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The Legal 500 Country Comparative Guides

Philippines LITIGATION

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This country-specific Q&A provides an overview of litigation laws and regulations applicable in Philippines.

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PHILIPPINES LITIGATION



1. What are the main methods of resolving commercial disputes?

The main methods of resolving disputes in the Philippine Jurisdiction are court litigation and alternative dispute resolution, which includes mediation, conciliation, and arbitration. Arbitration is becoming an increasingly more popular method of dispute resolution with arbitration clauses being common stipulations found in commercial contracts.

2. What are the main procedural rules governing commercial litigation?

Court litigation in Philippine Jurisdiction is governed by the Rules of Court, which are promulgated by the Supreme Court of the Philippines. Recent amendments were introduced to expedite litigation, foremost of which is the requirement that a complaint must already be accompanied by the evidence which the plaintiff intends to present, such as the judicial affidavits of witnesses and documentary exhibits. Other significant amendments include the prohibition of several motions which tend to delay the proceedings, the requirement that pre-trial shall be immediately conducted before the judge instead of having a preliminary conference before the branch clerk of court, and the rule that initial presentation of evidence shall take place no later than 30 calendar days after termination of pre-trial.

For arbitration, initially, Republic Act No. 876 (Arbitration Law) governed domestic arbitration in the Philippines. Republic Act No. 9285, or the Alternative Dispute Resolution Act (ADR Act), was thereafter enacted, covering international commercial arbitration and amending certain provisions of the Arbitration Law. On the other hand, Executive Order No. 1008 (EO 1008) was enacted to cover the arbitration of construction disputes. The Supreme Court has likewise issued A.M. No. 07-11-08-SC or the Special Rules of Court on Alternative Dispute Resolution (Special ADR Rules) covering judicial reliefs in aid of, or in relation to, arbitration.

The parties to an arbitration agreement are also allowed to stipulate on the applicability of the rules of private arbitration institutions or to define their own rules of procedure.

3. What is the structure and organisation of local courts dealing with commercial claims? What is the final court of appeal?

There are four levels of courts in the Philippine Jurisdiction: municipal or metropolitan trial courts, regional trial courts, the Court of Appeals, and the Supreme Court. The Supreme Court is the final court of appeal.

Generally, in observance of the hierarchy of courts, cases are initially decided by the municipal or metropolitan trial courts, regional trial courts, depending on which court has the appropriate jurisdiction. The Court of Appeals serves as the appellate court, while the Supreme Court is a court of last resort.

In Philippine Jurisdiction, regional trial courts are assigned by Supreme Court to sit as Special Commercial Courts, to hear and decide commercial cases in their respective territorial jurisdictions. However, in the event that a Special Commercial Court is not designated in the territorial jurisdiction concerned, then the case will be assigned to a regional trial court, sitting as a court of general jurisdiction.

4. How long does it typically take from commencing proceedings to get to trial?

With the amendments introduced to the Rules of Court, it may be anticipated that proceedings will get to trial within six (6) months to one (1) year from the commencement of the action. Barring any extension for the filing of an answer and a motion to dismiss the case, and if the court's calendar will allow, it may be possible to get to trial within three (3) months from commencement of the action.

5. Are hearings held in public and are documents filed at court available to the public? Are there any exceptions?

Court proceedings are open to the public, but any court may, in its discretion, exclude the public when the evidence to be adduced is of such nature as to require their exclusion in the interest of morality or decency.

Court records are also public records and shall be available for the inspection of any interested person, at all proper business hours, under the supervision of the clerk of court having custody of such records. However, there are cases where the court shall, in any special case, have forbidden their publicity, in the interest of morality or decency.

Arbitration proceedings are however confidential and cannot be published, except: (a) with consent of the parties; or (b) for the limited purpose of disclosing to the court relevant documents where resort to the court is allowed.

6. What, if any, are the relevant limitation periods?

In general, the following are the prescriptive periods:

1. For actions based on negligence or tort, four years from the time the right of action accrues.
2. For actions based on an oral contract and upon a quasi-contract, six years from the time the right of action accrues.
3. For actions to recover a movable property, unless the possessor has acquired ownership by prescription for a less period, eight years from the time possession is lost.
4. For actions based on a mortgage, upon a written contract, upon an obligation created by law, and upon a judgment, ten years from the time the right of action accrues.
5. For real actions over immovable property, thirty years from the time the right of action accrues.
6. For actions whose periods are not fixed by law, five years from the time the right of action accrues.

Other prescriptive periods for specific circumstances are found in special laws.

7. What, if any, are the pre-action conduct

requirements in your jurisdiction and what, if any, are the consequences of non-compliance?

Philippine laws and rules of procedure have condition precedents which are required before the commencement of an action. Non-compliance with these renders an action dismissible. An example of a condition precedent is the prior referral of a dispute to the Barangay Lupon, wherein a counsel of a Barangay (a local government unit) has authority to bring together the parties actually residing in the same city or municipality for amicable settlement of all disputes, subject to certain exceptions.

8. How are commercial proceedings commenced? Is service necessary and, if so, is this done by the court (or its agent) or by the parties?

Proceedings are generally commenced upon the filing of a complaint. Service of summons is generally necessary for a court to acquire the jurisdiction over the person of the defendant. Summons is served, by default, by the court sheriff. Summons is served by the plaintiff in the event that the sheriff fails to serve summons, or if the summons is to be served outside the judicial region of the court where the case is pending.

9. How does the court determine whether it has jurisdiction over a claim?

A court determines whether it has jurisdiction over a claim based on the allegations in the complaint. If the allegations show that the matter falls within the court's jurisdiction as defined by law, then the court is deemed to have jurisdiction over the claims.

10. How does the court determine what law will apply to the claims?

It is an established rule in Philippine jurisdiction that unless there is stipulation to the contrary, the law of the place where the contract is made governs, or *lex loci contractus*. However, Philippine Courts may opt to apply Philippine Law, despite any stipulation to the contrary, if the same involves a matter of public policy.

11. In what circumstances, if any, can claims be disposed of without a full trial?

In the Philippine jurisdiction, claims may be disposed of

without a full trial if a party moves for a judgement on the pleadings. A judgement on the pleadings is rendered based on the submissions of the parties, before the trial, and if the answer of the defendant fails to tender an issue, or otherwise admits the material allegations of the adverse party. A summary judgment may also be issued upon motion by a defending party if the pleadings, supporting affidavits, depositions and admissions on file, show that, except as to the amount of damages, there is no genuine issue as to any material fact.

Under the amended rules, the court may *motu proprio* include in the pre-trial order that the case shall be submitted for summary judgment or judgment on the pleadings, without need of position papers or memoranda if it determines, after pre-trial, that there are no more controverted facts, or no more genuine issue as to any material fact, or an absence of any issue, or should the answer fail to tender an issue. In such cases, judgment shall be rendered within ninety (90) calendar days from termination of the pre-trial.

A case may likewise be dismissed without trial in case of failure of a defendant to file an answer within the reglementary period, which will allow the court to render judgment and grant such relief as the plaintiff's pleading may warrant. A case may also be dismissed in the event of failure of the plaintiff to attend the pre-trial.

The Rules of Court also provide for expedited procedures for cases which fall under the Rules on Summary Procedure and the Rules on Small Claims.

Courts are also mandated to refer parties to mediation proceedings before trial is commenced, in order to amicably settle disputes.

12. What, if any, are the main types of interim remedies available?

In court litigation, the following provisional remedies may be availed of:

1. Preliminary Attachment - where in specific circumstances, a plaintiff or any proper party may have the property of the adverse party attached as security for the satisfaction of any judgment.
2. Preliminary Injunction - which is an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or a person to refrain from a particular act or acts. It may also require the performance of a particular act or acts.
3. Receivership - which is when one or more

receivers of the property subject of the action or proceeding may be appointed by the court where the action is pending in specific circumstances.

4. Replevin - which is an Order for the delivery of such property applied for by a party praying for the recovery of possession of personal property.

In intra-corporate disputes, a management committee for a corporation, partnership or association may be appointed when there is imminent danger of dissipation, loss, wastage or destruction of assets or other properties and paralyzation of its business operations which may be prejudicial to the interest of the minority stockholders, parties-litigants or the general public.

In arbitration, arbitral tribunals may issue interim measures of protection such as a preliminary injunction directed against a party, appointment of receivers, or detention, preservation, inspection of property that is the subject of the arbitration. Further, any such provisional or interim relief may be granted for the following purposes: (a) to prevent irreparable loss or injury; (b) to provide security for the performance of an obligation; (c) to produce or preserve evidence; or (d) to compel any other appropriate acts or omissions.

13. After a claim has been commenced, what written documents must (or can) the parties submit and what is the usual timetable?

When a claim has been commenced, through the filing of a complaint, the plaintiff must allege the ultimate facts along with the evidence necessary to support such allegations.

Once a complaint is filed, the defendant is generally granted a period of at least thirty (30) days to file an Answer.

The complaint and the answer must already be accompanied by the evidence which the parties intend to present, such as the judicial affidavits of witnesses and copies of their documentary exhibits. Only witnesses whose judicial affidavits are attached to the pleadings shall be presented by the parties during trial, unless additional witnesses are allowed by the court upon presentation of meritorious reasons.

An answer may only be responded to by a Reply when said answer includes an actionable document, or written instrument within which an action or defense is grounded upon.

The case will then be scheduled for pre-trial. At least three (3) days before pre-trial, the parties are required to submit their respective pre-trial briefs, containing a summary of the parties' claims, the issues of the case, the parties' evidence, the summary of witness testimonies, and the reliefs prayed for. After trial, although not provided under the rules of court, the parties may submit memoranda summarising their arguments and evidence as may be directed by the court, within 30 days from notice of the court's order.

14. What, if any, are the rules for disclosure of documents? Are there any exceptions (e.g. on grounds of privilege, confidentiality or public interest)?

Generally, parties to a litigation have wide discretion to submit into litigation whatever evidence or document that would support their arguments for their cause of action or defense. The Rules of Court do provide for discovery procedures related to documents in the form of a motion for production or inspection of documents, upon showing good cause therefor in that the documents sought are material to any matter involved in the action. This relief, however, is limited to documents which are not privileged or confidential under other laws such as, for example, Bank Secrecy.

15. How is witness evidence dealt with in commercial litigation (and, in particular, do witnesses give oral and/or written evidence and what, if any, are the rules on cross-examination)? Are depositions permitted?

As a general rule, Philippine cases no longer involve oral or long-form direct testimony for witnesses. Instead, the direct testimonies are in the form of judicial affidavits, which represent the question and answer normally done in an oral direct testimony, transcribed and reduced into writing, including the identification and attachment of documentary evidence. This procedure does away with the need for lengthy trial dates where, for example, numerous documents would have to be orally identified. The direct testimony proper during the trial, therefore, consists of an abbreviated testimony where the witness identifies his or her judicial affidavit and confirms the truthfulness of the allegations therein.

Cross-examination of witnesses is done in open court, and is a matter of right for the adverse party, who is allowed wide latitude in asking cross-questions. A recent amendment to the rules of evidence allows cross-

examination on **any relevant matter**, instead of being limited solely to the matters stated in the direct examination. The parties may also choose to ask re-direct and re-cross questions, before the witness' testimony is terminated.

Notably, the Supreme Court has promulgated guidelines for the conduct of proceedings through videoconference, including the testimony of witnesses, even including witnesses from abroad. Parties may now move for videoconference hearings by showing that the videoconferencing would be beneficial to the fair, speedy, and efficient administration of justice, as, for example, due to acts of God which limit physical access to courts, the inability of a witness or litigant to appear in court due to health concerns or security risks, among others. Further, any litigant or witness who are outside the Philippines may only participate from an embassy or consulate of the Philippines, who must allow the use of their facilities for videoconferencing.

With regard to depositions, the Rules of Court allow for depositions while an action is pending, before an action is filed, or pending appeal. These depositions may be in the form of oral examination or written interrogatories, and are admissible and may be used against a party who was present at the taking of the deposition and thus had an opportunity to pose cross-examination questions to the deponent.

16. Is expert evidence permitted and how is it dealt with? Is the expert appointed by the court or the parties and what duties do they owe?

Expert evidence is allowed as an exception to the general rule prohibiting the admissibility of opinions of witnesses. The opinions of experts are allowed on matters requiring special knowledge, skill, experience, training, or education, which must be demonstrated and proven before the courts allow the testimony as expert testimony. Generally, the parties will offer the testimony of their chosen experts, but the courts may also engage the services of experts should they deem fit.

There are no specific or unique duties that expert witnesses owe that distinguish them from regular witnesses. Notably, however, recent amendments to the rules on evidence lay down the factors to be considered by courts in appreciating the weight given to expert testimony, such as whether the opinion of the expert is based upon sufficient facts or data, whether it is the product of reliable principles and methods, which have been applied properly, and other factors which the court may deem necessary.

17. Can final and interim decisions be appealed? If so, to which court(s) and within what timescale?

For **final judgments and decisions of courts**, the rules allow for appeals to be interposed. Generally, appeals are filed before the next higher court, pursuant to the four-level structure described above, within fifteen days from the receipt of the order being appealed, with some limited exceptions where the appeal may be filed with an even higher court.

With regard to **interim or interlocutory orders**, appeals are not possible as they are not yet final orders of the court.

However, the Rules of Court provide for a mechanism by which these interim orders may be **annulled**, upon fulfilling the strict standard of showing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the court, through a petition for *certiorari*. Notably, this standard is much higher than the standard for regular appeals, as a showing of mere errors in judgment does not suffice. This procedure for the filing of a petition for *certiorari* is begun through a motion for reconsideration, filed within fifteen days from receipt, as a requisite for filing the same with a higher court. This petition must be filed within sixty days from receipt of the order denying the requisite motion for reconsideration.

18. What are the rules governing enforcement of foreign judgments?

The Rule of Court specifically provide for the effects of foreign judgments. Where it is shown that a tribunal of a foreign country, with proper jurisdiction over the matter, renders a judgment or final order, the same may be applied. In case the judgment relates to a specific thing, the judgment is conclusive upon title to the thing, whereas when the judgment is against a person, the judgment is presumptive evidence of a right between the parties involved in the case.

Philippine law also allows foreign judgments to be “repelled” or not recognized should it be shown, through evidence, that the foreign tribunal did not have jurisdiction, there was no notice to the adverse party, or the existence of collusion, fraud, or clear mistake of law or fact. Jurisprudence has also carved out an “public policy” exception to resist enforcement, by which a litigant may claim that the judgment sought to be enforced is contrary to public policy.

19. Can the costs of litigation (e.g. court costs, as well as the parties’ costs of instructing lawyers, experts and other professionals) be recovered from the other side?

While attorneys’ fees are allowed to be imposed as a form of damages or as an award in a case, upon showing of factual, legal, and equitable justification therefore, jurisprudence has held that the winning party is not always entitled to full recovery of the amounts devoted to legal services for the litigation. This seeks to avoid a situation where a “premium” would be placed on the right to litigate.

20. What, if any, are the collective redress (e.g. class action) mechanisms?

The Rules of Court provide for a class suit where the subject matter of the controversy is of common or general interest to enough persons as to make it impracticable to join all of them as parties. In these cases, the court may decide to implead a number of such persons that it deems as sufficient to protect the interests of all concerned. This, however, is without prejudice to the right of any individual party in interest to intervene in the case in order to protect his or her individual interest in the matter.

21. What, if any, are the mechanisms for joining third parties to ongoing proceedings and/or consolidating two sets of proceedings?

Parties may be added by the court at its discretion or upon motion, following the principle that all parties whose presence is necessary to have a complete and final determination of the controversy must be impleaded in the action. Thus, a misjoinder or nonjoinder of parties is not a ground for the dismissal of a case.

The Rules of Court further allow a person who has a legal interest in the matter being litigated, or in the success of either party or an interest against both, or one who may be adversely affected by disposition of property to be made in a case, to intervene in the same upon a determination that the intervention would not delay or prejudice the adjudication of rights as between the original parties, as well as after a determination of whether the intervenor’s rights could be fully protected in a separate proceeding.

Similarly, parties to the case who possess a claim of contribution, indemnity, subrogation or other relief, may

file a third-party complaint against a person not party to the action, such claim then being heard in the same proceeding.

With regard to consolidation, courts may consolidate or jointly hear cases where such involve a common question of law or fact, in order to avoid unnecessary costs or delay.

22. Are third parties allowed to fund litigation? If so, are there any restrictions on this and can third party funders be made liable for the costs incurred by the other side?

The Rules of Court are silent as to third party funders in Philippine cases, as the Rules are focused on properly impleading parties who are involved in the controversy or cause of action. Thus, while there is no express provision allowing the same, there is also no prohibition against third parties funding litigation.

As a consequence, and in keeping with the principle that the court has jurisdiction only over parties who are properly impleaded and who have participated in the case, third party funders are not bound by the judgment rendered, and the courts may not make the third party funder liable for costs incurred. In other words, being a third party funder does not per se result in liability, unless there is also a cause of action to include the third party funder as a defendant in the suit and thus subject to the court's judgment and jurisdiction.

23. What has been the impact of the COVID-19 pandemic on litigation in your jurisdiction (and in particular, have the courts adopted remote hearings and have there been any procedural delays)?

At its height, the COVID-19 pandemic severely hampered litigation proceedings in the Philippines. Before the pandemic, litigation processes still heavily revolved around in-person hearings and proceedings, without much latitude or flexibility with regard to remote hearings. Due to strict lockdowns imposed by the government, court proceedings were delayed because of the impossibility of conventional face to face procedures.

As the Philippines has attempted to adjust to the pandemic, the courts have followed suit. Videoconference hearings are now a viable and easily accessible option for parties. Further, courts have been made more accessible through hotlines and e-mail accounts, allowing inquiries, communications, as well as

court submissions to be done remotely.

Challenges remain, however, due to issues such as lack of viable internet access, especially in courts located in provinces where such infrastructure is more limited. In these cases, in-person appearances and proceedings are still the norm and are thus subject to the delays caused by COVID-related restrictions.

24. What, in your opinion, is the main advantage and the main disadvantage of litigating international commercial disputes?

The Rules of Court are designed in order to facilitate each party having the most opportunity to effectively and fully present its case. This is seen in the relaxed treatment of authentication of documents and the requirements for original copies, as well as the provision for discovery measures. Further, the thrust of court proceedings, as has been enshrined in jurisprudence, is to arrive at a judgment based on the merits of the case, fully shown, rather than being based on strict application of technicalities.

In other words, Philippine litigation has a degree of flexibility which allows for an effective and full presentation of evidence in order to establish a party's claim.

However, and even with the growing acceptance of technology and its application to streamlining the process of litigation, cases before Philippine courts are still susceptible to being delayed, due to, among others, the sheer volume of cases, the lack of effective internet infrastructure in some locations, and, as will be discussed below, the vulnerabilities of the system to prolonged lockdowns and closures brought about by events such as the COVID-19 pandemic.

25. What, in your opinion, is the most likely growth area for disputes for the next five years?

As has been the trend in recent years, the prevalence of arbitration and alternative dispute resolution proceedings represents a likely growth area for commercial disputes in the Philippines. While still a relatively young field in Philippine law, it is clear that arbitration and alternative dispute resolution is a flourishing area. Specialized industries have instituted arbitration rules and procedures, such as the Intellectual Property Office of the Philippines, the Wholesale Electricity Spot Market under the Electric Power Industry

Reform Act, as well as the Construction Industry Arbitration Commission, whose jurisdiction to decide construction cases has recently been affirmed and strengthened by the Supreme Court.

Further, institutions specifically geared towards the conduct of arbitration have become more prominent in commercial litigation, such as the Philippine Dispute Resolution Center, Inc. ("PDRCI") and the Philippine International Center for Conflict Resolution ("PICCR"). These institutions provide avenues and resources for the conduct of arbitration in the Philippines, as well as providing for rules and procedures which parties may choose to avail of in the construction of their contracts and agreements.

26. What, in your opinion, will be the impact of technology on commercial litigation in the next five years?

The COVID-19 pandemic has hastened the development of legal proceedings insofar as their application and use of technology. As mentioned above, videoconference hearings are now normal and widely used. Further, recent amendments to the Rules of Court also allow pleadings and other submissions to be filed and served through electronic mail, in addition to personal and postal options.

In addition to these, the Rules of Evidence have recently been amended to relax the rules on original documents to accommodate electronic copies of documentary evidence, as well as a greater appreciation of the rules on electronic evidence, considering the prevalence of electronic communications.

All in all, it is reasonable to expect that the legal system in the Philippines will be more receptive and adaptive to changes brought about by technology. To illustrate the attitude of the Supreme Court towards these new developments, it is notable that the bar exams, traditionally a written exam held in one venue, has been modified to a more digital format, with the use of examination software and decentralized testing centers to take advantage of this technology. Further, the Supreme Court has recently issued rules applying remote technologies to fundamental processes such as notarization and filing of documents.

27. What, if any, will be the long-term impact of the COVID-19 pandemic on commercial litigation in your jurisdiction?

As can be seen from above, the COVID-19 pandemic's impact on litigation in the Philippines has already been felt as it has essentially forced the court system to find ways to utilize technology in order to streamline processes and proceedings. Considering the success of these measures, it is reasonable to expect that these options become more and more normal and widely used.

It is also worth noting that the Supreme Court has also issued guidelines on the testimony through videoconference of even foreigners residing abroad, to appear and testify in proceedings in the Philippines. Again, this represents a step in the direction of making it easier for all parties, even those abroad, to effectively participate in litigation in the Philippines. All told, the development caused by the adjustment to the COVID-19 pandemic will have wide-reaching effects in terms of access to courts as well as more convenient procedures and processes.

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