

# The Asia Law News



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## Alternative Dispute Resolution in the Philippines

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The Alternative Dispute Resolution Act (the Act)<sup>1</sup> gives a legal framework for, and promotes the use of, alternative dispute resolution (“ADR”) mechanisms in the Philippines.<sup>2</sup>

Prior to the Act, laws introduced ADR mechanisms piecemeal in scattered areas of legal dispute, bringing them into use under such rubrics as contractual arbitration,<sup>3</sup> mandatory arbitration in the construction industry,<sup>4</sup> ADR mechanisms for labor and employment matters<sup>5</sup> and non-binding dispute resolution of small claims and domestic matters at the lowest local government unit.<sup>6</sup> The Act establishes a common or general legal framework for ADR mechanisms, and supplements existing laws with provisions designed to improve the efficiency of ADR mechanisms.

The Act identifies various ADR methods, such as mediation, evaluation by third persons, mini-trial, mediation-arbitration, international commercial arbitration, domestic arbitration or any combination thereof.<sup>7</sup>

To encourage the use of ADR mechanisms, the Act treats ADR proceedings as confidential. Information obtained through mediation or other ADR mechanisms is exempt from discovery and inadmissible in adversarial proceedings.<sup>8</sup> In arbitration proceedings, the publication of records, evidence and arbitral awards are proscribed unless the parties give their consent to disclosure or to the extent that disclosure<sup>9</sup> is necessary when parties resort to court action allowed under the law.

The Act does not require that agreements to submit to ADR mechanisms be in writing: the Act recognizes the validity of electronic signatures and extends the application of the Philippine E-commerce Act to ADR proceedings.<sup>10</sup>

The Act authorizes courts to grant interim protective measures, e.g., injunctions and restraining orders, in reference to ADR proceedings.<sup>11</sup>

A key feature of the Act is its adoption of the Model Law on International Commercial Arbitration (“Model Law”) of the United Nations Commission on International Trade Law.<sup>12</sup> The Act expressly provides that the Model Law shall apply to international commercial arbitration,<sup>13</sup> while specified sections of the Model Law shall apply to domestic arbitration.<sup>14</sup>

Parties to international commercial arbitration proceedings are also given the right to be represented by persons-of-choice,<sup>15</sup> impliedly including foreign lawyers who are not otherwise authorized to practice law in the country.<sup>16</sup>

In the case of mandatory arbitrations in the construction industry, the Act provides for the appointment of foreign arbitrators, subject to the promulgation of implementing rules by the Construction Industry Arbitration Commission (CIAC).<sup>17</sup>

In addition, the Act confirms the application of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“New York Convention”) in the recognition and enforcement of foreign arbitral awards covered by that Convention.<sup>18</sup> It also authorizes courts to recognize at their discretion and on grounds of comity and reciprocity arbitral awards not covered by the New York Convention,<sup>19</sup> e.g., arbitral awards made in countries that are not parties to the New York Convention.

The implementation of the Act is subject to the promulgation of implementing rules by appropriate administrative agencies.<sup>20</sup> By and large, the Act is expected to boost the efficiency of dispute resolution processes in the Philippines.

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*“In arbitration proceedings, the publication of records, evidence and arbitral awards are proscribed unless the parties give their consent to disclosure or to the extent that disclosure is necessary when parties resort to court action allowed under the law.”*

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<sup>1</sup> The Act was approved by the Philippine legislature on February 2, 2004 and signed by the President of the Philippines on April 2, 2004. It was published in the Official Gazette on April 13, 2004.

<sup>2</sup> § 1.

<sup>3</sup> The Arbitration Law, 1953(Phils.).

<sup>4</sup> Construction Industry Arbitration Law, 1980 (Phils.).

<sup>5</sup> Labor Code of the Philippines, 1974, as amended (Phils.).

<sup>6</sup> Local Government Code, 1982m as amended (Phils.).

<sup>7</sup> Chapters 2 to 5.

<sup>8</sup> § 9.

<sup>9</sup> § 23.

<sup>10</sup> § 4.

<sup>11</sup> § 28.

<sup>12</sup> § 19. Notably, while the Act expressly states that a copy of the Model Law shall be attached as an appendix, the text of the Model Law was not published with the Act. This oversight may raise the question of whether or not the Model Law was effectively adopted, in view of the rule that “[l]aws shall take effect after fifteen (15) days following the completion of their publication in the Official Gazette or in a newspaper of general circulation.” Administrative Code of 1987, § 18.

<sup>13</sup> § 19.

<sup>14</sup> § 33.

<sup>15</sup> § 22.

<sup>16</sup> Section 14, Article 12 of the 1987 Constitution of the Republic of the Philippines provides that “[t]he practice of all professions in the Philippines shall be limited to Filipino citizens, save in cases provided by law.”

<sup>17</sup> § 37.

<sup>18</sup> § 42.

<sup>19</sup> § 43.

<sup>20</sup> § 52. Section 52 provides that “within one (1) months after the approval of [the] Act, the Secretary of Justice [of the Philippines] shall convene a Committee that shall formulate the appropriate rules and regulations necessary for the implementation of [the Act].”

By: ADOLFO MARTIN GONZALEZ, GABRIEL R. MENESES AND JEFFREY N. ONG \*

### Intellectual Property:

#### OPTICAL MEDIA ACT OF 2003 - Approved: February 10, 2004

Prompted by the wide proliferation of counterfeit/pirated audio-visual works in the country, Republic Act No. 9239 intends to protect and promote intellectual property rights by regulating the manufacture, mastering, replication, importation and exportation of optical media in all its forms. Salient features of this Act includes: (i) the creation of the Optical Media Board, (the government entity tasked with directly overseeing the formulation and implementation of policies in order to effectuate the purposes of the statute), (ii) the adoption of a mandatory licensing procedure before any person or entity is permitted to engage in the regulated activities which involve optical media in all its forms; and (iii) the imposition of criminal penalties for violation of this Act.

### Capital Markets:

#### THE SECURITIZATION ACT OF 2004 - Approved: March 19, 2004

Republic Act No. 9267 (the "Securitization Act") aims to promote the development of the capital market in the Philippines by supporting securitization and providing its legal and regulatory framework. The Securitization Act also seeks to create a favorable market environment for a range of asset-backed securities (ABS). The Securitization Act introduced changes in taxation and in the secondary market for ABS to achieve these objectives.

The Securitization Act sets the definition for Securitization, ABS, Asset Pool, Credit Enhancement, Originator, Servicer, Special Purpose Entity (SPE), Special Purpose Corporation and Special Purpose Trust. The Act likewise discusses what is deemed to be a "true sale". Thus, the act creates a clearly defined and ready set of framework that was absent from present jurisprudence and civil code provisions.

The salient features of the Securitization Act include the removal of what Philippine legislators and the members of the Technical Working Group termed "friction costs" – essentially taxes that would have made the securitization unpalatable or uneconomical. The sale or transfer of assets to a SPE are exempt from value-added tax and documentary stamp tax, or any other taxes imposed in lieu thereof. Except for registration fees with the Securities and Exchange Commission, registration and annotation fees related or incidental to the transfer of assets, or the security interest thereto, are reduced by the Securitization Act to fifty percent (50%) of the original fee amount. Therefore, the cost of perfecting security interests in the Registry of Deeds and other governmental institutions where said security interests are recorded has been reduced to half of the normal registration/annotation costs.

Another salient feature of The Securitization Act of 2004 is the fact that a SPE is not classified as a Bank, Quasi-Bank or Financial Intermediary which consequently does not subject a SPE to Gross Receipts Tax or any other tax imposed in lieu thereof. An ABS issued by an SPE is not considered as a deposit substitute; nonetheless, it will still enjoy the same tax rate of 20% final withholding tax, except when the investor is a tax-exempt entity. A SPE may also be exempt from income tax if it promotes mortgage and housing receivables as determined by government housing agencies.

### Taxation:

#### AN ACT RATIONALIZING THE PROVISIONS ON THE DOCUMENTARY STAMP TAX OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED. AND FOR OTHER PURPOSES - Approved: February 17, 2004

Republic Act No. 9243 is an amendatory statute that seeks to rationalize the provisions on Documentary Stamp Tax of the National Internal Revenue Code. Significant features of this Act involves: (i) a reduction in the rates of Documentary Stamp Tax from 1% to 0.5%, [or amounting to One peso (P1.00) on each Two hundred pesos (P200)] of par value for the issue of new shares, and from 0.75% to 0.375% [or amounting to Seventy-five-centavos (P0.75) on each Two hundred pesos (P200)] of par value for the sale or exchange of existing shares; (ii) an increase



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in the rate of Documentary Stamp Tax on every original issue of debt instruments [amounting to One peso (P1.00) on each Two hundred pesos (P200), or fractional part thereof, of the issue price of any such instruments]; (iii) a shift in the computational base of Documentary Stamp Tax for insurance policies so as now to be pegged on the amount of premium/installment payment/contract price collected; and (iv) the introduction of exemptions from Documentary Stamp Tax for derivatives, transfer of property pursuant to the tax-free exchange provisions of the National Internal Revenue Code, and the sale/barter/exchange of shares, for the next five years following the effectivity of this Act, in companies listed and traded through the local stock exchange.

**AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES - Approved: March 30, 2004**

Republic Act No. 9282 expands the jurisdiction of the Court of Tax Appeals by including within its scope of competence, either as an original or appellate court, criminal offenses which arise from violations of the National Internal Revenue Code or Tariff and Customs Code and other laws administered by the Bureau of Internal Revenue or the Bureau of Customs. This Act likewise elevates the rank of the Court of Tax Appeals to the same level as that of the Court of Appeals. A party adversely affected by a resolution of a Division of the Court of Tax Appeals on a motion for reconsideration or new trial, may appeal the same by filing a petition of review with the Court of Tax Appeals sitting en banc, while decisions or rulings of the Court of Tax Appeals sitting en banc may be appealed by filing with the Philippine Supreme Court a verified petition for review on certiorari pursuant to Rule 45 of the 1997 Rules of Civil Procedure.

**AN ACT RESTORING THE TAX EXEMPTION OF OFFSHORE BANKING UNITS (OBUs) AND FOREIGN CURRENCY DEPOSIT UNITS (FCDUs), AMENDING FOR THE PURPOSE SECTION 27 (D) AND SECTION 28, PARAGRAPHS (A) (4) AND (A) (7) (b) OF THE NATIONAL INTERNAL REVENUE CODE AS AMENDED - Approved: April 28, 2004**

Republic Act No. 9294 is an amendatory statute that repeals certain provisions of the National Internal Revenue Code, as amended, for the purpose of restoring the tax exemption of offshore banking units and foreign currency deposit units. Specifically, income derived by offshore banking units from foreign currency transactions with non-residents, other offshore banking units in the Philippines and local commercial banks (including branches of foreign banks that may be authorized by the Bangko Sentral ng Pilipinas ("BSP") to transact business with offshore banking units) shall generally be exempt from all taxes. The same general exemption holds true for income derived by foreign currency deposit units from foreign currency transactions with non-residents, offshore banking units in the Philippines, local commercial banks (including branches of foreign banks that may be authorized by the BSP to transact business with foreign currency deposit units) and other depository banks under the expanded foreign currency deposit system.

### **Commercial:**

**FOOTWEAR, LEATHER GOODS AND TANNERY INDUSTRIES DEVELOPMENT ACT - Approved: April 15, 2004**

Republic Act No. 9290 seeks to generate employment and increase the country's foreign exchange earnings by supporting, promoting and encouraging the growth and development of small to medium scale enterprises in the footwear, leather goods and tannery industries.



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To accomplish this, the statute not only provides a framework of economic incentives for participants in these industries, but it likewise provides: (i) an express mandate aimed at the government sector and private recruitment agencies to source their requirements for apparel, footwear and related products from said industries; (ii) the availability of assistance funds; (iii) availability of technical support; and (iv) assurance of the supply of domestically-sourced raw materials.

### DOMESTIC SHIPPING DEVELOPMENT ACT OF 2004 - Approved: May 03, 2004

Republic Act No. 9295 recognizes the underlying importance of the domestic shipping industry as a vital factor to the country's economic development. Pursuant to this Act, qualified domestic ship operators, builders and repairers shall be entitled to certain investment incentives in order to ensure the continued growth and viability of this industry. Likewise, as a reaffirmation of the country's protectionist policy, this statute disallows the granting of certificates of public convenience to foreign vessels, thus effectively prohibiting them from transporting passengers or cargo to and from places within Philippine territorial waters, except in extraordinary circumstances.

### AN ACT AMENDING CERTAIN PROVISIONS OF REPUBLIC ACT NO. 7471, ENTITLED "AN ACT TO PROMOTE THE DEVELOPMENT OF PHILIPPINE OVERSEAS SHIPPING" - Approved: July 27, 2004

Republic Act No. 9301 is an amendatory statute that seeks to further bolster the development of the Philippine overseas shipping industry under the terms originally mandated in Republic Act No. 7471. It seeks to achieve the foregoing by expanding the definition of "overseas shipping" to now include shipping operations which are not necessarily limited to the mere transport of goods and persons, including purchase of ships for operation and the sale of ships after operation. This Act likewise introduces more favorable terms of income tax exemptions for the benefit of a Philippine shipping enterprise.

### AN ACT TO STRENGTHEN AGRICULTURE AND FISHERIES MODERNIZATION IN THE PHILIPPINES BY EXTENDING THE EFFECTIVITY OF TAX INCENTIVES AND ITS MANDATED FUNDING SUPPORT, AMENDING FOR THIS PURPOSE SECTIONS 109 AND 112 OF REPUBLIC ACT NO. 8435 - Approved: March 30, 2004

Republic Act No. 9281 endeavors to further strengthen agriculture and fisheries modernization in the Philippines by extending the effectivity of tax incentives and the mandated funding support provided under "The Agriculture and Fisheries Modernization Act of 1997". The original exemption from the payment of tariff and duties for importation of all types of agriculture and fisheries inputs, equipment and machinery as well as the funding allotment to be made by the Department of Budget and Management for the implementation of "The Agriculture and Fisheries Modernization Act of 1997" is now extended until year 2015.

### THE NATIONAL METROLOGY ACT OF 2003 - Approved: February 03, 2004

Republic Act No. 9236 encourages the standardization and modernization of units and standards of measurements to comply with international standards, protect the health, interest and safety of every consumer and their environment from the harmful effects of inaccurate or false measurements and to facilitate the development of scientific and technical knowledge and progress in the national economy.

Salient features of the law include the establishment of the National Measurement Infrastructure System which provides for measurement standards that are internationally traceable and consistent with the Meter Convention. The law also creates the National Metrology Board and defines its functions, duties and responsibilities. The law requires entities using or keeping measuring equipment for transactions under the regulated areas of application to register with the Board. Furthermore, the law prescribes the mandatory use of the system of units based on the International System of Units.

The law has implications on labeling requirements for products, commodities, goods and merchandise since it requires the contents and quantities of substances, nutritional and health value and other relevant information to be in the aforementioned prescribed system of units.



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*"... funding allotment to be made by the Department of Budget and Management for the implementation of "The Agriculture and Fisheries Modernization Act of 1997" is now extended until year 2015."*



## Professional Regulations:

Several laws were approved in 2004 seeking to elevate to globally competitive levels the standards of practice and service in certain professions by providing and governing the following: (i) the standardization and regulation of education in the said professions; (ii) the examination of registration of the said professions; and (iii) the establishment of a particular board for each profession tasked to supervise, control, and regulate the practice of the respective professions. Another common salient feature of these laws are their provisions on foreign reciprocity. The European Commission had previously requested the Philippines to honor its commitment to the General Agreement on Trade in Services (GATS) under the World Trade Organization (WTO). The European Commission wants the Philippines to remove remaining market barriers in professional services such as accounting, auditing and bookkeeping, taxation, engineering and architecture. It has also asked the country to open up computer related services, real estate professions, research and development services, banking, insurance, securities and other related professions. In an apparent move on the part of the Philippines to honor its international obligations including its commitment to the GATS under the WTO, the following laws were approved:



ACT	DATE APPROVED
THE PHILIPPINE LIBRARIANSHIP ACT OF 2003	February 19, 2004
GUIDANCE AND COUNSELING ACT OF 2004	March 02, 2004
THE ARCHITECTURE ACT OF 2004	March 17, 2004
THE PHILIPPINE VETERINARY MEDICINE ACT OF 2004	March 19, 2004
CUSTOMS BROKER ACT OF 2004	March 30, 2004
ELECTRONICS ENGINEERING LAW OF 2004	April 17, 2004
PHILIPPINE ACCOUNTANCY ACT OF 2004	May 13, 2004

## Environmental:

### PHILIPPINE CLEAN WATER ACT OF 2004 - Approved: March 22, 2004

Republic Act No. 9275 seeks to instill a comprehensive program of water quality management, geared towards the abatement and control of pollution primarily from land-based sources, in a manner consistent with the protection, preservation and revival of the quality of fresh, brackish and marine waters. The Department of Environment and Natural Resources, acting as the lead agency, shall be responsible for preparing a Water Quality Management Area Action Plan that shall include, but not be limited to, the formulation and implementation of the following: (a) goals and targets including sewerage or septage program, (b) schedule of compliance to meet the applicable requirements of this Act; (c) water pollution control strategies or techniques; (d) water quality information and education program; (e) resource requirement and possible sources; (f) enforcement procedures of the plan and (g) rewards and incentives under this Act.

## Miscellaneous:

### AN ACT INCREASING THE PENALTIES FOR ILLEGAL NUMBERS GAMES, AMENDING CERTAIN PROVISIONS OF PRESIDENTIAL DECREE NO. 1602, AND FOR OTHER PURPOSES - Approved: April 2, 2004

Republic Act No. 9287 is indicative of the government's desire to eradicate illegal gambling, particularly illegal numbers games such as "jueteng", by providing stiffer penalties to any person, including bettors, who shall participate or be involved in such activities. Aside from imposing stricter penalties on the active participants to illegal numbers games, this Act likewise

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imposes criminal sanctions on any parent, guardian or person exercising moral authority found guilty of inducing a minor, ward or incapacitated person to perform any of the acts punishable under this statute. Furthermore, it prescribes that a charge or conviction under this Act shall be without prejudice to an offender's prosecution for such other acts punishable under the Revised Penal Code or existing laws.

**NEWBORN SCREENING ACT OF 2004 - Approved: April 07, 2004**

Republic Act No. 9288 endeavors to promote and protect the right to health of individuals, including the rights of children to survival and full and healthy development as individuals, by institutionalizing a national newborn screening system. This Act requires the implementation of a screening system, (which includes the collection and biochemical screening of blood samples taken from newborns among others), that is to be performed after the 24th hour of life but not later than 3 days from complete delivery of a newborn. The results of the screening system shall then be collected and thereafter consolidated in a national database for recording and evaluation. This Act likewise mandates that the responsibility for screening is jointly vested on the parents of a newborn and the health practitioner involved in the delivery.

**THE MEAT INSPECTION CODE OF THE PHILIPPINES - Approved: May 12, 2004**

The paramount objective of Republic Act No. 9296 is to ensure the protection of human and animal health through the adoption of a strict and effective inspection procedure of food animals, meat and meat products. A significant yet controversial feature of this Act, which some sectors consider to be inconsistent with global trade rules, is the mandatory requirement of securing (i) an accompanying veterinary quarantine clearance issued by the Philippine Department of Agriculture; and (ii) an International Veterinary Certificate issued by the national controlling authority of the exporting country, before any shipping line or airline can accept shipment of meat and meat products for export into the Philippines.

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