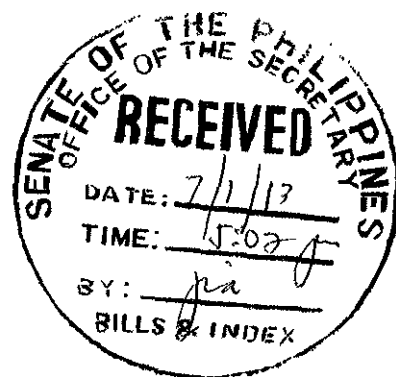


SIXTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

SENATE
S.B. No. 231



Introduced by Senator Maria Lourdes Nancy S. Binay

EXPLANATORY NOTE

Our Constitution grants to all persons the right to speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies. However, this right remains good only in paper and is currently infeasible given our present judicial system.

At the end of 2006, our lower courts have 716,040 cases pending. Five years later, at the end of 2011, the number of cases pending was reduced, though not significantly, to 614,888. On the other hand, 25,319 and 6,344 cases were pending before the third level courts and the Supreme Court, respectively at the end of 2011. The overall case disposal rate was not impressive either. The percentage mainly ranges below 50%, which means case input or the influx of cases is greater than case output or the disposition of cases. Enhanced Justice on Wheels Program, the Small Claims Project and the Judiciary Case Management System are just a few of the continuous administrative and judicial reforms designed to further improve the case disposal rates of our courts.

It is also apparent that cases will be ultimately decided only after several years from their filing. The long and tedious process of a lawsuit costs a lot of money, resources and time not only to the parties but also to the judiciary. The much-awaited justice has been dragged longer than it should be. Indeed, justice delayed is justice denied.

It is appropriate and timely to introduce mandatory arbitration to disputes involving medical malpractice, insurance law, maritime laws, intellectual property law and intra-corporate matters, or collectively known as the "Areas of Dispute".

These Areas of Dispute are logically included because of their peculiar nature and suitability for arbitration. For instance, medical malpractice cases often involve loss of people's lives. It is but unacceptable to fathom the reality of seeking damages for a claim that had been long buried, literally. The urgency of obtaining indemnity in maritime disputes cannot be overlooked as time is really of the essence, especially when they involve perishable goods and wastage of assets. Intra-corporate disputes, on the other hand, would be best resolved in a manner that gives the parties greater autonomy and flexibility. As these cases involve disputes within the corporation, judicial intervention must be kept at the minimum. Intellectual property cases entail technical skills and highly specialized knowledge; hence, it is more proper to settle these with arbitrators equipped with expertise in the subject matter.

Arbitration is defined as a dispute resolution process wherein disputes are resolved out of court. It entails the use of a neutral third party – an arbitrator or an arbitration panel.

Although the akin to that of the courts, the arbitration process is less formal and need not be bound by the strict rules of evidence. The parties are given the flexibility to agree upon the procedures that will govern the process, which results in parties having more faith in the integrity of the arbitration process.

Arbitration is not a novel concept in the Philippines. In fact, Republic Act 9285, otherwise known as "*The Alternative Dispute Resolution Act (ADR) of 2004*" promotes and grants the parties the option to resort to alternative dispute resolution such as arbitration. Executive Order No. 1008 (Construction Industry Arbitration Law), on the other hand, mandated arbitration as the default process for construction disputes. Accordingly, the Construction Industry Arbitration Commission has the original and exclusive jurisdiction over disputes arising from or connected to construction contracts.

The mandatory arbitration before the Philippine Arbitration Commission would definitely alleviate the recurring problem of clogged dockets in our courts. Decongestion of cases will soon be realized as a number of cases could be taken out of the jurisdiction of the judiciary. Seeking remedies with the court directly without going through arbitration would merit *motu proprio* dismissal of the case. Moreover, resources that had been devoted to the cases involving the Areas of Dispute can now be shifted to other cases, resulting in a more efficient and expeditious manner of their disposition.

Compulsory arbitration is equally beneficial to the parties. Not only would the process be faster than a lawsuit, an arbitrator or arbitral tribunal is equipped with expertise necessary to resolve the subject matter of the dispute. Moreover, unlike court cases that are open to the public, arbitration proceedings are kept confidential. Hence, the parties are assured that only those privy to the case shall have information about the records of the proceedings.

This bill is also in consonance with the core principles of the current administration – justice, fairness and inclusiveness. By enacting the bill, we will be able to deliver justice and fairness in the most expeditious manner. Also, Philippines is currently seen as the emerging "Investment Destination" of large multinational companies seeking to diversify their operations. With the greater transparency and high comfort level of doing business in the country, foreign investors are more inclined to invest here in our country. Accordingly, this bill will definitely augment their decision to shift here as it affords them greater democracy in settling disputes.

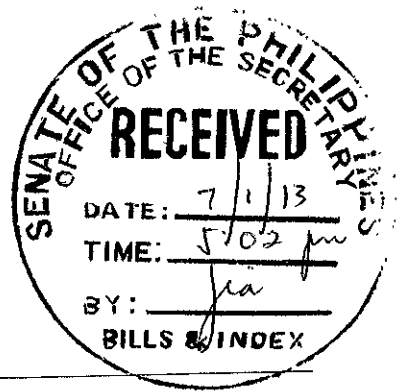
Thus, this bill seeks to provide an efficient and expeditious dispute resolution, supplementing those already provided in the Alternative Dispute Resolution Act; achieve the goal of decongestion of court dockets which would ultimately result in cost savings and preservation of judicial resources; afford parties greater autonomy and flexibility in resolving disputes; and attract more investments in our country as a result of this sophisticated yet economical dispute resolution.

In view of the foregoing, the timely passage of this bill is earnestly requested.


MARIA LOURDES NANCY S. BINAY
Senator

SIXTEENTH CONGRESS OF THE REPUBLIC)
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Introduced by Senator Maria Lourdes Nancy S. Binay

1 AN ACT CREATING THE PHILIPPINE ARBITRATION COMMISSION AND
2 INSTITUTIONALIZING COMPULSORY ARBITRATION FOR SPECIFIC AREAS OF
3 DISPUTE, AND FOR OTHER PURPOSES
4

5 *Be it enacted by the Senate and the House of Representatives of the Philippines in Congress*
6 *assembled:*

7
8 **SECTION 1.** *Title.* This Act shall be known as the "Philippine Arbitration Commission Act
9 of 2013."

10
11 **SECTION 2.** *Declaration of Policy.* The State grants to all persons the right to speedy
12 disposition of their cases before all judicial, quasi-judicial, or administrative bodies.
13 Consistent with this Constitutional mandate and to achieve efficient means of resolving
14 specific cases pending before all courts in the Philippines before an impartial and neutral
15 body, it is hereby declared the policy of the State to require compulsory arbitration for select
16 areas of dispute through the Philippine Arbitration Commission.

17
18 **SECTION 3.** *Creation, Scope and Jurisdiction.* The Philippine Arbitration Commission (the
19 "Commission") is hereby created and shall have original and exclusive jurisdiction over all
20 disputes arising from, or connected with the following areas: (a) medical malpractice; (b)
21 insurance laws; (c) maritime laws; (d) intellectual property law; and (e) intra-corporate
22 matters (collectively, the "Areas of Dispute").

23
24 Excluded from the coverage of this law are disputes arising from: (i) employer-employee
25 relationships, which shall continue to be governed by Presidential Decree No. (PD) 442,
26 otherwise known as the "Labor Code of the Philippines," as amended; (ii) territorial disputes
27 in the high seas with neighboring countries; and (iii) construction disputes, which shall
28 continue to be governed by the Executive Order No. 1008, otherwise known as the
29 "Construction Industry Arbitration Law."

30
31 **SECTION 4.** *Applicability of the ADR Act.* The provisions of the ADR Act and its
32 Implementing Rules and Regulations, in so far as they are not inconsistent, shall apply to the
33 proceedings contemplated in this Act.

34
35 **SECTION 5.** *Definition of Terms.* For purposes of this Act, the following terms shall mean:

36
37 (a) "Arbitral Tribunal" means a sole Arbitrator or a panel of three Arbitrators.
38

- 1 (b) "Arbitration Agreement" means an agreement by the parties to submit to arbitration
2 all or certain disputes which have arisen or which may arise between them in respect
3 of a defined legal relationship, whether contractual or not. An arbitration agreement
4 may be in the form of an arbitration clause in a contract or in the form of a separate
5 agreement
6
- 7 (c) "Arbitrator" shall be such persons as described in Section 12 of this Act
8
- 9 (d) "Foreign Arbitrator" shall mean a person who is not a national of the Philippines.
10
- 11 (e) "Insurance disputes" shall mean all agreements and transactions governed by
12 Presidential Decree No 612, otherwise known as the "Insurance Code"
13
- 14 (f) "Intellectual Property disputes" shall mean all disputes governed under RA 8293 and
15 shall consist of (i) copyright and related rights; (ii) trademarks and service marks, (iii)
16 geographic indications; (iv) industrial designs; (v) patents, (vi) layout-designs
17 (topographies) of integrated circuits; and (g) protection of undisclosed information
18
- 19 (g) "International Party" shall mean an entity whose place of business is outside the
20 Philippines. It shall not include a domestic subsidiary of such international party or a
21 co-venturer in a joint venture with a party which has its place of business in the
22 Philippines.
23
- 24 (h) "Intra-Corporate disputes" shall cover the following acts:
25
- 26 (i) Devices or schemes employed by, or any act of, the board of directors,
27 business associates, officers or partners, amounting to fraud or
28 misrepresentation which may be detrimental to the interest of the public and/or
29 of the stockholders, partners, or members of any corporation, partnership, or
30 association;
31
- 32 (ii) Controversies arising out of intra-corporate, partnership, or association
33 relations, between and among stockholders, members, or associates; and
34 between, any or all of them and the corporation, partnership, or association of
35 which they are stockholders, members, or associates, respectively;
36
- 37 (iii) Controversies in the election or appointment of directors, trustees, officers, or
38 managers of corporations, partnerships, or associations;
39
- 40 (iv) Derivative suits; and
41
- 42 (v) Inspection of corporate books.
43
- 44 (i) "Maritime" disputes" shall mean all disputes governed by (i) Act No. 2616, otherwise
45 known as the "Salvage Law", (ii) Commonwealth Act No. 65, otherwise known as
46 "Carriage of Goods by Sea Act", (iii) provisions on Common Carriers under RA 386,
47 otherwise known as the "Civil Code of the Philippines," (iv) PD 1521, otherwise
48 known as the "Ship Mortgage Decree of 1978", (v) RA 9295, otherwise known as the
49 "Domestic Shipping Development Act of 2004", (vi) Commercial Contracts for
50 Transportation under the Code of Commerce, and other similar and related laws

1
2 (j) "Medical Malpractice disputes" shall mean such failure of the medical professional,
3 whether medical doctor, nurse, laboratory technician or the like, to follow the
4 accepted standards of care, there being fault or negligence in the practice of his
5 profession, resulting in physical injuries or death to the patient
6

7 **SECTION 6** *Composition of the Commission.* The Commission shall consist of a
8 Chairman, and seven (7) members, all to be appointed by President of the Republic of the
9 Philippines. The Dean of the University of the Philippines College of Law shall be the
10 Chairman of the Commission. The Secretaries of the Department of Health and Department
11 of Transportation and Communication, Chairman of the Securities and Exchange
12 Commission, Commissioner of the Insurance Commission and Director General of
13 Intellectual Property Office shall serve as *ex officio* members. The remaining member of the
14 Commission shall be appointed to the Commission provided
15

16 (a) He is a member of the Philippine Bar with at least ten (10) years experience and
17 specialization in corporate law, civil law, insurance law, torts and damages,
18 intellectual property law, maritime law or arbitration,
19

20 (b) He is a holder of a masters degree in law,
21

22 (c) He is a licensed medical doctor for with at least ten (10) years experience,
23 specializing in chosen fields of medicine, including surgery, internal medicine,
24 anesthesiology, etc , or
25

26 (d) He is recognized to be an expert in the field of insurance, maritime and intellectual
27 property with proven track record and at least ten (10) years experience in whom the
28 business sector and the State can have confidence.
29

30 **SECTION 7.** *Functions and Powers of the Commission.* The Commission shall assist in the
31 conduct of arbitrations for matters falling within the Areas of Dispute. It shall perform the
32 following functions:
33

34 (a) To formulate and adopt an arbitration program relating to the Areas of Dispute;
35

36 (b) To formulate policies and prescribe rules and procedures to settle controversies
37 relating to Areas of Dispute brought before it;
38

39 (c) To supervise the arbitration program, and exercise such authority related thereto with
40 regard to the appointment, replacement and challenging of the arbitrators, and
41

42 (d) To direct its officers and employees to perform such functions as may be assigned to
43 them from time to time.
44

45 **SECTION 8** *Compensation.* The members of the Commission shall receive such salaries,
46 *per diems* and allowances in accordance with existing laws in the performance of their duties
47 and in carrying out the business of the Commission.
48

49 **SECTION 9.** *Term.* The term of office of the members of the Commission shall be six (6)
50 years; *provided that*, of the Commission members first appointed, the Chairman shall hold

1 office for six (6) years; a member for five (5) years, another member for four (4) years,
2 another member for three (3) years, and the last member for (2) years. The appointment to
3 any vacancy in the Commission shall only be for the unexpired portion of the term of the
4 predecessor.

5
6 **SECTION 10. *Quorum and Voting.*** The presence of a majority of the members of the
7 Commission shall constitute a quorum. The decisions of the Commission shall be arrived at
8 by a majority vote of the quorum.

9
10 **SECTION 11. *Secretariat.*** The Commission shall have a Secretariat that is attached to the
11 University of the Philippines Law Center, to be headed by an Executive Director, to be
12 appointed by the Commission, who shall be responsible for receiving requests for arbitration
13 and other pleadings, for notifying the parties thereto, for fixing and receiving filing fees,
14 deposits, costs of arbitration, administrative charges and other fees. It shall be the duty of the
15 Executive Director to notify the parties of the awards made by the Arbitrators.

16
17 The Commission is authorized to appoint the consultants, personnel and staff as may be
18 allowed by law.

19
20 **SECTION 12. *Arbitrators.*** A sole arbitrator or three arbitrators (the "Arbitral Tribunal")
21 may settle a dispute covered by this Act. Only arbitrators accredited by the Commission (the
22 "Arbitrator") shall be allowed to arbitrate disputes covered by this Act.

23
24 **SECTION 13. *Qualifications of Arbitrators.*** Given the highly specialized and technical
25 nature of the Areas of Dispute, Arbitrators shall possess the following minimum
26 qualifications:

- 27
28 (a) He is a member of the Philippine Bar with at least five (5) years experience and
29 specialization in corporate law, civil law, insurance law, torts and damages,
30 intellectual property law, maritime law or arbitration,
31
32 (b) He is recognized to be an expert in his field with proven track record in whom the
33 business sector and the State can have confidence.

34
35 **SECTION 14. *Authority to Act as Mediator.*** By written agreement of the parties to a
36 dispute, an Arbitrator may act as mediator. The parties may also agree in writing that,
37 following a successful mediation, the mediator shall issue the settlement agreement in the
38 form of an arbitral award.

39
40 **SECTION 15. *Appointment of Foreign Arbitrator.*** The Commission shall promulgate rules
41 to allow for the appointment of a Foreign Arbitrator as co-arbitrator or chairman of an
42 Arbitral Tribunal a person who has not been previously accredited by the Commission;
43 *Provided that:*

- 44
45 (a) One of the parties to the dispute is an International Party;
46
47 (b) The person appointed agreed to abide by the arbitration rules and policies of the
48 Commission;

49

- 1 (c) He is either a: (i) co-arbitrator upon the nomination of the International Party; or (ii) is
2 the common choice of the two Commission-accredited arbitrators first appointed, one
3 of whom was nominated by the International Party, and
4
5 (d) The Foreign Arbitrator shall be independent of, and of a different nationality from the
6 International Party.
7

8 **SECTION 16** *Powers of the Arbitral Tribunal* Without prejudice to the powers set out in
9 any other provision of this Act, the ADR Law and in the Model Law, an Arbitral Tribunal
10 shall have powers to make orders against any party for.

- 11
12 (a) Security for costs;
13
14 (b) Discovery of documents and interrogatories;
15
16 (c) Giving of evidence by affidavit,
17
18 (d) Grant of interim measures of protection under Sections 28 and 29 of the ADR Act;
19
20 (e) Samples to be taken from, or any observation to be made of, or experiment conducted
21 upon, any property which is or forms part of the subject matter of the dispute;
22
23 (f) Securing the amount in dispute;
24
25 (g) Ensuring that any award which may be made in the arbitral proceedings is not
26 rendered ineffectual by the dissipation of assets by a party, and
27
28 (h) An interim injunction or any other interim measure.
29

30 **SECTION 17.** *Immunity from Suit.* An arbitrator shall not be liable for

- 31
32 (a) Negligence in respect of anything done or omitted to be done in the capacity of
33 arbitrator; and
34
35 (b) Any mistake in law, fact or procedure made in the course of arbitral proceedings or in
36 the making of an arbitral award.
37

38 **SECTION 18.** *Appointment of Experts.* The Arbitral Tribunal or the Arbitrator, if requested
39 by the disputing parties, may utilize the services of technical or legal experts to give guidance
40 on technical questions calling for specialized knowledge in the settlement of the disputes. If
41 the either or both parties make the request for an expert, the Arbitrator or the Arbitral
42 Tribunal shall confirm the appointment of the expert. If the sole arbitrator makes the request
43 for an expert, the Commission must confirm the appointment of the expert.
44

45 **SECTION 19.** *Arbitration Expenses.* Arbitration expenses shall include the filing fee,
46 administrative charges, Arbitrator/s' fees, fee and expenses of the expert, and such other
47 reasonable fees as deemed necessary by the Commission.
48

1 The administrative charges and Arbitrator/s' fees shall be computed on the basis of the
2 percentage of the sum in dispute to be fixed in accordance with the table of administrative
3 charges and Arbitrator/s' fees
4

5 **SECTION 20. *Deposit*** The Commission shall be authorized to fix the amount to be
6 deposited that must be equivalent to the expected arbitration expenses. The deposit shall be
7 paid to the Secretariat before arbitration proceedings shall commence. Payment shall be
8 shared equally by the parties or be paid by any of them. If one party fails to contribute his
9 share in the deposit, the other party must pay in full. If both parties fail to tender the required
10 deposit, the case shall be considered dismissed by the parties shall still be liable to pay one-
11 half of the agreed administrative charge
12

13 **SECTION 21. *Court to Dismiss Case Involving any of the Areas of Dispute***. A regular court
14 before which a matter falling within any of the Areas of Dispute is filed shall, upon becoming
15 aware, but not later than the pre-trial conference, dismiss the case and refer the parties to
16 arbitration to be conducted by the Commission.
17

18 **SECTION 22. *Awards and Judicial Review***. The arbitral award shall be binding upon the
19 parties. The provisions of Chapter 7 of the ADR Act shall govern the award, judicial review
20 and enforcement of the arbitral award
21

22 **SECTION 23. *Funding***. The amount of fifty million pesos (₱50,000,000.00) is hereby
23 authorized to be released and shall be included in the General Appropriations Act of the year
24 following its enactment into law and thereafter to cover the operating and capital expenses of
25 the Commission.
26

27 **SECTION 24. *Separability Clause***. The provisions of this Act are declared to be separable
28 and if any provision or the application thereof is held invalid or unconstitutional, the validity
29 of the other provisions shall not be affected.
30

31 **SECTION 25. *Repealing Clause***. All provisions of existing laws, proclamations, decrees,
32 letters of instruction and executive orders contrary to or inconsistent with this Act are hereby
33 repealed or modified accordingly.
34

35 **SECTION 26. *Effectivity Clause***. This Act shall take effect immediately

Approved,