VII. ALTERNATIVE MODES OF DISPUTE RESOLUTION: THE PHILIPPINE PRACTICE

In the Philippines, like in many other parts of the world, there is a growing dissatisfaction with litigation as a mode of dispute settlement. Litigation is viewed as a rigid process involving technicalities which often produce rather than avert delay in the resolution of cases. As a result, the litigants are unnecessarily exposed not only to needless expenses on account of a long-drawn legal battle but also, to impeded opportunities for future business transaction or expansion.

In an era where transactions among individuals and various juridical entities extend way beyond the geographic and political boundaries of any given country, litigation as a mode of dispute settlement will have to take the backseat. Multinational and domestic transactions may involve various interests covering issues highly technical or specialized in character. Legal solutions or frameworks for resolving such issues are not limited to Philippine laws and jurisprudence as certain situations may call for the application of foreign laws. Hence, the intricacy of the commercial transactions and the complexity of the issues and the subject matters, among others, require innovative and expeditious modes of dispute resolution alternative to litigation.

As disputes may unavoidably arise from various commercial transactions, rarely can one find a contract without a provision for dispute resolution. In the Philippines, contracts usually provide for submission of a dispute to a court, with such stipulation indicating merely the venue of the action. In a limited sense, this shows the increasing number of commercial transactions the protagonists of which consciously adopt modes of dispute settlement alternative to litigation.

Collectively termed as alternative dispute resolution ("ADR"), the most popular techniques of this approach to legal disputes are arbitration and mediation. Although there exists other equally useful techniques that evolved from their respective practices in other countries (Parlade, Construction Arbitration 1-12 (1997), the recognition of arbitration and mediation in this jurisdiction is a consequence of the legislative involvement in enacting regulatory laws that accepted and recognized its

features (Examples are Republic Act No. 876, otherwise known as the Arbitration Law and Arts. 2028-2046 of the Civil Code of the Philippines on compromise and arbitration).

In this regard, ADR offers to the parties a method of adjudication that is speedy, assures confidentiality of the proceedings, less costly in terms of total time, finances, opportunities compared to litigation, and a fair and just resolution of cases (Parlade, supra. at p. 11).

By description, arbitration is a voluntary process wherein disputes may be referred to arbitration only if the parties have entered into an arbitration agreement or a submission agreement. In arbitration, the arbitrator makes a determination of the facts and applies the law to those facts to resolve a dispute independently of the actual result desired by the parties. On the other hand, in mediation, the mediator assists the parties in reaching a mutually agreeable settlement. The mediator actively participates in resolving the dispute then gives a decision or opinion, though not binding, on how to resolve the dispute. In other words, mediation is a non-binding dispute resolution process where a neutral third person chosen by the parties explores the means of settling the dispute or even put forward proposals that the parties are completely free to accept or reject.

Although mediation and conciliation are used interchangeably, the distinction is that the conciliator participates merely in the preliminary steps of facilitating discussion between the parties and, perhaps, helps them frame the issues for discussion (Id. at p. 3; citing Thmas Oehmke, Construction Arbitration 7 (1988).

A. History of ADR in the Philippines

The earliest legally recognized and accepted mode of dispute resolution alternative to litigation is arbitration. The Philippine Supreme Court in 1921 recognized arbitration, in that, "(t)he settlement of controversies by arbitration is an ancient practice at common law. In its broad sense, it is a substitution, by consent of the parties, of another tribunal for the tribunals provided by the ordinary processes of law; x x x. Its object is the final disposition, in a speedy and inexpensive way, of the matters involved, so that they may not become the subject of future litigation between the parties" (Chan Linte vs. Law Union and Rock Insurance Co., et al., 42 Phil. 548 (1921).

However, despite such pronouncement, arbitration as an alternative mode of dispute resolution had not been given a blanket and unregulated recognition in its incipiency. Courts of earlier times tended to nullify arbitral clauses that absolutely oust the judiciary of its jurisdiction. Such that "unless the agreement is such as to absolutely close the doors of the courts against the parties, which agreement would be void, the courts will look with favor upon such amicable agreements and will only with great reluctance interfere to anticipate or nullify the action of the arbitrator" (Manila Electric Co. vs. Pasay Transportation Co., 57 Phil. 600 [1932]).

With such judicial decisions came the legislative confirmation. In 1950, the Civil Code was enacted containing general provisions relating to compromise and arbitration. On the other hand, in 1953, the Philippine Legislature passed Republic Act No. 876 ("Rep. Act. No. 876"), otherwise known as the Arbitration Law which became the cornerstone of legislative participation in elevating arbitration as a recognized and viable mode alternative to litigation in settlement of disputes.

The Philippine Senate in 1965 adhered to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, thereby allowing the enforcement of international arbitration agreements between parties of different nationalities within a contracting state (National Union Fire Insurance Co. of Pittsburgh vs. Stolt-Nielsen Phils., Inc., G. R. No. 87958, April 26, 1990, 184 SCRA 682).

As the foregoing legislative acts validated the acceptability of ADR, it was clear that the Philippine Legislature took an active role in its promotion by subsequently enacting laws containing the features of either arbitration or mediation.

B. Sources of Law on ADR in the Philippines

With the primordial character of ADR as largely consensual, it operates principally upon the procedure stipulated by the parties in their agreement. However, in the absence or insufficiency of specific procedure, Rep. Act No. 876 will apply suppletorily.

But Rep. Act No. 876 is not the only source of law on ADR. Also applicable are Articles 2028 to 2046 of the Civil Code of the Philippines, international convention and treaties and judicial decisions promulgated by the Philippine Supreme Court applying or interpreting laws (Civil Code, Article 8).

In recent years though, laws have been enacted providing either arbitration or mediation as features for dispute resolution. Among these are the Local Government Code of 1991 on Katarungang Pambarangay (Republic Act No. 7160), Consumer Act of the Philippines of 1992 (Republic Act No. 7394), the Mining Act of 1995 (Republic Act No. 7942), and the Intellectual Property Code of 1998 (Republic Act No. 8293).

C. Other Modes of ADR

Although eventually resolved through arbitration and litigation, corporate disputes usually commercial in nature are principally resolved through consultation and negotiation among the parties. Should negotiations fail, it is common for the parties to seek the assistance of a third party to informally facilitate the resolution of the conflict through mediation and conciliation and not to impose any settlement. Such third party is usually a common relative or friend with ascendancy; a political and/or religious leader; and a reputable business associate or colleague.

Parties may also avail of the facilities of arbitration institutions like the Philippine Dispute Resolution Center, Inc. or the Construction Industry Arbitration Commission. Although these involve formal processes and generally avoided, continuing efforts to evolve an acceptable dispute resolution methods are being carefully undertaken.

D. Prevalent ADR Practices in the Philippines

Ultimately the success of ADR techniques depends to a large extent upon the sincerity of the parties to reach an amicable settlement. Nonetheless, different variations have been proposed to enhance and promote ADR in the Philippines, such as: (1) fact-finding, wherein a neutral third person chosen by the parties is tasked to ascertain the facts of the dispute and evaluated the position of each party, presents his findings and recommends his solution (Parlade, *supra.* at pp. 3-4); (2) reference to an expert concerning the valuation or on account of the specialized knowledge of the subject matter in dispute; (3) reference by a court to a special master for determination of the dispute including the production of evidence and its admissibility. The special master may be a magistrate, referee, or a private person whose decision, however, is not generally binding on the parties (*Id.).*

In the Philippines, however, the generally popular ADR techniques are arbitration and mediation. Resolution of disputes through arbitration generally utilizes Rep. Act. No. 876, in the absence of specific procedure stipulated in the contract of the parties.

Mediation, on the other hand, is the less known ADR technique which is sanctioned under the provisions of the Local Government Code of 1991 on Katarungang Pambarangay.

Parties though are not limited in their choices of ADR since the Civil Code of the Philippines itself recognizes, subject to limitations provided by law, compromise contract "whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced" (Civil Code, Article 2028).

1. Characterization of ADR Practice

Arbitration practice, being the common ADR technique adopted in Philippines, can be generally described according to choice of process or methods.

The law grants the parties the choice of arbitrator/s and to choose the procedure to be followed in the proceeding, including utilization of rules of other agencies or bodies. As long as the requirement of arbitration is present, the parties are allowed to conduct the same in the manner so stipulated provided that the same is not "contrary to law, morals, good customs, public order or public policy" (Civil Code, Article 1306).

The parties can also avail of the so-called institutionalized arbitration, wherein associations or institutes offer facilities and provide their own different arbitration procedure such as the Philippine Dispute Resolution Center, Inc. or Construction Industry Arbitration Commission.

On the other hand, mediation being the informal technique aids primarily in preventing litigation or even arbitration. Mediation is in certain cases considered to be a condition precedent for the filing of a case (Section 412, R. A. 7160).

2. Restrictions and Limitations of ADR Practice

Although the parties may avail themselves of ADR procedure in the settlement of disputes, it does not necessarily follow that any or all disputes can be the subject of ADR. By express statutory restriction, the following may not be the subject of ADR: (1) civil status of persons (Civil Code, Article 2043 in relation to Article 2035); (2) validity of marriage or legal separation (*Id.)*; (3) any ground for legal separation (*Id).* (4) future

support (*Id)*; (5) the jurisdiction of courts (*Id)*; (6) future legitime (*Id).*; and (7) criminal liability (Civil Code, Article 2043 in relation to Article 2034).

Further, certain disputes have been vested in particular tribunals pursuant to express provisions of law. Under the Consumer Act of the Philippines or Rep. Act No. 7394, consumer arbitrators are vested with original and exclusive jurisdiction to mediate, conciliate, hear or adjudicate all consumer complaints (Section 160, Rep. Act No. 7394). Said consumer arbitrators are government employees appointed by either the Secretaries of Health, Agriculture or Trade depending on the nature of disputes.

The Mining Act of 1995, or Rep. Act No. 7942, provides for the appointment of a panel of government-employed arbitrators in every regional office of the Department of Environment and Natural Resources which has exclusive and original jurisdiction involving disputes over (a) mining areas; (b) mineral agreements or permits; (c) surface owners or occupants and claimholders or concessionaires (Rep. Act No. 7942, Sections 77 and 78).

On the other hand, under the Intellectual Property Code of 1998 it is explicitly stated that "(i)n the event the technology transfer arrangement shall provide for arbitration, the Procedure of Arbitration of the Arbitration Law of the Philippines or the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) or the Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC) shall apply and the venue of arbitration shall be the Philippines or any neutral country" (Rep. Act No. 8293, Section 88.3).

There are other disputes that fall under the jurisdiction of particular agencies of government to hear, conciliate and mediate similar to those mentioned. In the case of the National Conciliation and Mediation Board (Executive Order Nos. 126 and 251 creating the National Conciliation and Mediation Board), although dealing principally with labor disputes, it nevertheless follows the same direction of ADR.

Finally, under the Local Government Code of 1991, or Rep. Act No. 7160, the parties may, at any stage of the proceeding before the barangay, agree in writing that they shall abide by the arbitration award of the lupon chairman or the pangkat. Such agreement to arbitrate may be repudiated within five (5) days from the date thereof on grounds of vitiated consent through fraud, violence or intimidation. The arbitration award shall be made after the lapse of the period for repudiation and within ten (10) days thereafter (Rep. Act No. 7169, Section 413 in relation to Section 418).

3. Arbitration Practice

The Philippine Arbitration Law, or Rep. Act No. 876, allows the parties to arbitrate controversy existing between them subject to the limitations discussed. Such that where the parties agree to arbitrate their disputes, their agreement is binding on them and they are expected to abide in good faith with the arbitral clause of their contract (Toyota Motor Philippines Corp. vs. Court of Appeals, G. R. No. 102881, December 7, 1992, 21 SCRA 236). And not even the presence of third party renders the arbitral agreement dysfunctional (*Id.)*.

But there are moments when parties refuse to abide by the arbitral agreement. In which case, the party seeking arbitration may either file a petition before the Regional Trial Court to compel arbitration and/or proceed ex-parte (without the participation of the other side) with the arbitration proceeding without the defaulting party.

Giving effect to the expeditious character of arbitration, the filing of petition to compel arbitration does not allow the party who refused to raise defenses touching upon the merits of the case since the proceeding is only a summary remedy to enforce the agreement to arbitrate (Mindanao Portland Cement Cop. Vs. McDonough Construction Company of Florida, G. R. No. L-23890, April 24, 1967, 19 SCRA 808).

On the other hand, should a party file a court action without resorting first to arbitration, the court in which the action is pending, upon being satisfied with arbitrability of the controversy, shall suspend the action until an arbitration has been had in accordance with its terms (Section 7, Rep. Act No. 876).

However, should the defaulting party still refuse to proceed with arbitration despite notice, the party seeking arbitration shall present evidence ex-parte (Umbao vs. Yap, 100 Phil. 1008 [1957]) which shall be the basis of the award later on (Section 12, Rep. Act No. 876).

The arbitrator is a crucial element in the arbitration proceeding. His ability, skills, expertise and fairness will determine the credibility of the proceeding and the acceptability of arbitration as alternative mode of dispute resolution.

Contracts may provide either a sole arbitrator or a panel of arbitrators. Should the contract be silent on the number, the arbitration law gives the court discretion to appoint one or three arbitrators, according to the importance of the controversy involved (Section 8 (e), Rep. Act No. 876).

In regard to appointment, arbitrators are appointed in the accordance with the submission agreement or arbitration clause through nomination of specific or ascertainable person/s; or providing for specific procedure; and referring to institutional arbitration rules or laws.

Should there be no appointed arbitrator, the Regional Trial Court shall make the appointment under the following instances into account the willingness or refusal of the party to name his choice of arbitrator/s (Id. Section 8 (a) – (d)): (1) when the parties are unable to agree upon a single arbitrator; (2) when the arbitrator appointed is unwilling or unable to serve and his successor has not been appointed; (3) if either party fails or refuses to name his arbitrator; and (4) if the arbitrators appointed fail to agree/select upon the third arbitrator (Id).

If the arbitral agreement provides for the specific time for the constitution of the arbitrator/s, the same is invariably followed. However, in the absence of such provision, the Arbitration Law did not provide a time limit for the constitution of the arbitral tribunal except that the Regional Trial Court shall appoint the arbitrator in case of failure of either party to name the same within 15 days after receipt of the demand for arbitration and that the arbitrators appointed shall decline or accept their appointments within 7 days from receipt of such appointment (Id.).

Of course, the qualification of the arbitrator must be taken into consideration. In addition to the general characteristics of impartiality, neutrality, and integrity, Philippine Arbitration Law provides for qualifications for arbitrators, to wit: (1) of legal age; (2) have full enjoyment of civil rights; (3) know how to read and write; (4) not related by blood or by marriage within the sixth degree to either party; (5) have, or had, no financial, fiduciary, or other interest in the controversy or cause to be decided or in the result of the proceeding; and (6) have no personal bias which might prejudice the right of any party to a fair and impartial award (Id., at Section 10).

Also, not only is an arbitrator precluded from acting as a champion or advocate for either of the parties to arbitration (Id.), but he is likewise prohibited from functioning as a mediator in, and even attending, the negotiations for the settlement of the dispute (Id. at Section 20).

In this connection, the arbitrators, by the nature of their functions, act in a quasi-judicial capacity (Oceanic Bic Division (FFW) vs. Romero, G. R. No. L-43890, July 16, 1984, 130 SCRA 392) and must accordingly demonstrate unquestioned fairness and impartiality in their decision.

Any challenge to the appointment of arbitrators must relate to the disqualifications recognized by law and must be made before the arbitrators (Section 11, Rep. Act No. 876). If the arbitrator does not give way to the challenge, it may be made before the Regional Trial Court in which case the arbitration proceeding shall be momentarily suspended pending the resolution of the incident (Id.).

The powers granted to the arbitrators are neither blanket nor unrestrained. They are subject to the express stipulation of issues presented by the parties and the proscriptions laid down by law.

Arbitrators are empowered to resolve only those issues that have been submitted to them under the submission agreement (Id., at Section 20). This is necessarily so considering that parties to a submission agreement are only bound by the award to the extent and in the manner prescribed by the contract and only if the award is in conformity to the contract (Id., at Section 24. Assets Privatization Trust vs. Court of Appeals, et al., G. R. No. 121171, December 29, 1998). Otherwise, the award can be assailed and vacated before the proper Regional Trial Court (Id.).

In reference to the fees of the arbitrators, they shall receive P50.00 or approximately $1.00 per day, unless the parties stipulate otherwise (Id., at Section 21).

When disputes arise from the contract of the parties that contains arbitration clause, a demand for arbitration is made by one party to the other party to resolve such dispute through arbitration in accordance with the contract provision (Id., at Section 5 (a)). In the absence of such arbitration clause, a submission agreement instead is made by both parties agreeing to submit to arbitration an existing controversy (Id., at Section 5 (c)).

There is no specific form for the submission agreement or demand for arbitration except that the same "must be in writing and subscribed by the party sought to be charged or by his lawful agent" (Id., at Section 4).

On the other hand, the minimum contents of the demand for arbitration are the following: (1) names and addresses of the parties; (2) nature of the controversy; (3) the amount involved, if any; (4) the relief sought; (5) the true copy of the agreement providing for arbitration; (6) the specific time within which the parties shall agree upon the arbitrator, where the arbitration is, by agreement, to be conducted by a single arbitrator; and (7) should the arbitration agreement provide for arbitration by a panel of three members, one of whom is to be selected by each party, the name of the arbitrator appointed by the party making the demand and shall require that a party upon whom the

demand is made shall advise the demanding party on writing within fifteen days the name of the arbitrator appointed by the second party (Id., at Section 5).

With respect to the submission agreement, the same is required to set forth the following: (1) the names of the parties; (2) nature of the controversy; and (3) the amount involved, if any (Id., at Section 5 (c)).

In the course of the presentation of evidence, arbitration proceedings, in general, are conducted orally with the presentation of evidence accomplished at the scheduled hearings (Id., at Section 15).

However, the parties may waive the conduct of oral hearings and presentation of oral testimony by executing a written agreement submitting their dispute to arbitration other than oral hearing (Id). For this purpose, the parties may be directed to do the following: (1) submit an agreed statement of facts; (2) submit their respective written contentions to the duly appointed arbitrators together with all documentary proof supporting the statement of facts; (3) submit a written argument; and (4) reply in writing to any of the other party's statement and proofs within seven days after receipt of such statement and proofs (Id. at Section 18). After submission of the foregoing, the arbitrator then declares the hearing closed (Id).

With the closing of the hearing comes the final resolution of the controversy that is embodied in the arbitral award. However, for the same to be valid, the award must comply with both the scope stated in the arbitration/submission agreement and with the formalities directed by law.

The award must be rendered within the period prescribed in the contract of the parties or submission agreement. In its absence, the award, in writing, must be rendered within thirty-(30) days after closing of the hearings, or if the oral hearings shall have been waived, within thirty-(30) days after the arbitrators shall have declared such proceedings in lieu of hearings closed (Id., at Section 19).

As to the form and contents, the arbitral award must be in writing, signed and acknowledged by the majority of the arbitrators, if more than one; and by the sole arbitrator, if there is only one (Id., at Section 20). The award must decide only those issues and matters submitted for arbitration. Although the arbitrators are granted the power to assess in their award the expenses of any party against another party when such assessment shall be deemed necessary (Id).

With regard to the voting procedure for the validity of an award, the parties may opt to provide in the arbitration or submission agreement the required voting,

provided that in the case of multiple arbitrators, at least a majority of the arbitrators concur therewith, unless the concurrence of all of them is expressly required in the submission or contract to arbitrate (Id., at Section 14 in relation to Section 20).

In the arbitration proceedings, the award, after becoming final, is generally not self-executing and must be confirmed and executed by court order (Civil Code, Article 2037 in relation to 2043).

One exception is the award granted by Construction Industry Arbitration Commission that can be enforced by said tribunal having been authorized to issue writs of execution involving its arbitral award (Executive Order No. 1008, 04 February 1985).

Another exception is in the case of arbitration award granted under the Local Government Code of 1991 wherein the award may be enforced by execution by the lupon within six (6) months from the date of the settlement. After the lapse of such time, the settlement may be enforced by action in the appropriate city or municipal court (Rep. Act No. 7160, Section 417).

Any party to the controversy may, within one-(1) month after the award is made, file with the Regional Trial Court having jurisdiction a motion to confirm the award (Section 23, Rep. Act No. 876). The court must grant the motion for confirmation unless the award is vacated, corrected or modified (Id.).

Upon confirmation, judgment is entered in conformity therewith in the court where the application is filed (Id., at Section 27). Such judgment so entered shall have the same effect as a judgment in an action and may be enforced as if it had been rendered in the same court in which it has been entered (Id., at Section 28).

To obtain an entry for such confirmation, the party applying shall, at the time of filing of such motion, also file with the Clerk of Court the following: (1) the submission, or contract to arbitrate; the appointment of the arbitrator; and each written extension of time, if any, within which to make the award; (2) a verified copy of the award; and (3) each notice, affidavit, or other paper used upon the application to confirm, modify, correct or vacate such award, and a copy of each order of the court upon such application (Id).

In this connection, the finality of the arbitral award is not absolute and can still be vacated, corrected or modified subject to proof of the grounds provided by law (Civil Code, Articles 2038 to 2040; also, Section 24 and 26, Rep. Act No. 876). Under the Civil Code, the grounds for annulling the arbitral award are mistake, fraud, violence, intimidation, undue influence, or falsity of documents, among others (Id.).

Also, the following are valid grounds to vacate the arbitral award: (1) corruption, fraud or other means in procuring the award; (2) evident partiality or corruption in the arbitrators or any of them; (3) misconduct of the arbitrators in refusing to postpone the hearing upon sufficient cause shown or misconduct in refusing to hear pertinent and material evidence; (4) deliberate failure of one or more arbitrators from disclosing disqualification; (5) any other misbehavior of the arbitrators materially prejudicing the right of the parties; or (6) arbitrators exceeded their powers or imperfectly executed them resulting in the absence of a mutual, final and definite award (Id., at Sections 24 and 26).

The award may likewise be modified or corrected on the basis of the following grounds: (1) evident, miscalculation of figures or evident mistake in the description of any person, thing, or property in the award; (2) award upon a matter not submitted to the arbitrator which does not affect the merit of the decision upon the matters submitted; or (3) the award is imperfect in form not affecting the merits of the controversy, and if it had been a commissioner's report the defect could have been amended or disregarded by the court (Id., at Section 15).

However, under the Local Government Code of 1991, any party may repudiate the arbitral award within ten (10) days from the date of settlement by filing with the Punong Barangay or Pangkat Chairman a sworn statement stating grounds of fraud, violence and intimidation (Rep. Act No. 7160, Section 418).

4. Mediation

Mediation has not been elevated to the same level as arbitration. Though recognized and sanctioned by law, no definite procedure has been carried out to develop such form of ADR. In the Philippines, mediation and conciliation have been used interchangeably and do not carry the technical description as discussed above.

Parties submitting their dispute to mediation must agree on the following: (1) the selection of the mediator or of the process by which the mediator may be selected; (2) the role of the mediator and the type of mediation contemplated, whether a rights mediation or interest mediation; (3) the submission by the representatives of the parties full settlement authority and the form in which such authority may be embodied; (4) the participation or non-participation of counsel in the mediation proceedings; (5) the time and place of the mediation sessions; (6) whether the mediator may meet both parties in joint sessions or separately in what are known as ex-parte caucuses; (7) whether the

evaluation to be made by the mediator of the dispute shall be facilitative or evaluative; (8) whether the statements, both oral and written, made by a party is admissible in evidence in a subsequent litigation; (9) whether a mediation is terminated at will by either party; (10) the pre-mediation submission of basic, non-controversial documents, including claim documents, and such statements which either party may submit to give as much information as possible to the mediator about the facts of the dispute, and whether such submissions and documents shall be kept confidential or shall be provided by one party to the other; (11) the scheduling of the mediation sessions and the submission of documents or information to the mediator; (12) in complex cases, the possibility of co-mediation; and (13) any agreement as to the sharing of the costs of mediation and the payment of the mediator's fees.

Mediation can be categorized as either rights mediation or interest mediation. A rights mediation is evaluative. In this mediation, the mediator must examine carefully the facts surrounding the dispute, clarify the issues involved in the dispute, both factual and legal and evaluate for the benefit of each party the possible decision of a court of law (Green, Mediation in Construction Dispute Resolution Formbook, 1997).

On the other hand, interest mediation is facilitative in that the issue being brought before the parties is not who is right or wrong but that the mediator helps the parties clarify their concerns, interests, values, and priorities (Id.). If the issues are mainly factual, especially if they are highly technical, the parties may choose a mediator who possesses the requisite specialization and experience with regard to such issues. In purely facilitative mediation, the mediator is reluctant to express any opinion on the merits underlying the dispute (Id).

Philippine law recognizes mediation as alternative mode of dispute settlement in the level of barangay. Under the Local Government Code of 1991, or Rep. Act No. 7160, the provisions on Katarungang Pambarangay purportedly establish mediation and conciliation as channel for settlement of dispute at the first level of the political unit of government.

Under the structure, a Lupong Tagapamayapa ("Lupon"), composed of the punong barangay as chairperson and ten (10) to (20) members, is constituted in every barangay (Rep. Act No. 7160, Section 399). A conciliation panel consisting of three (3) members shall be chosen by the parties to the dispute from the list of members of the Lupon. This panel is known as Pangkat Tagapagkasundo.

The procedure commences once an individual who has a cause of action against another individual involving any matter within the authority of the Lupon complains, orally or in writing to the lupon chairman of the barangay (Id., at Section 410 (a)). Upon receipt of the complaint, the lupon chairman shall, within the next working day, summon the respondent(s), with notice to the complainant(s) for them and their witnesses to appear before him for a mediation of their conflicting interests (Id., at Section 410 (b)). If he fails in his mediation effort within fifteen (15) days from the first meeting of the parties before him, he shall forthwith set a date for the constitution of the pangkat (Id.).

Interestingly, in all katarungang pambarangay proceedings, the parties must appear in person without the assistance of counsel or representatives, except for minor or incompetents who may be assisted by their next-of-kin who are not lawyers (Id., at Section 415). Further, mediation before the lupon or the pangkat becomes a condition precedent for the filing of a petition, complaint, action or proceeding in court covering any matter within the jurisdiction or authority of the lupon. A certification to the effect that no conciliation or settlement has been reached will be needed to a valid filing of such action before the court (Id., at Section 412 (a)).

The settlement shall be in writing, in a language or dialect known to the parties, signed by them, and attested to by the lupon chairman or the pangkat chairman, as the case may be (Id., at Section 411). Moreover, under the same law, customs and traditions of indigenous cultural communities are recognized in resolving controversies and disputes between and among members of the cultural communities (Id., at Section 412 (c)).

With respect to the effect of any amicable settlement, the same shall have the force and effect of a final judgment of a court upon the expiration of ten (10) days from the date thereof, unless repudiated or a petition for nullification has been filed with the proper municipal or city court (Id., at Section 416). Repudiation of settlement may be made by any party within ten (10) days from the date of settlement by filing with the lupon chairman a statement to that effect sworn to before him, on the ground of fraud, violence, or intimidation (Id., at Section 418).

Execution however of the amicable settlement can only be enforced by the lupon within six-(6) months from the date of settlement, after which it may be enforced by action in an appropriate municipal or city court (Id., at Section 417).

There is a potential for mediation to aid in preventing further clogging of court dockets. The informal process serves the purpose of the parties in making the

discussion free-flowing and without the anticipated legal technicalities and maneuverings. Indeed, not only will mediation be inexpensive but it offers avenue for conflict resolution accessible to ordinary people.

E. Conclusion

The ADR practice in the Philippines has not yet reached its full potential. At present, there is a continuing process of adopting successful the alternative modes already being practiced by various institutions in different countries and in developing and evolving unique mode/s suitable and in keeping with the cultural and economic development of the Philippines. As can be gleaned, the Philippines is treading the right path towards the promotion of alternative modes of dispute resolution. And the success of ADR in this country will depend entirely on the consistent and meaningful exposure of the Filipino people to a speedy and inexpensive administration of justice that ADR offers.