

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 78

MANDATING THE INCLUSION OF PROVISIONS ON THE USE OF ALTERNATIVE DISPUTE RESOLUTION MECHANISMS IN ALL CONTRACTS INVOLVING PUBLIC-PRIVATE PARTNERSHIP PROJECTS, BUILD-OPERATE AND TRANSFER PROJECTS, JOINT VENTURE AGREEMENTS BETWEEN THE GOVERNMENT AND PRIVATE ENTITIES AND THOSE ENTERED INTO BY LOCAL GOVERNMENT UNITS

WHEREAS, as early as 1953, Republic Act (RA) No. 876 otherwise known as "The Arbitration Law," already allowed persons or parties to submit to arbitration, "any controversy existing between them at the time of the submission and which may be the subject of an action, or the parties to any contract may in such contract agree to settle by arbitration a controversy thereafter arising between them;"

WHEREAS, the Supreme Court (SC) in 2001, has authorized the use of court-annexed mediation as a form of Alternative Dispute Resolution (ADR) in specific cases. Furthermore, other forms of ADR have been incorporated into the Philippine judicial system, such as: the use of pre-trial; discovery modes of procedure; the barangay certification prerequisite to filing actions in court; and, the procedure in small claims cases;

WHEREAS, RA No. 9285, otherwise known as "The ADR Act of 2004," declares that it is the policy of the State to actively promote party autonomy in resolving disputes and to respect the freedom of the parties to make their own arrangements to resolve their disputes;

WHEREAS, the SC promulgated the Special Rules of Court on ADR in 2009 (A.M. No. 07-11-08-SC), with the objective of encouraging and promoting the use of ADR, particularly arbitration and mediation, as an important means to achieve speedy and efficient resolution of disputes with the greatest cooperation of the courts and at the same time the least intervention from the same;

WHEREAS, towards this end, the State shall encourage and actively promote the use of ADR mechanisms through conciliation and negotiation, mediation and arbitration, in the order of application, as an efficient tool and an alternative procedure in achieving speedy and impartial justice and de-clogging court dockets; and

WHEREAS, there is a need to provide a more inviting climate for private investments by making the resolution of disputes arising out of a contract less expensive, tedious, complex and time-consuming, especially for large-scale, capital-intensive infrastructure and development contracts.



NOW, THEREFORE, I, BENIGNO S. AQUINO III, President of the Philippines, by virtue of the powers vested in me by the Constitution and existing laws do hereby order:

SECTION 1. Use of ADR mechanisms. All contracts involving Public-Private Partnership (PPP) projects and/or those entered into under RA No. 6957 entitled, "The Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and for Other Purposes," as amended by RA No. 7718, otherwise known as the "Build-Operate and Transfer (BOT) Law," as well as Joint Venture Agreements (JVAs) between government and private entities issued by the National Economic and Development Authority (NEDA) pursuant to Executive Order (EO) No. 423 (s. 2005), shall include provisions on the use of ADR mechanisms, at the option and upon agreement of the parties to said contracts.

All parties who enter into similar contracts with Local Government Units (LGUs) are encouraged to stipulate on the use of ADR mechanisms, in accordance with their own JV rules, guidelines or procedures.

When parties to the abovementioned contracts agree to submit the case for ADR, the use of either domestic or international ADR mechanisms shall be highly encouraged, giving the parties complete freedom to choose which venue and forum shall govern their dispute, as well as the rules or procedures to be followed in resolving the same.

SECTION 2. Implementing Agency. NEDA, in consultation with the appropriate agencies of the government, is hereby directed to issue the Implementing Rules and Regulations (IRR) to implement this EO, which shall be binding on all government agencies and shall guide LGUs that shall enter into PPP or BOT contracts and JVAs.

SECTION 3. Information Campaign. The Department of Justice (DOJ) through the Office of the Alternative Dispute Resolution (OADR), NEDA through the PPP Center, and the government media instrumentalities shall conduct a massive information campaign on this policy directive and the different ADR mechanisms to all national and local government agencies/entities, the private sector and the general public.

The initial funding requirements for the information campaign shall be shared by and charged against the current appropriations of the PPP Center, NEDA, OADR, and other concerned agencies. Funding for the succeeding years shall be incorporated in their respective regular appropriations thereafter.

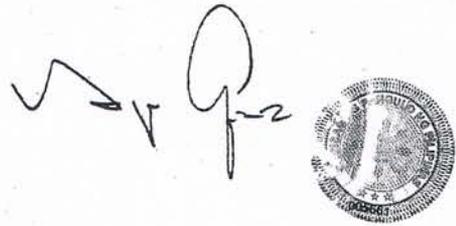
SECTION 4. Repealing Clause. All issuances, orders, rules, and regulations or parts thereof which are inconsistent with the provisions of this EO are hereby revoked and/or modified accordingly.



SECTION 5. Separability Clause. If any provision of this EO is declared invalid or unconstitutional, the other provisions unaffected shall remain valid and subsisting.

SECTION 6. Effectivity Clause. This EO shall take effect immediately upon its publication in a newspaper of general circulation.

DONE, in the City of Manila, this 4th day of July, in the year of our Lord, Two Thousand and Twelve.



By the President:



PAQUITO N. OCHOA, JR.
Executive Secretary



CERTIFIED COPY:



MARIANITO M. DIMAANDAL
DIRECTOR IV
MALACANANG RECORDS OFFICE

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