

ARBITRATION IN THE PHILIPPINES

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I. INTRODUCTION

Globalization has become the buzzword of the new millennium as developing countries seek to expand international trade and attract foreign investment. Quite understandably, the opening of domestic doors to foreign investors will inevitably result in more conflicts arising from the intrinsic complexity of international commerce as well as the inherent cultural and legal differences between trading nations. This chapter will discuss the role of commercial arbitration in resolving these disputes in the Philippines.

Perhaps owing to the Filipino's aversion to adversarial proceedings, and considering also the costly and slow process of litigation, commercial many quarters are working to make arbitration in the Philippines an effective and efficient means of dispute resolution. For that reason, the Philippine legislation on commercial dispute resolution is slowly keeping pace with the developments in international trade.

A. History of Arbitration in the Philippines

Arbitration, as an alternative mode of dispute resolution, has long been recognized and accepted in the Philippines. In 1921, the Philippine Supreme Court, applying common law, noted that: [t]he settlement of controversies by arbitration is an ancient practice at common law. In its broad sense, it is a substitution, by consent of the parties, of another tribunal for the tribunals provided by the ordinary processes of law.... Its object is the final

disposition, in a speedy and inexpensive way, of the matters involved, so that they may not become the subject of future litigation between the parties.¹

Early jurisprudence in the Philippines, however, was not supportive of arbitration. Despite the recognition accorded to arbitration by tradition and by provisions of the Civil Code, the use of arbitration as a mode of dispute resolution was discouraged by the tendency of some courts to nullify arbitration clauses on the ground that the clauses ousted the judiciary of its jurisdiction.

Propitiously, in the early 1920's, the Philippine Supreme Court began to lay the basis for the recognition and acceptance of arbitration as a mode of settling disputes in the following ruling:

In the Philippines fortunately, the attitude of the courts toward arbitration agreements is slowly crystallizing into definite and workable form.... The rule now is that unless the agreement is such as to absolutely close the doors of the courts against the parties, which agreement would be void, the courts will look with favor upon such amicable agreements and will only with great reluctance interfere to anticipate or nullify the action of the arbitrator.²

With this blessing bestowed by the courts, arbitration became a viable alternative to costly and prolonged litigation. In turn, the growing frequency of arbitration led to pressures for a regulatory law. In 1953, the Philippine Congress enacted Republic Act No. 876, otherwise known as the Arbitration Law,³ thereby adopting "the modern view that arbitration as an inexpensive, speedy and amicable method of settling disputes and as a means of avoiding litigation should receive every encouragement from the courts."⁴

¹ *Chan Linte vs. Law Union and Rock Insurance Co., et al.*, 42 Phil. 548 (1921).

² Malcolm, J., dissenting, in *Vega vs. San Carlos Milling Co.*, 51 Phil. 908 (1924); see also *Manila Electric Co. vs. Pasay Transportation Co.*, 57 Phil. 600 (1932).

³ The full text of Republic Act No. 876 is included at the Philippines tab of the statutory appendix to this volume.

⁴ *Eastboard Navigation Ltd. vs. Juan Ysmael & Co., Inc.*, 102 Phil. 1 (1957).

In 10 June 1958, the Philippines became a signatory to the United Nations Convention on the Recognition and the Enforcement of Foreign Arbitral Awards of 1958 (the "New York Convention"). On 6 July 1967, the said Convention was ratified.

Fifty years after the enactment of the Philippine Arbitration Law, the Philippine Congress enacted, Republic Act No. 9285, otherwise known as the Alternative Dispute Resolution Act of 2004. The enactment of Republic Act No. 9285 was the Philippines' solution to making arbitration an efficient and effective method in dispute resolution specially for international arbitration.

Prior to the enactment of Republic Act No. 9285, there were no laws prescribing the mechanics for the conduct of international arbitration. Instead, when dealing with disputes regarding international contracts, Philippine entities, including the Government, are often required to agree to dispute settlement by arbitration in the foreign country under the rules of foreign arbitral institutions.⁵ Worse, notwithstanding the Philippines' adherence to the New York Convention, no legislation has been passed providing a specific procedure for the enforcement of foreign arbitral awards. Thus, there have been instances in which international arbitral awards have been treated by Philippine courts as akin to foreign judgments for lack of specific invocation of the New York Convention. As a consequence, foreign arbitral awards have sometimes been deemed only presumptively valid, rather than conclusively valid, as required by the New York Convention.⁶

Under Republic Act No. 9285, the Philippines unequivocally declared that it is its policy "to actively promote party autonomy in the resolution of disputes or the freedom of the parties to make their own arrangements to resolve their disputes" and "encourage and actively promote the use of Alternative Dispute Resolution (ADR) as an important means to achieve speedy and impartial justice and declog court dockets."⁷

⁵ United Nations Commission on International Trade Law ("UNCITRAL") Model Law Bill, Explanatory Note.

⁶ New York Convention, Art. III ("Each contracting state shall recognize arbitral awards as binding...").

⁷ Republic Act No. 9285, Sec.2.

To keep pace with the developments in international trade, Republic Act No. 9285 also ensured that international commercial arbitration would be governed by the United Nations Commission in International Trade (“UNCITRAL”) Model Law on International Arbitration adopted by the United Nations Commission on International Trade Law on June 21, 1985.⁸ Republic Act No. 9285 also fortified the use and purpose of the New York Convention by specifically mandating that it shall govern the recognition and enforcement of arbitral awards covered by the said convention⁹, while foreign arbitral awards not covered by the New York Convention shall be recognized and enforced in accordance with the procedural rules to be promulgated by the Supreme Court.¹⁰

Moreover, Republic Act No. 9285 updated the rather antiquated Philippine Arbitration Law or Republic Act No. 876.

Presently, the Congressional Oversight Committee is reviewing the draft of the Implementing Rules and Regulations of Republic Act No. 9285. At the same time, the Supreme Court of the Philippines is formulating the Special Rules of Court on Alternative Dispute Resolution, which will govern the procedure to be followed when recourse is made to the courts on any matter, which is subject of arbitration or other forms of alternative dispute resolution.

B. The Practice of Arbitration in the Philippines Today

At present, arbitration practice in the Philippines is either *ad hoc*, institutionalized or specialized.

For *ad hoc* arbitration, Philippine law grants the parties the right to select an arbitrator or arbitrators and to choose procedures to govern the proceedings, including rules of arbitration institutions. So long as the main requirement for arbitration, namely consent, is present, the State allows the parties to conduct the arbitration in any manner they

⁸ Republic Act No. 9285, Secs. 19-31.

⁹ Republic Act No. 9285, Sec. 42.

¹⁰ Republic Act No. 9285, Sec. 43.

stipulate, provided that the arbitration process is not "contrary to law, morals, good customs, public order or public policy."¹¹

Institutionalized arbitration is conducted through organized bodies such as courts of arbitration, trade associations, and arbitration centers and institutes, each prescribing its own different arbitration procedure. Foremost among these institutions in the Philippines is the Philippine Dispute Resolution Center Inc. ("PDRCI").¹² These institutions do not actually participate in settling the dispute but help administer the arbitration and provide a set of rules to govern the proceedings. For international arbitration, the popular institutional rules referred to are those of the International Chamber of Commerce ("ICC"), the Hongkong International Arbitration Centre ("HKIAC") and the Singapore International Arbitration Centre ("SIAC").¹³

Nevertheless, the rules of most arbitral institutions, including those of the PDRCI, do not purport to cover in detail many essential elements of procedure. Instead, these institutionalized rules cover such matters as the commencement of arbitral proceedings, the presentation of the answer and counterclaim, the appointment of arbitrators, the right to be represented by counsel, and the assignment of costs and fees. Accordingly, in the absence of agreement by the parties, specific procedural matters are left to the discretion of the arbitral institution or the arbitrator(s). Furthermore, the institutional rules tend to apply across the board to all arbitrations and make no distinction between those involving relatively simple issues and those that present complex questions of law or require extensive fact-finding. Of course, good arbitrators and good lawyers can--and frequently do--fill in the interstices of general rules as they go along.¹⁴ Thus, even in institutional arbitration, the procedural rules actually followed may vary from case to case.

¹¹ CIVIL CODE, Art. 1306.

¹² A copy of the PDRCI Rules of Procedure is included at the Philippines tab of the appendix to this volume.

¹³ These various rules are included in the appendix to this volume.

¹⁴ Realan Clark and Dieter G. Lange, *Recent Changes in English Arbitration Practice*, 35 BUSINESS LAWYER 1630 (July 1980).

Specialized arbitration involves particular industries or kinds of disputes. For example, banking disputes on check clearing are resolved by a specialized system administered under the auspices of the Bankers' Association of the Philippines. In the construction industry, the Construction Industry Arbitration Commission ("CIAC") was created in 1985 by Executive Order No. 1008 ("E.O. No. 1008")¹⁵ in recognition of the need for technical expertise to resolve various factual questions in construction disputes. Subject to the agreement of the parties to submit the dispute to voluntary arbitration, the CIAC was given original and exclusive jurisdiction over all construction disputes. Indeed, so comprehensive is the jurisdiction of the CIAC over construction controversies, that it has been decreed that "as long as the parties agree to submit to voluntary arbitration, regardless of what forum they may choose, their agreement will fall within the jurisdiction of the CIAC, such that, even if they specifically choose another forum, the parties will not be precluded from electing to submit their dispute before the CIAC because this right has been vested upon each party by law."¹⁶ (This ruling could be reconsidered in the light of the New York Convention to enforce the international arbitration agreements between parties of different nationalities made within a contracting state.) As such, the CIAC has become one of the premier specialized arbitration institutions in the Philippines. From the time of its creation until 15 January 2000, at least two hundred thirty-five (235) cases have been filed involving an aggregate amount of ₱ 7.22 billion (1 U.S. \$ = roughly ₱ 50). Of these 235 cases, 38 (or sixteen percent), involved foreign companies and/or subsidiaries of multinational companies.

Despite these various permutations, the fundamental rule in international commercial arbitration is that the procedure will be dictated by the choice or agreement of the parties. The parties can either draft their own procedures or refer to existing arbitration rules, such as the ICC Rules, American Arbitration Association ("AAA") Rules or the Rules of the United Nations Commission in International Trade Law (UNCITRAL). In the absence of any agreement of the parties, the law of the forum will be used to fill the gap. In

¹⁵ Enacted on February 4, 1985.

¹⁶ *China Chiang Jiang Energy Corp. v. Court of Appeals, et al.*, G.R. No. 125706, Sept. 30, 1996; *National Irrigation Administration v. Court of Appeals, CIAC, et al.*, G.R. No. 129169, Nov. 17, 1999, 318 SCRA 255, 268.

the Philippines, this means that Republic Act No. 9285 shall principally govern the proceedings.

C. Sources of Law

For international commercial arbitration, Republic Act No. 9285 is now the primary statute used to supplement the parties' agreement in governing the arbitration. Also applicable are Articles 2028 to 2046 of the Civil Code of the Philippines,¹⁷ international

¹⁷ The CIVIL CODE of the Philippines provides:

ART. 2028. A compromise is a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced.

ART. 2029. The court shall endeavor to persuade the litigants in a civil case to agree upon some fair compromise.

ART. 2030. Every civil action or proceeding shall be suspended:

- (1) If willingness to discuss a possible compromise is expressed by one or both parties; or
- (2) If it appears that one of the parties, before the commencement of the action or proceeding, offered to discuss a possible compromise but the other party refused the offer.

The duration and terms of the suspension of the civil action or proceeding and similar matters shall be governed by such provisions of the rules of court as the Supreme Court shall promulgate. Said rules of court shall likewise provide for the appointment and duties of amicable compounders.

ART. 2031. The courts may mitigate the damages to be paid by the losing party who has shown a sincere desire for a compromise.

ART. 2032. The court's approval is necessary in compromises entered into by guardians, parents, absentee's representatives, and administrators or executors of decedents' estates.

ART. 2033. Juridical persons may compromise only in the form and with the requisites which may be necessary to alienate their property.

ART. 2034. There may be a compromise upon the civil liability arising from an offense; but such compromise shall not extinguish the public action for the imposition of the legal penalty.

ART. 2035. No compromise upon the following questions shall be valid:

- (1) The civil status of persons;
- (2) The validity of a marriage or a legal separation;
- (3) Any ground for legal separation;
- (4) Future support;
- (5) The jurisdiction of courts;
- (6) Future legitime.

ART. 2036. A compromise comprises only those objects which are definitely stated therein, or which by necessary implication from its terms should be deemed to have been included in the same.

A general renunciation of rights is understood to refer only to those that are connected with the dispute which was the subject of the compromise.

conventions and treaties such as the Model Law and the New York Convention,¹⁸ and settled jurisprudence or judicial decisions of the Supreme Court applying or interpreting the laws.¹⁹

For domestic arbitration, Republic Act No. 9285 is also the primary statute used to supplement the parties' agreement in governing their arbitration along with Republic Act No. 876 and Articles 8, 10, 11, 12, 13, 14, 18 and 19 of the Model Law.

ART. 2037. A compromise has upon the parties the effect and authority of *res judicata*; but there shall be no execution except in compliance with a judicial compromise.

ART. 2038. A compromise in which there is mistake, fraud, violence, intimidation, undue influence, or falsity of documents, is subject to the provisions of article 1330 of this Code.

However, one of the parties cannot set up a mistake of fact as against the other if the latter, by virtue of the compromise, has withdrawn from a litigation already commenced.

ART. 2039. When the parties compromise generally on all differences which they might have with each other, the discovery of documents referring to one or more but not to all of the questions settled shall not itself be a cause for annulment or rescission of the compromise, unless said documents have been concealed by one of the parties.

But the compromise may be annulled or rescinded if it refers only to one thing to which one of the parties has no right, as shown by the newly-discovered documents.

ART. 2040. If after a litigation has been decided by a final judgment, a compromise should be agreed upon, either or both parties being unaware of the existence of the final judgment, the compromise may be rescinded.

Ignorance of a judgment which may be revoked or set aside is not a valid ground for attacking a compromise.

ART. 2041. If one of the parties fails or refuses to abide by the compromise, the other party may either enforce the compromise or regard it as rescinded and insist upon his original demand.

ART. 2042. The same persons who may enter into a compromise may submit their controversies to one or more arbitrators for decision.

ART. 2043. The provisions of the preceding Chapter upon compromises shall also be applicable to arbitrations.

ART. 2044. Any stipulation that the arbitrators' award or decision shall be final, is valid, without prejudice to articles 2038, 2039, and 2040.

ART. 2045. Any clause giving one of the parties power to choose more arbitrators than the other is void and of no effect.

ART. 2046. The appointment of arbitrators and the procedure for arbitration shall be governed by the provisions of such rules of court as the Supreme Court shall promulgate.

¹⁸ Another such treaty is the Agreement on the Establishment of a Court of Arbitration and Permanent Conciliation Commission between the Republic of the Philippines and the Spanish State, 22 December 1948 (Philippine Treaty Series, vol. 2, p. 93).

¹⁹ CIVIL CODE, Art. 8.

D. Traditional and Cultural Modes of Dispute Resolution in the Philippines

Although arbitration has become a widely-accepted alternative to litigation, the cultural mistrust of formal adversarial proceedings has had an impact on the development of arbitration as a mode of commercial dispute resolution. Commercial disputes involving corporate entities are principally resolved through consultation and negotiation among the parties. If negotiations fail, it is common for the parties to seek the assistance of an independent third party, a so-called *ninong* (i.e., godfather/sponsor), to informally facilitate the solution of the problem through mediation and conciliation. The mutually selected *ninong* is usually a common relative or friend with high status; a political or religious leader; or a reputable business associate or colleague. The *ninong* acts as a kind of referee, mediator or conciliator, and does not impose a settlement or render an award but merely serves as a means by which issues are clarified; impasses are broken; and amicable settlements agreed upon.

Acknowledging the importance of traditional modes of dispute resolution, the Local Government Code expressly recognizes and, for certain cases, mandates arbitration before the Lupon Tagapamayapa.²⁰ As in other arbitral proceedings, an award of the Lupon Tagapamayapa has the “force and effect of a final judgment of a court” and “may be enforced by execution by the Lupon within six (6) months from the date of settlement. After the lapse of time, the settlement may be enforced in an action in the appropriate city or municipal court.”²¹

Another cultural mode of dispute resolution specific to the members of the ethnic Filipino-Chinese community is negotiation, conciliation or mediation conducted by the "Community-based or Family Associations" where a tribunal composed of members of a particular Chinese lineage or group with the same family name assumes the role of referee between the disputing individuals.

²⁰ Republic Act No. 7160, secs. 416 and 417.

²¹ *Teresita V. Idolor v. Court of Appeals, et al.*, G.R. No. 141853, February 7, 2001.

Parties may also utilize mediation/conciliation facilities offered by arbitration institutions such as PDRCI and CIAC. The Supreme Court has also been keen on promoting court-annexed mediation and, in fact, has trained and accredited court mediators. The formal conciliation or mediation procedures prescribed in the rules of the PDRCI and CIAC (including those sponsored by courts) are still, however, in their infancy. Their development as acceptable modes of alternative dispute resolution is now the thrust of the CIAC and PDRCI (including the courts) in the new millennium.

II. CHOICE OF PHILIPPINE LAW: CONSEQUENCES FOR THE ARBITRATION AGREEMENT AND ARBITRABILITY OF THE DISPUTE

Arbitration, being essentially consensual in nature, is dependent on the existence of an agreement that is valid as to form and substance. Without an agreement that constitutes the basis of arbitral competence, the arbitrator or the arbitral tribunal are without jurisdiction to conduct any proceedings, much less render any decision binding on the parties or on States in which enforcement may be sought.

A. Domestic Arbitration

Subject to the doctrine of *forum non conveniens*, parties to an arbitration are free to choose which law would govern the arbitration proceedings. The parties' choice of law is usually expressly provided in the arbitration clause/submission agreement, which constitutes the basis of arbitral competence and serves as the legal basis for the arbitration. If the parties agree that Philippine law would govern their arbitration proceedings, the following should be borne in mind:

1. Binding Effect of Arbitral Agreements

Arbitration agreements are treated like any other contract governed by the Philippine Civil Code provisions on contracts. Thus, provided the parties agree to be

bound by the terms of the arbitration agreement,²² and those terms are not contrary to law, morals and good customs, public order or public policy,²³ that agreement is binding on them. Section 2 of Republic Act No. 876 mirrors that sentiment, to *wit*:

Sec. 2. *Persons and matters subject to arbitration.* — Two or more persons or parties may submit to the arbitration of one or more arbitrators any controversy existing between them at the time of the submission and which may be the subject of an action, or the parties to any contract may in such contract agree to settle by arbitration a controversy thereafter arising between them. Such submission or contract shall be valid, enforceable and irrevocable, save upon such grounds as exist at law for the revocation of any contract.

Consequently, it has been decided that where the parties agree to arbitrate their disputes, their agreement is binding on them and they are expected to abide in good faith with the arbitral clause of their contract.²⁴ The presence of a third party does not make the arbitral agreement unenforceable or void.²⁵

The Philippine Arbitration Law enforces the binding effect of an arbitration agreement when it mandates courts to suspend actions filed by a party in disregard of the arbitral agreement.²⁶ The Philippine Arbitration Law further mandates the court before which an action is brought in a matter, which is subject of an arbitration agreement to refer the parties to arbitration unless it is proven that the arbitration agreement is null and void, inoperative, or incapable of being performed.²⁷

²² Philippine Civil Code, Article 1305.

²³ *Ibid*, Article 1306.

²⁴ *Toyota Motor Philippines Corp. v. Court of Appeals*, G.R. No. 102881, Dec. 7, 1992, 216 SCRA 236.

²⁵ *Ibid*.

²⁶ Republic Act No. 876, Sec. 7.

²⁷ Section 33 in relation to Section 24 of Republic Act No. 9285; Chapter 4, Rule 4.2, Article 4.2.8 of the IRR of Republic Act No. 9285; Section 33 of Republic Act No. 9285 in relation to Article 8 of the Model Law.

2. Scope of the Arbitration Clause/Arbitral Issues

The question of whether a particular dispute is within the ambit of an arbitration clause depends upon the terms of the clause itself.²⁸ Parties are free to stipulate which disputes and to what issues may be referred to arbitration. It must be noted, however, that the following cannot be referred to arbitration:

- a. labor disputes, which are covered by Presidential Decree No. 442;
- b. disputes involving the civil status of persons;
- c. disputes on the validity of marriage;
- d. disputes concerning any ground for legal separation;
- e. disputes involving the jurisdiction of courts;
- f. disputes on future legitime;
- g. disputes involving criminal liability; and
- h. those disputes, which by law cannot be compromised.²⁹

The case of *Western Minolco Corporation v. Court of Appeals*³⁰ illustrates a situation involving a limited arbitration clause. In that case, the parties agreed to refer to arbitration only the issues on the meaning, application and effect of the agreement, and the amount and computation of royalties. Thus, when one of the parties referred the matter of deductions or other items of expense, a controversy relating to the “breach of faith” or “double dealing” by one of the parties to arbitration, the Philippine Supreme Court ruled that that issue is beyond the scope of the arbitral agreement.

²⁸ Report of the Secretary General, UNCITRAL Arbitration Rules, Eighth Session, Geneva, 1 April 1975.

²⁹ Republic Act No. 9285, Sec. 6.

³⁰ *Western Minolco Corporation v. Court of Appeals*, G.R. No. L-51996, Nov. 23, 1988, 167 SCRA 592.

In domestic arbitration, it is the court that decides the issue of whether a dispute is within the ambit of the arbitral clause.³¹ If the court finds that the issue is arbitrable, it shall order the parties to proceed to arbitration.

3. Interim Remedies

“It is not incompatible with an arbitration agreement for a party to request, before the constitution of the arbitral tribunal, from a Court an interim measure of protection and for the Court to grant such measure.”³² “After constituting the arbitral tribunal and during arbitration proceedings, a request for an interim measure of protection...may be made with the arbitral tribunal”.³³ Nevertheless, if the arbitral tribunal has no power to act or is unable to act effectively, the parties are not precluded from requesting the Court to grant an interim measure of protection. Significantly, parties may also apply with a Philippine court for assistance in enforcing an interim measure granted by the arbitral tribunal.³⁴

An arbitral tribunal or Philippine court may grant a party interim relief for the following purposes:

- a. to prevent irreparable loss or injury, e.g., attachment;
- b. to require security for the performance of an obligation;
- c. to require the production and preservation of any evidence; and
- d. to compel any other act or omission.³⁵

³¹ Republic Act No. 876, Secs. 6 and 7.

³² Republic Act No. 9285, Section 28.

³³ *Ibid.*

³⁴ *Id.*

³⁵ Republic Act No. 9285, Section 28.

In granting interim relief to a party, the arbitral tribunal or Philippine court may require that party to post a bond to cover damages that may be suffered by the party against whom relief is sought should it later be found that the relief was unwarranted.³⁶ Conversely, the Philippine court or arbitral tribunal may allow the party against whom the relief is sought to post a counter-bond that would suspend the effects of the relief granted and cover damages that may result from such suspension.³⁷

Republic Act No. 9285 requires that the application for a interim relief be in writing and served upon both the court or the arbitral tribunal and the party against whom the relief is sought.³⁸ The application must also detail the relief sought, the persons against whom relief is sought, the grounds for the relief and the evidence supporting the request.³⁹

4. Finality of Arbitral Award

Within one month from the time an arbitral award is rendered, any party may apply with the Philippine court having jurisdiction over the same for an order confirming that award.⁴⁰ “Upon the granting of an order confirming, modifying or correcting an award, judgment may be entered therewith in the court wherein said application was filed.”⁴¹ Once the order confirming the arbitral award together with the award itself is entered in the book of entries of judgment, the arbitral award becomes final and executory.⁴²

³⁶ *Ibid.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Republic Act No. 9285, Section 40 in relation to Section 23 of Republic Act No. 876.

⁴¹ Republic Act No. 876, Section 27.

⁴² Rules of Court, Rule 36, Section 2.

It is worthy to note, however, that a CIAC arbitral award is executory and need not be confirmed by a Philippine court.⁴³

Moreover, an agreement by the parties that the arbitral award or decision shall be final is valid under Philippine law. According to one Supreme Court case,⁴⁴ however, that agreement does not deter the courts from reviewing an arbitral award where appropriate. Thus, where there are grounds for vacating, modifying or rescinding an arbitral award, the injured party may still seek judicial relief, even if there exists a contractual stipulation that the decision of the arbitrator shall be final and unappealable.⁴⁵

B. International Arbitration

Under the Model Law, parties are likewise free to stipulate on their choice of law, both as to rules applicable to the substance of the dispute⁴⁶ as well as with respect to the rules of procedure⁴⁷ applicable to the arbitration proceedings. Given the express application of the Model Law, the following parallel aspects to domestic arbitration should also be noted:

1. Binding effect of arbitral agreements

Parties may constitute arbitration agreements, which by definition are “those agreements of parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether

⁴³ Republic Act No. 9285, Section 40.

⁴⁴ *Chung Fu Industries (Phils.), Inc. v. Court of Appeals*, G.R. No.96283, Feb. 25, 1992, 206 SCRA 545.

⁴⁵ Chung Fu case.

⁴⁶ Chapter VI, Article 28 of the Model Law.

⁴⁷ Chapter V, Article 19 of the Model Law.

contractual or not”, and may either be “in the form of an arbitration clause in a contract or in a separate agreement”.⁴⁸

Similar to domestic arbitration, where an action is brought in a matter subject of an arbitration agreement, the court must refer the parties to arbitration unless it finds that the agreement is “null and void, inoperative or incapable of being performed”.⁴⁹ Even where such action has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.⁵⁰

2. Scope of the Arbitration Clause/Arbitral Issues

Under the Model Law, the arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement.⁵¹ “If arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, [a Philippine court] to decide the matter, which decision shall be subject to no appeal.”⁵²

A court before which an action is brought in a matter which is the subject matter of an arbitration agreement shall, if at least one party so request not later than the pre-trial conference, or upon the request of both parties thereafter, refer the parties to arbitration unless it finds that the arbitration agreement is null and void, inoperative or incapable of being performed.⁵³

⁴⁸ Chapter II, Article 7 of the Model Law.

⁴⁹ Model Law, Article 8.

⁵⁰ Chapter II, Article 8 of the Model Law.

⁵¹ Chapter IV, Article 16 of the Model Law.

⁵² Model Law, Article 16.

⁵³ Republic Act No. 9285, Section 24.

3. Interim Remedies

In international arbitration, arbitral tribunal is also empowered to order interim measures of protection unless the parties agree otherwise.⁵⁴ If the arbitral tribunal has not been appointed or is incapable of granting the interim relief, parties may apply with the court for the appropriate relief.⁵⁵

The type of relief that may be applied for and the manner by which the parties may apply for the relief is the same as that provided by the ADR Act for domestic arbitration.

4. Finality of Arbitral Award

Within thirty days from receipt of the arbitral award, the parties may request the arbitral tribunal to correct typographical error or errors in computation,⁵⁶ and/or to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.⁵⁷ Within the same period and if the parties agree, a party may also request the arbitral tribunal to interpret a specific point or part in the arbitral award.⁵⁸

Within three months from receipt of the arbitral award or amended arbitral award, a party may petition the court to set aside the award on grounds, which, among others, include incapacity of a party to the arbitration agreement, invalidity of the arbitration agreement, no notice given of the appointment of an arbitrator or of the arbitral proceedings, dispute beyond the scope of the terms of submission to arbitration, composition of the tribunal or the arbitral procedure not in accordance with the agreement of the parties, public policy.⁵⁹

⁵⁴ Model Law, Article 17.

⁵⁵ Republic Act No. 9285, Section 28.

⁵⁶ Model Law, Article 33 (1) (a).

⁵⁷ *Ibid*, Article 33 (3).

⁵⁸ *Ibid*, Article 33 (1) (b).

IV. ENFORCEMENT OF ARBITRATION AGREEMENTS

Philippine law treats an arbitration agreement, whether it is domestic or international in character, as contract. Consequently, an arbitration agreement is enforceable between the parties unless it is found to be void, inoperative or incapable of being performed.⁶⁰ In that regard, a party to an arbitration agreement may compel the other party to comply with the terms of thereof by instituting an action against him for specific performance with the courts and/or proceed *ex parte* with the arbitration proceedings without the defaulting party.

Under Republic Act No. 9285, courts are mandated to refer the parties to arbitration where an action is brought in a matter, which is the subject matter of a valid arbitration agreement if at least one party so request, not later than the pre-trial conference, or upon the request of both parties thereafter.⁶¹

It is important to note, however, that parties to an arbitration agreement may subsequently mutually decide to refer their dispute to the court. Further, the inaction of a party who seeks to enforce an arbitration agreement may also constitute on a waiver on his part to arbitrate.

A. Domestic Arbitration

1. Petition to Compel Arbitration

To compel arbitration, which is domestic in character, there is no need for a party to petition a court to compel arbitration. This is because a party to a domestic arbitration need only apply to the Appointing Authority, or in its default, the court, to appoint an arbitrator or arbitrators. After, when the arbitral tribunal has been

⁵⁹ Chapter VII, Article 34 of the Model Law; *See also* Chapter 5, Rule 5.5, Article 5.5.35 of the IRR to the ADR Act *on the grounds to vacate an arbitral award by the appropriate court.*

⁶⁰ Republic Act No. 9285, Section 24.

⁶¹ *Ibid.*

constituted, a party to any arbitration agreement may lodge its plea to compel arbitration with the arbitral tribunal.⁶²

Parenthetically,

A party who knows that any provision of the [Model Law] from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without under delay or, if a time-limit provided therefore, within such period of time, shall be deemed to have waived his right to object.⁶³

2. *Ex Parte* Proceedings

Failure of a party to participate in a domestic arbitration proceeding will not give rise to a dismissal or suspension of that proceeding. Hearings conducted by the arbitral tribunal “may proceed in the absence of any party who, after due notice, fails to be present at such hearing or fails to obtain the adjournment thereof.”⁶⁴ Nevertheless, “an award shall not be made solely on the default of a party” and the party that fails to appear may still be given an opportunity to submit evidence if it is required by the arbitral tribunal for making the award.⁶⁵

B. International Arbitration

1. Petition to Compel Arbitration

For international arbitration, there is also no need for a party to petition a court to compel arbitration. As in domestic arbitration, a party to an international arbitration need only apply to the Appointing Authority, or in its default, the court,

⁶² Model Law, Section 16; Republic Act No. 9285, Section 28.

⁶³ Model Law, Article 4.

⁶⁴ Republic Act No. 876, Section 12.

⁶⁵ *Ibid.*

to appoint an arbitrator or arbitrators. After, when the arbitral tribunal has been constituted, a party to any arbitration agreement may lodge its plea to compel arbitration with the arbitral tribunal.⁶⁶

Parenthetically,

A party who knows that any provision of the [Model Law] from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without under delay or, if a time-limit provided therefore, within such period of time, shall be deemed to have waived his right to object.⁶⁷

2. Ex Parte Proceedings

Unless otherwise agreed by the parties, if, without showing sufficient cause:

(a) the claimant fails to communicate his statement of claim in accordance with Article 23(1), the arbitral tribunal shall terminate the proceedings;

(b) the respondent fails to communicate his statement of defense in accordance with Article 23(1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;

(c) any party fails to appear at hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.⁶⁸

T

If any of the parties to the arbitration proceedings brings an action before the court on a matter subject of the arbitration agreement, the arbitral proceedings may

⁶⁶ Model Law, Section 16; Republic Act No. 9285, Section 28.

⁶⁷ Model Law, Article 4.

⁶⁸ Model Law, Article 25.

proceed and an award may be issued even if the matter brought before the court is still pending.⁶⁹

V. ESTABLISHMENT OF THE ARBITRAL TRIBUNAL

While it is Philippine policy to actively promote party autonomy in the resolution of disputes and to give the parties freedom to make their own arrangements to resolve their disputes,⁷⁰ Philippine law places a limit on the parties' freedom to choose arbitrators. Article 2045 of the Philippine Civil Code specifically provides that, 'any clause giving one of the parties the power to choose more arbitrators than the other is void and of no effect.' That restriction applies to both domestic and international arbitration.

The discussions below will provide the similarities and differences in the establishment of the arbitral tribunal for domestic and international arbitration.

A. Domestic Arbitration

1. The Number of Arbitrators

Except for the limitation provided by Article 2045 of the Civil Code, parties are free to determine the number of arbitrators.⁷¹ In the absence of an agreement on the number of arbitrators, the number of arbitrators shall be three.⁷² It must be noted, however, that in the event that the parties seek the aid of the Appointing

Authority or court in appointing an arbitrator or arbitrators because of the parties' refusal or failure to make such an appointment, "the [Appointing Authority or] court shall in its discretion appoint one or three arbitrators, according to the

⁶⁹ Model Law, Article 25.

⁷⁰ Republic Act No. 9285, Section 2.

⁷¹ Model Law, Article 10 in relation to ADR Act, Section 33.

⁷² Model Law, Article 10 in relation to ADR Act, Section 33.

importance of the controversy” if “the agreement is silent as to the number of arbitrators.”⁷³

Under the Republic Act No. 9285, the default Appointing Authority is the same for both domestic and international arbitration. “Appointing Authority” is defined as “the person or institution named in the agreement as the appointing authority; or the regular arbitration institution under whose rules the arbitration is agreed to be conducted.”⁷⁴ In the event that the parties fail to name an appointing authority, it is understood that the Appointing Authority will be the President of the Integrated Bar of the Philippines, and if he fails to act, the Regional Trial Court.⁷⁵ The Appointing Authority’s functions are essentially to aid the parties in the appointment, challenge, and termination of the mandate, of an arbitrator or arbitrators where the parties are unable to agree.⁷⁶

2. Time Limits

For domestic arbitration, the parties are free to determine the period within which the arbitral tribunal shall be constituted.⁷⁷ Nevertheless, Philippine law, provides for the period when a party may begin to seek the aid of the Appointing Authority, or in its default, the court to appoint an arbitrator.

Section 8 of the Republic Act No. 876 states that the aggrieved party may seek the aid of the Appointing Authority, or in its default, the court in appointing an arbitrator “if either party to the contract fails or refuses to name his arbitrator within [thirty days]⁷⁸ after receipt of the demand for arbitration.”

⁷³ Republic Act No. 876, Section 8 (e).

⁷⁴ Republic Act No. 9285, Section 26.

⁷⁵ *Ibid*, Section 26.

⁷⁶ *Id.*

⁷⁷ Republic Act No. 876, Section 8; Model Law, Article 11.

⁷⁸ *See* Republic Act No. 9285, Sec. 32 in relation to Sec. 33.

If the two arbitrators fail to agree on the third arbitrator within the same period of time, the aggrieved party may request the Appointing Authority, or the court as the case may be to appoint the arbitrator.⁷⁹

The Philippine Arbitration Law also mandates that the arbitrator appointed by the Appointing Authority or court must accept or decline the appointment within seven days from being notified of the appointment.⁸⁰

Notably, there is no time period for the Appointing Authority or the court, as the case may be, to appoint an arbitrator. Nevertheless, the appointment should be made within a reasonable period.

3. Manner of Appointment

Arbitrators are invariably appointed in accordance with the Submission Agreement/Arbitration Clause⁸¹ by the nomination of specific person(s), nomination of ascertainable person(s), stipulation of a specific method, or reference to institutional arbitration rules or arbitration laws.

If the parties agree on the manner of appointment of an arbitrator but one of them fails to act in accordance with the procedure or there is a failure to abide by the procedure, the parties may refer the appointment to the Appointing Authority or court, as the case may be, which shall appoint the arbitrator in the manner it deems appropriate.⁸² Likewise, in the absence of an agreement on the manner of appointment of an arbitrator, the parties may also refer the appointment to the Appointing Authority or court, as the case may be.

⁷⁹ Model Law, Article 11 (3) in relation to Republic Act No. 9285, Section 33.

⁸⁰ Republic Act No. 876, Section 8.

⁸¹ *Ibid.*

⁸² Model Law, Section 11 (4) in relation to Section 33 of Republic Act No. 9285.

4. Qualifications

For domestic arbitration, the Philippine Arbitration Law provides specific qualifications that an arbitrator must have to avoid being challenged. Those qualifications are that the arbitrator must:

- a. be of legal age;
- b. have full enjoyment of his civil rights;
- c. know how to read and write;
- d. not be related by blood or by marriage within sixth degree to either party;
- e. have or have had no financial, fiduciary, or other interest in the controversy or cause to be decided or in result of the proceeding; and
- f. have no personal bias which might prejudice the right of any party to a fair and impartial award.⁸³

An arbitrator cannot act as champion or advocate for either of the parties to arbitration.⁸⁴ Neither can he act as mediator nor be present in the negotiations for the settlement of the dispute.⁸⁵

The afore-mentioned qualifications are not exclusive as the parties may agree that the arbitrator possesses other additional qualifications.

When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstance likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time

⁸³ *Ibid.*

⁸⁴ *Id.*

⁸⁵ *Id.*

of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him.⁸⁶

Upon learning that the arbitrator does not possess the required qualifications, the parties may decide to retain the arbitrator or challenge his appointment.⁸⁷

5. Challenge

Previously, the arbitrator [of a domestic arbitration] may only be challenged upon a showing that he lacks the qualifications for arbitrators enumerated in Section 10 of Republic Act No. 876, “which [qualifications] may have arisen after the arbitration agreement or were known at the time of the arbitration”.⁸⁸ With the enactment of Republic Act No. 9285, an arbitrator may be challenged not only for lack of the qualifications provided by Section 10 of Republic Act No. 876, but also if there are justifiable doubts as to his impartiality and independence, or if he does not possess qualifications agreed to by the parties.⁸⁹ Moreover, “a party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.”⁹⁰

The parties are free to agree on the challenge procedure.⁹¹ If there is no agreement on the challenge procedure, “a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal [or the circumstances that would give rise to a challenge], send a written statement of the reasons for the challenge to the arbitral tribunal.”⁹²

⁸⁶ Model Law, Article 12 (1) in relation to Section 33 of Republic Act No. 9285.

⁸⁷ Republic Act No. 876, Section 10.

⁸⁸ Republic Act No. 876, Section 11.

⁸⁹ Model Law, Article 12 (2) in relation to Republic Act No. 9285, Section 33.

⁹⁰ *Ibid.*

⁹¹ Model Law, Section 13 (1) in relation to Republic Act No. 9285, Section 33.

⁹² Model Law, Section 13 (2) in relation to Republic Act No. 9285, Section 33.

The arbitral tribunal shall decide the challenge.⁹³ If the challenge is rejected, any of the parties may petition the Appointing Authority, or in its default, the court, to decide on the challenge.⁹⁴ That petition should be made within thirty days from receipt of the notice of rejection.⁹⁵ Any decision of the Appointing Authority, or court, as the case may be, cannot be appealed.⁹⁶

Previously, the rule was that arbitration proceedings are suspended while the court decides on the challenge.⁹⁷ Now, Republic Act No. 9285 in relation to Article 13 (3) of the Model Law provides that, while the challenge is pending with the Appointing Authority or court, “the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make and award.”

6. Fees

With respect to domestic arbitration, Section 21 of Republic Act No. 876 states that the fees of the arbitrators shall be fifty pesos, or approximately U.S. \$ 1.00, per day unless the parties agree otherwise in writing prior to the arbitration. As such fee is quite unreasonable for the arbitrator, the proposed Rules and Regulation Implementing Republic Act No. 9285 include guidelines in fixing the arbitrators fees and other expenses.

B. International Arbitration

1. The Number of Arbitrators

Similar to domestic arbitration, parties to an international arbitration are free to determine the number of arbitrators⁹⁸ provided that, neither party may choose

⁹³ Republic Act No. 876, Section 11; Model Law, Article 13 (2).

⁹⁴ Model Law, Article 13 (2) in relation to Republic Act No. 9285, Section 33.

⁹⁵ *Ibid.*

⁹⁶ *Id.*

⁹⁷ Republic Act No. 876, Section 11.

more arbitrators than the other party. In the absence of an agreement on the number of arbitrators, the number of arbitrators shall be three.⁹⁹

2. Time Limits

Like domestic arbitration, parties to an international arbitration are free to stipulate when arbitrators shall be appointed.¹⁰⁰ Further, parties to an international arbitration may also seek the aid of the Appointing Authority or court in the appointment of the arbitrator if a party fails to appoint an arbitrator within thirty days from receipt of the request to do so, or if the two arbitrators fails to agree on the third arbitrator within thirty days of their appointment.¹⁰¹

Moreover, there is also no specified period for the Appointing Authority or court to appoint an arbitrator.

Unlike in domestic arbitration, however, there is no specific period provided for when an arbitrator must accept or decline his appointment. Nevertheless, the acceptance or rejection must be made within a reasonable period.

3. Manner of Appointment

The rules relating to the manner of appointment of an arbitrator to an international arbitration are the same as those applicable to domestic arbitration.

⁹⁸ Model Law, Article 10 in relation to Republic Act No. 9285, Section 33.

⁹⁹ Model Law, Article 10 in relation to Republic Act No. 9285, Section 33.

¹⁰⁰ Model Law, Article 11.

¹⁰¹ Model Law, Article 11 (3) (a).

4. Qualifications

The rules applicable to international arbitration do not provide specific qualifications for arbitrators. Under the Model Law, parties may provide for such qualifications under their broad authority to constitute an appointment procedure.¹⁰² In any case, the Model Law simply emphasizes the importance of the arbitrator's impartiality or independence.

A person requested to be an arbitrator must nevertheless "...disclose any circumstance likely to give rise to justifiable doubts as to his impartiality or independence."¹⁰³ "An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him."¹⁰⁴

5. Challenge

For international arbitration, an arbitrator may be challenged if there are justifiable doubts as to his impartiality and independence, or if he does not possess qualifications agreed to by the parties.¹⁰⁵ Moreover, "a party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made."¹⁰⁶

The parties are free to agree on the challenge procedure.¹⁰⁷ If there is no agreement on the challenge procedure, "a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal [or the circumstances that would give rise to a challenge], send a written statement of the reasons for the challenge to the arbitral tribunal."¹⁰⁸

¹⁰² *Ibid*, Article 11(2).

¹⁰³ *Id*, Article 12 (1) in relation to Section 33 of Republic Act No. 9285.

¹⁰⁴ *Id*, Article 12 (1) in relation to Section 33 of Republic Act No. 9285.

¹⁰⁵ *Id*, Article 12 (2).

¹⁰⁶ *Id*.

¹⁰⁷ *Id*, Section 13 (1) in relation to Republic Act No. 9285, Section 33.

¹⁰⁸ *Id*, Section 13 (2) in relation to Republic Act No. 9285, Section 33.

The arbitral tribunal shall decide the challenge.¹⁰⁹ If the challenge is rejected, any of the parties may petition the Appointing Authority, or in its default, the court, to decide on the challenge.¹¹⁰ That petition should be made within thirty days from receipt of the notice of rejection.¹¹¹ Any decision of the Appointing Authority, or court, as the case may be, cannot be appealed.¹¹²

While the challenge is pending with the Appointing Authority or court, “the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make and award.”¹¹³

6. Fees

With respect to international arbitration, the Model Law, Republic Act No. 9285’s provisions on international commercial arbitration, do not provide for arbitrator’s fees. In the practice in international arbitration, however, the parties and the arbitrator agree on the fees.

VI. PROCEDURE OF THE ARBITRATION

Preliminarily, it must be stressed that, for domestic arbitration and international arbitration, parties are free to decide on the rules of procedure to be followed by the Arbitral Tribunal in conducting the proceedings.¹¹⁴ Absent such agreement, the applicable governing arbitration law would apply to grant the arbitrators the authority to devise the same.¹¹⁵

¹⁰⁹ *Id.*, Article 13 (2).

¹¹⁰ *Id.*, Article 13 (2) in relation to Republic Act No. 9285, Section 33.

¹¹¹ *Ibid.*

¹¹² *Id.*

¹¹³ *Id.*, Article 13 (3).

¹¹⁴ Section 33 of the Republic Act No. 9285 in relation to Article 19 of the Model Law; Chapter IV, Rule 4.5, Article 4.5.19 of the IRR to the Republic Act No. 9285.

¹¹⁵ *Ibid.*

A. Domestic Arbitration

1. Basic Pleadings

Submission Agreement

A submission is nothing more than a written document wherein the parties agree to submit to arbitration an already existing dispute. The submission agreement invariably comes into being when the parties do not have a written arbitration agreement at the time a dispute arises. Conceivably, if the parties have a very restrictive arbitration clause in a contract, they might wish to have a matter that seems to be beyond the confines of the clause arbitrated. This can be done under a submission agreement.

Demand/Request for Arbitration

The demand (or request) for arbitration presupposes that there exists an arbitration agreement. This is because the right of a party to demand arbitration from another arises from the arbitration agreement itself.

In Philippine practice, the demand (or request) for arbitration is treated as a complaint or petition wherein the ultimate facts involved in the dispute, the causes of action and relief demanded are already asserted. Effectively, therefore, the demand (or request) to arbitration is considered the claimant's statement of claim.

2. Form of Basic Pleadings

There is no specific form prescribed for the submission agreement, only, it must be in writing and signed by the party against whom arbitration is sought or by his lawful agent.¹¹⁶ There is likewise no prescribed form for the demand (or request) to arbitrate except that it be in writing and served upon the other party in person or by registered mail.¹¹⁷

¹¹⁶ Republic Act No. 876, Section 4.

¹¹⁷ *Ibid*, Section 5.

3. Basic Contents of the Submission Agreement or Demand/Request for Arbitration

A submission agreement for domestic arbitration must at the minimum contain a statement that the parties agree to submit an existing dispute to arbitration. Other than that, a parties may include other matter in the submission such as the procedure for appointing an arbitrator, the governing arbitration law, the language of the arbitration, the arbitration procedure, and such other matters as the parties require to give effect to arbitration.

A demand (or request) to arbitrate “shall set forth the nature of the controversy, the amount involved, if any, and the relief sought, together with a true copy of the contract providing for arbitration.”¹¹⁸ “In the event that the contract between the parties provides for the appointment of a single arbitrator, the demand shall set forth a specific time within which the parties shall agree upon such arbitrator.”¹¹⁹

If the contract between the parties provides for the appointment of three arbitrators, one to be selected by each party, the demand shall name the arbitrator appointed by the party making the demand; and shall require that the party upon whom the demand is made shall within fifteen days after receipt thereof advise in writing the party making such demand of the name of the person appointed by the second party; such notice shall require that the two arbitrators so appointed must agree upon the third arbitrator within ten days from the date of such notice.¹²⁰

In addition to those basic requirements, the demand (or request) to arbitrate may contain a Prefatory Statement/Introduction to put in the advocate's perspective or slant of the facts and issues, a Reservation of the right to raise other claims/issues ascertained and identified in the course of the arbitration, and occasionally a compilation of the party's documentary evidence.

¹¹⁸ *Id.*, Section 5 (a).

¹¹⁹ *Id.*

¹²⁰ *Id.*

4. Answer and Counterclaim

Necessity and Time to File

As Philippine law treats a demand (or request) to arbitrate as akin to the claimant's statement of claims, the answer to the demand (or request) to arbitrate is actually the respondent's statement of defense. That law does not, however, make the filing of an answer mandatory. Further, the failure of the respondent to file an answer does not suspend the arbitral proceedings. To protect his rights, however, the respondent should file an answer specifically denying the material allegations of the demand (or request) to arbitrate and should set forth what he claims to be the facts. The time within which to file an answer depends on the agreement of the parties. In cases where parties fail to provide a period to file the answer, Philippine law does not provide a period within which the answer should be filed. It is believed, however, that the respondent should answer within a reasonable period of time.

Content of the Answer

There is no hard-and-fast rule as to what the content of an answer filed in a domestic arbitration proceeding. From a practical standpoint however, it would be a poor strategy for a respondent not to answer the claim of the claimant in his demand for arbitration. The arbitrator(s) will not only have a one-sided view of the dispute, i.e., the claimant's side, worse, the arbitrator(s) may likely misinterpret and draw negative conclusions from defendant/respondent's failure/ neglect to answer. If only for practical considerations, it is certainly worthwhile to file an answer. The Answer becomes essential when the defendant/respondent has affirmative defenses which he desires to prove.

The Counterclaim

The counterclaim is practically a cross-action set by the defendant, or respondent in arbitration. The defendant alleges that he has a valid claim and is entitled to some relief or a remedy against the plaintiff in respect of any matter

(whenever and however arising), and may, instead of bringing a separate action, make a counterclaim, and add it to his defense. A counterclaim is governed by the same rules of pleading as a statement of claim.

5. Reply and its Necessity

The reply is the answer, which the claimant may deliver to a counterclaim. In the reply, claimant may raise all matters, which he intends to rely in rebuttal of the allegations in the defense and his defense to the counterclaim. A reply is neither necessary not essential in domestic arbitration proceedings.

B. International Arbitration

1. Basic Pleadings

Submission Agreement

A submission agreement for an arbitration, which is international in character is no different from the submission agreement in domestic arbitration.

Demand/Request for Arbitration

For international arbitration, the right of a party to demand arbitration from another also arises only if an arbitration agreement exists. Unlike in domestic arbitration, however, the demand (or request) for arbitration, which is international in character, is treated differently from claimant's statement of claim. In international arbitration, a demand (or request to arbitrate simply specifies the basis of the claimant's right to arbitrate as well as an outline of the issues to be arbitrated. It is later, during the arbitral proceedings, that the claimant will submit his statement of claims, which will have to contain the facts supporting his claim, the points at issue, and the relief he seeks.¹²¹

¹²¹ *Id.*, Article 23 (1).

2. Form of Basic Pleadings

Republic Act No. 9285 and the Model Law are silent with respect to the form of the submission agreement. Nevertheless, as a submission agreement is in fact an arbitration agreement, only if it is made after the dispute arises, then, such submission must likewise comply with the requirement of form of an arbitration agreement. In that regard, the submission agreement must be in writing.¹²² “An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of telecommunications which provide a record of the agreement.”¹²³

Republic Act No. 9285 and the Model Law are also silent about the form of a demand (or request) for arbitration. The demand (or request) to arbitrate should, however, be in writing because it would serve as proof first that a request exists and latter that that request was sent to the other party.

3. Basic Contents of the Submission Agreement or Demand/Request for Arbitration

In international arbitration, a submission agreement must at the minimum contain a statement that the parties agree to submit an existing dispute to arbitration. Other than that, a parties may include other matter in the submission such as the procedure for appointing an arbitrator, the governing arbitration law, the language of the arbitration, the arbitration procedure, and such other matters as the parties require to give effect to arbitration.

Unlike domestic arbitration, the law does not provide for what a demand (or request) to arbitrate a dispute, which is international in character, should contain. However, the demand (or request) to arbitrate must at least detail the dispute involved and must show that the dispute is covered by an arbitration agreement.

¹²² *Id.*, Article 7 (1).

¹²³ *Id.*

This is necessary because the demand (or request) to arbitrate determines when the arbitral proceedings commence.¹²⁴

4. Answer and Counterclaim

Necessity and Time to File

In international arbitration, the parties may agree, or the Arbitral Tribunal may determine, the period within which respondent may submit his statement of defense or answer.¹²⁵ If the respondent fails to communicate his defense, the Arbitral Tribunal shall continue the proceedings without treating such failure itself as an admission of the claimant's allegation.¹²⁶

Parenthetically, either party may amend or supplement his claim or defense during the course of the arbitral proceedings unless there is an agreement to the contrary.¹²⁷

Content of the Statement of Defense or Answer

Respondent's statement of defense shall state his defense in respect of the facts and issues that the claimant raised in his statement of claims.¹²⁸ The statement of defense should also contain other matter that the parties agreed it should contain.¹²⁹ The respondent may also chose to refer to, or submit, together with his statement of defense, evidence in his behalf.¹³⁰

¹²⁴ See Model Law, Section 21.

¹²⁵ Model Law, Article 23 (1).

¹²⁶ *Ibid*, Article 25.

¹²⁷ *Id.*, Article 23 (2).

¹²⁸ *Id.*, Article 23 (1).

¹²⁹ *Id.*

¹³⁰ *Id.*

The Counterclaim

The nature of, and rules governing, counterclaim in domestic arbitration are the same as those for international arbitration.

5. Reply and its Necessity

As with domestic arbitration, a reply is neither necessary nor essential in international arbitration proceedings.

VII. THE AWARD

A. Domestic Arbitration

1. Time to Render the Award

Generally, the arbitral tribunal would render the award within the period agreed upon by the parties. In the absence of an agreement, Section 19 of Republic Act No. 876 specifically provides that the arbitral tribunal must render a written award within thirty days after closing of the hearing. Such period may be extended by mutual consent of the parties.

2. Form and Content of the Award

The award in a domestic arbitration must be in writing and signed by the arbitrator or arbitrators.¹³¹ “In arbitral proceedings with more than one arbitrator, the signature of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.”¹³² Unless the parties

¹³¹ *Id.*, Section 31 (1) in relation to Republic Act No. 9285 Section 33.

¹³² *Id.*

agree otherwise, the award should state the reasons upon which it is based.¹³³ The award should also state the date and place of arbitration.¹³⁴

3. Grounds and Procedure to Quash/Vacate the Award

Section 41 of Republic Act No. 9285 provides that:

A party to a domestic arbitration may question the arbitral award with the appropriate Regional Trial Court in accordance with rules of procedure to be promulgated by the Supreme Court only on those grounds enumerated in Section 25 of [the Philippine Arbitration Law]. Any other ground raised against a domestic arbitral award shall be disregarded by the Regional Trial Court.

Section 25 of Republic Act No. 876 refers, however to the grounds for modification or correction of an award, and not to grounds to vacate an award. Notably, it is Section 24 of the Republic Act No. 876 that enumerates the grounds to vacate and award. It appears, therefore, that there was a typographical error in printing the final version of the ADR Act with regard to that matter.

The proposed Implementing Rules and Regulation of Republic Act No. 9285 tries to cure the apparent typographical error by re-establishing the grounds to vacate an award as provided by Section 24 of the Republic Act No. 876, which grounds include:

- a. Corruption, fraud or other means in procuring the award;
- b. Evident partiality or corruption in the arbitrators or any of them;
- c. Misconduct of the arbitrators in refusing to postpone the hearing upon sufficient cause shown or misconduct in refusing to hear pertinent and material evidence;

¹³³ *Id.*, Article 31 (2) in relation to Republic Act No. 9285 Section 33.

¹³⁴ *Id.*, Article 31 (3) in relation to Republic Act No. 9285 Section 33.

- d. Disqualification of one or more arbitrators and said arbitrator(s) refrained from disclosing such disqualification;
- e. Any other misbehavior of the arbitrators by which the right of any of the parties have been materially prejudice; or
- f. The arbitrators exceeded their powers or imperfectly executed them such that a mutual, final and definite award was not made.¹³⁵

Should the Joint Philippine Congressional Committee approve the proposed Implementing Rules and Regulations of Republic Act No. 9285, parties would have clearer and more established parameters to support a position to vacate an award.

With respect to the procedure for vacating a domestic arbitral award, the Philippine Supreme Court has yet to promulgate the rules of procedure for this matter. In the meantime, the procedure for vacating an award, which is currently being employed, is that relative to a case for specific performance.

4. Confirmation and Enforcement of the Award

With respect to domestic arbitration, Republic Act No. 9285 expressly states that the confirmation of the domestic arbitral award shall be governed by “Section 23 of [the Philippine Arbitration Law]” and that the domestic arbitral award shall be enforced in the same manner as final and executory decisions of the Regional Trial Court.¹³⁶

Under Republic Act No. 876, any party to the controversy may, within one month after the award is made, file with the Regional Trial Court having jurisdiction a motion to have the award confirmed with notice to the adverse party or his attorney. Unless the award is vacated, modified or corrected, the court must grant the

¹³⁵ *Id.*, Secs. 24 and 26.

¹³⁶ Republic Act No. 9285, Section 40.

motion for confirmation of award.¹³⁷ Upon granting of an order confirming an award, judgment may be entered in conformity therewith by the Court.¹³⁸ The judgment so entered which will be docketed as if rendered in a special civil action, shall have the same force and effect and be subject to all the provisions relating to a judgment in an action and may be enforced as if it had been rendered in the court in which it has been entered. Confirmation of the award is essential before the same can be judicially enforced. Hence, a successful party cannot secure a writ of execution to enforce an arbitral award in his favor without said award first confirmed by the courts of law. An exception is an award rendered under the Construction Industry Arbitration Law,¹³⁹ which authorizes the issuance of a writ of execution to enforce the arbitral award upon the finality thereof.¹⁴⁰

Note that “an arbitration ... has also the effect of *res judicata*, because under Article 2043 of the Civil Code, the provision on Compromise is also applicable to arbitration. Article 2037 expressly provides that a compromise has the effect or authority or *res judicata* ... and consequently can no longer (be appealed)”.¹⁴¹ This is of course not to mention Sections 27 and 28 of R.A. No. 876 which make the confirmed award subject to immediate execution.

B. International Arbitration

1. Time to Render the Award

In international arbitration, the arbitral tribunal would also render the award within the period agreed upon by the parties.¹⁴² In the absence of such an agreement, the award must be rendered within a reasonable period.¹⁴³

¹³⁷ *Ibid.*

¹³⁸ Republic Act No. 876, Sec. 25.

¹³⁹ Executive Order No. 1008, eff. Feb. 4, 1985.

¹⁴⁰ The Construction Industry Arbitration Law, Executive Order No. 1008, Sec. 20.

¹⁴¹ Republic Act No. 876. Sec. 28.

¹⁴² Model Law, Section 28 (1).

¹⁴³ *See* Model Law, Article 19.

2. Form and Content of the Award

The requirements as to the form and contents of an award in a domestic arbitration are the same for awards rendered in international arbitration.

3. Grounds and Procedure to Set Aside an International Arbitral Award

The following are the grounds for setting aside (vacating) a foreign arbitral award:¹⁴⁴

(1) An arbitral award may be set aside by the Regional Trial Court only if:

(a) the party making the application furnishes proof that:

(i) 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 thereon, under the law of the Philippines; or

(ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iii) 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 the part of the award which contains decisions on matters not submitted to arbitration may be set aside; or

(iv) 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 the ADR Act from which the parties

¹⁴⁴ Model Law, Article 34.

cannot derogate, or failing such agreement, was not in accordance with the ADR Act;
or

(b) the Court finds that:

(i) the subject matter of the dispute is not capable of settlement by arbitration under the law of the Philippines; or

(ii) the award is in conflict with the public policy of the Philippines.

Similar to the rules applicable to domestic arbitration, the Philippine Supreme Court has yet to promulgate the rules of procedure in cases involving the setting aside of international arbitral awards. In the meantime, the procedure for vacating an award, which is currently being employed, is that relative to a case for specific performance.

4. Confirmation and Enforcement of the Award

With respect to international commercial arbitration awards, Section 40 of Republic Act No. 9285 expressly states that, “the recognition and enforcement of an award in an international commercial arbitration shall be governed by Article 35 of the Model Law”. Article 35 of the Model Law provides:

(1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this article and of Article 36.

(2) The party relying on an award or applying for its enforcement shall supply the duly authenticated original award or a duly certified copy thereof, and the original arbitration agreement referred to in Article 7 or a duly certified copy

thereof. If the award or agreement is not made in an official language of this State, the party shall supply a duly certified translation thereof into such language.

The foregoing provision has been adopted under the procedure for recognition and enforcement of awards under international commercial arbitration in the IRR to Republic Act No. 9285¹⁴⁵:

“The party relying on an award or applying for its enforcement shall file with the Regional Trial Court the original or duly authenticated copy of the award and the original arbitration agreement referred to in Article 4.6.7 or a duly authenticated copy thereof. If the award or agreement is not made in an official language of the Philippines, the party shall supply a duly certified translation thereof into such language.”

With respect to foreign arbitral awards, Republic Act No. 9285 distinguishes between awards made under the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“New York Convention”, which was ratified by the Philippine Senate under Senate Resolution No. 71) and those not thus covered by the New York Convention:¹⁴⁶

- a. As to arbitral awards covered by the New York Convention.

The petitioner shall establish that the country in which the foreign arbitration award was made is a party to the New York Convention.¹⁴⁷

- b. As to arbitral awards not covered by the New York Convention.

The recognition and enforcement of these awards shall be done in accordance with the procedural rules to be promulgated by the Supreme Court. The

¹⁴⁵ Chapter IV, Rule 4.6, Article 4.6.35 of the IRR to Republic Act No. 9285.

¹⁴⁶ Chapter 7(B) of the Republic Act No. 9285.

¹⁴⁷ Section 42 of Republic Act No. 9285; Section 4.6.35.1(a) of the IRR to Republic Act No. 9285.

Court may, on grounds of comity and reciprocity, recognize and enforce a non-convention award as a Convention award.¹⁴⁸

The recognition and enforcement of these awards shall be filed with the Regional Trial Court in accordance with the rules of procedure to be promulgated by the Supreme Court. The party relying on the award or applying for its enforcement shall file with the Regional Trial Court the original or duly authenticated copy of the award and the original arbitration agreement or a duly authenticated copy thereof. If the award or agreement is not made in an official language of the Philippines, the party shall supply a duly certified translation thereof into such language.¹⁴⁹

If the Regional Trial Court has recognized the arbitral award but an application for (rejection and/or) suspension of enforcement of that award is subsequently made, the Regional Trial Court may, if it considers the application to be proper, vacate or suspend the decision to enforce that award and may also, on the application of the party claiming recognition or enforcement of that award, order the other party seeking rejection or suspension to provide appropriate security.¹⁵⁰

Finally, it must be stressed that a foreign arbitral award, when confirmed by a Court of a foreign country, shall be recognized and enforced as a foreign arbitral award and not as a judgment of a foreign Court.¹⁵¹ When a foreign arbitral award is recognized by the Regional Trial Court, it shall be enforced in the same manner as final and executory decisions of the courts of law of the Philippines.¹⁵²

¹⁴⁸ Section 43 of Republic Act No. 9285; Sections 4.6.35.1(b) and 4.6.36.2 of the IRR to Republic Act No. 9285.

¹⁴⁹ Section 42 of Republic Act No. 9285; Section 4.6.35.2 of the IRR to Republic Act No. 9285.

¹⁵⁰ Sections 42 and 45 of the ADR Act; Sections 4.6.35.5, 4.6.36.1, and 4.6.36.3, of the IRR to Republic Act No. 9285.

¹⁵¹ Section 44 of the ADR Act; Section 4.6.35.3 of the IRR of Republic Act No. 9285.

¹⁵² Section 44 of the ADR Act; Section 4.6.35.4 of the IRR of Republic Act No. 9285.

VIII. APPEAL

Under Republic Act No. 9285, a decision of the Regional Trial Court confirming, vacating, setting aside, modifying, or correcting a domestic or international arbitral award may be appealed to the Court of Appeals in accordance with the rules of procedure to be promulgated by the Supreme Court. The losing party who appeals from the judgment of the court recognizing and enforcing an arbitral award shall be required by the appellate court to post a counter-bond executed in favor of the prevailing party equal to the amount of the award in accordance with the rules to be promulgated by the Supreme Court.¹⁵³

IX. JUDICIAL INTERVENTION

Judicial intervention comes into play in the following circumstances:

- a. in the determination of the validity and enforceability of the arbitration agreement and its provisions by the Arbitral Tribunal;
- b. in the determination of whether a particular dispute comes within the ambit of the arbitration agreement by the Arbitral Tribunal;¹⁵⁴
- c. in a petition to compel arbitration;¹⁵⁵
- d. interim remedies to conserve the subject matter of arbitration pending appointment of the arbitrators;¹⁵⁶
- e. petition to quash or vacate the award;¹⁵⁷
- f. confirmation and enforcement of the award;¹⁵⁸

¹⁵³ Section 46 of the ADR Act; Section 4.6.37.1 of the IRR of Republic Act No. 9285.

¹⁵⁴ See discussion of 3.2.2, *supra*.

¹⁵⁵ See discussion of 3.3.1., *supra*.

¹⁵⁶ See discussion of 3.2.3., *supra*.

¹⁵⁷ See discussion of 3.6.3., *supra*.

¹⁵⁸ See discussion of 3.6.5., *supra*.

g. in the appointment or challenge of an arbitration in the event default of the Appointing Authority; and

h. appeals from a judgment of the court.¹⁵⁹

X. RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

As earlier stated, the Philippines adopted the 1958 New York Convention in 1965 under Senate Resolution No. 71.¹⁶⁰ The New York Convention has been expressly recognized by our Supreme Court as a system of settling commercial disputes of an international character.¹⁶¹ Hence, Philippine courts will recognize and enforce arbitration awards made in countries, which are signatories to the Convention on the basis of reciprocity and other forms of that Convention. In the same manner, arbitral awards handed down by Philippine arbitration bodies can similarly be enforced through the courts of other signatory countries.

Foreign arbitral awards may likewise be enforced in the Philippines by the filing of an application with the Regional Trial Court having jurisdiction of a petition or application attaching (1) the duly authenticated original award or a duly certified copy thereof, and (2) the original agreement providing for arbitration or a duly certified copy thereof. If the award agreement is not in an official language of the Philippines, then the party applying for recognition and enforcement shall produce a translation of the award and/or agreement into an official language of the Philippines duly certified by an official or sworn translation or by a diplomatic or consular agent.¹⁶²

¹⁵⁹ See discussion of 3.6.6., *supra*.

¹⁶⁰ 61 O.G. 8344, Dec. 27, 1965.

¹⁶¹ *National Union Fire Insurance Company of Pittsburg v. Stolz-Nielsen Philippines, Inc.*, G.R. No. 87958, Apr. 26, 1990, 184 SCRA 682.

¹⁶² Republic Act No. 876, Sec. 27.

XI. Conclusion

Commercial arbitration is fast gaining ground in the Philippines and globally as the most practicable of all alternative dispute resolution methods. Understandably, and rightly so, arbitration has been touted as the “‘wave of the future’ in international relations.”¹⁶³

In the Philippines, arbitration is steadily becoming the favored mode of settling international controversies. Oftentimes, however, arbitration agreements with foreign entities provide for the venue to be in Singapore or Hong Kong. However, the Philippines could easily become another important Asian center for arbitration. With enactment of Republic Act No. 9285, the general population's facility with the English language, the rise of institutionalized arbitration before the PDRCI and CIAC, the increasing number of experts in various fields including engineering, construction, finance and banking as well as the supremacy of law and due process, the Philippines could serve as an ideal venue for international commercial arbitration.

¹⁶³ *Sea-Land Service, Inc. v. Court of Appeals, et al.*, G.R. No. 126212, March 2, 2000, 327 SCRA 135; *BF Corporation vs. Court of Appeals*, G.R. No. 120105, March 27, 1998, 288 SCRA 267, 286.