

# Alternative Dispute Resolution Framework



## 1. Prefatory Statement

The Philippine microinsurance industry comprises a heterogeneous mix of actors that include microinsurance providers and delivery channels such as commercial insurance companies, cooperative insurance societies, mutual benefit associations, pre-need companies, health maintenance organizations, thrift, rural and cooperative banks, cooperatives and non-government organizations. In view of the unique structures and policies that govern each of these entities, the microinsurance sector recognizes that an *appropriate* Alternative Dispute Resolution (ADR) mechanism shall be adopted on the basis of the characteristics of each stakeholder.

Guiding principles shall facilitate the formulation of an ADR framework to address disputes that occur within the microinsurance sector by setting fundamental standards. These will ensure consistency in implementation while allowing flexibility essential to accommodate the nuances inherent to the different stakeholders.

## 2. Rationale for ADR

Laws and regulations were passed in recent years to encourage, if not mandate, the use of ADR to resolve various types of disputes. The primary objective is to provide avenues to settle disputes through the swiftest and most accessible means.

The use of appropriate ADR methods reduces the cost, time, and complexity of any subsequent litigation. By incorporating the ADR processes into the regulatory framework governing the Philippine microinsurance industry, the microinsurance sector is committed to provide its stakeholders with options for resolving disputes outside the courtroom, and minimize the expense and delays that may accompany the judicial process.

The microinsurance sector recognizes that existing laws and regulations lay a crucial foundation for the effective design and implementation of ADR processes. Among the relevant laws and regulations are the following:

- **Republic Act No. 9285 (RA 9285), The ADR Act of 2004**

**Section 2:** it is the policy of the State to actively promote and encourage the use of ADR as an important means to achieve speedy and impartial justice and to de-clog court dockets.

- **Republic Act No. 9520 (RA 9520), The Philippine Cooperative Code of 2008**

**Article 137:** disputes among members, officers, and committee members, and intra-cooperative disputes,

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shall be settled amicably in accordance with the conciliation or mediation mechanisms embodied in the by-laws of the cooperative and in other applicable laws.

- **Rules and Regulations Implementing (IRR) Special Provisions of RA 9520, Rule III, Section 13:** in cases where the dispute falls within the jurisdiction of the Insurance Commission (IC), the same shall be referred to the said agency and resolved in accordance with the IC's regulations.

- **Republic Act No. 6939 (1990), The Cooperative Development Authority (CDA) Charter**

**Section 8:** upon request of either or both parties, the CDA shall mediate and conciliate disputes within a cooperative or between cooperatives.

- **Revised Procedures for Mediation and Conciliation of Cooperative Disputes in the CDA (2004)**

**Section 5(a):** matters involving the internal affairs of the cooperative, including the rights and privileges of members, may be the subject of mediation and/or conciliation.

- **Executive Order No. 523 (2006), Instituting the Use of ADR in the Executive Department of the Government**

**Section 1. Use of Alternative Dispute Resolution:** All agencies and administrative bodies under the Executive Department shall promote the use of alternative modes of dispute resolution such as mediation and conciliation as part of their practice in resolving disputes.

Significantly, the Microinsurance Regulatory Framework (2010) states:

7.2.3.1. Complaints involving microinsurance benefits shall be acted upon within 5 working days upon filing of a complaint, and a resolution shall be made within 45 working days from the time the case is submitted for final resolution. Alternative dispute resolution mechanisms as mutually agreed upon by the parties concerned, may be utilized for the speedy resolution

of microinsurance cases.

Insurance Memorandum Circular 1-2010, Annex 1, I(G) on the Key Features of a Microinsurance Contract, further provides that disputes related to microinsurance contracts shall be settled initially through ADR mechanisms.

The foregoing provisions indicate the IC's commitment to adopt ADR methods for microinsurance disputes. As such, each microinsurance stakeholder is encouraged to adopt an ADR system that addresses its particular character; and, as made express by the governing laws and policies, each stakeholder is urged to employ mediation and/or conciliation as primary modes to address disputes arising within their jurisdiction.

### 3. ADR Framework for Microinsurance Disputes

#### A. Guiding Principles

These principles shall guide the design and implementation of an ADR system throughout the industry.

- (i) **SUBSIDIARITY** – Amicable settlement of disputes between parties at levels closest to where disputes occur, with the help of competent and authorized facilitators.
- (ii) **PROCEDURAL FAIRNESS** – A quality process wherein a third-party facilitator safeguards neutrality and ensures mutual respect among the parties.
- (iii) **EMPOWERMENT AND SELF-DETERMINATION:** Parties are enabled to reach an independent, voluntary and satisfactory agreement, and to abide by such agreement in good faith.
- (iv) **EFFECTIVE COMMUNICATION** – Inside and outside the ADR process, parties are encouraged to freely express themselves through a productive exchange of thoughts, opinions and ideas to arrive at a mutually acceptable agreement.
- (v) **RECONCILIATION** – The ADR process allows parties to reach an amicable settlement and re-build relationships.



Proceeding from the guiding principles proposed above, especially with respect to empowerment, procedural fairness and reconciliation, the use of mediation and conciliation as preferred modes of ADR is encouraged for the microinsurance industry, where the elements of community and personal relationships are strong.

**B. Process Design Factors**

These concepts shall be considered by the industry stakeholders in adopting their respective ADR processes.

- (i) Mediation - a trained third party facilitates a negotiation for the purpose of reaching a voluntary agreement concluded by the parties themselves. The mediator refrains from dispensing advice or

suggestions, and aims to guide the discussion towards resolution by safeguarding the structure of the process and observance of the ground rules agreed upon.

- (ii) Conciliation - While conciliation is similar to mediation, it is distinguished by the fact that a conciliator actively offers opinions and suggestions.

- (iii) Cases to be referred to the ADR process

Disputes related to a microinsurance product or service arising from claims and complaints are the types of cases suitable for referral to ADR. These do not include those cases that RA 9285 does not allow to be compromised<sup>1</sup>.

Briefly, below is a summary of the key features of the mediation and conciliation processes:

Features	MEDIATION	CONCILIATION
Process	Structured, with specific stages	Less structured, following the course of the particular negotiation
Decision maker	The parties/disputants themselves	The parties/disputants themselves
Basis of decision	Needs and interests of all parties, rather than demands or positions	Most favorable reconciliation of positions
Involvement of the parties	Direct and full participation in representing their respective interests; deciding on issues; and creating, evaluating and agreeing on options and solutions	With the guidance and suggestions of the conciliator, direct and full participation in agreeing on options and solutions
Role of third party facilitator	Independent and impartial process facilitator who does not give opinions, suggestions nor judgments on disputes	Usually an authority figure responsible for seeking a solution to the dispute, who may give opinions and advice, but not impose a judgment
Types of possible outcomes	“Win-win” situation; mutual acceptance	Best compromise solution acceptable to the parties

<sup>1</sup> As stated in Article 1.3 of the Implementing Rules and Regulations of Republic Act No. 9285: “Exception to the Application of the ADR Act. The provisions of the ADR Act shall not apply to the resolution or settlement of the following: (a) labor disputes covered by Presidential Decree No. 442, otherwise known as the “Labor Code of the Philippines, as amended”, and its Implementing Rules and Regulations; (b) the civil status of persons; (c) the validity of marriage; (d) any ground for legal separation; (e) the jurisdiction of courts; (f) future legitime; (g) criminal liability; (h) those disputes which by law cannot be compromised; and (i) disputes referred to court-annexed mediation.”



(iv) Structural Elements of ADR mechanisms

These parameters aim to unify the various ADR processes that have been and will be established within the microinsurance sector.

- Least cost – Dispute resolution process is affordable for all microinsurance stakeholders.
- Accessible - All stakeholders of the microinsurance sector must have convenient access to ADR mechanisms at the local levels, based on clear procedures that are easily understood.
- Practical - The ADR process must be feasible and appropriate for the microinsurance sector, taking into account the needs of diverse stakeholders, and existing systems and policies. Available resources must be maximized for sustainability.
- Effective - A successful ADR process will result in mutually acceptable agreements that are durable.
- Timely - Disputes will be resolved swiftly and within the time prescribed by rules set by the regulators.

(v) Operational Elements of the Framework

- a. The rules on confidentiality, competence, impartiality, consent and self-determination, and enforcement of settlement agreements that will govern each ADR system shall comply with RA 9285 and its IRR.
- b. The IC shall formulate a uniform Code of Conduct for ADR process facilitators in consultation with various stakeholders.
- c. Practitioners of ADR within the microinsurance sector shall abide by this Code of Conduct to ensure that policyholders and providers alike are granted the highest standard of service.

(vi) Reporting

Information on the outcome of cases referred to ADR processes shall be incorporated in the Annual Reports submitted by insurance providers to the IC.

(vii) Accreditation of Mediators and Conciliators

- a. The IC shall establish an accreditation system to level ADR skills and empower facilitators at the earliest stages of the process to handle disputes.
- b. This system will include a regular performance evaluation of facilitators.

(viii) Information Campaign

Microinsurance providers and delivery channels shall promote the use of mediation and conciliation as a recourse mechanism available to all policyholders to address any dispute.

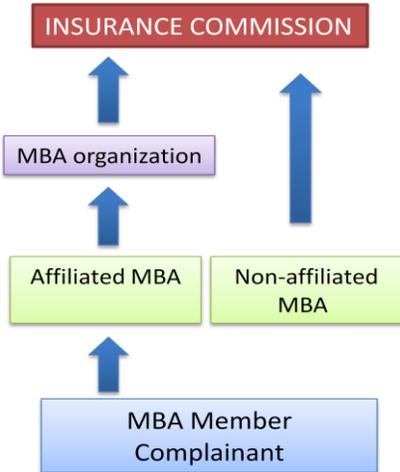
**C. Proposed ADR Processes for the Microinsurance Sector**

The ADR framework for the microinsurance sector was designed to protect both consumers and providers by providing them with venues to resolve disputes in a convenient and expeditious non-adversarial manner. The process to be offered shall be mediation and / or conciliation that promote empowerment of the disputing parties.

It must be noted that cooperatives have existing Mediation-Conciliation Committees that can cater to disputes affecting their members. Therefore, microinsurance disputes involving cooperatives will be referred to the existing primary and secondary level mechanism. Other sectors / groups that do not have a formal Mediation-Conciliation mechanism may adopt their own guided by the following:



**Illustration A: Proposed ADR Process for Mutual Benefit Associations (MBA)**



**(i) Mutual Benefit Associations (MBA):**

<b>Filing a case</b>	All members of an MBA may file a complaint with their respective MBA where a roster of IC accredited facilitators shall be provided.
<b>Third Party Facilitator</b>	Only IC Accredited facilitators may handle Mediation – Conciliation cases
<b>Venue for ADR</b>	Mediation – Conciliation proceedings shall be held within the respective MBA.
<b>Parties to a case</b>	Only complainants and respondents directly involved in the case must be present during the course of the proceedings. Authorized representatives shall present a Special Power of Attorney prior to signing any agreement. Should parties wish to bring legal counsel, the legal counsel shall not actively participate in the proceedings and only act as an observer.
<b>Appeals mechanism in unresolved cases or where parties decline ADR</b>	Each level of the appeals mechanism may apply only upon presentation of the <i>Certificate of Non-Resolution</i> . MBAs are further categorized into “affiliated” and “non-affiliated”: a. For MBAs affiliated with an MBA organization, parties may submit the case to their respective organization. Should cases remain unresolved at this level, a third stage is available at the IC where the rules of the

	regulatory body will apply. b. For MBAs not affiliated with any MBA organization, parties may submit the case to the IC.
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**(ii) Cooperatives:**

Complainants in the cooperative sector are categorized into three types with each having its own process of resolution:

**a. Members of Primary Cooperatives**

<b>Filing a case</b>	A member may file a complaint with his respective cooperative, where a roster of accredited facilitators shall be provided.
<b>Third Party Facilitator</b>	Conciliation-Mediation Committee of the cooperative.
<b>Venue for ADR</b>	Proceedings shall be held within the respective cooperative.
<b>Parties to a case</b>	Only complainants and respondents directly involved in the case must be present during the course of the proceedings. Authorized representatives shall present a Special Power of Attorney prior to signing any agreement. Should parties wish to bring legal counsel, the legal counsel shall not actively participate in the proceedings and only act as an observer.
<b>Appeal mechanism in unresolved cases or where parties decline ADR</b>	Upon presentation of the <i>Certificate of Non-Resolution</i> , parties may file to a second level process with the cooperative insurance society they are affiliated with.  Should cases remain unresolved, a third level is available with the IC-upon presentation of the <i>Certificate of Non-Resolution</i> .

**b. Primary Cooperatives with group policies**

<b>Filing a case</b>	All primary cooperatives may file a complaint with the cooperative insurance society they are affiliated with.
<b>Third Party Facilitator</b>	Conciliation-Mediation Committee
<b>Venue for ADR</b>	Proceedings shall be held within the respective cooperative insurance society

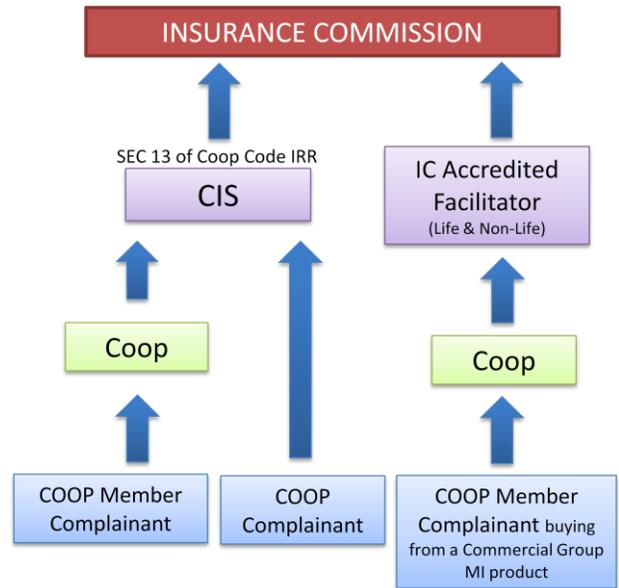


<b>Parties to a case</b>	Only complainants and respondents directly involved in the case must be present in all sessions. Authorized representatives shall present a Special Power of Attorney prior to signing any agreement. Should parties wish to bring legal counsel, the legal counsel shall not actively participate in the proceedings and only act as an observer.
<b>Appeal mechanism in unresolved cases or where parties decline ADR</b>	Upon presentation of the <i>Certificate of Non-Resolution</i> , parties may elevate the dispute to a second level process with the IC.

- c. Cooperative members who purchase a commercial group microinsurance product of the primary cooperative

<b>Filing a case</b>	All members may file a complaint with their respective cooperatives.
<b>Third Party Facilitator</b>	Conciliation-Mediation Committee
<b>Venue for ADR</b>	Proceedings shall be held at the office of the cooperative.
<b>Parties to a case</b>	Only complainants and respondents directly involved in the case must be present in all sessions. Authorized representatives shall present a Special Power of Attorney prior to signing any agreement. Should parties wish to bring legal counsel, the legal counsel shall not actively participate in the proceedings and only act as an observer.
<b>Appeal mechanism in unresolved cases or where parties decline ADR</b>	Upon presentation of the <i>Certificate of Non-Resolution</i> , parties may submit the dispute to the ADR unit of the insurance provider where an IC Accredited Facilitator shall handle this second level process.  Should cases remain unresolved, a third level is available with the IC upon presentation of a <i>Certificate of Non-Resolution</i> .

**Illustration B: Proposed ADR Process for Cooperatives:**



**(iii) Life and Non-Life Commercial Insurance Providers:**

Policyholders of life & non-life products purchased from agents or brokers of insurance providers may follow this ADR model:

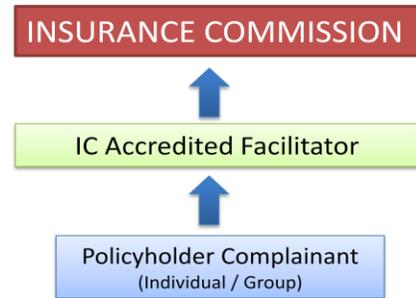
<b>Filing a case</b>	Policyholders may file their complaints with the Mediation-Conciliation unit of their respective insurance provider.
<b>Third Party Facilitator</b>	IC Accredited Facilitator
<b>Parties to a case</b>	Only complainants and respondents directly involved in a case must be present in all sessions. Authorized representatives <sup>2</sup> shall present a Special Power of Attorney prior to signing any agreement. Should parties wish to bring legal counsel, the legal counsel shall not actively participate in the proceedings and only act as an observer.
<b>Venue for ADR</b>	Proceedings shall be held at the office of the third party facilitator located within the municipality or city of residence stated in the policy contract. Should a

<sup>2</sup> Should an officer of the head office not be available to attend the proceedings, the company may opt to send local representatives such as Agents, heads of Sales Units, Branch Officers and adjusters (in the case of non-life companies).



	<p>third party facilitator not be available or if parties do not prefer to use the available facilitator/s, parties may choose from the roster of facilitators in neighboring cities or municipalities. The proceedings may be held in a public office or space, provided it is agreed upon by all parties.</p> <p>In case the party changes residence, a Barangay Certification shall be submitted to update the venue of Mediation-Conciliation.</p>
<b>Appeal mechanism in unresolved cases or where parties decline ADR</b>	<p>Upon presentation of the <i>Certificate of Non-Resolution</i>, parties may elevate the case to a second level process with the IC.</p>

**Illustration C: Proposed ADR Process for Life and Non-Life Commercial Insurance Providers:**





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