



ADR Practice Before the CDA

QUERY

- IN THE EVENT OF INTRA-COOPERATIVE OR INTER-COOPERATIVE DISPUTES, CAN THE PARTIES OR THE COOPERATIVE RAISE THE SAID ISSUES FOR RESOLUTION IMMEDIATELY TO THE CDA?

QUERY

- CAN THE PARTIES GO DIRECTLY TO THE REGULAR COURT IN ORDER FOR THE PRESENT DISPUTE TO BE RESOLVE?

QUERY

- MAY THE REGULAR COURTS REFUSE TO ACT ON THE CASE INVOLVING INTRA-COOPERATIVE OR INTER COOPERATIVE DISPUTES SUBMITTED TO IT?

QUERY

- MAY THE COURTS SUBSTITUTE ITS OWN JUDGMENT TO THAT OF THE ARBITRATORS?

Declaration of Policy

- It is hereby declared the policy of the State to promote the viability and growth of cooperatives as instruments of equity, social justice and economic development and to create an agency, in fulfillment of the mandate in Section 15, Article XII of the Constitution.

ADR in the CDA

- The Cooperative Development Authority is already mandated to implement ADR, particularly mediation and conciliation, even before the passage of R.A. 9285 in 2004.

ADR in the CDA...

- Section 8 of R.A. 6939 provides that:
- ***“Section 8. Mediation and Conciliation. - Upon request of either or both parties, the Authority shall mediate and conciliate disputes within a cooperative or between cooperatives: Provided, That if no mediation or conciliation succeeds within three (3) months from request thereof, a certificate of non-resolution shall be issued by the commission prior to the filing of appropriate action before the proper courts.”***

TIMELINE OF ADR PRACTICE IN THE CDA.....

- "ART. 137. *Settlement of Disputes, Conciliation, and Mediation Proceedings.* – Disputes among members, officers, directors, and committee members, and intra-cooperative, inter-cooperative, intra-federation or inter-federation disputes shall, as far as practicable, be settled amicably in accordance with the conciliation or mediation mechanisms embodied in the bylaws of cooperatives and in such other applicable laws.

TIMELINE OF ADR PRACTICE IN THE CDA.....

- "The conciliation and mediation committee of the cooperative shall facilitate the amicable settlement of intra-cooperative disputes and disputes among members, officers, directors, and committee members.
- "Should such conciliation or mediation proceeding fail, the matter shall be settled through voluntary arbitration: *Provided, however,* That before any party can validly file a complaint with the Authority for voluntary arbitration, it must first secure a certification from its conciliation and mediation committee and from the cooperative union or federation to which it belongs that despite all efforts to settle the issues, the same have failed.

TIMELINE OF ADR PRACTICE IN THE CDA.....

"The jurisdiction of the voluntary arbitrators shall be exclusive and original and their decisions shall be appealable to the Office of the President. The Authority shall issue and adopt the proper rules of procedure governing arbitration as the primary and exclusive mode for dispute resolution in accordance with the Alternative Dispute Resolution Act of 2004.

SIGNIFICANT VARIATION

- Prior to the passage of R.A. 9520 in 2009, the CDA itself conducts mediation and conciliation as the only mode of settling disputes.
- After the passage of R.A. 9520, mediation and conciliation is now being conducted at the primary cooperative and federation levels. In case of non-settlement, they shall issue a certificate of non-settlement to be attached by the parties concerned if they will file a request for Arbitration before the CDA.
- Accordingly, as much as possible, the CDA will no longer conduct mediation and conciliation at its level. Voluntary Arbitration shall be the primary and exclusive mode of resolving disputes before the CDA.

VOLUNTARY ARBITRATION BEFORE THE CDA

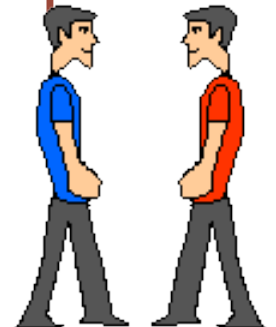
- September 2011 – Training of cooperative voluntary arbitrators conducted by the OADR and the PDRCI.
- December 2011 – Rules of Procedure Governing Voluntary Arbitration before the CDA approved by the Board of Administrators.
- February 2012 – oath taking of accredited voluntary arbitrators.
- April 2014 – Training of New Batch of Arbitrators and re-accreditation of existing Arbitrators



OVERVIEW OF THE RULES OF PROCEDURE GOVERNING VOLUNTARY ARBITRATION BEFORE THE CDA

Statement of Policy and Objectives

It is the policy and objective of these Rules to provide a fair and expeditious settlement of intra-cooperative and inter-cooperative disputes by way of an ***institutional mode*** of voluntary arbitration as an alternative to judicial proceedings with the end in view of ensuring and possibly restoring the disrupted harmonious and friendly relationships between or among the parties.



ANNOTATIONS

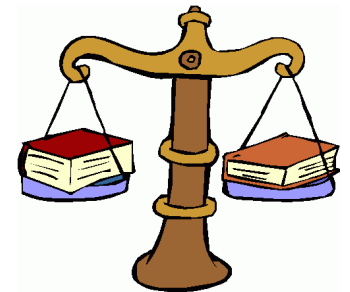
- **Institutional Arbitration** – governed by the rules of a specific arbitral institution and managed by it. Arbitration proceedings under the CDA are institutional in character. This means:

- c) The proceedings are primarily governed by the rules and administrative guidelines issued by the Authority;
- d) Managed by the CDA, through a Secretariat (Legal Division);
- e) Appointing Authority is the CDA;
- f) Standard Fee Schedule;

Ad Hoc Arbitration – no specific arbitral institution; arbitration managed by the parties and tribunal.

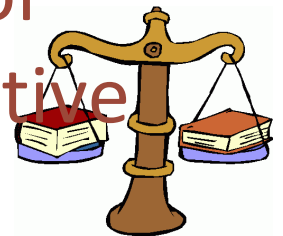
Applicability of Rules

These Rules are applicable to proceedings in voluntary arbitration before the Cooperative Development Authority.



Application of Judicial Technical Rules

Voluntary Arbitration is an administrative proceeding. The technical rules applicable to court or judicial proceedings need not be controlling and it is the spirit and intention of these rules to use every and all reasonable means to ascertain the facts in each case speedily and objectively, and without regard to technicalities of law or procedure, all in the interest of substantive due process.



Jurisdiction

The Cooperative Development Authority and the Arbitral Tribunal as contemplated by these Rules shall have original, exclusive and primary jurisdiction over disputes among members, officers, directors, and committee members, and intra-cooperative, inter-cooperative, intra-federation or inter-federation disputes which were not resolved amicably in accordance with the [Conciliation/Mediation Mechanisms](#).

Exercise of Jurisdiction

The Authority and the Arbitral Tribunal cannot acquire jurisdiction over the dispute, unless there exist

- An Arbitration Agreement either in their Articles of Cooperation, By-laws, contracts or other form of written communication between and among the parties;



Exercise of Jurisdiction

- a) In the absence of an existing Arbitration Agreement, the parties subsequently agree to submit the same for voluntary arbitration, which submission may be in a form of
- An exchange of communication between the parties or some other form showing that the parties have agreed to submit whatever dispute to voluntary arbitration or [adhere to the provisions of Article 137 of R.](#)
;

Exercise of Jurisdiction

- i. Expressly or impliedly submitting to voluntary arbitration as can be gleaned from their respective written communications or pleadings filed with the Cooperative Development Authority or before the Arbitral Tribunal in accordance with these rules; or
- ii. Signing a Submission Agreement during the preliminary conference.



ANNOTATIONS

- This relates to the relationship of the cooperative with the government and other cooperatives. The Articles of Cooperation is the bond between the state and the cooperative.
- *Sample Arbitration Clause (Articles of Cooperation)*
- “Any dispute, controversy or claim arising out of or relating to this Articles of Cooperation, the cooperative law and related rules, administrative guidelines of the Cooperative Development Authority, including inter-cooperative, inter-federation disputes and related concerns, and any question regarding the existence, interpretation, validity, breach or termination or the business relationship shall be exclusively referred to and finally resolved by voluntary arbitration under the institutional rules promulgated by the Cooperative Development Authority, after compliance with the conciliation or mediation mechanisms embodied in the applicable bylaws and in such other pertinent laws.”

ANNOTATIONS

- This relates to the internal and intra-cooperative concerns of the cooperative. The By-laws is the bond between the cooperative and its members and officers.
- *Sample Arbitration Clause (By-laws)*
- “Any dispute, controversy or claim arising out of or relating to this By-laws, the cooperative law and related rules, administrative guidelines of the Cooperative Development Authority, including disputes involving members, officers, directors, and committee members, intra-cooperative, intra-federation disputes and related issues, and any question regarding the existence, interpretation, validity, breach or termination of agreements, or the membership/general assembly concerns shall be exclusively referred to and finally resolved by voluntary arbitration under the institutional rules promulgated by the Cooperative Development Authority, , after compliance with the conciliation or mediation mechanisms embodied in the bylaws of the cooperative, and in such other applicable laws.”

Qualification of Arbitrators

- The Cooperative Development Authority shall constitute a list of Accredited Voluntary Arbitrators.
- The Voluntary Arbitrators shall render service only when called upon to arbitrate a cooperative dispute.
- Any employee or officer of the Cooperative Development Authority may likewise be appointed as Voluntary Arbitrator if he/she possesses the necessary qualification.

Primary Domestic Sources of Arbitration Law

B. Republic Act 9285 (RA 9285) – “The ADR Act of 2004” which is UNCITRAL based. For international arbitration, the UNCITRAL MODEL LAW was adopted as an Annex to the law and the “travaux preparatoires” were expressly referred to in interpreting the same.

D. Republic Act 876 (RA 876) - The Philippine Arbitration Law which is based on the U.S. Federal Arbitration Law. It continues to govern domestic arbitrations as modified by RA 9285, including portions of the UNCITRAL MODEL LAW

Primary Domestic Sources of Arbitration Law

- C. Executive Order 1008 (EO 1008) – The Construction Industry Arbitration Law which created the Construction Industry Arbitration Commission (“CIAC”). EO 1008 governs construction arbitration and its rules are ICC-based.

ADR Act of 2004

Declaration of Policy

“SEC. 2 It is hereby declared the policy of the State to actively promote party autonomy in the resolution of disputes or the freedom of the party to make their own arrangements to resolve their 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 declog 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 of appropriate cases. Likewise, the State shall enlist active private sector participation in the settlement of disputes through ADR. This Act 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 and 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.” (RA 9285)

ADR Forms

- 1. Mediation**
- 2. International Arbitration**
- 3. Domestic Arbitration**
- 4. CIAC Arbitration**
- 5. Other Forms of ADR**
 - a. Early Neutral Evaluation**
 - b. Mini-Trial**
 - c. Mediation-Arbitration**

MEDIATION

"Mediation" means a voluntary process in which a mediator, selected by the disputing parties, facilitates communication and negotiation, and assist the parties in reaching a voluntary agreement regarding a dispute." (R.A. 9285, Sec. 3 [q])

INTERNATIONAL COMMERCIAL ARBITRATION

When is arbitration international?

1. If the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States. (UML, Article 1[3])
8. If the place of arbitration, contract performance, or the place of the subject matter of the dispute is situated in a State other than the place of business of the parties
3. The parties expressly agree that subject matter is international

DOMESTIC ARBITRATION

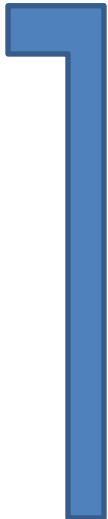
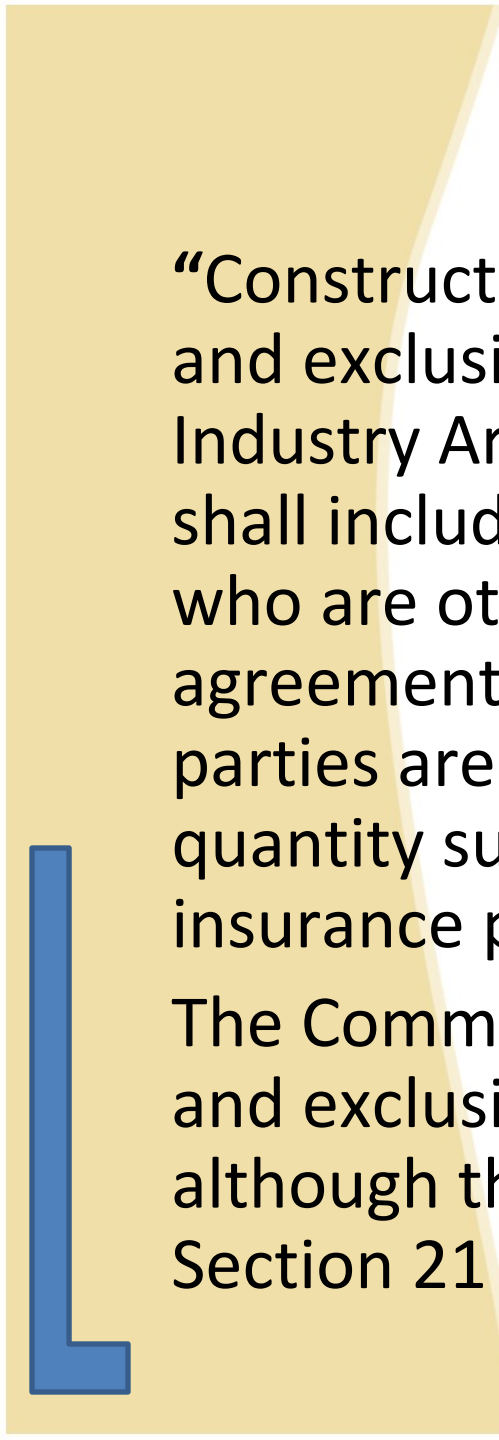
Scope: Domestic Arbitration means an arbitration that is not international, as defined in Article 1(3) of the UML (ADR Law, Sec. 32)

Law Governing Domestic Arbitration


- Republic Act No. 876, otherwise known as “The Arbitration Law”, as amended by Chapter 5 of the ADR Law on Domestic Arbitration
- Selected sections of the UML
 - Articles 8, 10, 11, 12 ,13, 14, 18 and 19
 - Articles 29 to 32
- Sections 22 to 31 of Chapter 4 of the ADR Law on International Arbitration

CONSTRUCTION ARBITRATION

“The arbitration of construction disputes shall be governed by Executive Order No. 1008, otherwise known as the Construction Industry Arbitration Law.” (R.A. 9285, Sec. 34)



“Construction disputes which fall within the original and exclusive jurisdiction of the Construction Industry Arbitration Commission (the "Commission") shall include those between or among parties to, or who are otherwise bound by, an arbitration agreement, directly or by reference whether such parties are project owner, contractor, subcontractor, quantity surveyor, bondsman or issuer of an insurance policy in a construction project.



The Commission shall continue to exercise original and exclusive jurisdiction over construction disputes although the arbitration is "commercial" pursuant to Section 21 of this Act.” (R.A. 9285, Sec. 35)

OTHER ADR FORMS

“EARLY NEUTRAL EVALUATION” means an ADR process wherein parties and their lawyers are brought together early in a pre-trial phase to present summaries of their cases and receive a nonbinding assessment by an experienced, neutral person, with expertise in the subject in the substance of the dispute.” (R.A. 9285, Sec. 3 [n])

“MINI-TRIAL” means a structured dispute resolution method in which the merits of a case are argued before a panel comprising senior decision makers with or without the presence of a neutral third person after which the parties seek a negotiated settlement.” (R.A. 9285, Sec. 3 [u])

“MEDIATION-ARBITRATION” or Med-Arb is a step dispute resolution process involving both mediation and arbitration.” (R.A. 9285, Sec. 3 [f])

Advantages of Arbitration

- 2. Neutrality of Arbitrators**
- 3. Technical Expertise of Arbitrators**
- 4. Privacy and Confidentiality**
- 5. Speed of the Disposition**
- 6. Non-Formal and More Flexible Procedure**
- 7. Flexibility in the Choice of Law/s**
- 8. Better Enforcement of Arbitral Awards vs. Judicial Decisions**

Advantages of Arbitration

2. Neutrality

- Fear of Patriotic or “Hometown” decisions
- Independent – “Other National”
- Freedom of Choice
- Familiarity with UNCITRAL Model Law

Advantages of Arbitration

1. Technical Expertise of Arbitrators

Selection is usually based on special knowledge or expertise of the arbitrator (s)

- a. No time is wasted in “educating” the arbitrators
- b. More focused and pro-active inquiry results
- c. In arbitral tribunals – 3 heads are better than 1.
 - i. Synergy is engendered by multi-disciplinary and differing approaches and perspectives of arbitrators
 - ii. Efficient division of labor is generated along lines of each arbitrator’s specialization

Advantages of Arbitration

2. Privacy and Confidentiality

- Privacy is invariably insured by limiting the proceedings to the parties, their representatives and witnesses
- Confidentiality
- Protective orders

Advantages of Arbitration

Confidentiality of Arbitration Proceedings

“The arbitration proceedings, including the records, evidence and the arbitral award, shall be considered confidential and shall not be published except (1) with the consent of the parties, or (2) for the limited purpose of disclosing to the court of relevant documents in cases where resort to the court is allowed herein. Provided, however, that the court in which the action or the appeal is pending may issue a protective order to prevent or prohibit disclosure of documents or information containing secret processes, developments, research and other information where it is shown that the applicant shall be materially prejudiced by an authorized disclosure thereof.” (R.A. 9285, Section 23)

Advantages of Arbitration

2. Speed of the Disposition

D. Due principally to

- i. Expertise of Arbitrators
- ii. Non-Formal and More Flexible Procedures
- iii. No clogged dockets
- iv. Good case management in Institutional/Administered Arbitration (vs. *Ad Hoc* Proceedings)

Advantages of Arbitration

B. Non-availability of Protracted Pre-Trial Discovery Procedures

- i. Waiver of Judicial Procedures
- ii. Check Applicable Rules/Law on Available/Limited Modes
- iii. Arbitrator's Discretion/Sanctions
 - Lack of Coercive Power
 - Voluntary Compliance/Adverse Inference

Advantages of Arbitration

2. Non-Formal and More Flexible Procedure

- Not bound by the technical rules of procedure/rules of evidence
- Parties shall be treated with equality and each party shall be given a full opportunity of presenting his case. (UML, Article 18)
- Example: Witness Conferencing

Advantages of Arbitration

“Witness Conferencing” or “Round-table hearing” involves:

- Witnesses for both parties (for a particular issue) are required to be present and exchange testimony
- In response to a specific question on a disputed issue, the arbitrator will allow the witnesses to exchange testimony (giving each party equal time and opportunity to do so) until he is satisfied that both parties have sufficiently stated their opposing views/evidence on said issue.
- The lawyers will conduct their examination, cross-examination, re-direct, and re-cross after arbitrators have finished their clarification.

Advantages of Arbitration

6. Flexibility in the Choice of Law/s

- Law of the place (“seat”) of arbitration; aka the *Lex Arbitri* or Curial law
- Procedural law of the place of arbitration
- Governing Law: The “proper law” of the contract governing substantive issue, merits
- Law governing enforcement of the Award
 - New York Convention
 - Bilateral, multi-lateral treaties
 - civil procedure law, arbitration law of the place of enforcement

Advantages of Arbitration

- Law governing the Arbitration agreement
 - arbitrability. Is the subject matter one which can be arbitrated, e.g. anti-trust claims, divorce, etc.?
- Law governing the capacity of the parties to enter into agreements to arbitrate (restriction imposed by domestic law)
 - state agencies
 - age of party

Advantages of Arbitration

7. Better Enforcement of Arbitral Awards vs. Judicial Decisions

A. New York Convention of 1958

- Reservations on Reciprocity and Commercial Issues

Limited Grounds for Refusal

1. By Challenging Party:

Advantages of Arbitration

- i. Incapacity of a Party to, and Invalidity of, Arbitration Agreement
 - ii. No proper notice/Inability to present case
 - iii. Beyond Scope of Arbitration Agreement
 - iv. Composition of Arbitral Tribunal not in accord with Agreement/Law of Place of Arbitration
 - v. Award not yet binding or final
2. By Court of Enforcement Forum
- i. Non-arbitrable matters
 - ii. Contrary to Public Policy

Advantages of Arbitration

B. There is no equivalent International Convention on the Enforcement of Judicial decisions similar to the NY Convention. In the Philippines, a foreign judgment is merely a “presumptive evidence of a right as between the parties” and “may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud or clear mistake of law or fact”.

Advantages of Arbitration

C. The court shall in no case substitute its own judgment for that of the arbitral tribunal. See *Asset Privatization Trust v. Court of Appeals*, 300 SCRA 579 (1998) where the Court ruled that courts “will not review the findings of law and fact contained in an award, and will not undertake to substitute their judgment for that of the arbitrators, since any other rule would make an award the commencement, not the end, of litigation. Errors of law and fact, or an erroneous decision on matters submitted to the judgment of the arbitrators, are insufficient to invalidate an award fairly and honestly made.” 300 SCRA at 601-602.



• END