Philippines

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Philippines: International Arbitration

1. What legislation applies to arbitration in your country? Are there any mandatory laws?

Republic Act No. 9285, or the Alternative Dispute Resolution Act of 2004 (ADR Act), is the legislation that applies to arbitration in the Philippines. In particular, it provides that (a) international commercial arbitration shall primarily be governed by the 1985 UNCITRAL Model Law on International Commercial Arbitration (1985 Model Law), (b) domestic arbitration shall continue to primarily be governed by Republic Act No. 876 (Arbitration Law), and (c) the arbitration of construction disputes shall continue to be governed by Executive Order No. 1008.

2. Is your country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?

Yes, the Philippines signed and ratified the New York Convention. The Philippines signed the New York Convention in June 1958 on the basis of reciprocity and, upon ratifying the same on July 6, 1967, declared that it would apply the Convention to the recognition and enforcement of awards made only in the territory of another contracting state and only to differences that arise out of legal relationships, whether contractual or not, which are considered commercial in nature under the national law of the state that is making the declaration.

3. What other arbitration-related treaties and conventions is your country a party to?

The Philippines is a party to the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (ICSID Convention).

4. Is the law governing international arbitration in your country based on the UNCITRAL Model Law? Are there significant differences between the two?

Yes, the ADR Act provides that the 1985 Model Law primarily governs international commercial arbitration seated in the Philippines. There are no significant differences. However, sections 26, 27, 28, 30, and 31 of the ADR Act modify and supplement certain provisions of the 1985 Model Law. Moreover, the ADR Act additionally provides for legal representation in international arbitration, subject to certain limitations [ADR Act, Section 22] and for confidentiality in arbitration proceedings, subject to certain exceptions [ADR Act, Section 23].

5. Are there any impending plans to reform the arbitration laws in your country?

As of October 2024, Senate Bill No. 1308 (dated September 12, 2022) remains pending in the Senate. The Bill proposes to adopt the 2006 amendments to the 1985 Model Law to update the international commercial arbitration practices in the Philippines to conform with present international standards.

6. What arbitral institutions (if any) exist in your country? When were their rules last amended? Are any amendments being considered?

The Construction Industry Arbitration Commission (CIAC) was created through the enactment of Executive Order No. 1008 in 1985. The CIAC is vested with original and exclusive jurisdiction over construction disputes in the Philippines where the parties have agreed to arbitration. The Philippine Supreme Court has interpreted this to mean that where the parties have agreed to arbitration without naming an arbitration institution, the CIAC shall have original and exclusive jurisdiction over their construction disputes; where the parties have agreed to an arbitration institution, the parties' arbitration agreement shall be read as providing for CIAC as an alternative choice of arbitration institution. The CIAC released their latest Revised Rules of Procedure (CIAC Rules) on January 1, 2023.

The Philippine Dispute Resolution Center, Inc. (PDRCI) was organized by the Philippine Chamber of Commerce and Industry in 1996 to provide alternative dispute resolution services in the Philippines. It has forged cooperation agreements with various international arbitration centers and is the primary commercial arbitration institution in the Philippines. The Amended PDRCI Arbitration Rules (PDRCI Rules) were released in 2021.

The Philippine International Center for Conflict Resolution (PICCR) was organized by the Integrated Bar of the Philippines (IBP) in 2019 to provide alternative dispute resolution services all over the Philippines. The PICCR Handbook and Arbitration Rules (PICCR Rules) were released in 2019.

7. Is there a specialist arbitration court in your country?

There is no specialist arbitration court in the Philippines. The Regional Trial Courts have been vested with jurisdiction to act on arbitration-related petitions under the Special Rules of Court on Alternative Dispute Resolution issued by the Philippine Supreme Court in 2009 (Special ADR Rules), such as petitions (a) questioning the existence, validity, and enforceability of an arbitration agreement, (b) for interim measures of protection, and (c) for the recognition and enforcement of arbitral awards.

8. What are the validity requirements for an arbitration agreement under the laws of your country?

Philippine law requires the arbitration agreement to be in writing. For domestic arbitration and international commercial arbitration, this requirement is satisfied even if the arbitration agreement is in (a) an electronic document, or (b) a document signed by the parties, or (c) an exchange of letters, telex, telegrams or in any other means of telecommunication providing a record of the agreement, or (d) an exchange of statements of claim and defense in which the agreement's existence is alleged by a party without being denied by the other party. Moreover, the reference in a contract to a document that contains an arbitration clause shall constitute an arbitration agreement, provided that the contract is in writing, and the reference is such as to make that clause part of the contract [ADR Act Implementing Rules and Regulations (IRR), Article 4.7 and 5.6].

For construction disputes, the arbitration agreement need not be signed by the parties, as long as the intent is clear that the parties agree to submit the construction dispute to arbitration. Moreover, it may be in the form of exchange of letters sent by post or by telefax, telexes, telegrams, electronic mail, or any other mode of communication [CIAC Rules, Section 4.1.3].

9. Are arbitration clauses considered separable from the main contract?

Yes, the Philippines recognizes the principle of separability of the arbitration clause. This means that an arbitration clause shall be treated as an agreement independent of the other terms of the contract of which it forms part. Thus, a finding that the contract where the arbitration clause is contained is null and void shall not necessarily invalidate the arbitration clause [Special ADR Rules, Rule 2.2].

10. Do the courts of your country apply a validation principle under which an arbitration agreement should be considered valid and enforceable if it would be so considered under at least one of the national laws potentially applicable to it?

The Philippine Supreme Court has not ruled on the applicability of this validation principle in resolving issues relating to the validity and enforceability of arbitration agreements.

11. Is there anything particular to note in your jurisdiction with regard to multi-party or multi-contract arbitration?

Some of the relevant rules on multi-party or multi-contract arbitration are as follows:

a. The ADR IRR governs multi-party arbitrations that are seated in the Philippines, subject to modifications that the tribunal shall deem appropriate in order to address the complexities of a multi-party arbitration [ADR Act IRR, Article 4.44 and 5.44];
b. In multi-party arbitrations governed by the PDRCI Rules or the PICCR Rules, if the dispute is to be referred to three arbitrators, the multiple claimants and multiple respondents shall jointly nominate the arbitrators [PDRCI Rules, Article 14(1); PICCR Rules, Article 12(6)];
c. In multi-party arbitrations governed by the PDRCI Rules, the arbitration shall proceed between those parties with respect to whom the arbitral tribunal has made a *prima facie* determination that an arbitration agreement exists and that it binds all the parties [PDRCI Rules, Article 8(2)]. The parties may also agree on a tribunal that is composed of a number of arbitrators other than one or three, including the method of appointment of the arbitrators [PDRCI Rules, Article 14(2)];
d. In multi-contract arbitrations governed by the PDRCI

Rules, the arbitration shall proceed as to those claims with respect to which the arbitral tribunal has made a *prima facie* determination that the agreements under which the claims are made may be compatible and that such claims can be determined in a single arbitration [PDRCI Rules, Article 9(2)];

e. In multi-party construction arbitrations governed by the CIAC Rules, multiple parties may agree on the method for constitution of the tribunal. In the absence of agreement, the CIAC shall appoint the arbitrators [CIAC Rules, Section 9.1.2];
f. In a multi-party arbitration under the PICCR Rules, the arbitration shall proceed between those parties with respect to which the PICCR is prima facie satisfied that an arbitration agreement, binding to such parties, may exist [PICCR Rules, Article 6(4)(i)]; and
g. In a multi-contract arbitration under the PICCR Rules, the arbitration shall proceed as to those claims with respect to which the PICCR is prima facie satisfied that the agreements under which the claims are made may be compatible, and that all parties to the arbitration may have agreed that such claims can be determined together in a single arbitration [PICCR Rules, Article 6(4)(ii)].

12. In what instances can third parties or non-signatories be bound by an arbitration agreement? Are there any recent court decisions on these issues?

As a general rule, contracts, such as an arbitration agreement, take effect only between the parties, their assigns, and heirs [Civil Code of the Philippines, Article 1311]. This is the principle of relativity of contracts. Thus, a third party cannot be bound by an arbitration agreement. Consequently, a third party cannot be impleaded in the arbitration proceedings and the arbitral tribunal cannot compel such 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].

An exception to this principle may arise under the doctrine of piercing the veil of corporate fiction. In *Lanuza, Jr. and Olbes v. BF Corporation, et al.* [G.R. No. 174938, October 1, 2014], the Philippine Supreme Court held that the corporate representatives of a corporation may be compelled to submit to arbitration proceedings in connection with a contract entered into by the corporation if there are allegations of bad faith or malice on their part in representing the corporation and such representatives are sought to be held solidarily liable with the corporation. In such cases, the corporate representatives may be compelled to participate in the arbitration proceedings to determine (a) if the corporate veil should be pierced and the representatives should be held liable, and (b) the extent of their liabilities.

Another exception relates to an arbitration agreement covering intra-corporate disputes that are found in a corporation's articles of incorporation or by-laws, or in a separate agreement that may bind the corporation itself, its directors, trustees, officers, executives, and managers, even if they are not signatories to the articles of incorporation, by-laws, or separate agreement [See, Revised Corporation Code, Section 181, and SEC Memorandum Circular No. 8, series of 2022, Section 6.].

13. Are any types of dispute considered non-arbitrable? Has there been any evolution in this regard in recent years?

The following matters cannot be resolved or settled through arbitration under the ADR Act: (a) labor disputes; (b) the civil status of persons; (c) the validity of marriage; (d) any ground for legal separation; (e) the jurisdiction of courts; (f); future legitime; (g) future support; (h) criminal liability; and (i) those which by law cannot be compromised [ADR Act, Section 6]. This is consistent with Article 2043, in relation to Article 2035, of the Philippine Civil Code which was enacted in 1949.

14. Are there any recent court decisions in your country concerning the choice of law applicable to an arbitration agreement where no such law has been specified by the Parties?

In Department of Foreign Affairs v. BCA Corporation International & Ad Hoc Arbitral Tribunal [G.R. No. 225051, July 19, 2017], the Philippine Supreme Court applied lex loci contractus – the law of the place where the contract is made governs where the parties did not specify their choice of law in the arbitration agreement perfected in the Philippines.

The dispute arose when the petitioner terminated its contract with the respondent. The respondent opposed the termination and referred the dispute to arbitration under the UNCITRAL Arbitration Rules. In the course of the arbitral proceedings, the petitioner sought relief directly from the Supreme Court to assail the arbitral tribunal's procedural orders allowing the respondent to file an amended claim and submit additional supporting evidence. The petitioner argued that the amended claim should have been denied because it was belatedly filed

and was outside the scope of the arbitration agreement.

In ruling that the petition was improperly filed with the Supreme Court, the court determined that Philippine law was the law applicable to the arbitration agreement because the agreement was perfected in the Philippines. Thus, the Supreme Court applied Philippine arbitration laws, i.e., the ADR Act and its IRR, and the Special ADR Rules, and dismissed the petition for failure to observe the rules on court intervention under the ADR Act and Special ADR Rules.

15. How is the law applicable to the substance determined? Is there a specific set of choice of law rules in your country?

The law that shall govern the substance of the dispute depends on the 'choice of law' of the parties as specified in the contract. In the absence of agreement or upon failure of the parties to designate, the arbitral tribunal shall apply the law determined by the conflict of laws rules that it considers applicable. In all cases, the arbitral tribunal shall decide based on the terms of the contract and shall take into account the usages of the trade that apply to the transaction [ADR Act IRR, Article 4.28].

Choice-of-law rules generally require an analysis of (i) a factual relationship, such as a property right or contract claim, and (ii) a connecting factor or point of contact. One or more of the following circumstances may be present to serve as the possible connecting factor for the determination of the applicable law: (1) the nationality of a person, his [or her] domicile, his [or her] residence, his [or her] place of sojourn, or his [or her] 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 (when real rights are involved); (4) the place where an act has been done (particularly important in contracts and torts); (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; (7) the place where judicial or administrative proceedings are instituted or done; or (8) the flag of a ship [See Alcala Vda. de Alcañeses v. Alcañeses, G.R. No. 187847, June 30, 2021].

In a contract dispute, the "state of the most significant relationship rule" may also be applied by considering the following connecting factors: (a) place where the contract was made, (b) place of negotiation, (c) place of performance, and (d) domicile, place of business, or place of incorporation of the parties.

In *Philippine Export and Foreign Loan Guarantee Corporation v. V.P. Eusebio Construction, Inc., et al.* [G.R. No. 140047, July 13, 2004], the Philippine Supreme Court used the "state of the most significant relationship rule" to determine the applicable law in the issue of whether the respondent had breached its contractual obligations due to delayed work performance. Respondent was one of the contractors engaged by the Iraqi government for the construction of a rehabilitation center in Baghdad, Iraq. The Supreme Court held that, in the absence of an agreement between the parties on the choice of law, the applicable law is that of the state that "has the most significant relationship to the transaction and the parties." Since one of the parties is the Iraqi government and the place of performance of the contract is in Iraq, the Supreme Court held that the issue of whether there was a breach of contract must be determined by the laws of Iraq.

16. In your country, are there any restrictions in the appointment of arbitrators?

In international commercial arbitration, and in the absence of any express agreement by the parties, there are no restrictions in the appointment of arbitrators [ADR Act IRR, Article 4.11]. There are no restrictions on the appointment of arbitrators under the 1985 Model Law.

Under PDRCI Rules, if the parties do not reach an agreement on the choice of a sole arbitrator or either party fails to make any proposal, the arbitrator shall be appointed and confirmed by PDRCI. In making the appointment, PDRCI shall ensure the appointment of a qualified, independent, and impartial arbitrator and, when appropriate, it shall appoint an arbitrator of a nationality other than the nationalities of the parties [PDRCI Rules, Articles 12 and 13].

Under PICCR Rules, in confirming or appointing arbitrators, the PICCR shall consider the prospective arbitrator's nationality, residence and other relationships with the countries of which the parties or the other arbitrators are nationals, and the prospective arbitrator's availability and ability to conduct the arbitration in accordance with the PICCR Rules. For arbitrations where a party or the parties are of different nationalities, the sole arbitrator or the chair of the arbitral tribunal shall be of a nationality other than those of the parties. However, in suitable circumstances and provided that none of the parties objects within the time limit fixed by the PICCR, the sole arbitrator or the chair of the arbitral tribunal may be chosen from a country of which any of the parties is a national [PICCR Rules, Article 13].

There are certain qualifications to be appointed as

arbitrators in domestic arbitration and construction arbitration in the Philippines. Specifically:

a. In domestic arbitration, arbitrators must be (i) of legal age, (ii) in full enjoyment of his or her civil rights, (iii) able to read and write, (iv) not related by blood or marriage within the sixth degree to a party to the controversy, (v) without any financial, fiduciary or other interest in the controversy, and (vi) without any personal bias which might prejudice the right of any party to a fair and impartial award [ADR Act IRR, Article 5.10].
b. In construction arbitration in the Philippines under the CIAC, the arbitrators must possess the competence, integrity, and leadership qualities to resolve any construction dispute expeditiously and equitably. They may include engineers, architects, construction managers, engineering consultants, and businessmen familiar with the construction industry and lawyers who are experienced in construction disputes. Generally, only CIAC-accredited may be appointed as arbitrator unless the nominee (i) is the parties' common nominee; (ii) possesses the technical or legal competence to handle the construction dispute involved; and (iii) has signified his or her availability or acceptance of his possible appointments [CIAC Rules, Rule 8]. An arbitrator must meet the following requirements to be accredited by the CIAC: (i) at least 40 years of age at the time of application; (ii) a holder of a Bachelor's degree in Engineering, Architecture, Law, Accountancy or any other course relevant to any field of construction or construction activity; (iii) licensed to practice his/her profession in the Philippines and, preferably, endorsed and/or nominated by his/her professional organization through a duly approved Board Resolution; (iv) at least ten (10) years in the practice of his/her profession and ten (10) years of work experience in construction management-related activities or in handling of construction disputes and/or contract negotiations; (v) in full enjoyment of his/her civil rights and must not have been convicted of a crime involving moral turpitude or of any crime for which the penalty imposed upon him/her is over six (6) months of imprisonment; and (vi) subject to all screening requirements and accreditation course for arbitrators to be conducted by the CIAC [CIAC Resolution No. 06-2015 dated September 28, 2015].

17. Are there any default requirements as to the selection of a tribunal?

If the parties to a domestic arbitration or international commercial arbitration fail to agree on the number of arbitrators, the arbitral tribunal shall be composed of three (3) arbitrators [ADR Act IRR, Arts. 4.10 and 5.9].

In domestic arbitration and international commercial arbitration, in the event that (a) a party refuses to nominate an arbitrator, (b) the parties, or the two (2) arbitrators, fail to arrive at an agreement as to the sole arbitrator, or the third arbitrator, as required under the rules, or (c) a third-party or institution fails to perform its function under their procedures, and in the absence of any appointment procedure agreed upon by the parties, the National President of the IBP or his/her duly authorized representative is authorized to take the necessary measures to appoint an arbitrator [ADR Act IRR, Arts. 4.11 and 5.10].

18. Can the local courts intervene in the selection of arbitrators? If so, how?

Yes, the Regional Trial Court may intervene in the selection of arbitrators in the following specific instances:

a. In institutional arbitration, the court can intervene in the selection of arbitrators if: (i) a party fails or refuses to appoint an arbitrator, the parties fail to agree on the sole arbitrator, or when two (2) designated arbitrators fail to agree on the third or presiding arbitrator; and (ii) the institution fails or is unable to perform its duty as appointing authority within a reasonable time from receipt of the request for appointment [Special ADR Rules, Rule 6.1(a)];
b. In *ad hoc* arbitration, the court can intervene in the selection of arbitrators if: (i) the parties failed to provide a method for appointing or replacing an arbitrator, or substitute arbitrator, or the method agreed upon is ineffective; and (ii) the National President of the IBP, or his duly authorized representative, fails or refuses to act within the required period under pertinent rules, or as agreed upon by the parties, or, in the absence thereof, within thirty (30) days from receipt of such request for appointment [Special ADR Rules, Rule 6.1(b)]; and
c. Where the parties agreed that their dispute shall be resolved by three arbitrators but no method of appointing those arbitrators has been agreed upon, each party shall appoint one arbitrator and the two (2) arbitrators thus appointed shall appoint a third arbitrator. If a party fails to appoint his arbitrator within thirty (30) days of receipt of a request to do so from the other party, or if the two (2) arbitrators fail to agree on the third arbitrator within a reasonable time from their appointment, the appointment shall be made by the Appointing Authority. If the latter fails or refuses to act or appoint an arbitrator within a

reasonable time from receipt of the request to do so, any party or the appointed arbitrator/s may request the court to appoint an arbitrator or the third arbitrator as the case may be [Special ADR Rules, Rule 6.1(c)].

19. Can the appointment of an arbitrator be challenged? What are the grounds for such challenge? What is the procedure for such challenge?

Yes. In domestic arbitration and international commercial arbitration, the appointment of an arbitrator can be challenged if (a) circumstances exist that give rise to justifiable doubts as to his or her impartiality or independence, or (b) he or she does not possess qualifications agreed upon by the parties. A party in international commercial arbitration may challenge an arbitrator appointed by him/her, or in whose appointment he/she has participated, only for reasons of which he/she becomes aware after the appointment has been made [ADR Act IRR, Article 4.12 and 5.11]. In domestic arbitration, an arbitrator may also be challenged if (i) he or she is disqualified to act as arbitrator under the ADR Rules, or (ii) he or she refuses to respond to questions by a party regarding the nature and extent of his professional dealings with a party or counsel [ADR Act, Article 5.11].

Parties are free to agree on the procedure to challenge the appointment of arbitrators. In the absence of any such agreement, a party may challenge an arbitrator by filing a written statement within fifteen (15) days from knowledge of the constitution of the arbitral tribunal or the circumstance which gives rise to grounds to challenge the appointment. Unless the challenged arbitrator withdraws from his or her office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge. In case of an unsuccessful challenge, the challenging party may file a request with the appointing authority to decide on the challenge within thirty (30) days after having received notice of the decision rejecting the challenge. The appointing authority's decision shall be immediately executory and not subject to appeal or motion for reconsideration [ADR Act IRR, Article 4.13 and 5.12].

Under the PICCR Rules, a challenge must be submitted by a party either within thirty (30) days from receipt by that party of the notification of the appointment or confirmation of the arbitrator, or within thirty (30) days from the date when the party making the challenge was informed of the facts and circumstances on which the challenge is based if such date is subsequent to the receipt of such notification [PICCR Rules, Article 14(2)].

A party may also petition the Regional Trial Court to rule on its objection on the appointment of an arbitrator. When an arbitrator is challenged before the arbitral tribunal under the procedure agreed upon by the parties or under the procedure provided for in Article 13 (2) of the Model Law, and the challenge is not successful, the aggrieved party may request the appointing authority to rule on the challenge, and it is only when such appointing authority fails or refuses to act on the challenge within such period as may be allowed under the applicable rule or, in the absence thereof, within thirty (30) days from receipt of the request, that the aggrieved party may renew the challenge in court [Special ADR Rules Rule 7.2]. Under the Special ADR Rules, a party may challenge the appointment of an arbitrator by filing a petition with the 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 [Special ADR Rules Rule 7.3]. 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 [Special ADR Rules, Rule 7.5].

20. Have there been any recent developments concerning the duty of independence and impartiality of the arbitrators, including the duty of disclosure?

In *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 CIAC in construction disputes in the Philippines. Under these guidelines, the Court of Appeals may only 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) or that the CIAC's actions in the arbitral process are unconstitutional or invalid.

The Philippine Supreme Court has emphasized in *Wyeth Philippines, Inc. v. Construction Industry Arbitration Commission* [G.R. No. 220045-48, June 22, 2020] that "when the integrity of the arbitral tribunal itself has been jeopardized", the courts may review the factual findings of the arbitral tribunal. In this case, the arbitral tribunal recalled the appointment of one of the arbitrators and

directed the two members to choose a replacement from the list of accredited arbitrators who was not a nominee of any of the parties. The arbitral tribunal then issued its award after the conduct of hearings, submission of parties' memoranda, and offers of exhibits. The Supreme Court did not review the factual findings of the arbitral tribunal because the petitioner in the case failed to allege and prove that the integrity of the arbitral tribunal was jeopardized.

The Philippine Supreme Court in *Tri-Mark Foods, Inc. v. Gintong Pansit, Atbp, Inc.* [G.R. No. 215644, September 14, 2021] stated that it adopts the "reasonable impression of partiality standard" which "requires a showing that a reasonable person would have to conclude that an arbitrator was partial to the other party to the arbitration." It adds that "[s]uch interest or bias, moreover, 'must be direct, definite and capable of demonstration rather than remote, uncertain, or speculative.'" Further, "[w]hen a claim of arbitrator's evident partiality is made, 'the court must ascertain from such record as is available whether the arbitrators' conduct was so biased and prejudiced as to destroy fundamental fairness.'"

21. What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?

The ADR Act, the ADR Act IRR, and the 1985 Model Law do not have provisions addressing the ability of a truncated tribunal to continue with the proceeding while the vacancy has not been filled. In this regard, the ADR Act provides that if the mandate of any member of an arbitral tribunal terminates by reason of withdrawal, resignation, failure or incapability of performing his or her functions, or challenge by a party, a substitute arbitrator can be appointed according to rules applicable to the arbitrator being replaced, such as the ADR Act IRR or the 1985 Model Law [ADR Act IRR, Article 4.15 and 5.14].

The parties may seek guidance from the rules of the arbitral institution they selected to govern the arbitration, if any, in case of a truncated tribunal. For example:

a. for arbitrations administered by the PDRCI, if an arbitrator is replaced, the proceedings will resume at the stage where the arbitrator who was replaced ceased to perform his/her functions without repeating the previous hearings, unless the arbitral tribunal decides otherwise [PDRCI Rules, Article 23]; and
b. for arbitrations administered by the PICCR, once a truncated tribunal is reconstituted, and after having invited the parties to comment, the arbitral tribunal will determine if and to what extent prior proceedings shall be repeated before the reconstituted arbitral tribunal. Further, after the closing of the proceedings, instead of replacing an arbitrator who has died or been removed by the PICCR the PICCR may decide, when it considers it appropriate, that the remaining arbitrators shall continue the arbitration. In making such a determination, the PICCR shall take into account the views of the remaining arbitrators and of the parties and such other matters that it considers appropriate in the circumstances [PICCR Rules, Article 15].

22. Are arbitrators immune from liability?

Arbitrators cannot 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 [ADR Act IRR, Article 1.5 in relation to Section 38(1), Chapter 9, Book 1, Administrative Code of 1987].

Arbitrators, however, may be held to answer for any violation of a confidentiality or protective order issued by a court [Special ADR Rules, Rule 10].

23. Is the principle of competence-competence recognised in your country?

Yes, the principle of competence-competence is recognized in the Philippines.

The 1985 Model Law, which applies to international commercial arbitration seated in the Philippines [ADR Act, Section 19], recognizes the principle of competence-competence. Under Article 16, the arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement.

The Special ADR Rules recognizes the principle of competence-competence in arbitration. Rule 2.2 states: "The Special ADR Rules recognize the principle of competence-competence, which means that the arbitral tribunal may initially rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement or any condition precedent to the filing of a request for arbitration."

In this connection, under Rule 2.4 of the Special ADR Rules, the arbitral tribunal is given the first opportunity to rule on the issue of whether it has jurisdiction to decide the dispute submitted to it. This includes any objections with respect to the validity of the arbitration agreement or any condition precedent to the filing of a request for

arbitration. Additionally, when a court is tasked to rule upon an issue affecting the jurisdiction or competence of an arbitral tribunal, the rules mandate that the court exercises restraint and defers to the jurisdiction of the arbitral tribunal by allowing it first to rule upon the issue.

Also, under Rule 2.4 of the Special ADR Rules, when a court is asked to decide as to whether an arbitral agreement is null and void, inoperative, or incapable of being performed, the court is limited to only making a prima facie determination of the issue. Unless the court determines that the arbitration agreement is indeed null and void, inoperative, or incapable of being performed, it must refer the parties to arbitration. However, Rule 3.11 of the Special ADR Rules states that such prima facie determination will not prejudice the right of a party to raise the issue of the existence, validity, and enforceability of the arbitration agreement before the arbitral tribunal or the Regional Trial Court (RTC) in an action to vacate or set aside the arbitral award. In such case, the RTC's review of the arbitral tribunal's ruling upholding the existence, validity, or enforceability of the arbitration agreement shall no longer be limited to a mere prima facie determination but shall be a full review of such issue with due regard to the standard for review for arbitral awards.

In any case, after the commencement of arbitration, any party to the arbitration may petition the RTC for judicial relief from the ruling of the arbitral tribunal on a preliminary question upholding or declining its jurisdiction [Special ADR Rules, Rule 3.12]. Nevertheless, should the arbitral tribunal defer its ruling on a preliminary question regarding its jurisdiction until its final award, the aggrieved party is not allowed to seek judicial relief to question the deferral and must await the final arbitral award before seeking judicial recourse [Special ADR Rules, Rule 3.20].

Thus, only after the arbitral tribunal shall have already ruled on the issue of jurisdiction may the aggrieved party seek judicial recourse against submitting itself to the process of arbitration [See *Cagayan De Oro City Water District v. Pasal*, G.R. No. 202305, November 11, 2021].

24. What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?

The ADR Act 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. Under Rule 2.2 of the Special ADR Rules, when the parties have agreed to submit their dispute to arbitration, the courts shall refer the parties to arbitration bearing in mind that the arbitration agreement is law between the parties and that they are expected to abide by it in good faith.

Under the Special ADR Rules, the other party may file a motion to request the court to refer the parties to arbitration not later than the pre-trial conference in the court litigation [Special ADR Rules, Rule 4.1 and Rule 4.2]. After an exchange of pleadings and the conduct of a hearing, the court shall stay the action and either (1) refer the parties to arbitration if it finds, prima facie and based on the pleadings and supporting documents submitted by the parties, that there is an arbitration agreement and the subject matter of the dispute is capable of resolution by arbitration, or (2) continue with the judicial proceedings, if otherwise [Special ADR Rules, Rule 4.5].

When the court refers the dispute to arbitration, such order cannot be subject to a motion for reconsideration, appeal, or petition for certiorari [Special ADR Rules, Rule 4.6].

25. What happens when a respondent fails to participate in the arbitration? Can the local courts compel participation?

When respondent fails to communicate their statement of defense, the arbitral tribunal shall continue the proceedings. Such failure to communicate the statement of defense will not, by itself, be deemed an admission of the claimant's allegations. Further, if any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it [ADR Act IRR, Articles 4.25 and 5.25].

The ADR Act allows for a party to a court litigation, regarding a matter which is the subject matter of an arbitration agreement, to petition the court to refer the parties to arbitration. Such petition must be filed not later than the pre-trial conference. The court may deny the petition if, among other grounds, it finds the arbitration agreement is null and void, inoperative, or incapable of being performed [ADR Act, Section 24].

Rule 4 of the Special ADR Rules provides for the procedure for referral to ADR by a party to a pending action in violation of an arbitration agreement. If the court issued an order referring the dispute to arbitration, such order is immediately executory and shall not be subject to a motion for reconsideration, appeal, or petition for certiorari of the parties.

26. Can third parties voluntarily join arbitration proceedings? If all parties agree to the intervention, is the tribunal bound by this agreement? If all parties do not agree to the intervention, can the tribunal allow for it?

Yes, third parties can voluntarily join arbitration proceedings. A claimant can include persons who are not parties to the arbitration agreement as additional claimants or respondents [ADR Act IRR, Article 5.44]. Both the respondent and additional respondents shall be deemed to have consented to such inclusion unless they object, on jurisdictional grounds, to the inclusion. The Regional Trial Courts may issue an order directing the inclusion in arbitration of those parties who are not bound by the arbitration agreement but who agree to such inclusion provided that those originally bound do not object [Special ADR Rules, Rule 4.7].

The PDRCI Rules and the PICCR Rules both allow a party wishing to join an additional party to the arbitration to submit the appropriate request to the institution or the tribunal once constituted.

The PDRCI Rules provides that the PDRCI or the arbitral tribunal shall have the power to allow an additional party to be joined to the arbitration if there is a prima facie determination that an arbitration agreement exists and it binds all the parties, including the additional parties [PDRCI Rules, Article 7].

The PICCR Rules provides that an additional party may be joined even after the confirmation or appointment of an arbitrator, if all parties, including the additional party, agree [PICCR Rules, Article 7].

If not all the parties agree to the intervention, then the arbitral tribunal may apply the principle that it cannot acquire jurisdiction if the parties do not agree to submit their dispute to the arbitral process [See *Spouses Ang v. De Venecia*, G.R. No. 217151, 12 February 2020].

27. What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?

The 1985 Model Law recognizes that it is not incompatible with an arbitration agreement for a party to request, before or during proceedings, that interim measures of protection be issued by a court [1985 Model Law, Article 9].

The ADR Act, the ADR Act IRR, and the Special ADR Rules provide for the grant of interim measures of protection based on the following grounds: (a) to prevent irreparable loss or injury, (b) to provide security for the performance of any obligation, (c) to produce or preserve any evidence, or (d) to compel any other appropriate act or omission. Specifically, the following interim measures of protection may be granted by the Regional Trial Courts: (1) preliminary injunction directed against a party to arbitration, (2) preliminary attachment against property or garnishment of funds in the custody of a bank or third person, (3) appointment of a receiver, (4) detention, preservation, delivery, or inspection of property, or (5) assistance in the enforcement of an interim measure of protection granted by an arbitral tribunal [Special ADR Rules, Rule 5.6]. The ADR Act and the ADR Act IRR also grant the arbitral tribunal, itself, at the request of any party, the power to order any party to take such interim measures of protection as the tribunal may deem necessary based on the grounds provided including items 1 to 4 discussed above.

Yes, local courts can issue interim measures pending the constitution of the arbitral tribunal. A petition for an interim measure of protection may be filed with the Regional Trial Courts (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 [Special ADR Rules, Section 5.2].

28. Are anti-suit and/or anti-arbitration injunctions available and enforceable in your country?

An anti-suit injunction is in the nature of a preliminary injunction and may be sought from an arbitral tribunal or a Philippine court to restrain a party from pursuing a court or arbitration proceeding in breach of an arbitration agreement.

Generally, after arbitration commences, a court cannot enjoin the arbitral tribunal from continuing the proceedings and rendering its award despite the pendency of the petition before the court [Special ADR Rules, Rule 3.18]. Nonetheless, a petition may be filed in court to seek judicial relief from the ruling of the arbitral tribunal on a preliminary question upholding or declining its jurisdiction [Special ADR Rules, Rule 3.12].

However, before the commencement of arbitration, a petition may be filed in court to question the existence, validity, and enforceability of the arbitration agreement

[Special ADR Rules, Rule 3.2]. The petitioner may also apply for a preliminary injunction [Special ADR Rules, Rule 5.6(a) in relation to Rule 3.10]. However, in resolving the petition, the court must exercise judicial restraint, deferring to the competence or jurisdiction of the arbitral tribunal to rule on its competence or jurisdiction [Special ADR Rules, Rule 3.8]. A prima facie determination by the court upholding the existence, validity, or enforceability of the arbitration agreement shall not be subject to a motion for reconsideration, appeal, or certiorari [Special ADR Rules, Rule 3.11].

29. Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence? Can local courts compel witnesses to participate in arbitration proceedings?

The arbitral tribunal has the power to determine the admissibility, relevance, materiality, and weight of any evidence [1985 Model Law, Article 19(2); ADR Act, Article 19(2); ADR Act IRR, Articles 4.19 and 5.18]. The arbitral tribunal can decide whether to hold hearings for the presentation of evidence or whether the proceedings shall be conducted on the basis of documents and other materials [1985 Model Law, Article 24]. The arbitral tribunal or a party with the approval of the arbitral tribunal may request from a competent court assistance in taking evidence [1985 Model Law, Article 27].

The parties may offer such evidence as they desire, and shall produce such additional evidence as the arbitrators shall require or deem necessary to an understanding and determination of the dispute [Arbitration Law, Section 15]. 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. Arbitrators shall receive as exhibits in evidence any document which the parties may wish to submit and the exhibits shall be properly identified at the time of submission. The arbitrators may make an ocular inspection of any matter or premises which are in dispute, but such inspection shall be made only in the presence of all parties to the arbitration, unless any party who shall have received notice thereof fails to appear, in which event such inspection shall be made in the absence of such party.

Parties generally offer testimonial evidence of an ordinary or expert witness, as well as documentary evidence supporting the testimony of its witnesses. Parties are given the opportunity to submit judicial affidavits of their witnesses, to which are attached the documentary evidence relevant to the testimony. The opposing party will be given an opportunity to cross-examine the witness during a hearing, where the tribunal may also ask clarificatory questions. In this regard, the parties may agree that the IBA Rules on the Taking of Evidence in International Commercial Arbitration or the Prague Rules on the Efficient Conduct of Proceedings in Arbitration, or other similar international rules, be taken into account by, or at the least guide, the arbitrators.

Under the CIAC Rules, an arbitral tribunal is not bound by technical evidentiary rules. Aside from witness testimonies and documentary evidence, the arbitral tribunal may also conduct a site inspection of any building, place or premises, or require video presentations [CIAC Rules, Rules 13.5 to 13.10].

Unless otherwise agreed by the parties, the arbitral tribunal may also (i) appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal; and (ii) require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection. Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue [ADR Act, Article 26; ADR Act IRR, Article 4.26].

Local courts can render assistance to an arbitral tribunal with respect to taking evidence, such as issuing orders to direct a witness to comply to a subpoena issued by an arbitral tribunal [Special ADR Rules, Rule 9.5; ADR Act, Article 27].

30. What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your country?

There is no specific mandatory code of ethics applicable to arbitrators, but parties may agree to adopt rules of ethics, such as the Rules of Ethics for International Arbitrators adopted by the IBA or the IBA Guidelines on Conflicts of Interest in International Arbitration, which were also adopted by the PDRCI and PICCR. Aside from these, the PDRCI also adopted the IBA Guidelines on Party Representation in International Arbitration, to the extent they do not conflict with any provision of Philippine law [Annex A of the PDRCI Rules, Article 5]. The Philippine Institute of Arbitrators has also issued a Code

of Professional Responsibility for its members. Likewise, if the arbitrator or counsel is a Philippine lawyer, the Code of Professional Responsibility and Accountability promulgated by the Philippine Supreme Court for lawyers will apply.

31. In your country, are there any rules with respect to the confidentiality of arbitration proceedings?

Arbitration proceedings, including records, evidence, and the arbitral award, are generally considered confidential and cannot be published. The exceptions are: (a) when the parties give their consent; or (b) when judicial resort is allowed, for the limited purpose of disclosing to the court relevant documents [ADR Act, Section 23; CIAC Rules, Rule 7.1].

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, the Special ADR Rules specifically provide that a party, counsel, or witness who disclosed or who was compelled to disclose information relative to the subject of ADR under circumstances that would create a reasonable expectation that the information shall be kept confidential, can prevent such information from being further disclosed without the express written consent of the source or the party who made the disclosure [Special ADR Rules, Rule 10.1]. For this purpose, a party may file a petition for a protective order with the Regional Trial Court where that order would be implemented, any time there is a need to enforce the confidentiality of the information obtained, or to be obtained, in the ADR proceedings [Special ADR Rules, Rule 10.2]. 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 ADR proceeding [Special ADR Rules, Rule 10.4]. Further, if there is a pending court proceeding in which the information obtained in an ADR 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 [Special ADR Rules, Rule 10.3].

32. How are the costs of arbitration proceedings estimated and allocated? Can pre- and post-award interest be included on the principal claim and costs incurred?

In principle, the costs of arbitration shall be borne by the unsuccessful party. The arbitral tribunal may, however, apportion between the parties such costs if apportionment is reasonable, based on the circumstances [ADR Act IRR, Articles 4.46(d) and 5.46(d)].

Notably, the Philippine Civil Code provides for specific instances when reasonable amounts for attorney's fees and expenses of litigation may be awarded, in the absence of the parties' agreement [Philippine Civil Code, Article 2208].

Since attorney's fees and expenses of litigation are in the concept of actual or compensatory damages, a party is entitled to such as he has duly proved [Philippine Civil Code, Article 2199].

33. What legal requirements are there in your country for the recognition and enforcement of an award? Is there a requirement that the award be reasoned, i.e. substantiated and motivated?

The Philippines is a party to the New York Convention. Consequently, the provisions on recognition and enforcement of an award under the ADR Act and Special ADR Rules are consistent with the New York Convention.

The petition for enforcement and recognition of an arbitral award may be filed anytime from receipt of the award [Special ADR Rules, Rule 12.2(A)], 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 [Special ADR Rules, Rule 12.3]. The petition shall be verified by a person who has personal knowledge of the facts stated therein [Special ADR Rules, Rule 12.6]. Further, it shall state the following: (i) the addresses of record, or any change thereof, of the parties to arbitration; (ii) a statement that the arbitration agreement or submission exists; (iii) the names of the arbitrators and proof of their appointment; (iv) a statement that an arbitral award was issued and when the petitioner received it; and (v) the relief sought. The following shall also be attached: (a) an authentic copy of the arbitration agreement; (b) an authentic copy of the arbitral award; (c) a verification and certification

against forum shopping executed by the applicant; and (d) an authentic copy or authentic copies of the appointment of an arbitral tribunal [Special ADR Rules, Rule 12.7].

Yes, it is required that the award be reasoned, i.e., substantiated and motivated. It "shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms" [ADR IRR, Article 4.31(b)].

34. What is the estimated timeframe for the recognition and enforcement of an award? May a party bring a motion for the recognition and enforcement of an award on an ex parte basis?

For a domestic arbitral award, a petition for confirmation may be filed at any time after the lapse of thirty (30) days from receipt by the petitioner [Special ADR Rules, Rule 11.2(A)]. If the court finds that the petition filed is sufficient in form and substance, the court shall cause notice and a copy of the petition to be delivered to the respondent allowing the respondent to file a comment or opposition thereto within fifteen (15) days from receipt of the petition. The petitioner may, within fifteen (15) days from receipt of the petition in opposition thereto, file a reply [Special ADR Rules, Rule 11.7]. If the court finds that there are issues of fact in the petition or petition in opposition thereto, the court shall require the parties, within fifteen (15) days from receipt of the order, to simultaneously submit the affidavits of their witnesses, and reply affidavits within ten (10) days from receipt of the affidavits to be replied to [Special ADR Rules, Rule 11.8].

For an international commercial arbitral award, a petition for recognition and enforcement may be filed anytime from receipt of the award [Special ADR Rules, Rule 12.2(A)]. If the court finds that the petition 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. Instead of an opposition, the respondent may file a petition to set aside in opposition to a petition to recognize and enforce. The petitioner may, within fifteen (15) days from receipt of the petition to set aside in opposition to a petition to recognize and enforce, file a reply [Special ADR Rules, Rule 12.8]. 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, within fifteen (15) days from receipt of the order. If the court finds from the petition or petition in opposition thereto that there are issues of fact relating to the grounds relied upon for the court to set aside, it shall require the parties, within fifteen (15) days from receipt of the order, simultaneously to submit the affidavits of their witnesses and reply affidavits within ten (10) days from receipt of the affidavits to be replied to [Special ADR Rules, Rule 12.9].

For a foreign arbitral award, a petition for recognition and enforcement of the award may be filed any time after receipt of the award [Special ADR Rules, Rule 13.2]. If the court finds 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, allowing the respondent to file an opposition thereto within thirty (30) days from receipt of the notice and petition [Special ADR Rules, Rule 13.6]. 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, within thirty (30) days from receipt of the order. If, from a review of the petition or opposition, there are issues of fact relating to the ground/s relied upon for the court to refuse enforcement, the court shall, motu proprio or upon request of any party, require the parties to simultaneously submit the affidavits of their witnesses within fifteen (15) to thirty (30) days from receipt of the order. The court may, upon the request of any party, allow the submission of reply affidavits within fifteen (15) to thirty (30) days from receipt of the order granting said request [Special ADR Rules, Rule 13.8].

However, whether these time frames are followed largely depends on the discretion of the presiding judge of the court where the petition is filed.

A party may not bring a petition for recognition and enforcement of an award on an ex parte basis as the rules provide that the court shall cause notice and a copy of the petition to be delivered to the respondent, and for the respondent to file a comment or opposition [Special ADR Rules, Rules 11.7, 12.8, and 13.6].

35. Does the arbitration law of your country provide a different standard of review for recognition and enforcement of a foreign award compared with a domestic award?

Yes, the rules provide for slightly different grounds upon which the court may rule to: (a) vacate a domestic arbitral award, (b) set aside an international commercial arbitral award, and (c) refuse recognition and enforcement of a foreign arbitral award [Special ADR Rules, Rules 11.4, 12.4, and 13.6]. Please see discussion in No. 37 below.

36. Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts?

Yes, the rules impose limits on the available remedies as the arbitral award may be subject to a petition to vacate a domestic arbitral award, petition to set aside international commercial arbitral award, and petition to refuse recognition and enforcement of a foreign arbitral award, under the grounds set forth in the rules (Please see discussion in No. 37 below for the grounds). As such, if such grounds are proved, the remedies provided in the arbitral award affected will not be enforced.

37. Can arbitration awards be appealed or challenged in local courts? What are the grounds and procedure?

For a domestic arbitral award, a petition for vacation may be filed. The grounds for vacating a domestic arbitral award are:

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 [Special ADR Rules, Rule 11.4(A)].

For an international commercial arbitral award, a petition for setting aside the award may be filed. Any other recourse from the arbitral award, such as by appeal or petition for review or petition for certiorari or otherwise, shall be dismissed by the court [Special ADR Rules, Rule 12.5]. The grounds for which the court may set aside or refuse enforcement of the award are:

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. The party making the application to set aside or resist enforcement 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 arbitral award which contains decisions on matters not submitted to arbitration may be set aside or only that part of the arbitral 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 [Special ADR Rules, Rule 12.4].

The grounds for setting aside or refusing enforcement of an international commercial arbitral award mentioned above are also the same grounds for refusing the recognition and enforcement of a foreign arbitral award.

Final awards in a commercial arbitration, whether in a domestic arbitration or an international commercial arbitration seated in the Philippines, may not be appealed before the Philippine courts. However, final awards in a CIAC arbitration may be appealed to the Court of Appeals or the Supreme Court. The Philippine Supreme Court, in the case of *Global Medical of Laguna, Inc. v. Ross Systems International, Inc.* [G.R. No. 230112. 11 May 2021], clarified that such CIAC final awards: (i) should be appealed to the Supreme Court through a Rule 45 petition for review on certiorari if the issue raised is a pure question of law; and (ii) may be appealed to the Court of Appeals if the issues raised are questions of fact, whose factual issues shall be limited to those that pertain to either a challenge on the integrity of the CIAC arbitral tribunal (*i.e.*, allegations of corruption, fraud, misconduct,

evident partiality, incapacity or excess of powers within the tribunal) or an allegation that the arbitral tribunal violated the Philippine Constitution or positive law in the conduct of the arbitral process. The Court of Appeals may conduct a factual review only upon sufficient and demonstrable showing that the integrity of the CIAC arbitral tribunal had indeed been compromised, or that it committed unconstitutional or illegal acts in the conduct of the arbitration.

38. Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?

In an arbitration agreement, parties may expressly waive the right to appeal or challenge an award of an arbitral tribunal before any dispute arises. The waiver is allowed under Article 6 of the Philippine Civil Code which provides that "rights may be waived, unless the waiver is contrary to law, public order, public policy, morals or good customs, or prejudicial to a third person with a right recognized by law." In this connection, the waiver of the right to appeal or challenge an arbitral award is not contrary to, but is in fact consistent with, Rule 19.7 of the Special ADR Rules that provides that a party to an arbitration agreement is precluded from filing an appeal or petition for certiorari questioning the merits of an arbitral award. The waiver may also be implied from the parties' agreement to be bound by a set of arbitral rules that prohibit appeals or challenges of arbitral awards.

However, parties cannot waive the grounds to vacate or set aside the decision of an arbitral tribunal as this would be contrary to law. The court may still vacate or set aside the arbitral award in an arbitration seated in the Philippines provided that the grounds for vacating or setting aside such arbitral award under the Special ADR Rules is proved [Special ADR Rules, Rule 19.10]. These grounds are those found under the Arbitration Law, the ADR Act, and the UNCITRAL Model Law. The court may also deny recognition and enforcement of a foreign arbitral award provided that the grounds for refusing recognition and enforcement of such arbitral award under the Special ADR Rules is proved. These grounds are those found under the New York Convention and the UNCITRAL Model Law. However, the court has no power to vacate or set aside a foreign arbitral award [Special ADR Rules, Rule 19.11]

39. In what instances can third parties or non-signatories be bound by an award? To what extent might a third party challenge the recognition of an award?

Contracts, such as an arbitration agreement, generally take effect only between the parties, their assigns, and heirs [Philippine Civil Code, Article 1311]. As such, as a general rule, a third party cannot be bound by an arbitration agreement and, subsequently, an arbitral award. There are, however, known exceptions to the relativity of contracts, which include: (i) the doctrine of piercing the veil of corporate fiction, and (ii) when an agent signs on behalf of the principal and in accordance with the orders of the principal. The Philippine Supreme Court, however, has not applied these exceptions in order to bind a third party to an arbitration award issued in an arbitration proceeding in which the third party did not participate.

Third parties or non-signatories to an arbitration agreement may be bound by an award if they agree to be part of the arbitration proceedings. In this regard, joinder of third parties may be allowed under the circumstances provided in the applicable arbitration rules, and in the ADR Act IRR in case of ad hoc arbitrations. The PDRCI Rules and the PICCR Rules both allow a party wishing to join an additional party to the arbitration to submit the appropriate request to the institution or the tribunal once constituted. Third parties who are not joined as parties in the arbitration proceedings (whether domestic, international commercial, or foreign) in accordance with the rules stated above may not challenge the recognition of an award.

In arbitration proceedings before the CIAC, the CIAC has exercised its jurisdiction over a surety who was not party to the construction contract in dispute, finding that "[a]lthough not the construction contract itself, the performance bond is deemed as an associate of the main construction contract that it cannot be separated or severed from its principal." [*El Dorado Consulting Realty and Development Group Corp. v. Pacific Union Insurance Company*, G.R. Nos. 245617 & 245836, November 10, 2020]. Furthermore, the Supreme Court has also held that a "non-party to a construction contract containing an arbitration clause can be bound by such arbitration clause depending on such party's ties to the construction contract subject of the dispute." [*The Consortium of Hyundai Engineering Co., Ltd. and Hyundai Corp. v. National Grid Corporation of the Philippines*, G.R. Nos. 214743 & 248753, December 4, 2023].

40. Have there been any recent court decisions in

your jurisdiction considering third party funding in connection with arbitration proceedings?

There is currently no Philippine Supreme Court ruling on the validity of a third-party funding in connection with an arbitration proceeding. We note that there are no restrictions on the use of contingency or alternative fee arrangements for arbitrations conducted in the Philippines.

Having said that, third-party funding arrangements should avoid elements of a champertous contract which is prohibited under Philippine law for being contrary to public policy. A contract is considered as champertous if a stranger to a suit undertakes to carry on the litigation at his own cost and risk, in consideration of receiving, if successful, a part of the proceeds or subject sought to be recovered [*RODCO Consultancy and Maritime Services Corporation v. Ross,* G.R. No. 259832, November 6, 2023]. Philippine courts have ordinarily applied this prohibition to lawyers. The Philippine Supreme Court, however, in *RODCO Consultancy*, applied the prohibition to a third-party attorney-in-fact who colluded with a party's lawyer to finance a litigation.

41. Is emergency arbitrator relief available in your country? Are decisions made by emergency arbitrators readily enforceable?

Yes, emergency arbitrator relief is available in the Philippines. The ADR Act and its implementing rules and regulations do not specifically mention such relief. Nevertheless, such relief is provided under the PDRCI Rules and the PICCR Rules.

Under the PICCR Rules, 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 pursuant to the Emergency Arbitration Rules of the PICCR [PICCR Rules, Article 30, Par. 1]. The decision of the emergency arbitrator shall take the form of an order and the parties to the arbitration agreement undertake to comply with any order made by the emergency arbitrator [PICCR Rules, Article 30, Par. 2]. Note, however, that the orders of the emergency arbitrator shall not bind the arbitral tribunal with respect to any question, issue or dispute determined in the order. Likewise, the arbitral tribunal may modify, terminate or annul the order or any modification thereto made by the emergency arbitrator [PICCR Rules, Article 30, Par. 3].

With regard to the PDRCI Rules, a party may apply for an interim measure with or following the filing of a Notice of Arbitration but prior to the constitution of the arbitral tribunal [PDRCI Rules, Article 58, Par. 1]. The general rule is that an emergency decision is binding. However, it ceases to be binding when any of the following instances are present: (a) upon the arbitral tribunal rendering a final award, unless the arbitral tribunal expressly decides otherwise; (b) upon the withdrawal of all claims or the termination of the arbitration before the rendering of a final award; or (c) if the arbitral tribunal is not constituted within ninety (90) days from the date of the emergency decision, unless this period is extended by the agreement of the parties or by PDRCI [PDRCI Rules, Article 58, Par. 14]. Similar to the PICCR Rules, any emergency decision may, upon request of a party, be modified, suspended or terminated by the arbitral tribunal, once constituted [PDRCI Rules, Article 58, Par. 15].

Considering that emergency arbitrator relief is not specifically mentioned under the ADR Act and its implementing rules and regulations, as well as under the Special ADR Rules, there may be some objections raised against the enforceability of emergency arbitrator reliefs.

In this connection, the ADR Act and Special ADR Rules enable Philippine courts to extend their assistance in the implementation or enforcement of an interim measure ordered by an arbitral tribunal [ADR Act, Section 28 (b)(6); and Special ADR Rules, Rule 5.6 (e)]. It may thus be argued that court assistance is limited only to the implementation or enforcement of an interim measure of protection granted by an arbitral tribunal which is constituted to resolve the parties' dispute. It arguably does not extend to interim measures of protection granted by an emergency arbitrator considering that, at the time the ADR Act and Special ADR Rules were enacted and promulgated (*i.e.*, 2004 and 2009, respectively), the concept of emergency arbitrators was non-existent. The Philippine Supreme Court has not ruled on this issue though.

42. Are there arbitral laws or arbitration institutional rules in your country providing for simplified or expedited procedures for claims under a certain value? Are they often used?

While expedited procedures are not specifically mentioned under the ADR Act and its implementing rules and regulations, both the PDRCI and PICCR arbitration rules provide for an expedited procedure for claims under a certain value. Under the PDRCI's expedited procedures, the case shall be heard by a sole arbitrator who is mandated to issue an award within six (6) months from the time PDRCI transmits the file to the former [PDRCI

Rules, Article 57, Par. 2]. Under PICCR's expedited procedures, the case shall also be submitted to a sole arbitrator [PICCR Rules, Appendix 2, Article 2, Par. 1]. Within fifteen (15) days from the time the file was transmitted to the arbitral tribunal, the parties shall be invited to a case management conference [PICCR Rules, Appendix 2, Article 3, Par. 3]. The arbitral tribunal is mandated to render its final award within six (6) months from the date of the case management conference [PICCR Rules, Appendix 2, Article 4, Par. 1]. Both procedures offered by the PDRCI and PICCR provide that the award shall be rendered solely on the basis of the documents submitted by the parties [PDRCI Rules, Article 57, Par. 2; and PICCR Rules, Appendix 2, Article 3, Par. 5].

The PDRCI Rules allow a party, prior to the constitution of the arbitral tribunal, to apply for expedited procedure where: (a) the amount in dispute representing the aggregate of any claim, counterclaim, or any other claim does not exceed Twenty-Five Million Pesos (PhP25,000,000.00) (about USD 441,500); or (b) the parties so agree; or (c) in cases of exceptional urgency [PDRCI Rules, Article 57, Par. 1].

Under the PICCR Rules, the parties who agree to arbitration under PICCR Rules agree that the expedited procedure provisions shall take precedence over any contrary terms of the arbitration agreement [PICCR Rules, Article 31, Par. 1]. The expedited procedure provisions shall apply if: (a) the amount in dispute does not exceed Twenty Million Pesos (PhP20,000,000.00) (about USD 353,000) at the time of the receipt of the answer to the request pursuant to Article 5 of the PICCR Rules, or upon expiry of the time limit for the Answer or at any relevant time thereafter; or (b) the parties so agree [PICCR Rules, Article 31, Par. 2]. The expedited procedure provisions shall not apply if (a) the parties have agreed to opt out of the expedited procedure provisions; or (b) the PICCR, upon request of a party before the constitution of the arbitral tribunal or on its own motion, determines that it is inappropriate in the circumstances to apply the expedited procedure provisions [PICCR Rules, Article 31, Par. 3].

In this connection, construction arbitrations under the CIAC Rules are, as a general rule, under an expedited procedure considering that CIAC arbitrators are mandated to issue their final award within six (6) months from the signing of the Terms of Reference or the termination of the preliminary conference [CIAC Rules, Section 16.1].

Considering that the rules on expedited procedures are relatively new, it may not be said that expedited procedures are often used in commercial arbitration under the PDRCI Rules or the PICCR Rules at this time.

Having said that, considering that a substantial majority of commercial arbitration in the Philippines involves construction disputes heard before the CIAC, it may be said that expedited procedures are often used in the Philippines.

43. Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted in your country? If so, how?

Currently, there is no active promotion of diversity in the choice of arbitrators and counsel. We note, however, that arbitration institutions such as the CIAC, PDRCI, and PICCR appear to consider diversity in their choice of arbitrators.

44. Have there been any recent court decisions in your country considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?

The Philippine Supreme Court has yet to issue a decision regarding the setting aside of an arbitral award that had already been enforced in another jurisdiction. Under the ADR Act and the Special ADR Rules, Philippine courts may not set aside foreign arbitral awards, regardless of whether they have been enforced in another jurisdiction.

45. Have there been any recent court decisions in your country considering the issue of corruption? What standard do local courts apply for proving of corruption? Which party bears the burden of proving corruption?

In *Tri-Mark Foods, Inc. v. Gintong Pansit, Atbp., Inc.* [G.R. No. 215644, September 14, 2021], while the Supreme Court reversed the decision of the Court of Appeals to vacate the arbitral award, it was emphasized that under Rule 11.4 of the Special ADR Rules, one of the grounds for vacating an arbitral award is if there was evident partiality or corruption in the arbitral tribunal or any of its members. The Supreme Court ruled that the Court of Appeals was correct when it based the vacation of the subject arbitral award on the evident partiality of the sole arbitrator because this is a recognized ground for vacating a domestic arbitral award. However, the Court of Appeals erred in the application of evident partiality as a ground for vacating the arbitral award. The alleged act of the arbitrator in disregarding the evidence does not automatically amount to evident partiality.

"Evident partiality" as a ground for vacating arbitral award was elaborated in *RCBC Capital Corp. v. Banco de Oro Unibank, Inc.* [G.R. Nos. 196171 & 199238, December 10, 2012], which was also cited in the case mentioned above. In *RCBC*, BDO moved to vacate the second partial award on the ground that the chairman of the arbitral tribunal acted with evident partiality in making the award. The Supreme Court agreed with the Court of Appeals' finding that the chairman's act of furnishing the parties with copies of a particular legal article, considering other attendant circumstances including that said legal article was only helpful to the claimant, was indicative of partiality such that a reasonable man would have to conclude that he was favoring the claimant.

The Supreme Court, in *Global Medical of Laguna, Inc. v. Ross Systems International, Inc.* [G.R. No. 230112, May 11, 2021], recently ruled that final awards in a CIAC arbitration may be appealed to the Court of Appeals or the Supreme Court, provided that the issues to be raised are questions of fact that shall be limited to those that pertain to either a challenge on the integrity of the CIAC arbitral tribunal (*i.e.* allegations of corruption, fraud, misconduct, evident partiality, incapacity or excess of powers within the tribunal) or an allegation that the arbitral tribunal violated the Philippine Constitution or positive law in the conduct of the arbitral process. The Supreme Court later reiterated, in several cases, that parties may appeal factual issues on limited grounds, such as where there are allegations of corruption, fraud, misconduct, evident partiality, incapacity or excess of powers within the tribunal [*Menlo Renewable Energy Corporation v. Edwards Marcs Philippines, Inc.*, G.R. No. 263531, February 13, 2023].

Having said that, the Supreme Court has not expressly set out the standard for local courts in proving corruption to vacate or set aside an arbitral award. As to which party bears the burden of proving corruption, it is a fundamental rule that the party who alleges an affirmative fact has the burden of proving it because mere allegation of the fact is not evidence of it [*Hilario v. Miranda*, G.R. No. 196499, November 28, 2018].

46. What measures, if any, have arbitral institutions in your country taken in response to the COVID-19 pandemic?

The CIAC issued Memorandum Circular No. 01-2020 or the *Guidelines on the Conduct of On-line or Virtual Proceedings for CIAC Cases* authorizing the arbitral tribunal or sole arbitrator to conduct online or virtual preliminary conferences, hearings, meetings and other case proceedings.

The PDRCI issued *Practice Note No. 1* or the *Guidelines on Online Meetings and Virtual Hearings,* providing that the arbitral tribunal has the discretion to conduct the arbitration in such manner as it considers appropriate, including the holding of online meetings and virtual hearings, provided that the parties are treated with equality and given a reasonable opportunity to present their case.

The PICCR issued *PICCR Guidance Note on Virtual Hearings* allowing the arbitral tribunal to conduct virtual hearings if the following specified pre-conditions are met:

a. The parties agree in writing to the holding of a virtual hearing or the tribunal determines that there are circumstances that warrant it;
b. In case the tribunal determines that a virtual hearing is warranted, the tribunal, after consulting the parties, issues a procedural order (a) in accordance with the applicable law, arbitration rules, and the best interest of the arbitration; and (b) stating a determination that the holding of a virtual hearing does not unduly cause a disadvantage to any party to the arbitration;
c. The applicable arbitration law and arbitration rules do not disallow the holding of virtual hearings; and
d. The minimum logistical, technological and security requirements described in the Note, or their substantive equivalent, are met [Secs. C.1.-4.].

47. Have arbitral institutions in your country implemented reforms towards greater use of technology and a more cost-effective conduct of arbitrations? Have there been any recent developments regarding virtual hearings?

Yes. As discussed above, the CIAC, PDRCI and PICCR have all issued guidelines on the conduct of virtual hearings. In addition, the CIAC Guidelines on the Conduct of On-line or Virtual Proceedings for CIAC Cases also provide for the use of an e-bundle of documentary evidence to be used in the examination or cross-examination of the witnesses who may be presented during the hearing. The parties may also agree on utilizing a shared virtual document repository to be available via computers at all locations of the participants of the telephone, video, or electronic conference, provided that the parties exert best efforts to ensure the security of all the documents.

48. Have there been any recent developments in your jurisdiction with regard to disputes on

climate change and/or human rights?

With regard to climate change disputes, on September 15, 2015, a Petition was filed by 31 individuals and non-government organizations with the Commission on Human Rights (CHR) requesting the investigation of the responsibility of the Carbon Majors for human rights violations or threats of violations resulting from the impacts of climate change. The Carbon Majors are defined in the Petition as the largest multinational and state-owned producers of crude oil, natural gas, coal, and cement.

In 2018, the CHR conducted eight sets of fact-finding and non-adversarial hearings open to the public. While the parties were given notices of the hearings, their participation was entirely voluntary. Numerous witnesses and resource speakers were presented by the Petitioners and invited by the Panel during the course of the hearings.

On May 6, 2022, the CHR published the Report declaring that climate change is real and concluding that climate change is a human rights issue in the Philippines. The CHR found that the Carbon Majors have a quantifiable and substantial contribution to climate change and that they had early awareness, notice, or knowledge of their products' adverse impact on the environment. In this regard, the CHR identified the following as potential sources of liability for the Carbon Majors:

a. Article 19 and 21 of the Civil Code of the Philippines based on acts of obfuscation, deception and misinformation contravening the standard of honesty and good faith expected of a person in the exercise of his rights;
b. Shareholders of fossil-based companies can hold companies to account for “continued investments in oil explorations for largely speculative purposes;"
c. Carbon Majors' “failure to comply with specific administrative or regulatory requirements, such as those in the nature of exacting transparency in business operations;" and
d. More glaring basis of liability such as in the case of *Kiobel v Royal Dutch Petroleum Co.* (569 U.S. 108 (2013).

While the Report is an important government issuance in that it makes new and strong pronouncements as to climate change, the CHR's power is limited to the conduct of investigations and does not extend to the imposition of any penalty. Consequently, its reports, including this Report, are only recommendatory and are not, in themselves, sources of liability or binding on any court or tribunal. Thus, any claims against the Carbon Majors will still have to be instituted through a separate proceeding in the appropriate court or tribunal.

In addition, in *Segovia v. Climate Change Commission* [G.R. No. 211010, March 7, 2017], the Supreme Court resolved the issue on whether the Philippine government's Climate Change Commission violated the Constitution by failing to enact climate-related transportation measures. Segovia et al. filed a petition for a Writ of Kalikasan and Continuing Mandamus to compel the Presidentially-created Climate Change Commission to implement a variety of measures to promote biking and walking and disincentivize car travel. While the Court ruled that Segovia et al. failed to establish all requisites for a Writ of Kalikasan, this case shows that a Writ of Kalikasan is a remedy available to climate change disputes.

Under the Rules of Procedure for Environmental Cases, a Writ of Kalikasan is available against an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces [Rule 7, Section 1].

The following can file a petition for Writ of Kalikasan:

1. natural and juridical persons;
2. entities authorized by law; and
3. public organizations, non-government organizations and public interest groups on behalf of persons whose right to a balanced and healthful ecology is violated or threatened to be violated [Rule 7, Section 1].

A petition for Writ of Kalikasan may be filed with the Supreme Court or the Court of Appeals [Rule 7, Section 3].

With regard to human rights disputes, on January 26, 2023, the Philippine government filed an appeal of the decision of the pre-trial chamber of the International Criminal Court (ICC) authorizing the prosecutor's resumption of the prosecutor's investigation in the Philippines, claiming that national authorities had begun their own investigations into cases of extrajudicial killings allegedly committed by the police in connection with former President Rodrigo Duterte's ‘war on drugs.' On July 18, 2023, the appeals chamber of the ICC confirmed the prosecutor's resumption of the investigation into alleged crimes against humanity in the Philippines.

Furthermore, in *Deduro v. Vinoya* [G.R. No. 254753, July 4, 2023], the Supreme Court ruled that the Writ of Amparo is available to victims of red-tagging (i.e., labelling of persons as criminals, terrorists or communists),

villification and guilt by association. Such acts threaten a person's right to life, liberty or security.

The Writ of Amparo is a remedy available to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity [Rule on the Writ of Amparo, Section 1]. It shall also cover the extralegal killings and enforced disappearances or threats thereof [Section 1].

A petition for the Writ of Amparo may be filed by the aggrieved party or by any qualified person or entity in the following order:

1. any member of the immediate family, namely: the spouse, children and parents of the aggrieved party;
2. any ascendant, descendant or collateral relative of the aggrieved party within the fourth civil degree of consanguinity or affinity, in default of those mentioned in the preceding paragraph; or
3. any concerned citizen, organization, association or institution, if there is no known member of the immediate family or relative of the aggrieved party [Section 2].

A petition for the Writ of Amparo may be filed with the Regional Trial Court of the place where any of the elements of the threat, act or omission occurred, the Sandiganbayan, the Court of Appeals, the Supreme Court, or any justice of such courts [Section 3].

49. Do the courts in your jurisdiction consider international economic sanctions as part of their international public policy? Have there been any recent decisions in your country considering the impact of sanctions on international arbitration proceedings?

Philippine courts do not appear to consider international economic sanctions as part of Philippine international public policy. At present, there are no recent decisions relating to the impact of sanctions on international arbitration proceedings.

50. Has your country implemented any rules or regulations regarding the use of artificial intelligence, generative artificial intelligence or large language models in the context of international arbitration?

The Philippines has neither issued nor implemented any rules or regulations regarding the use of artificial intelligence, generative artificial intelligence or large language models in the context of international arbitration at this time.

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