

**GLI** GLOBAL  
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# Philippines

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## Introduction

The Philippine government actively promotes alternative modes of dispute resolution (“ADR”), such as mediation and arbitration, and also through legally mandated arbitration clauses in government contracts. These include all contracts involving public-private partnerships, build-operate-transfer projects, and joint venture agreements entered into by the government, like those between local government and private entities.

With the Supreme Court’s procedural rules clarifying the supervisory and assistive functions of the courts in disputes with arbitration agreements, arbitration is steadily gaining ground in mainstream Philippine dispute resolution. While quite detached from the genre of commercial arbitration in general, the construction industry commonly engages in arbitration with the established presence of the Philippine Construction Industry Arbitration Commission (“CIAC”) created pursuant to Executive Order No. 1008, signed on 4 February 1985.

The Integrated Bar of the Philippines (“IBP”), the country’s mandatory organisation for licensed lawyers, assumed an active role in promoting ADR by launching the Philippine International Center for Conflict Resolution (“PICCR”) – a non-stock, non-profit ADR institution that administers commercial arbitration and provides ADR services and facilities.

A large number of commercial disputes in the Philippines relating to international business transactions are resolved through arbitration. This trend began about two decades ago and most of the parties to these commercial arbitrations engage in international arbitral institutions. Below are the recent trends in the different arbitral institutions in the Philippines.

For 2018, the number of filed arbitration cases included: the Philippine Dispute Resolution Center, Inc. (“PDRCI”), which handled five newly commenced domestic arbitrations; the CIAC, which handled 58 newly commenced domestic arbitrations; and the IBP, which assisted with the appointment of arbitrators in 40 newly commenced *ad hoc* arbitrations.

From the foregoing trends, ADR is expected to become more popular and extensive in the coming years.

## Consensual

Resorting to arbitration is voluntary. Consent from both parties may either be in the form of an arbitration clause that pre-existed the dispute or a subsequent submission agreement. This written arbitration agreement is an independent and legally enforceable contract that must be complied with in good faith. By entering into an arbitration agreement, the parties agree to submit their dispute to an arbitrator (or tribunal) of their own choosing and be bound by the latter’s resolution. Being contractual and consensual in character, the parties in an arbitration agreement cannot implead a third party in the proceedings even if the

latter's participation is indispensable for a complete settlement of the dispute. The tribunal does not have the power to compel a person to participate in the arbitration proceedings without the latter's consent. It also has no authority to decide on issues that the parties did not submit (or agree to submit) for its resolution. [*Fruehauf Electronics Philippines Corporation vs. Technology Electronics Assembly and Management Pacific Corporation*, G.R. No. 204197 (23 November 2016).]

### Purely private

As a purely private mode of dispute resolution, the arbitration proceedings, including the records, evidence, and arbitral award, are confidential, unlike court proceedings, which are generally public. This allows the parties to avoid publicity and protect their privacy. Philippine law places a high regard on the confidentiality of arbitration proceedings and has devised a judicial remedy to prevent or prohibit the unauthorised disclosure of confidential information obtained therefrom. [*Fruehauf Electronics Philippines Corporation vs. Technology Electronics Assembly and Management Pacific Corporation*, G.R. No. 204197 (23 November 2016).]

### Party autonomy

The contractual nature of arbitration affords the parties substantial autonomy in determining the procedure and conduct of the proceedings. This lends considerable flexibility in arbitration proceedings as compared to court litigation governed by the rigours of the Rules of Court. The parties likewise appoint the arbitrators by agreement. There are no legal requirements as to the competence or technical qualifications of an arbitrator other than: (1) being of legal age; (2) having full enjoyment of their civil rights; and (3) having the ability to read and write. The parties can tailor-fit the tribunal's composition to the nature of their dispute. Thus, a specialised dispute can be resolved by experts on the subject. [*Fruehauf Electronics Philippines Corporation vs. Technology Electronics Assembly and Management Pacific Corporation*, G.R. No. 204197 (23 November 2016).]

### Exception to the general character of party autonomy

There is, however, a mandatory arbitration process in labour cases. A Voluntary Arbitrator or Panel of Voluntary Arbitrators presides over these processes. Compulsory arbitration in labour disputes refers to "the process of settlement of labour disputes by a government agency which has the authority to investigate and to make an award which is binding on all the parties, and as a mode of arbitration where the parties are compelled to accept the resolution of their dispute through arbitration by a third party". While a Voluntary Arbitrator is not part of the governmental unit or labour department's personnel, the arbitrator renders arbitration services provided for under labour laws. [*Ludo and Luym vs. Saordino*, G.R. No. 140960 (20 January 2003).]

### Legal framework

Arbitration in the Philippines is mainly regulated by the:

- Civil Code of the Philippines ("*Civil Code*").
- Republic Act 876, otherwise known as the Arbitration Law ("*Arbitration Law*").
- Republic Act 9285, otherwise known as the Alternative Dispute Resolution Act of 2004 ("*Alternative Dispute Resolution Act of 2004*").
- Implementing Rules and Regulations of the Alternative Dispute Resolution Act of 2004 (Department of Justice ["DOJ"] Department Circular No. 98 dated 4 December 2009).
- Supreme Court A.M. No. 07-11-08-SC 1 September 2009 or the Special Rules of Court on Alternative Dispute Resolution ("*Special Rules of Court on Alternative Dispute Resolution*").

- The Philippine CIAC by virtue of Executive Order No. 1008 signed on 4 February 1985.

Philippine law, under the *Alternative Dispute Resolution Act of 2004*, has adopted the United Nations Commission on International Trade Law (“UNCITRAL”) Model Law (“*Model Law*”) for international commercial arbitration. Some provisions of the *Model Law*, such as the appointment of arbitrators, grounds for challenge, challenge procedure, equal treatment of parties, determination of rules of procedure, decision-making by the panel of arbitrators, settlement, form and contents of award, and termination of proceedings, have also been made applicable to domestic arbitration.

### Arbitrable issues

Unless it involves the following matters (*Section 6, Alternative Dispute Resolution Act of 2004 and Article 2035, Civil Code*), arbitration can cover any subject:

- Labour disputes covered by the *Labour Code*.
- Civil status of persons.
- Validity of marriage.
- Any ground for legal separation.
- Jurisdiction of courts.
- Future legitime (that is, the future right of an heir to the portion of the deceased’s property to which he/she is entitled under the law regardless of the provisions in the predecessor’s will).
- Criminal liability.
- Future support (that is, the right to the support of spouses, descendants, ascendants and siblings at some future time).

### Arbitration institution

The CIAC and the PDRCI administer arbitration, especially in disputes involving huge amounts. Arbitration proceedings conducted by the CIAC involve construction disputes. The International Court of Arbitration of the International Chamber of Commerce (“ICC”), the Singapore International Arbitration Centre, and the Hong Kong International Arbitration Centre are the arbitration institutions commonly specified in Philippine contracts that have an international component.

The PDRCI administers commercial arbitration proceedings, except construction disputes. Recently instituted was the IBP’s PICCR, thus making commercial arbitration and ADR services and facilities more publicly accessible.

## **Jurisdiction**

A party questioning the jurisdiction of an arbitral tribunal can apply to the local courts for judicial relief in determining the issue of the existence, validity, and enforceability of the arbitration agreement. However, when a court is asked to rule on issues affecting the competence or jurisdiction of an arbitral tribunal in a dispute brought before it, the court must exercise judicial restraint and defer to the competence or jurisdiction of the arbitral tribunal by allowing the arbitral tribunal the first opportunity to rule on such issues (*Rule 2.4, Special Rules of Court on Alternative Dispute Resolution*).

The *Special Rules of Court on Alternative Dispute Resolution* also recognise the principle of “competence-competence”, which means that the arbitral tribunal can initially rule in its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement (*Rule 2.2, Special Rules of Court on Alternative Dispute Resolution*).

## Arbitration agreement

### Substantive and formal requirements

An arbitration agreement is formed when two or more parties agree to submit to one or more arbitrators any controversy existing between them at the time of the submission, or thereafter. This agreement is valid, enforceable, and irrevocable, save on such grounds that exist under the law for revocation of any contract (*Section 2, Arbitration Law*). A contract or a submission to arbitrate must be in writing and signed by the parties or their lawful agents (*Section 4, Arbitration Law*).

### Separability or severability of arbitration agreement

An arbitration agreement is required to be in writing and signed by the parties to the agreement, or by their lawful agents. A clause in the main contract is therefore sufficient, and a separate arbitration agreement is not needed (*Section 2, Arbitration Law, see also the Alternative Dispute Resolution Act of 2004 and the Model Law*).

The *Model Law* states that 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 (*Article 7(6), Model Law and Section 19, Alternative Dispute Resolution Act of 2004*).

The *Special Rules of Court on Alternative Dispute Resolution* recognise the principle of separability of the arbitration clause; that is, an arbitration clause must be treated as an agreement independent of the other terms of the underlying contract of which it forms a part. Accordingly, a decision that the contract is null and void will not necessarily affect the validity of the arbitration clause (*Rule 2.2, Special Rules of Court on Alternative Dispute Resolution*).

### Third party

Being consensual, an arbitration agreement is, as a general rule, only binding on the contracting parties. Parties that did not sign the contract cannot be compelled to arbitrate disputes relating to the contract, except when the contract contains a reference to a document containing an arbitration clause to which the third party is a signatory.

A third party that did not sign a contract incorporating an arbitral clause may compel a party that signed the contract to arbitrate, if the contract refers to a document containing an arbitral clause and the reference is as such to make that arbitration clause part of the contract (*Section 7(2), Model Law*).

### Breach of an arbitration agreement

Where parties have agreed to submit their dispute to arbitration, the local courts must refer the parties to arbitration, bearing in mind that the arbitration agreement is the law between the parties and they are expected to abide by it in good faith (*Rule 2.2 (A), Special Rules of Court on Alternative Dispute Resolution*). If a contracting party initiates a court case to enforce an agreement containing an arbitration clause, the adverse party can file a motion requesting the local court to refer the parties to arbitration (*Rule 4.1, Special Rules of Court on Alternative Dispute Resolution*).

## Procedure

### Commencement of arbitral proceedings

The parties are free to agree on specific rules governing the commencement of their arbitral proceedings. Unless they provide otherwise, arbitration commences by service to the other party of a demand for arbitration (*Section 5, Arbitration Law and Article 21, Model Law*).

### Applicable rules of procedure

Outside of the CIAC, arbitrators usually apply the *Model Law*, ICC Rules of Procedure, UNCITRAL Arbitration Rules, and the PDRCI Rules of Procedure, the PICCR Arbitration Rules, supplemented by the International Bar Association (“IBA”) Rules on the Taking of Evidence in International Arbitration. The parties are free to agree on the procedure to be followed in the conduct of arbitral proceedings, including the adoption of procedural rules of institutional arbitration (*Rule 2.3, Special Rules of Court on Alternative Dispute Resolution*).

### Default rules

If parties fail to agree on the procedure to be followed, the arbitral tribunal can conduct arbitration in the manner it considers appropriate (*Rule 2.3, Special Rules of Court on Alternative Dispute Resolution*), taking into account the provisions of the *Arbitration Law* and the *Alternative Dispute Resolution Act 2004*.

### Disclosures

Much like court litigation, the parties are not required by law to make any disclosures to the other party or the arbitrator, unless directed by the arbitral tribunal in circumstances of necessity, relevance, and materiality. However, the parties are not precluded from making any voluntary disclosures. In accordance with the principle of party autonomy contained in the *Civil Code* and *Section 2* of the *Alternative Dispute Resolution Act 2004*, nothing prohibits the parties from setting the rules on disclosure, including an agreement to require both parties to disclose all relevant, material, and necessary facts and documents.

### Evidence

Regardless of any agreement between the parties, the arbitrators have the power to:

- Require any person to attend a hearing as a witness.
- Subpoena witnesses and order the disclosure of documents when relevant to the case (*Section 14, Arbitration Law*).

An arbitrator can also require the parties to produce additional evidence that it deems necessary for the understanding and determination of the dispute (*Section 15, Arbitration Law*).

However, the arbitral tribunal has no inherent contempt powers; accordingly, the arbitral tribunal must apply to the proper court to enforce such orders and request sanctions in instances of non-compliance. The parties can also request the court for assistance in taking evidence and in the disclosure of documents (*Rule 9.5, Special Rules of Court on Alternative Dispute Resolution*).

### Confidentiality

The arbitration proceedings, including the records, evidence, and the arbitral award, are confidential and must not be published (*Section 23, Alternative Dispute Resolution Act 2004*).

Information is deemed confidential if it is intended by the source not to be disclosed or obtained under circumstances that would create reasonable expectation on behalf of the source that the information must not be disclosed. This includes:

- Communications (oral or written) made in dispute resolution proceedings, including memoranda, notes, or work products of the neutral party or non-party participant.
- Pleadings, motions, manifestations, witness statements, or reports filed or submitted in arbitration (*Section 3(h), Alternative Dispute Resolution Act 2004*).

The restriction on confidentiality applies to all participants in the arbitration proceedings, including parties, arbitrators, and non-party participants such as witnesses, resource persons, experts, and institutions.

## Arbitrators

### Number and qualifications/impartiality

The parties are free to determine the number of arbitrators, failing which, the default number is three (*Article 10, Model Law* and *Section 19, Alternative Dispute Resolution Act of 2004*).

In addition to the foregoing qualifications, an arbitrator must not:

- Be related by blood or marriage up to the sixth degree to either party to the arbitration agreement.
- Have or have had any financial, fiduciary, or other interest in the dispute.
- Have any personal bias that might prejudice the right of any party to a fair and impartial award (*Section 10, Arbitration Law*).

No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties (*Article 11(1), Model Law* and *Section 19, Arbitration Law*).

### Appointment

The court acts as the appointing authority to appoint arbitrators in the following instances:

- Where any of the parties in an institutional arbitration:
  - fails or refuses to appoint an arbitrator; or
  - fails to reach an agreement on the sole arbitrator (in an arbitration before a sole arbitrator).
- When the two designated arbitrators fail to reach an agreement on the third or presiding arbitrator (in an arbitration to be conducted by three arbitrators) and the institution under whose rules the arbitration is to be conducted, fails or is unable to perform its duty as appointing authority within a reasonable time from receipt of the request for appointment.
- In all instances where arbitration is *ad hoc* and the parties failed to provide a method for appointing, replacing, or substituting an arbitrator, or the agreed method is ineffective, and the IBP National President or his duly authorised representative fails or refuses to appoint an arbitrator.
- If the appointing authority fails or refuses to act or appoint an arbitrator within a reasonable time from receipt of the request to do so (*Rule 6.1, Special Rules of Court on Alternative Dispute Resolution*).

### Removal of arbitrators

An arbitrator can be removed in accordance with the procedure agreed by the parties or as provided for in Article 13(2) of the *Model Law*. If challenged, an arbitrator can be removed by an appointing authority or the court, on application, if the appointing authority fails or refuses to act on the challenge (*Rule 7.2, Special Rules of Court on Alternative Dispute Resolution*). The disqualification can occur if the arbitrator:

- Is related by blood or marriage within the sixth degree to either party to the controversy.
- Has or has had financial, fiduciary, or other interest in the controversy or cause to be decided or in the result of the proceeding.
- Has any personal bias which might prejudice the right of any party to a fair and impartial award (*Section 10, Arbitration Law*).

## Interim relief

Similar to regular court litigation, provisional remedies are also available in arbitration. A party may apply for interim relief to prevent an irreparable injury, to protect the security of the contract, and to preserve evidence. The pendency of an arbitral proceeding does not



foreclose a resort to the courts for interim relief. The courts may issue provisional relief before the institution of the arbitral tribunal. Upon the institution of the arbitral tribunal, the request for interim relief must be filed before the arbitral tribunal (*Rule 5.2, Special Rules of Court on Alternative Dispute Resolution*).

#### Interim measures

Unless otherwise agreed by the parties, the arbitral tribunals can, at the request of a party, order any party to take such interim measures of protection as the arbitral tribunal may consider necessary, including:

- Preliminary injunctions directed against a party.
- Appointment of receivers.
- Detention, preservation, or inspection of property that is the subject of the dispute in arbitration.

Either party can apply to the court for assistance in implementing or enforcing interim measures ordered by an arbitral tribunal (*Section 29, Alternative Dispute Resolution Act of 2004*).

#### Emergency arbitration

Under the Philippine Laws and Rules on Arbitration, there is no specific provision yet on the appointment of an emergency arbitrator. There is also no existing Supreme Court ruling on the appointment of an emergency arbitrator or on the facility of an emergency arbitration.

Nonetheless, Philippine arbitral institutions have incorporated provisions on emergency arbitration. Specifically, the PICCR Arbitration Rules state that a party that needs urgent interim or conservatory measures that cannot await the constitution of an arbitral tribunal may make an application for such measures before an emergency arbitrator (*Section 30, PICCR Rules*). Likewise, under the PDRCI Rules, a party may apply for an interim measure concurrent with or following the filing of a Notice of Arbitration, but prior to the constitution of the arbitral tribunal, by submitting an application for the appointment of an emergency arbitrator (*Section 53, PDRCI Rules*).

#### Court assistance

The court can only issue interim remedies in the following instances:

- Before the arbitration is commenced.
- After the arbitration is commenced but before the constitution of the arbitral tribunal.
- 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 (*Rule 5.2, Special Rules of Court on Alternative Dispute Resolution*).

Recently, the Supreme Court ruled that while the *Alternative Dispute Resolution Act of 2004* allows a Regional Trial Court to grant interim or provisional relief, including preliminary injunction, this general statute must give way to a special law governing national government projects, *Republic Act No. 8975*, which prohibits courts, except the Supreme Court, from issuing temporary restraining orders and writs of preliminary injunction in cases involving national government projects [(*Busan Universal Rail, Inc. vs. Department of Transportation-Metro Rail Transit 3*, G.R. No. 235878 (26 February 2020))].

#### Ex parte

As a general rule, only courts can grant *ex parte* interim relief when there is an urgent need to:

- Preserve property.
- Prevent the respondent from disposing of, or concealing, the property.
- Prevent the relief applied for from becoming defunct (*Rule 5.7, Special Rules of Court on Alternative Dispute Resolution*).

## Security

The order issued by the arbitral tribunal granting an interim measure of protection may be conditioned on the provision of security, the performance of an act, or omission thereof, specified in the order (*Rule 5.12, Special Rules of Court on Alternative Dispute Resolution*).

### **Arbitral award**

#### Issues

Arbitrators have the power to award the expenses of any party against another party, when such assessment is deemed necessary (*Section 20, Arbitration Law*). The arbitral tribunal only has the power to decide and give a final award on matters that have been submitted to them by the parties. Therefore, if the parties have raised the issue of damages, injunction, costs, interest, or any other relief relating to the subject matter, then the same may be awarded by the arbitral tribunal. If the parties have not raised these issues before the arbitral tribunal, then it has no power to rule thereon.

#### Cost allocation and calculation

The arbitral tribunal has discretion as to how the costs of the arbitration process are awarded (*Section 20, Arbitration Law*). Awarded costs usually include the expenses (or a portion of them) of any party against another party. A successful party's cost may be recovered if it is necessary. Following the general rule in evidence, the party who asserts that he is entitled to costs has the burden of proving the same. The tribunal can take into consideration all the circumstances of the case.

### **Challenge of an award**

#### Rights of appeal/challenge

As an arbitral award is final and binding (*Rule 19.7, Special Rules of Court on Alternative Dispute Resolution*), a party to an arbitration proceeding is precluded from filing an appeal or a petition for *certiorari* seeking judicial review questioning the merits of an arbitral award with the courts (*Rule 19.7, Special Rules of Court on Alternative Dispute Resolution*). In construction arbitration, an arbitral award rendered by the CIAC is appealable to the Court of Appeals (*Rule 43, Revised Rules of Court of the Philippines; CIAC Rules of Procedure*).

Nevertheless, an arbitral award can be vacated, modified, corrected, or set aside by the Regional Trial Court under very limited specified grounds (*Sections 24 and 25, Arbitration Law and Rule 11.1, Special Rules of Court on Alternative Dispute Resolution*), whose decisions can be reviewed by the Court of Appeals and subsequently by the Supreme Court (*Rules 19.8, 19.12, and 19.36, Special Rules of Court on Alternative Dispute Resolution*).

In labour disputes, the Voluntary Arbitrator's decisions are appealable by way of *Rule 43, Petition to the Court of Appeals* [*Nyk-Fil Ship Management, Inc. vs. Gener Dabu*, G.R. No. 225142 (13 September 2017)].

#### Grounds and procedure

An appeal to the Court of Appeals through a petition for review under the Special Rules is allowed from the following final orders of the Regional Trial Court:

- Granting or denying an interim measure of protection.
- Denying a petition for appointment of an arbitrator.
- Denying a petition for assistance in taking evidence.
- Enjoining or refusing to enjoin a person from divulging confidential information.

- Confirming, vacating, or correcting/modifying a domestic arbitral award.
- Setting aside an international commercial arbitration award.
- Dismissing the petition to set aside an international commercial arbitration award even if the court does not decide to recognise or enforce such award.
- Recognising and/or enforcing an international commercial arbitration award.
- Dismissing a petition to enforce an international commercial arbitration award.
- Recognising and/or enforcing a foreign arbitral award.
- Refusing recognition and/or enforcement of a foreign arbitral award.
- Granting or dismissing a petition to enforce a deposited mediated settlement agreement.
- Reversing the ruling of the arbitral tribunal upholding its jurisdiction (*Rule 19.12, Special Rules of Court on Alternative Dispute Resolution*).

When the Regional Trial Court has acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to a lack of, or excess of, jurisdiction, and there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law, a party can file a special civil action for *certiorari* to annul or set aside the order on one of the following grounds:

- The arbitration agreement is inexistent, invalid, or unenforceable.
- Reversing the arbitral tribunal's preliminary determination upholding its jurisdiction.
- Denying the request to refer the dispute to arbitration.
- Granting or refusing interim relief.
- Denying a petition for the appointment of an arbitrator.
- Confirming, vacating, or correcting a domestic arbitral award.
- Suspending the proceedings to set aside an international commercial arbitral award and referring the case back to the arbitral tribunal.
- Allowing a party to enforce an international commercial arbitral award pending appeal.
- Adjourning or deferring a ruling on whether to set aside or recognise and/or enforce an international commercial arbitral award.
- Allowing a party to enforce a foreign arbitral award pending appeal.
- Denying a petition for assistance in taking evidence (*Rule 19.26, Special Rules of Court on Alternative Dispute Resolution*).

A party who is not satisfied with the decision of the Court of Appeals can appeal to the Supreme Court, whose review is not a matter of right but of sound judicial discretion, which will be granted only for serious and compelling reasons resulting in grave prejudice to the aggrieved party (*Rule 19.36, Special Rules of Court on Alternative Dispute Resolution*).

For the review of the CIAC Awards, the Supreme Court *en banc* held that the judicial review of CIAC arbitral awards takes either of two remedial routes, depending on the issue being raised. First, if the issue raised is a pure question of law, the petition should be filed directly and exclusively with the Supreme Court, notwithstanding *Rule 43*. Second, in cases where the petition takes issue on the integrity of the arbitral tribunal and its decision (i.e., allegations of corruption, fraud, misconduct, evident partiality, incapacity, or excess of powers within the tribunal), or the unconstitutionality or invalidity of its actions in the arbitral process, then the parties can and should appeal the CIAC award before the Court of Appeals under *Rule 65*, on grounds of grave abuse of discretion amounting to lack or excess in jurisdiction (*Global Medical Center of Laguna Inc. vs. Ross Systems International, Inc., G.R. 230112/G.R. 230119*).

#### Excluding rights of appeal

Being a consensual agreement between the parties, they may include a stipulation on waiver of rights to challenge an award. A waiver, however, may be questioned in court as being contrary to “morals, good customs, public order, or public policy” (*Article 1306, Civil Code*).

## Enforcement of an award

### International commercial arbitration award

A petition to recognise and enforce or set aside an arbitral award can be filed with the Regional Trial Court:

- Where arbitration proceedings were conducted.
- Where any of the assets to be attached or levied on are located.
- Where the act ordered in the award will be or is being performed.
- Where any of the parties to the arbitration reside or have their place of business.
- In the National Capital Judicial Region (*Rule 12.3, Special Rules of Court on Alternative Dispute Resolution*).

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 15 days from receipt of the order, which sufficiently discuss the legal issues and the legal basis for the relief sought (*Rule 12.9, Special Rules of Court on Alternative Dispute Resolution*).

It is presumed that an arbitral award was made and released in due course and is subject to enforcement by the local court, unless the adverse party is able to establish a ground for setting aside or not enforcing an arbitral award (*Rule 12.12, Special Rules of Court on Alternative Dispute Resolution*).

### Foreign arbitral awards

The recognition and enforcement of a foreign arbitral award in the Philippines is governed by the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (*New York Convention*) and the *Special Rules of Court on Alternative Dispute Resolution*.

Philippine courts may, on the grounds of comity and reciprocity, recognise and enforce a foreign arbitral award made in a country that is not a signatory to the *New York Convention* (*Rule 13.4, Special Rules of Court on Alternative Dispute Resolution*). At any time after receipt of a foreign arbitral award, any party to the arbitration can petition the proper Regional Trial Court to recognise and enforce the award (*Rule 13.2, Special Rules of Court on Alternative Dispute Resolution*).

The petition to recognise and enforce a foreign arbitral award can be filed with the Regional Trial Court:

- Where the assets to be attached or levied on are located.
- Where the act ordered in the award will be or is being performed.
- Where any of the parties to the arbitration reside or have their place of business.
- In the National Capital Judicial Region (*Rule 13.3, Special Rules of Court on Alternative Dispute Resolution*).

If the court finds that the issue between the parties is mainly one of law, the parties can be required to submit briefs of legal arguments, not more than 30 days from receipt of the order (*Rule 13.8, Special Rules of Court on Alternative Dispute Resolution*). The court shall set the case for hearing if, on the basis of submissions, there is a need to do so. During the hearing, the affidavits of witnesses shall take the place of their direct testimonies, subject to cross-examination (*Rule 13.9, Special Rules of Court on Alternative Dispute Resolution*).

It is presumed that a foreign arbitral award was made and released in due course of arbitration and is subject to enforcement by the court. The court shall recognise 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. The decision of the court recognising and enforcing a foreign arbitral award is immediately executory (*Rule 13.11, Special Rules of Court on Alternative Dispute Resolution*).



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Mr. Galacio is a Fellow of the Chartered Institute of Arbitrators (“CI Arb”), a member of the ICC Institute of World Business Law, and an accredited international arbitrator based in the Philippines. He has obtained an Oxford Diploma in International Commercial Arbitration (“DiplCI Arb”), a Certificate in International Investment Arbitration, and a Certificate in Maritime Disputes and Arbitration. He is also a Certified Fraud Examiner (“CFE”), a senior litigator, and was Deputy General Counsel of the Integrated Bar of the Philippines (“IBP”).



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Ms. Lynn focuses on arbitration, tax litigation, banking litigation, trial advocacy, and appellate practice. Likewise, she is a member of the Tax Litigation Group and Trade Law Group at Cruz Marcelo & Tenefrancia.

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