

## DOLE exempts BPOs from night shift rules

In the recent 2010 IBM Global Location Trends Annual Report, the Philippine has outpaced India as the leading destination for business support functions such as business process outsourcing, with more than 15,000 new jobs compared to India's 13,000. In the Philippines, the BPO industry is expected to bring in US\$9.5 Billion in revenues this year according to the Contact Center Association of the Philippines. In recognition of the contribution of women employees to the advancement of BPOs, the Department of Labor and Employment issued Department Advisory No. 4 which allows women employees in BPOs to work during night time.

The Labor Code, under Article 130, prohibits women from doing commercial or non-industrial work between midnight and 6:00 a.m. the following day. However, Article 131 gives the Secretary of Labor the authority to issue appropriate regulations to allow women to do night time work.

Pursuant to the Advisory, employers are required to provide safe and healthful working conditions and adequate and reasonable facilities such as sleeping and resting quarters within the establishment.

Pregnant women and nursing mothers, on the other hand, will only be allowed to work as long as they can show the proper certification from their physicians.

Relatedly, under the same Advisory, employers and employees are given the opportunity to explore flexible working hours consistent with the nature of the BPO industry. Among the suggested ways of implementing the concept are:

Compressed Work Week, wherein the employees will be allowed to work for less than 6 days in a week but still within the required 48-hour engagement. A typical working day cannot exceed 12 hours, without any premium beyond the usual 8-hour shift;

Gliding or Flexi-Time Schedule gives employees the freedom to choose their arrival and departure times but are required to complete the core working hours; and

Flexi-holiday Schedule, on the other hand, provides employees the right to choose when they want to avail their holidays in lieu of the dates set by law as long as there is no diminution of benefits.

Employers are still required to keep and maintain records to show the flexible hour arrangements were voluntarily availed that of by the employees. ***bbl***



# IPOPHL requires parties to mediate

In a bid to expedite the resolution of cases using alternative modes, the Intellectual Property Office issued Office Order No. 154 on October 5, 2010 requiring the following cases to undergo mediation:

- Administrative complaints for violation for intellectual property rights;
- Inter parties cases;
- Disputes involving technology transfer payments;
- Disputes relating to the terms of a license involving the author's rights to public performance or other communication of his work;
- Cases appealed to the Office of the Director General from decisions of the Bureau of Legal Affairs and the Documentation, Information and Technology Transfer Bureau; Other cases which may be referred to mediation during the settlement period to be declared by the Director General.

A party who cannot appear in person during the mediation proceedings should appoint a representative with a special power of attorney. For juridical persons, the duly authorized agent should have secretary's certificate or a board resolution indicating that the agent is fully empowered to offer, negotiate, accept, decide and enter into a compromise agreement. Moreover, the agent should have the contact number of the most senior officer on hand so that the mediator could reach the latter during the actual mediation proceedings.



All mediation proceedings will be held at the offices of the IPOPHIL unless the parties agree to hold it in different venue, with the attendant costs to be shouldered by both parties. The parties have 60 days from referral to the IPOPHIL Mediation Office to mediate their case, extendible for another 30 days.

If the parties are able to settle their differences during the mediation proceedings, a compromise agreement will be submitted for approval to the officer hearing the case to ensure that the settlement is not contrary to law, public policy, morals or good customs. A compromise agreement approved by the hearing officer shall have the effect of a decision or judgment on the case and can be enforced as such accordingly.

In the event of failure of mediation within the given period, the parties may avail of arbitration before going back to pre-trial or to the pending proceedings, as the case may be. Unlike mediation where the mediator merely suggests options to the parties, the arbitrator can make a ruling on the issues of the case.

The absence of a party during mediation proceedings is a ground for dismissal of the case for the complainant or oppositor, or a declaration of default for the respondent. Appearing during mediation without the proper authority will be considered an absence for the attending agent.

All information disclosed during mediation shall be considered confidential in nature. A violation of the confidentiality of the information is a ground for contempt, in addition to sanctions under the Alternative Dispute Resolution Act of 2004 (Republic Act No. 9285). A party may appear with or without counsel during mediation proceedings.



## BIR voids Informer's Rewards

On November 15, 2010, the Bureau of Internal Revenue issued Revenue Memorandum Circular No.86-2010 junking the claim of Mr. Danilo A. Lihayhay for his Informer's Reward amounting to Eleven Trillion Eight Hundred Seventy Five Billion Pesos (P11,875,000,000,000.00) on account of the information he provided on the Marcoses' ill-gotten wealth. The BIR Circular embodied Opinion No. 48, S. 2010 dated October 18, 2010 issued by the Department of Justice.

According to Lihayhay, he is entitled to twenty five percent (25%) of the ill-gotten wealth pursuant to Republic Act No. 2338 or the Informer's Reward Law. This position of Lihayhay was previously confirmed by the unnumbered DOJ Opinion issued by then Justice Secretary Raul M. Gonzales, which reconsidered and/or clarified DOJ Opinion No. 18, s. 2005.

On the other hand, it is the position of BIR that Section 282 (A) of the National Internal Revenue Code, which provides for an Informer's Reward equivalent to ten percent (10%) of the revenue recovered or One Million Pesos (P1,000,000.00), whichever is lower, is the applicable provision since it is the earlier law and that Section 291 thereof repealed inconsistent or contrary laws.

The DOJ, in its Opinion No. 48, S. 2010, ruled that there was no basis for issuance of the unnumbered DOJ Opinion considering that any request for reconsideration and/or clarification of a DOJ Opinion should only be made by the requesting party. The reconsideration and/or clarification of Opinion No. 18, s. 2005 was sought by Lihayhay who did not ask for said original opinion.

Also, the DOJ opined that the unnumbered opinion was "off-tangent and untenable". The Informer's Reward Law, a special law, being irreconcilable and inconsistent with Presidential Decree (PD) No. 1158 or the National Internal Revenue Code of 1977, another special law, was deemed to have been nullified by PD No. 1158, which is a later law.

Moreover, Section 36 of PD No. 1773, which amended PD 1158, clearly and categorically repealed the Informer's Reward Law. Thus, the Informer's Reward Law, which was the basis of Lihayhay's claim for 25% of the ill-gotten wealth, ceased to exist as part of the law of the land. Any tax informer, therefore, is only entitled to 10% of the revenues, surcharges or fees recovered and/or fine or penalty imposed and collected or One Million Pesos (P1,000,000.00), whichever is lower. *gsm*



# Meet your associate: Walter and Chinky

Diderot said that only passions, great passions, can elevate souls to great things so starting this issue, Legal Finesse will introduce its lawyers not only by the work they are doing for clients of the Firm but by also things they are passionate about outside the office.



**Walter Robin Go.** Walter, one of the serious-looking senior associates of the Firm was admitted to the bar in 2006. He likes the underwater world and goes scuba diving with his wife and family on a regular basis.

He got his license in 2008 after learning from Mr. Wilson Uy, a dive instructor, and has since then explored the waters in Anilao and in Sombrero Batok (his best diving experience so far where, according to him, visibility was like diving in an aquarium, at least at the time when he took the plunge). He encourages others to try it out as it is not dangerous as people make it out to be. Quite the reverse, it allows one to relax by marveling at the wonders of the deep waters.

Aside from litigation, Walter engages in alternative dispute resolution and intellectual property prosecution work.

**Precious Angela Lledo.** Chinky, as she is fondly called, loves birds. Her passion for aviculture started when she was in her senior year in law school when her father bought her a pair of cockatiel. At first, she never thought that she would be in to it as what she had was only a couple. However, when the following week, her father, again, brought home another pair of parakeet, she began to be serious about it.

As she had to take care of avian creatures despite having zero knowledge of how it was properly done, she surfed the net and read books. That was when she slowly began to take interest in what she was doing. After a while, she decided to look for professional breeders and bred a set of birds herself. The first set that she was able to breed included three pairs of zebra finch.

Aviculture requires a considerable amount of effort and time. Chinky had to wake up by around 4 a.m. to feed her pets and change their water, and had to spend most of her Sundays cleaning their cages. According to her, however, it was worth it as her routine helped her a lot when she was preparing for the bar exams.

Next year, she intends to set up her own aviary to accommodate her fast growing number of birds.

Chinky was a law intern of the Firm for two terms before becoming a full-fledged litigator after passing the Bar examinations this year. *alga*

