

SEVENTEENTH CONGRESS OF THE REPUBLIC
OF THE PHILIPPINES
Third Regular Session



SENATE
S.B. NO. 2033

'18 SEP 26 P 4:13

Introduced by Senator Maria Lourdes Nancy S. Binay

RECEIVED

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

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 Disputes 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. At 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. These 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 executive jurisdiction over disputes arising from or connected to construction contract.

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, resource that have 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.

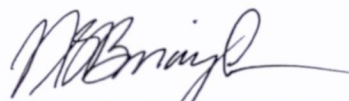
Compulsory arbitration is equally beneficial to the parties. Not only would the process be faster than a lawsuit, an arbitration or arbitral tribunal is equipped with expertise necessary to resolve the subject matter of the dispute. Moreover, unlike court cases that are open to the public, arbitration 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 this 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.

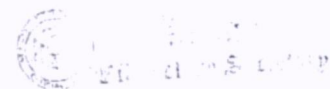
Thus, this bill seeks to provide an efficient and expeditious dispute resolution, supplementing those already provided in the Alternative Dispute Resolution Act; achieve the goal of decongestion of court dockets which would ultimately result in cost savings

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.

A handwritten signature in black ink, appearing to read 'ML Binay', with a long horizontal flourish extending to the right.

MARIA LOURDES NANCY S. BINAY
Senator



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DISPUTE, AND FOR OTHER PURPOSES

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

1 Section 1. *Title.* – This Act shall be known as the "Philippine Arbitration
2 Commission Act of 2017."

3
4 Sec. 2. *Declaration of Policy.* – The State grants to all persons the right to speedy
5 disposition of their cases before all judicial, quasi-judicial, or administrative bodies.
6 Consistent with this Constitutional mandate and to achieve efficient means of resolving
7 specific cases pending before all courts in the Philippines before an impartial and
8 neutral body, it is hereby declared the policy of the State to require compulsory
9 arbitration for select areas of dispute through the Philippine Arbitration Commission.

10
11 Sec. 3. *Creation, Scope and Jurisdiction.* The Philippine Arbitration Commission
12 (the "Commission") is hereby created and shall have the original and exclusive
13 jurisdiction over all disputes arising from, or connected with the following areas: (a)
14 medical malpractice; (b) insurance laws; (c) maritime laws; (d) intellectual property
15 law; and (e) intra-corporate matters (collectively, the "Areas of Dispute").

16 Excluded from the coverage of this law are disputes arising from: (i) employer-
17 employee relationships, which shall continue to be governed by Presidential Decree No.

1 (PD) 442, otherwise known as the "Labor Code of the Philippines," as amended; (ii)
2 territorial disputes in the high seas with neighboring countries; and (iii) construction
3 disputes, which shall continue to be governed by the Executive Order No. 1008,
4 otherwise known as the "Construction Industry Arbitration Law."

5
6 Sec. 4. *Applicability of ADR Act.* – The provisions of the ADR Act and its
7 Implementing Rules and Regulations, in so far as they are not inconsistent, shall apply
8 to the proceedings contemplated in this Act.

9
10 Sec. 5. *Definition of Terms.* – For purposes of this Act, the following terms shall
11 mean:

12 (a) "Arbitral Tribunal" means a sole Arbitrator or a panel of three
13 Arbitrators.

14 (b) "Arbitration Agreement" means an agreement by the parties to
15 submit to arbitration all or certain disputes which have arisen or
16 which may arise between them in respect of a defined legal
17 relationship, whether contractual or not. An arbitration agreement
18 may be in the form of an arbitration clause in a contract or in the
19 form of a separate agreement.

20 (c) "Arbitrator" shall be such persons as described in Section 12 of
21 this Act.

22 (d) "Foreign Arbitrator" shall mean a person who is not a national of
23 the Philippines.

24 (e) "Insurance disputes" shall mean all agreements and transactions
25 governed by Presidential Decree No. 612, otherwise known as the
26 "Insurance Code".

27 (f) "Intellectual Property disputes" shall mean all disputes governed
28 under RA 8293 and shall consist of (i) copyright and related rights;
29 (ii) trademarks and service marks, (iii) geographic indications; (iv)
30 industrial designs; (v) patents; (vi) layout-designs (topographies)

1 of integrated circuits; and (vii) protection of undisclosed
2 information.

3 (g) "International Party" shall mean an entity whose place of business
4 is outside the Philippines. It shall not include a domestic subsidiary
5 of such international party or a co-venturer in a joint venture with
6 a party which has its place of business in the Philippines.

7 (h) "Intra-Corporate disputes" shall cover the following acts:

8 (i) Devises or schemes employed by, or any act of, the board
9 of directors, business associates, officers or partners,
10 amounting to fraud or misrepresentation which may be
11 detrimental to the interest of public and/or of the
12 stockholders, partners, or members of any corporation,
13 partnership, or association;

14 (ii) Controversies arising out of intra-corporate, partnership,
15 or association relations, between and among stockholders,
16 members, or associates; and between, any or all of them
17 and the corporation, partnership, or association of which
18 they are stockholders members, or associates,
19 respectively;

20 (iii) Controversies in the election or appointment of directors,
21 trustees, officers, or managers of corporations,
22 partnerships, or associations;

23 (iv) Derivative suits; and

24 (v) Inspection of corporate books.

25 (i) "Maritime disputes" shall mean all disputes governed by (i) Act
26 No.2616, otherwise known as the "Salvage Law", (ii)
27 Commonwealth Act No. 65, otherwise known as "carriage of
28 Goods by Sea Act", (iii) provisions of Common Carriers under RA
29 386, otherwise known as the "Civil Code of the Philippines," (iv)
30 PD 1521, otherwise known as the "Ship Mortgage Decree of

1 1978", (v) RA 9295, otherwise known as the "Domestic Shipping
2 Development Act of 2004", (vi) Commercial Contracts for
3 Transportation under the Code of Commerce, and other similar
4 and related laws.

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

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

- 19 (a) He is a member of the Philippine Bar with at least ten (10) years
20 experience and specialization in corporate law, civil law, insurance
21 law, torts and damages, intellectual property law, maritime law or
22 arbitration.
- 23 (b) He is a holder of a masters degree in law.
- 24 (c) He is a licensed medical doctor for with at least ten (10) years
25 experience, specializing in chosen fields of medicine, including
26 surgery, internal medicine, anesthesiology, etc, or
- 27 (d) He is recognized to be an expert in the field of insurance,
28 maritime and intellectual property with proven track record and at
29 least ten (10) years experience in whom the business sector and
30 the State can have confidence.

1
2 Sec. 7. *Functions and Powers of the Commission.* – The Commission shall assist
3 in the conduct of arbitrations for matters failing with the Areas of Dispute. It shall
4 perform the following functions:

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

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

9 (c) To supervise the arbitration program, and exercise such authority
10 related thereto with regard to the appointment, replacement and
11 challenging of the arbitrators; and

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

14
15 Sec. 8. *Compensation.* – The members of the Commission shall receive such
16 salaries, *per diems* and allowances in accordance with existing laws in the performance
17 of their duties and in carrying out the business of the Commission.

18
19 Sec. 9. *Term.* – The term of office of the members of the Commission shall be six
20 (6) years; *provided that*, of the Commission members first appointed, the Chairman
21 shall hold office for six (6) years; a member of five (5) years, another member for four
22 (4) years, another member for three (3) years, and the last member for (2) years. The
23 appointment to any vacancy in the Commission shall only be for the unexpired portion
24 of the term of the predecessor.

25
26 Sec. 10. *Quorum and Voting.* – The presence of a majority of the members of
27 the Commission shall constitute a quorum. The decisions of the Commission shall be
28 arrived by a majority vote of the quorum.

1 Sec. 11. *Secretariat.* – The Commission shall have a Secretariat that is attached
2 to the University of the Philippines Law Center, to be headed by an Executive Director,
3 to be appointed by the Commission, who shall be responsible for receiving requests for
4 arbitration and other pleadings, for notifying the parties thereto, for fixing and receiving
5 filing fees, deposits, costs of arbitration, administrative charges and other fees. It shall
6 be the duty of the Executive Director to notify the parties of the awards made by the
7 Arbitrators.

8 The Commission is authorized to appoint the consultants, personnel and staff as
9 may be allowed by law.

10
11 Sec. 12. *Arbitrators.* A sole arbitrator or three arbitrators (the "Arbitral Tribunal")
12 may settle a dispute covered by this Act. Only arbitrators accredited by the Commission
13 (the "Arbitrator") shall be allowed to arbitrate disputes covered by this Act.

14
15 Sec. 13. *Qualifications of Arbitrators.* – Given the highly specialized and technical
16 nature of the Areas of Dispute, Arbitrators shall possess the following minimum
17 qualifications:

18 (a) He is a member of the Philippine Bar with at least five (5) years
19 experience and specialization in corporate law, civil law, insurance
20 law, torts and damages, intellectual property law, maritime law or
21 arbitration.

22 (b) He is recognized to be an expert in his field with proven track
23 record in whom the business sector and the State can have
24 confidence.

25
26 Sec. 14. *Authority to Act as Mediator.* – By written agreement of the parties to a
27 dispute, an Arbitrator may act as mediator. The parties may also agree in writing that,
28 following a successful mediation, the mediator shall issue the settlement agreement in
29 the form of an arbitral award.

1 Sec. 15. *Appointment of Foreign Arbitrator.* – The Commission shall promulgate
2 rules to allow for the appointment of a Foreign Arbitrator as co-arbitrator or chairman of
3 an Arbitral Tribunal a person who has not been previously accredited by the
4 Commission; *Provided that:*

- 5 (a) One of the parties to the dispute is an International Party;
- 6 (b) The person appointed agreed to abide by the arbitration rules and
7 policies of the Commission;
- 8 (c) He is either a: (i) co-arbitrator upon the nomination of the
9 International Party; or (ii) is the common choice of the two
10 Commission-accredited arbitrators first appointed, one of whom
11 was nominated by the International Party; and
- 12 (d) The Foreign Arbitrator shall be independent of, and of a different
13 nationality from the International Party.

14 Sec. 16. *Powers of the Arbitral Tribunal.* – Without prejudice to the powers set
15 out in any other provision of this Act, the ADR Law and in the Model Law, an Arbitral
16 Tribunal shall have powers to make orders against any party for:
17

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

1
2 Sec. 17. *Immunity from Suit.* – An arbitrator shall not be liable for:

- 3 (a) Negligence in respect of anything done or omitted to be done in
4 the capacity of arbitrator; and
5 (b) Any mistake in law, fact or procedure made in the course of
6 arbitral proceedings or in the making of an arbitral award.

7
8 Sec. 18. *Appointment of Experts.* – The Arbitral Tribunal or the Arbitrator, if
9 requested by the disputing parties, may utilize the services of technical or legal experts
10 to give guidance on technical questions calling for specialized knowledge in the
11 settlement of the disputes. If the either or both parties make the request for an expert,
12 the Arbitrator or the Arbitral Tribunal shall confirm the appointment of the expert. If the
13 sole arbitrator makes the request for an expert, the Commission must confirm the
14 appointment of the expert.

15
16 Sec. 19. *Arbitration Expenses.* Arbitration expenses shall include the filing fee,
17 administrative charges, Arbitrator/s' fees, fee and expenses of the expert and such
18 other reasonable fees as deemed necessary by the Commission.

19
20 Sec. 20. *Deposit.* – The Commission shall be authorized to fix the amount to be
21 deposited that must be equivalent to the expected arbitration expenses. The deposit
22 shall be paid to the Secretariat before arbitration proceedings shall commence. Payment
23 shall be shared equally by the parties or be paid by any of them. If one party fails to
24 contribute his share in the deposit, the other party must pay in full. If both parties fail
25 to tender the required deposit, the case shall be considered dismissed by the parties
26 shall still be liable to pay one-half of the agreed administrative charge.

27
28 Sec. 21. *Court to Dismiss Case Involving any of the Areas of Dispute.* – A regular
29 court before which a matter falling within any of the Areas of Dispute is filed shall, upon

1 becoming aware, but not later than the pre-trial conference, dismiss the case and refer
2 the parties to arbitration to be conducted by the Commission.

3
4 Sec. 22. *Awards and Judicial Review.* – The arbitral award shall be binding upon
5 the parties. The provisions of Chapter 7 of the ADR Act shall govern the award, judicial
6 review and enforcement of the arbitral award.

7
8 Sec. 23. *Funding.* – The amount of fifty million pesos (P 50,000,000.00) is hereby
9 authorized to be released and shall be included in the General Appropriations Act of the
10 year following its enactment into law and thereafter to cover the operating and capital
11 expenses of the Commission.

12
13 Sec. 24. *Separability Clause.* – The provisions of this Act are declared to be
14 separable and if any provision or the application thereof is held invalid or
15 unconstitutional, the validity of the other provisions shall not be affected.

16
17 Sec. 25. *Repealing Clause.* – All provisions of existing laws, proclamations,
18 decrees, letters of instruction and executive orders contrary to or inconsistent with this
19 Act are hereby repealed or modified accordingly.

20
21 Sec. 26. *Effectivity Clause.* – This Act shall take effect immediately.

Approved,