

THE PHILIPPINES

DELOS GUIDE TO ARBITRATION PLACES (GAP)

CHAPTER PREPARED BY

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JURISDICTION INDICATIVE TRAFFIC LIGHTS

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There have not been any material changes requiring an update to this chapter (including the traffic lights) since the date of the latest version. Nonetheless, please note that this chapter does not constitute legal advice and its authors, the contributing law firm and Delos Dispute Resolution decline all responsibility in this regard.

IN-HOUSE AND CORPORATE COUNSEL SUMMARY

Arbitration in the Philippines is primarily governed by Republic Act No. 9285 (“RA 9285”). It is also known as the Alternative Dispute Resolution Act of 2004. RA 9285 primarily adopted (1) Republic Act No. 876 (otherwise known as the Arbitration Law), which was enacted on June 19, 1953 to govern domestic arbitration, and (2) the UNCITRAL Model Law to govern international commercial arbitration.

RA 9285 was enacted as part of the State’s policy to actively promote party autonomy in the resolution of disputes. Thus, parties are free to agree on, among other things: (a) the seat of arbitration, (b) the law governing the arbitration agreement, (c) the place where arbitration hearings shall be held, (d) the language of the arbitration, (e) the procedure for the appointment of arbitrators, and (f) the procedure for the arbitration proceedings. The Philippines is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Key places of arbitration in the jurisdiction	Metro Manila is the key place of arbitration in the Philippines.
Civil law / Common law environment?	Civil law
Confidentiality of arbitrations?	Arbitration proceedings are confidential.
Requirement to retain (local) counsel?	There is no requirement to retain counsel or local counsel in the arbitration proceedings.
Ability to present party employee witness testimony?	ϕ
Ability to hold meetings and/or hearings outside of the seat?	The parties are free to agree on the place where the arbitration hearings may be held.
Availability of interest as a remedy?	Interest may be awarded in cases involving breach of contract. The present legal rate of interest is 6% <i>per annum</i> .
Ability to claim for reasonable costs incurred for the arbitration?	Generally, arbitration costs shall be borne by the unsuccessful party. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.
Restrictions regarding contingency fee arrangements and/or third-party funding?	There are no restrictions or regulations on the use of contingency or alternative fee arrangements or third-party funding for arbitration conducted in the Philippines.
Party to the New York Convention?	ϕ
Other key points to note	The principles of party autonomy, competence-competence, and separability of the arbitration agreement are recognized by Philippine law. Parties are not prohibited from waiving their right to seek the setting aside of an arbitral award.
WJP Civil Justice score (2017-2018)	0.47

ARBITRATION PRACTITIONER SUMMARY

Arbitration in the Philippines is primarily governed by Republic Act No. 9285 (“RA 9285”). It is also known as the Alternative Dispute Resolution Act of 2004. RA 9285 primarily adopted (1) Republic Act No. 876 (otherwise known as the Arbitration Law), which was enacted on June 19, 1953 to govern domestic arbitration, and (2) the UNCITRAL Model Law to govern international commercial arbitration.

Parties are free to agree on, among other things: (a) the seat of arbitration, (b) the law governing the arbitration agreement, (c) the place where arbitration hearings shall be held, (d) the language of the arbitration, and (e) the procedure for the appointment of arbitrators and the proceedings.

Philippine courts also provide support to parties to an arbitration agreement and arbitration proceedings. For example, Philippine courts have the power to (1) suspend court proceedings and refer the parties to arbitration once it is notified of the existence of an arbitration agreement between the parties, (2) issue interim measures of protection when necessary, and (3) provide assistance in the taking of evidence. An arbitral award may not be appealed, and may only be set aside or refused enforcement in accordance with the grounds set out in the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, to which the Philippines is a party to.

Date of arbitration law?	RA 9285 was enacted on February 4, 2004, and it has not yet been amended.
UNCITRAL Model Law? If so, any key changes thereto?	The Philippines adopted the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law on June 21, 1985. It has not yet adopted the 2006 Model Law.
Availability of specialised courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	ϕ
Availability of <i>ex parte</i> pre-arbitration interim measures?	Arbitrators may issue interim measures of protection. Philippine courts have the power to issue interim measures of protection, including temporary orders of protection that they can issue <i>ex parte</i> .
Courts’ attitude towards the competence-competence principle?	The principle of competence-competence is recognized by Philippine law. Philippine courts will generally stay court proceedings if there is a valid arbitration agreement covering the dispute.
Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?	The Philippines has adopted the grounds to refuse the recognition and enforcement of an arbitral award set out in the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.
Courts’ attitude towards the recognition and enforcement of foreign awards annulled at the seat	ϕ

of the arbitration?	
Other key points to note?	<p>The law does not regulate the arbitrator's right to admit or exclude evidence.</p> <p>A domestic arbitral award or international commercial arbitral award may not be appealed.</p> <p>The petition to recognize and enforce an arbitral award may be filed anytime from receipt of the award, but it must be filed within 10 years from receipt of the award. However, if a timely petition to set aside an arbitral award is filed (which must be filed within three months from the receipt of the award), the opposing party must file therein and in opposition thereto the petition for recognition and enforcement of the same award within fifteen (15) days from receipt of the petition to set aside.</p> <p>A foreign arbitral award is presumed to have been made and released in due course of arbitration and is subject to enforcement by the court.</p> <p>It is a crime for an arbitrator to have any interest in the property disputed in the arbitration proceedings wherein he acted as an arbitrator. However, there does not appear to be any arbitrator who has been convicted of this crime.</p>

JURISDICTION DETAILED ANALYSIS

1. The legal framework of the jurisdiction

1.1 Law governing the arbitration agreement – if based on the UNCITRAL Model Law, what key modifications if any have been made to it? If not, what form does the arbitration law take?

Arbitration in the Philippines is governed principally by Republic Act No. 9285, otherwise known as the Alternative Dispute Resolution Act of 2004 (“RA 9285” or the “ADR Act”). RA 9285 was enacted on February 4, 2004 and primarily adopted: (1) Republic Act No. 876, otherwise known as the Arbitration Law (“RA 876”), which was enacted on June 19, 1953 to govern domestic arbitration, and (2) the Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law on June 21, 1985 (“Model Law”) to govern international commercial arbitration. Some provisions of the Model Law were also made applicable to domestic arbitration.

Under RA 9285, an arbitration is considered an international commercial arbitration if (a) it involves any party whose place of business is outside the Philippines (at sec. 3(p)), and (b) it covers matters arising from all relationships of a commercial nature, whether contractual or not (*e.g.*, any trade transaction for the supply or exchange of goods or services; distribution agreements; construction of works; commercial representation or agency; factoring; leasing; consulting; engineering; licensing; investment; financing; banking; insurance; joint venture and other forms of industrial or business cooperation; carriage of goods or passengers by air, sea, rail or road) (at sec. 21).

Further, pursuant to Sec. 34 of RA 9285, disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines are governed by Executive Order No. 1008, otherwise known as the Construction Industry Arbitration Law (“EO 1008”), which was enacted on February 4, 1985. The discussion below will not consider the rules for construction arbitration under EO 1008.

1.2 When was the arbitration law last revised

RA 9285 has not been amended to date.

2. The arbitration agreement

2.1 How do courts in the jurisdiction determine the law governing the arbitration agreement?

There is no express law setting out the rules on the law governing the arbitration agreement. However, it is the policy of the law to promote party autonomy in the resolution of disputes or the parties’ freedom to make their own arrangements to resolve their disputes (see RA 9285, sec. 2). Thus, the law governing the arbitration agreement will depend on the choice-of-law provision of the parties in said arbitration agreement. Generally, Philippine courts shall apply the law agreed upon by the parties, provided that there is a substantive relationship between the choice of law and the contract or transaction, here the arbitration agreement. In the absence of such agreement, Philippine courts shall apply the law which they determine to have the most substantive relationship with such contract or transaction, *i.e.*, the arbitration agreement.

2.2 Is the arbitration agreement considered to be independent from the rest of the contract in which it is set forth?

Yes, the arbitration agreement is considered to be independent from the rest of the contract in which it is set forth. A.M. No. 07-11-08-SC, otherwise known as the Special Rules of Court on Alternative Dispute Resolution (“Special ADR Rules”), recognizes the principle of separability of the arbitration clause, which means that such clause shall be treated as an agreement independent of the other terms of the contract of which it forms part. Accordingly, a decision that the contract is null and void shall not render the arbitration agreement invalid.

2.3 What are the formal requirements (if any) for an enforceable arbitration agreement?

Department of Justice Circular No. 98, otherwise known as Alternative Dispute Resolution Act of 2004 Implementing Rules and Regulations (“ADR Act IRR”), requires that the arbitration agreement be in writing. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defense in which the existence of an agreement is alleged by one party and not denied by another. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement, provided that the contract is in writing and the reference is such as to make that clause part of the contract.

2.4 To what extent, if at all, can a third party to the contract containing the arbitration agreement be bound by said arbitration agreement?

Under Article 1311 of the Civil Code of the Philippines, contracts take effect only between the parties, their assigns and heirs. Thus, a third party who is not a party to the arbitration agreement shall not be bound by the arbitration agreement.

2.5 Are there restrictions to arbitrability? In the affirmative:

2.5.1 Do these restrictions relate to specific domains (such as IP, corporate law etc.)? Do these restrictions relate to specific persons (i.e. State entities, consumers etc.) ?

Yes, there are restrictions to arbitrability. The following disputes may not be referred to arbitration under Philippine law: (a) labor disputes; (b) the civil status of persons; (c) the validity of a marriage; (d) any ground for legal separation; (e) the jurisdiction of courts; (f) future legitime; (g) criminal liability; (h) questions on the validity of legal separation; and (i) future support.

3. Intervention of domestic courts

3.1 Will the courts stay litigation if there is a valid arbitration agreement covering the dispute?

3.1.1 If the place of the arbitration is inside of the jurisdiction? If the place of the arbitration is outside of the jurisdiction?

The Philippines is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“New York Convention”), which provides, among others, that the “*court of a Contracting State, when seized of an action in a matter of respect of which the parties have made an agreement [to submit the dispute to arbitration], shall, at the request of one of the parties, refer the parties to arbitration...*” (at Article II(3)).

In this regard, Philippine courts will generally stay litigation if there is a valid arbitration agreement covering the dispute. Sec. 24 of RA 9285 provides that a court before which an action is brought in a matter which is the subject matter of an arbitration agreement shall, if at least one party so requests not later than the pre-trial conference, or upon the request of both parties thereafter, refer the parties to arbitration unless it finds that the arbitration agreement is null and void, inoperative or incapable of being performed. Court proceedings may be set aside if the proceedings continue despite the court having been notified of the existence of an arbitration agreement between the parties (see *Koppel, Inc. v. Makati Rotary Club Foundation, Inc.*, G.R. No. 198075, September 4, 2013).

The Special ADR Rules further provide that an order referring a dispute to arbitration is immediately executory and cannot be the subject of a motion for reconsideration, appeal or a petition for certiorari.

The law makes no distinction between an arbitration agreement providing for arbitration inside or outside of the Philippines.

3.2 How do courts treat injunctions by arbitrators enjoining parties to refrain from initiating, halt or withdraw litigation proceedings?

Philippine courts are not bound by any injunction issued by an arbitrator enjoining the conduct of litigation proceedings. Philippine courts, not being a party to the arbitration, are not bound by injunction orders that may be issued by the arbitrator. However, as mentioned above, a party may request a Philippine court, not later than the pre-trial conference, to refer the parties to arbitration. Moreover, pursuant to Rule 5.6 of the Special ADR Rules, Philippine courts may assist in the enforcement of interim measures of protection issued by arbitral tribunals, such as injunction orders, which the latter cannot enforce effectively. This is consistent with the current policy promoting arbitration (*i.e.*, the arbitration agreement provides (directly or by reference to arbitration rules) the procedural rules applicable between the parties. The parties have an obligation to abide by the arbitration agreement in good faith).

3.3 On what grounds(s) can the courts intervene in arbitrations seated outside of the jurisdiction? (Relates to the anti-suit injunction but not only)

Philippine courts do not have the authority to directly intervene in arbitrations seated outside the Philippines. However, a party to an arbitration agreement may petition a Philippine court under the Special ADR Rules to issue an interim measure of protection in aid of arbitration to compel any appropriate act. This may include an order enjoining the other party from proceeding with the arbitration proceedings if the arbitration proceedings were not commenced in accordance with the arbitration agreement.

4. The conduct of the proceedings

4.1 Can parties retain outside counsel or be self-represented?

There is no prohibition for a party to be self-represented or be represented by outside counsel, *i.e.*, foreign counsel, in either a domestic or an international commercial arbitration. Under Sections 22 and 33 of RA 9285, a party may be represented by any person of his choice in an arbitration conducted in the Philippines. However, should the party decide to retain outside counsel, such outside counsel shall not be authorized to appear as counsel in any Philippine court, or any other quasi-judicial body whether or not such appearance is in relation to the arbitration in which he appears, unless admitted to the practice of law in the Philippines.

4.2 How strictly do courts control arbitrators' independence and impartiality? For example: does an arbitrator's failure to disclose suffice for the court to accept a challenge or do courts require that the undisclosed circumstances justify this outcome?

When a person is approached in connection with his possible appointment as an arbitrator, he must disclose any circumstance likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings shall, without delay, disclose any such circumstance to the parties unless they have already been informed of them by him. The ADR Act IRR provides that an arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications on which the parties have agreed. A party may challenge an arbitrator which it has appointed or in whose appointment it has participated, only for reasons which have arisen or of which it becomes aware after the appointment. Thus, the failure to disclose by itself, will not justify an acceptance of a challenge. It must be shown that there are justifiable doubts as to his impartiality or independence.

The challenge must first be referred to the arbitral tribunal for resolution. If the challenge is not successful, the aggrieved party may request the appointing authority to decide on the challenge. Should the appointing authority fail or refuse to act on the challenge within the relevant period, then the aggrieved party, pursuant to Rule 7.2 of the Special ADR Rules, may renew the challenge through a petition filed with a Regional Trial Court.

4.3 On what ground(s) do courts intervene to assist in the constitution of the arbitral tribunal (in case of *ad hoc* arbitration)?

In general, should the appointing authority refuse to act within thirty (30) days from receipt of the request to appoint arbitrators, a party may submit an application to the court.

Rule 6.1 of the Special ADR Rules provides that a court shall act as appointing authority in all instances where arbitration is *ad hoc* and the parties fail to provide a method for appointing or replacing an arbitrator, or substitute arbitrator, or the method agreed upon is ineffective, and the National President of the Integrated Bar of the Philippines (“IBP”) or his duly authorized representative fails or refuses to act within such period as may be allowed under the pertinent rules of the IBP or within such period as may be agreed upon by the parties, or in the absence thereof, within thirty (30) days from receipt of such request for appointment. It should be noted that in *ad hoc* arbitration, the default appointment of arbitrators is made by the National President of the IBP or his duly authorized representative.

4.4 Do courts have the power to issue interim measures in connection with arbitrations?

4.4.1 If so, are they willing to consider *ex parte* requests?

Yes, Philippine courts have the power to issue the following interim measures of protection: (a) preliminary injunction directed against a party to an arbitration, (b) preliminary attachment against property or garnishment of funds in the custody of a bank or third person, (c) appointment of a receiver, (d) detention, preservation, delivery, or inspection of property, or (e) assistance in the enforcement of an interim measure of protection granted by the arbitral tribunal, which the latter cannot enforce effectively. Any such interim measure of protection may be issued in order to: (i) prevent irreparable loss or injury; (ii) provide security for the performance of any obligation; (iii) produce or preserve any evidence; and (iv) compel any other appropriate act or omission.

In cases where the court finds that there is an urgent need to either (a) preserve property, (b) prevent the respondent from disposing of, or concealing, the property, or (c) prevent the relief sought from becoming illusory because of prior notice, the court shall issue an immediately executory temporary order of protection *ex parte* and require the petitioner to post a bond to answer for any damage that respondent may suffer as a result of its order. The *ex parte* temporary order of protection shall be valid only for a period of twenty (20) days from the service on the party required to comply with the order.

4.5 Other than arbitrator’s duty to be independent and impartial, does the law regulate the conduct of the arbitration?

4.5.1 Does it provide for the confidentiality of arbitration proceedings?

Yes, the law provides for the confidentiality of arbitration proceedings. Under Section 23 of RA 9285, the arbitration proceedings, including the records, evidence, and the arbitral award shall be considered confidential and shall not be generally published. Publication of the information obtained through the proceedings may be allowed: (1) where there is consent of the parties, or (2) for the limited purpose of disclosing to the court relevant documents in cases where resort to the court is allowed. However, these exceptions do not extend to information containing secret processes, developments, research, and other information (*i.e.*, business or trade secrets) where it is shown that the applicant shall be materially prejudiced by an authorized disclosure thereof.

In this connection, pursuant to Rule 10 of the Special ADR Rules, a party, counsel or witness who disclosed or who was compelled to disclose information during the arbitration proceedings under circumstances that would create a reasonable expectation, on behalf of the source, that the information shall be kept confidential, may petition a Regional Trial Court to issue a protective order to prevent such information from being further disclosed without the express written consent of the source or the party who made the disclosure.

4.5.2 Does it regulate the length of arbitration proceedings?

No, the law does not regulate the length of arbitration proceedings.

4.5.3 Does it regulate the place where hearings and/or meetings may be held?

Section 30 of RA 9825 provides that the parties are free to agree on the place of arbitration. If the parties fail to agree on the place of arbitration, then the place of arbitration shall be in Metro Manila, unless the tribunal, having regard to the circumstances of the case including the convenience of the parties, shall decide on a different place of arbitration. Further, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts, or the parties, or for inspection of goods other party or documents.

4.5.4 Does it allow for arbitrators to issue interim measures?

Yes, Section 28 of RA 9285 provides that arbitrators may issue interim measures of protection, under the following conditions:

- (a) After the constitution of the arbitral tribunal and during arbitral proceedings, a request for an interim measure of protection or modification thereof, may be made with the arbitral tribunal.
- (b) The following rules on interim or provisional relief shall be observed:
 - (i) Any party may request that provisional relief be granted against the adverse party;
 - (ii) Such relief may be granted to prevent irreparable loss or injury, provide security for the performance of any obligation, produce or preserve any evidence, or compel any other appropriate act or omission;
 - (iii) The order granting provisional relief may be conditioned upon the provision of security or any act or omission specified in the order;
 - (iv) Interim or provisional relief is requested by written application transmitted by reasonable means to the arbitral tribunal and the party against whom the relief is sought, describing in appropriate detail the precise relief, the party against whom the relief is requested, the grounds for the relief, and evidence supporting the request;
 - (v) The order shall be binding between the parties;
 - (vi) Either may apply with the Court for assistance in implementing or enforcing an interim measure ordered by an arbitral tribunal;
 - (vii) A party who does not comply with the order shall be liable for all damages resulting from non-compliance, including all expenses, and reasonable attorney's fees, paid in obtaining the order's judicial enforcement.

4.5.5 Does it regulate the arbitrator's right to admit/exclude evidence?

No, the law does not regulate the arbitrator's right to admit or exclude evidence. In this regard, Article 19 of the Model Law, which applies to both international commercial arbitration and domestic arbitration, provides that the arbitral tribunal has the power to determine the admissibility, relevance, materiality and weight of any evidence. Further, with respect to domestic arbitration, Section 15 of RA 876 provides that the arbitrators shall be the sole judge of the relevancy and materiality of the evidence offered or produced, and shall not be bound to conform to the Rules of Court pertaining to evidence.

4.5.6 Does it make it mandatory to hold a hearing?

No. Article 4.24, Rule 5, Chapter 4, of the ADR Act IRR, which applies to international commercial arbitration and adopts the language of Article 24 of the Model Law, states that subject to any contrary agreement by the parties, the arbitral tribunal shall decide (1) whether to hold oral hearings for the presentation of evidence or for oral argument, or (2) whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that no hearings shall be held,

the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

In domestic arbitration, Section 12 of RA 876 provides that subject to the terms of the contract between the parties, the arbitrators selected shall, within the relevant periods set out in the law, set a time and place for the hearing of the matters submitted to them, and shall notify each of the parties of the same. The parties may resort to other processes in lieu of a hearing. In this regard, Section 18 of the RA 876 recognizes the right of the parties to agree to submit their dispute to arbitration through the submission of agreed statement of facts and written arguments.

4.5.7 Does it prescribe the principles governing the awarding of interest?

No, the law does not prescribe principles governing the awarding of interest. Having said that, under the Philippines law, interest may be awarded in cases involving breach of contract (Civil Code of the Philippines, Art. 2210). Further, if the obligation consists in the payment of a sum of money and the debtor incurs delay, interest shall be awarded based on the rate agreed upon or, in the absence of stipulation, the legal rate of 6% per annum (Civil Code of the Philippines, Art. 2209; See, also, BSP Circular No. 799 series of 2013).

4.5.8 Does it prescribe principles governing the allocation of arbitration costs?

Generally, arbitration costs in both international commercial arbitration and domestic arbitration shall be borne by the unsuccessful party. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case. With respect to the costs of legal representation (the costs of expert advice and of other assistance required by the arbitral tribunal), the arbitral tribunal shall be free to determine which party shall bear such costs or it may apportion such costs between the parties if it determines that appointment is reasonable, taking into account the circumstances of the case (ADR Act IRR, Arts. 4.46(d) and 5.46 (e)).

Further, in domestic arbitration, arbitrators have the power to assess the expenses of any party against another party, when such assessment is deemed necessary (RA 876, Sec. 20).

4.6 Liability

4.6.1 Do arbitrators benefit from immunity to civil liability?

Pursuant to Section 5 RA 9285, in relation to Section 38(1), Chapter 9, Book I of the Administrative Code of 1987, arbitrators shall not be civilly liable for acts done in the performance of their duties, unless there is a clear showing of bad faith, malice, or gross negligence.

4.6.2 Are there any concerns arising from potential criminal liability for any of the participants in arbitration proceeding?

Article 216 of the Revised Penal Code, which penalizes possession of prohibited interest by a public officer, may penalize arbitrators who, directly or indirectly, shall take part in any contract or transaction connected with the property subject of the arbitration proceedings. This provision seems to prohibit an arbitrator from having any interest in the property disputed in the arbitration proceedings wherein he acted as an arbitrator. This crime is punishable by a fine and/or imprisonment. Having said that, there does not appear to be any arbitrator who has been convicted of this crime.

5. The award

5.1 Can parties waive the requirement for an award to provide reasons?

Yes, the parties can waive the requirement for an award to provide reasons. Under Article 31(2) of the Model Law (which, pursuant to RA 9285, applies to international commercial and domestic arbitrations), the

award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given (ADR Act IRR, Articles 4.31(b) and 5.31(b)).

5.2 Can parties waive the right to seek the annulment of the award?

The Philippine arbitration laws do not prohibit parties from waiving their right to seek the setting aside of an arbitral award. In this regard, Article 2044 of the Civil Code provides that any stipulation that the arbitrators' award or decision shall be final, is valid, except when there is, among others, mistake, fraud, violence, intimidation, undue influence, or falsity of documents. Nonetheless, it may be argued that the right to seek the annulment of the award, when its recognition or enforcement would be contrary to public policy, may not be waived by the parties. This issue, however, has not been resolved by the Philippine Supreme Court.

5.3 What atypical mandatory requirements apply to the rendering of a valid award rendered at a seat in the jurisdiction?

There are no atypical or unusual requirements that must be complied with to ensure the validity of the arbitral award. Under Article 31(1) of the Model Law (which, pursuant to RA 9285, applies to international commercial and domestic arbitrations), the award must be in writing and signed by the arbitrator or majority of all the members of the tribunal in case of arbitral proceedings with more than one arbitrator (ADR Act IRR, Articles 4.31(a) and 5.31(a)).

5.4 Is it possible to appeal an award (as opposed to seeking its annulment)?

No, the law does not provide for an appeal of an award. A petition to vacate a domestic award, and a petition to set aside or refuse the recognition of the international commercial and foreign arbitral award, based on the grounds prescribed by law, are the exclusive recourse against the award. Thus, a party to an arbitration is precluded from filing an appeal or a petition for certiorari questioning the merits of an arbitral award (Special ADR Rules, Rule 19.7), and, in this regard, Philippine courts are mandated: (a) not to disturb the arbitral tribunal's determination of facts and/or interpretation of law in a petition to vacate a domestic award (Special ADR Rules, Rule 11.9), and (b) to dismiss any other recourse from the arbitral award, such as by appeal or petition for review or petition for certiorari or otherwise, with respect to an international commercial award (Special ADR Rules, Rule 12.5).

5.5 What procedure exists for the recognition and enforcement of awards, what time-limits apply and is there a distinction to be made between local and foreign awards?

Rule 12 of the Special ADR Rules sets out the procedure for the recognition and enforcement of an international commercial arbitral award rendered by an arbitral tribunal seated in the Philippines. The procedure is outlined below:

1. *Who may request recognition and enforcement.* - Any party to an international commercial arbitration in the Philippines may petition the proper court to recognize and enforce an arbitral award (Rule 12.1, Special ADR Rules);
2. *When to file petition.* - The petition to recognize and enforce an arbitral award may be filed anytime from receipt of the award, but it must be filed within 10 years from receipt of the award (Civil Code of the Philippines, Article 1144). However, if a petition to set aside an arbitral award is timely filed (*i.e.*, within three [3] months from the receipt of the award), the opposing party must file therein and in opposition thereto the petition for recognition and enforcement of the same award within fifteen (15) days from receipt of the petition to set aside (Rule 12.2, Special ADR Rules);
3. *Grounds to oppose a petition for recognition and enforcement.* - A party resisting the recognition and enforcement of an arbitral award must prove that: (a) a party to the arbitration agreement was under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereof, under Philippine law; (b) it was not given proper notice of the appointment of

an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; (c) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration; provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside or only that part of the award which contains decisions on matters submitted to arbitration may be enforced; (d) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of Philippine law from which the parties cannot derogate, or, failing such agreement, was not in accordance with Philippine law; (e) the subject-matter of the dispute is not capable of settlement by arbitration under the law of the Philippines; or (f) the recognition or enforcement of the award would be contrary to public policy (Rule 12.4, Special ADR Rules). These grounds were drawn from Article V of the New York Convention;

4. *Venue.* - The petition may, at the option of the petitioner, be filed with the Regional Trial Court: (a) where arbitration proceedings were conducted; (b) where any of the assets to be attached or levied upon is located; (c) where the act to be enjoined will be or is being performed; (d) where any of the parties to arbitration resides or has its place of business; or (e) in the National Capital Judicial Region (Rule 12.3, Special ADR Rules);

5. *Form.* - The application to recognize and enforce (either through (a) a petition to recognize and enforce, or (b) an opposition to a petition to set aside the award), shall be verified by a person who has personal knowledge of the facts stated therein (Rule 12.6, Special ADR Rules);

6. *Notice.* - Upon finding that the petition filed is sufficient both in form and in substance, the court shall cause notice and a copy of the petition to be delivered to the respondent directing him to file an opposition thereto within fifteen (15) days from receipt of the petition. In lieu of an opposition, the respondent may file a petition to set aside in opposition to a petition to recognize and enforce, or a petition to recognize and enforce in opposition to a petition to set aside (Rule 12.8, Special ADR Rules);

7. *Submission of documents.* - If the court finds that the issue between the parties is mainly one of law, the parties may be required to submit briefs of legal arguments, not more than fifteen (15) days from receipt of the order. If the court finds that there are issues of fact relating to the grounds relied upon for the court to set aside, it shall require the parties within a period of not more than fifteen (15) days from receipt of the order simultaneously to submit the affidavits of all of their witnesses and reply affidavits within ten (10) days from receipt of the affidavits to be replied to. The parties shall attach to these affidavits all documents relied upon in support of their positions (Rule 12.9, Special ADR Rules);

8. *Hearing.* - If, on the basis of the submissions of the parties, the court finds that there is a need to conduct an oral hearing, the court shall set the case for hearing. During the hearing, the affidavits of witnesses shall take the place of their direct testimonies and they shall immediately be subject to cross-examination thereon. The court shall ensure that the case is heard without undue delay (Rule 12.10, Special ADR Rules);

9. *Judgment of the court.* - Unless a ground to set aside an arbitral award is fully established, the court shall grant the petition to recognize and enforce the arbitral award, or dismiss the petition to set aside. If a petition to recognize and enforce the arbitral award was filed in opposition to the petition to set aside, the court shall recognize and enforce the award. In resolving the petition or petition in opposition thereto, the court shall either set aside or enforce the arbitral award. The court shall not disturb the arbitral tribunal's determination of facts and/or interpretation of law." (Rule 12.13, Special ADR Rules);

Rule 13 of the Special ADR Rules sets out the procedure for the the recognition and enforcement of an international commercial arbitral award rendered by an arbitral tribunal seated outside the Philippines, which is similar to the procedure outlined above.

5.6 Does the introduction of annulment or appeal proceedings automatically suspend the exercise of the right to enforce an award?

A petition to vacate a domestic award, or set aside and refuse the recognition of an international commercial award, must first be resolved before the award is enforced. In this regard, if a petition to vacate a domestic award is filed within the relevant period before a petition to confirm the award is filed, then the petition to confirm must be filed in opposition to the petition to vacate (Special ADR Rules, Rule 11.2). If a petition to set aside an international commercial award is filed within the relevant period and ahead of a petition to recognize and enforce the award, the petition to recognize and enforce must be filed in opposition to the period to set aside. The decision denying any of the foregoing petitions may be appealed to the Court of Appeals, but the appeal shall not stay the award, judgment, final order or resolution sought to be reviewed unless the Court of Appeals directs otherwise upon such terms as it may deem just. For example, the Court of Appeals may, as a condition for the stay of the enforcement of the award, require the appellant to post a bond in an amount equivalent to the amount of the award to answer for all damages that may be suffered by the winning party as a result of the stay if the enforcement of the award is sustained on appeal. The failure of the appellant to post the bond, when required by the Court of Appeals, is a ground for the dismissal of the appeal (Special ADR Rules, Rule 19.25).

5.7 When a foreign award has been annulled at its seat, does such annulment preclude the award from being enforced in the jurisdiction?

Under Article 4.36, Rule 6 of the ADR Act IRR, the enforcement of an arbitral award, made in a state that is a party to the New York Convention, may be refused if the party furnishes proof that the award has been set aside or suspended by a court at its seat. There are no known precedents of a request to recognize and enforce an award which has been annulled at the seat.

5.8 Are foreign awards readily enforceable in practice?

A foreign arbitral award is presumed to have been made and released in due course of arbitration and is subject to enforcement by the court. Thus, a Philippine court is therefore mandated to recognize and enforce a foreign arbitral award, unless a ground to refuse recognition or enforcement of the foreign arbitral award under this rule is fully established (Special ADR Rules, Rule 13.11).

6. Funding arrangements

6.1 Are there restrictions to the use of contingency or alternative fee arrangements or third-party funding at the jurisdiction?

6.1.1 If so, what is the practical and/or legal impact of such restrictions?

At present, there are no restrictions or regulations on the use of contingency or alternative fee arrangements or third-party funding for arbitration conducted in the Philippines.

7. Is there likely to be any significant reform of the arbitration on the near future?

There are no pending bills before the Philippine Congress that seek to amend the current arbitration laws in the Philippines. Having said that, the Office of Alternative Dispute Resolution ("OADR"), the attached agency of the Department of Justice created under RA 9285 to, among others, "*assist the government to monitor, study and evaluate the use by the public and the private sector of ADR, and recommend to Congress needful statutory changes to develop, strengthen and improve ADR practices in accordance with world standards*", has created a Technical Working Group on arbitration to recommend amendments to RA 9285. The OADR will be conducting public consultations on the proposed amendments by late 2017, after which the proposed amendments will be submitted to the Philippine Congress for consideration in 2018.