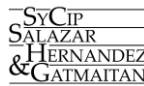


GUIDE TO ARBITRATION PLACES (GAP)

THE PHILIPPINES

CHAPTER PREPARED BY

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JURISDICTION INDICATIVE TRAFFIC LIGHTS

- |  |   |
|--|---|
| 1. Law                                       | ● |
| a. Framework                                 | ● |
| b. Adherence to international treaties       | ● |
| c. Limited court intervention                | ● |
| d. Arbitrator immunity from civil liability  | ● |
| 2. Judiciary                                 | ● |
| 3. Legal expertise                           | ● |
| 4. Rights of representation                  | ● |
| 5. Accessibility and safety                  | ● |
| 6. Ethics                                    | ● |
| Evolution of above compared to previous year | ⊞ |
| 7. Tech friendliness                         | ● |
| 8. Compatibility with the Delos Rules        | ● |

VERSION: 21 MARCH 2025 (v01.03)

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 any and all responsibility.

## IN-HOUSE AND CORPORATE COUNSEL SUMMARY

Arbitration in the Philippines is primarily governed by Republic Act No. 9285, also known as the Alternative Dispute Resolution Act of 2004 ("RA 9285"). RA 9285 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 1985 UNCITRAL Model Law ("Model Law") to govern international commercial arbitration.

RA 9285 was enacted pursuant to 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.

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| Key places of arbitration in the jurisdiction?                                  | Metro Manila, where the major business districts are located, is the key place of arbitration in the Philippines.   |
| Civil law/Common law environment? (if mixed or other, specify).                 | Civil law.  |
| Confidentiality of arbitrations?  | Arbitration proceedings are generally confidential, subject to exceptions provided under RA 9285.   |
| Requirement to retain (local) counsel?  | There is no requirement to retain local counsel in the arbitration proceedings.   |
| Ability to present party employee witness testimony?                            | Yes.  |
| Ability to hold meetings and/or hearings outside of the seat and/or remotely?   | The parties are free to agree on the venue of the arbitration hearings, even if the venue is outside the seat of arbitration.   |
| Availability of interest as a remedy?   | Interest may be awarded. The present legal rate of interest is 6% <i>per annum</i> .  |
| Ability to claim for reasonable costs incurred for the arbitration?             | Generally, reasonable arbitration costs shall be borne by the unsuccessful party. However, the arbitral tribunal may apportion such arbitration 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 presently 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?   | Yes.  |
| Party to the ICSID Convention?  | Yes.  |
| Compatibility with the Delos Rules?   | The Delos Rules are highly compatible with local arbitration laws.  |

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| Default time-limitation period for civil actions (including contractual)?                             | 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. |
| Other key points to note?   | <p>The principles of party autonomy, competence-competence, and separability of the arbitration agreement are recognized by Philippine law.</p> <p>Parties are not prohibited from waiving their right to seek the setting aside of an arbitral award.</p>   |
| <a href="#">World Bank, Enforcing Contracts: Doing Business</a> score for 2020, if available?         | 46.0   |
| <a href="#">World Justice Project, Rule of Law Index: Civil Justice</a> score for 2024, if available? | 0.46   |

## ARBITRATION PRACTITIONER SUMMARY

Arbitration in the Philippines is primarily governed by Republic Act No. 9285, also known as the Alternative Dispute Resolution Act of 2004 (“ADR Act”). The ADR Act 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 1985 UNCITRAL Model Law (“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 international commercial arbitral award may not be appealed and may only be 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.

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| Date of arbitration law?   | The ADR Act was enacted on February 4, 2004, and it has not yet been amended.   |
| UNCITRAL Model Law? If so, any key changes thereto? 2006 version?  | 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?                          | Arbitration-related petitions are ordinarily, but not exclusively, raffled to specialized commercial courts of the pertinent Regional Trial Court.  |
| Availability of <i>ex parte</i> pre-arbitration interim measures?  | The Philippine courts may grant interim measures <i>ex parte</i> in certain genuine urgent matters.   |
| Courts’ attitude towards the competence-competence principle?  | The principle of competence-competence is recognized by Philippine law.<br><br>Philippine courts will generally stay court proceedings if there is a valid arbitration agreement covering the dispute.  |
| May an arbitral tribunal render a ruling on jurisdiction (or other issues) with reasons to follow in a subsequent award?                               | Yes.  |
| Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention? | For international commercial or foreign arbitral awards, 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.<br><br>For domestic arbitral awards, the Philippines has furnished specific grounds for annulment of awards under Section 24 of RA 876 ( <i>i.e.</i> |

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|   | the award was procured by corruption, fraud, or other undue means; evident partiality or corruption in the arbitrators; arbitrators were guilty of misconduct or exceeded their powers; arbitrators were disqualified to act but willfully refrained from disclosing such disqualification; arbitral tribunal exceeded its powers or so imperfectly executed them that a complete, final and definite award was not made; arbitration agreement did not exist or was invalid; or party to arbitration was a minor or a person judicially declared to be incompetent).   |
| Do annulment proceedings typically suspend enforcement proceedings?   | <p>If a petition for recognition and enforcement of an international commercial award (i.e., an arbitral award rendered in an arbitration seated in the Philippines) has been filed, a petition to set aside the arbitral award, if not yet time-barred, shall be made in the same proceedings. As such, these petitions are heard at the same time by the same court. In effect, the annulment proceedings do not suspend the enforcement proceedings.</p> <p>If a petition for recognition and enforcement of a foreign arbitral award (i.e., an arbitral award rendered in an arbitration seated outside the Philippines) has been filed, a Philippine court may defer action on the petition upon notice that an application for the setting aside of the award has been made with a competent authority in the country where the award was made.</p>   |
| Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?   | Philippine courts have not yet ruled upon this issue.   |
| If an arbitral tribunal were to order a hearing to be conducted remotely (in whole or in part) despite a party's objection, would such an order affect the recognition or enforceability of an ensuing award in the jurisdiction? | While a hearing conducted remotely despite a party's objection is not expressly stated as one of the grounds for setting aside an international commercial arbitral award, the losing party may try to argue that the non-participating party was unable to present one's case, or that the arbitral procedure was not conducted in accordance with the parties' agreement if the parties may be argued to have previously agreed that hearings shall be made in-person. Likewise, for domestic arbitral awards, the losing party may try to argue that the order of the arbitral tribunal to conduct the hearing remotely is a misconduct on the part of the arbitrators which materially prejudiced the rights of the objecting party. Whether or not the losing party will succeed will depend on the totality of facts and circumstances of the arbitration proceedings, and not solely on the remote hearings. |
| Key points to note in relation to arbitration with and enforcement of awards against public bodies at the jurisdiction?   | The Special ADR Rules does not provide for state immunity as among the grounds to resist the enforcement of an award. In this connection, the Philippine Supreme Court ruled in <i>China National Machinery &amp; Equipment Corp. v. Santamaria</i> (G.R. No. 185572, February 7, 2012) that (i) an agreement to submit any dispute to arbitration may be construed as an implicit waiver of immunity from suit, and (ii) the doctrine of state immunity cannot be extended to commercial, private and proprietary acts.  |

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|  | <p>However, any money claims against the government are within the primary jurisdiction of the Commission on Audit ("COA"). In this respect, the Philippine Supreme Court ruled in <i>Department of Environment and Natural Resources v. United Planners Consultants, Inc.</i> (G.R. No. 212081, February 23, 2015) that the settlement of any money claim against the government is still subject to the primary jurisdiction of the COA despite the finality of the arbitral award confirmed by the Regional Trial Court pursuant to the Special ADR Rules. Accordingly, any money claims must still be approved by the COA through a petition filed before them. This requirement holds unless an appropriation law has already been enacted to cover the prevailing party's money claim against the government.</p> |
| Is the validity of blockchain-based evidence recognised?   | At present, there are no rules which expressly recognize blockchain-based evidence.   |
| Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?                                  | While the Alternative Dispute Resolution Act of 2004 Implementing Rules and Regulations ("ADR Act IRR") requires that the arbitration agreement and award be in writing and signed, the blockchain may meet this requirement if the blockchain, may be argued as an electronic document under the E-Commerce Act.   |
| Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement? | Yes, the court may consider a blockchain agreement and/or award as originals, provided that the governing law of the arbitration agreement recognizes the validity of an arbitration agreement and award recorded in a blockchain. This view is also consistent with the definition of an original of a document under the Revised Rules on Evidence.   |
| Other key points to note?  | <p>Arbitrators have full discretion in the admission or exclusion of 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 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> |

## 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 (“Model Law”) adopted by the United Nations Commission on International Trade Law on June 21, 1985 to govern international commercial arbitration. Some provisions of the Model Law were also made applicable to domestic arbitration. Department of Justice Circular No. 98, otherwise known as Alternative Dispute Resolution Act of 2004 Implementing Rules and Regulations (“ADR Act IRR”) was issued to provide specific guidelines for the implementation of RA 9285.

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 (RA 9285, Sec. 3(p)) or the place where a substantial part of the obligations is to be performed or the place with which the subject matter of the dispute is most closely connected is outside the Philippines, or the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country, 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) (RA 9285, Sec. 21).

Further, pursuant to Section 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 (RA 9285, Sec. 2). Thus, the law governing the arbitration agreement will depend on the choice-of-law provision of the parties in the 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 arbitration agreement. In the absence of such agreement, Philippine courts shall apply the law which they determine to have the most substantive relationship with the arbitration agreement. In *Saudi Arabian Airlines v. Court of Appeals* (G.R. No. 122191, October 8, 1998), the Philippine Supreme Court lists the relevant factors to determine which law has the most substantive relationship. These factors could be any of the following among others: (1) the nationality of a person, his domicile, his residence, his place of sojourn, or his origin; (2) the seat of a legal or juridical person, such as a corporation; (3) the situs of a thing, that is, the place where a thing is, or is deemed to be situated; (4) the place where an act has been done; (5) the place where an act is intended to come into effect; (6) the intention

of the contracting parties as to the law that should govern their agreement; and (7) the place where judicial or administrative proceedings are instituted or done. In *Hasegawa and Nippon Engineering Consultants Co., Ltd. v. Kitamura*, (G.R. No. 149177, November 23, 2007) the Philippine Supreme Court held that for contract disputes, the “state of the most significant relationship rule” may also be applied by considering the following connecting factors: (i) place where the contract was made, (ii) place of negotiation, (ii) place of performance, and (iv) the domicile, place of business, or place of incorporation of the parties.

## **2.2 In the absence of an express designation of a ‘seat’ in the arbitration agreement, how do the courts deal with references therein to a ‘venue’ or ‘place’ of arbitration?**

It should be noted that RA 9285 uses the word “place” to describe the legal seat of an arbitration.

If the arbitration agreement does not designate the place or seat of arbitration but includes a reference to a venue, the tribunal will first decide whether the parties intended the reference as the place or seat of arbitration, and if not, the seat will be in Metro Manila by default, unless the tribunal designates a seat otherwise, taking into account the circumstances of the case, including convenience of the parties (RA 9285, Sec. 30).

## **2.3 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 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.

## **2.4 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.

## **2.5 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. This is the principle of privity of contract. Thus, a third party who is not a party to the arbitration agreement shall not be bound by the arbitration agreement. Consequently, a third party cannot be impleaded in the arbitration proceedings and the arbitral tribunal cannot compel a third party to participate in the proceedings without that party's consent [See *Fruehauf Electronics Philippines Corporation v. Technology Electronics Assembly and Management Pacific Corporation*, G.R. No. 204197, November 23, 2016]. Known exceptions include: (1) doctrine of piercing the veil of corporate fiction if one or both of the parties involved are juridical entities where the individuals composing the juridical entity are the ones considered to be the party to the contract in certain instances (e.g. existence of fraud); and (2) when an agent signs the contract on behalf of the principal and in accordance with the orders of the principal. The Philippine Supreme Court, however, has not ruled on this issue in relation to an arbitration agreement.



## **2.6 Are there restrictions to arbitrability? In the affirmative: do these restrictions relate to specific domains (such as anti-trust, employment law etc.) and/or specific persons (i.e., State entities, consumers etc.)?**

Yes, there are restrictions to arbitrability on the basis of the nature of the dispute. 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 (i.e., inheritance); (g) criminal liability; (h) questions on the validity of legal separation; and (i) future support (i.e., financial obligations of a parent to a child).

## **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?**

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..."* (New York Convention, Art. II(3)).

In this regard, Philippine courts will generally stay litigation if there is a valid arbitration agreement covering the dispute. RA 9285 sets forth as a policy of the State, the promotion of party autonomy in the resolution of disputes such that the State encourages the use of alternative dispute resolution to achieve speedy and impartial justice while declogging court dockets. Section 24 of the same law 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.

#### **3.1.2 If the place of the arbitration is outside of the jurisdiction?**

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.

### **3.3 On what grounds(s) can the courts intervene in arbitrations seated outside of the jurisdiction? (Relates to the anti-suit injunctions/anti-arbitration injunctions or orders, but not only)**

As a rule, Philippine courts do not have the authority to directly intervene in arbitrations seated outside the Philippines. However, under the Special ADR Rules, a party to an arbitration agreement, without

distinguishing whether it provides for a foreign or domestic arbitration, may petition a Philippine court under the Special ADR Rules to issue an interim measure of protection before the arbitration is commenced, after the arbitration is commenced but before the constitution of the arbitral tribunal, or after the constitution of the arbitral tribunal but only to the extent that the arbitral tribunal has no power to act or unable to act effectively. This may include a preliminary injunction directed against a party to the arbitration from pursuing a court action to resolve an arbitrable dispute.

In addition, any party to an arbitration, whether domestic or foreign, may request a court to provide assistance in the taking of evidence. These include an order directing a person found in the Philippines to, among others, comply with a subpoena, appear as a witness before a deposition officer, allow a physical examination of a person or inspection of things or premises, allow the recording or documentation of the condition of persons, things, or premises, allow the examination and copying of documents, and perform any similar acts. Furthermore, a party, counsel or witness, who disclosed or was compelled to disclose confidential information in an arbitration, may file a petition for a protective order to prevent such information from further disclosure without express consent of the person who made the disclosure.

## **4 The conduct of the proceedings**

### **4.1 Can parties retain foreign counsel or be self-represented?**

There is no prohibition for a party to be self-represented or be represented by outside counsel in either a domestic or an international commercial arbitration. Outside counsel may either refer to a foreign or local counsel, or any other third-party, who is not exclusively employed by a party. 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 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 be of a gravity such as to 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 (a) where the principal place of business of any of the parties is located, (b) if any of the parties are individuals, where those individuals reside, or (c) in the National Capital Region. The petition shall state (a) the name/s of the arbitrator/s challenged and his/their address, (b) grounds for the challenge, (c) facts showing that the ground for the challenge has been expressly or impliedly rejected by the challenged arbitrator/s; and (d) facts showing that the appointing authority failed or refused to act on the challenge.

However, for domestic arbitral awards, one of the grounds to vacate an arbitral award is the willful non-disclosure of the disqualification of one or more of the arbitrators. For international commercial arbitral

awards, the disqualification of one or more of the arbitrators may be argued as rendering the composition of the arbitral tribunal to be not in accordance with the agreement of the parties, which is a ground to set aside the enforcement of the arbitral award.

Additionally, in the case of *Global Medical Center of Laguna, Inc. v. Ross Systems International, Inc.* (G.R. Nos. 230112 and 230119, May 11, 2021), the Philippine Supreme Court set out certain guidelines regarding the judicial review of arbitral awards rendered by the Construction Industry Arbitration Commission (“CIAC”) in construction disputes. Under these guidelines, the Philippine Court of Appeals may review the factual findings of a CIAC arbitral tribunal if there is sufficient and demonstrable showing that the integrity of the CIAC arbitral tribunal had been compromised (i.e., allegations of corruption, fraud, misconduct, evident partiality, incapacity or excess of powers within the tribunal). This was further reiterated and emphasized in the case of *ASEC Development and Construction Corp. vs. Toyota Alabang, Inc.* (G.R. Nos. 243477-78, April 27, 2022) wherein the Philippine Supreme Court stated that parties may appeal questions of fact to the Court of Appeals when they also challenge the integrity of the CIAC arbitral tribunal.

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

Yes, Philippine courts have the power to issue the following interim measures of protection relating to an arbitration: (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.

These interim measures may even be issued by courts pending the constitution of the arbitral tribunal. Under Section 5.2 of the Special ADR Rules, a petition for an interim measure of protection may be made (a) before arbitration is commenced, (b) after arbitration is commenced, but before the constitution of the arbitral tribunal, or (c) after the constitution of the arbitral tribunal and at any time during arbitral proceedings but, at this stage, only to the extent that the arbitral tribunal has no power to act or is unable to act effectively.

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 may 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 arbitrators' duty to be independent and impartial, does the law regulate the conduct of the arbitration?**

The ADR Act IRR mandates the equal treatment of parties, i.e., the parties shall be treated with equality and each party shall be given full opportunity to present its case. In the absence of the parties' agreement on the procedure to be followed in the arbitration proceedings, the law allows the arbitral tribunal to conduct the arbitration in such manner as it deems appropriate, including the power to determine the admissibility, relevance, materiality and weight of any evidence. The ADR Act IRR however provides that, unless the arbitral tribunal considers inappropriate, the 1976 UNCITRAL Arbitration Rules shall apply subject to the clarification that all references to the "Secretary-General of the Permanent Court of Arbitration" shall be deemed to refer to the appointing authority under the law.

#### **4.6 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 unauthorized disclosure thereof.

According to the Philippine Supreme Court in *Fruehauf Electronics v. Technology Electronics* (G.R No. 204197, 23 November 2016), Philippine law highly regards the confidentiality of arbitration proceedings that it devised a judicial remedy to prevent the unauthorized disclosure of confidential information obtained from arbitration proceedings.

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 relative to the subject of 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. The protective order may be granted upon showing that the applicant would be materially prejudiced by an unauthorized disclosure of the information obtained, or to be obtained, during an arbitration proceeding. Further, if there is a pending court proceeding in which the information obtained in an arbitration proceeding is required to be divulged or is being divulged, the party seeking to enforce the confidentiality of the information may file a motion to enjoin the confidential information from being divulged or to suppress confidential information.

#### **4.7 Does it regulate the length of arbitration proceedings?**

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

#### **4.8 Does it regulate the place where hearings and/or meetings may be held, and can hearings and/or meetings be held remotely, even if a party objects?**

Section 30 of RA 9285 provides that the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for hearing witnesses, experts, or the parties.

RA 9285 does not prohibit the holding of hearings and/or meetings remotely. The Philippine Dispute Resolution Center, Inc., Philippine International Center for Conflict Resolution, Inc., and CIAC have also issued guidelines for the conduct of virtual hearings and/or meetings. However, in case of an objection from a party, the arbitral tribunal must determine whether such remote holding of hearings and/or meeting shall, among others, prevent a party from presenting its case.

#### **4.9 Does it allow for arbitrators to issue interim measures? In the affirmative, under what conditions?**

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

- (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; and
  - (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.

#### **4.10 Does it regulate the arbitrator's right to admit/exclude evidence? For example, are there any restrictions on the presentation of testimony by a party employee?**

The arbitrator has the full discretion in determining the admission or exclusion of 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.

There are no restrictions on the presentation of the testimony of a party employee.

#### **4.11 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 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.

#### **4.12 Does it prescribe the principles governing the awarding of interest?**

No, the arbitration law does not prescribe principles governing the awarding of interest. Having said that, under Philippine 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).

#### **4.13 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).

#### **4.14 Liability**

#### **4.15 Do arbitrators benefit from immunity from civil liability?**

Pursuant to Section 5 of 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.

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

At present, there are no special rules which provide for potential criminal of any of the participants in the arbitration proceeding.

### **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, Arts. 4.31(b) and 5.31(b)).

#### **5.2 Can parties waive the right to seek the annulment of the award? If yes, under what conditions?**

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 of the Philippines 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 applies to both 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, Arts. 4.31(a) and 5.31(a)).

### 5.4 Is it possible to appeal an award (as opposed to seeking its annulment)? If yes, what are the grounds for appeal?

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 11 of the Special ADR Rules sets out the procedure for the confirmation, correction or vacation of awards in domestic arbitration. The procedure is outlined below:

1. *Who may request confirmation, correction or vacation.* - Any party to a domestic arbitration may petition the court to confirm, correct or vacate a domestic arbitral award (Rule 11.1, Special ADR Rules);
2. *When to request confirmation, correction or vacation.* - A party may petition the court to confirm the arbitral award at any time after the lapse of thirty (30) days from receipt of the arbitral award (Rule 11.2 (A), Special ADR Rules) or at any time after the petition to vacate the arbitral award is filed (Rule 11.2 (E), Special ADR Rules). For correction or vacation, a party may make such petition before the court not later than thirty (30) days from receipt of the arbitral award (Rule 11.2(B) and (C), Special ADR Rules);
3. *Grounds to vacate an arbitral award.* - The arbitral award may be vacated on the following grounds: (a) the arbitral award was procured through corruption, fraud or other undue means; (b) there was evident partiality or corruption in the arbitral tribunal or any of its members; (c) the arbitral tribunal was guilty of misconduct or any form of misbehavior that has materially prejudiced the rights of any party such as refusing to postpone a hearing upon sufficient cause shown or to hear evidence pertinent and material to the controversy; (d) one or more of the arbitrators was disqualified to act as such under the law and willfully refrained from disclosing such disqualification; (e) the arbitral tribunal exceeded its powers, or so imperfectly executed them, such that a complete, final and definite award upon the subject matter submitted to them was not made; (f) the arbitration agreement did not exist, or is invalid for any ground for the revocation of a contract or is otherwise unenforceable; or (g) a party to arbitration is a minor or a person judicially declared to be incompetent (Rule 11.4(A), Special ADR Rules);
3. *Venue.* - The petition for confirmation, correction/modification or vacation of a domestic arbitral award may be filed with Regional Trial Court having jurisdiction over the place in which one of the parties is doing business, where any of the parties reside, or where arbitration proceedings were conducted (Rule 11.3, Special ADR Rules);
4. *Form.* - The petition to confirm, correct, or vacate the award shall be verified by a person who has knowledge of the jurisdictional facts (Rule 11.6, Special ADR Rules);

5. *Notice.* - Upon finding that the petition filed under this Rule 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 allowing him to file a comment or opposition thereto within fifteen (15) days from receipt of the petition. In lieu of an opposition, the respondent may file a petition in opposition to the petition. The petitioner may within fifteen (15) days from receipt of the petition in opposition thereto file a reply (Rule 11.7, Special ADR Rules);
6. *Submission of documents.* - If the Court finds from the petition or petition in opposition thereto that there are issues of fact, it shall require the parties, within a period of not more than fifteen (15) days from receipt of the order, to simultaneously submit the affidavits of all of their witnesses and reply affidavits within ten (10) days from receipt of the affidavits to be replied to. Documents relied upon in support of the statements of fact shall be attached to such affidavits or reply affidavits. If the petition or the petition in opposition thereto is one for vacation of an arbitral award, the interested party in arbitration may file an opposition which shall be supported by a brief of legal arguments to show the existence of a sufficient legal basis for the opposition. (Rule 11.8, Special ADR Rules);
7. *Hearing.* - If on the basis of the petition, the opposition, the affidavits and reply affidavits of the parties, the court finds that there is a need to conduct an oral hearing, the court shall set the case for hearing. Such cases shall have preference over other cases before the court, except criminal cases. 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 have full control over the proceedings in order to ensure that the case is heard without undue delay (Rule 11.8, Special ADR Rules);
8. *Judgment of the court.* - Unless a ground to vacate an arbitral award is fully established, the court shall confirm the award. In resolving the petition or petition in opposition thereto, the court shall either confirm or vacate the arbitral award. The court shall not disturb the arbitral tribunal's determination of facts and/or interpretation of law. In a petition to vacate an award or in petition to vacate an award in opposition to a petition to confirm the award, the petitioner may simultaneously apply with the Court to refer the case back to the same arbitral tribunal for the purpose of making a new or revised award or to direct a new hearing, or in the appropriate case, order the new hearing before a new arbitral tribunal, the members of which shall be chosen in the manner provided in the arbitration agreement or submission, or the law. In the latter case, any provision limiting the time in which the arbitral tribunal may make a decision shall be deemed applicable to the new arbitral tribunal (Rule 11.9, Special ADR Rules).

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 within 10 years from receipt of the award (Civil Code of the Philippines, Art. 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 at the same court 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 is 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 recognition and enforcement of a foreign award, i.e., an arbitral award rendered by an arbitral tribunal seated outside the Philippines, which is similar to the procedure outlined above for the recognition and enforcement of an international commercial award. One difference though is that the Philippine court shall not set aside a foreign arbitral award but may only refuse to recognize and enforce the same.

## **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 (*i.e.*, arbitral award where the seat of arbitration is the Philippines), 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 petition to set aside. If the petition to confirm a domestic award, or a petition to recognize and enforce an international commercial award, is filed before a petition to vacate or set aside is filed, then the petition vacate or set aside must be filed in opposition to the petition to confirm or petition to recognize and enforce. The decision confirming a domestic award, or recognizing and enforcing an international commercial award, 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).

In a petition to recognize and enforce a foreign arbitral award (*i.e.*, arbitral award where the seat is not the Philippines), a court may adjourn or defer rendering a decision on the petition if, in the meantime, an application for the setting aside or suspension of the award has been made with a competent authority in the country where the award was made (Special ADR Rules, Rule 13.10). Upon application of the petitioner, the court may require the other party to give suitable security.

## **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 laws or regulations relating to, or restrictions to, the use of contingency or alternative fee arrangements or third-party funding at the jurisdiction?**

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

# **7 Arbitration and technology**

### **7.1 Is the validity of blockchain-based evidence recognised?**

At present, there are no rules that expressly recognize blockchain-based digital information as evidence. In any case, the 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 not be bound to conform to the Rules of Court pertaining to evidence in determining the relevance and materiality of the evidence offered or produced at the hearing.

### **7.2 Where an arbitration agreement and/or award is recorded on a blockchain, is it recognised as valid?**

Yes. Under the ADR Act IRR, the arbitration agreement and the award must both be in writing and respectively signed by the parties and the arbitrator/s in order to be valid. A blockchain may meet this requirement as it is considered as a written contract, which in turn may be considered as an electronic document under Republic Act No. 8792, the Electronic Commerce Act of 2000 ("E-Commerce Act"). An electronic document, as defined in Section 5(f) of the E-Commerce Act, refers to information or the representation of information, data, figures, symbols or other modes of written expression, described or however represented, by which a right is established or an obligation extinguished, or by which a fact may be prove and affirmed, which is received, recorded, transmitted, stored, processed, retrieved or produced electronically. It is expressly provided under RA 9285 that the provisions of the E-Commerce Act apply to arbitration proceedings. It should be noted that, at present, the Philippine Supreme Court has not yet ruled on the recognition of blockchain-recorded contracts as electronic documents.

### **7.3 Would a court consider a blockchain arbitration agreement and/or award as originals for the purposes of recognition and enforcement?**

Yes, the court may consider a blockchain agreement and/or award as originals, provided that the governing law of the arbitration agreement recognizes the validity of an arbitration agreement and award recorded in a blockchain. Pursuant to Administrative Matter No. 19-08-15-SC, the 2019 Amendments to the 1989 Revised Rules on Evidence ("Revised Rules on Evidence"), an "original" of a document is the document itself or any counterpart intended to have the same effect by a person executing or issuing it. Further, if data is stored in a computer or similar device, any printout or other output readable by sight or other means, shown to reflect the data accurately, is an "original" (Revised Rules on Evidence, Rule 130, Sec. 4). It should be noted though that the Philippine Supreme Court has not yet ruled on this issue.

### **7.4 Would a court consider an award that has been electronically signed (by inserting the image of a signature) or more securely digitally signed (by using encrypted electronic keys authenticated by a third-party certificate) as an original for the purposes of recognition and enforcement?**

Yes, the court may consider an award that has been electronically or digitally signed as an original. As mentioned, a document is considered original provided it is a printout or other output readable by sight or other means, shown to reflect the data accurately. In this connection, Rule 2, Section 1(j) of Administrative Matter No. 01-07-01-SC, the Rules on Electronic Evidence, considers a digital signature as an electronic signature. Thus, a court may consider an electronically or digitally signed award as an original for purposes of recognition and enforcement. It should be noted though that the Philippine Supreme Court has not yet ruled on this issue.

## **8 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"), an agency attached to the Department of Justice which was 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, after which the proposed amendments will be submitted to the Philippine Congress for consideration.

Incidentally, a bill is currently pending before the Philippine Congress to provide a Modernization Funding for the OADR in the amount of Php 500,000,000 Philippine Pesos, in line with the Philippine public policy to promote, develop and expand the use of ADR in the Philippine public and private sectors.

## 9 Compatibility of the Delos Rules with local arbitration law

The Delos Rules are compatible with the ADR Act. In particular, the ADR Act promotes party autonomy in the resolution of disputes. This means that parties have the freedom to make their own arrangements to resolve their disputes, including the rules to be followed by the arbitral tribunal in conducting the arbitration proceedings, such as the Delos Rules. In the absence of any such agreement, the dispute shall be resolved in accordance with the procedure set out in the ADR Act and its IRR.

## 10 Further reading

In *Mabuhay Holdings Corporation v. Sembcorp Logistics Limited* (G.R. No. 212734, December 5, 2018), the Philippine Supreme Court took into account the State's policy in favor of arbitration and enforcement of arbitral awards and adopted the narrow approach in determining whether the enforcement of an award would be contrary to public policy. According to the Supreme Court, mere errors in the interpretation of the law or factual findings would not suffice to warrant refusal of enforcement under the public policy ground. The illegality or immorality of the award must reach a certain threshold such that, enforcement of the same would be against the State's fundamental tenets of justice and morality, or would blatantly be injurious to the public, or the interests of the society. Since it was not shown how the purported violation of the Philippine laws would violate the State's fundamental tenets of justice and morality, the Supreme Court affirmed the recognition and enforcement of the arbitral award.

In the more recent case of *Lone Congressional District of Benguet Province v. Lepanto Consolidated Mining Co.*, (G.R. Nos. 244063 & G.R. No. 244216, June 21, 2022), however, the Philippine Supreme Court allowed the vacation of an arbitral award on the basis that the determination made by the arbitral tribunal in the subject arbitral award, that one of the parties is exempted from securing a specific government certification as required by law to be a pre-condition for the renewal of its contract with the Philippine government, did not relate merely to interpretation of law, or its application to established facts, but involved a violation of Philippine public policy. Here, the Supreme Court applied Rule 19.10 of the Special ADR Rules which allows courts to entertain a petition to vacate a domestic award on any ground other than those provided under the Special ADR Rules “only if the [domestic award] amounts to a violation of public policy.” In justifying the application of *public policy* exception under Rule 19.10, the Supreme Court held that public policy involved (i.e., the protection of rights of indigenous peoples to their ancestral domains) is “clear, explicit, well-defined and dominant, i.e. it is directly ascertainable by reference to a statute, implementing administrative rules and court decisions and not merely from ambiguous and murky general considerations of supposed public interests.”

## ARBITRATION INFRASTRUCTURE AT THE JURISDICTION

|   |   |
|---|---|
| Leading national, regional and international arbitral institutions based out of the jurisdiction, <i>i.e.</i> , with offices and a case team? | ϕ   |
| Main arbitration hearing facilities for in-person hearings?   | The arbitral bodies listed below have their own hearing room.   |
| Main reprographics facilities in reasonable proximity to the above main arbitration hearing facilities?                                       | ϕ   |
| Leading local providers of court reporting services, and regional or international providers with offices in the jurisdiction?                | ϕ   |
| Leading local interpreters for simultaneous interpretation between English and the local language, if it is not English?                      | ϕ   |
| Other leading arbitral bodies with offices in the jurisdiction?   | Construction Industry Arbitration Commission, Philippine Dispute Resolution Center, Incorporated, and Philippine International Center for Conflict Resolution |