the guarantee of confidentiality may be waived by the mediation parties. Moreover, the ADR Law provides that an agreement to submit a dispute to mediation by an institution shall include an agreement to be bound by the internal mediation and administrative policies of such institution, and that an agreement to submit a dispute to mediation under institutional mediation rules shall be deemed to include an agreement to have such rules govern the mediation of the dispute and for the mediator, the parties, their respective counsel, and non-party participants to abide by such rules. In the event of conflict between the institutional mediation rules and the provisions of the ADR Law, however, the latter shall prevail. Further, the ADR Law prohibits a mediator from making a report, assessment, evaluation, recommendation, finding, or other communication regarding a mediation

to a court or agency or other authority that may make a ruling on a dispute that is the subject of a mediation, except where the mediation occurred or has terminated, or where a settlement was reached; or as regards known facts that a reasonable individual would consider likely to affect the impartiality of the mediator, including a financial or personal interest in the outcome of the mediation and any existing or past relationship with a party or foreseeable participant in the mediation. The ADR Law also grants parties the freedom to agree on the place of mediation; failing such agreement, the place of mediation shall be any place convenient and appropriate to all parties.

4 Obligation to mediate

Is mediation in your country obligatory? Can mediation be ordered by courts in your country?

Voluntary mediation, or mediation entered into by agreement of the parties, is not obligatory. However, CAM, which is mediation done under the auspices of the court is mandatory in certain cases after a court has acquired jurisdiction over a case.

5 Court-annexed mediation

Does the law of your country provide for court-annexed mediation? If so, is court-annexed mediation mandatory?

As discussed above, the Supreme Court implements the CAM programme for the Philippine courts. Pursuant to AM No. 01-10-5-SC-PHILJA, it is mandatory for the following cases to be referred to CAM during the pretrial stage of court proceedings:

- all civil cases and the civil liability of criminal cases covered by the Rule on Summary Procedure, including the civil liability for violation of BP 22, except those that by law may not be compromised;
- special proceedings for the settlement of estates;
- all civil and criminal cases filed with a certificate to file action issued by the Barangay chairman or the Settlement Council under the Revised Katarungang Pambarangay Law (under the Local Government Code);
- the civil aspect of quasi-offences under title 14 of the Revised Penal Code;
- the civil aspect of less grave felonies punishable by correctional penalties not exceeding six years' imprisonment, where the offended party is a private person;
- the civil aspect of fraud, theft and libel;
- all civil cases and probate proceedings, testate and intestate, brought on appeal from the exclusive and original jurisdiction granted to the first level courts under section 33(1) of the Judiciary Reorganisation Act of 1980 (BP 129);
- all cases of forcible entry and unlawful detainer brought on appeal from the exclusive and original jurisdiction granted to the first level courts under section 33(2) of BP 129;

- all civil cases involving title to or possession of real property or an interest therein brought on appeal from the exclusive and original jurisdiction granted to the first level courts under section 33(3) of BP 129; and
- all habeas corpus cases decided by the first level courts in the absence of the regional trial court judge, which are brought up on appeal from the special jurisdiction granted to the first level courts under section 35 of BP 129.

In such cases, the trial court judge shall issue an order referring the litigants to the Philippine Mediation Center (PMC) unit of the court for mediation. If mediation fails, the parties will then be referred back to the judge for judicial dispute resolution (JDR), wherein the judge him or herself will act as a conciliator, evaluator and mediator. If the JDR process fails, the case will be raffled to another judge (trial judge) who will then proceed with the litigation aspect of the case, unless all the parties to the case move that the JDR judge should likewise be the trial judge. CAM is still available to the parties during the appeals stage of litigation, under the PMC – appeals court mediation (AMC) process.

Parties who refuse to appear before the PMC to mediate, and those who fail to participate in JDR and AMC, may be subject to the following sanctions, among others: censure, reprimand, contempt, requiring the absent party to reimburse the appearing party his or her costs, including attorneys' fees for that day up to treble such costs, payable on or before the date of the rescheduled setting. Sanctions may also be imposed by the referring judge upon his or her own initiative or upon the motion of the interested party.

6 Mediation-arbitration

Is mediation combined with arbitral proceedings? May a mediator act later in the same dispute as an arbitrator, conciliator or judge?

Mediation may be combined with arbitral proceedings. Mediation-arbitration, or 'med-arb', is recognised in the ADR Law as an ADR process involving mediation and arbitration. Med-arb is institutionalised particularly in labour cases brought before the Philippine Department of Labor and Employment, where med-arbiters of the Bureau of Labor Relations hear and resolve disputes concerning union representation.

As a general rule, mediators in voluntary mediation may become an arbitrator for the same dispute subsequently; in fact, the ADR Law recognises that the parties may agree to have the previous mediator act as an arbitrator in the event the dispute is referred to arbitration. However, the Rules of Procedure of the Construction Industry Arbitration Commission (CIAC) created pursuant to Executive Order No. 1008 provide that, in construction arbitration, one who acted as conciliator/mediator in a case cannot act as arbitrator for the same case when brought to arbitration, unless both parties consent to his or her appointment in writing.

In JDR proceedings, the judge who acts as mediator/conciliator is generally prohibited from hearing the case for trial when JDR fails, and thus the case must be raffled to another trial judge. According to the Revised Guidelines, the JDR judge 'may have elicited confidential information that may create bias and partiality that could affect the judgment'. However, the parties may, by a joint written motion, ask that the JDR judge be the trial judge as well.

7 Online dispute resolution (ODR)

Have there been any developments regarding online dispute resolution in your country? Is your country participating in any international ODR project?

The Philippines is still in the development stages in providing for ODR mechanisms. As early as 2004, there have been initiatives by the Cyberspace Policy Center for Asia-Pacific and the Philippine

Dispute Resolution Center (PDRCI) to operate a website for ODR. This website was to be supported by the Asia Foundation and Microsoft Philippines (www.microsoft.com/philippines/_pressroom/008.aspx) and was envisaged as a 'web-based multidoor courthouse offering several services' such as neutral evaluation, mediation, and arbitration (www.mediate.com/Integrating/docs/34worldviews.pdf). However, at present, we are not aware of any functional ODR mechanism in the country, nor is the Philippines participating in international ODR projects such as ODR Exchange or ECODIR.

8 Confidentiality and disclosure

Is mediation a confidential proceeding in your country? In which cases can disclosure of confidential information by the mediator or the parties be permitted or compelled? Are there any sanctions for breach of confidentiality?

Mediation is generally a confidential proceeding. For voluntary mediation proceedings, section 9 of the ADR Law provides for the following confidentiality rules:

- information obtained through mediation shall be privileged and confidential;
- a party, a mediator, or a non-party participant may refuse to disclose and may prevent any other person from disclosing a mediation communication;
- confidential information shall not be subject to discovery and shall be inadmissible in any adversarial proceeding, whether judicial or quasi-judicial. However, evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its use in a mediation;
- in such an adversarial proceeding, the following persons involved or previously involved in a mediation may not be compelled to disclose confidential information obtained during mediation:
 - the parties to the dispute;
 - the mediator or mediators;
 - the counsel for the parties;
 - the non-party participants;
 - any persons hired or engaged in connection with the mediation as secretary, stenographer, clerk or assistant; and
 - any other person who obtains or possesses confidential information by reason of his or her profession; and
- a mediator may not be called to testify to provide information gathered in mediation. A mediator who is wrongfully subpoenaed shall be reimbursed the full cost of his or her attorney's fees and related expenses. In this connection, a mediator is forbidden to make a report, assessment, evaluation, recommendation, finding or other communication regarding a mediation to a court or agency that may make a ruling on a dispute subject of mediation, except where:
 - the mediation occurred or has terminated, or where a settlement was reached; or
 - the information sought to be disclosed or reported relates to the qualifications of a mediator that may give rise to a conflict of interest situation.

The ADR Law provides, however, that the privilege of confidentiality may be waived in record, or orally during a proceeding by the mediator and the mediation parties. A privilege arising from the confidentiality of information may likewise be waived by a non-party participant if the information is provided by such a non-party participant.

Moreover, there are exceptions to the privilege of confidentiality enumerated in the ADR Law as follows:

- there is no privilege against disclosure under section 9 if mediation communication is:
 - in an agreement evidenced by a record authenticated by all parties to the agreement;

- available to the public or is made during a session of a mediation that is open, or is required by law to be open, to the public;
 - a threat or statement of a plan to inflict bodily injury or commit a crime of violence;
 - intentionally used to plan a crime, attempt to commit, or commit a crime, or conceal a crime or criminal activity in progress;
 - sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation in a proceeding in which a public agency is protecting the interest of an individual protected by law; but this exception does not apply where a child protection matter is referred to mediation by a court or a public agency participates in the child protection mediation;
 - sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against the mediator in a proceeding; or
 - sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a party, non-party participant, or representative of a party based on conduct occurring during a mediation;
- (ii) there is no privilege under section 9 if a court or administrative agency finds, after a hearing in camera (ie, in closed chambers), that the party seeking discovery or the proponent of the evidence has shown that the evidence is not otherwise available, meaning the evidence sought could only be made available during the mediation proceedings, that there is a need for the evidence that substantially outweighs the interest in protecting confidentiality, and the mediation communication is sought or offered in:
- a court proceeding involving a crime or felony; or
 - a proceeding to prove a claim or defence that under the law is sufficient to reform or avoid a liability on a contract arising out of the mediation;
- (iii) a mediator may not be compelled to provide evidence of a mediation communication or testify in such proceeding; and
- (iv) if a mediation communication is not privileged under an exception in subsection (i) or (ii), only the portion of the communication necessary for the application of the exception for non-disclosure may be admitted. The admission of particular evidence for the limited purpose of an exception does not render that evidence, or any other mediation communication, admissible for any other purpose.

As for CAM and JDR proceedings, the Revised Guidelines provide that any and all matters discussed or communications made, including requests for mediation and documents presented during the mediation proceedings before CAM and JDR, shall be privileged and confidential, and the same shall be inadmissible as evidence for any purpose in any other proceedings, subject to the qualification that 'evidence or information that is otherwise admissible does not become inadmissible solely by reason of its use in mediation or conciliation'. In fact, in CAM, the mediator is forbidden by the Revised Guidelines from recording in any manner the proceedings, as well as from taking transcripts or minutes. If personal notes are taken for the mediator's guidance, such notes shall be shredded and destroyed. The Revised Guidelines further provide that the JDR judge shall not pass any information obtained in the course of conciliation to the trial judge or to any other person. This prohibition shall include all court personnel or any other person present during such proceedings. All JDR conferences shall be conducted in private.

9 Limitation period

Does a mediation proceeding suspend the limitation period for a court claim?

The ADR Law does not provide that mediation proceedings suspend the limitation periods for court claims. But, under CAM, since the referral to mediation by the court presupposes that a court claim has already been lodged, the limitation period is deemed effectively tolled by the filing of the formal complaint.

10 Settlement

What is the legal character of the final (settlement) agreement? What are the legal requirements for the enforceability or the content of the agreement? Is it possible to revise, withdraw or challenge the final settlement agreement?

A settlement agreement partakes of the nature of a contract between the parties, which is binding upon them. Under the ADR Law, a settlement agreement following successful voluntary mediation shall be prepared and signed by the parties together with their counsels, if any, and by the mediator; the parties and their counsels should have endeavoured to make the terms and conditions thereof complete, with adequate provisions for the contingency of breach to avoid conflicting interpretations of the agreement. On the other hand, the mediator shall certify that he or she explained the contents of the settlement agreement to the parties in a language known to them.

The ADR Law gives the parties to the settlement agreement the option, if they so desire, to deposit such settlement agreement with the appropriate clerk of a Regional Trial Court (RTC) of the place where one of the parties resides. Where there is a need to enforce the settlement agreement, a verified petition may be filed by any of the parties with the same court, which shall proceed summarily to hear the petition, pursuant to the Special ADR Rules (AM No. 07-11-08-SC) promulgated by the Supreme Court.

Finally, the ADR Law allows the parties to agree in the settlement agreement that the mediator shall become a sole arbitrator for the dispute and shall treat the settlement agreement as an arbitral award, which shall be subject to enforcement under the provisions of the Domestic Arbitration Law.

On the other hand, for CAM and JDR, if full settlement of the dispute is reached, the parties, assisted by their respective counsels, shall draft the compromise agreement, which shall be submitted to the court for judgment upon compromise or other appropriate action. A judgment upon compromise may be enforced by execution ordered by the court. Under the Civil Code of the Philippines (the Civil Code), if a party to a compromise fails or refuses to abide by the compromise, the other party may either enforce the compromise or regard it as rescinded and insist upon his or her original demand.

As for the possibility of revising, modifying or challenging a settlement agreement, neither the ADR Law nor the Special ADR Rules provide for procedures for the withdrawal or revision of the settlement agreement. However, the Civil Code states that in cases where the consent of a mediation party to the agreement is vitiated by mistake, violence, intimidation, undue influence or fraud, the same is considered a voidable contract that can be annulled by the courts.

11 Mediation institutions

What are the most prominent mediation institutions in your country?

For CAM, the governing body is the PMC established by the Supreme Court. The PMC is under the supervision of the Philippine Judicial Academy (PHILJA). As for voluntary mediation, there are private ADR providers, such as PDRC, which provide institutional mediation as an alternative mode of settling disputes. For construction disputes, the CIAC also provides for mediation.

Mediation procedure

12 Background

Describe the development of mediation in your country.

The many Philippine indigenous tribes and communities already had their specific dispute resolution mechanisms based on local legal systems and practices, primarily by bringing a dispute before an elder or chieftain for resolution. However, colonisation by Spain from the 16th century onwards reduced these indigenous dispute resolution mechanisms to mere customs and traditions, and as such they were replaced by Western legal concepts, particularly Spanish civil law and later Anglo-American common law (see: Maria Roda Cisneros, *Indigenous Modes of Dispute Resolution and Indigenous Justice Systems*). Over time, the Philippines developed a vast and complex legal system where legal disputes are settled in courts, through the adversarial system of litigation. This led to the perennial problem of clogged court dockets, which causes delays in the resolution of disputes and contributes to dissatisfaction in the settlement of issues through the courts.

The Civil Code, promulgated in 1949, has a chapter on compromises, although it does not specifically refer to compromises entered into after mediation. The Arbitration Law (RA 876), promulgated in 1953, provides for domestic arbitration as an ADR method but does not provide for other ADR methods such as mediation. But, in 1978, Presidential Decree No. 1508 established a local or community dispute settlement system, known as the Katarungang Pambarangay of amicably settling disputes at the barangay level (ie, smallest local government unit), primarily through mediation, conciliation or arbitration before the Barangay chairman or conciliation panels. The Katarungang Pambarangay Law was recognised under the subsequent Local Government Codes, promulgated in 1983 and 1991 (see www.iiasa.ac.at/Research/PIN). The Katarungang Pambarangay system was reported in 2011 as having been able to settle some 355,345 of the approximately 461,834 disputes (76 per cent) referred to them. However, it was not until the passage of the ADR Law in 2004 that most forms of present ADR methods, including mediation, whether voluntary or court-annexed, were recognised and statutorily defined.

In 2001, the Supreme Court designated the PHILJA as its component unit for court-referred/related mediation and other ADR systems. Thus, the PHILJA undertook to conduct mediation under pilot projects in specifically designated courts. Further, in partnership with the Canadian International Development Agency, the Supreme Court and the PHILJA undertook the Justice Reforms Initiatives Support Project (JURIS) in 2003 to support the then Action Plan for Judicial Reforms Programme of the Supreme Court. The JURIS project aims to strengthen the use of mediation as an ADR process through JDR and CAM (see: Justice Amuerfina Melencio-Herrera, *CAM – Making It Work: The Philippine Experience*). Likewise, in 2003, encouraged by the success of CAM, the PHILJA started the Appeals Court Mediation Project.

As proof of the increasing public awareness in mediation in the Philippines, the country will be hosting the Sixth Asia Pacific Mediation Forum Summit to be held in Manila in December 2013.

13 Areas of disputes for mediation

In which areas of disputes is mediation preliminarily applied? Are there any disputes that cannot be mediated?

All disputes, except those expressly excluded by law, can be the subject of mediation.

In particular, for voluntary mediation, the ADR Law provides that its provisions are inapplicable to:

- labour disputes covered by the Labor Code of the Philippines, as amended;

- the civil status of persons;
- the validity of a marriage;
- any ground for legal separation;
- the jurisdiction of courts;
- future legitime;
- criminal liability; and
- those which by law cannot be compromised.

As for CAM and JDR, the Revised Guidelines provide that the following cases cannot be mediated:

- (i) civil cases, which by law cannot be compromised (ie, the civil status of persons, the validity of a marriage or legal separation, any ground for legal separation, future support, the jurisdiction of courts and future legitime);
- (ii) criminal cases not falling under any of the following:
 - all civil and criminal cases filed with a certificate to file action issued by the Barangay chairman or the Settlement Council under the Revised Katarungang Pambarangay Law;
 - the civil aspect of quasi-offences under title 14 of the Revised Penal Code;
 - the civil aspect of less grave felonies punishable by correctional penalties not exceeding six years' imprisonment, where the offended party is a private person; and
 - the civil aspect of fraud, theft and libel;
- (iii) habeas corpus petitions;
- (iv) all cases under Republic Act No. 9262 (Violence against Women and Children); and
- (v) cases with a pending application for restraining orders or preliminary injunctions.

In cases covered under (i), (iv) and (v), however, where the parties inform the court that they have agreed to undergo mediation on some aspects thereof (eg, custody of minor children, separation of property, or support pendente lite) the court shall refer them to mediation.

Please note that labour union issues can be mediated in the Bureau of Labor Relations. Likewise, under the Rules of Procedure for Intellectual Property Office (IPO) Mediation Proceedings, the IPO offers mediation services for certain IP-related disputes, such as administrative complaints for violation of intellectual property rights and unfair competition, inter partes cases, and disputes involving technology transfer payments, among others. Mediation is also practised by other government agencies in settling disputes, especially at their initial stages – as seen in the Department of Trade and Industry, Housing and Land Use Regulatory Board, Cooperatives Development Authority, Commission on the Settlement of Land Problems, Insurance Commission, National Commission on Indigenous Peoples, and Presidential Commission for the Urban Poor, among others (see: *A Sourcebook on Alternatives to Formal Dispute Resolution Mechanisms*, published by JURIS in 2008). On the other hand, the Office of the Solicitor General in 2010 issued the New Rules on Alternative Dispute Resolution for Disputes Between National Government Agencies.

14 Procedural requirements

Are there procedural requirements for mediation proceedings in your country? Must the parties prepare for the mediation?

For CAM and JDR, the parties, after the last pleading has been filed, are referred to mediation via an order issued by the JDR judge requiring the parties to appear before the PMC unit staff to commence mediation. The court likewise gives the PMC a copy of the order for mediation. The mediator chosen by the parties from the list of PMC-accredited mediators is free to adopt such procedures that will best facilitate the mediation proceedings. There are, however, no specific requirements to the parties to prepare and submit summaries or other documents, consistent with the conciliatory and non-adversarial nature of mediation.

15 Structure and process of mediation

Describe the most common steps for the mediator's preparation of a mediation proceeding. Describe the most common structure of mediation proceedings. What is the typical time frame for a mediation proceeding? Are there any special considerations for international mediation proceedings?

For CAM, on the date set in the order for mediation, the parties shall proceed to select a mutually acceptable mediator from among the list of accredited mediators. If no agreement is reached, the PMC unit staff shall, in the presence of the parties and the mediators, choose by lot the one who will mediate the dispute from among the mediators in the unit, ensuring a fair and equal distribution of cases. The mediator chosen shall be considered an officer of the court while performing his or her duties as such or in connection therewith. The mediator shall then commence the mediation process, unless the parties and the mediator agree to reset the initial mediation conference, which shall not be later than five days from the original date.

At the initial conference, the mediator shall explain the mediation process to both parties, stressing the benefits of an early settlement of their dispute based on serving their mutual interests, rather than their legal positions. Thereafter, another joint conference may be held to consider various options that may resolve the dispute through reciprocal concessions and on terms that are mutually beneficial to both parties. As already mentioned, the minutes of the CAM shall not be recorded in any manner.

The order for mediation shall include the pre-setting of the case for JDR not earlier than 45 days from the time the parties first personally appear at the PMC unit-CAM so that the JDR will be conducted immediately if the parties fail to settle at the CAM; thereafter, the JDR will be conducted by the judge, where he or she will act as a mediator and conciliator to facilitate the discussion of the parties to have them reconcile their differences. The judge also becomes a neutral evaluator who makes a non-binding and impartial assessment of the parties' respective positions and on the basis of such neutral evaluation, persuades the parties to enter into a fair and mutually acceptable settlement. To complete the JDR, judges of lower courts have a period not exceeding 30 days, while RTC judges have a period not exceeding 60 days, subject to extension upon the judge's discretion if there is a high probability of settlement and upon joint written motion of the parties.

16 Mediation style

What is the primary mediation style in your country for commercial mediation: facilitative mediation, evaluative mediation or transformative mediation? Are private sessions (caucuses) or joined sessions, or both, commonly used in mediation?

Mediation is primarily facilitative and evaluative. Under the ADR Law, mediation is essentially a process where the mediator facilitates communication and negotiation, and assists the parties in reaching a voluntary agreement.

With the consent of both parties, the mediator may hold separate caucuses with each party to determine their respective real interests in the dispute.

17 Co-mediation

What form does team mediation typically take in your country? Is co-mediation regularly used in your country? In which kind of cases?

Team mediation, or co-mediation, is not yet firmly established in the Philippines. However, in mediation of family or domestic disputes, (as regards certain aspects thereof, eg, custody of minor children, separation of property, or support pendente lite, which, pursuant to the Revised Guidelines, is referable by the court to mediation, where the parties inform the court that they have agreed to undergo

mediation on some aspects thereof) co-mediation is sometimes observed, and is said to be slowly gaining ground (<http://jlp-law.com/blog/mediation-reaching-its-potential-in-family-law-cases/>).

18 Party representatives and third parties

What is the practice in your country with respect to the inclusion of party representatives in mediation proceedings? What is the practice with respect to experts and witnesses?

Under the ADR Law, mediation parties are allowed to designate a lawyer or other person to provide assistance in voluntary mediation. A waiver of this right shall be made in writing by the party waiving it. A waiver of participation or legal representation may, however, be rescinded at any time. Likewise, the presence of non-party participants, such as experts and witnesses, as well as persons hired or engaged in connection with the mediation as secretary, stenographer, clerk or assistant, etc, are recognised; these persons are covered by the confidentiality and disclosure rules discussed in question 8.

As regards CAM and JDR, the parties are allowed to be accompanied by such other persons, including lawyers, who can assist in the settlement of the dispute. However, the Revised Guidelines exhort lawyers to 'adopt a role as advisers and consultants to their clients, drop their combative role in the adjudicative process, and giving up their dominant role in judicial trials. They must accept a less directive role in order to allow the parties more opportunities to craft their own agreement.'

19 Specific mediation procedures/conflict or dispute management systems

Have companies set up their own dispute management systems in your country? Are there any special routes for consumers to use mediation for small claims? Are there any institutions that offer mediation for their customers, users, etc? Is online mediation available in your country?

Under the Implementing Rules of the Labor Code, parties to a collective bargaining agreement are mandated to establish machinery for the expeditious resolution of grievances, including those arising from the interpretation or enforcement of company personnel policies. This machinery can include mediation, although arbitration is the more prevalent practice.

As regards consumer complaints over consumer products, the Department of Trade and Industry, pursuant to Executive Order No. 523 (Administrative Justice Reform by Instituting the Use of ADR) and Department Administrative Order No. 07, S. 2008 (Simplified and Uniform Rules of Procedure for Administrative Cases), follows mediation as part of its adjudicative process to act on consumer complaints over violations of the Consumer Act of the Philippines and other Trade and Industry Laws.

Mediation agreement

20 Conclusion and content

Is there any obligation to conclude an agreement between the mediator and the parties or between the parties before or at the beginning of the proceeding? Are there any legal requirements regarding the content of the agreement between the mediator and the parties? What are the common provisions for such mediation agreement? Must the agreement be in writing?

For CAM and JDR, there is no obligation on the mediation parties to conclude agreements between themselves, or between the parties and the mediator before or at the beginning of the proceeding.

On the other hand, for voluntary mediation under the ADR Law, there is no obligation to conclude mediation agreements between the parties or between parties and the mediator. However, a mediation

agreement may provide for rules that will govern the mediation, such as the place of mediation. Moreover, an agreement to submit a dispute to mediation by any institution shall include an agreement to be bound by the internal mediation and administrative policies of such institution, and an agreement to submit a dispute to mediation under institutional mediation rules shall be deemed to include an agreement to have such rules govern the mediation of the dispute and for the mediator, the parties, their respective counsels, and non-party participants to abide by such rules.

21 Costs for mediation

Are there any legal provisions on mediators' fees? What is the average mediator's fee in mediations involving companies? Is there any legal aid or other financial support for mediation proceedings if parties cannot afford to pay the mediator?

The Rules of Court of the Philippines (ROC), as amended by AM No. 04-2-04-SC, prescribe the collection of mediation fees in CAM and JDR, which accrues to the Mediation Fund for the training of mediators, payment of mediators' fees and other PMC operating expenses. The fees range from 500 to 1,000 Philippine pesos; however, paupers or indigent litigants, are, in all cases, exempt from contributing to the Mediation Fund.

As for voluntary mediation, the fees would depend upon the agreement of the parties in accordance with their separate agreement with the chosen mediator. If the mediation is conducted under the auspices of a mediation institution, the costs and fees payable will depend upon the contractual agreement of the parties with the mediation institution. Mediator fees may ordinarily be based on time charges, which may vary depending on the stature of the mediator. Mediation institutions such as the CIAC, provide for mediators' fees based on the sum in dispute. Notably, CIAC mediation fees are lower by 50 per cent than CIAC arbitration fees.

Professional matters for mediators

22 Regulation

Is there any specific regulation of mediators in your jurisdiction? Give details. Are there any regulations on immigration or tax issues or regarding the right to work for foreign mediators?

The ADR Law provides that it does not require that a mediator shall have special qualifications by background or profession alone unless the special qualifications of a mediator are required in the mediation agreement or by the mediation parties.

For CAM and JDR, the PHILJA, through PMC, is the agency tasked with recruiting, training, and recommending mediators for accreditation with the Supreme Court. To qualify as a court-accredited mediator, one must have a bachelor's degree and must be at least 30 years old. He or she must be proficient in oral and written communication in English and Filipino. Further, he or she must possess a good moral character and willingness to learn new skills. He or she must also express willingness to render public service. (See <http://pmc.judiciary.gov.ph/become-a-mediator.htm>.) Every mediator must likewise abide by the Code of Ethical Standards for Mediators prescribed by the Supreme Court, through PHILJA. There are no specific regulations or issuances as regards accreditation of foreign mediators and there seems to be no restrictions as regards foreign mediators when it comes to voluntary mediation proceedings.

23 Training

Are there any requirements regarding training for mediators?

Before an applicant may qualify as a CAM mediator, he or she must pass a comprehensive written examination and interview, which will put his or her oral and written communication skills to test.

The applicant must also complete a basic mediation seminar, which lasts for five days. Attendance in a four-week internship programme is likewise required. During this period, the applicant handles actual CAM cases. PHILJA administers the tests, interviews, seminars and internship programmes.

24 Continued education

Must mediators undertake continued professional education? Is there a credit point system for the continued education of mediators?

A CAM mediator must attend at least 75 per cent of all the activities conducted by the PMC, such as refresher courses, meetings and other training within the two-year period in order to maintain good standing. He or she must also participate in the annual settlement month. He or she may also attend foreign training and conferences, subject to the submission of a description of the programme one month before the said activity. The accreditation may be revoked or not renewed if a mediator fails to maintain his or her good standing.

There is no credit point system for the continued education of mediators. However, for the purpose of upgrading the level of the mediators on the next accreditation, each case settled by them shall be equivalent to one point.

25 Accreditation of mediators

Outline the system for certification of mediators.

To be accredited by the PHILJA, the prospective mediator must submit a curriculum vitae with 2 inches x 2 inches photo, college school records, National Bureau of Investigation/police clearance and a certificate of good moral character from two persons not related to the applicant. The applicant will then undergo a written comprehensive exam and interviews, which will be administered by the PHILJA. The qualified applicant will need to attend and complete a basic mediation seminar workshop, which shall include a short written exercise to test his or her proficiency in oral and written communication and a four-week internship programme. PHILJA may request training services from other organisations or individuals.

PHILJA will submit a list of recommended applicants to the Supreme Court based on the overall performance of each applicant. The Supreme Court en banc will approve the accreditation of mediators. The accreditation shall be effective for two years. After the expiration of a mediator's accreditation, a mediator's conduct and performance shall be extensively reviewed by his or her respective PMC coordinator for recommendation to the Evaluation and Accreditation Committee of the PMC to determine whether the concerned mediator can be re-accredited.

For voluntary mediation, the Office for Alternative Dispute Resolution (OADR) established pursuant to the ADR Law is the agency tasked with the formulation of standards for the training of the ADR practitioners and service providers (which include mediators), and for certification that such ADR practitioners and service providers have undergone the professional training provided by the OADR.

26 Mediator liability and sanctions

What are the duties of mediators in a mediation procedure? What liability do mediators face when offering their services and conducting mediation proceedings? Is professional indemnity insurance for mediators available or obligatory? Are there any further sanctions or other disciplinary measures for mediators in cases of misconduct, poor performance, etc? Are there any regulations referring to the dismissal of mediators?

During CAM, the mediator should explain to the parties the benefits of an early settlement of the dispute and shall attempt immediate settlement. The mediator should not record the proceedings but he

Update and trends

In November 2012, the Supreme Court formed the Core Committee for the National Conference for the Revision of the Rules of Civil Procedure. The overall controlling objective of the Core Committee is to draft and propose a revised Rules of Civil Procedure that 'gives true justice in all kinds of civil actions before the courts' and it notes that justice is done only if the revised rules substantially ensure the following:

- the parties in every case are placed on equal footing;
- the costs of litigation are reduced;
- the courts' time and resources are wisely distributed among cases in proportion to:
 - the amounts involved;
 - the complexity of the issues raised; and
 - and the public interests in their resolution;
- all cases are speedily heard and decided; and
- the impartiality of the courts is enhanced and safeguarded.

In this regard, on 20 May 2013, the National Conference for the Revision of the Rules of Civil Procedure published the First Draft of the Revised Rules of Civil Procedure (First Draft), which integrates the various issuances on CAM and other mediation techniques into the proposed Revised Rules of Civil Procedure. In the Primer to the First Draft, it is provided that in order to augment the efforts to decongest the courts, every case, with few exceptions, must undergo alternative dispute resolutions before it is filed in court. Among these alternative dispute resolutions provided in the First Draft are CAM and JDR. Notably, in relation to CAM, the Primer notes that '(e)xperience shows that court trained mediators have high success rates'; on the other hand, the Primer acknowledges the effectiveness of the JDR system when it mentions that '[s]tatistics show a high success rate in [JDR]'.

or she may take down personal notes, which must not be shown to the parties. He or she shall keep a file of the mediation proceedings and shall return to the parties the documents or records submitted by them. He or she shall prepare a status report on the progress of the proceedings at the end of the mediation period for submission to the trial court.

If CAM is successful, the mediator should inform the court. He or she must furnish the court either with the original of the compromise agreement signed by the parties and counsel for the approval by the court, withdrawal of the complaint and counterclaim, if any or a satisfaction of the claim. If the mediation fails, the mediator shall submit to the court a 'certificate of failed mediation'. The court, upon receipt of such certificate, shall proceed with JDR.

As regards disciplinary measures against mediators, if a report or complaint against any mediator filed before the Grievance Committee is found *prima facie* meritorious, the Grievance Committee shall conduct an investigation and submit a report.

During this period, the mediator shall be preventively suspended for a period of 30 days. PHILJA shall review the report and provide for appropriate sanctions. The decision of the PHILJA chancellor shall be final unless the sanction is the cancellation of accreditation or non-renewal thereof.

The Supreme Court will affirm through a resolution the cancellation or non-renewal of the accreditation. It also has the discretion to impose additional penalties depending on the gravity of the mediator's culpable action.

We note that under the ADR Law, ADR providers and practitioners, which include mediators, shall have the same civil liability for the acts done in the performance of their duties as that of public officers as provided in the Administrative Code (ie, they shall be liable for the acts they committed in the performance of their duties when there is a clear showing of bad faith, malice or gross negligence).

27 Appointment

Is there any regulation regarding the appointment of mediators? Is it common in your country to seek assistance by institutions or official bodies for the appointment of mediators? Are mediators obliged to inform about conflicts of interest in the course of appointment?

The ADR Law requires an individual who is requested to serve as a mediator in voluntary mediation, before accepting a mediation, to make an inquiry that is reasonable under the circumstances to determine whether there are any known facts that a reasonable individual would consider likely to affect the impartiality of the mediator, including a financial or personal interest in the outcome of the mediation and any existing or past relationship with a party or a foreseeable participant in the mediation; further, such individual must disclose such facts known or learned as soon as is practicable to the parties before accepting a mediation. At the request of a mediation party, an individual who is requested to serve as mediator shall disclose his or her qualifications to mediate a dispute.

For CAM and JDR, the PHILJA administers tests for prospective mediators, subject to the submission of a proper application from a prospective mediator. Thereafter, the application is approved by the PHILJA, subject to confirmation of appointment by the Supreme Court. The mediator will then be considered an officer of the court.

The mediator shall refrain from participating in the mediation of any dispute if he or she perceives that there will be a clear conflict of interest. He or she should disclose any circumstance that 'may create or give the appearance of conflict of interest' or create doubt on the mediator's impartiality. He or she should also disclose if he or she has already represented either party in any capacity. He or she should also divulge 'any known, significant current or past personal or professional relationship with any party or attorney involved in the mediation'. This duty continues throughout the process.

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If the parties do not seek the inhibition of the mediator after the mediator made such disclosures, he or she shall continue to act as such.

Cases

28 Notable cases

Briefly give details of any significant recent mediation cases or disputes or judgments involving mediation that have been published in your country.

The case of *Chan Kent v Micarez, et al* (GR No. 185758, 9 March 2011), decided by the Supreme Court, dealt squarely with the issue of the sanctions that a court can impose on a party who fails to attend a CAM proceeding. In that case, the parties to a court case, who were contesting ownership over a parcel of land, were referred to CAM by the judge. During CAM, the plaintiff failed to appear;

hence, the court sanctioned the plaintiff by dismissing the complaint. The Supreme Court, on appeal, while noting that the dismissal of the complaint is indeed an available sanction for a party's failure to attend CAM, ruled that the dismissal of the case was too harsh a penalty under the circumstances, absent a showing of wilful and flagrant disregard of the rules on CAM. Ultimately, the Supreme Court ordered that the case be reinstated in the lower court and CAM proceedings be continued in earnest.

Notably, the ruling of the Supreme Court in *Chan Kent v Micarez* was affirmed in *Sandoval Shipyards Inc et al v Philippine Merchant Marine Academy* (GR No. 188633, 10 April 2013) where it was reiterated that absent a showing of a party's wilful or flagrant disregard of mediation rules, an intent to effect a delay in litigation or a lack of interest in a possible amicable settlement of a case, a party's absence during a CAM session should not be a ground for the trial court to immediately dismiss a case.



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